

**§ 1 Scope of Application**

(1) These General Terms and Conditions of Sale and Delivery (TSD) apply to all sales and deliveries, to all work and labor contracts and to all contracts for work and materials, as well as to all comparable exchange agreements entered into by any of the legal entities and companies of Envases' group. They shall particularly apply to agreements entered into by the following users:

Envases Öhringen GmbH, Öhringen / GERMANY;

Envases Aesch AG, Aesch / SWITZERLAND;

Envases Liverpool Ltd., Liverpool / UNITED KINGDOM;

Envases Hungary Kft., Győr / HUNGARY;

Envases Haid GmbH, Ansfelden / AUSTRIA;

Envases Chicago Corp., Chicago / USA.

(2) All transactions shall exclusively be governed by Envases' TSD. Envases repudiates any terms and conditions used by the other contracting party which are inconsistent with or which differ from these TSD unless Envases explicitly assents to their applicability in writing. These TSD shall even apply if Envases unconditionally enters into sales or perform deliveries in awareness of terms used by the other contracting party which are inconsistent with or which differ from these TSD.

(3) These TSD shall only apply to transactions with entrepreneurs, public legal entities, and public separate estates in terms of BGB section 310.

(4) As far as continuous business relations are concerned, these TSD shall also apply to future transactions even if they are not explicitly agreed upon again.

§ 2 Offer and Documents Relating to the Offer

(1) Envases' offers are non-binding unless otherwise shown in the order acknowledgement. The same applies to the documents attached to Envases' offers such as pictures, drawings, samples, drafts, particulars as to measures, weights, or information on any kind of performance unless they have explicitly been referred to by Envases as binding.

(2) If orders by other parties contracting with Envases are to be treated as offers in terms of BGB section 145, then Envases may accept those orders within two weeks.

§ 3 Prices and Payment

(1) All prices shall be deemed to be quoted "ex works" (EXW, INCOTERMS ® 2010) and in the local currency of each user unless otherwise shown in the order acknowledgement. The legal value added tax is not included. The legal amount of that tax applicable on the day on which the invoice is made will be separately shown in the invoice.

(2) Envases reserves the right to reasonably modify their prices if cost reductions or cost increases occur after the contract has been made, particularly if such cost reductions or cost increases are caused by labor pacts, or changes of the prices of materials, of raw materials or of energy resources. Upon request to do so, Envases will verify such cost reductions or cost increases to the other contracting party. Particularly, a price alignment only making up for a meanwhile occurred increase of Envases' list prices shall be deemed



to be reasonable, provided it is compatible with the provisions of BGB section 315. There shall be no adjustment of prices if fixed prices have explicitly agreed upon.

(3) Payments shall only be made to one of the accounts mentioned in the respective invoice. Payment shall be made no later than 30 days after invoicing without any deduction. The statutory provisions on default of payment shall apply. The default interest rate is 9 percentage points above the respective basic interest rate. Envases is not barred from claiming additional default damages, particularly on the basis of the principles on commitment fees charged by banks.

(4) The other contracting party shall not set off any counterclaims against Envases' claims unless such counterclaims are either undisputed or acknowledged by Envases as meritorious or declared to be meritorious by an unappealable judicial decision. Other than that, there shall be no offsetting of claims.

(5) The limitations on exercising any rights of withholding payment shall be the same as those on the right to set off any counterclaims. The foregoing shall be without prejudice to the right of the other contracting party to withhold payment in cases of gross breaches of contract and in cases in which Envases has already received a part of Envases' payment claim which is equivalent to our possibly defective performance.

§ 4 Delivery Process

(1) The inception of the time of delivery requires the clarification of all technical and other issues and preconditions required for performing the contract. For example, depending on the type and content of the contract, that includes the confirmation of the lithography, the size samples, the completion of the tools, and having possibly required governmental permits at hand. It shall commence no sooner than on the day on which the order acknowledgment is dispatched and it shall be deemed to have been observed if, by the end of the time limit for delivery, the goods have either left Envases' plant/warehouse or, in case their dispatch is impossible, the readiness of the goods for dispatch has been reported.

(2) Observance of the time limit for delivery requires the performance of its contractual obligations by the other contracting party. That includes without limitation the timely reception of agreed upon payments. The defense of non-performance of the contract by the other contracting party is reserved by us.

(3) All information relating to the time of delivery shall only be approximative unless a specific date for delivery has been explicitly confirmed.

(4) If Envases is prevented from performing our delivery obligation by the occurrence of unforeseen circumstances which Envases is not in a position to avoid although Envases has exercised its diligence as was reasonable under the circumstances of any respective individual case, then the time allowed for delivery shall be reasonably extended unless such performance has become impossible. Any occurred delay is suspended. The extension shall particularly cover disruptions of business operations, governmental interference, delay of the delivery of important raw materials and supplies, industrial action and its consequences and effects, force majeure, etc. In those cases, the other contracting party is temporarily discharged from its obligation to take delivery of the goods during the period of that extension.

