

# General Terms and Conditions of Sale

November 2012

(USA and Canada)

## 1. Scope

These general terms and conditions of sale ("General Terms") shall govern the contract between the parties to the exclusion of any other terms of the buyer regardless of any specific or general terms and conditions which may appear on the purchase order or other documents of the buyer. The "contract" means the contract for the sale by delfortgroup speciality papers Inc. ("Delfort") and purchase by the buyer of goods and/or services whether present or future.

deliveries in advance or provide a letter of credit or other security. In cases of repeated late payment or changes in Delfort's reasonable evaluation of the financial standing of the buyer, Delfort may either terminate the contract or request advance payment, a letter of credit or other security where the same has not been agreed beforehand and the buyer shall bear any costs and expenses resulting therefrom.

## 2. Offer, Information, Conclusion of Contract

2.1. No offer shall be binding on Delfort unless expressly agreed in writing to be binding. Any quality data or information contained in data sheets, brochures and other oral or written information shall not be binding unless specifically agreed in writing by Delfort. The same shall apply for the samples, sample rolls and the like provided.

3.5. The buyer shall not be entitled to withhold payment of any amount due to Delfort nor shall the buyer have any right of set-off unless counterclaims of the buyer are acknowledged by Delfort in writing, undisputed or recognized by a final and legally binding court decision. The buyer must not assign any claims to any third party without Delfort's prior written consent.

2.2. The contract shall become binding only once Delfort has confirmed the order in writing. Delfort's acceptance of any order is conditional on the buyer's assent to these General Terms. Acceptance of delivery without prior objections to these General Terms shall constitute such assent. If after Delfort's confirmation of the order the buyer requests or causes any additional modifications to the order data, Delfort may correspondingly adjust any contract terms affected thereby. Any oral arrangements as well as any such additional modifications of the order data shall not be binding until Delfort has confirmed them in writing.

2.3. Delfort reserves the right to correct any typographical errors regarding prices or specifications in any offer, order confirmation or other contract document.

2.4. The buyer may not cancel the contract prior to delivery (irrespective whether such deliveries occur directly or to warehouse) unless, for any reason other than Force Majeure (as hereinafter defined), Delfort has failed to deliver the goods within any grace period or Delfort has informed the buyer that it is unable to supply the goods.

## 4. Delivery and Passing of Risk

4.1. The risk of loss or damage shall pass to the buyer at the latest upon delivery of the ordered goods to the place of destination named by the buyer ("Place of Destination"). If delivery is delayed due to circumstances within the buyer's reasonable control, the price risk shall pass to the buyer at the date of notification of readiness for dispatch. Without prejudice to its other rights, Delfort shall be entitled to bill the warehousing costs commencing one month following the notification of readiness to deliver, and to dispose of the goods at its own discretion provided that a reasonable grace period notified in writing to the buyer announcing the intention to dispose of the goods has expired without buyer taking delivery within such period of time.

4.2. In cases of Force Majeure Delfort may store the ordered goods at Delfort's or at a carrier's premises at the buyer's risk and expense.

## 3. Prices, Terms of Payment, Delay

3.1. Unless agreed otherwise, the prices are DDU according to the latest effective version of Incoterms. Prices do not include packaging charges for non-standard packaging or federal, state or local taxes and other governmental charges, including but not limited to, import or export duties, GST, sales, use or privilege taxes, or excise or similar taxes levied by any government. The buyer bears the applicable taxes and governmental charges, as well as packing charges for non-standard packaging and other fees in connection with the deliveries. In the event that Delfort is required at any time to pay any such tax or charge, the buyer shall reimburse Delfort promptly on demand.

## 5. Delivery Time, Partial Deliveries, Variances

5.1. Delfort's written confirmation (including per e-mail) of the order or a binding offer shall govern with respect to delivery time, mode and quantity. Delfort is entitled to deliver in installments provided that these are reasonable for the buyer.

5.2. Delivery dates and lead times quoted are estimates only unless explicitly guaranteed in writing by Delfort to be binding.

3.2. Should there, after the commencement of the contract, occur a substantial increase of the relevant price determinants, such as the price for raw material and auxiliary commodities, wages and other social costs, cost for energy, taxes and likewise expenses at Delfort or a supplier of Delfort, Delfort shall be entitled to adjust the prices accordingly for all deliveries to be made.

