

Terms and Conditions

of **Schwarz Produktion Stiftung & Co. KG**
Langendorfer Str. 23 06667 Weißfenfels, Germany

1. SCOPE OF APPLICATION

These standard terms and conditions (hereinafter "Terms and Conditions") shall govern all business relationships between Schwarz Produktion Stiftung & Co. KG (hereinafter the "Seller", "We" or "Us") and our customers (hereinafter the "Purchaser(s)") concerning the sale and/or delivery of supercalendered paper (hereinafter "SC Paper" or "Goods").

Unless the Seller and the Purchaser expressly agree otherwise, these Terms and Conditions shall apply in their entirety.

These Terms and Conditions shall apply exclusively. Any terms and conditions of the Purchaser conflicting with or deviating from these Terms and Conditions shall only become part of the agreement if and to the extent that the Seller has given its explicit written consent to their application.

These Terms and Conditions shall also apply in those cases where the Seller effects delivery to the Purchaser without reservation, in full knowledge of the latter's conflicting or deviating terms and conditions.

Individual agreements (e.g., master supply agreements, quality agreements) and any arrangements with the Purchaser, set forth in the Seller's order confirmation, shall prevail these Terms and Conditions.

These Terms and Conditions shall apply solely to traders within the meaning of sections 310 (1) and 14 of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB). These Terms and Conditions shall furthermore apply to all future transactions with the Purchaser for the purchase of Goods.

2. FORMATION OF CONTRACTS

(a) All offers submitted by the Seller and any information contained therein, referring to potential order and deliver quantities, the quality and the grammage (g/m²) of the SC Paper, the reel diameter/width, etc., shall be non-binding and subject to change. Offers submitted by the Seller shall merely constitute an invitation to the Purchaser to place an order. The Purchaser's order for the Goods shall then constitute a binding offer to conclude a contract. Unless otherwise stipulated in the order, the Seller shall be entitled to accept this contract offer within two (2) weeks of receipt by sending a written order confirmation.

(b) If the Seller's order confirmation contains minor deviations from the Purchaser's order, such deviations shall be deemed accepted by the Purchaser if the latter does not expressly contradict them within five (5) working days.

3. WEIGHT SPECIFICATION

Unless otherwise stated, "tonne" (or "t") shall mean 1,000 kilograms.

4. DELIVERY QUANTITIES

Quantities delivered shall be calculated based on the weight determined at the time the Goods were manufactured and packed. The weight of the Goods shall be determined on a gross-for-net basis (including wrapping material, cores and plugs).

Such quantities shall serve as the basis for determining the purchase price to be paid by the Purchaser and for determining whether a quantity deviates from the contractually agreed quantity to such an extent that the purchase shall be deemed not to have been performed in compliance with the contract.

5. QUANTITY TOLERANCES

An order shall be deemed performed in compliance with the contract if the Seller supplies the Purchaser with Goods which do not deviate from a contractually agreed quantity by more than the tolerances listed below.

If a delivery includes multiple lots (as defined below in clause 6 (a)), each lot shall be treated separately.

For grammages up to and including 180 g/m²

<u>Contractual quantity</u>	<u>Permissible deviation</u>
Under 1 t	± 15%
1 t up to below 5 t	± 10%
5 t up to below 10 t	± 7.5%
10 t up to below 100 t	± 5%
from 100 t	± 3%

For grammages up to and including 180 g/m², the specified upward or downward deviations shall be doubled if the Purchaser has specified a maximum or minimum weight without any margin for excess or short quantities.

6. GRAMMAGE TOLERANCES

(a) Definitions

Delivery means: the total quantity of Goods covered by a contract and delivered at a given point in time.

Lot means: one or multiple units of paper of the same type and with specified properties, produced by one and the same factory and delivered at one and the same point in time.

Unit means: a reel, bale, pallet, package or other transport packaging.

Grammage means: the weight in grams per square meter of paper.

Ordered grammage means: the grammage specified in the contract.

Actual grammage of a paper lot means: the arithmetic mean of the grammage determined by random testing of the lot according to recognised standard methods such as ISO 186, SCAN-P 6:75 or ISO 536. However, in the case of wood-containing printing papers, the actual grammage of these products is calculated based on their moisture content at the time of manufacture.

Tolerance in connection with grammage means: the permissible difference between the ordered and the actual grammages, expressed in percent of the ordered grammage.

(b) Stipulations

In terms of grammage, a paper lot shall be deemed delivered in compliance with the contract provided that

(1) the actual grammage in relation to the ordered grammage remains within the tolerances specified for paper in Table A below, and

(2) the test values for individual units in relation to the ordered grammage remain within the tolerances specified for one tonne in the table below.

