

General Terms and Conditions for the Sales of Special Papers

1. General Information

- 1.1 The following terms and conditions only apply to commercial operations between Mitsubishi HiTec Paper Flensburg GmbH and/or Mitsubishi HiTec Paper Bielefeld GmbH (in the following referred to jointly or also individually as the "Seller") and companies as defined in § 310 paragraph 1 BGB (Bürgerliches Gesetzbuch – German Civil Code) (in the following referred to as the "Buyer").
- 1.2 The following terms and conditions apply to all agreements between the Seller and the Buyer as well as all deliveries and offers from the Seller to the Buyer. Any terms and conditions of the Buyer that deviate from these terms and conditions and have not been explicitly recognised by the Seller for an individual case have no validity, even if the Buyer's terms and conditions have not been explicitly contradicted. Any diverging or subsidiary agreements require the written form to be valid. In so far as no other agreement has been made, diverging or subsidiary arrangements are applicable only in individual cases.
- 1.3 In so far as reference is made to commercial contractual terms in the order confirmation or correspondence, the International Regulations for the Interpretation of Commercial Terms (Incoterms) in their respective valid version shall be applied to the contractual relationship if possible interpreted in accordance with these general terms and conditions of sale. Any provisions of the general terms and conditions of sale that contradict the Incoterms become invalid individually.
- 1.4 In so far as further contractual terms and conditions previously drafted by the Seller are integrated in the contract as for example data sheets, etc., these are only valid as supplements to the following provisions of the general terms and conditions of sale, which are always overriding, or they are to be interpreted in accord with those terms and conditions.

2. Offer, Order Placement

- 2.1 The Seller's offers are subject to change and nonbinding in so far as they have not been explicitly specified in writing as binding or fixed as qualified by the Seller.
- 2.2 If the Buyer's order is to be qualified as an offer as defined in § 145 BGB (German Civil Code), then the Seller may accept the offer within 2 weeks. A sales contract is not materialised until the Seller has confirmed the order in writing. Only when the Seller has confirmed the order is the Seller under obligation to the Buyer.
- 2.3 If the Seller explicitly specifies an offer as binding or fixed, he is bound to his offer for a period of 3 days after submitting the offer if nothing else has been explicitly agreed between the Parties.
- 2.4 Orders for the delivery of paper and cardboard (from new production or from stock) must contain data informing the Seller unambiguously at least about the following details:
- Reference to a possible offer (written correspondence, visit, forwarding of pricelists, etc.)
 - Quantity
 - Quality with reference to a type, a brand or a forwarded sample as well as other possibly necessary information
 - For reels:
 - Reel width, reel diameter, inner diameter of tubes, grammage (g/m²)
 - For formats:
 - Dimensions, direction of web travel, if necessary, grammage (g/m²)
 - Configuration and packaging
 - Term of delivery, destination and type of dispatch
 - Price to be agreed on
 - Payment conditions to be agreed on
- 2.5 Delivery schedules as well as their changes and additions require the written form. In case of call-off orders deliveries are made after the Buyer's call. The Seller is entitled to insure the merchandise available in stock for call-off against fire and to invoice the Buyer for the incurring costs. This is not applicable if the Buyer accepts a fixed and precise offer in all its details for a fixed date of delivery or a fixed delivery time limit. The Buyer's order confirmation must be sent at the latest within 10 working days subsequent to the receipt of the written order.
- 2.6 Information about the object or the amount of the delivery or the performance (e.g. weight, dimensions and technical data) as well as their descriptions (e.g. drawings and illustrations) are only approximate relevant performance descriptions or information about the quality and are not warranted properties or guarantees for the quality of the merchandise. Guarantees for the quality of the merchandise are provided by the Seller only in writing and must be explicitly identified as such.
- 2.7 The Seller reserves the right of property and intellectual property regarding illustrations, drawings, calculations and other documents. This also applies to written documents marked "confidential". Before forwarding them to third parties, the Buyer needs to obtain the Seller's explicit written consent.
- 2.8 Displaying merchandise on the Internet does not constitute an offer but rather an unbinding invitation to a customer to place an order.

