

General Conditions of Sale, Service and Delivery of SPG Packaging UK Ltd – Business Unit Angleboard UK (Last updated: April 2017)

§ 1 General, Scope

- (1) These General Conditions of Sale, Service and Delivery (GTCs) shall apply to all Seller's business relationships with its' customers ("**Buyers**").
- (2) The GTCs shall apply in particular to contracts for the sale and/or delivery of goods ("**Goods**"), regardless of whether Seller produces the goods itself or buys them from suppliers. Unless otherwise agreed, the GTCs shall apply in the version valid at the time of ordering by the Buyer and/or in any case in the last text form the Buyer received as a framework agreement, including for future contracts of the same type, without Seller needing to refer to them again in every instance. The GTCs shall also apply to the provision of services.
- (3) Seller GTCs shall apply exclusively. Differing, conflicting or additional GTCs of the Buyer shall only become part of the contract when Seller has given its' express consent. This consent requirement shall apply in every case, including in cases where Seller carries out the delivery to the Buyer without reservation with knowledge of their GTCs.
- (4) Legally relevant declarations and notifications, which are to be delivered to Seller by the Buyer upon conclusion of the contract (e.g. setting deadlines, informing of defects, notice of withdrawal or reduction), shall require the written form to be effective.

§ 2 Conclusion

- (1) Seller offers are non-binding and subject to change. This shall also apply if Seller hands over catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents - including in electronic form - for which Seller holds ownership and copyrights.
- (2) The ordering of goods by the Buyer shall be considered a binding contract offer. Provided that nothing else arises from the order,
Seller shall be entitled to accept this contract offer within four weeks of its receipt by Seller.
- (3) Acceptance can take place either in text form (e.g. order confirmation by e-mail) or by delivering the goods to the Buyer within the period stated in § 2 (2).

§ 3 Delivery Period and Delivery Delay

- (1) The delivery period shall be agreed individually, or stated by Seller upon acceptance of the order. Delivery dates or periods which have not been expressly agreed upon as being binding shall be exclusively non-binding.
- (2) The delivery period shall commence with the dispatch of Seller's order confirmation but not before all details and documents to be produced by the Buyer and/or approvals to be ensured by the Buyer have been procured, and in particular not before an agreed deposit or proof of an agreed payment security has been received. A further requirement shall be the timely provision of any preliminary construction and assembly work on the part of the Buyer and the demonstration of such, as well as the provision of electricity, gas, water, etc.
- (3) If Seller cannot meet binding delivery deadlines for reasons for which Seller is not responsible (non-availability of service, such as operational disruptions of all kinds, difficulties in procuring materials or power, transport delays, strikes, legal lockouts, shortage of labour, energy or raw materials, difficulties in obtaining necessary regulatory approvals, official measures or missing, incorrect or untimely delivery by suppliers), Seller shall immediately inform the Buyer thereof and at the same time provide the new, most probable delivery date. If performance continues to be impossible within the new delivery period, Seller shall be entitled to withdraw in whole or in part from the contract; Seller shall immediately refund any consideration already paid by the buyer. In the event of non-availability of the service due to late delivery on Seller's part by its' supplier, this shall only apply if Seller has concluded a congruent cover transaction, if neither Seller nor its' supplier is at fault, or if Seller is not obliged to procure the service in individual cases (such as in the case of the individual exclusion of the procurement of raw materials).

- (4) The commencement of Seller's delivery default shall be determined by statutory provisions. In any case, a reminder on the part of the Buyer shall be required. If Seller is in default of delivery, the Buyer shall be entitled to demand a one-off compensation for their default damages if they can justify that they have indeed incurred damages. The lump-sum compensation shall amount to 0.5% of the net price per completed calendar week (delivery value), but no more than 5% of the delivery value of the delayed goods. Seller shall reserve the right to prove that the Buyer has in fact incurred no damages, or has incurred significantly less damage than the lump-sum compensation allows for.
- (5) Both claims for damages by the Buyer owing to default of the service as well as claims for damages instead of the service which go beyond the limits set out in § 3 (4) shall in all cases exclude delayed delivery, including after expiry of the deadline for delivery set by Seller. This shall not apply in cases of liability due to intent, gross negligence or due to injury to life, body or health. A change in the burden of proof to the detriment of the Buyer shall not be tied to the aforementioned rules. Seller's statutory rights shall remain unaffected, particularly in the case of an exclusion of liability (e.g. due to impossibility or unreasonableness of performance and/or supplementary performance).

