

## **General Terms and Conditions of the Vereniging van Nederlandse Fabrikanten van Kartonnages en Flexibele Verpakkingen "KARTOFLEX"**

### **-Translation-**

Registered<sup>1</sup> with the Griffie van de Arrondissementsrechtbank (Clark of the District Court) in The Hague, on 16 June 2006, number 49-2006 changing the terms from 10 December 2002, number 136/2002.

### **Article 1. Conditions of supply and payment; customer and supplier; purchase/sale; contract**

1.1 By customer is understood the person or organisation placing the order; by supplier, the person or organisation accepting the order.

1.2 Evidence of purchase or sale is only the written confirmation of the order sent by the supplier to the customer.

### **Article 2. Quotations**

2.1 When a quotation is requested and is not followed by an order, the cost of calculating the quotation can be invoiced only if this has been agreed in advance.

2.2 In the case a composite quotation, there is no obligation to deliver a part of the order at part of the price given for the whole.

2.3 When designs, text, data etc. have been submitted only for part of a job, the supplier is not committed to the price quoted for the full job if work relating to the part that was not documented entails more effort than the work relating to the documented part.

### **Article 3. Modification of the order**

3.1 Any change to the original order, including changes in text, typography, graphics, print or conversion, made by written instructions or otherwise by or on behalf of the customer, if causing higher costs than could be assumed when the price was quoted, will be additionally charged to the customer. Changes that lead to reduced cost will motivate the supplier to invoice an amount lower than initially agreed.

3.2 Changes required by the customer in the execution of an order after it has been issued, must have been notified to the supplier in good time and in writing.

3.3 If changes made by the customer to an order issued lead to the supplier exceeding the delivery period agreed, this is at the customer's risk.

### **Article 4. Property of the customer; materials or semi-finished goods supplied by the customer**

4.1 The supplier is expected to exercise the same care as he would for his own property for property that is made available to him by or on behalf of the customer, for example in storage and use, processing and conversion.

4.2 The customer always bears the risk for such property except for cases of damage or destruction due to wilful action or grave fault by the supplier. Where the customer wants that risk covered, he should take out insurance himself and at its own expense.

4.3 The customer providing materials or semi-finished products for the supplier is required to include a quantity for rejects in manufacture or processing.

4.4 When materials or semi-finished products are supplied by the customer, the supplier, except for wilful action or grave fault to be demonstrated by the customer, is not liable for shortages in the consignment of material sent to him.

4.5 When the customer makes available materials or semi-finished products, packaging and allowance for rejects and trimming waste ect. become the property of the supplier.

### **Article 5. Transfer of risk; shipment and transport risk; delivery**

5.1 The risk for goods to be supplied is transferred from supplier to customer at the moment the goods are leaving the factory, regardless of the mode of shipment agreed.

5.2 When goods are supplied carriage paid, the cheapest mode of transport applies. For any other mode transport at the request of the customer, the extra cost is charged to the customer.

5.3 Acceptance of goods by the carrier without comment on the waybill or the receipt is taken as evidence that packaging was in good condition.

5.4 Delay in transport does not constitute a liability for the supplier unless it was caused by his wilful action or grave fault.

5.5 Delivery is to the door. The individual present on the premises of the customer at the time of delivery and receiving the goods is considered to be competent for the purpose and the customer cannot invoke matters of competence against the supplier.

### **Article 6. Delivery period and date, reception**

6.1 The delivery period or date agreed does not define statutory default, unless explicitly agreed otherwise. Where delivery is not as agreed, the customer should hold the supplier in default by written notice and should grant the supplier a reasonable period for fulfilment.

6.2 The customer is required to take delivery as soon as the products ordered ready. If the customer refuses to take delivery or fails to give information or instructions required for delivery, goods will be stored at the customer's risk. The customer will then bear all additional cost including cost of storage and transport.

6.3 If the customer does not take partial delivery within the period agreed, the supplier at his discretion is entitled either to deliver the remainder and to invoice in the usual way, including the cost of delivery, or to rescind the agreement on the remainder of the order where this is yet to be produced, while maintaining his claim to compensation under article 7.

The supplier is also entitled to such action if the customer has not taken the total quantity within one year of delivery, or in case of absence of an agreed delivery period within one year starting from the day of the agreement. This applies also if at the time the contract is concluded no specific period is agreed. However, the customer in this case should be given notice of default.