3. Format and Direction of Web Travel Data

- 3.1 Format: The format of the paper or the cardboard is determined by its two dimensions, width and length.
- 3.2 Direction of web travel: The direction of web travel or the machine direction of the paper or the cardboard corresponds to the direction of the pulp flow on the paper machine. The short grain runs vertical to the direction of the web travel. If a certain web travel direction is required, it must be entered on the order and repeated on the order confirmation. The direction of the web travel must be clearly indicated on reams and packages.

4. Passing of the Risk

- Risk and danger are transferred to the Buyer:
- 4.1 if the merchandise is to be sent by the Seller, at the time of loading into/onto the means of transport chosen by the Seller ex Seller's factory or warehouse where the dispatch of the merchandise to the Buyer begins, irrespective of recourse against the commissioned freight carrier. This also applies if the Seller has taken over the dispatch costs and further costs of delivery and placement;
- 4.2 if the merchandise is to be collected by the Buyer from the Seller's factory or warehouse, at the moment the notice of availability in the Seller's factory or warehouse where the merchandise is to be collected. The same applies if removal or dispatch is postponed by the Buyer and if the Seller takes care of singling out the merchandise at the time defined or if the Seller is exempt from his duty to deliver as defined in item 5.10 of these terms.
- 4.3 In as far as no other provisions have been specified in the order confirmation, delivery "ex works" is agreed.

5. Delivery

- 5.1 The delivery period begins with the date of the order confirmation. However, the delivery period does not begin before all details of order execution have been settled and all other requirements to be fulfilled by the Buyer have been met. The defence of non-performance remains reserved. The same applies to delivery dates.
- 5.2 It is permissible to deliver the merchandise before the end of the delivery period. Partial deliveries are permissible if the Buyer does not have an obvious interest in not receiving partial deliveries.
- 5.3 Delivery periods and delivery dates as well as performance periods and dates are always regarded only as approximate times unless a fixed period or a fixed date has been agreed (firm deal). In so far as dispatch has been agreed, the delivery periods and delivery dates are the date of transfer to the forwarder, commissioned freight carrier or other persons or companies commissioned with the transport. Furthermore, expressing timely dispatch readiness is sufficient respect of delivery periods and dates in so far as readiness has been communicated to the Buyer.
- 5.4 If the Buyer wishes, the delivery is covered by transport insurance. The costs incurred for this are borne by the Buyer.
- 5.5 In case of force majeure and other hindrances which could not be foreseen at the time of the conclusion of the contract (e.g. interruption of operations of all kind [also machinery breakdown], difficulties in acquiring materials or energy, transport delays, strikes, lockouts, labour shortage, energy or raw material shortage, measures taken by the authorities) which the Seller does not have to answer for and which make the delivery or performance substantially difficult or impossible, the Seller's obligation to fulfil the contract does not apply, in so far as the hindrance of delivery is only temporary, for the duration of the hindrance plus a reasonable start-up period. If the delay lasts more than two weeks, the Buyer and the Seller are entitled to rescind the contract in the absence of other agreements without either Party having the right to claim damages for this.
- 5.6 This applies accordingly in case of difficulties in acquiring the necessary permits from the authorities, e.g. import licences or authorisations, irrespective of the Seller's potential possibility to recognize these difficulties at the time of the conclusion of the contract.
- 5.7 The Seller must inform the Buyer immediately in writing about the temporary hindrance or the impossibility to deliver and the related reasons.

- 5.8 If such a hindrance is related to a delivery due that is part of a contract covering several deliveries in sequence, the right to rescind the contract applies only to the delivery due and not to future deliveries.
- 5.9 If the order has been partially completed by the Seller at the time of such a temporary or permanent delivery hindrance, the Buyer is obliged to accept the finished merchandise under the stipulated conditions. This does not apply in so far as the Buyer is justifiably not interested in a partial delivery and is entitled to rescind the contract.
- 5.10 If, based on contractual agreement, the Seller is obliged to transport the merchandise and cannot do so due to circumstances such as those described in item 5.6, the Seller is exempt from his obligation to deliver for the duration of the hindrance. The Seller shall inform the Buyer immediately and provide the merchandise properly separated and available for collection on the Seller's premises or in another warehouse.

