

General Terms and Conditions of Purchase Orders No. 5

§ 1 Scope of Application

(1) Envases General Terms and Conditions of Purchase Orders (TPO) shall apply to all sales contracts and contracts for work and materials and other orders and to all comparable exchange agreements entered into by any of the legal entities and companies of Envases. They shall particularly apply to agreements entered into by the following users:

Envases Packaging Group GmbH, Öhringen/Germany;

Envases Packaging AG, Aesch/Switzerland;

Envases Packaging International B.V., Amsterdam/Netherlands;

Envases Packaging Ltd., Liverpool/Great Britain;

Envases Packaging KFT, Győr/Hungary;

Envases Packaging GmbH, Ansfelden/Austria;

Envases Packaging Corp., Chicago/USA.

(2) All transactions shall exclusively be governed by these TPO. Envases repudiates any terms and conditions used by the supplier which are inconsistent with or which differ from these TPO unless Envases explicitly agree to their applicability in writing. These TPO shall even apply if Envases unconditionally places orders or accept deliveries in awareness of terms used by the other contracting party which are inconsistent with or which differ from these TPO.

(3) These TPO 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 TPO shall also apply to future transactions even if they are not explicitly agreed upon again.

(5) All stipulations, including all ancillary agreements, entered into by Envases and the supplier with regard to the performance of a contract are laid down in writing in this contract. No verbal stipulations are made when the agreement is entered into. Any modification or amendment of any agreement including these terms and conditions shall be made in writing and signed by both parties. Any modification of this writing requirement is on its part required to be made in writing.

(6) Envases Technical General Terms and Conditions of Purchase Orders as amended from time to time shall additionally apply if and to the extent to which they cover the subject matter of any respective contract (purchase of machinery, equipment, and tools, including general overhauls, modifications, etc.).

(7) Any delivery made to Envases shall be deemed to include an acknowledgment of these TPO.

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§ 2 Orders

- (1) Orders shall only be binding for Envases if they have been placed in writing, by telefax or e-mail.
- (2) An order will be binding on the supplier at latest, if the other contracting party does not revoke within one week from receipt.
- (3) Envases orders are revocable up until receipt of the supplier's order confirmation, but no later than one week after receipt of the order at the supplier's address.
- (4) Envases reserves all rights, including without limitation all ownership rights and all intellectual property rights to copyrights, pictures, drawings, films, data carriers, calculations or other records, items and other documents. They shall in no manner be made accessible or passed on to any third party without Envases explicit written approval. They shall only be used for processing our orders, afterwards they shall be immediately returned. They shall not be duplicated without Envases written permission unless a duplication is unavoidable for completing Envases order. Any existing copies shall also be immediately returned or destroyed after the respective contract has ended.

§ 3 Prices and Payment Terms

- (1) The agreed upon prices are fixed prices which include all incidental costs. The prices shall be understood to be net prices including delivery "to our door" and packaging (DDP, INCOTERMS ® 2010). Even if the costs for packaging are agreed to be borne by Envases, Envases shall not bear more than the cost price. Any packaging materials returned by Envases shall be reimbursed to Envases in the amount charged to us unless the packaging materials are no longer fit to be used.
- (2) Envases can only process invoices, order acknowledgments and delivery notices if the order number itemized in Envases order is shown on them as specified in Envases order. The supplier shall be liable for all consequences resulting from non-compliance with that obligation unless it proves that it is not responsible therefor.
- (3) Delivery notices shall be attached to deliveries in a manner making them immediately available.
- (4) Unless otherwise agreed in writing, Envases pays invoices within 14 days following delivery and receipt of the invoice with a 3% cash deduction or within 30 days after receipt of the invoice without any deduction.

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(5) Envases has the right to raise the defenses of set-off, of withholding performance, and of non-performed contract to the extent provided by statutory law. These defenses including the defense of non-performed contract shall only be available to the supplier if the claims against Envases are either acknowledged by Envases as meritorious, or undisputed, or declared to be meritorious by a final and unappealable judicial decision.

