

## General Terms and Conditions for the Sale of Packaging

Applicable in business transactions with companies, legal persons under public law, and special public funds. Consumers are not permitted to place purchase orders.

### 1. General provisions

- 1.1 The general terms and conditions of sale set out in this document (hereinafter: "Conditions of Sale") apply to all sales of packaging and packaging material between Verpackungswerk West GmbH (hereinafter: "VW-WEST") and the customer, including the supply of corrugated and solid board packaging, amongst other things (packaging, packaging material, and corrugated and solid board packaging hereinafter collectively: "Delivery Items").
- 1.2 These Conditions of Sale apply exclusively. Terms and conditions of the customer which conflict with, deviate from, or supplement these Conditions of Sale (in particular, general terms and conditions of purchase and general terms and conditions of business) shall not be accepted by VW-WEST and shall not apply unless they are expressly approved by VW-WEST in text form. This approval requirement applies also and in particular if VW-WEST carries out the delivery to the customer without reservations while being aware of the customer's terms and conditions.
- 1.3 These Conditions of Sale, as in force and available at [https://www.vwwest.de/agb\\_en](https://www.vwwest.de/agb_en) at the time the respective purchase order is placed, also apply to all future contracts, without VW-WEST being required to make reference to them in each particular case.
- 1.4 Any agreements supplementing, or deviating from, these Conditions of Sale which are made between VW-WEST and the customer for the implementation of a contract must be documented in text form. This also applies to the cancellation of this text form requirement.
- 1.5 These Conditions of Sale shall not affect any statutory rights of VW-WEST which exist in addition to, or go beyond, the rights provided for herein.

### 2. Formation of contract

- 2.1 All offers by VW-WEST are subject to change and non-binding unless they are expressly stated to be binding.
- 2.2 Unless otherwise provided, no purchase orders placed in writing or by telephone shall be binding until confirmed by VW-WEST by order confirmation issued in text form. Order confirmations that are generated using automatic devices and, therefore, do not contain a name and signature shall be deemed issued in compliance with the text form requirement. If VW-WEST does not reply to offers, purchase orders, requests, or other notices from the customer, this shall be deemed consent only if an express agreement to this effect has been made in text form. Order confirmations shall not be binding upon VW-WEST to the extent that they contain obvious mistakes, misspellings, or calculation errors which are relevant to the contract.
- 2.3 All pictures, drawings, information about weights and dimensions, DIN standards, and other descriptions of the Delivery Item from documents that form part of the offer or the order confirmation are approximations only, to the extent not expressly stated to be binding. They do not constitute an agreement on or guarantee

of an according quality of the Delivery Item. The dimensions of corrugated and solid board packaging are stated in the order "length, width, and height" and describe the inner dimensions in mm, except to the extent otherwise agreed or expressly stated otherwise.

- 2.4 VW-WEST reserves all ownership rights and copyrights in relation to all offer documents. Such documents shall not be made available to third parties. The preceding provisions do not affect the provisions of clause 12 below, which shall apply additionally.

### 3. Custom-made products

- 3.1 If VW-WEST supplies a product according to the customer's specifications based on the purchase order and the customer's design drawings, if any, VW-WEST will, within a first step, create a so-called approval drawing. This approval drawing will contain all design and product information relevant to VW-WEST. VW-WEST will send the approval drawing to the customer for approval.
- 3.2 Furthermore, VW-WEST will create an approval and/or design sample the dimensions and functionalities of which are identical to those of the future product. VW-WEST reserves the right with regard to its production of samples to produce series products which deviate from the samples where this is necessary for technical reasons and to use materials of a different quality for the series products. The approval and/or design sample will also be sent to the customer by VW-WEST for approval.
- 3.3 The customer is obliged to carefully examine the approval drawing and the sample sent to it, note down the required corrections, if any, and confirm its approval by adding its signature. If printing approval is required, such approval shall again be given by the customer by adding its signature to the proof. In this case, VW-WEST will not be liable for any errors overlooked or not reported by the customer.
- 3.4 In the event that any stereotypes, tools, or other auxiliary materials or devices for production which are necessary for the implementation of the purchase order are manufactured or ordered by VW-WEST itself, VW-WEST will invoice the customer for these items, charging the agreed price. The stereotypes, tools, and other auxiliary materials or devices for production shall remain the property of VW-WEST. The customer will not acquire any right to demand the transfer of ownership or possession.
- 3.5 The cost of maintaining and servicing the stereotypes, tools, and other auxiliary materials or devices for production shall be borne by the customer. The cost of making changes to the stereotypes, tools, and other auxiliary materials or devices for production due to changes to the product and the cost of any renewals required for technical reasons shall also be borne by the customer.
- 3.6 VW-WEST is not obliged to store the stereotypes, tools, and auxiliary materials or devices for production for a period longer than thirty (30) months after the end of the last production cycle. VW-WEST is expressly authorised to destroy the stereotypes, tools, and auxiliary materials or devices for production upon expiry of a period of thirty (30) months following the end of the last production cycle.