If a delivery comprises two or more lots, the actual grammage of each lot must be determined separately.

(c) Table A: Tolerances for different paper types

Lot weight	Printing and writing paper 35-80 g/m ²
(t)	(%)
1 (minimum)	± 5.0
5	± 3.6
10	± 3.2
20	± 2.7
50	± 2.3
100	± 2.0
500	± 1.4
1000	± 1.3
3000	± 1.0

For paper lots in intermediate quantities, tolerances can be calculated by linear interpolation.

7. REEL WIDTH TOLERANCES

A delivery of paper shall be deemed to have been performed in compliance with the contract if the delivered sizes (for reels: width) do not deviate from the contractually agreed sizes by more than the tolerances specified below:

Reels (with trimmed edge)	
< 400 mm	±2 mm
400 mm to below 2000 mm	±3 mm
from 2000 mm	± 5 mm

At least 95% of the measurement results must be within these tolerances.

8. CONDITION/QUALITY OF THE GOODS, OBLIGATION TO INSPECT AND REPORT DEFECTS, COMPLAINTS

(a) Information and data relating to the specification of the Goods or a sample thereof do not constitute a guarantee of quality or durability, but are to be understood solely as approximate indications of the average condition/quality of the Goods.

(b) The Purchaser undertakes to inspect the quality of the Goods not later than prior to processing them.

If the quality does not match the contractually agreed quality or if the Purchaser has reason to believe that the quality is such that it may cause problems during processing, the Purchaser shall not allow processing to commence unless it has received, in writing or by telecommunication, the Seller's permission to do so.

If the Purchaser identifies any defects in the Goods during processing, it must notify the Seller of such defects in writing or by telecommunication without undue delay.

(c) Complaints concerning defects in quality that can be identified on the basis of the Seller's documentation or by means of a sample supplied by the Seller must be submitted by the Purchaser within seven (7) days after the Purchaser has received the documentation or the sample.

Complaints concerning other defects in quality must be submitted by the Purchaser as follows:

(1) without undue delay if the defect can be identified by visual inspection of the Goods or their packaging;

(2) as soon as the defect is discovered, but not later than within thirty (30) days for defects relating to grammage, size, colour, cleanliness, strength or other reasons that can be identified by sampling, and
(3) as soon as the defect is discovered, but not later than within three (3) months if it was not possible to identify the defect by visual inspection or sampling.

All deadlines are calculated from the time the Goods are unloaded at the destination.

If a complaint concerning defects has not been submitted in good time, that part of the delivery that has already been processed cannot be the subject of a complaint.

At least 90% of the rejected Goods must still be intact and clearly identifiable.

(d) When complaining a defect, the Purchaser must identify the Goods clearly and state all the facts on which its complaint is based and send the Seller at the same time, or as soon as possible thereafter, all documents supporting its complaint.

Until the dispute on the complaint is resolved, the Purchaser shall accept the Goods and store them carefully in its warehouse, and insure them in its own and likewise in the Seller's interest for their full value, including transport and storage costs.

If there is any sign of transport damage, the Purchaser must notify the carrier of such damage immediately.

(e) Where a delivered lot or any part thereof is not within the relevant tolerances specified in clause 6 or 7 or is not reasonably comparable in quality to a sample provided by the Seller, or fails to conform to the Seller's specifications, the Purchaser may refuse to accept the lot if the lot is defective as a whole.

Where only part of the lot is defective and the Purchaser is able to use the remaining part, it may refuse acceptance of the defective part only.

However, the Purchaser may not refuse to accept a defective lot or a defective part of a lot which it is able to use for its normal business purposes despite the defect or deficiency.

For such lots or parts of lots, the Purchaser may claim a reduction of the contract price.

(f) Complaints arising due to the fact that the Seller delivered the Purchaser a larger or smaller quantity of Goods than was contractually agreed, shall be notified by the Purchaser to the Seller within seven (7) days after the Purchaser has received documents specifying or confirming the weight of the Goods delivered.

In the interest of both parties, the Purchaser shall after receipt of the Goods be obliged to notify the carrier of any shortfalls assumed to have occurred during transport.

9. DEFAULT OF PAYMENT AND RETENTION OF TITLE IN THE GOODS

(a) If the Purchaser fails to pay for the Goods within the contractually agreed period, the Seller shall be entitled to demand default interest on the outstanding amount at a rate of 8 percentage points above the discount or minimum interest rate officially or generally applicable in the country of the Purchaser at the given date, for as long as the relevant payment remains outstanding.

