

## **General Terms and Conditions (GTC) for legal transactions with merchants of Merseburger Verpackung GmbH (hereinafter referred to as MERSEPACK) (Last revised: 01.01.2021)**

### **1. Validity of the Terms and Conditions**

**1.1** These GTC apply to all deliveries and services of MERSEPACK, excluding any conflicting conditions of our contractual partners / buyers.

**1.2** Our GTC apply exclusively to companies in the sense of Section 310 (1) of the German Civil Code (BGB) as well as to legal entities under public law or special funds under public law.

**1.3** They also apply to all future business relations without explicit renewed reference. Deviations from our GTC require an explicit agreement in writing.

**1.4** In addition, Incoterms 2020 apply to all our deliveries and services ex works, unless we have expressly agreed to deviating delivery conditions in our individual contracts.

**1.5.** In all other respects, the DIN and EN regulations applicable within Germany at the time of the conclusion of the contract and, in addition, our manufacturer's specifications apply to all our deliveries and services, insofar as we refer to them in our offers or on the Internet.

### **2. Offers, conclusion and content of the contract as well as tolerances**

**2.1** All our offers are non-binding. The buyer is bound by orders for 2 weeks. The contract is concluded exclusively through our order confirmation within 2 weeks of receipt of the order or, alternatively, by performance of the order within the same period. Verbal subsidiary agreements, other commitments, etc. made by our employees shall only become binding upon our written confirmation.

**2.2** Business mail printed and/or sent with data processing equipment is also legally binding without a signature.

**2.3** Our illustrations, dimensions, weights, brochure information and/or documents relevant to the offer, such as drawings, technical data, material data sheets, statements in advertising material, etc. do not constitute any quality specifications. Warranted characteristics or

guarantees are not associated with them, but only if these legal effects are agreed separately in writing. The data provided to us in this respect shall be authoritative for all quantities, weights and dimensions of the delivery. Information on further processing purposes or possible uses of our contractual products shall only be binding if made in writing. We object to any transfer of rights and any transfer of our know-how insofar as we manufacture and supply products for the customer. All rights / special rights and any know-how remain the property of MERSEPACK.

**2.4** Information on processing options and possible applications of our products, technical recommendations or advice and other information provided by our employees (technical application advice) are given to the best of our knowledge, but without obligation and to the exclusion of any liability. They do not exempt our buyer and his customers from carrying out their own tests and trials to determine the suitability of the products for the intended use. Technical application advice does not constitute a separate contractual legal / advisor relationship.

**2.5** Our offers apply to deliveries within Germany and abroad. In the event of deliveries within Germany, the buyer shall be liable to us for all disadvantages and liabilities arising from the use of the goods outside of Germany.

**2.6** MERSEPACK reserves the property rights and copyrights to illustrations, presentation objects, drawings, calculations, data and other documents; they may not be made available to third parties without the prior consent of MERSEPACK, at least in writing. This applies, in particular, to such information and documents which are specifically marked as confidential. These are to be treated confidentially as business secrets.

**2.7** The customer has no claim to documentation, factory certificates and certifications unless specifically agreed upon at

the time of conclusion of the contract or if such an obligation to provide evidence results from legal regulations or DIN regulations applicable in Germany.

**2.8** Our General Terms and Conditions of Sale and Delivery also apply to technical elaborations that we prepare on behalf of our customers. Here, we reserve all rights from our copyrights. The customer is only authorised to use our elaborations after a corresponding agreement with us, which must be made at least in writing. We expressly do not check technical elaborations for our customers with regard to their intended use / purpose and their feasibility for specific projects, unless expressly agreed in writing.

**2.9** We regularly invoice our expenses for test productions, such as the preparation of cost estimates. The costs incurred by us shall be charged when the order is placed, otherwise they shall be payable by invoice.

### **3. Delivery times and performance, delays**

**3.1** The dates and deadlines specified by MERSEPACK are non-binding, unless expressly agreed otherwise in writing upon conclusion of the contract. As a matter of principle, MERSEPACK does not assume any procurement risks. We object to any contractual penalties for non-compliance with delivery times.