5.3. In the event that Delfort guarantees in writing a delivery date or lead time:

5.3.1. In case Delfort is responsible for any delay of delivery, the buyer may claim a penalty in the amount of 0.1% of the net invoice value of the respective portion per day, such penalty, however, being capped with a maximum amount of 1% of the net invoice value of the respective portion.

5.3.2. In the event that Delfort fails to deliver (guaranteed delivery date) or dispatch (guaranteed lead time) the goods within a reasonable grace period for any reason other than Force Majeure, the buyer may cancel the contract.

3.3. Unless agreed between the parties otherwise in writing, the goods will be invoiced on the date of shipment. Payment shall be due thirty (30) days net of the invoice date, with no discount for early payment. Payments are not considered to be settled until Delfort receives payment confirmation from its bank. Without prejudice to Delfort's other rights, if the buyer fails to pay on the due date, Delfort may charge interest on a daily basis at the rate of 10% p.a. above the U.S. Prime Rate as published on bloomberg website ([www.bloomberg.com](http://www.bloomberg.com)) and applicable on the last day of the calendar half-year immediately preceding the calendar half-year in which the buyer's default occurred, however, not more than agreed by the parties separately in writing. The buyer shall indemnify Delfort in respect of all costs (including legal fees) reasonably incurred in attempting to recover the overdue amount.

5.4. The claim for payment of the penalty and cancellation upon failure to deliver or dispatch the goods within a reasonable grace period shall be the sole remedy of the buyer in case of Delfort's failure for any reason other than Force Majeure to deliver goods at the guaranteed delivery date or dispatch the goods within the guaranteed lead time.

5.5. If the beginning of the lead time is not fixed by Delfort, the lead time commences with the date of the confirmation of the order. However, Delfort shall not be obliged to deliver until all obligations incumbent on the buyer before delivery (e.g. technical, commercial requirements, official permits, authorizations and licenses, etc.) have been fulfilled. If the buyer requires any modifications after acceptance of the order, the term of delivery shall commence only upon Delfort's written confirmation of such modifications. Furthermore, the delivery term (lead time) shall not commence until the buyer proves that – if contractually agreed – a letter of credit has been obtained, or that an advance payment or other security has been provided by the buyer. The lead time is complied with if the goods subject to delivery leave Delfort's premises on the last day of the delivery term, or if Delfort notifies the buyer

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that the goods are ready for dispatch within the term of delivery.

5.6. In the event that Delfort informs the buyer that it is unable to supply the goods for any reason other than Force Majeure, the customer may terminate the contract with immediate effect. Such right to cancel the contract shall be the sole remedy of the buyer under the contract or applicable laws in relation to the contract in case of Delfort's inability to supply the goods for any reason other than Force Majeure.

5.7. If Delfort makes delivery but the quantity of the goods delivered by Delfort falls below customary or agreed tolerances (as applicable), Delfort's sole obligation shall be to deliver additional goods to make up for any such deficiency.

### 6. Warranties and Liability

6.1. The buyer is obliged to examine each delivery immediately upon arrival at the Place of Destination. The buyer shall notify Delfort of any apparent defects (including damage in transit), incompleteness of the goods or any other variances from the confirmation of the order, immediately upon arrival of the delivery at the Place of Destination in writing by specifying the defect, incompleteness or other variances, and quoting the invoice number. The buyer shall notify Delfort of any hidden defects (including defects surfacing during manufacturing) immediately after discovery, but no later than six months after delivery to the Place of Destination. If not so notified, Delfort shall have no liability as to such defective goods. Defective goods must be kept available for Delfort's inspection for 14 days from the date of the notification and must not be returned to Delfort early. Upon Delfort's request, specimens of the goods found faulty must be sent back to Delfort. If the buyer does not comply with the provisions as set forth in this paragraph, it shall not be entitled to reject the goods and Delfort shall have no liability for such defects or incompleteness.

6.2. If the buyer processes the defective goods after the discovery of the defect, it shall not have any claims against Delfort based on the defective goods, nor shall Delfort be obliged to indemnify it.

6.3. If the goods are defective, Delfort shall have the choice to either repair or replace the goods. Only if such repair or replacement is impossible or reasonably unacceptable for Delfort or for the buyer, a price reduction or refund shall be granted to the buyer. The remedies as set forth in this Section 6.3 shall be the sole remedies of the buyer in case of delivery of defective goods under the contract or applicable laws in relation to the contract.

