General Terms and Conditions for Sale and Delivery, Sihl GmbH Dueren

1. General:

1.1. Only our General Terms and Conditions of Sale and Delivery apply to offers, order confirmations, deliveries, and services, including under future business relationships. Contradicting terms and conditions are hereby expressly not recognised unless there is a further discrepancy in the individual case. The terms and conditions of the client require our express written consent.

1.2. Supplementary terms and conditions may also apply as a priority for the delivery and provision of products not manufactured by us.

1.3. The following terminology applies for general sales and delivery terms and conditions: Terms and conditions, terms and conditions of delivery = these General Terms and Conditions of Sale and Delivery; client = the client acting commercially or independently; principal or other contractual partner as an entrepreneur in the sense of Articles 14 and 310 German Civil Code; 'we', 'us', our' = we as the user of the terms and conditions who provide the client with the deliveries and/or services; goods = the goods, work or service owed based on a contract entered into verbally, in writing or in another manner, or based on a legal relationship similar to a contract.

2. Offer/ orders

2.1. Orders by the client are not binding on us until they have been confirmed at least in writing (§ 126 b BGB German Civil Code) usually 48 hours after being entered in our EDP system. Where we make offers, they are non-binding and understood as ex works. All pricing details are regarded as plus statutory Value Added Tax at the time of delivery/ service. Offers are binding within two weeks after receipt. Offers and order confirmations are subject to proper and timely self-delivery by our supplier unless we are responsible for delayed or non-performed delivery by the supplier.

2.2. Amendments and orders despite an order confirmation being made are only possible within 48 hours of receipt of the order confirmation by the client. Changes to orders are excluded where the goods have either already been produced due to the order, or production of the goods has commenced. The same applies accordingly to services to be provided by us. Otherwise, all agreements and ancillary arrangements outside of an order require an order confirmation or a quote by us in writing.

2.3. With deliveries and services that occur later than 4 months after entering into the contract, we are entitled to adjust the price accordingly. With a continuing obligation, an appropriate price adjustment is possible at any time in the event of rising costs.

2.4. We reserve copyright and rights of title to illustrations, drawings, calculations, technical datasheets, formulae and other documents. None of this content may be passed on to third parties without our express written consent.

3. Delivery/ service

3.1. Our delivery/service is ex works. With retail goods, also at our discretion directly to wholesalers or manufacturers. Compliance with our delivery duty requires the prompt and proper performance of the obligation of the clients. In particular, the client shall make the information required for performing the contract available in good time and in full. Returns are only made after consultation with the client at its risk and on its account. Where the goods are not collected on time in part or in whole when made ready, we are entitled to store them at the cost of the client. In this event, risk is transferred when the goods are made ready for the ordering party by notifying readiness for collection.

3.2. Where the delivery/service is free of carriage, the client shall immediately ensure that all preliminary work necessary for the delivery/service has already been performed, and the delivery/service can occur there without delay. Waiting times and additional costs may be invoiced to the client.

3.3. Where we are to deliver the goods, we are entitled to select the transport type and route at our own discretion. Shipping is from our plant in the name of and on behalf the client in a manner that appears favourable to us, however without a guarantee for the most secure, cheapest and quickest carriage. Risk is transferred on handover of the goods to the natural person or legal entity (e.g. haulier) determined for performing shipment.

3.4. All deliveries are made ready in packaging usual for commerce, which is not taken back unless statutory provisions state otherwise. We are entitled to insure the goods at the cost of the client against theft, breakage, water and other damage/transport damage, unless the client is shown to have to have taken out insurance.

3.5. With delivery contracts on demand, where the respective partial quantities to be delivered are not retrieved or assigned in time, after a grace period has gone unheeded we are entitled to assign ourselves and deliver the goods, or to back away from performance of the partial delivery or, as may apply, outstanding performance under the contract, a demand compensation due to non-performance in its lieu thereof.

3.6. The creation of security stocks of goods to be stored for clients without an order being placed requires express agreement, and occurs based on payment normally invoiced by us.