§ 4 Delivery, Transfer of Risk, Acceptance, Default of Acceptance

- (1) The delivery shall be carried out from the warehouse (Dudley UK Incoterms 2010), which is also the place of performance for the delivery and for any subsequent performance. At the request and expense of the buyer, the goods shall be sent to another destination (dispatch sale) and, if agreed, added to the Buyer's costs. Unless otherwise agreed, Seller shall be entitled to determine the type of shipment (in particular the transport company, shipping, packaging).
- (2) The risk of accidental loss and accidental deterioration of the goods shall pass to the Buyer at the latest with the transfer of the goods. In case of dispatch sales, the risk of accidental loss and accidental deterioration of the goods, as well as the risk of default shall be transferred as soon as the goods are delivered to the shipper, carrier or other person or institution assigned to carry out the dispatch. This shall also apply if partial deliveries are made or if Seller has taken on other services (e.g. shipment or installation).
- (3) If acceptance has been agreed, this shall be decisive for the transfer of risk. The goods shall be deemed to be accepted when (i) the delivery and, in cases where Seller also owes the installation, the installation is completed; (ii) Seller has informed the Buyer with regard to the assumed acceptance in accordance with this Section; (iii) twelve working days have passed since the delivery or installation or the Buyer has begun to use the goods (e.g. the delivered equipment is in use) and in this case six working days have passed since delivery or installation and (iv) the Buyer has refrained from giving their acceptance within this period for a reason other than because of a reported defect, making the use of the goods impossible or considerably detracting from their usefulness. The handover/acceptance shall remain the same even if the Buyer is in default of acceptance.
- (4) If the Buyer is in default of acceptance, refrains from cooperating or Seller's delivery is delayed for reasons attributable to the Buyer, the Seller shall be entitled to demand compensation for the damage resulting from this, including additional expenses (e.g. warehousing costs).
- (5) Seller shall be entitled to partial deliveries in cases where (i) partial delivery is suitable for the Buyer within the context of the contractual intended purpose, (ii) the delivery of the remaining ordered goods is ensured and (iii) the Buyer will not thereby incur any considerable additional effort or costs (unless Seller declares that it is prepared to assume these costs).

§ 5 Prices and Payment Conditions

- (1) Unless otherwise agreed in individual cases, Seller's prices are valid at the time the contract is concluded ex-warehouse (Dudley UK Incoterms 2010), plus statutory VAT, if applicable.
- (2) For dispatch sales, § 4(1), the Buyer shall bear the costs of transport and packaging ex-warehouse, unless otherwise agreed, as well as the costs of transport insurance, if so desired by the Buyer. Any duties, fees, taxes and other public charges shall be paid by the Buyer.
- (3) The purchase price shall be due and payable within 30 days of invoicing and delivery or acceptance of the goods.

- (4) Seller shall, however, be entitled at any time, including in the framework of an ongoing business relationship, to carry out delivery in whole or in part only against advance payment. Seller shall declare a corresponding reservation no later than at the point of order confirmation.
- (5) The Buyer shall be in default upon expiry of the aforementioned payment period. The purchase price shall be subject to interest during the period of default in the amount of the legally valid default interest rate. Seller shall reserve the right to claim further damages. Seller's claim to commercial maturity interest vis-à-vis the merchants shall remain unaffected.
- (6) The Buyer shall only be entitled to offsetting or retention rights where their claim is legally justified or uncontested. The reciprocal rights of the Buyer, particularly in accordance with § 7 of these GTCs, shall remain unaffected by delivery defects.
- (7) If, upon conclusion of the contract, it should become apparent (e.g. by an application to open insolvency proceedings) that Seller's claim for the purchase price is at risk owing to the inability of the Buyer to settle the amount, Seller shall be entitled to withdraw from the contract in accordance with the statutory regulations on refusal of performance and if applicable, after setting a deadline for settlement. For contracts regarding the manufacture of non-substitutable goods (unique products), Seller can declare the withdrawal immediately; the statutory rules regarding the dispensability of the deadline remain unaffected.