6.4. Delfort shall not be liable for negligible deviations from the standard specifications or agreed specifications or for only minor impairment of the goods applications, nor shall Delfort be liable for damages resulting directly or indirectly from instructions or specifications provided by the buyer, improper handling, willful damage, negligence, abnormal working conditions, any alteration of the goods by the buyer or any use by buyer in a manner which adversely affects the performance of the goods. Delfort shall not be obliged to notify the buyer of the unsuitability of its instructions or specifications unless Delfort is aware of such unsuitability.

6.5. Delfort warrants that goods which have been manufactured by it will correspond with the standard specifications or agreed specification, as the case may be, at the time of delivery to the Place of Destination and will be free from defects in material and workmanship for a period of six months from delivery to the Place of Destination. This warranty is given subject to the other express conditions set out in these General Terms. The buyer assumes all risk and liability arising from the conversion of the goods, including without limitation use of the goods in combination with other substances or materials. THE WARRANTY ABOVE IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY WARRANTY WITH RESPECT TO MERCHANTABILITY, FITNESS FOR AN INTENDED PURPOSE, PARTICULAR USE OR SUCCESSFUL PASSING OF ANY REGULATORY TESTS, COMPLIANCE WITH REGULATORY STANDARDS AND NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

6.6. Delfort shall have no liability to the buyer or any direct or indirect customer of buyer, under or arising from any product liability laws or statutory provisions regarding warranties, to the maximum extent allowed by applicable law.

6.7. The buyer agrees to indemnify and hold harmless Delfort from any claims by the buyer's direct or indirect customers or any third party arising from the use of any products manufactured by the buyer or a third party which incorporate the goods.

6.8. Until resolution of a warranty claim, the buyer shall provide for appropriate storage and for insurance at full resale value plus transportation and warehouse expenses for its own benefit as well as for the benefit of Delfort. In case the claim turns out to be valid, Delfort shall reimburse such out of pocket expenses to a reasonable extent.

### 7. Limitation of Liability

7.1. TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW, DELFORT SHALL IN NO EVENT, WHETHER AS A RESULT OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, BE LIABLE FOR CONSEQUENTIAL LOSSES, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, COSTS OR EXPENSES, FINANCIAL LOSS, LOSS OF PROFITS OR INTEREST, OR OTHER ECONOMIC ADVANTAGE, INCLUDING BUT NOT LIMITED TO LOSS OF PRODUCTION, LOSS OF BUSINESS REPUTATION OR OPPORTUNITY, LOSS OR EXCESSIVE UTILIZATION OF RAW MATERIAL OR ENERGY, PLANT SHUT DOWN, COST OF CAPITAL, LABOR CHARGES AND THE LIKE, OR THIRD PARTY CLAIMS.

7.2. In any case, the maximum liability of Delfort under, or in connection with, the contract shall not exceed the purchase price of the specific goods for which damages are claimed. The buyer is obliged to unconditionally impose these liability limitations on its customers.

7.3. The liability limitations as set out in this clause shall also apply to any claims against Delfort's legal representatives, employees and agents.

### 8. Force Majeure

Delfort shall not be liable or be deemed to be in breach of contract by reason of any delay in performing or any failure to perform any of its obligations if the delay or failure was due to any cause beyond its reasonable control ("Force Majeure") including machinery breakdown, strike, lock-out, insufficient supply of materials or energy, lack of transport means, fire, flood, earthquake, other Acts of God, war, riots, hostilities, terrorism, changes in legislation making performance illegal, and similar events or circumstances. Any disruption of supply of goods due to a judgment, order or any other decision or measure issued by court or other public authorities based on claims by third parties raised against Delfort, its direct and indirect shareholders, its affiliates or agents, for alleged infringement of intellectual property rights shall also constitute a Force Majeure event. This clause shall also apply if Delfort's suppliers suffer any of these Forces Majeure events. In case where a Force Majeure event occurs during an already existing delay, the period of grace which has to be granted to Delfort by the buyer shall not expire before the Force Majeure event ceased. Delfort shall inform the buyer of the start and end of any Force Majeure as soon as possible.

