

## General Sales and Delivery Terms of Pacflex Verpackungen GmbH / 1

### 01. CONCLUSION OF THE CONTRACT

Supply contracts between the Seller and the Purchaser shall be concluded only when the Seller confirms the supply contract in writing. Declarations issued by and vis-à-vis representatives shall take effect only upon written confirmation of the Seller. Modifications or supplements of the concluded agreements shall take effect only if done in writing. These terms and conditions of sale and supply shall apply even if the Purchaser has communicated or communicates their own deviating general terms and conditions, or if such terms are printed on documents provided by the Purchaser, in particular on order slips. This serves as express objection to deviating counter-confirmations of the Purchaser.

### 02. PRICING

Prices of the Seller as stated as gross prices ex works, including packaging. Packaging cannot be returned. This does not apply to side panels (shipping containers) in case of suspended delivery and plastic packaging. These shall remain the seller's property and have to be returned to the Seller in clean condition within 60 days after shipment at the latest, freight and charges paid. Otherwise, they will be charged. The risk for any loss or damage of the shipping containers before return shall be borne in any event by the Purchaser. If transport packaging is taken back notwithstanding the above, the Purchaser shall be obliged to bear the costs incurred for disposal. The Seller shall be entitled to adapt prices in case of an increase in prices for material usage that take effect after conclusion of the contract and before execution of the order and impacts on the prices. Our offers are subject to change. If goods are invoiced according to weight, then the invoice will be calculated based on the gross weight (including jackets). Costs for drafts, stereotypes, printing plates, impression cylinders etc., will be invoiced prorated by separate invoice. Costs for subsequent changes induced by the Client shall be charged to the Client. All extra charges, public dues or possible newly arising taxes that affect delivery directly or indirectly and increase the cost of delivery shall be borne by the Purchaser, unless otherwise stipulated by law.

### 03. TERMS OF DELIVERY

In the absence of a binding, written commitment by the Seller, delivery dates and deadlines indicated by the Seller shall be deemed to be approximate. Deviations of up to 2 weeks have to be tolerated even for binding delivery dates and deadlines. Delivery dates confirmed by the Seller are subject to unforeseen circumstances beyond the seller's control, e.g. high outside temperatures, operational disruptions, delays in the supply of essential raw materials and auxiliaries, fire or similar disasters. Events of force majeure shall entitle the seller to postpone delivery for the duration of the impediment and an adequate lead time or, if the contract has not been fulfilled as yet, to rescind the contract in whole or in part. Events such as a strike, lockout or other circumstances that make delivery more difficult or impossible for the Seller are deemed to be equivalent to force majeure. If an agreed and confirmed delivery date is exceeded by more than six weeks, the Purchaser shall be entitled to set the Seller a final deadline of two weeks for subsequent delivery. If the obligation to deliver is not discharged until expiry of the final deadline for subsequent delivery, the Purchaser shall be entitled to rescind the contract. Rescission must be declared in writing without undue delay after expiry of this final deadline. No claims for damages can be derived from the failure to comply with the delivery deadline. Orders and call orders shall be accepted or called off within three months from date of order confirmation. After expiry of this deadline, any quantities still unaccepted or not called off will be delivered and charged. The Seller shall be entitled to charge EUR 7.00 per pallet and month as storage fee for any delays in accepting the order of more than 30 days after notification to the Purchaser that the order is ready to be shipped. Changes in delivery terms are permitted only up to 20 days prior to the scheduled delivery date. The scheduled delivery date may not be changed by a period of more than 45 days.