6. Delay of Acceptance

- 6.1 If the Buyer does not collect the merchandise after it has been made available or postpones the collection, the Seller is entitled to store the merchandise at the Buyer's expense or to demand reimbursement for storage costs, even if the Seller stores the merchandise in his own warehouse.
- 6.2 If the Buyer can document circumstances which he is not responsible for, such as described in item 5.5 of the general terms and conditions of sale, then the Seller may rescind the contract after a period of 2 weeks without either of the two Parties having the right to claim for compensation.
- 6.3 If the Buyer is not able to invoke such circumstances, the Seller can rescind the contract after a period of 2 weeks and claim for compensation.
- 6.4 If such a hindrance relates to part of a contract covering several deliveries in sequence, the right to rescind the contract and to claim compensation only applies to the delivery due but not to future deliveries.

7. Basis of Invoicing

- 7.1 If subsequent to the conclusion of the contract freight costs, insurance costs or public fees and encumbrances (e.g. duties, import/export fees) are newly introduced or increased, the Seller is entitled to add such increased charges to the price agreed, also in cases of carriage free or delivery duty paid merchandise.
- 7.2 All products are invoiced according to the accounting mode drawn up in the respective order confirmation. The Seller is entitled to alter his accounting modes without an explicit advance notice. In so far as nothing else has been agreed in a separate single agreement and/or in so far as nothing in particular has been designated in the order confirmation, the price of papers of all types is calculated according to area (m²) or weight or piece.
- 7.3 All prices are indicated in EUROs in so far as nothing else has been explicitly defined otherwise and represent net prices plus the legal value-added tax. With deliveries for collection with foreign destinations, the Seller is entitled to invoice the legal value-added tax and to demand its settlement as long as the Buyer has not provided evidence of the export out of the Federal Republic of Germany. Upon the presentation of appropriately documented evidence of the export out of the Federal Republic of Germany, the value-added tax will be reimbursed to the Buyer.

8. Payment

- 8.1 The Seller's commercial sales personnel and representatives are only entitled to collect the invoiced amounts if they are explicitly authorised to do this by the Seller.
- 8.2 The Buyer bears the risks and charges connected with the transfer of the invoiced amount.
- 8.3 The Seller accepts bills of exchange offered only if they are based upon a special agreement and only for the purpose of payment. Bills of exchange may only be accepted if they are duly taxed and discountable. They are accepted on presentation and protest. Notes of credit for bills of exchange and cheques are valid subject to receipt and less bill of exchange charges and expense – with the value of the day on which the Seller may dispose of the countervalue. If the Seller accepts bills of exchange as payment, the Buyer bears the costs of the bills of exchange and the costs resulting from possible discounting.
- 8.4 The Buyer is obliged to authorise payment so that payment receipt is effected 20 days at the latest after the date of the invoice. After the expiration of that period the Buyer gets into arrears. If the Buyer gets into arrears, he must pay interest amounting to the legal rate applicable to the respective business (currently 8% with reference to 1st June 2008) above the basic rate of interest. This does not affect the rights to assert further claims for compensation.
- 8.5 If, after the conclusion of the contract, the Seller obtains factual knowledge of the Buyer's inability to pay, especially of a considerable worsening of the Buyer's financial circumstances (e.g. through claim enforcement, insolvency, suspension of payments, liquidation, pledging or chattel mortgage of merchandise, supplies or outstanding amounts, or if the Buyer has repeatedly failed to pay invoices despite reminders), the Seller is entitled to deny performance and call in all receivables issuing from the business relationship with the Buyer, if the factual circumstances qualify the claim for counter performance to be endangered. The right to refuse performance is not applicable if counter performance is effected or security for this is provided.
- 8.6 The Seller can set an appropriate period of time for the Buyer to provide counter performance or security corresponding to the Seller's performance matching payment with delivery. After the effectless lapse of this period the Seller may rescind the contract.