§ 6 Retention of Title

- (1) Seller shall retain ownership of the purchased goods until complete settlement of all current and future liabilities from the purchase agreement and an ongoing business relationship (secured claims).
- (2) The goods subject to retention of title shall be neither pledged to a third party before complete settlement of the secured claims nor transferred as means of a security. The Buyer shall inform Seller immediately in writing if an application to open insolvency proceedings has been filed or if third parties have access to goods belonging to Seller (e.g. pledges).
- (3) In the event of non-contractual behaviour on the part of the Buyer, in particular non-payment of the owed purchase price, Seller shall be entitled to withdraw from the contract in accordance with statutory provisions and to reclaim the goods on the basis of retention of title and the withdrawal. If the Buyer fails to pay the owed purchase price, Seller shall only assert these rights if it has set the Buyer an appropriate deadline for payment which has since lapsed, or a deadline of this type is dispensable in accordance with statutory provisions.
- (4) The Buyer shall, until further notice, be entitled to sell on and/or to process the goods held under retention of title in the ordinary course of business in accordance with (c) below. In this case, the following provisions shall also apply.
 - (a) The retention of title shall extend to the processing, mixing or combining of the products resulting from Seller's goods in their full value, whereby Seller shall be considered the manufacturer. If, in the case of processing, mixing or combining with third party goods, a right of ownership of the third party exists, Seller shall acquire co-ownership of the processed, mixed or combined goods in proportion to the invoice value. Moreover, the provisions which apply to goods delivered under retention of title shall also apply to the resulting product.
 - (b) The Buyer hereby assigns to Seller, by way of security, any and all claims from the resale of the goods or the products vis-à-vis third parties in full or to the extent of any co-ownership interest in accordance with the preceding paragraph. Seller accepts the assignment. The obligations of the Buyer stated in Section (2) shall also apply with regard to the assigned claims.
 - (c) The Buyer shall remain authorised to collect the claim in addition to Seller. Seller shall be obliged not to collect the claim if the Buyer meets their payment obligations to Seller, demonstrates no failure in performing their obligations and Seller does not make use of the retention of title by exercising a right in accordance with paragraph (3). If this is the case, however, Seller shall be entitled to demand that the Buyer informs Seller of the assigned claims and their debtors, provides all details required for collection, hands over the associated documents and informs the debtors (third parties) of the assignment. Seller shall also be entitled in this case to revoke the authority of the Buyer to sell on and process the goods under retention of title.
 - (d) Seller shall release the goods or claims, if their value exceeds the amount of the secured claims by more than 125%. The selection of the objects to be released shall remain at Seller's discretion.

- (5) The Buyer shall store the goods at no extra cost and shall carry out maintenance and inspection work at their own cost, if required. The Buyer shall provide Seller with information regarding the location of the goods at any time, and provide Seller with the opportunity to inspect their proper condition. To this end, the Buyer shall provide Seller access to the location of the goods. In the event of late payment, Seller reserves the right to enter Buyer's premises, at any time, and take possession of the goods, and the Buyer agreed to be liable for all associated costs.
- (6) The buyer shall be obliged to insure the goods at their own cost against theft, breakage, fire and water damage and to prove at Seller's request the existence of this insurance. The insurance claim resulting from damages shall be assigned to Seller in the amount of the invoiced amount plus a security deposit of 25% of the invoice amount. Seller hereby accepts the assignment.