**3.2.** The observance of any delivery period shall be conditional upon the fulfilment of the buyer's contractual obligations. Delivery periods begin at the earliest on conclusion of the contract, but not before all documents, releases, technical clarifications and parts lists, etc. to be procured by the buyer are provided in full. Subsequent requests for modifications and additions by the buyer shall extend the delivery period accordingly. The delivery period shall be deemed to have been met if, by the time of its expiry, the delivery item has left the supplying plant or readiness for dispatch has been notified; if the goods are not dispatched on time through no fault of our own. In the event of unforeseen events and/or force majeure, including procurement disruptions at our suppliers, the

delivery period shall also be extended accordingly.

**3.3** In the event of make-and-hold orders, we are entitled to manufacture the entire order volume in one go. Change requests cannot be taken into account after the order has been placed unless this has been expressly agreed in writing.

**3.4** We reserve the right to correct and punctual deliveries by our own suppliers. We shall inform the buyer immediately of the non-availability of a delivery and, in the event of withdrawal, reimburse the buyer immediately for the corresponding consideration. In any event, we shall immediately inform the buyer of any issues in the procurement market, in production, machine breakdowns / malfunctions and other disruptions, in particular in cases of force majeure, and notify the buyer of the disruptive event.

**3.5** If MERSEPACK has not performed a due service in accordance with the contract, the buyer may not withdraw from the contract, claim compensation for damage in lieu of the entire service or claim reimbursement of futile expenses insofar as the breach of duty by MERSEPACK is insignificant. We object to any contractual penalty in this respect.

**3.6** MERSEPACK shall only be in default due to a reminder, unless otherwise stated by law or by the contract. Reminders and setting of deadlines by the buyer must be made in writing to be effective.

**3.7** MERSEPACK is entitled to make partial deliveries and provide partial services at any time, without MERSEPACK associating this with a new offer. In the event of non-deliverability of the remaining part, the buyer shall be entitled to withdraw from the contract without compensation. MERSEPACK shall bear any additional costs arising from the partial delivery. The buyer is not obligated to pay the full purchase price until MERSEPACK has fully performed the contract or service, unless otherwise stated in the contract.

**3.8** If MERSEPACK does not perform a due service or does not perform it as owed, but the

service has already been partially performed, the buyer may only claim compensation for damage in lieu of the entire service to the extent that his interest in the entire service so requires. In this event, withdrawal from the entire contract is only possible if the buyer demonstrably has no interest in partial services. Additional compensation for damage is excluded in the event of withdrawal.

**3.9** If MERSEPACK is in default for reasons for which MERSEPACK is responsible, liability for damages in the event of simple negligence shall be excluded. The above limitation of liability does not apply if the delay is due to MERSEPACK's culpable breach of an essential contractual obligation. In all cases of liability, MERSEPACK's liability shall be limited to the foreseeable damage typical for the contract. In the event of a delay in delivery for which we are responsible, the buyer may, after a written reminder, set us a reasonable further deadline with the indication that he will refuse acceptance of the subject of the contract after the deadline has expired. Only after fruitless expiry of the new deadline and all other legal requirements is the buyer entitled to withdraw from the contract by written declaration. In the event of withdrawal, the customer may not claim compensation for damages for non-performance.

#### **4. Transfer of risk, packaging**

**4.1** Unless otherwise agreed in writing, delivery ex works is agreed. The risk shall pass to the buyer as soon as the consignment has been handed over to the person carrying out the transport or has left the supplying plant for the purpose of dispatch; this shall also apply if MERSEPACK arranges the transport with its own resources on behalf of the buyer.

**4.2** If dispatch becomes impossible through no fault of MERSEPACK, the risk shall transfer to the buyer upon notification of readiness for dispatch.

**4.3** If the buyer so wishes, MERSEPACK shall insure the delivery with transport insurance at the buyer's expense.

**4.4** Transport packaging and all other packaging in accordance with the Packaging Ordinance shall not be taken back, with the exception of reusable means of transport such as pallets, skeleton containers, etc. The buyer is obligated to dispose the disposable packaging at his own expense. The reusable means of transport are only lent to the buyer; the buyer is obligated to return them in proper condition, i.e. in particular without damage and empty of residues, at his own expense and in compliance with the statutory provisions of the Packaging Ordinance; in the event of contamination or damage to the means of transport, the buyer shall bear the repair costs or undertake to compensate MERSEPACK for the value insofar as repair is impossible. MERSEPACK is entitled to set off the incurred costs directly against its own payment claims.