### 04. TERMS OF DELIVERY

Unless terms of payment have been agreed upon with the conclusion of the contract, the payment arrangements and terms of payment indicated in the Seller's invoices shall be deemed to be binding. If no specific stipulations have been made, the purchase price shall be due 30 days after the date of invoice. For payment in cash or payment by cheque within 10 days after date of invoice, a 2 % cash discount on the net goods value shall apply. The date of payment shall be date on which the Seller has the money at his disposal. No cash discount shall apply if any purchase price payments under previous, due invoices are still outstanding. An off-set against claims of the Client is only permitted if such claims are uncontested or have been established by a court with final and binding effect. The Seller is not obliged to accept bills of exchange. However, if the Seller accepts bills of exchange, then the costs of discounting the bill of exchange with a bank and the collection charges shall be borne by the Purchaser and are immediately due for payment in cash. Issue of a bill of exchange shall not be deemed to be cash payment. Failure to pay the purchase price upon maturity amounts to a material breach of contract. The Purchaser shall be in default - even in the absence of a dunning notice on the part of the Seller - if payment of the purchase price is not made at the latest 30 day after receipt of an invoice and maturity of the purchase price. If a calendar date has been defined for the payment, the Purchaser shall be in default without a dunning notice on the part of the Seller if he fails to pay in due time. In the aforementioned cases, the Seller shall be entitled to surcharge default interests of 12% per annum. This interest rate also applies to a granted deferral of payment. If the Purchaser defaults on his payment obligations, if a protest is entered on a bill of exchange, if goods of the Purchaser are seized or if the Purchaser's financial circumstances deteriorate considerably, the Seller shall be entitled to rescind the supply agreement - to

the extent that it has not yet been performed - after setting an appropriate grace period or to demand damages for non-fulfilment. The Seller shall be entitled to execute any deliveries still outstanding against cash in advance only. The Seller may assign the claims for payment at any time to a third party or sell them to a factoring company. The general terms and conditions apply unchanged in this case as well. In case of an incorrect VAT ID number, the Customer shall be liable for VAT recourse claims.

### 05. INDUSTRIAL PROPERTY RIGHTS AND PRINTING DOCUMENTS

The buyer is responsible for the verification of the copyright and the right of reproduction of documents surrendered to us as well as for compliance with all other provisions for all products. For this reason, the Purchaser shall hold us harmless from all claims. We shall retain copyright on designs provided by us, as well as on special versions of our products, along with the right of reproduction in any procedure and for any purpose. Printing documents provided by us, such as drafts, layouts, stereotypes, films, impression cylinders and printing plates, shall remain our property even if partial costs are paid by the Purchaser. The Seller shall keep printing plates, sleeves, matrices and final artwork for at least two years after their last use. Even without special notice, gravure cylinders may be deleted 12 months after their last use. The Contracting Parties undertake to keep all information obtained from each other strictly confidential, irrespective of the manner in which this information was obtained by the respective other Party - lawfully or unlawfully - and to use them only as part of their business and for the purposes of this business relation and to take all measures to prevent disclosure to third parties. Subject to a duty of confidentiality are in particular all technical information, technical drawings and other technical documents, as well as materials, specification data, suppliers, goods, samples, letters, models, equipment, tools, technical processes and other technical know-how; furthermore, all industrial property rights, copyright and other legal positions, in particular, manuscripts, texts, technical versions, photographs, films, videos, multis, recordings, software as well as similar rights and items. The Contracting Parties undertake not to analyse materials or have them analysed, not to derivative them or artificially reproduce them to determine their composition. The disclosure of models and products of Pacflex to third parties, in particular competitors, manufacturers or refiners of films, merchants, processors, etc. is not permitted. The duty of confidentiality shall also extend to companies forming part of a group of companies and affiliated companies within the meaning of section 15 of the German Stock Corporations Act (AktG).

The duty of confidentiality of non-exploitation of the information and items provided does not apply if they

- a) are shown to have been known to the informed Contracting Party already before being so provided to them, or
- b) were already in the public domain or generally accessible before being so provided to the informed Contracting Party, or
- c) became part of the public domain or made generally accessible through no act or fault on the part of the informed Contracting Party, or
- d) essentially correspond to information that has been made known or available to the informed Contracting Party at any time by an authorised third party, or
- e) were developed by them independently.