§ 7 Warranty Claims by the Buyer

- (1) For the rights of the Buyer regarding physical and legal defects (including incorrect and late delivery, as well as incorrect assembly or incorrect assembly instructions) the statutory provisions shall apply unless otherwise agreed in the following. The statutory special provisions regarding final delivery of the goods to the consumer shall remain unaffected in all cases.
- (2) The basis for Seller's liability for defects is chiefly the agreement regarding the quality of the goods. The product descriptions (including those of the manufacturer) shall apply as an agreement regarding the quality of the goods; these are passed on to the Buyer before ordering or are included in the contract in the same manner as these GTCs. Raw material or manufacturing-related deviations in dimensions, weight, quantity or quality as well as technically required changes to the design shall not represent a defect if equal in value to the agreed quality.
- (3) If the quality was not agreed upon, it shall be assessed in accordance with statutory stipulations whether a defect is present or not. Seller shall not accept liability, however, for public statements by the manufacturer or other third parties (e.g. advertising statements).
- (4) The Buyer's claims regarding defects require that they have satisfied their contractual and statutory assessment and notification obligations. If a defect should be identified during the assessment or later, Seller must be notified of this immediately and in writing. Notification shall be considered immediate if it is carried out within two weeks, whereby the timely sending of the notification is sufficient to satisfy the deadline. Regardless of this assessment and notification obligation, the Buyer shall notify Seller in writing of any obvious defects (including incorrect or late delivery) within two weeks of delivery, whereby the timely sending of the notification is sufficient to satisfy the deadline. If the Buyer fails to carry out the proper assessment and/or defect notification, Seller will not be liable for any unreported defects.
- (5) If the delivered goods are defective, the Buyer may initially demand, at Seller's discretion, remedy of the defect (repair) or delivery of a flawless good (replacement delivery) as subsequent performance.
- (6) Seller shall be entitled to make the owed subsequent performance dependant on the Buyer settling the purchase price due. The Buyer is, however, entitled to retain a portion of the purchase price in proportion to the defect.
- (7) The Buyer shall allow Seller the necessary time and opportunity to complete the owed subsequent performance, and in particular must handover the rejected goods for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective goods in accordance with statutory regulations. The fulfilment shall include neither the assembly of the defective good nor renewed installation if installation was not originally a contractual obligation.
- (8) The expenses required for assessment and fulfilment, in particular transport, road, labour and material costs (not: assembly and installation costs), shall be borne by Seller if a defect is actually present. Otherwise, Seller can demand that the costs arising from the incorrect assertion of a defect repair (in particular assessment and transport costs) be reimbursed, unless the lack of a defect was not discernible by the Buyer.
- (9) If the fulfilment fails within a reasonable time after the defect is notified to Seller or a deadline for the fulfilment set by the Buyer expires without successful rectification, or this deadline is dispensable in accordance with statutory regulations, the Buyer may withdraw from the purchase agreement or reduce the purchase price. No right to withdraw shall exist in the event of a minor defect, however.

- (10) Furthermore, no claims for defects shall exist for deteriorations owing to normal wear and tear or for damages that occur after the transfer of risk owing to improper assembly, treatment or incorrect, incomplete or late maintenance, improper storage, excessive use, unsuitable equipment or use of non-approved consumables, an unsuitable installation site or due to external influences, such as chemical, electro-chemical or electrical influences or extraordinary temperature or weather conditions which were not foreseen in the contract, as well as for non-reproducible software errors. Likewise, no claims for defects exist for improper changes to delivered objects carried out by the Buyer or a third party, e.g. by installing components of unknown origin. Claims for defects arising from the adaptation of software on software associated with the Buyer shall only be valid up to the interface of the delivered object. In any case, the Buyer shall bear the additional costs arising from repairing defects caused by the change.
- (11) No claims or defects shall exist due to any fault arising from the goods having been subjected to any type of operation or use in contravention of their specification or their operational limitations or any type of operation for which the Goods were not manufactured, or any fault arising from any cause beyond the control of the Seller.

The warranty period shall be one year from the date of delivery or, if acceptance is required, from the date of acceptance. This period shall not apply for the Buyer's claims for damages arising from injury to life, limb or health or from intentional or grossly negligent breach of duty by Seller or its' agents in accordance with the statutory provisions. Any warranty is excluded for used delivered objects.

- (12) The Buyer's claims for damages or compensation for wasted effort shall also exist for defects only in accordance with § 8 and are otherwise excluded.

§ 8 Other Liability

- (1) Unless otherwise stipulated in these GTCs, including the following stipulations, Seller shall be liable in accordance with the statutory provisions for any breach of contractual and non-contractual obligations and in any event for no amount greater than the total amount paid in the preceding 12 months on foot of the contract.
- (2) Seller shall be liable for damages, regardless of the legal reason, in the context of fault-based liability for intent and gross negligence. In cases of simple negligence, Seller shall only be held liable, subject to a milder liability scale in accordance with legal stipulations (e.g. to the extent of care that Seller would employ in its' own affairs),
- a) for damages arising from injury to life, body or health,
- b) for damages arising from the significant breach of a key contractual obligation (an obligation, the fulfilment of which enables the proper implementation of the contract overall and the adherence to which the contractual partner regularly relies upon and may rely upon); in this case, Seller's liability is however limited to the replacement of the foreseeable, typical damages.
- (3) Seller's liability for indirect and consequential damages, for loss of profits, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of anticipated savings, loss of reputation, or all operational losses (in each case whether direct, indirect or consequential) and ii) any indirect, special or consequential loss or damage shall be excluded, subject to Seller's liability from Section 8 (2).
- (4) The liability limitations arising from paragraph (2) shall also apply for breaches of duty by/in favour of persons whose debts are to be represented by Seller in accordance with statutory regulations. They shall not apply if Seller fraudulently conceals a defect or have accepted a warranty for the quality of the goods and for Buyer's claims in accordance with the Product Liability Directive [Consumer Protection Act].
- (5) In the event of a breach of obligation that is not part of a defect, the Buyer cannot withdraw or terminate the contract if Seller is responsible for the breach of duty. A right of termination of the Buyer shall be excluded. The statutory requirements and legal consequences shall also apply.