3.7. Standard certificates and test reports for production processes and goods (e.g. DIN ISO certification) are made available at the request of the client. We issue all other certification over and beyond standard certificates and reports against reimbursement of the required costs.

4. Delivery/ service time:

4.1. Delivery deadlines and service times stated by us, even if stated in the order confirmation, remain non-binding unless expressly agreed in writing (§ 126 b BGB German Civil Code). To the best of our ability we will endeavour to keep to delivery and service periods. Delivery periods commence on receipt of our order confirmation, however not before all details for performing the order have been clarified, all conditions to be met by the client have been complied with, and all information has been provided. The same applies to delivery deadlines.

4.2. We are entitled to early and partial delivery. The day of notifying readiness for shipping is regarded as the day of delivery. Otherwise it is the day the goods are sent.

4.3. The delivery/service time shall be extended appropriately if it is delayed unforeseeably by events for which we are not responsible, primarily in the case of strikes, power outages, traffic jams, pandemics, raw material scarcity and transport and logistics delays. The same applies if corresponding events occur with our subcontractors. The client is only entitled to withdraw from the contract with delivery/ service periods set as binding in consideration of the aforementioned appropriate extension where the delivery/service period is passed, and a delivery/service is not performed by us despite an appropriate grace period. In this event, the client is only entitled to claim for provable arrears losses, and also if the arrears are due to gross negligence or wilful intent.

4.4. In the event of the client refusing acceptance, after a fruitless grace period of 4 working days we are entitled to withdraw from the contract and/or demand compensation, including any additional costs. We are entitled to either dispose of the delivery item in another way, or deliver to the client with an appropriately extended grace period. In this event, our entitlement to arrears damages remains in place, which without evidence accounts for 1% of the net invoice amount for every month, to a maximum of 20% of the net invoice amount. Higher arrears losses can be claimed with evidence. The client is only provided with evidence that a loss or reduction in value has actually not occurred or is significantly lower than the fixed amount.

4.5. In accordance with statutory provisions, we are liable for delayed delivery due to a grossly negligent or wilful breach of contract. Fault by our representatives or vicarious agents is to be assigned to us. Insofar as the delivery delay is not due to a wilful breach of contract for which we are responsible, our liability for compensation shall be limited to the typical foreseeable direct damages, not exceeding the amount of the net order value. In accordance with statutory provisions, we are also liable where a delay in delivery for which we are responsible is due to the culpable breach of a significant contractual duty. In this case, the compensation shall also be limited to the typical foreseeable direct damages, not exceeding the amount of the net order value.

5. Contract production/ machinery sale

5.1. Where we produce for the client under contract production, the client shall provide the materials required in full and in on time to the place of production. The same applies to technical datasheets, formulae, process instructions, and other information required for the contract production.

5.2. We are to be handed at no charge the information in accordance with Clause 5.1 as well as any other necessary models, templates, tools or equipment provided by the client. They will be handled and used by us with the care applied in our own matters. We are not liable for accidental damage to or deterioration of these items provided.

5.3. Waste or, as may apply, offcuts normally associated with contract production does not represent a defect and is not to be charged to the client. With contract production, the client makes sufficient reserve material available.

5.4 The items provided are inspected by us for apparent defects promptly after receipt of the goods. Where defects are found, the client is informed of them promptly. Without express written confirmation, we do not guarantee that goods supplied by us as part of contract production are suited to a specific purpose or have a specific characteristic.

5.5. The provisions of Clause 7.1 apply where the client acquires from us machinery or accessories of other manufacturers that we distribute as a dealer. Where we also provide the client with terms & conditions of the manufacturer along with our delivery conditions, our delivery conditions prevail in the event of doubt.