Respective of the existence of proprietary rights, no licensing rights, rights of replication or use, or any other rights shall be derived from the receipt of technical information. Pacflex shall retain in any event the intellectual property right in such information. Pacflex shall retain copyright and the right to register industrial property rights (e.g., registration of patents and utility models).

The Customer is aware that

- pursuant to sections 17 and 18 of the German Act against Unfair Competition (UWG), any breach of trade and business secrets is a criminal offence and punishable with imprisonment of up to 5 years and
- that pursuant to section 19 UWG, persons who breach trade or business secrets are, moreover, obliged to compensate any resulting damage.

In case of a breach, irrespective of whether it is a negligent or intentional breach of the duty, the Customer undertakes to compensate all direct and/or indirect damage (including consequential damage) resulting from the breach to the Supplier. In addition, liquidated damages in the amount of EUR 50,000 (fifty thousand euros) shall be payable in addition to the proven damage.

An at least negligent breach of the duty of confidentiality shall be rebuttably presumed to have occurred if Pacflex can show cause for a strong suspicion that items subject to the duty of confidentiality were disclosed from the sphere of the other Contracting Party to third parties.

### 06. TOLERANCES AND PRODUCT SPECIFICATIONS

#### Deviations in weight

Models shall only be non-binding templates. They do not amount to warranted properties. Tolerances of the mass per unit area shall comply with specifications in the terms of delivery of the manufacturer of the materials used.

#### Deviations in dimensions

In case of all deliveries, we shall have the right to the following deviations in dimension:

**bags:** in length +/-5 mm, in width +/-4 %;

**formats:** in length and width +/-8 mm;

**extrusion rolls:** in width +/-15 mm;

**roll goods for packaging machines:** mm; +2 / -2 mm

**plastic films, compound films, etc.** in total strength of +/-15 %, in single layer if less than 20 micron +/-25 %, if less than 8 micron +/-50 %, rigid films in total strength +/-5 %, in single layer, if flexible layer +/-25 %.

**Shrink foils, skin foils.** In addition to the above dimension tolerances other changes may occur if not stored properly or during transport (at more than 20 °C).

**Shrink bag:** width +15 mm, -5 mm, length +20 mm, -10 mm

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**Hard films:** total strength as a composite with flex: +/-8%, mono A-PET +/-5%.

### Deviations in quantity

For all designs, the contractor reserves the right to an excess or short delivery of up to 20% of the ordered quantity, whereby the actual delivery quantity shall be charged. This percentage increases to 30 % in case of sale by quantities up to 100,000 pieces, in case of sale by weight: for weights up to 2,000 kg, in case of sale by running meter: for running metres up to 50,000 lfm (running metre).

### **07. PRINT**

Seller requires clear specifications regarding the text to be printed, the printing size and printing procedures. In case of unclear specifications, we shall proceed to the best of our own discretion, but we shall not be liable to compensate for errors and misprints. We shall not be liable for misprints overlooked by the Purchaser. The Client shall not be entitled to refuse galley proofs marked by him as „ready for press“. Oral requests for changes must be confirmed in writing. We shall use standard print colours for the print. If special demands are made regarding the colours, such as light resistance, alkali fastness, rubbing resistance etc., the Purchaser must indicate them specifically when placing the order. We do not assume warranty for the high light resistance of print colours. We reserve the right to make minor deviations in colours. Such deviations shall not entitle the Purchaser to reject the goods or to a reduction in price. Proofs shall only be provided before printing if the Purchaser so requires or if we deem it necessary. Machine proofs and stereotypes will be charged separately according to time and materials. We do not assume warranty for the colour fastness of plastic products, even if the colours are described as light or water resistant. Moreover, we do not assume any guarantee for the migration of plasticisers, paraffin-soluble colourants/static inhibitors, binding agents or similar migration phenomena nor for resulting consequences.