§ 9 Compliance with Safety Regulations, Traceability

- (1) Seller's products offer the industry-standard protection against accidents when used properly in conjunction with any security barriers it may be necessary for Seller's customer to install.

- (2) The smooth running of Seller's product depends on the use of material that is subject to constant checks during production in order to ensure that Seller's usual tolerances and material goods can be upheld.
- (3) The Buyer may only transfer operation of the equipment Seller provides to persons that are appropriately instructed in the technical regulations, public sector safety rules and practical use of the equipment. Possible costs that arise from the instruction and the commissioning of the equipment for demonstration purposes shall be borne by the Buyer.
- (4) The Buyer shall comply fully with all user instructions and safety recommendations issued by the Seller in relation to the goods.
- (5) If the Buyer passes on the delivered goods to third parties, the Buyer shall ensure the traceability of the goods through appropriate measures. The Buyer shall ensure in particular that, in the event of a measure required owing to product liability reasons (e.g. product recall, product warning), the delivered goods shall be traced and their last buyer shall be informed of such measures immediately. If the Buyer does not pass on the delivered goods to a third party, but instead uses/consumes these in their own operation, they shall also ensure that, in the event of a required measure in accordance with Sentence 2, warehouse goods and goods in use shall be sought out.

§ 10 Export regulations

- (1) Seller reserves the right to perform checks of legal export provisions and will supply any necessary regulatory approval (e.g. an export licence) subject to these checks. Seller shall take all reasonable action to obtain said regulatory approval. Seller shall not accept a guarantee that the necessary regulatory approval has been granted, however. The Buyer shall be obliged to support Seller in obtaining such approval and to provide Seller with the necessary documents and information within an appropriate period of time.
- (2) The Buyer shall be obliged to obtain any required import licences.
- (3) The Buyer shall be obliged to carry out all required inspection measures (sanction lists, end use, embargo stipulations, etc.) prior to the export of the goods delivered directly or indirectly by Seller to ensure compliance with national, international and especially US (re-)export control regulations, and to obtain the necessary approvals from the relevant authorities at their own expense as required.
- (4) The Buyer shall be obliged to maintain confidentiality on all information made known to it as part of the business relationship or on occasion thereof (such as export data), refraining in particular from forwarding said information to non-authorised persons without prior written approval or from making said information accessible in another form.

§ 11 Dispute Resolution

(1) Mediation

In the event of a dispute, each party will nominate one expert with a view towards settling the dispute to the mutual satisfaction of both parties. In the event that no settlement can be achieved within a reasonable timeframe (30 days), both parties agree to submit the matter to arbitration.

(2) Arbitration

If any questions, disputes or difference whatsoever shall arise between the Seller and the Buyer in relation to or in connection with the contract either party may give to the other notice in writing of such question, dispute or difference and the same shall be referred to the arbitration of a person to be agreed upon or failing agreement to a professional arbitrator appointed in conformity with the LCIA Rules, by an independent LCIA representative. The submission shall be deemed a submission to arbitration within the meaning of the Arbitration Act 1996 or of any statutory modification thereof for the time being in force.

§ 12 Law and Jurisdiction

- (1) The laws of the England & Wales shall apply for these GTCs and the contractual relationship between Seller and the Buyer to the exclusion of international uniform law, in particular the UN sales law.



- (2) The exclusive and international jurisdiction for all disputes arising from this contractual relationship, whether directly or indirectly, shall be Seller's registered office. Seller shall, however, be entitled in all cases to file claims at the place of delivery in accordance with these GTCs/an overriding individual agreement or at the general jurisdiction of the Buyer. Preferential legal provisions, in particular those relating to exclusive responsibilities, remain unaffected.
- (3) Seller shall be entitled to transfer the rights and obligations from the contractual relationship to a third party. This transfer requires the consent of the Buyer. This shall be deemed to be given if the Buyer does not lodge a dispute within a period of four weeks of receipt of a corresponding notification. Reference will be made to this provision in Seller's notification.