### **Article 7. Cancellations**

When the customer completely or partly cancels an accepted order, he is required to compensate the supplier for all cost incurred or to be incurred for the execution of that order (cost of preparation, storage, provisions etc.) and when the supplier so desires to pay for all materials destined for the execution of that order, at the prices included in the supplier's estimate; all this while maintaining the claim of the supplier to compensation for loss of profit as well as other claims arising from cancellation of an accepted order on the basis of damages, cost and interest.

### **Article 8. Payment**

8.1 Payment shall be effected within 30 days from the date of invoice, to the bank or postal (giro) account of the supplier or in cash in Netherlands currency (euro) at the office of the supplier. The customer can only invoke settlement against a claim if that claim is either recognised by the supplier or simply confirmed otherwise.

<sup>1</sup> in the original Dutch language version to which reference will be made in case of dispute

8.2 Whatever payment conditions may have been agreed, the supplier may at all times require security and may suspend work on the order if such security is not given.

8.3 The supplier is entitled to invoice a credit limitation supplement of 2% minimum. This supplement may be deducted from the amount of the invoice if the net amount is paid within 30 days following the date of invoicing.

8.4 When the customer is late with his payment, interest is due until the day of fulfilment in accordance with paragraph 6:120 Burgerlijk Wetboek. This interest for each month (or fraction of a month) is equal to one twelfth of the interest on an annual basis in accordance with paragraph 6:120 Burgerlijk Wetboek.

8.5 For orders requiring a long manufacturing time, the supplier may demand payment by instalments during execution; in this case, the amounts and the periods must be agreed beforehand.

#### **Article 9. Lien and property reservation**

9.1 Where the supplier holds property of the customer, he is entitled to hold such property in lien for settlement of all cost incurred by him for the execution of orders of the same customer, regardless of whether such orders relate to such property, unless the customer has provided sufficient security for such cost. Such right of retention in lien is maintained should the customer be declared bankrupt.

9.2 Goods delivered by the supplier remain the property of the supplier until the customer has settled all liabilities arising from all contracts concluded with the supplier:

- compensation relating to the goods themselves,
- compensation for services provided or to be provided by the supplier based on the contract(s)
- any claims arising from failure by the customer to implement the contract(s).

Goods delivered by the supplier which are reserved property under this clause may only be sold to third parties in the normal course of business. The customer may not pledge such goods for security or collateral nor establish any other claim to them.

#### **Article 10. Default; cash collection, rescission**

10.1 If the customer does not meet a contractual obligation to the supplier, the latter without further action on his part is entitled to repossess goods supplied but not paid for, wherever and in whatever state they may be.

The customer hereby acknowledges this right of the supplier in that case and will in that case enable him to access all premises in order to seize or take the goods referred to above.

10.2 When the customer does not meet a contractual obligation to the supplier, the supplier may legally rescind the contract while maintaining his claim to complete compensation of cost, damage, profit lost and interests.

10.3 If the customer is in default or fails to meet one or several of his obligations, all reasonable expenditure to obtain settlement out of court will be charged to the customer.

The minimum chargeable to the customer will be:

- for the first	€ 3,000.-	15%
- for the part between	€ 3,000.- and 6,000.-	10%
- for the part between	€ 6,000.- and 15,000.-	8%
- for the part between	€ 15,000.- and 60,000.-	5%
- for the part in excess of	€ 60,000.-	3%

Where the supplier shows that his expenditure was greater while in reason necessary, such expenditure will be claimable.

#### **Article 11. Force majeure**

11.1 The supplier is not liable for default that cannot be blamed on him or for which he is not liable under statute law, the contract or established trade practices.

11.2 Force majeure (overmacht) includes war, military mobilisation, mob violence, inundation, stagnation or limitation of supply by public

utilities, shortage of coal, gas, petroleum products or other energy sources, fire, machine breakage and other accidents, industrial action limiting production, government action, failure by third parties to supply materials and semi-finished goods, and other unexpected conditions including those in the country of origin of materials and semi-finished products, which disrupt normal business and cause delay or impossibility of execution of an order.