## Verpackungswerk West GmbH

### 4. Delivery, delivery dates/periods, default in delivery

- 4.1 The scope of the delivery shall be as determined in the order confirmation issued by VW-WEST in text form. Changes to the scope of the delivery must be confirmed by VW-WEST in text form in order to be valid.
- 4.2 Except to the extent expressly otherwise agreed in text form, delivery shall be "ex works" (EXW, as defined by Incoterms® 2010). This means that the only obligations to be performed by VW-WEST as part of the delivery are to make the Delivery Item available at VW-WEST's place of business and to give notice that the delivery item is ready for collection.
- 4.3 If, unlike stipulated in clause 4.2 above, VW-WEST assumes the obligation to ship the Delivery Item, VW-WEST shall only be obliged to organise the transport and hand the Delivery Item over to the first carrier at VW-WEST's place of business. The customer must, regardless of the value of the shipped Delivery Items, bear all costs in connection with the shipment (e.g., freight, cartage, loading costs and fees, customs duties), irrespective of whether such costs are incurred domestically or abroad (also see clause 6.2 below in this regard).
- 4.4 To the extent that, unlike stipulated in clause 4.2 above, VW-WEST assumes obligations regarding the transport of the Delivery Item (e.g., shipment according to clause 4.3 above), VW-WEST may choose the shipping and/or transport routes and the means of shipment and/or transportation, except to the extent otherwise agreed in text form; in the event of drop-shipping, the aforesaid choice will be made by the suppliers. This does not affect the customer's obligation to bear the costs related to the shipment and/or transport (clause 4.3 above and clause 5.2 below). Shipping and/or transport routes and means of shipment and/or transportation which lead to unusually high costs (e.g., express or fast freight, air freight) will be selected by VW-WEST only in consultation with the customer.
- 4.5 The customer is obliged to deliver to VW-WEST, at the customer's own expense, all test materials which are needed to complete the Delivery Item and have to be provided by the customer no later than four weeks before the anticipated delivery date (see clause 4.6 below), even if this date is not binding.
- 4.6 Binding delivery dates or delivery periods shall be agreed in writing or in text form in the offer or the order confirmation and be expressly marked as such. If an offer or an order confirmation does not contain a delivery date or delivery period which has been marked as binding, the delivery date or delivery period mentioned therein shall be deemed to be merely a rough guide as to when to expect the receipt of the delivery.
- 4.7 The delivery period shall commence upon formation of the contract but not before all documents, permits, design details, and approvals to be procured by the customer have been provided in full, all technical issues have been clarified, and the agreed down-payment, if any, has been received. In order for the delivery period to be adhered to, the customer must perform its further obligations timely and properly.
- 4.8 Where delivery dates or delivery periods have been agreed, they shall be deemed met if the Delivery Item has been made available by the time of expiry of the delivery date or delivery period and VW-WEST has given notice that the Delivery Item is ready for collection or, where otherwise agreed, the Delivery Item has

been handed over to the first carrier. Any delivery shall be conditional upon VW-WEST being supplied timely and properly by its own suppliers.