6. Quality/ inspection and information duties:

6.1. Descriptions of quality, specifications, datasheets or other verbal or written information about the usefulness or characteristics of the goods and/or service are non-binding unless they are agreed in writing. Public statements, promotions or advertisements by us or another manufacturer represent no indication of quality and/or statement of usefulness. Immediately after receipt of the goods/service, the client shall see for itself that the delivered goods are suitable in the sense of Section 377 German Civil Code for its purpose with regard to number, completeness, characteristics, freedom from defects and other qualities by means of suitable measures, for instance incoming goods inspections using representative samples/models. In the event of doubt, the client shall establish this by means of samples/test runs.

6.2. We are to be informed without delay after receipt by reporting the facts in writing.

6.3. Deviations in quality, colour, tome, cleanliness, length and strength common when manufacturing paper, including laminate and specialist papers such as film represent no defect with the goods. In general, deviations in dimensions, weight, colour, quality and performance are permitted under tolerances normal for the industry and relevant regulations (e.g. DIN). Deviations in quantity of up to 10% cannot be objected to. During technical development and production opportunities, we reserve the right to make changes to the goods where this does not adversely affect the usability known to us of the goods to be supplied. Offcuts/ rejects occurring during production cannot be invoiced to the client.

6.4. Quantities, dimensions, weight and other details regarding characteristics and usage are solely in line with manufacturer information with delivery of items not manufactured by us.

7. Acceptance/ complaints:

7.1. Where defects are evident, the client is to inform us of them within no later than five working days. The same applies in the event of deviations with items and quantities in the event of latent defects as of becoming aware of the defect within the warranty period.

7.2. Services provided by us are to be accepted without delay. Use is regarded as acceptance. In the event of a defect becoming apparent here, the procedure in Clause 7.1 is to be followed. Where an inspection of a reported defect reveals that it is not covered by warranty, we are entitled to charge the costs of the inspection to the client at the normal rates.

8. Export controls:

With exports, the client is responsible for complying with import, export and customs legislation in Germany, Europe and the destination country. Before export, the client is to obtain the required permits or other licences and information (e.g. customs value, customs procedure, tariff heading etc.) at its own costs and, where required, provide is with them. Refusal of a permit and/or certificate for export by the relevant authorities does not entitle the client to return the goods or to compensation. It does not eliminate the basis for business.

9. Force majeure:

Force majeure, such as natural disasters, unrest, strikes, lockouts, pandemics, power outages, raw material scarcity and transport and logistics delays, as well as other unforeseeable events which are unavoidable for us, release both parties, for the duration of the disruption and in the scope of its effects, from their respective duties insofar as the delivery disruptions are due to these events. In this event, we are entitled to withdraw in part or in whole from the part of the contract still unperformed.

10. Warranty and liability:

10.1. Warranty rights of the client require it to comply without delay with its investigation (Clause 6) and notification (Clause 7) duties. Only faults occurring during the proper contractual use of the goods are covered by the warranty. In principle, only our express confirmed product description or that of the manufacturer applies for determining the characteristics.

10.2. The rectification of faults due to normal wear and tear, external influences, or operating errors are excluded from the warranty unless mandatory statutory claims, for instance due to product liability or a standalone warranty assurance, exist. The same applies to faults occurring due to alterations to the goods not made by us. We provide no guarantee that the delivered products match the special purposes of the client, or can be installed and used with other products of the client from one and the same manufacturer or other manufacturer without fault and adverse effect.

10.3. The warranty period is one year as of handover of the goods/provision of the service. With contracts for used items, the warranty period is one year as of delivery of the goods.

10.4. Guarantee declarations of other manufacturers do not apply for and against us. We provide our clients with no guarantees in the legal sense.

10.5. Where an operating instruction provided by us is incorrect, we are only obliged to deliver an error-free operating instruction, and only if the fault with the operating instruction goes against proper operation.

10.6. With defects to the goods, we initially perform the warranty, as chosen by us, by means of improvement or replacement service (supplementary performance).