9. Reservation of proprietary rights

- In so far as the following provisions do not conflict with regulations of public order in the Buyer's country especially regarding insolvency legislation, the following applies if no written agreements stipulate the contrary:
- 9.1 The Seller remains the owner of the merchandise delivered by him until the Buyer has completely paid all of the Seller's receivables resulting from the business relationship with the Buyer.
- 9.2 The Buyer can process or resell this merchandise within the framework of regular business management. The Buyer is not authorised to dispose of other orders of the authorities, in particular the pledging of goods or concession of pledged property.
- 9.3 Processing or altering the merchandise that is the object of the reservation of proprietary rights is performed for the Seller as defined in § 950 BGB (German Civil Code) however, without causing new obligations for the Seller. If such merchandise is processed into a new product together with other products that do not belong to the Buyer or mixed inseparably, the Seller acquires co-ownership of the new products according to the value of the merchandise subject to the reservation of proprietary rights. The Buyer stores the property or co-property of altered merchandise subject to reservation without charge to the Seller. Upon the Seller's request the Buyer is obliged at any time to provide information relevant to the pursuance of the Seller's rights of property or co-property.
- 9.4 The Buyer assigns to the Seller all claims including securities and collateral rights resulting from the resale of the processed or non-processed merchandise which is completely or partially subject to the reservation of proprietary rights. This assignment is made in fact to compensate for the reservation of proprietary rights which becomes invalid with the resale and as a security for the Seller up to the value of the merchandise subject to the reservation of proprietary rights. Upon the Seller's demand the Buyer has to inform his customer about this assignment.
- 9.5 If the Buyer integrates receivables resulting from the resale of the merchandise subject to the reservation of proprietary rights into an account relationship existing with his customer, he already now assigns to the Seller the balance or final balance acknowledged in his favour corresponding to the total amount of the receivables included in the current account relationship resulting from the resale of the merchandise subject to reservation.
- 9.6 The Buyer is obliged to inform the Seller immediately if he intends to assign or has already assigned to third parties receivables resulting from the resale of the merchandise already delivered or to be delivered by the Seller. In particular this applies in case agreements containing non-recourse or recourse factoring have been concluded with these third parties which may be impaired by the Seller's security rights mentioned in items 9.1 to 9.5. In case of recourse factoring the Seller is entitled to rescind the contract whose security rights are or might be affected and to demand the surrender of merchandise already delivered. The same applies in case of non-recourse factoring if the Buyer cannot freely dispose of the purchase price subsequent to the contract with the factor.
- 9.7 The Seller is obliged to release to the Buyer upon demand the securities the Seller is entitled to, in so far as the implementable value of the securities exceeds the receivables to be secured by more than 20 %; the choice of the securities to be released is incumbent on the Seller.
- 9.8 The Buyer must insure the merchandise subject to the reservation of proprietary rights against loss or damage, in particular against fire and theft. The Buyer's claims to insurances resulting from a damage case concerning the merchandise subject to reservation are already assigned to the Seller with the conclusion of the contract, anticipated at an amount corresponding to the value of the merchandise subject to reservation.
- 9.9 The Buyer must inform the Seller immediately in writing about any measures taken by third parties