- 4.9 Partial services and partial deliveries shall be permitted to the extent reasonable. VW-WEST may issue invoices for reasonable instalments.
- 4.10 If non-compliance with delivery periods is due to force majeure or other disturbances for which VW-WEST is not responsible, e.g., war, terrorist attacks, or import and export restrictions, including any such circumstances affecting VW-WEST's suppliers, the agreed delivery periods shall be extended for the duration of the existence of the impediment. This also applies to any industrial action affecting VW-WEST or VW-WEST's suppliers. If the impediment continues for more than sixty calendar days, the contracting parties shall have the right to rescind the contract. In such cases, claims for damages shall be excluded for lack of fault.
- 4.11 To the extent that the Delivery Item is handed over to the customer on Euro-pallets, industrial pallets, in wire cages, or on panel or board trolleys or other load carriers (hereinafter collectively: "Load Carriers"), the customer must deliver to VW-WEST the same number of Load Carriers, which must additionally be of the same type and quality, at the place where the Delivery Item is handed over. If the customer fails to do so, VW-WEST may charge EUR 10.00 per Load Carrier and week of delay from the third calendar day on, at maximum, however – even if returning the Load Carriers is impossible – an amount equal to the current value of the Load Carriers. Furthermore, in this case, the place of fulfilment for the obligation to return of the respective Load Carrier shall be VW-WEST's seat. Once the current value of the respective Load Carrier has been reached, VW-WEST will no longer be obliged to take the respective Load Carrier back.
- 4.12 If Delivery Items which have been ordered by means of a call-off order are not called off on the agreed call-off date and/or within the agreed period of time or within a reasonable period of time fixed by VW-WEST (hereinafter collectively: "Call-off Period"), the customer shall be in default of acceptance. Upon expiry of the call-off date or, as the case may be, the Call-off Period, the goods shall be stored at the expense and risk of the customer, regardless of any prior, deviating agreement. In all other respects, the provisions of clause 5 below shall apply. If a customer who has placed a call-off order is in default of acceptance, VW-WEST shall be free, after setting a reasonable deadline for subsequent performance (acceptance) to no avail, to rescind the contract or demand that the entire amount of goods yet outstanding under the call-off order be accepted immediately and that the overall purchase price yet outstanding be paid immediately.
- 4.13 A pallet exchange is agreed between the customer and VW-WEST according to the following provisions: Only Euro-pallets labelled with "EPAL/EPAL in oval" and "UIC/EUR in oval" shall be exchanged. The customer shall return to VW-WEST pallets in the same number, type and quality according to UIC 435/2 which he has received from VW-WEST. Only Euro-pallets of class NEW, class A and class B according to the quality classification EPAL/GS 1 Germany, status 2015, are deliverable and returnable. If VW-WEST delivers class B, the customer shall return class B or higher to VW-WEST. If VW-WEST supplies class A, the customer shall return class A or higher to VW-

WEST. If VW-WEST delivers class NEW, the customer shall return class NEW to VW-WEST. If this quality standard is not fulfilled by the customer when exchanging pallets, the customer shall be obliged to purchase the pallets delivered by VW-WEST. VW-WEST shall issue an invoice to the customer for the purchase price. The purchase price for not returned pallets shall be the average purchase price for pallets of the owed quality standard valid in the month of invoicing. After payment of the purchase price, VW-WEST shall make the returned pallets which do not comply with the quality standard available to the customer at their place of delivery for collection. If the customer does not collect the pallets without undue delay, VW-WEST is entitled to destroy the uncollected pallets in an environmentally friendly way at the expense of the customer after having set a deadline of two weeks and after having announced to do so. The setting of a deadline for the collection and the announcement of the destruction must be made in text form. If the customer returns less pallets than he has received from VW-WEST, the customer shall be obliged to purchase the pallets not returned. With regard to the purchase price and the invoicing, the provisions of the preceding sentences 8 and 9 shall apply.