(6) The supplier shall not assign any of its rights or claims against Envases to any third party.

(7) The place of any payment shall be at the domicile of the user of these General Terms and Conditions of Purchase Orders.

§ 4 Deliveries

(1) Any delivery, even in case of a shipment, is performed at the risk of the supplier.

(2) The delivery times or delivery dates specified in the order are binding for the supplier. If no delivery times or delivery dates are specified in the order, then the delivery time or delivery date mentioned in the supplier's order acknowledgment shall be binding on it. The supplier shall be held to be in default of payment without the requirement of a prior dunning letter if it fails to observe delivery dates which are stipulated by reference to the calendar or which are clearly identifiable. Envases is entitled to termination or damages including as provided by statutory law if any respective delivery is delayed.

(3) In the event of the supplier's default, Envases is entitled to claim liquidated compensation of Envases's default damages in the amount of 1% of the net price for each completed week of the supplier's default; the total amount of this liquidated compensation is not to exceed 5% of the net price of the goods which have been delivered late, however. Envases is reserved the right to prove that Envases has suffered higher damages. The supplier is reserved the right to prove that Envases has suffered no damages at all or only significantly lesser damages.

(4) Absent any written agreement to the contrary, Envases has the right to require the delivery of orders in installments according to Envases's operational requirements. Envases may demand modifications of the construction and design of ordered goods until they are manufactured to the extent the supplier can reasonably be expected to comply with such a demand.

(5) If the goods are shipped by a freight forwarding company, the other contracting party agrees to notify the freight forwarding company of the fact that Envases is a customer waiving any haulage, logistics and warehousing insurance certificate, and that Envases explicitly forbids the freight forwarding company to buy indemnity insurance pursuant to ADSp section 29.1 and goods in transit insurance. If a freight forwarder charges Envases any costs for a haulage, logistics, and

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warehousing insurance certificate, then Envases has the right to deduct those costs from the supplier's invoice.

(6) Deliveries shall not be made on pallets without Envases prior written permission unless European pool pallets or pool mesh box pallets in terms of the respective applicable German Industry Norm (DIN) provisions or International Union of Railways (UIC) provisions are used. Upon receipt, all pallets shall bear a clearly legible declaration slip.

(7) The supplier agrees to give Envases immediate written notice if any circumstances jeopardizing the observance of the agreed upon delivery time occur or become identifiable for it. It shall, however, thereby not be discharged from its liability for timely delivery.

(8) Envases shall not be held to be in default of acceptance of the supplier's performance unless the requirements of the applicable statutory provisions are met. The supplier shall, however, explicitly offer its performance to Envases even if a definite or definable calendar time has been agreed upon for any act or contribution by Envases (e.g., provision of materials). If Envases culpably fails to timely accept the supplier's performance, the supplier party is entitled to claim compensation of its additional expenditure according to the provisions of statutory law.

If the contract relates to a non-fungible product to be manufactured by the other contracting party (made-to-order manufacture), the supplier shall not be entitled to any rights in excess of the rights mentioned in the preceding clause unless Envases has agreed to make any contribution to the supplier's performance and unless Envases is responsible for failing to make the contribution.

§ 5 Liability for Defects

(1) Envases shall examine incoming goods within a reasonable time as to their identity, quantity and as to visible defects or damages caused during shipment. A complaint shall be deemed to have been made in time if it is received by the supplier within a period of 15 working days after receipt of the goods or, in cases of hidden defects, as of the identification of the respective defects. To the extent that special quality assurance systems have been agreed upon between Envases and the supplier, their provisions covering the type and substance of the obligations to be performed by Envases relative to examining the goods and complaining about defects shall take precedence.

(2) Envases shall have the warranty rights provided by statutory law unless otherwise agreed in these TPO. The submission of drawings or the acceptance or payment of goods shall by no means effect a loss of warranty rights even if Envases is aware of the defect at that time.