(5) If the other contracting party delays taking delivery of the goods or if it culpably breaches any other obligations to cooperate, then Envases shall be entitled to claim compensation of any damages caused thereby including any additional expenditures. Any additional rights are reserved by Envases.

(6) Envases has the right to make delivery installments. Unless other tolerances have been agreed upon, Envases reserves the right to supply less or more than the respective agreed upon quantity of goods to an



extent as is customary in Envases' trade or in Envases' industry if such shortage or excess is caused by either manufacturing-related or shipment-related circumstances.

(7) Envases assumes no procurement risks for the timeliness of any delivery.

§ 5 Packaging Materials

(1) Any packaging materials made available by Envases on the basis of a loan for its use or on the basis of a loan-in-kind, including accessories, such as pallets, trays, etc., shall immediately be sent back to our supplier plant shown in the shipping documents in undamaged condition and carriage prepaid. Envases reserves the right to charge the replacement value of those packaging materials after the expiry of that term. The same applies if any packaging materials are returned in damaged or defective condition.

(2) Non-returnable packaging materials, particularly cardboard packaging materials will be charged on the basis of their cost price unless the parties to the respective contract have agreed otherwise.

§ 6 Shipment and Passing of Risk

(1) Absent any provision to the contrary, the commercial domicile of the user shall be the place of any performance and dispatch shall be "Ex Works" (EXW Incoterms 2010) Envases' factory. At the request of the other contracting party, Envases will buy in-transit insurance coverage for the respective shipment at the expense of the other contracting party.

(2) The delivery of raw materials or half-finished products for toll manufacturing or finishing purposes is performed at the expense and risk of the other contracting party, the same applies to the redelivery of the finished goods.

§ 7 Reservation of Proprietary Rights

(1) Until such time as all present and future claims held by Envases against the other contracting party from the ongoing business relationship have been settled in full, Envases reserves its proprietary rights to the Contractual Products sold and delivered.

(2) Until such time as the secured claim has been paid in full the Contractual Products subject to the retention of proprietary rights may neither be pledged to third parties nor assigned as collateral. The other contracting party shall be required to inform Envases without delay in writing, if and inasmuch as any third party accesses to Contractual Products in Envases' ownership should be effected.

(3) The other contracting party is, however, authorised to sell on and/or processes the Contractual Products subject to the retention of proprietary rights in the ordinary course of its business. In such a case the following stipulations shall apply in addition:

a) The reservation of proprietary rights also stretches to cover those products and their full values that are created as a result of the processing, blending or combining of Envases' Contractual Products, whereby Envases is considered the manufacturer. Should, as a result of processing, blending or combining with any third-party items any proprietary rights of said third parties remain intact, Envases shall acquire co-ownership in proportion to the invoice values of the processed, blended or combined items. In addition, the same shall apply to the newly created product as to the Contractual Products delivered subject to the retention of proprietary rights.



b) Any third party receivables resulting from the sale of the contractual item or newly created product are hereby already assigned by the other contracting party to Envases as collateral either wholly or to the amount of any co-ownership share acquired by Envases in accordance with the previous paragraph. Envases accepts the assignment.

c) The Purchaser shall remain empowered to collect the receivable alongside Envases. Envases undertakes not to collect the receivable as long as the other contracting party complies with its payment commitments towards Envases, does not fall into default, no application for the opening of insolvency proceedings has been filed and there is no other deficiency in its performance capability.

d) Should the realisable value of the sureties exceed the claims held by Envases by more than 10 %, Envases shall release sureties at its own discretion at the demand of the other contracting party.

(4) To the extent the validity of the retention of title is subject to special conditions or formal requirements in the country of the other contracting party, the other contracting party shall meet or satisfy those conditions or formal requirements at its own expense.

§ 8 Intellectual Property Rights and Tools

(1) If any third party industrial property rights or copyrights, or labeling regulations or other in-tangible property rights are violated when the goods are manufactured on the basis of drawings, samples or other information or requests of the other contracting party, then the other contracting party shall indemnify us against all third party claims upon our first demand.

(2) Drafts, lithographs, printing blocks, printing plates, embossing presses, and tools are only charged on a pro rata basis and do, therefore, remain Envases' property. They may only be made accessible to third parties or used in dealings with third parties with Envases' written authorization. If the other contracting party makes molds available, then it shall ship them to Envases free of any charges.