## 5. Default of acceptance

- 5.1 If the customer defaults on its obligation to accept delivery or violates other obligations to cooperate, VW-WEST may demand to be compensated for any damage or loss caused by default. The liquidated damages shall be in an amount equal to 0.5% of the net price of the values delivered per day of default, at maximum, however, a total amount equal to 5% of the net price of the values delivered. This shall not affect VW-WEST's right to assert further claims for damages, nor the customer's right to prove that the damage or loss actually suffered was smaller.
- 5.2 The risk of accidental loss or destruction or accidental deterioration of the Delivery Item shall pass to the customer at the time of commencement of the customer's default of acceptance.
- 5.3 In the event of default of acceptance, all invoices regarding the Delivery Item shall become due and payable immediately.
- 5.4 Without prejudice to the customer's rights and claims for defects, the customer shall take delivery of the Delivery Items even if they contain immaterial defects.

## 6. Prices

- 6.1 The price shall be as stated in the order confirmation. Except to the extent expressly otherwise agreed, the price is in EURO. The price does not include statutory value-added tax, which will be stated separately in the invoice at the statutory rate applicable on the invoice date and shall be owed by the customer additionally.
- 6.2 In the absence of a separate agreement, all prices are "ex works" (EXW, as defined by Incoterms® 2010) and exclusive of all incidental costs, such as packaging, freight, customs duties, and insurance. If VW-WEST arranges the transport despite the general agreement on delivery "ex works" (EXW, as defined by Incoterms® 2010) in clause 4.2 above, all incidental costs incurred domestically or abroad in connection with the transport shall nevertheless be borne by the customer.
- 6.3 If, in the period between the conclusion of the contract and the delivery day, a factor relevant to the pricing

increases or decreases without VW-WEST being responsible for this, or if this was foreseeable for VW-WEST at the time the contract was concluded, VW-WEST reserves the right to change the prices at its own discretion adjust the amount by which the acquisition or production costs of the delivery item have increased or decreased. Relevant factors in this sense are wages, energy costs and / or costs for raw materials (e.g. due to scarcity of resources) or changes in the industry or the legal framework (e.g. through the introduction of additional and / or further taxes and tariffs due to the withdrawal of the United Kingdom (UK) from the European Union). Corresponding changes in costs will be proven to the customer upon request. VW-WEST can change the prices by notifying the customer in writing before the adjustment occurs. The customer has the right to object to the change within two (2) weeks from the date of the notification of the change. Otherwise, the price change is deemed to have been approved and the business relationship between VW-WEST and the customer, including the changed price, will continue to exist. If the customer objects to the respective price change, both parties will discuss and negotiate possible price adjustments in good faith and try to find an amicable solution. If this does not succeed, the customer has an extraordinary right of termination.

- 6.4 For call-off orders, the prices to be charged shall – in the absence of a separate agreement – always be the prices applicable on the day the respective delivery is carried out, or the prices applicable at the time acceptance is due.

## 7. Terms of payment

- 7.1 Except to the extent otherwise agreed in text form, the gross price plus the cost of packaging, freight, and insurance, where applicable, shall be paid within fourteen calendar days of the invoice date without any deduction (hereinafter: "Time Allowed for Payment"). The deduction of a discount must be agreed in text form.
- 7.2 Payments shall be deemed made when VW-WEST can dispose of the amount at its place of business. In the event that VW-WEST accepts non-cash means of payment, the obligation to pay shall not be deemed fulfilled until the amount owed has been credited unconditionally to the relevant bank account and/or can be disposed of.
- 7.3 If the Time Allowed for Payment is exceeded, VW-WEST may – without being required to issue a reminder first – demand default interest at a rate of nine percentage points p.a. above the base rate published by the German central bank (Bundesbank) from time to time. This shall not affect VW-WEST's right to assert further claims for damages, nor the customer's right to prove that the damage or loss actually suffered was smaller.
- 7.4 In the event that the customer defaults on a payment, VW-WEST may demand that all claims resulting from the business relationship which are due and not subject to any defences be paid immediately in cash.
- 7.5 Counterclaims of the customer shall not entitle the customer to make a set-off or assert a right of retention unless they have been established in a judgment which cannot be appealed against or are undisputed. The customer may assert a right of retention only if its counterclaim is based on the same contractual relationship.