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(3) Notwithstanding BGB section 442 subsection 1 clause 2, the defect-based claims Envases is entitled to shall not be subject to any limitation even if gross negligence on Envases part made Envases unaware of the defect when the contract was entered into.

(4) Envases shall have the right to remedy any defect themselves at the other contracting party's expense if Envases cannot reasonably be expected to wait an additional period for that purpose, including without limitation cases of imminent hazards, of particular urgency, and the case of the supplier's failure to cure the respective defect, and the other cases in which statutory law provides such a right.

(5) The period of limitation shall be 36 months as from the date risk in the goods passes to Envases.

(6) The supplier shall bear the cost incurred by it in investigating and remedying a defect even if it turns out that no defect had actually existed. Envases liability to compensate damages in the event of erroneous requests for the repair of defects remains unaffected subject to the limitation, however, that Envases shall only be liable to compensate such damages either if Envases was aware that no defect existed or if gross negligence on Envases part made us fail to become aware that no defect existed.

§ 6 Product Liability – Indemnification – Liability Insurance Coverage

(1) The supplier shall indemnify Envases upon first demand against compensation claims of third parties to the extent it is responsible for a product damage if the cause originated from its sphere of control and management and if it is itself externally liable.

(2) As part of its liability for damages in terms of subsection 1, the supplier shall also compensate Envases for all expenditures resulting from or accrued in connection with a product recall performed by Envases. Envases will notify the supplier of the content and the extent of the product recall to be performed, and, to the extent possible and reasonable, Envases will grant it an opportunity to provide its own analysis. Other rights under statutory law shall remain unaffected.

(3) The supplier agrees to maintain product liability insurance providing single limit coverage of €10 million for each case of injury to persons / damage to property. If Envases has any additional damage claims, then those claims shall remain unaffected.

§ 7 Contractual Right of Termination

Envases shall be entitled to terminate any respective contract if the usability of the ordered rendered permanently impossible, impracticable, or substantially impaired due to occurrences

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Envases is not responsible for such as industrial action, disruptions of business, accidents, acts of war, governmental interference, and in cases of force majeure. Both parties have the right to request a postponement of delivery of three months before the right to termination is exercised.

§ 8 Intellectual Property Rights; Violations of Statutory Provisions

(1) The other contracting party warrants that no intellectual property rights or other rights or claims of third parties are infringed upon by the delivery of the goods and services ordered by Envases, nor by their resale, treatment, or other intended use by Envases. If Envases is insofar made liable by any third party, then the supplier shall indemnify Envases upon first demand including all of Envases necessary expenditures. This shall include the defense of anticipated claims against Envases.

(2) The period of limitation shall be 10 years from the date of execution of the respective contract.

(3) The other contracting party shall, moreover, be solely responsible and liable to Envases for the compliance with all statutory provisions and governmental regulations with respect to any respective delivery and delivery item, particularly with respect to its intended use.

§ 9 Confidentiality

The supplier shall keep Envases orders and the entire contractual relationship including all pertinent data and documents confidential. It shall only make any reference to the existing business relationship with Envases after having beforehand obtained Envases written permission to do so. This obligation shall survive the expiration or termination of the respective contract as long as Envases has an interest of its own in such confidentiality which is worth being protected.

§ 10 Reservation of Proprietary Rights

(1) Title to any respective delivered goods shall immediately pass to Envases upon their delivery to Envases. Envases does not acknowledge any qualified types of title retention, such as the extended retention of title.

(2) Envases retains our property in any tools possibly made available by Envases to the supplier. The supplier shall use those tools only for processing Envases's orders, and it shall service and maintain them at its own expense, and it shall buy insurance covering damages to them caused by fire, water, and theft on the basis of their original value. The supplier now and hereby assigns

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all of its compensation claims based on this insurance coverage to Envases; Envases accepts that assignment.

§ 11 Final Stipulations

(1) Unless otherwise agreed upon in writing, the place of any performance shall be at the domicile of the 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 supplier

(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.