

# Iggesund Paperboard Terms and Conditions of Trade 2015

## 1. Definitions and Formation of Contract

- 1.1. In these terms and conditions the "Seller" shall be the company responsible for producing the goods from whom the order acknowledgement is issued, being either:
  - 1.1.1. Iggesund Paperboard AB, a Swedish company, or
  - 1.1.2. Iggesund Paperboard (Workington) Ltd, a British company,and the "Buyer" shall be the body (whether corporate or personal) to whom the order acknowledgement is addressed. The Seller and the Buyer may herein also be referred to each as a "Party" and together as "Parties".

"Goods" shall be those products and quantities referred to on the order acknowledgement.
- 1.2. All orders for Goods will be deemed to be an offer by the Buyer to purchase Goods on these terms and conditions. A binding contract between the Buyer and the Seller will only be formed on the despatch of the Goods to the Buyer by the Seller. Acceptance of the Goods by the Buyer will be deemed conclusive evidence of the Buyer's acceptance of these terms and conditions.
- 1.3. These terms and conditions constitute the whole agreement between the Seller and the Buyer relating to its subject matter to the exclusion of all other terms and conditions save as expressly provided herein. No oral or written prior drafts, agreement, undertakings, representations, warranties or arrangements of any nature relating to such subject matter by any employee or agent of the Seller or the Buyer will form part of a contract nor will it be treated as constituting a representation on the part of either Party.

## 2. Quantity

An order for Goods shall be deemed to have been fulfilled in accordance with the contract if the Seller delivers to the Buyer, Goods that do not deviate from the contract quantity by more than the quantity tolerance values referred to in the current edition of Iggesund Product Catalogue, (the "Catalogue"). The Catalogue is subject to review as part of the Seller's commitment to continuing development. The Seller reserves the right to make changes in specifications and features shown in the Catalogue.

## 3. Quality

The delivered Goods are manufactured and verified in accordance with the defined specifications, target values and tolerances in relation to paperboard properties, referred to in the current edition of the Catalogue. All other warranties and, subject to Clause 10 hereto representations, shall, to the extent permitted by law, be excluded.

## 4. Claims

- 4.1. It shall be the responsibility of the Buyer to check the quality of delivered Goods before and during their processing. If the quality of the Goods is not in accordance with the quality contracted for or if the Buyer has any concern over the quality of the Goods, then the Buyer shall stop using the Goods until the Seller is given the opportunity to examine the Goods and confirm that the Goods comply with Clause 3.
- 4.2. Claims arising from the Seller delivering to the Buyer a quantity of Goods less or more than is contracted for - including the tolerances in relation to quantity stipulated in these terms and conditions - must be promptly notified by the Buyer to the Seller, but in any event within fifteen (15) days of the Buyer receiving any document stating or certifying the weight of the Goods delivered.
- 4.3. All claims, other than claims in respect of quantity, must be made in writing by the Buyer to the Seller:
  - 4.3.1. immediately, in the event of a defect that can be ascertained upon visual inspection of the Goods or their packing;

4.3.2. in the event of a defect relating to physical properties or other reason that can only be determined through use of the Goods, by way of samples, as soon as the defect is discovered and in any event no later than within thirty (30) days after receiving the Goods; or

4.3.3. in the event of a defect which is not discovered in the circumstances set out in Clause 4.3.1 or 4.3.2, at latest within three (3) months after receiving the Goods.

If the Buyer does not comply with the provisions and time limits stipulated in Clause 4.2 or 4.3 as the case may be, subject to Clause 6.6, the Seller shall not be liable for any claim that the Buyer may make against the Seller under the contract.