- 7.6 VW-WEST shall have the right to carry out outstanding deliveries, or provide outstanding services, only against payment in advance, or against the provision of security, if any circumstances become known after the formation of the contract which are apt to significantly reduce the customer's creditworthiness and as a result of which payment by the customer of VW-WEST's outstanding claims arising out of the respective contractual relationship is at risk. This shall apply accordingly if the customer refuses and/or fails to pay outstanding claims of VW-WEST without there being any undisputed objections to VW-WEST's claims, or without there being any objections which have been established in a judgment that cannot be appealed against.
- 7.7 If the customer is not based in Germany, VW-WEST may demand payment by confirmed, irrevocable documentary credit granted – at VW-WEST's choice – by a German bank/savings bank in favour of, and at no cost to, VW-WEST under which VW-WEST has the right to deliver the Delivery Items in partial shipments and where the first third (1/3) becomes due on first demand, against acknowledgement of receipt, immediately after the letter of credit has been opened and the remaining two thirds (2/3) become due upon presentation of the documents.
- 8. Obligation to give notice of defects**
- 8.1 In order for the customer to have any rights in respect of defects, the customer must perform its statutory obligations to examine and give notice of defects (§§ 377, 381 German Commercial Code); in particular, the customer must check the Delivery Item upon receipt or prior to acceptance and provide VW-WEST with written notice of all obvious defects, as well as of all defects that could be identified during such examination, without delay upon receipt of the Delivery Item. Hidden defects must be reported to VW-WEST by the customer in writing without delay after they have been discovered.
- 8.2 If printed Delivery Items are to be supplied, the customer is obliged to carefully check the artworks or design templates submitted to it, note down the required corrections, if any, and confirm its printing approval by adding its signature. In this case, VW-WEST will not be liable for any errors overlooked or not reported by the customer.
- 8.3 If the customer fails to carry out a proper examination and/or to give notice of defects, VW-WEST's liability for the defect shall be excluded. When notifying VW-WEST of defects, the customer shall provide a description of the defects in text form.
- 9. Claims for defects, deviations in quantity, damages, limitation**
- 9.1 Claims for repair or for delivery of a new Delivery Item that is free of defects (repair and replacement delivery hereinafter collectively: "Subsequent Performance") shall be excluded for insignificant deviations, deviations which cannot be avoided technically, and deviations that are customary in trade, in particular, deviations regarding the composition of the material, sizing, colour, smoothness, purity, thickness, dimensions, and weight of the Delivery Item, especially fluctuations in weight of up to 10% in either direction or deviations in the dimensions of up to 3 mm in either direction.
- 9.2 Deviations in quantity, weight, or dimensions shall additionally be permitted within the tolerances customary in the industry. This shall apply accordingly to the tolerances customary in the industry for the respective Delivery Item. VW-WEST reserves the right to deliver quantities larger or smaller than those ordered, especially for production-related technical reasons, to the extent reasonable, the permitted deviation being 20% for up to 500 pieces, 15% for up to 3,000 pieces, and 10% for more than 3,000 pieces. Excess or short deliveries of the aforesaid scope shall not constitute a defect. In such cases, the goods actually supplied shall be paid for. If partial deliveries are made, the excess or short deliveries may be distributed over the single deliveries.
- 9.3 If the customer identifies any defects in the Delivery Item, the customer may not dispose of the Delivery Item – i.e., the Delivery Item must not be divided, sold, processed, mixed, or combined – until an agreement has been reached regarding how to handle the complaint and/or until an expert appointed by the chamber of industry and commerce at the customer's seat has carried out proceedings for the preservation of evidence. The customer is additionally obliged to give VW-WEST the opportunity to verify the existence of the reported defect on site and/or, if so requested by VW-WEST, to make available the objected-to Delivery Item or samples thereof.
- 9.4 If the Delivery Item contains any defects, VW-WEST may remedy the defects or, at the option of VW-WEST, deliver a Delivery Item that is free of defects for the purposes of Subsequent Performance.
- 9.5 If the Delivery Item is not at the place of delivery, the customer shall bear all additional costs incurred by VW-WEST in remedying the defects, unless the transfer of the Delivery Item to another place is in accordance with its contractual use.
- 9.6 Furthermore, rights in respect of defects shall not exist
- in the event of faulty assembly of the Delivery Item by the customer or third parties;
  - in the event of failure to follow the instructions for assembly;
  - if the Delivery Item is in a condition, or has suffered damage, caused after the transfer of risk by improper handling, storage, or maintenance, or by excessive strain or use;
  - if the Delivery Item is in a condition, or has suffered damage, resulting from force majeure, from specific external impacts not foreseen under the contract, or from the Delivery Item being used other than as foreseen under the contract or in a manner or for a purpose outside its customary use.
- VW-WEST refuses to accept liability for a condition of the Delivery Item that is due to processing or to the material chosen if the customer prescribes a material not included in VW-WEST's range of products.
- 9.7 The customer is obliged to transfer to VW-WEST ownership of all Delivery Items and/or parts of deliveries which are replaced in connection with a warranty claim.
- 9.8 VW-WEST has unlimited liability for damage or losses resulting from a breach of guarantee or from death, bodily injury, or damage to health. The same shall apply to wilful intent and gross negligence, mandatory statutory liability for product defects (in particular under the German Product Liability Act), and liability for fraudulent concealment of defects. In cases of simple negligence, VW-WEST shall only be liable if material obligations which result from the nature of the contract