- that contradict the reservation of proprietary rights, e.g. the pledging of the merchandise that is the object of the reservation of proprietary rights described.
- 9.10 The Seller may rescind the contract or take back the processed or non processed merchandise subject to reservation if one of the cases designated in the present terms and conditions of sale occurs. If the Seller takes back the merchandise after further processing by the Buyer and sells it to a third party, the Seller is to pay the Buyer for the difference between the sales price of the merchandise in question before and after its further processing.
- 10. Delivery hindrances**
- 10.1 For deliveries or performance delayed due to unforeseen extraordinary circumstances which the Seller could not prevent despite exercising the appropriate diligence required by the conditions of the individual case (even if these circumstances occur at the suppliers') such as strikes, lockout, interruption of operations (also machinery breakdown), subsequent difficulties in material acquisition, rejects in case of an important work piece, an order of the authorities, etc., the delivery period is extended by the duration of the hindrance plus appropriate start-up time to meet the Seller's operational requirements.
- 10.2 If the circumstances described in item 10.1 occur, the Seller can rescind the non-fulfilled part of the contract alternatively to item 10.1.
- 10.3 If the above circumstances make the delivery or performance impossible without it being the Seller's fault, the Seller is exempt from the obligation to deliver without the Buyer having right to demand compensation.
- 11. Complaints, material deficiencies**
- 11.1 The Buyer or the recipient named by the Buyer is to check the merchandise immediately upon receipt at the destination according to the regulations specified in § 377 HGB (German Commercial Code) and to rebuke possible deficiencies according to item 11.4.
- 11.2 If a consignment warehouse for the Seller is set up at the Buyer's, the Buyer is obliged to check the consigned merchandise upon delivery to warehouse as instructed and specified in § 377 HGB (German Commercial Code) and to rebuke possible deficiencies as specified in item 11.4.
- 11.3 The Seller's starting negotiations about deficiencies rebuked by the Buyer simply represents an attempt to reach an amicable settlement. This is not to be understood as a tacit waiver of the objection of the delayed rebuke of the deficiency.
- 11.4 Rebukes are only effective if they are made in writing and received by the Seller and if the following time limits are observed:
- In case of damage due to transport, immediately after discovery, at the latest, however, within 3 working days after the receipt of the merchandise. Damage to the merchandise and packaging recognizable from the outside is to be appropriately documented immediately on the bill of freight by the Buyer. This documenting is not meant as a rebuke but merely serves to narrow down the time of the damage occurrence.
 - If the delivery obviously deviates from the order with regard to quality/type or quantity or in case of obvious non-fulfillment of exceptionally granted quality guarantees, immediately after discovery, at the latest, however, within 5 working days after the receipt of the damaged merchandise at its destination.
 - In case of deficiencies or irregularities which can be determined by means of superficial inspection or simple checking, immediately after discovery, in any case however at the latest within 14 days after receipt of the merchandise at its destination;
 - In case of deficiencies or irregularities which can only be proved after thorough examination, by a test or by a normal batch run, immediately after discovery, at the latest after one year subsequent to receipt of the merchandise at its destination;
 - If it is not possible for the Buyer to express the complaint due to specific circumstances within the scope of subcontractual work within the time limits defined above in spite of optimum effort and the corresponding general information from the end customers about the time limits to be observed, the Buyer can demand the extension of the time limits named above by a maximum of 14 additional days.
- 11.5 If the Buyer fails to file the complaint in due form and time, the merchandise is deemed as accepted. The Seller's statements about infringements of the contract or material deficiency or deficiency in title only serve to clarify the material aspect but, however, do not signify a waiver of the formalities of an orderly complaint. Punctually submitting the Buyer's report is decisive for the observance of the time limit. The buyer is fully responsible for the burden of evidence for all prerequisites for a complaint, in particular for the deficiency itself and its presence, in the event of the passing of a risk, for the time to determine the deficiency and for the punctuality in rebuking the deficiency.
- 11.6 Identifying a deficiency of a part of the merchandise obliges the Buyer to examine the merchandise to determine the extent of the deficiency. The detection of a deficiency in a part of the merchandise cannot constitute the rejection of the entire merchandise.