11.3 If performance of a contract is delayed by force majeure for more than one month, each of the parties to the contract may legally rescind the contract or the part of the contract with reference to the concerning delivery without the supplier being liable for any compensation of damage which the customer or a third party may have incurred.

11.4 The supplier may also invoke force majeure when the condition impeding implementation of the contract arises after the supplier should have fulfilled his obligations.

11.5 When the supplier at the time of occurrence of force majeure has partially fulfilled his obligations or can only partly fulfil his obligations, he may separately invoice the part supplied or to be supplied and the customer is then required to settle that invoice as for a separate contract. This does not apply if the supplied or to be supplied does not have a value in itself.

#### **Article 12. Prices**

12.1 When prices of materials or semi-finished good required for the implementation of the order increase, or in the case of change of wages, employers' contributions or other employment conditions, changes in exchanges rates and similar conditions after acceptance of an order, the supplier may increase or decrease prices accordingly. Complex text matter, additional proofs and author's corrections will also justify price increases. If the increase is more than 10%, the customer may cancel the agreement by a statement in writing. Cancellation is to be effected forthwith after being apprised of the price increase.

12.2 Prices are always exclusive of Value Added Tax (BTW).

#### **Article 13. Packaging**

13.1 The supplier ensures satisfactory packaging of goods according to standard trade practice.

13.2 Boxes, crates and similar packaging separately invoiced may – if returned within 14 days carriage paid and in good condition – be credited at the amount invoiced with deduction of any cost of repair found necessary after receipt of the packaging material.

#### **Article 14. Tolerances**

14.1 Colour.  
Minor differences in colour print do not constitute a reason for rejection.

14.2 Quantity.  
The supplier is deemed to have performed adequately if deviations in quantity do not exceed:

- a. for paper products:
  - 20% above or below the quantity specified for orders up to 250 kg.
  - 10% above or below the quantity specified for orders of 250 to 5000 kg.
  - 5 % above or below the quantity specified for orders above 5000 kg.
- b. for cellophane, plastics or combinations:
  - 30% above or below the quantity specified for orders for a net weight up to 500 kg.
  - 20% above or below the quantity specified for orders for 500 to 1000 kg.
  - 10% above or below the quantity specified for orders over 1000 kg.
- c. for paper boards/card board products:

- 20% above or below the quantity specified for orders under 500 kg.
- 10% above or below the quantity specified for orders over 500 kg.

d. for corrugated board boxes:

- 20% above or below the quantity specified for orders less than 1000 units.
- 15% above or below quantity specified for orders of 1000 to 5000 units.
- 10% above or below the quantity specified for orders over 5000 units.

e. for all other products:

- 30% above or below the quantity specified for orders with a net weight up to 500 kg.
- 20% above or below the quantity specified for orders with a net weight of 500 to 1000 kg.
- 10% above or below the quantity specified for orders with a net weight 1000 to 5000 kg.
- 5% above or below the quantity specified for orders with a net weight 1000 to 5000 kg.

The quantity specified relates to an item in one size and quality. The invoice is based on actual quantity supplied.

#### 14.3 Material.

The supplier is deemed to have performed satisfactorily if differences in quality, colour, hardness, glazing, calliper etc. may be turned minimal. When judging whether a consignment is outside reasonable limits, a representative average should be considered; rejection cannot be decided on a small number of specimens. Colour deviations of board material or over laminations are not reason for rejection.

#### 14.4 Gram mage

admissible deviation from the agreed gram mage is for paper:

up to 39 g/m <sup>2</sup>	8%
40-59 g/m <sup>2</sup>	5%
60 g/m <sup>2</sup> and over	4%

and for board products:

up to 500 g/m <sup>2</sup>	5%
500 g/m <sup>2</sup> and over	8%

#### 14.5. Calliper.

Admissible deviation for a single measurement in relation to the calliper agreed is for.

- cellophane and plastic films up to 40 µ	20%
- cellophane and plastic films over 40 µ	15%
- aluminium foil (in lamination or plain)	10%
- other materials, composites	15%

#### 14.6.1. Size.

The permissible deviation in relation to the agreed size is:

- a. for paper in reels: 1% with a minimum of 3 mm  
for paper in sheets: 1% with a minimum of 5 mm (in length and width)
- b. for cellophane or plastic film in reels ± 2 mm
- c. for bags of cellophane or plastic film, developed length/width,  
up to 200 mm : ± 2 mm  
over 200 mm: ± 4 mm
- d. for paper bags, developed width: 3 mm maximum bag length: 5 mm maximum
- e. the permissible deviation in relation to the agreed diameter of the reel is 3 cm.  
A limited number of remainder reels may have a smaller diameter.