**4.5** In the event of make-and-hold orders, the buyer is obligated to call up the goods at the latest within 8 working days after our notification of readiness for dispatch, unless agreed otherwise. After the expiry of 8 working days, the buyer shall bear our additional expenses for storage and logistics.

#### **5. Prices and payments**

**5.1** The prices stated in our offers plus the respective statutory value added tax shall be authoritative. Additional deliveries and services shall be charged separately, in particular approval and accompanying costs for special transport exceeding 19.6 m in length as well as additional transport costs resulting from packaging regulations and packages below the standard weight of 2.5 tonnes.

**5.2** Unless agreed otherwise, the prices are ex works / warehouse including normal transport packaging, transport costs and VAT and are always quoted in EUR.

**5.3** Unless agreed otherwise in writing, the invoice amount shall be due for payment without any deductions after delivery and invoicing. If, contrary to the agreement, the goods are not called up in accordance with the contract in the event of make-and-hold orders, we shall be

entitled to invoice them as delivered plus storage costs after a reasonable period of grace has expired. Transport and storage shall then be carried out at the expense and risk of the buyer.

**5.4** Default interest on MERSEPACK's payment claims shall be payable at an interest rate of 9% above the base rate of the European Central Bank, subject to higher damage.

**5.5** The buyer shall only be entitled to set off rights if his counterclaims have been legally established, are undisputed or have been recognised by MERSEPACK. Furthermore, he is only entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship. We object to any current account set-off. In the event of defects in the delivery, the buyer's counter rights shall remain unaffected; see in particular Clause 6.4 sentence 3.

**5.6** If MERSEPACK is aware of circumstances which call into question the creditworthiness of the buyer, MERSEPACK shall be entitled, even after conclusion of the contract, to demand down payments or security deposits, without prejudice to further legal claims. If the buyer fails to comply with either the down payment or the security deposits, MERSEPACK shall be entitled to a right of retention. Alternatively, MERSEPACK may withdraw from the contract after an unsuccessful reminder by setting a deadline for the provision of the down payment or security deposit. MERSEPACK may also demand claims for damages.

**5.7** The goods are delivered subject to retention of title in accordance with these conditions (Clause 7).

## **6. Warranty / Compensation for damage and statute of limitations**

**6.1** Each of our deliveries and services must be checked immediately for completeness and freedom from defects. The buyer shall notify us in writing of any obvious defects which are recognisable upon proper inspection immediately after delivery. The company must immediately notify us in writing of any defect found in a delivery or service. The notification

must contain a precise description of the defect. We are not obligated to perform a 100% outgoing inspection.

**6.2** The buyer is obligated to have the condition of the goods acknowledged by himself or by an authorised third party upon collection or delivery. A short delivery does not constitute a defect any more than a wrong delivery. On the contrary, MERSEPACK is entitled to make subsequent deliveries upon request.

**6.3** Excess or short deliveries do not expressly constitute a defect.

**6.4** If the delivery / service is defective, MERSEPACK shall, at its discretion, provide a warranty by rectification or replacement delivery, provided that no case of Section 445 a (1) BGB exists. We are entitled to make the subsequent performance owed dependent on the buyer paying the purchase price due. However, the buyer shall be entitled to withhold an appropriate part of the purchase price that is reasonable in relation to the defect. The claims of the buyer due to a defect in a purchased item are, with the exception of the cases of Section 445 a (1) BGB, initially limited to supplementary performance. If the supplementary performance finally fails after at least three attempts, the buyer shall have the right to reduce the purchase price or, if the defect is substantial, to withdraw from the contract. Any additional claims for damages are excluded. Claims by the buyer for expenses incurred for the purpose of subsequent performance, in particular transport, travel, labour and material costs, are excluded if the expenses increase because the object of the delivery was subsequently taken to a place other than the place of performance; unless the shipment corresponds to its intended use. We object to any return of defective contractual products at the risk and expense of MERSEPACK if deliveries from us are defective. Instead, the customer must inform us immediately of the defectiveness of the contractual products and discuss and agree with us the return of the products at our discretion.