10.7. Where supplementary performance fails, the client is invariably entitled as it chooses to demand reduction or cancellation. The client is not entitled to cancel with only minor breaches or minor defects. Where the client withdraws with justification from the contract after failed supplementary performance, it is not entitled to claim compensation in addition to this due to the defect. Where the client makes claims for compensation after failed supplementary performance, the goods remain with the client if reasonable for it. Compensation is limited to the difference between the purchase price and the value of the defective item. This does not apply if the breach has been caused fraudulently or with wilful intent. The right under Section 445a German Civil Code does not apply to unused, but not new items, or to new items modified, processes, or otherwise amended by the client.

11. Exclusion and limitation of liability:

11.1. Claims by the client due to a defect expire one year after the transfer of risk. This does not apply if there is an accusation of gross negligence and in the event of us being responsible for injury or harm to health or in the event of the client, one of its vicarious agents, or a third party losing its life. Statutory limitation periods apply in this event.

11.2. We are not liable for minor breaches of insignificant contractual duties committed by us, our vicarious agents, or third parties commissioned by us.

11.3. Liability, for whatever reason, is excluded with defects caused due to external influences such as voltage fluctuations, incorrect installation, operation and usage/maintenance/changes to the product by the client or by third parties commissioned by the client. The same applies to defects occurring due to normal wear and tear.

11.4. Where the client is entitled to a claim for making good the loss instead of performance, our liability is limited to making good the foreseeable typically occurring loss, even as part of supplementary performance. Liability for consequential losses, indirect losses such as lost profit, or lost production with the client are excluded. This also applies to claims for compensation due to fault when entering into the contract, other breaches, due to a tortious claim for compensating, or the making good of material damage in accordance with Section 823 of the German Civil Code.

11.5. The aforementioned restrictions to liability do not affect claims by the client under product liability. In addition, the restrictions to liability do not apply in the event of injury and harm to health that can be apportioned, or in the event of the loss of life of the client or its vicarious agents and third parties. The same applies in the event of grossly negligent or intentional breaches of significant contractual duties (material obligation). Further liability as that set out in Clause 10.1 to 10.7 is excluded regardless of the legal nature of the asserted claim.

12. Terms of payment

12.1. In the absence of another agreement or unilateral approval by us, services and deliveries for new customers are payable in advance for their first two orders and, otherwise, require payment within a net payment period of 14 days.

12.2. Discount deductions require our written consent.

12.3. The client enters automatically into payment arrears on expiry of the payment period. While in arrears, the client is to pay debt interest of 9% over the base rate, and we reserve the right to assert a further claim for compensation. Payments by the client are first offset against costs and interest, otherwise in accordance with Section 366 (2) of the German Civil Code.

12.4. Where we are made aware of facts that, when judged commercially, lead to justified doubt in the creditworthiness of the client, we are able to immediately make due all receivables under the business relationship, including such ones that are deferred. In these cases, we only need to perform outstanding deliveries or services against payment of an appropriate security.

13. Offsetting, right of retention, assignment:

Counterclaims only entitle the client to offsetting if they are undisputed, recognised by us, or established with force of law. The same applies to rights of retention. The assignment of client rights requires our express consent. We have the right to assign all our rights against the client to third parties.

14. Retention of title:

14.1. All goods delivered by us remain our property until settlement of all current, conditional or future receivables from the ongoing business relationship with the client. This also applies if individual or all of our receivables are accepted in a current account and the balance is drawn.

14.2. The client is entitled to further sell and process goods delivered to it in the ordinary course of business, provided that it does not fall behind in payments with us. In the event of onward sale, the client is obliged to only resell goods delivered to it under retention of title only also under retention of title on its side if the goods are not immediately paid for by the third-party acquirer. Other remuneration, in particular pledging or providing as security, is not permitted.

14.3. In the event of conduct by the client in breach of the contract, in particular in the event of payment arrears or a breach of a duty in accordance with Clause 13, we are entitled to demand the goods back without this involving withdrawal from the contract, which remains reserved.

