

# **General Business Terms and Conditions of DERSCHLAG GmbH & Co. KG Folienverarbeitung**

## **I. Scope; Applicability; Exclusivity of the Terms and Conditions**

1. The following General Business Terms and Conditions shall apply to all current and future business relationships (especially sales and supply relationships) between DERSCHLAG GmbH & Co. KG Folienverarbeitung (“Principal”) and any customer (“Client”). They particularly apply to all purchase agreements, supply agreements and other special agreements in which DERSCHLAG GmbH & Co. KG Folienverarbeitung is the seller of its products.
2. All deviating, contrary or supplementary provisions, conditions and warranties, in particular possible general business terms and conditions of the customer, shall – irrespective of whether or not they are known – not become part of any contract, unless their applicability has been expressly agreed to in writing by DERSCHLAG GmbH & Co. KG Folienverarbeitung.
3. All written declarations of DERSCHLAG GmbH & Co. KG Folienverarbeitung related to the conclusion of a contract contain a written and explicit reference to the current General Business Terms and Conditions of DERSCHLAG GmbH & Co. KG Folienverarbeitung.

## **II. Definitions**

1. DERSCHLAG GmbH & Co. KG Folienverarbeitung is hereinafter also referred to as the “**Principal**”.
2. The following General Terms and Conditions are also referred to as the “**DERSCHLAG Folienverarbeitung Terms & Conditions**”.
3. All customers of DERSCHLAG GmbH & Co. KG Folienverarbeitung are referred to as “**Client**”.
4. “**Consumer**” within the meaning of DERSCHLAG Folienverarbeitung Terms & Conditions means any consumer within the meaning of Section 13 of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB).
5. “**Entrepreneur**” within the meaning of DERSCHLAG Folienverarbeitung Terms & Conditions means any entrepreneur within the meaning of Section 14 BGB.

6. “**Merchant**” within the meaning of DERSCHLAG Folienverarbeitung Terms & Conditions means any merchant within the meaning of the German Commercial Code (*Handelsgesetzbuch*, HBG).
7. Prices without the statutory value added tax for services to be performed by the Principal on the basis of the respective contractual relationship shall hereinafter also be referred to as “**Order Price**”.
8. “**Reworking/Tolling Transactions**” are transactions where the Client provides the Principal with materials to be reworked and processed at its own risk, and on which the Principal then performs the agreed processing work.

### III. Placing of Order; Conclusion of Contract; Confirmation of Order

#### Conclusion of Contract; Order Price

1. All offers of the Principal and/or all offer documents provided in advance for information purposes (prospectuses, price lists, catalogs, cost estimates) are non-committal and non-binding.
2. The Principal may make binding offers for the purpose of concluding a contract (orders) to the Client orally, over the phone or in writing (*e.g.* via phone, facsimile, e-mail or in person). By making such offer, the Client agrees with the exclusivity of the DERSCHLAG Folienverarbeitung Terms & Conditions.
3. Orders are subject to a written order confirmation by the Principal. A contract is established only upon the transmission of such written order confirmation to the Client.
4. The Principal’s stated Order Prices shall apply under the proviso that the Principal’s main cost factors at the time of concluding the contract essentially remain the same until the delivery of the goods. If and to the extent that between the conclusion of the contract and the time of delivery there is a material change in any of these cost factors (*e.g.* materials, auxiliary supplies, statutory charges, taxes etc.), the Principal shall be entitled to demand an adjustment of the Order Price from the Client that is reasonable for the Client. In this case, the Principal shall disclose its original calculation and indicate the respective cost factors responsible for the cost increase in each individual case.
5. Unless otherwise expressly agreed in writing, the Order Prices do not include shipping costs.
6. In case of Reworking/Tolling Transactions (i) the quoted Order Price and (ii) the ability to meet a possibly written agreed delivery date presuppose that the required materials are made available to the Principal in good time prior to carrying out the order.