- and are of particular importance for achieving the purpose of the contract are violated. If such obligations are violated, as well as in the event of default or impossibility of performance, VW-WEST's liability shall be limited to such damage and losses as can typically be expected under the contract. In all other cases, liability shall be excluded.
- 9.9 The limitation period for the customer's claims for defects shall be one year. This does not affect VW-WEST's unlimited liability for damage or losses resulting from a breach of guarantee or from death, bodily injury, or damage to health, for wilful intent and gross negligence, and for product defects; in these cases, solely the statutory limitation periods shall apply.
- 9.10 The limitation period shall commence upon delivery of the Delivery Item, at the latest, however, as soon as the customer is in default of acceptance. This does not affect VW-WEST's unlimited liability for damage or losses resulting from a breach of guarantee or from death, bodily injury, or damage to health, for wilful intent and gross negligence, and for product defects; in these cases, solely the statutory provisions regarding the commencement of the limitation period shall apply.
- 9.11 If VW-WEST has assumed the obligation to undertake the assembly of the Delivery Item based on an additional agreement with the customer, the warranty period shall again be one year, starting with the acceptance of the Delivery Item by the customer. If Subsequent Performance takes place as a gesture of goodwill, the limitation period shall not start anew as a result of Subsequent Performance. The limitation period additionally applies to tort claims which are based on a defect of the Delivery Item. This does not affect VW-WEST's unlimited liability for damage or losses resulting from a breach of guarantee or from death, bodily injury, or damage to health, for wilful intent and gross negligence, and for product defects; in these cases, solely the statutory provisions regarding the limitation periods and the commencement of the limitation period shall apply.
- 9.12 To the extent that VW-WEST's liability for damages is excluded according to clauses 9.1 to 9.11 above, this also applies with regard to the personal liability for damages of VW-WEST's officers, employees, staff, representatives, and vicarious agents.
- 9.13 Warranty claims against VW-WEST may only be asserted by the customer and must not be assigned.
- 9.14 The provisions of this clause 9 shall apply accordingly to defects as to title which do not consist in an infringement of third-party property rights.
- 10. Retention of title**
- 10.1 VW-WEST retains title to the Delivery Items until the purchase price, including value-added tax and any interest and incidental costs, has been paid in full.
- 10.2 If the customer purchases Delivery Items from VW-WEST in the context of an ongoing business relationship, VW-WEST will retain title until all claims resulting from the business relationship, including future claims and further including claims arising out of contracts entered into at the same or a later time, have been settled. This also applies if some or all of VW-WEST's claims were included in a current account and the balance has been drawn and acknowledged.
- 10.3 If VW-WEST becomes liable under a bill of exchange in connection with the payment of the purchase price by the customer, the retention of title shall not end before the bill of exchange has been honoured by the customer as drawee.