- 11.7 A material deficiency exists if the merchandise does not have the quality agreed in the contract, if the merchandise is not suitable for the use designated in the contract and/or does not show the quality normally found in material of the same kind and which can be expected by the Buyer according to the nature of the material. The samples identify only the quality of the object of the contract and do not represent a guarantee (§ 276 BGB – German Civil Code) nor a quality guarantee (§ 443 BGB).
- 11.8 A legal deficiency exists if the Buyer proves that the merchandise is not free from implementable rights or claims by third parties at the time of the passing of the risk. Without a waiver of further legal requirements, the rights or claims of third parties based on commercial or other intellectual property may be reason for a legal deficiency only in so far as these rights are registered and made public according to normal national regulations of the Federal Republic of Germany and/or according to international regulations. Irrespective of the legal regulations valid in the Federal Republic of Germany the delivery is not legally deficient if the legal regulations valid at the Buyer's place of business do not oppose the normal use of the merchandise.
- 11.9 The Buyer's rights regarding material and legal deficiencies are in the first place limited to refilling. Refilling is carried out as the Seller chooses, either through the elimination of the deficiency or by the delivery of flawless merchandise. The Seller is not liable for costs incurred caused by the transport of the merchandise to a location different from the location of fulfillment unless the transport corresponds to its intended application known to the Seller at the time of the conclusion of the contract.
- 11.10 In case of existing legal deficiencies only the Seller is entitled to effectuate licences or possibly necessary permissions for use within the framework of prioritized refilling from the third party. The Buyer is not permitted to arbitrarily acquire or to effectuate otherwise a possibly necessary permission/licence for the delivery, start-up operation, use, resale, etc. of the merchandise at the expense of the Seller from the owner of such protective rights. Costs resulting from an agreement between the Buyer and the third party for the permission/licencing opposing these prerequisites represent no reimbursable damage for the Buyer.
- 11.11 If refilling fails, the Buyer is entitled to rescind the contract after the expiration of a time period of 10 working days to be determined, to reduce the purchase price or – the Seller is guilty of negligence – to demand compensation for damages. Liability independent of negligence can only be considered in case there is an explicit written acceptance of a guarantee (§ 276 BGB – German Civil Code) or a quality guarantee (§ 443 BGB) by the Seller.
- 11.12 Non-negligence liability is only taken into account if there is an explicit written transfer of a guarantee (§ 276 BGB – German Civil Code) or a quality guarantee (§ 443 BGB) through the Seller.
- 11.13 In so far as the Buyer asserts claims for material deficiencies against the Seller based on public statements made by the Seller or his assistants, in particular in advertisements or in characterising certain properties, the Buyer must prove that the statement has been instrumental for the order placement. The Seller is not liable for statements made in thirdparty advertisements.
- 11.14 Deficiency claims made by the Buyer expire within one year from the date of passing the risk. In the event of a delivery recourse the expiration period according to (§ 478, 479 BGB – German Civil Code) remains unaffected.
- 11.15 If the Buyer has had to accept the return of newly produced merchandise sold to a consumer due its deficiency or if the Buyer's customer has reduced the sales price, the Buyer's legal rights in case of defaults apply without restrictions of the rights of guarantee specified in this provision with the exception of the entitlement to damage claims (§ 478 BGB – German Civil Code).
- 11.16 The Seller is entitled to conclude the transportation contract subject to the Allgemeine Deutsche Spediteurbedingungen (ADSP – general German transport terms). The Seller is not liable for transport damages in so far as the risk has been transferred to the Buyer. In this case possible claims resulting from the transportation contract against the freight carrier are to be settled exclusively between the Buyer and the freight carrier. The possible claims made by the Seller against the freight carrier resulting from the transportation contract are assigned to the Buyer in anticipation, who accepts this assignment with the conclusion of the sales contract.
- 11.17 When the Buyer requires products for further processing from the Seller the first time, a sample (e.g. a test reel) of the paper on which the order is based is first made available to the Buyer. The Buyer is obliged to examine this test reel regarding suitability for the application intended by the Buyer in particular for further processing. The test results are to be made available to the Seller. In case of a follow-up order, the Seller is not liable for damage which might have been foreseeable and avoidable after testing for the purpose intended.
- 11.18 Before further processing of the merchandise the Buyer must check if the merchandise delivered according to the specifications is in fact suitable for the application intended. Should the Buyer fear or detect that