Subsequent Changes/Adjustments to a Contract

7. Subsequent changes/adjustments to any order requested by the Client entitle the Principal to renegotiate the contract terms affected by such change/adjustment.
8. All subsequent changes/adjustments to any order require a written confirmation by the Principal in order to become effective. Such written confirmation shall be deemed the acceptance of the changed/adjusted contract.
9. If, as a result of a requested subsequent change/adjustment to an order, a machine breaks down or waste is produced in the execution of that particular order, the costs and expenses caused thereby shall be charged to the Client.

Miscellaneous

10. Any Client must be aged 18 or above. Unless otherwise agreed in writing in the individual case, contracts shall solely be concluded in German.
11. If, after concluding a contract, the Principal obtains knowledge of a material deterioration in the Client's financial situation, the Principal may make the further processing of the order, as well as the delivery of the goods, contingent on an advance payment, or the provision of adequate security by the Client. The advance payment may be up to 100% of the Order Price. At the Principal's choice, the Client shall provide the security in the form of a bank guarantee, an absolute bank guarantee, an unrestricted letter of comfort or through other securities regarded as economically and legally equivalent.
12. All contracts are concluded subject to the proviso that correct and timely delivery is made by the Principal's suppliers. This shall only apply to such cases where the Principal is not responsible for a possible non-delivery by its suppliers. In case of a non-delivery by its suppliers, the Principal shall inform the Client thereof at short notice and, if applicable, repay the Client any payment it has already received from the Client.

**IV. Execution of the Agreed Performance**

1. Advice

Advice, information, proposals and suggestions made or given by the Principal regarding the use, processing and possible applications of products manufactured by the Principal only constitute a quality agreement, a quality assurance or quality guarantee with respect to the goods to be delivered if this is expressly agreed in writing in the individual case.

2. Samples/Trial Reels

The Principal's provision of samples/trial reels or such like to the Client does not constitute a quality agreement, a quality assurance or any sort of quality guarantee with regard to the performance to be rendered by the Principal.

3. Print and/or Production Specimens

All print and/or production specimens furnished to the Client by the Principal prior to the execution of the order shall be carefully examined by the Client, in particular with regard to all material characteristics required for the intended use of the manufactured product.

The Principal assumes no liability that the print and/or production specimens provided to it by the Client in advance, or the print and/or production specimens approved by the Client for processing, or the print and/or production specimens not objected to by the Client, are suited for their intended use.

The Client shall return the signed documents as a sign of its agreement. Samples or trial reels provided to the Client shall be countersigned as a sign of agreement. Any corrections desired by the Client shall be marked clearly. The Principal shall not be liable for possible discernable defects which the Client has overlooked in its examination or has failed to object to, unless the Principal fraudulently concealed such defect. All pieces of technical advice and recommendations provided by the Principal are based on appropriate assessment, but are given outside any contractual obligation. The Principal's liability is insofar excluded.

4. Quantity Tolerance

For production-related technical reasons, the Principal shall in principle be entitled to deliver the following higher or lower quantities in deviation from the ordered quantity, and to charge these quantities to the Client:

Quantity	Percentage
0 – 4,999m <sup>2</sup>	50%
5,000 – 9,999m <sup>2</sup>	30%
over 10,000m <sup>2</sup>	15%

For sealing lids and die cuts (in the case of an order by number of pieces), the Principal shall, for production-related technical reasons, be entitled to deliver the following higher or lower quantities in deviation from the ordered quantity:

Quantity	Percentage
0 – 1 million pieces	25%
1 – 5 million pieces	20%
over 5 million pieces	15%

In the case of Reworking/Tolling Transactions, the waste produced in this process may amount to 15% of the actual order volume. The waste is, among others, independent from the order volume, the production procedure and the quality of the material made available. Unless specific execution standards have been agreed in the individual case, these tolerances shall be deemed as granted by the Principal.

5. Quality Tolerance

The order shall be executed in usual market quality in accordance with state-of-the-art science and technology and within the technically necessary material and process tolerances, which, depending on the foil thickness in the respective case, may be +/- 10 %. Unless specific execution standards have been agreed in the individual case, these tolerances shall be deemed as granted by the Principal.