- 10.4 The customer shall be authorised, subject to revocation, to process the Delivery Items in the normal, proper course of business. In the event that the customer processes the Delivery Item, it is agreed that such processing shall be carried out on behalf and for the account of VW-WEST as the manufacturer and that VW-WEST shall be directly entitled to ownership or – where the processing involves materials of more than one owner or the value of the processed item exceeds the value of the Delivery Item – co-ownership (ownership in undivided shares) of the newly created item in proportion to the value of the Delivery Item (final amount invoiced, including value-added tax) compared to the value of the other materials and the processing value. In the event that VW-WEST does not acquire ownership as described above, the customer hereby transfers its future ownership or – in the aforesaid proportion – co-ownership of the newly created item to VW-WEST by way of security. VW-WEST hereby accepts this transfer.
- 10.5 The customer shall be authorised, subject to revocation, to combine and mix the Delivery Items in the normal, proper course of business. If the Delivery Item is inseparably combined or mixed with other items not owned by VW-WEST, VW-WEST shall acquire co-ownership of the new item in proportion to the value of the Delivery Item (final amount invoiced, including value-added tax) compared to the other combined or mixed goods at the time of combination or mixing. If the Delivery Item is combined or mixed such that an item of the customer is to be considered the principal item, the customer and VW-WEST hereby agree that the customer hereby transfers co-ownership of this item to VW-WEST on a pro rata basis by way of security. VW-WEST hereby accepts this transfer.
- 10.6 The authority to process the Delivery Items (clause 10.4 above) and the authority to combine and mix the Delivery Items (clause 10.5 above) shall be subject to the condition precedent that VW-WEST validly acquires ownership or, where applicable, co-ownership of the items which replace the Delivery Items.
- 10.7 The Delivery Items and any items which replace the Delivery Items according to the provisions of clauses 10.4 and 10.5 above and are covered by this retention-of-title clause are hereinafter referred to as the "Retention-of-Title Goods".
- 10.8 The customer shall store the Retention-of-Title Goods free of charge on behalf of VW-WEST – to the extent feasible and reasonable, separate from the customer's own items and marked as the (jointly owned) property of VW-WEST.
- 10.9 The customer shall treat the Retention-of-Title Goods with care. The customer shall, at its own expense, insure the Retention-of-Title Goods adequately at their replacement value against damage by fire, water, and theft. If any maintenance and inspection work becomes necessary, the customer shall timely carry out such work at its own expense.
- 10.10 The customer shall be authorised, subject to revocation, to sell the Retention-of-Title Goods in the normal, proper course of business on the customer's normal terms and conditions. This authority to sell shall be conditional upon the customer retaining title to the Retention-of-Title Goods when selling them to its purchasers and upon the claims arising out of such sale being transferred to VW-WEST as provided in