If the price is payable in a currency other than that of the country of the Seller, the Seller shall likewise be entitled to compensation if the exchange rate on the date of late payment is less favourable to it than on the date on which payment was due.

(b) Where the Purchaser is in default of payment and such default is not due to any error on the part of the transferring banks, the Seller, after having set in writing a grace period of fourteen (14) days without result, shall be entitled to rescind the agreement if the Seller, at the time it gives notice of rescission, has not yet received the payment.

As regards agreements for partial deliveries, the rescission shall apply to that part of the agreement that is still outstanding, including or excluding, at the Seller's option, the delivery with respect to which the Purchaser is in default of payment.

(c) The Seller hereby reserves title in the Goods until the purchase price and all other outstanding claims arising from this business relationship have been paid in full.

Until passage of title, the Purchaser shall be obliged to handle the Goods with care; in particular, it shall insure them, at its own expense, adequately against fire, water damage and theft at replacement value.

In the event of levies of attachment or other third-party intervention, the Purchaser shall immediately notify the Seller in writing so that the Seller can bring an action pursuant to section 771 of the German Code of Civil Procedure (*Zivilprozessordnung* – ZPO).

The Purchaser shall be entitled to resell the Goods in the ordinary course of business; however, it hereby assigns to the Seller all receivables in the amount of the final invoice amount (including VAT) of the Seller's receivables accruing to it against its customers or third parties from resale, irrespective of whether the Goods have been resold without or after processing.

The Purchaser shall remain authorised to recover such receivables even after assignment. The Seller's right to recover the receivables itself shall remain unaffected.

However, the Seller undertakes not to recover the receivables as long as the Purchaser meets its payment obligations out of the

proceeds received, does not default on payment and, in particular, as long as no application for the opening of bankruptcy, composition or insolvency proceedings has been filed or payments have been suspended.

However, if this is the case, the Seller may require that the Purchaser disclose the receivables assigned and their debtors, provide all information necessary for recovery, submit the relevant documents and advise the debtors (third parties) of the assignment.

Any processing of the Goods on the part of the Purchaser shall in all cases be performed on the Seller's behalf.

Where the Goods are processed together with other items not owned by the Seller, the Seller shall acquire a co-ownership interest in such items, in the ratio of the value of the Goods (final invoice amount, including VAT) to the other items processed at the time of processing. In all other respects, the same shall apply to the item created by processing as to the Goods delivered under reservation of title.

At the Purchaser's request, the Seller shall release the securities to which it is entitled to the extent that the realisable value of its securities exceeds the receivables to be secured by more than 10%; the selection of the securities to be released shall be incumbent on the Seller.

Contrary to the foregoing provisions of this section (c), the following shall apply where cross-border deliveries are concerned: If the Goods are delivered prior to payment of all receivables owed by the Purchaser under a contract with the Seller, they shall remain the property of the Seller until payment has been made in full and insofar as this is permissible under the laws of the jurisdiction in which the Goods are located. If these laws do not permit the retention of title, but allow the Seller to reserve other security interests in the Goods, similar to the retention of title under German law, the Seller may exercise all rights of this kind. The Purchaser shall be obliged to cooperate with any measures taken by the Seller to protect the Seller's right of title in the Goods or any right in its stead.

(d) Should the Purchaser be in default of any contractual payment, the Seller shall have the right, after giving written notice to the Purchaser, to withhold deliveries to be made to the Purchaser under the relevant contract and any other agreements between them until the Seller has received the payment in question.

(e) Should the Purchaser or the Seller become insolvent or be liquidated or should a receiver be appointed or should it otherwise be determined that the financial position of one party is such that it can reasonably be assumed that it will not be able to meet its obligations, the other party shall have the right to rescind the agreement if the first party has not given a satisfactory performance guarantee within ten (10) days after receipt of notice to that effect.

(f) The risks and costs associated with the transfer of the invoice amount shall be borne by the Purchaser.

If the Seller accepts bills of exchange in payment, the Seller shall bear the exchange costs and the costs of any discounting.

10. DEFAULT OF ACCEPTANCE AND DEFAULT OF DELIVERY

If the Purchaser is in default of acceptance or culpably breaches other obligations to cooperate, the Seller shall be entitled to claim compensation for the damage incurred as a result, including any additional expenses.

Further claims shall be reserved.

The risk of accidental loss or accidental deterioration of the Goods shall pass to the Purchaser if it is in default of acceptance.

(b) The Goods shall be unloaded at their destination solely on the Purchaser's behalf and at the Purchaser's risk.