**6.5** The warranty rights of the buyer presuppose that he has promptly and properly fulfilled his obligations to inspect and give notice of defects of our contractual products in accordance with Section 377 of the German Commercial Code (HGB). This obligation extends to the inspection of the completeness of the delivery, the absence of defects, the quality and for recognisable defects even if we carry out the delivery for the customer directly to the specified construction site or as a drop shipment, including the immediate notification to us. The goods shall be deemed to be free of defects with regard to contractual and statutory claims and rights if the complaint is made late. This shall not apply to claims for damages based on intentional conduct or under the Product Liability Act.

**6.6** The buyer's statutory rights of recourse against MERSEPACK exist only insofar as the buyer has not entered into an agreement with its customer that goes beyond our liability. Recourse against MERSEPACK for such additional costs is expressly excluded.

**6.7** Claims do not exist in the event of insignificant deviation from the agreed quality, insignificant impairment of usability, natural wear and tear and/or in the event of damage arising after the transfer of risk as a result of incorrect and/or negligent handling, excessive stress, unsuitable operating resources and/or due to special external influences and/or in the event of qualities which are not assumed under the contract.

**6.8** If MERSEPACK products are used for purposes not covered by the scope of application defined by us or not for the expressly intended contractual purpose for which they are intended, MERSEPACK's liability for defects caused / contributed to by this reason and/or consequential damage shall not apply.

**6.9** Our liability is excluded in the event of slightly negligent breaches of duty. In the event of a gross breach of duty or intent, our liability shall be limited to the foreseeable damage typical for the contract and to a maximum of the value of the delivery concerned. Liability for

financial losses is excluded. This extends to all damage, irrespective of the legal grounds, including any claims for breach of pre-contractual duties of disclosure and tort. This limitation of liability as described above shall not apply in the event of injury to life, limb or health or in the event of damage arising from the breach of a material contractual obligation, nor shall it apply if MERSEPACK has fraudulently concealed a defect or has given a guarantee for the quality of the object of purchase or if damage arises from intentional action.

**6.10** Claims for defects become statute-barred within 12 months of the transfer of risk. The rights under sections 445 a, 445 b BGB remain unaffected. The warranty shall be extended by the period of time from the notification of the defect to the subsequent performance if the defects are substantial or significant or impair the usability and we acknowledge and remedy the defect ourselves or have it remedied by a third party. A notification of defect does not expressly suspend the limitation period of the warranty claims if we determine, after checking the causes of the defect, that we are not responsible for the defect. The warranty shall never be less than 1 year. This period also applies to other claims for damages by the buyer, irrespective of their legal basis, unless MERSEPACK is guilty of intent, a breach of warranty or in the case of fraudulent concealment of defects or in the case of claims under the Product Liability Act or culpable breach of material contractual obligations.

## **7. Retention of title**

**7.1** The delivered goods remain the property of MERSEPACK until full payment is made of all claims arising from the business relationship between MERSEPACK and the buyer. The inclusion of individual claims in a current invoice and the recognition of the balance shall not affect the retention of title. Payment shall only be deemed to have been made upon receipt of the equivalent value by MERSEPACK.

**7.2** In the event of behaviour contrary to the contract on the part of the buyer, in particular in the event of default of payment, MERSEPACK shall be entitled to take the purchased item back. The taking back of the purchased item by MERSEPACK does not constitute a withdrawal from the contract, unless MERSEPACK has expressly declared this in writing.

**7.3** The seizure of the purchased item by MERSEPACK always constitutes a withdrawal from the contract. MERSEPACK shall be entitled to reuse the object of sale after it has been taken back. The proceeds of the reuse shall be credited against the buyer's liability minus sales costs.