(3) One half of the proportional costs is payable when the order is placed, the other half thereof is payable when the outturn samples are received, and that is without any cash discount deduction. The other contracting party shall also bear the costs of any modifications requested by it.

(4) Envases does diligently lay the tools, lithographs, and molds away for subsequent orders and insure them against damages by fire. Our duty to lay the tools, lithographs, and molds away expires if the other contracting party has failed to place any subsequent orders within two years after the last delivery and if Envases has given notice of the expiry of that duty.

§ 9 Inspection of incoming goods, warranty and other liabilities

(1) The other contracting party shall examine the goods for possible defects immediately following the receipt of the goods and it shall complain of detected defects within 3 working days in writing following the receipt of the goods. Hidden defects shall be complained of within 3 working days after their identification. Otherwise, the goods shall be considered approved, except in cases of intentional misrepresentation. This obligation to complain of defects shall also apply to chain transactions.

(2) The quality of any respective sample or galley proof shall be deemed agreed upon when the submitted samples or galley proofs are certified as released or when the other contracting party waives the submission of those samples or galley proofs. With regard to printed and varnished packaging materials, Envases makes efforts to exactly match the agreed upon hues. Technically inevitable print or color differences are excepted due to technical reasons. Such differences shall not be counted as defects.



(3) Rejected goods shall be kept available for us until Envases either takes them back or gives written permission to destroy them.

(4) If any item is defective, then Envases has the choice to either cure the defect ourselves at Envases' expense or to supply a replacement. Envases may refuse to remedy its performance, however, if and to the extent that remedying its performance is unreasonable for us, particularly if the expenditure required for remedying our performance is disproportionate to the price of the item. The item to be replaced shall either be returned to Envases in exchange for the remedied performance or be destroyed at our expense after receiving written instruction by Envases to do so.

(5) Subject to the statutory requirements and to the provisions of these TSD, the other contract-ing party may at its choice either rescind the respective sales contract or claim damages if En-vases fails to remedy our performance or if a time fixed for remedying Envases' performance expires before the performance is remedied. The other contracting party shall have no right to reduce the price if Envases neither is responsible for the defect because of intentional conduct nor has given any warranty with respect to that defect. Unsubstantial defects shall not entitle the other contracting party to rescission or damages. If fewer goods than agreed are delivered, then the other contracting party shall not be entitled to rescission or damages unless it proves that its interest in the respective contract has objectively been frustrated.

(6) Envases shall be liable for compensation – regardless of the legal grounds – in cases of willful intent and gross negligence. In cases of simple negligence Envases shall only be liable

a) for losses resulting from the violation of life, body or health,

b) for losses resulting from the violation of a cardinal contractual obligation (an obligation the fulfillment of which makes the orderly implementation of the contract possible in the first place or up-on the adherence to which the contractual partner could reasonably place its trust on a regular basis); in such a case, however, the supplier's liability shall be restricted to compensation for predictable losses typically occurring with this kind of contract. Liability under the Product Liability Act remains unaffected by this.

(7) The risk of a lack of compatibility between packaging and filling shall be borne by the con-tractual partner. A lack of compatibility between packaging and filling shall only be deemed a defect if the compatibility between packaging and filling is the object of a quality agreement in an individual contract between Envases and the contractual partner.

(8) Any liability is disclaimed unless provisions to the contrary have been made above.

(9) The warranty period shall be 12 months as of the passing of risk unless longer limitation periods are mandatorily provided by statutory law. This reduction of the statutory period of limi-tation shall not apply in any event of damages resulting from injury to life, body, or health, or in any event of damages caused by intentional or grossly negligent breach of any duty.

§ 10 No Assignment of Claims

The other contracting party shall not assign any contractual rights to any third party without Envases' explicit written approval.

§ 11 Final Stipulations



- (1) Unless otherwise agreed upon in writing, the place of any performance shall be at the domicile of the respective user.
- (2) Amendments and/or supplements to this contract require the written form. This also applies to any amendment to this written form clause itself.
- (3) No side agreements have been concluded pursuant to this contract.
- (4) German law shall be applicable to this contract without giving effect to the United Nations Convention on the International Sale of Goods (CISG).
- (5) As far as it is legally permitted Öhringen is the exclusive court of jurisdiction for all disputes arising from or in connection with this contract and the implementation thereof. Envases shall also be entitled to file a suit at the domicile of the other contracting party.
- (6) Should one or more stipulations of this contract be or become either wholly or partially ineffective or null and void, or should this agreement contain a loophole, the effectiveness of the remaining stipulations of this contract shall not be affected by this. The Contractual Parties hereby agree now that any ineffective clause or any clause that should become ineffective in the course of the implementation of the contract is to be replaced by one that comes closest as possible to the ineffective clause from an economic point of view.

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