- 4.4. When giving notice of a claim, the Buyer must identify in such notice the Goods clearly and state fully the facts on which his claim is based and the Buyer shall send to the Seller, then or as soon as possible thereafter, any documents and physical evidence which supports the claim.
- 4.5. In the event of any shortage of the Goods being delivered or any damage to the Goods believed to have occurred in transit, the Buyer must notify the carrier, on receipt of the Goods, of the shortage or damage. At the same time, the Buyer must notify the Seller immediately, in writing, of any such shortage or damage in transit.
- 4.6. If the Buyer has given notice of claim as required in these terms and conditions and the Parties are unable to reach agreement on settlement of the claim, the dispute shall be referred to arbitration provided that (where practicable) the allegedly faulty Goods in dispute shall be made available to the Seller unused and not unduly tampered with so that samples may be taken for the purpose of the arbitration.

## **5. Delayed Payment and Ownership of the Goods**

- 5.1. The Buyer shall pay for the Goods in accordance with the terms set out under the heading "Payment Terms" on the order acknowledgement in respect of those Goods and if the Buyer fails to pay for the Goods within the period specified thereunder, the Buyer shall be deemed to be in default of the payment.

The Seller reserves the right to charge interest on any overdue payments at the statutory interest rate specified for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 (if this contract is governed by English Law) or stipulated in the Interest Act (Sw. Rätelagen, SFS 1975:635) (if this contract is governed by Swedish Law), unless a different rate is set out under the heading "Payment Terms".

- 5.2. If the Buyer is in default of payment for ten (10) days from the date on which it becomes due, the Seller has the right to terminate the contract upon giving written notice to the Buyer. If the Goods are delivered in instalments, the Seller may elect to either terminate the contract in its entirety or partially in respect of the Goods for which the Buyer is in default of payment.
- 5.3. All risk and all liability to third parties in respect of the Goods shall pass to the Buyer on delivery.
- 5.4. Notwithstanding delivery of the Goods to the Buyer, property and ownership of the Goods shall not pass from the Seller until:
- 5.4.1. the Buyer shall have paid the Seller unconditionally in full for the Goods in cleared funds; and
- 5.4.2. no other sums are then outstanding from the Buyer to the Seller, whether under the same contract or otherwise.
- 5.5. While property and ownership of the Goods remains with the Seller pursuant to this Clause 5, the Buyer shall store the Goods at his own cost separately from his own Goods or those of any other person and in a safe place adequately protected from the elements and marked in such a way that the Goods can be clearly identified as the Seller's Goods and shall insure the Goods to their full value for the interest of the Seller against all risks to the satisfaction of the Seller.
- 5.6. The Buyer may not deal with, sell, part with possession of, consume or otherwise dispose of the Goods until title to them has passed to him under Clause 5.4 otherwise than in the ordinary course of its business.
- 5.7. Upon occurrence of the circumstances where the Seller is entitled to exercise any of his rights under Clause 5.8 and 5.9, any right of the Buyer to sell, dispose of, deal with or in any way use

Goods in which the property remains with the Seller shall immediately cease. The Buyer must then immediately place any of the Goods in his possession or under his control at the disposal of the Seller and the Seller shall (without prejudice to any of his other rights and remedies) have the right to re-possess and use those Goods and detach them from other products and may by himself, or through his servants or agents, enter any land or building, vehicle or vessel or other place where the Goods are reasonably thought to be situated for the purpose of removing any of those Goods.

For the purpose of collecting and taking possession of the Goods, the Buyer gives the Seller and his agent irrevocable authority to enter his premises without notice. Where the Goods are situated on the premises of a third party which holds those Goods on behalf of the Buyer, the Buyer must procure that the third party stores those Goods separately to facilitate such entry and removal and that the third party relinquishes any claim he may have in respect of those Goods.

- 5.8. Should the Buyer be in default in making a payment due under the contract, the Seller shall have the right upon giving notice to the Buyer in writing to withhold deliveries due to the Buyer under any contract entered into with the Buyer until such payment is received by the Seller.
- 5.9. Should the Buyer or the Seller become insolvent or go into liquidation or have a receiver appointed or otherwise be found to be in such a financial position that he, in the other Party's reasonable opinion, will not be able to fulfil his obligations under the contract, the other Party shall have the right to terminate the contract upon notice.