### **08. SHIPMENT AND TRANSFER OF RISKS**

Unless otherwise agreed, shipment shall be effected at the Purchaser's expense and risk. With the delivery of the goods to a forwarding agent, risk of accidental loss and damage passes to the Purchaser. Transport insurance shall be contracted by the Purchaser at his expense. The risk shall also pass if the shipment of goods is delayed for reasons for which the Customer is responsible and if the goods are ready for collection. In case of a delay of acceptance of more than 30 days, the Seller shall be entitled to charge the usual demurrage. The Seller shall be responsible for unloading the goods and shall bear the resulting costs.

### **09. RETENTION OF TITLE**

The goods delivered remain the Seller's property until full settlement of all due payments, including payments that still become due in future (reserved goods). The Purchaser shall only obtain ownership of the goods delivered only upon fulfilment of all previous and future obligations under the business relationship with the Seller. In case of a delivery on current account, the reserved goods shall secure the Seller's balance claim. If the Seller's title ceases through combination or intermixture, then the Purchaser transfers to the Seller already by the present ownership in the new stock or goods produced combined or intermixed to the extent of the invoice value of the reserved goods. The Purchaser shall keep them for the Seller free of charge. The rights of co-ownership arising from that shall be deemed to be reserved goods. The Purchaser may only dispose of the Seller's reserved goods in the ordinary course of business. The Purchaser's claims from the resale of the reserved good are assigned already by the present to the seller. The assigned claim shall serve as security in the amount equivalent to the value of the reserved goods sold as well as for the respective balance claim. If the reserved goods are sold by the Purchaser together with other goods which do not belong to the Seller, then the assignment of the claim for the purchase price shall only apply to the value of the reserved goods which are the subject matter of the sales contract or part of the subject matter of the sale. If the reserved goods are used by the Purchaser to perform in terms of a contract for work or a contract for works, labour and material, then the claims under those contracts shall be assigned to the Seller to the same extent as has been defined for the purchase price claim. The Purchaser, however, remains entitled to collect the claims from a resale assigned to the Seller as long as the Purchaser meets his payment obligations. He may, however, not dispose of such claims by assignment. The Purchaser's authorisation to collect the claim can be revoked by the Seller at any time. The Seller's power to collect shall remain unaffected by the Purchaser's direct debiting authorisation. The Seller is entitled to notify third-party debtors of the assignment at his own discretion. The Purchaser shall be obliged to provide on first request all information necessary to enforce the Seller's rights under this section. In this case, the Seller may approach the banks of the Customer to notify them of his right of retention and demand payment to himself. The Purchaser shall give notice of seizure of the goods without undue delay. The costs for legal action incurred by the Seller through the necessity of proceeding against the seizing parties or other persons who claim title to the goods, shall be borne by the Purchaser.

The assertion of the right of retention as well as seizure of the goods delivered by the Seller do not constitute rescission of the contract. If the goods are reclaimed for any of the above reasons, the Purchaser shall permit the Seller to enter his premises or the property and to collect the goods delivered. Goods will be taken back only at the expense of the Purchaser. Subject to any further damage, the Seller is entitled to charge 95 % of the proceeds as liquidated costs. The Purchaser shall insure the goods delivered against fire, water and other damage. Claims in case of damage under this insurance are assigned to the Seller. If, for reasons of the law applicable at the registered of the Seller, it is not possible to secure the goods delivered in accordance with the above provisions, the Client shall ensure that the Seller is protected in an economically equivalent manner, having due consideration of the statutory provisions in force at the registered office of the Purchaser, also providing the Seller with rights of intervention in case of insolvency of the Purchaser.