- the merchandise is not suitable for the application intended and/or
 - the merchandise is deficient and/or,
 - in the opinion of the Buyer, problems due to the quality of the merchandise will arise during further processing,
- further processing of the affected merchandise may not be carried out without the explicit written consent of the Seller. Should further processing of the merchandise by the Buyer be carried out without this written consent, the merchandise is deemed as approved.
- 11.19 In so far as the written order confirmation does not explicitly state the contrary the Seller is not liable for the properties of the merchandise to be congruent with those of a sample or test material or to correspond to any legal regulations of countries other than the Federal Republic of Germany. If a sample, a test material or merchandise lot already delivered by the Seller shows certain properties which are so important for further use by the Buyer or his customers that in any case, in particular also because of these properties the (follow-up) order is placed by the Buyer, the Buyer is liable for indicating to the Seller these circumstances and the especially desired property of the merchandise explicitly when ordering. If this indication about the special property of the merchandise is omitted and if the merchandise does not show this special property at the time of the passing of the risk, the Seller is not liable for these circumstances. General liability for deficiencies according to the remaining provisions of these general terms and conditions remains unaffected.
- 11.20 The Seller is not liable for defective merchandise or possible subsequent damage in so far as the deficiency and/or subsequent damage are caused by unqualified storage or processing. Unqualified storage and processing may occur in particular if the Buyer has not adhered to the specifications of the product information or other users' instructions. In case of doubt, the Buyer must explicitly inform himself and ask the Seller about qualified storage and/or further processing.
- 11.21 The Buyer is obliged to test before the new application the Seller's product that has already been used by the Buyer and how to be used in a new application. A new application is, in particular, also when new or different equipment is used for processing the paper as for example new or different printers.
- 11.22 If the Seller is informed that the merchandise delivered is not suitable for the purpose intended by the Buyer or that there is a risk of subsequent damage to the equipment used for further processing, the Seller communicates this to the Buyer. Then the Buyer is entitled to assert claims granted to him according item 11.9 together with item 12. of these terms and conditions. If the Buyer uses the merchandise in spite of knowing about the risks communicated by the Seller, the Seller is not held liable for damage resulting from this since the damage could have been avoided by the Buyer.
- 12. Liability and compensation for damage**
- 12.1 Fundamentally the Seller is liable to compensate for damage, regardless of the legal reason, only for damage in so far as it is based on intention or gross negligence on the part of the Seller's agents and managing staff or on the fact that other employees and/or assistants to the Seller have neglected crucial obligations to the contract with intention or have committed gross carelessness while performing their jobs.
- 12.2 In the event of simple negligence, the Seller is liable, regardless of the legal reason, for damage only if his agents and/or managing staff and/or other employees and/or assistants have violated contract relevant duties while executing their work and thus jeopardise the fulfillment of the respective contract target.
- 12.3 In case of damage resulting from gross or simple negligence, the liability of the Seller, the managing staff, other employees and/or auxiliary agents is limited to contractual typical foreseeable damage. Liability for non-foreseeable, extraordinary risks is to be excluded. The Buyer has to indicate special risks, an atypical damage contingency or an atypical damage amount to the Seller in writing.
- 12.4 Compensation claims due to indirect damage, in particular due to lost profits, are to be excluded unless this damage is the result of gross negligence or intention on the part of the executive organs and managing staff or of intentional or gross breach of contractual duties by other staff and/or auxiliary agents of the Seller while performing their jobs.
- 12.5 Restrictions of liability are not applicable to personal damage.
- 12.6 Based on this contract the Seller is not liable to third parties for damage arising in connection with the fulfillment of the obligations of this contract by the Seller, the managing staff, other employees and/or auxiliary agents. The Buyer exempts the Seller against such third party claims permanently and from the first request.
- 12.7 The limitation of liability is not applicable for claims conform to the German Product Liability Act.
- 12.8 In so far as the Buyer demands from the Seller the reimbursement of expenses incurred while testing the receipt of the performance (§ 284 BGB – German Civil Code) instead of compensation for performance, the amount of these expenses is limited to such expenses that a reasonable third party would have incurred.