## **6. Limitation of Damages**

- 6.1. If due to a defect in quality of the Goods the Buyer rejects the delivered Goods, or where the Goods delivered to the Buyer is less than the quantity contracted for, the Seller shall at its own election and without delay replace the defective Goods or make good the short delivery, as applicable and, subject to Clause 6.3, 6.5 and 6.6, the Seller shall reimburse any additional expenses incurred by the Buyer for:
  - 6.1.1. handling, storing and insuring the defective Goods in accordance with the Seller's instructions; and
  - 6.1.2. loss of or damage to any physical property belonging to the Buyer, provided that the loss or damage occurs during the processing of the Goods.
- 6.2. Unless otherwise expressly stated in these terms and conditions, the Seller shall not be liable to the Buyer for compensation or damages of any kind whatsoever.
- 6.3. To the extent permitted by law, where either Party is liable for damages to the other:
  - 6.3.1. the liability of each Party shall not exceed the loss which the Party in fault could reasonably have foreseen at the time of the conclusion of the contract;
  - 6.3.2. damages shall in no case exceed the invoiced value of the Goods concerned; and
  - 6.3.3. neither Party shall be liable to the other Party for any indirect, special, incidental or consequential loss (including without limitation any loss of profit, loss or revenue, loss of business).
- 6.4. The Buyer shall indemnify the Seller against all loss, damage and expenses arising out of third party claims in respect of the Goods which are the subject of the contract, save where such loss, damage or expense arises from or as a result of any wilful act or any negligence on the part of the Seller.
- 6.5. A Party that alleges a breach of contract by the other Party, must take all necessary measures to mitigate the loss resulting from the breach, provided that and in so far as he can do so without unreasonable inconvenience or cost. If he fails to take such measures, the Party in breach may claim a reduction in the damages.
- 6.6. No provision in these terms and conditions exclude or limit the liability of each Party in respect of (i) death or personal injury resulting from the negligence or fraud of the Seller and (ii) such other matters in respect of which liability cannot be excluded or limited by the Parties under applicable law.

## **7. Grounds Of Discharge From Liability (Force Majeure)**

- 7.1. The following shall be considered as grounds of discharge from liability if they occur after the conclusion of the contract - or when they have occurred before that time, if their effects were not clearly foreseeable before the conclusion of the contracts - and they prevent, hinder or delay:
- 7.1.1. the process in which the Buyer (or if the Buyer is a wholesale dealer, his customer, provided the customer is named in the contract) intends to use the Goods; or
  - 7.1.2. the Buyer's acceptance of the Goods; or
  - 7.1.3. the Seller's production or delivery by agreed means,
- viz:
- war; war risk; insurrection; blockage; requisition; embargo; calling up of personnel for military service; currency restrictions; export or import prohibitions or restriction; restrictions in the use of power; labour conflicts; general shortage of labour, transport and materials; water shortage; fire; flood; storm; obstruction of railways; obstruction of roads; obstruction of navigation by ice at port of shipment; loss or detention at sea; non-delivery, faulty or delayed delivery by the Seller's suppliers of raw material and other commodities for industrial production and any other circumstances beyond the control of the Parties.
- 7.2. The Buyer or the Seller, as the case may be, may suspend performance under this contract on the grounds of discharge from liability, neither Party being responsible to the other Party for any damage resulting from such suspension. Goods released by the Seller and already manufactured or in the course of manufacture or in transit from the Seller must, however, always be accepted and paid for by the Buyer subject to the provisions of Clause 7.3.
- 7.3. In the event of suspension of performance for less than ten (10) consecutive days, deliveries shall be resumed as soon as practicable for the full contract quantity. When such suspension shall have continued for a period of ten (10) consecutive days or more, the delivery or deliveries omitted during the period of suspension can be cancelled by either Party without liability to the other and subsequent deliveries shall be resumed thereafter according to contract.
- 7.4. The Party wishing to claim relief by reason of any of the said circumstances shall
- 7.4.1. notify the other Party in writing without delay of the nature, extent, effect and likely duration of the circumstances constituting the force majeure,
  - 7.4.2. use all reasonable endeavours to minimise the effect of the force majeure on its performance of its obligations under the contract including the making of alternative arrangements for resuming the performance of its obligations which may be practicable without incurring material additional expense, and
  - 7.4.3. immediately after the cessation of the force majeure notify the other Party thereof and resume full performance of its obligations under the contract.
- 7.5. If any force majeure delays or prevents the performance of the obligations of either Party for a continuous period in excess of three (3) months, the Party not so affected shall then be entitled to give notice to the affected Party to terminate the affected contract, specifying the date (which shall not be less than 30 days after the date on which the notice is given) on which termination will take effect. Such a termination notice shall be irrevocable, except with the consent of both Parties.