14.6.2 Dimensions of corrugated board boxes are inside dimensions, referenced as length x width x height. For corrugated sheets the first dimension given is parallel to the corrugation. The tolerance for each dimension is ± 5 mm.

14.7 Where a maximum or minimum figure is agreed, the entire tolerance field (sum of + and - figure) applies under the maximum or above the minimum.

14.8 For other specifications (not listed in this article), deviations accepted in earlier deliveries or failing these customary deviations are admitted.

### Article 15. Complaints; liability; indemnity

15.1 Complaints are to be made in writing within two weeks after receipt of goods. The customer who has not examined goods within two weeks after receipt is considered to have approved the goods or the action performed.

15.2 The customer will enable the supplier to establish on the spot the nature, importance and justification of the complaint.

15.3 The customer enables the supplier to replace unsatisfactory work by satisfactory work, unless the customer has been able to demonstrate to the satisfaction of the supplier that the delay thus caused and/or cost of transport would cause considerable disadvantage for the customer.

15.4 If the supplier has delivered goods which deviate from the agreed quality and replaces them by goods corresponding to this quality, the faulty goods will be returned to the supplier at the expense and risk of the latter.

15.5 Goods may not be returned without the express agreement of the supplier. This agreement for goods to be returned does not imply recognition by the supplier of the validity of the claim or of his liability.

15.6 If part of a delivery is faulty, this does not justify refusal to accept the entire consignment delivered. In particular, it is technically unavoidable during the manufacture of paper and plastic packaging, cartons and other similar products for a small fraction of the whole to deviate from what was agreed. In this context, a small fraction is up to 3% of the total supply, with a maximum of 10,000 units.

15.7 Supplier's liability is anyhow limited to the damage suffered by the customer as a direct and exclusive consequence of supplier's default.

15.8 Supplier's liability is limited to the amount of the invoice relating to the consignment form which the damage arises.

15.9 The supplier is not responsible for the consequences of faults in the patterns or models, materials or information carries furnished by the customer or for the consequences of difficulties encountered in the utilisation, processing or conversion of what has been delivered by the supplier in accordance with the proof or proofs approved by the customer.

15.10 The supplier is not liable for consequences of faults in film masters or similar material provided by the customer for the printing of the uniform product code (UPC, EAN) or any similar code, nor for the difficulties or the consequences of difficulties arising in the use of the printed code. Film masters provided by the customer here includes print proofs comprising a uniform product code approved by the customer.

15.11 Incorrect storage of the goods by the customer precludes the liability of the supplier.

15.12 Under no circumstances may the customer make any claim against the supplier after the goods delivered or part thereof have been used, processed or converted.

### Article 16. Printing EAN symbol; migration

16.1 The supplier uses standard inks for printing. If the customer has special requirements such as alkali or rub resistance, he has to specify this beforehand. Even if the supplier accepts these requirements, slight deviations in relation thereto may not give rise to refusal to accept the goods and will not involve the supplier's liability.

16.2 The supplier only provides printer's proofs where the customer explicitly asks for these or where the supplier deems this desirable.

16.3 Printer's proofs approved in writing by the customer are binding and faults left uncorrected may not give rise to complaints.

16.4 Customer and supplier explicitly exclude supplier liability for the consequences of (un)usability of the EAN bar code symbol or other code symbol applied at the request of the customer to the goods provided by the supplier and for the consequences of incorrect reading of such a code by the equipment used, except for imputable shortcomings in production.

16.5 In the absence of specific written instructions from the customer, orders are carried out with materials that are usual in the trade and by normal methods of production. The supplier in the framework of Netherlands packaging regulations <sup>2</sup> (Verpakkingen- en Gebruiksartikelen Besluit, Warenwet) is liable for the influence of packaging material on the product packaged and inversely only if and to the extent that the customer has apprised the supplier in writing and previous to the order of the specific properties of the product, giving the supplier an opportunity to determine his position on these aspects.