- 12.9 In general the Buyer's rights of recourse against the Seller exist only in so far as the Buyer has not made agreements with his customer exceeding the compulsory deficiency claims legally valid in the Federal Republic of Germany.
- 13. Tolerances**
- 13.1 Quantity tolerances for the delivery of graphic papers in reels cannot be generally defined due to the great variety of the reels. Unless otherwise agreed in writing, a general deviation of $\pm 10\%$ of the total order is permissible.
- 13.2 Grammage tolerances (weight per m^2) and gauge tolerances to be accepted by the Buyer as contractual performance are designated in product specific data sheets. This data is always accessible on the Seller's Internet website. As a rule the data is issued to the Buyer in the preliminary agreement or with the order confirmation. The information in the product specific data sheets is only descriptive information about quality. Guarantees are not assumed concerning this matter.
- 13.3 Furthermore, the Allgemeinen Verkaufsbedingungen für graphische Papiere und graphische Kartons zur drucktechnischen Anwendung (General Terms and Conditions for the Sale of Graphic Papers and Graphic Cardboards) recommended by the Verband Deutscher Papierfabriken (German Association for Paper Factories) published in the Federal Gazette on 19th May 1983 and 26th January 1984 in the respective updated version, are applicable in so far as no deviating specifications subject to an individual agreement have been defined regarding the precision tolerances for quantity, dimension, grammage and counting, etc. for papers and cardboards.
- 14. Other properties**
- 14.1 For all other technical properties whose tolerances are not listed above, the Seller is not liable for minor deviations in so far as the merchandise delivered is suitable for the purpose intended with the order. Buckling of paper and cardboard is not considered to be a hidden flaw. The Buyer of special productions is obliged to accept the originally ordered quantity even if up to 10% thereof show minor deviations but are suitable for the same purpose as the papers and cardboards ordered.
- 14.2 Furthermore, the Allgemeinen Verkaufsbedingungen für graphische Papiere und graphische Kartons zur drucktechnischen Anwendung (General Terms and Conditions for the Sale of Graphic Papers and Graphic Cardboards) recommended by the Verband Deutscher Papierfabriken (German Association for Paper Factories) published in the Federal Gazette on 19th May 1983 and 26th January 1984 in the respective updated version, are applicable in so far as no deviating specifications subject to an individual agreement have been defined.
- 15. Final provisions**
- 15.1 The assignment of claims against the Seller that the Buyer is entitled to in accordance with the business relationship is excluded with the exception of monetary claims in the sense of § 354 a HGB (German Commercial Code).
- 15.2 The Buyer's right to retain or to set off exists solely with regard to such counter claims that have been defined as legally valid or have not been contested.
- 15.3 The Seller is entitled to set off; this also applies if the mutual receivables are payable in different currencies. The officially mean buying and selling rate fixed on the Frankfurter Devisenbörse (Frankfurt Stock Exchange) on the day of the declaration of set-off is the valid rate of exchange.
- 15.4 The place of performance for all deliveries and payments is the registered office of the Seller's subsidiary with which the Buyer settles the contract.
- 15.5 The exclusive venue for all litigation resulting directly or indirectly from the contractual relationship, also for legal charges concerning bills of exchange and cheques is the registered office of the Seller's subsidiary with which the Buyer settles the contract. The Seller may also choose to bring charges at the place of business of a Buyer's subsidiary that is, in any case, involved to some extent in the settlement of the contract.
- 15.6 The Parties may agree that litigations in connection with the sales contract are to be decided by an arbitrating body.
- 15.7 For these business terms and conditions and for the complete legal relationship between the contractual Partners, German law is exclusively applicable, as it would be applicable between domestic business people, in particular excluding the rules and regulations of the uniform UN Convention on the International Sale of Goods. Commercial practice usually performed at the Seller's place of business is applicable.
- 15.8 If single provisions of these business terms and conditions or the terms and conditions within the framework of other agreements are or become void or ineffective, the effectiveness of other provisions or agreements remains hereby unaffected. The ineffective part is to be replaced in the process of interpretation by a permissible provision which corresponds as closely as possible to the ineffective provision and fulfils the desired economic result to the greatest extent.
- 15.9 The Buyer is aware of the fact that the Seller has stored data from the contractual relationship for the purpose of data processing in accordance with § 28 Bundesdatenschutzgesetz (Federal Data Protection Law) and that the Seller reserves the right to transfer the data to third parties (e.g. insurances), in so far as this is necessary for the settlement of the contract.