**7.4** In the event of seizure or other interventions by third parties, MERSEPACK must be informed immediately in writing. MERSEPACK has the right, but no obligation, to bring an action in accordance with section 771 of the German Code of Civil Procedure (ZPO). The obligation only arises if the buyer pre-finances the action at the buyer's own risk of legal costs. Insofar as the third party is not in a position to reimburse MERSEPACK for the court and out-of-court costs of a lawsuit pursuant to Section 771 ZPO, the buyer shall be liable for the loss incurred.

**7.5** The buyer is entitled to resell the goods subject to retention of title in the ordinary course of business; however, he already now assigns to MERSEPACK all claims in the amount of the final invoice amount (including VAT) of the claims to which MERSEPACK is entitled, which accrue to him from the resale against his customers or third parties, irrespective of whether the purchased item has been resold without or after processing. MERSEPACK accepts the assignment. If the assigned claim against the purchaser of the reserved goods has been included in a current invoice (current account), the assignment shall also refer to the recognised balance and, in the event of the buyer's insolvency, to the then existing "causal balance". The buyer remains authorised to collect this claim even after the assignment. The authority of MERSEPACK to collect the claim itself remains unaffected. However, MERSEPACK undertakes not to collect

the claim as long as the buyer meets his payment obligations from the proceeds collected, is not in default of payment and, in particular, no application for the opening of insolvency proceedings has been filed or payments have not been suspended. However, if this is the case, MERSEPACK may demand that the buyer inform MERSEPACK of the assigned claims and their debtors, provide all information necessary for collection, hand over the relevant documents and inform the debtors (third parties) of the assignment.

**7.6** The processing or transformation of the reserved goods by the buyer shall always be carried out for MERSEPACK. If the reserved goods are processed with other items not belonging to MERSEPACK, MERSEPACK shall acquire co-ownership of the new item in the ratio of the value of the reserved goods (final invoice amount including VAT) to the other processed items at the time of processing. In all other respects, the same shall apply to the item created by processing as to the goods delivered subject to retention of title.

**7.7** If the goods subject to retention of title are inseparably mixed with other items not belonging to MERSEPACK, MERSEPACK shall acquire co-ownership of the new item in the ratio of the value of the goods subject to retention of title (final invoice amount including VAT) to the other mixed items at the time of mixing. If the mixing is carried out in such a way that the buyer's item is to be regarded as the main item, it shall be deemed agreed that the buyer transfers co-ownership to MERSEPACK on a pro rata basis. The buyer shall keep the resulting sole ownership or co-ownership for MERSEPACK.

**7.8** MERSEPACK undertakes to release the securities to which it is entitled at the buyer's request insofar as the realisable value of MERSEPACK's securities exceeds the claims to be secured by more than 10%; the selection of the securities to be released shall be incumbent upon MERSEPACK.

## **8. Reservation of performance / embargo clause / force majeure**

1. Our performance of the contract is subject to the proviso that no obstacles due to national or international regulations of foreign trade law as well as no embargos and / or other sanctions stand in the way of performance. The customer is, in particular, obligated to refrain from all transactions (a) with persons, organisations or institutions which are on a sanctions list according to EC regulations or US export regulations, (b) with embargoed states, (c) for which the necessary approval is not available or no longer applicable, (d) which may occur in connection with NBC weapons, military misappropriation.

2. In particular, the customer undertakes to inform us immediately and without being requested to do so in writing if he intends to deliver or use products or services purchased from us in areas which are subject to such provisions. He shall indemnify us against all legal consequences arising from the infringement of such provisions and shall pay compensation to the extent necessary if we thereby causally suffer a loss.

3. We expressly object to all provisions on the lapse of purchase obligations due to events of force majeure, such as natural disasters, earthquakes, floods, severe weather, volcanic eruptions, acts of God, riots, blockades, fire, civil war, embargo, hostage-taking, war, revolution, sabotage, strikes by third parties, terrorism, traffic accidents, pandemics and epidemics as well as production disruptions. In this context, we also object to any release from liability in the event of non-acceptance.

**4.a)** Force majeure, labour disputes, riots, pandemics, such as Covid-19, public law / official measures as well as other unforeseeable, unavoidable and serious events release MERSEPACK from its obligations to perform for the duration of the disruption (plus a reasonable extension of the performance period) and to the extent of their effect, without compensation or penalty, insofar as it could neither foresee the

consequences, but in any event could not avoid them. MERSEPACK is obligated, within the scope of what is reasonable for it, to provide the contractual partner with the necessary information without delay, at least in writing, and to adapt its obligations to the changed circumstances in good faith and in this respect to be transparent towards the other party.