6. EAN/GS1-Code

The Principal shall not be liable for any consequences caused by defective film masters or defective similar materials made available by the Client or its suppliers and vicarious agents for the purpose of printing EAN Codes/GS1Codes, uniform product codes or similar codes, or symbols.

The EAN Codes/GS1 Codes are printed in accordance with state-of-the-art technology. The Principal gives no warranty for the functionality and other features of the EAN Codes/GS1 Codes, especially not with regard to their readability at cash registers. The Client undertakes to indemnify the Principal against all claims and other rights of third parties arising in connection with the use of EAN Codes/GS1 Codes.

**V. Delivery; Delivery Dates; Admissibility of Partial Deliveries; Duty of Care**

1. Unless, in the individual case, otherwise explicitly agreed in writing, delivery dates shall be non-binding.
2. A written agreed delivery date shall be deemed observed if the goods to be delivered have left the works (Derschlag).
3. The observance of an agreed delivery time presupposes that all execution details have been clarified at the time of agreeing the delivery time, and that until then the Client has fulfilled all conditions to be fulfilled by it (e.g. submission of print documents, consent of the execution specifications etc.).
4. If the Client requests subsequent adjustments or changes to the order which have an effect on the agreed delivery time, a new written agreed delivery time shall apply upon the Principal's acceptance of the adjusted or amended contract. If no adjusted delivery time is agreed in writing, a reasonable (extended) delivery time shall apply.

5. The Principal shall be entitled to make partial deliveries. From delayed partial deliveries the Client cannot derive any claims for the other partial deliveries.
6. To the extent that the Principal undertakes the shipment of the manufactured goods, it shall do so with the due care of a prudent businessperson. Liability shall be limited to intentional acts and gross negligence. The risk of accidental loss and/or of deterioration of the goods to be delivered shall pass to the Client at handover, or for mail order purchases, on delivery of the goods to the carrier, freight forwarder or other person or institution designated with the task of performing shipment. The handover shall be deemed to have taken place even if the Client delays the acceptance of the goods to be delivered.

## **VI. Delay in Delivery; Compensation of Damages**

1. If a definite delivery date has been agreed, the Client shall, in the event of a delay, set the Principal a reasonable extension of at least 10 calendar days.
2. Claims for compensation of damages due to delayed delivery, or any other liability for damages may only be asserted in case of intent or gross negligence by the Principal, and shall always be limited to the (net) order value. Compensation of any direct damage (*e.g.* lost profit or covering purchases) or compensation of consequential or atypical damages shall be excluded. These provisions shall apply *mutatis mutandis* with regard to the Principal's legal representatives and vicarious agents. This clause shall not apply to (i) damage in the form of personal injury or other damage to body, life or health, nor to (ii) claims under the German Product Liability Act (*Produkthaftungsgesetz – ProdHaftG*).
3. Disruptions to operations at either the Principal's or the suppliers' places of operations for which the Principal is not responsible, yet on which the Principal's production or the delivery of goods depends, shall release the Principal from the requirement to comply with a possibly agreed delivery date, provided that the Client is informed about such disruption without delay. This shall only apply if and to the extent a remedy cannot be found in time, or can only be found at a disproportionately high cost. The Principal itself shall only be responsible in case of intent or gross negligence. Disruptions to operations shall be all obstructions of a serious nature which, objectively, occur without any fault on the Principal's part and were unforeseeable by the Principal, in particular general shortages of raw materials and energy, transport bottlenecks, intervention by the authorities, industrial action, war and civil commotion, as well as fires at the production sites through no fault on the Principal's part.
4. The foregoing clause 4 shall apply *mutatis mutandis* if, despite congruent covering purchases, the Principal is not supplied correctly or in good time by its suppliers.

## **VII. Delay in Acceptance**

1. If the goods are not accepted as contractually agreed, the Principal shall be entitled to charge the Client the costs it incurs as a result (*e.g.* for storage of the goods at its own or third party premises).
2. If, despite reasonably extending the time limit for acceptance, the goods are still not accepted, the risk of accidental loss and/or deterioration of the goods shall pass to the Client upon the expiration of the extension.
3. The quality risk shall pass to the Client no later than after the expiration of one month following the first agreed delivery date.

