

MKF-Folien GmbH

General Terms of Delivery and Payment

1. Our General Terms of Delivery and Payment apply, except in case of special agreement between contracting parties. Any General Conditions of the Buyer are not valid, if not expressly accepted by the Supplier (i.e. MKF-Folien GmbH).
- 2.a) The contract is concluded as soon as the Supplier has sent an Order Confirmation to the Buyer, based on the latter's order and within the time limit indicated by him, if any.
- 2.b) Offers are made without engagement on the Supplier's part. If a time limit has been set for the acceptance of the offer, the Supplier must receive the Buyer's written confirmation within one week after the end of such time limit.
- 2.c) The Supplier has the right to make a reasonable price increase if raw material prices, energy, salaries, freight charges or taxes increase after the date of the Order Confirmation.
- 3.a) Place of execution of the order is Berlin.
- 3.b) The risks are transferred to the Buyer when the goods are leaving the Supplier's factory, notwithstanding the delivery basis (carriage free or ex works).
- 3.c) If not otherwise agreed, the Supplier shall choose the kind of packing, despatch and itinerary.
- 3.d) In case of doubt, prices are valid ex works, excluding freight, customs, import fees and packing (plus VAT where applicable). Goods may be insured on the Buyer's request against special risks to be named by him, and on his own cost.
- 4.a) Information about the goods in leaflets, advertisements, price lists etc. is given approximately: It is only binding when expressly referred to in writing by the Supplier. Technical standards are only mentioned in order to describe the goods and must not be considered as a guarantee for special characteristics.
- 4.b) The following tolerances apply, for which we do not accept claims:
 - quantities to be delivered:
 - lots up to 5 tons +/- 10% of the ordered quantity
 - lots over 5 tons +/- 500 kg,
 - formats (at right angles) +/- 1.5 mm
 - formats (other angles) +/- 15 mm
 - width tolerance of film on reels +/- 15 mm
 - thickness tolerance of film on reels +/- 10%Will not be accepted as claims: variations of quality, colour, weight, length etc. recognized as usual in the industry. Resistance to light cannot be guaranteed, slight paling is reserved.
- 5.a) The weeks indicated in the Supplier's Order Confirmations are to be understood as weeks of despatch.
- 5.b) In case of delayed delivery caused by the Supplier (intentionally or by gross neglect) the Buyer shall have the right to refrain from the contract only after having granted additional time (at least 3 weeks) to the Supplier and having announced to refuse receipt of delivery after this additional time. Claims for indemnity because of delayed delivery are excluded.
- 5.c) The Supplier cannot be held responsible for unforeseeable circumstances, such as work conflicts, factory break-downs, mobilisation, riots, lack of raw material or non-delivery of raw material/auxiliary material. Such circumstances entitle the Supplier to delay delivery by the duration of the hindrance plus an appropriate period of time, or to refrain from the contract because of the non-fulfilled part of it. This shall also apply if such circumstances occur while delivery is delayed by the Supplier or one of his sub-contractors. The Buyer may ask the Supplier to declare within two weeks whether he wants to refrain from the contract, or to deliver within an appropriate period of time. If he does not declare himself within the time granted to him by the Buyer, he must not refrain from the non-fulfilled part of the contract.
- 6.a) Place of execution of payment is Berlin
- 6.b) Payment by cheque, transfer or other means will be considered as received on the day after the amount is credited to the Supplier's account. Payments shall always be used for the oldest invoices due, plus interest arisen for them.
- 6.c) Bills of exchange can only be accepted after the Supplier has expressly confirmed acceptance before delivery, and with all charges to be borne by the Buyer.
- 6.d) As soon as the invoice falls due the Supplier has the right to charge interest without warning. The interest may be 8% higher than the basic interest rate of the Central Bank of Europe, or may represent at least 9% (except if he can prove that the damage was more than that). The Buyer would have to prove that the damage was less than the minimum basic rate.
- 7.a) Quality claims have to be submitted in writing immediately, but not later than 10 days after receipt of the goods, and prior to transformation thereof. The date of receipt by the Supplier is relevant for the respect of the time limit. The Buyer is bound to check the goods as is usual in the industry, and to transform them under the same conditions valid for production. In case of hidden faults he shall send the claim to the Supplier immediately after having detected the faults.
If not agreed otherwise, claims prescribe after 12 months from handing over of the risk.
If longer time limits are defined by German Civil Law, § 438 art. 1 No. 2 BGB § 479 art. 1 BGB and § 634a art 1 No. 2 BGB, those limits apply.
- 7.b) If claims are not precluded by 7.a) or if they are detected during transformation of the material, the Buyer shall have to prove that the fault has not been caused by himself (method of processing, auxiliary material, etc.) If such faults arise, the Buyer shall inform the Supplier immediately and allow access to his premises for checking.
If the Buyer tries to mend faults or in case of wrong treatment of the material, no claims can be made. However, the Buyer may mend the fault in order to prevent greater damage, or if the Supplier is delaying repair, however, he must inform the Supplier of his intention to do so. In such cases the Buyer may make a reasonable claim for additional costs.