14.4. The client assigns as of now all receivables including securities and ancillary rights arising from or in connection with the onward sale to the end client or third parties, and regardless of whether the goods delivered by us under reservation are sold on without or after processing. The client is prohibited from entering into agreements with its clients that are able to exclude or adversely affect our rights in any way whatsoever. In particular, it may not enter into any arrangements that make advance assignment of the receivable to us void. The client remains authorised to collect the receivables assigned to us until revocation. We will not revoke this authorisation to collect for as long as the client complies properly with its payment obligations. We are entitled to have the content and scope of the assigned receivables as well as the name and address of the debtor submitted to us in writing.

14.5. Where the goods delivered by us are sold on with other items, in particular with other reserved goods, the following applies: Where the amounts applicable to individual goods cannot be determined on a case-by-case basis from the invoice, the receivable is assigned to the third party at the amount of the delivery price agreed between us and the client. Where the goods are further processed or combined with other, third-party or in-house goods, this is always done for us as the manufacturer in the sense of Section 950 of the German Civil Code. Where our goods are processed or inseparably mixed with other items, we acquire co-ownership in the new item in proportion of the value of our goods to the other items processed or mixed at the time of processing or mixing. The client safeguards without charge ownership or co-ownership for us.

14.6. We undertake to release the securities allocated to us at the request of the client when the value of the securities exceeds the receivables to be secured by more than 10%. The choice of securities to be released is a matter for us. In the event of attachments or other third-part interventions, the client shall inform the third party of our security rights, identify the goods owned by us as such, and inform us otherwise without delay.

15. Commercial protective rights and copyright:

15.1. Where a third-party asserts justified claims against the client due to a breach of a commercial protective right or copyright (hereinafter 'protective rights') due to goods delivered by us when making use thereof under the contact, we are liable towards the client solely based on the following conditions:

15.2. As we see fit and at our costs, we will acquire the right to use the goods, alter the goods in such a way so as not to breach the protective right, or replace the goods. Where this is not possible under reasonable conditions, we will take back the goods against reimbursement of the purchase price.

15.3. The aforementioned obligations only exist if the client informs us of the asserted claims without delay in writing, does not acknowledge a breach of the protective rights, and all defensive actions and settlement negotiations are reserved for us. Where the client suspends use of the product to reduce damage or for other reasons, it shall notify the third party that no acknowledgement of a breach of protective rights is associated with suspension of use.

15.4. Claims by the client due to breaches of protective rights are excluded where it is responsible for the breach of protective rights. The same applies where the breaches of protective rights are caused by specific requirements of the client, by use not foreseeable by us, or the goods are altered by the client or used together with products not delivered by us.

15.5. Further claims against us are excluded. This exclusion of liability does not apply where, for example, mandatory liability is claimed in accordance with product liability legislation, in cases of wilful intent or gross negligence, or the breach of significant contractual duties. In the same way, the right of the client to withdraw from the contract exists under the aforementioned conditions.

16. Confidentiality:

All technical data and other, non-disclosable commercial and technical details made aware to the client under the business relationship with us are trade and business secrets and to be kept confidential by it. It may only be implemented and used for the purpose of the goods. The obligation of confidentiality continues after termination of the contractual relationship for 24 months.

17. Governing law/ place of performance/ jurisdiction/ ancillary provisions

17.1. For all legal relationships, including future ones, between the client and us, the law of the Federal republic of Germany applies without the UN Convention on Contracts for the International Sale of Goods (CISG).

17.2. The place of performance is our registered office.

17.3. Where the client is a merchant, legal entity under public law, or a public-law special fund, sole jurisdiction for all disputes lies with the courts covering our registered office. Nevertheless, we are entitled to bring proceedings against the client in its general place of jurisdiction.

17.4. Individual provisions being invalid does not affect the effectiveness of the remaining provisions. Such provisions coming as close as possible to that commercially intended according to the sense and purpose of the invalid clause will replace the ineffective one.

17.5. Contractual relationships are subject to the written format. Amendments and additions to contractual agreements as well as these terms and conditions of sale and delivery are required to be in writing to be effective. The same applies to deviations from the requirement for the written format.

As of 06/2021