### 9. Security Interest

9.1. Delfort reserves, and by receipt of the goods delivered to the buyer, the buyer grants to Delfort, a purchase money security interest in each of the goods as security for the due and punctual performance of all of the buyer's obligations under the contract. This interest will be satisfied by payment in full unless otherwise provided for in any installment payment agreement. The buyer agrees to execute such documents to evidence and perfect such security interest as Delfort may request from time to time. The buyer hereby appoints each of Delfort's officers as the buyer's duly authorized agent for the purpose of taking any and all such action, including, without limitation, execution of financing statements on Form UCC-1 and other documents,

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deemed necessary by Delfort, in its sole discretion, for the perfection and enforcement of the security interest granted hereby.

and effect. In the event that the provision on arbitration (section 12.2) does not become binding upon the parties for any reason, any disputes arising out of or in connection with the delivery of goods to which these General Terms apply shall be exclusively submitted to the court having jurisdiction as regards the subject matter in Charlottesville, Virginia (USA).

### 10. Intellectual Property Rights of Third Parties

10.1. The buyer shall bear the sole responsibility for obtaining intellectual property rights in the ordered design of the goods as well as in all printed matter, drafts and completed specimens and shall indemnify Delfort and hold Delfort harmless against all claims, costs, damages, and expenses (including legal expenses) resulting from any actual or alleged infringement of any third party intellectual property rights.

13.5. No waiver of any provision of these General Terms or of the contract by Delfort shall be deemed a waiver of any subsequent breach of these General Terms or of the contract by the buyer.

10.2. Notwithstanding the above, the intellectual property rights in any specifications written or determined by Delfort as well as designs, samples, sample rolls, patterns, and other information attributable to Delfort shall remain the exclusive property of Delfort.

13.6. No waiver of or variations to these General Terms shall be binding unless agreed in writing by Delfort.

10.3. The buyer shall not assert any claims to copyrights or any other rights to specifications written or determined by Delfort or design, samples, sample rolls, patterns, and other information attributable to Delfort, nor manufacture or have manufactured for itself or for third parties any objects in which, or in the manufacture of which, any information or knowledge of Delfort was used directly or indirectly; nor shall the buyer use any of the designs, documents, information or knowledge directly or indirectly made available by or made known to it by Delfort for the purposes of securing its own intellectual property rights or copyrights or preventing the granting of intellectual property rights or copyrights to Delfort.

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### 11. Confidentiality

The buyer shall keep confidential all information received from Delfort in any form and format whatsoever, including but not limited to know-how, specifications, formulas, samples and business data. The obligation to maintain secrecy shall remain in force irrespective of any termination of the business relationship between the parties until the information has become part of the public domain other than through fault of the buyer.

### 12. Place of Performance, Venue, Applicable Law

12.1. The place of performance (including Buyer's payment obligation) is agreed to be Delfort's principal place of business.

12.2. These General Terms, as well as any other terms and conditions that form the sales contract of the goods to be sold hereunder, shall be interpreted and construed in accordance with the laws of the Commonwealth of Virginia, USA, without, however, giving effect to the rules on conflicts of laws within such jurisdiction. The UN Convention on Contracts for the International Sale of Goods shall not apply. All disputes arising out of, or in connection with, the sale of goods hereunder shall be finally settled by arbitration. The arbitration shall be governed by the Rules of Arbitration of the International Chamber of Commerce. The arbitration proceedings shall be conducted in the English language by one or more arbitrators appointed in accordance with such rules, and the place of arbitration shall be Charlottesville, Virginia (USA). Notwithstanding the above, Delfort shall be entitled to lodge a claim concerning collection of outstanding debts in any court having jurisdiction over the buyer.

### 13. Miscellaneous

13.1. Any of Delfort's contractual obligations may be fulfilled by any other subsidiary of delfortgroup AG.

13.2. The buyer shall not assign any of its rights or obligations without Delfort's prior written consent.

13.3. To the extent legally possible under applicable laws, Delfort may cancel the contract with immediate effect if the buyer enters a voluntary arrangement with its creditors, is subject to a bankruptcy proceeding, suffers an administration order, goes into liquidation or has a receiver appointed.

13.4. If any part of any provision of these General Terms is deemed illegal, void or unenforceable, it shall be deemed severed, and the remainder of these General Terms shall remain in full force