## **VIII. Payment; Offsetting of Counterclaims**

1. In principle, invoices and payments are made in euros. The use of a different freely convertible currency may be agreed. In this case, the official exchange rate applicable on the invoice date shall be used, unless a different arrangement is made in writing in the individual case.
2. The Principal shall be entitled to invoice the Client on or at any time after dispatch of the goods from the Principal's premises, or on or after such date the Client is in delay of acceptance.
3. Checks and bills of exchange shall only be accepted as conditional payment, and bills of exchange only after special written arrangement and subject to their discountability. Interest and costs incurred in discounting or the collection of bills of exchange shall be borne by the Client.
4. In the event of late payment the Client shall, without prejudice to additional claims, pay default interest at an annual rate of 6 percent unless the Client demonstrates a lower loss; the Client shall, however, pay at least the statutory rate of interest. Higher interest rates are owed (*e.g.* for a bank loan) if and to the extent the Principal shows the Client that this is warranted by sufficient proof.
5. In the event of a material deterioration in the Client's financial situation, or delayed payment or acceptance of services by the Client for such reason, the Principal shall have the right to demand immediate payment of goods even if they have not been delivered yet, or to demand immediate payment of not yet due invoices and not yet due bills and checks to the extent that such amounts serve to cover expenses already incurred by the Principal in connection with carrying out the order.
6. The Client may exercise a right of set off or right of retention against payment claims of the Principal only in case of undisputed claims, or claims that have been established by final and non-appealable judgment.

## **IX. Retention of Title**

1. If the Client is a Consumer, the Principal shall retain ownership of the goods until full payment of the purchase price. If the Client is an Entrepreneur or Merchant, the Principal shall retain ownership of the goods until all claims arising from the ongoing business relationship have been fully paid.
2. The Client is required to inform the Principal immediately of any seizure of the goods by any third party (*e.g.* in the event of an attachment), as well as of any damage to, or the destruction of the goods delivered to the Client subject to a retention of title. The Client shall inform the Principal immediately of any change in possession of the goods or any change of place of residence or business.
3. If the Client is in breach of contract, in particular in the case of late payment or a breach of contract according to this Section IX., the Principal shall be entitled to withdraw from the contract and demand the return of the goods.
4. The Client shall be entitled to sell any goods delivered to it subject to a retention of title to third parties in its ordinary course of business. In this case, the Client shall already assign all of its claims against the third party from such sale in the amount of the invoice to the Principal. The Principal shall accept the assignment. The Principal reserves the right to collect the claim itself as soon as the Client does not meet its payment obligations properly and falls behind its payments.
5. The reworking and processing of goods supplied by the Client is always done in the name and on behalf of the Principal. Where the Principal processes goods that are not owned by it, the Principal shall acquire co-ownership rights in the newly produced goods (in proportion to the value added by the Principal to such goods. The same shall apply if the goods are mixed with other goods not owned by the Principal.

## **X. Complaints; Warranty; Notification of Defect**

1. The following provisions apply to all of the Client's warranty claims with the exception of claims for compensation of damages, unless explicitly referred to in the following. This shall apply without prejudice to Section VI. paragraph 2.
2. If the Client is a Merchant, the Principal shall examine the delivered goods immediately and in accordance with Section 377 of the German Commercial Code (*Handelsgesetzbuch – HGB*) on receipt at their destination with the care of a prudent businessperson. The examination shall extend to all essential properties of the goods that are required for their use. The Client's duty to examine the delivered goods shall also exist where reference samples and/or a quality control test certificate have been provided. If the Client fails to carry out these duties, the Principal shall not be liable for any defects or damage resulting therefrom.