### **10. DEFECTS AND WARRANTY**

In the production of plastic films and/or combinations and similar goods, a relatively low number of faulty goods is technically unavoidable and a percentage of up to 5 % of the total quantity is not objectionable, irrespective of whether the defect is in material, processing or in print. Defects of a part of the delivery do not justify rejection of the entire delivery, if a separation of irreproachable and defective goods is possible by reasonable means. The warranty period starts as from date of delivery and generally is twelve months, except for films that only have a limited service life due to their specific form of processing, e.g. anti fog, antistatic, binding agent, or similar migration phenomena, etc., or due to certain additives. In this case, the deadlines pursuant to the data sheet shall apply. Date of delivery is also the date when the goods are ready for shipment and are not collected by the Purchaser (in time) despite and agreed date of delivery. Possible notifications of defect notified to the Seller in writing without undue delay; however, not later than ten days after delivery of the goods. Concealed defects, which cannot be detected through careful inspection within this time limit, must be notified to the Seller without undue delay in writing, however, not later than ten days after their detection. Claims for concealed defects are excluded after a period of twelve months after delivery. Films that have been treated with additives have a limited service life. This service life is stipulated in the technical data sheets. The service life is equivalent to the warranty period. Warranty claims are excluded if the Purchaser processes or sells the goods after he has detected or should have detected the defect, unless the Purchaser proves that the processing or sale was necessary in order to prevent further damage. Seller's warranty obligation is limited to the free of charge additional delivery in the amount of the defective goods against in return for the defective goods. If the cure fails, the Purchaser shall be entitled - at his choice - to either reduce the purchase price or to rescind the contract. Requirement is, however, that the goods are still in the same condition as on delivery. If the Purchaser proves that he has processed or resold without being in breach of the obligation to notify the defects, he can claim a reduction of the purchase price for this part of the goods. For all other damage (including consequential damage) that does not relate to the loss of life, injury or health impairment, the Seller's liability is generally limited to intent or gross negligence. The Seller shall be liable damage caused through simple negligence only if the Seller has breached a cardinal duty, the compliance with which is essential for the proper performance of the contract and on the compliance with which the other Contracting Party generally relies or may rely on. Purchaser's claims based on defective EAN bar codes affixed to the goods at the Purchaser's request are excluded. We deliver our products on the basis of your order. Seller has not examined the products as to their suitability for your intended purposes and processing and accordingly does not assume any liability in this regard. Seller recommends that Purchaser examines their suitability through a packaging and application test. Recommendations for the selection of the products, processing suggestions, changes in machine settings by application engineers or other employees of the Seller are provided without any legal commitment and are mere acts of courtesy. They shall not form the basis for any claims on the part of the Purchaser.

### **11. PLACE OF PERFORMANCE, JURISDICTION AND APPLICABLE LAW**

German law shall apply for these General Terms and Conditions as well as to the entire legal relationship between the Seller and the Purchaser. The Vienna UN convention on Contracts regulating the International Sale of Goods dated 11 April 1980 shall not apply. As far as legally acceptable, Siegenburg shall be the exclusive place of jurisdiction for all disputes directly or indirectly arising from this contract. However, the Seller shall be entitled to sue also at the place where the registered office of the Client is located or in any other competent jurisdiction (also abroad). This applies exclusively to German law as applicable to legal transactions between German parties, unless national laws do not mandatorily require otherwise. Prices are in Euro. Technical specifications are in German standard denominations. If these terms and conditions are translated into another language, the German version shall prevail in case of dispute. The Customer may not rely on any lacking understanding of German.

### **12. MISCELLANEOUS**

Pacflex may at any time and without prior notice amend these General Terms and Conditions. The prices that are valid at the time the order is placed shall apply. Notification of and effective application in order confirmation and/or invoice of the respective General Terms and Conditions is also achieved by publication on the website: [www.pacflex.com](http://www.pacflex.com).

Collateral agreements and supplements to contract content are valid only in writing. For all orders, especially for print jobs, objections to the order confirmation must be raised immediately after receipt, otherwise the order shall be deemed to have been accepted. If individual parts of these General Terms and Conditions are or become void, this shall not affect the effectiveness of the other provisions. Any provision that is void must be replaced in the manner indicated by the intention and purpose of the other provisions and in line with the statutory provisions.

Status: 01.01.2020