#### **Article 17. Intellectual property, copyright, industrial property**

17.1 By giving the order reproduce any object of intellectual property (copyright, industrial property) the customer declares that there is no infringement of intellectual property of third parties. The customer ensures indemnity of the supplier in and out-of-court for all consequences, financial and otherwise, arising from reproduction.

17.2 The copyright of sketches, drawings and other artwork including photographs, software, designs and the like conceived or produced by the supplier remains with the supplier, even when the customer has placed an order including such material.

17.3 If no order follows for a design as referred to in clause 17.2, that design is invoiced after one month, the copyright remaining with the supplier.

17.4 Copyright is not included in the cost of designs.

#### **Article 18. Disputes**

Every offer, quotation, order, confirmation of order, agreement and legal action following from these is subject to the law of the Netherlands. Litigation arising can, if the Rechtbank (district court) is competent, in initial proceedings only be presented to the Rechtbank where the supplier is domiciled. The stipulations of the Vienna Sales Convention do not apply.

Parties may, however, decide to submit their dispute to an arbitration committee excluding a lawsuit and appeal.

If recourse to arbitration is decided, it is hereby established that:

- a. There is a dispute when one side states that this is the case.
- b. A committee of arbitration comprises three arbitrators whose decision (award) is binding.
- c. Arbitrators are appointed as follows: one by the plaintiff, one by the defendant and one by the president of the KARTOFLEX association (or by the vice-president in the event of the president's being involved in the dispute); their mandate lasts until a final decision is reached.
- d. At least one of the arbitrators is a lawyer (holding the degree of meester in de rechten).
- e. Arbitrators are to be appointed within four weeks after the request was presented.
- f. A request for arbitration is submitted by letter with recorded delivery to the secretariat of KARTOFLEX or to the president of that association. This letter shall clearly set out the matters at issue and the claims.
- g. Such request is not receivable if the performance to which the dispute relates occurred more than six months ago.

h. The procedure will be determined by arbitrators for the case concerned.

i. Arbitrators will act diligently and equitably and will not be bound by formal statute law.

j. Arbitrators may require, either from the claimant or from both parties, a deposit as a guarantee for settlement of the cost of arbitration.

k. The party against whom the award is made pays an amount determined by arbitrators toward the cost of arbitration, including cost incurred by the opponent party.

l. If both parties are found to be at fault on certain points, the arbitration costs may be divided between the parties and the costs of the parties themselves may be offset between them, in whole or in part.

m. Remuneration of arbitrators, to an amount to be established by them, is comprised in the cost of arbitration.

n. Arbitrators will maintain complete confidentiality of anything they are apprised of in the course of arbitration.

#### **Article 19. Miscellaneous**

19.1 When a job is reordered, the supplier is obliged, if he can no longer supply at the old price, to inform the customer before he implements the order.

19.2 Materials or information carriers to be supplied by the customer will meet specifications given by the supplier.

19.3 The customer only receives a printer's proof or a revision if he has so requested. Every proof or revision is invoiced.

19.4 The supplier is not responsible for mistakes not corrected by or on behalf of the customer in the proof furnished for printing or in the other materials provided. With due regard to article 15.8 the supplier is liable for typesetting errors in smaller jobs where the customer does not require a proof and has not received one, as well as for deviation from the original order without prior information to the customer. The supplier is also liable for new faults caused by him after the order to print.

19.5 Conservation of means of production.

a. All means of production such as graphic image carriers, repro's, other information carriers, dies, are conserved only if written instructions are received in due course from the customer. Storage is invoiced.

b. Conservation of means of production does not guarantee that they can be reused.

19.6 Ownership of means of production.

a. All means of production such as blocks, flongs, printing plates and cylinders, negatives, positives, diapositives, dies, information carriers, software and other graphic material belong to the equipment of the printing plant and are the property of the supplier, even if they have been invoiced.

b. The customer cannot require such equipment to be handed over to him, unless the supplier has previously agreed otherwise.

c. The supplier is not obliged to conserve such equipment.

d. Gravure etchings are removed from the cylinder after completion of the order, unless an agreement has been reached for the conservation of the cylinder.

e. Clauses 19a and 19b do not apply to means of production supplied by customer. These remain the property of the customer.

<sup>2</sup> or similar other national and international regulations