3. If the Client is a Merchant, and defects are not notified in writing to the Principal with 5 working days after receipt of the goods, the assertion of warranty claims shall be excluded (preclusion). The Client shall carry the full burden of proof regarding all eligibility requirements for its claim, in particular with regard to the defect itself, the time of detection of the defect and the timeliness of the notification of the defect.
4. If the Client is a Merchant or an entrepreneur, the Principal shall rectify the defect at its choice either by substitute delivery or by remedying the defect.
5. The Principal gives no warranty as to the suitability of the goods for their intended purposes by the Client, unless a particular characteristic and/or quality has been explicitly agreed, warranted and guaranteed in writing. The Principal shall only be liable for light-fastness, variability and deviations in the colors, as well as for the quality of the bonding, lacquers, laminations, impregnations and coatings where and to the extent that, upon proper inspection, such defects in the materials were discernible prior to their use by the Principal.
6. Defects in a part of the delivered goods shall not give rise to a right to reject the whole delivery unless the partial delivery is not of interest for the Client.
7. If the Client is an Entrepreneur or Merchant, the Principal shall be liable to the Client only up to the amount of its own claims against the respective supplier. In such case, the Principal is released from its own liability if the Principal assigns its claims against the respective supplier to the Client.
8. In the case of contracts with Entrepreneurs and Merchants, the warranty period is one year as from delivery of the goods. In the case of contracts with Consumers, the statutory provisions of law apply.

## **XI. Shipping and Packaging**

1. Unless otherwise expressly agreed in writing, shipping shall be at the sole risk and expense of the Client.
2. The packaging material to be used shall be at the Principal's sole discretion unless a different arrangement has been made in writing, in which case such agreement shall be decisive. Unless otherwise agreed, the Principal ensures standard appropriate packaging. Pallets, covering boards, wooden cases and other rented packaging shall remain the property of the Principal.
3. Pallets, covering boards, wooden cases and other rented packaging shall be returned within a reasonable period of time and in flawless condition, and, unless otherwise agreed, free of charge for the Principal.

## **XII. Sketches, Drafts, Models, Tools, Mould Equipment, Pressure Cylinders as well as Preliminary Works**

1. Models, tools, clichés, printing plates, pressure cylinders, printing rollers and similar objects remain in the sole legal ownership of the Principal, even if the Client fully or partly pays for the use of such objects. Drafts and drawings prepared by the Principal are intellectual property of the Principal and may only be used for and in connection with the relevant order.
2. To the extent that models, tools, clichés, printing plates, pressure cylinders, printing rollers and similar objects are made available to the Principal by the Client, such objects shall be delivered to the Principal free of charge. The Principal shall be liable for their destruction, loss or the deterioration of their condition, as well as for any damage resulting therefrom, only to the extent that such is covered by the Principal's insurance or was caused by gross negligence or intent on the part of the Principal.
3. Pressure cylinders, printing plates, clichés and other tools shall be stored by the Principal no longer than twelve months after their final use. The Client shall be informed of the objects' planned disposal or dismantling in advance. This shall also apply to all sketches and drafts. External printing materials and other objects provided to the Principal shall be returned to the respective legal owner after twelve months.

## **XIII. Copyrights**

1. The Client shall be responsible for checking the multiplication and copyrights for all printing materials, drafts and patterns, unless the Client has expressly delegated this obligation to the Principal.
2. Where goods are delivered according to the Client's plans or specifications, the Client shall fully indemnify the Principal against protection claims by third parties. In case of contractual breaches by the Client, the Client's protection rights do not hinder the use of the goods by the Principal.

## **XIV. Severability Clause**

Should individual provisions of our contract with the Client, including these general business terms and conditions, be or become fully or partly invalid, such shall not impact the effectiveness of the other provisions. In this case, the fully or partly ineffective provision shall be replaced by a provision which economically comes closest to the ineffective provision.

**XV. Place of Delivery and Venue**

Place of Delivery and Payment (*Erfüllungs- und Zahlungsort*) shall be the business seat of the Principal. In case the Client is considered to be a Merchant, a legal person according to public law (*juristische Person des öffentlichen Rechts*) or a public law fund (*öffentlich-rechtliches Sondervermögen*), sole venue shall be Bad Berleburg. The same applies if the Client does not have a general venue in Germany. The laws of the Federal Republic of Germany shall exclusively apply. The provisions regarding the internal sale of goods (CISG) are expressly excluded.

**February 2016**

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