- 7.c) If the claim is justified the Supplier is obliged to fulfil his contract. However, if he fails to do so or if he does not respect the time limit (at least 3 weeks) set to him by the buyer, announcing to refrain from the contract or to reduce the price, the Buyer may cancel the contract. Further reaching claims like compensation of costs, or liquidated damages, cannot be made, except if provided under Art. 10 hereof. Replaced parts must be returned to the Supplier if requested.
- 7.d) Recourse acc. to §§ 478+479 BGB does only apply if the consumer's claim was justified and only within the framework of legal stipulations, but not in case of signs of good will agreed upon between Supplier and Buyer.
- 8.a) The Supplier remains the owner of the delivered goods and all things made out of such goods until fulfilment of all existing and future claims of the Supplier against the Buyer arising from the business relationship (including contingent claims, e.g. resulting from bills of exchange). In case of a current account the reserved title to the deliveries (Conditional Goods) serves as security for the balance claim against the Buyer. The Buyer is obliged to store and mark all goods delivered on the basis of this retention of title clause separately.
- 8.b) A potential manufacturing or converting of the delivered goods is performed by the Buyer on behalf of the Supplier, without causing any obligations for the Supplier. If the Buyer becomes co-owner of the delivered goods by manufacturing, converting or mixing them with other goods, the Buyer hereby transfers this property to the Supplier. The Buyer will possess the goods as depositary for the Supplier with due diligence. If the Buyer manufactures converts or mixes the Conditional Goods with goods not belonging to the Buyer, the Supplier becomes co-owner of the new things at the ratio of the invoice value of the treated Conditional Goods to the invoice value of the other goods.
- 8.c) The Buyer may only sell the delivered goods and the new things generated by having manufactured or converted the delivered goods in the regular course of business (against cash payment or under reservation of title). Transfer by way of security, pledging or other disposals jeopardising the Supplier's rights are not permitted.
- 8.d) The Buyer hereby assigns in full all claims arising from the resale of the Conditional Goods (whether or not the goods have been manufactured or converted before) or from another legal ground concerning the Conditional Goods to the Buyer for security. On the Supplier's request the Buyer is obliged to provide the Supplier with all information and documents that are needed to assert the Supplier's rights vis-à-vis the Buyer's customers.
- 8.e) In case of a prior manufacturing or converting etc. of the Conditional Goods with goods not belonging to the Buyer the Buyer hereby assigns his claim against his customer arising from a potential resale of the goods in the following amount for security to the Supplier. The claim is separated at the ratio of the invoice value of the untreated Conditional Goods to the invoice value of the untreated other goods which are part of the resold goods. The part of the claim that corresponds with the invoice value of the untreated Conditional Goods is assigned to the Supplier.
Should the foregoing provision, for any reason, not lead to an assignment of the claim in the stipulated amount, the claim of the Buyer against his customer has in any case to be assigned to the Supplier in the amount of the invoice value of the untreated Conditional Goods, that are part of the claim of the Buyer.
If the value of the security exceeds the Supplier's claims against the Buyer by more than 25% the Buyer is entitled to request the release of security.
- 8.f) Should third parties interfere with the Conditional Goods or the assigned claims, the Buyer is obliged to notify the Supplier immediately providing him with the documents necessary for the intervention. The Buyer bears the costs of the intervention.
- 8.g) If the Supplier enforces his reservation of title in accordance with the foregoing provisions by way of taking back the Conditional Goods, he is entitled to sell the goods privately or by way of a public auction. Enforcing the reservation of title is considered to be a rescission of the contract. Taking back the Conditional Goods is carried out at the realised proceeds, not exceeding the agreed delivery prices. Additional claims for damages, in particular for a loss of profit, are reserved.
9. If the Buyer bears part of the costs for tools, printing or embossing cylinders etc., such tools or cylinders still remain the Supplier's property, respecting any patent rights or utility patents of the Buyer.
10. If the Supplier is obliged by contractual or legal stipulations to pay damages or expenses, contrary to the stipulations fixed above, he can only be held responsible as far as he or his employees can be proven to have acted on intention, by gross neglect, or by harm to life, body or health.
This does not concern his responsibility under Product Liability laws, or his responsibility for non-respect of important contractual obligations by his fault. However, his responsibility is limited (except as fixed in the first sentence of this article) to the foreseeable and typical extent of the damage. This stipulation does not change the obligation for proof of the Buyers disadvantage.
11. If one of the present stipulations becomes invalid, this does not affect the remaining stipulations.
12. On principle the legal stipulations apply, except if expressly precluded, or if deviating agreements have been made.
13. The court of jurisdiction for all claims arising from this legal relationship, including actions on bills of exchange and cheques, is at the Supplier's option Berlin or the residence of the defendant. German law is exclusively applicable. The United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods (BGBI. 1989, page 586) for the Federal Republic of Germany is not applicable.