**b)** If an economically reasonable resumption of MERSEPACK's services is neither foreseeable nor reasonable, e.g. due to the considerable duration of the disruption, MERSEPACK has the right to extraordinary termination of the contract after prior notice. In doing so, MERSEPACK must prove in advance that it has fulfilled all its objectively realistically possible damage reduction obligations. Instead of a termination, MERSEPACK may also demand the cancellation of the contractual relationship due to a disruption of the basis of the business or terminate it extraordinarily, as described above. In all these events, MERSEPACK is exempt from the obligation to pay compensation or penalties due to any delays or non-performance or lack of performance. There is a consensus between the parties that for the duration of the disruption, existing claims are suspended in accordance with Section 206 BGB.

**c)** The parties expressly agree on the applicability of Section 313 BGB.

## **9. Tolerances**

With regard to all quantities, weights and masses not mentioned herein, the terms and conditions of the European pulp, paper and board industry shall apply in their current valid version.

Insofar as the conditions mentioned below refer to batches, these are defined as follows:

If a delivery consists of two or more batches, each batch shall be determined separately with regard to 1) permissible tolerances, 2) basis weights and 3) roll widths / formats.

A batch thus represents the division or splitting of an order or order quantity into partial deliveries on different delivery dates but of the same type and quality (i.e. homogeneous goods in terms of colour and material).

### **1. Permissible tolerances**

An order shall be deemed to have been fulfilled in accordance with the contract if the quantities, weights and masses of the goods delivered

by Merseburger Verpackung GmbH remain within the tolerances specified below.

#### Liner and fluting: independent of gram weights

contracted quantity	permitted deviation
less than 10 tonnes	to be agreed separately
from 10 tonnes to under 20 tonnes	± 15%
from 20 tonnes to under 50 tonnes	± 10%
from 50 tonnes to under 100 tonnes	± 7.5%
100 tonnes and above	± 5%

#### 2. Basis weights

Goods delivered by Merseburger Verpackung GmbH shall be deemed to be in compliance with the contract if the actual gram weight in relation to the contractually agreed gram weight remains within the tolerances set out below and the test values of the individual units in relation to the contractually agreed gram weight remain within the tolerances set out in the tables below for each tonne.

If a delivery consists of two or more batches, the actual gram weight of each batch must be determined separately.

registered office of MERSEPACK shall have exclusive jurisdiction.

**10.3** The law of the Federal Republic of Germany shall apply exclusively, to the exclusion of the UN Convention on Contracts for the International Sale of Goods. The GTC are published in German and English. In the event of difficulties of interpretation / disputes over interpretation, the German version shall regularly be valid.

**10.4** Should any provision in these Terms and Conditions be or become invalid, this shall not affect the validity of the remaining provisions. In such an event, the parties undertake to replace the invalid clause with a valid one that comes as close as possible to the economic purpose of the invalid clause.

#### Tolerances for different papers

Weight of the batch in tonnes	Printing and writing papers 35-80g/m <sup>2</sup>	Creped and coated papers	other qualities
	%	%	%
1 (at least)	± 5.0	± 10	± 7.0
5	3.6	10	5.1
10	3.2	10	4.4
20	2.7	10	3.8
50	2.3	10	3.2
100	2.0	10	2.8

For paper batches in intermediate weights, the tolerance values determined by linear interpolation apply.

#### 3. Roll widths / formats

In the event of the delivery of paper or cardboard, it shall be deemed to be in accordance with the contract if the dimensions delivered (for formats: length and width, for rolls: width) do not deviate from the contractually agreed dimensions by more than shown below:

Roll width trimmed	+/- 2 mm,
uncut	+/- 20 mm,
Formats	+/- 50 mm

### **10. Place of performance / place of jurisdiction / applicable law / severability clause**

**10.1** Place of performance is the registered office of MERSEPACK in Merseburg.

**10.2** For all disputes arising from the business relationship, the competent court at the