## **8. Price Variation**

Subject to the rights of the Seller to increase the price in the event of an increase in any applicable taxes subsequent to the date of the order acknowledgement prices invoiced shall be those stated on the order acknowledgement.

## **9. Deliveries**

- 9.1. The Seller reserves the rights to deliver the Goods by instalments in any sequence and deliver a separate invoice in respect of each instalment. Where the Goods are delivered by instalments, the contract shall be severable, and each instalment shall be deemed to be the subject of a separate contract. No default by the Seller in respect of one or more instalments shall entitle the Buyer to repudiate the contract or to damages.

- 9.2. Times and dates quoted for deliveries are estimates only and the time for delivery shall not be of the essence.
- 9.3. The Seller shall not be liable in any way for losses, damage or expenses whether direct, indirect or consequential suffered by the Buyer due to any delay in delivering the Goods.
- 9.4. ICC Incoterms published by the International Chamber of Commerce as amended from time to time shall apply to the contract between the Buyer and the Seller.

## **10. Special Provisions**

These terms and conditions shall apply in their entirety unless otherwise expressly agreed upon in writing by the Seller and the Buyer. In the event that there is a discrepancy between the English language version of the Terms and Conditions and those in any other language, the English language version shall prevail.

## **11. Invalidity**

If any provision of these terms and conditions is held by any court or competent authority to be illegal, void, invalid or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the remainder of these terms and conditions in that jurisdiction shall not be affected, and the legality, validity and enforceability of the whole of these terms and conditions in any other jurisdiction shall not be affected.

## **12. Arbitration**

Pursuant to Clause 13, any dispute arising out of or in connection with this contract, including any question regarding the existence, scope, validity, or termination of this contract or this Clause, the legal relationships established by this contract or the consequences of its nullity (and including any tortious or statutory claims), shall be referred to and finally resolved by arbitration under the arbitration rules of the international chamber of commerce, which rules are deemed to be incorporated by reference into this Clause. Notwithstanding anything in the mentioned arbitration rules:

- 12.1. where the Seller is Iggesund Paperboard (Workington) Ltd, the Parties preserve their right to appeal or refer to the English courts on questions of law. The seat of the arbitration shall be London, England.
- 12.2. where the Seller is Iggesund Paperboard AB, the Parties preserve their right to appeal or refer to the Swedish courts on questions of law. The seat of the arbitration shall be Stockholm, Sweden.

## **13. Applicable Law**

Where the Seller is Iggesund Paperboard (Workington) Ltd, this contract and any non-contractual obligations arising from or connected with it shall be governed by English law and this contract shall be construed in accordance with English law.

Where the Seller is Iggesund Paperboard AB, this contract and any non-contractual obligations arising from or connected with it shall be governed by Swedish law and this contract shall be construed in accordance with Swedish law.