11. LIABILITY FOR DEFECTS AND DUTY TO MITIGATE DAMAGE

(a) The Purchaser's claims for defects shall be contingent on it having duly complied with its obligations to inspect and report defects in accordance with clauses 8 (b) - 8 (d) above.

(b) In the event of a legitimate complaint, the Seller shall take back the defective Goods at its own expense, which shall be returned to it by the Purchaser in good condition and in the original or similar packaging.

The Seller shall without delay replace the Goods for which the complaint is legitimate; in the case of short deliveries, the Seller shall subsequently deliver the missing quantities of Goods as required by contract. The Seller may refuse the replacement/subsequent delivery if this is impossible or unreasonable.

The Seller shall also bear all expenditures required to remedy the defect, specifically expenses for transport, travel, labour and materials insofar as these are not increased due to the fact that the Goods were transported to a site other than the place of performance.

Such delivery of replacement Goods shall preclude any further claim for compensation on the part of the Purchaser.

(c) If the Seller fails to deliver replacement Goods within a reasonable period or if the replacement Goods delivered are also defective, the Purchaser may claim a reduction of the purchase price or rescission of contract.

(d) The Seller shall be liable in accordance with the statutory provisions where the Purchaser asserts claims for damages caused by wilful intent or gross negligence on the part of the Seller, including wilful intent or gross negligence on the part of its representatives or vicarious agents.

Where there is no wilful breach of contract on the part of the Seller, its liability for damages shall be limited to reasonably foreseeable, typically occurring loss or damage.

(e) The Seller shall be liable in accordance with the statutory provisions if it has culpably breached a material contractual obligation; in such case, liability for damages shall be limited to reasonably foreseeable, typically occurring loss or damage. In the event of a simple negligent breach of a material contractual obligation, the Seller's liability shall also be limited to the purchase price of the Goods concerned.

(f) The Seller's liability for culpable injury to life, limb or health shall remain unaffected; the foregoing shall also apply with respect to strict liability under the German Product Liability Act (*Produkthaftungsgesetz*).

(g) Beyond the liability claims stipulated herein, the Seller's liability shall be precluded.

(h) The limitation period for defect claims shall be 12 months, calculated from the date on which the risk of loss passes; the limitation period for cases of supplier recourse pursuant to sections 478, 479 BGB shall remain unaffected.

(i) If a party accuses the other party of breach of contract, the accusing party shall be obliged to take all necessary measures to mitigate the damage caused by the breach, provided this is possible without unreasonable inconvenience or expense.

If it fails to take such measures, the other party may claim a reduction in the damages payable.

12. FORCE MAJEURE

(a) If and to the extent that one of the parties is prevented from performing its contractual obligations or the performance thereof is delayed due to fire, flood, earthquake, other natural disasters or acts of God, acts of war, terrorism, riots, sabotage, civil unrest, uprisings or revolutions, active acts or omissions by government agencies or due to other reasons beyond the reasonable control of that party ("Force Majeure"), the affected party shall be temporarily released from the corresponding performance obligations for the duration of the event of Force Majeure. The affected party shall notify the other party immediately of the occurrence of an event of Force Majeure.

(b) Where performance is suspended for less than ten (10) consecutive days, deliveries shall be resumed as soon as practicable for the full contract quantity.

If such suspension continues for ten (10) consecutive days or more, the delivery or deliveries omitted during the period of suspension may be cancelled without liability to the other party. Subsequent deliveries shall thereafter be resumed in accordance with the contract.

13. INCREASED COSTS

Should the total cost of production and transport of the Goods increase significantly, but by at least ten percent (10%) following the date the contract was concluded, the Seller shall be entitled to request price renegotiations for quantities with due delivery dates of thirty (30) days following the service of the notice of negotiation in order to receive reimbursement of its increased costs for as long as they continue.

If within those thirty (30) days no agreement can be reached, the Seller shall be entitled to rescind the contract for that part of the contract quantity not yet delivered.

14. ASSERTION OF CLAIMS

All claims must be asserted in writing, e.g., by post, e-mail or fax.

15. RIGHTS OF OFFSETTING AND RETENTION

The Purchaser shall have a right to set-off and a right to withhold performance only insofar as its counterclaims have been declared final and binding by a court of law, are uncontested, or have been acknowledged by the Seller.

16. GOVERNING LAW AND JURISDICTION

(a) These Terms and Conditions and the legal relationships between the Purchaser and the Seller shall be governed solely by the laws of the Federal Republic of Germany, excluding its conflict of law rules and excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

(b) The exclusive place of jurisdiction for all disputes arising out of or in connection with this Contract shall be Karlsruhe, Germany.