- clause 10.12 below. The customer is not authorised to dispose of the Retention-of-Title Goods in any other manner; in particular, the customer is not authorised to pledge the Retention-of-Title Goods or transfer them by way of security.
- 10.11 The authority to process the Delivery Items and the authority to sell the Retention-of-Title Goods (clauses 10.4 and 10.10 above) and the authority to combine and mix the Delivery Items (clause 10.5 above) may be revoked by VW-WEST at any time if the customer fails to properly perform its obligations to VW-WEST, in particular, if the customer defaults on a payment or does not handle the Retention-of-Title Goods in accordance with the contractual provisions (including these Conditions of Sale).
- 10.12 The customer's claims arising out of the sale of the Retention-of-Title Goods are hereby assigned to VW-WEST. VW-WEST accepts this assignment. The assigned claims shall serve as security to the same extent as the Retention-of-Title Goods. If the Retention-of-Title Goods are sold with other goods which have not been supplied by VW-WEST, the claim arising out of the sale shall be assigned in proportion to the value of VW-WEST's Retention-of-Title Goods (final amount invoiced, including value-added tax) compared to the other goods sold. In the event of a sale of goods in which VW-WEST has co-ownership interests according to clauses 10.4 and 10.5 above, a portion which corresponds to VW-WEST's ownership interest shall be assigned to VW-WEST. The same applies to other claims which take the place of, or otherwise arise with regard to, the Retention-of-Title Goods, such as insurance claims or tort claims in the event of loss or destruction.
- 10.13 VW-WEST authorises the customer, subject to revocation, to collect the claims which have been assigned to VW-WEST in the customer's own name. This does not affect VW-WEST's right to collect such claims itself; VW-WEST will not, however, assert the claims itself, nor will it revoke the authority to collect, as long as the customer properly performs its contractual obligations, in particular, its obligations to pay. If, however, the customer commits a breach of contract, in particular, if the customer defaults on the payment of any consideration owed, VW-WEST may revoke the authority to collect and demand that the customer inform VW-WEST of the assigned claims and the respective debtors, that it notify the respective debtors of the assignment, and that it deliver and provide to VW-WEST all records and information needed by VW-WEST to assert the claims.
- 10.14 The collection authority granted by VW-WEST does not generally give the customer the right to assign the claims further to third parties. The customer may, however, assign the claims by way of genuine factoring if all of the requirements set out below are fulfilled:
- VW-WEST is informed without delay of the factoring bank;
  - VW-WEST is informed without delay of the customer's bank accounts maintained at the factoring bank;
  - The proceeds from factoring exceed the value of VW-WEST's secured claim.
- VW-WEST's claim shall become due immediately upon the proceeds from factoring being credited to the relevant bank account.
- 10.15 The authority given in clauses 10.4, 10.5, 10.10, and 10.13 above to process, combine and mix the Delivery Items, sell the Retention-of-Title Goods, and collect claims shall expire without any further action being required (condition subsequent) upon the customer applying for the institution of insolvency proceedings, or upon an application to institute insolvency proceedings being filed against the customer, or upon insolvency proceedings being instituted against the customer's assets.
- 10.16 If VW-WEST rescinds the contract in accordance with the provisions set out in clause 11.1 below (enforcement event), VW-WEST shall have the right to inspect the Retention-of-Title Goods, demand their surrender, and sell or otherwise dispose of them as provided in clause 11 below.
- 10.17 At the request of the customer, VW-WEST will be obliged to release the security to which VW-WEST is entitled to the extent that – taking into account the downward value adjustments customarily applied in the banking industry – the realisable value of such security exceeds VW-WEST's claims arising out of the business relationship with the customer by more than 10%. VW-WEST will be responsible for selecting the security to be released.
- 10.18 In the event of an attachment of the Retention-of-Title Goods or other interferences by third parties, the customer must point out VW-WEST's ownership and notify VW-WEST without delay in writing so as to enable VW-WEST to enforce its ownership rights. The customer shall use its best endeavours to assist VW-WEST free of charge with the enforcement of VW-WEST's ownership rights; in particular, the customer shall provide all necessary records and issue all declarations. If the third party is unable to reimburse VW-WEST for the judicial or extra-judicial costs incurred in this connection, the customer shall be liable for these costs.
- 10.19 In the event that the goods are delivered to countries with a different legal system where the retention-of-title provisions set out in clauses 10.1 to 10.15 above do not provide the same degree of security as in the Federal Republic of Germany, the customer hereby grants VW-WEST a corresponding security interest. If this requires further steps to be taken, the customer shall do whatever is necessary to grant VW-WEST such a security interest without delay. The customer shall assist with all measures that are necessary and useful for the validity and enforceability of such security interests.
- 11. Rescission**
- 11.1 If the customer commits a breach of contract, in particular, if the customer defaults on a payment, VW-WEST may, without prejudice to any other contractual or statutory rights, rescind the contract upon expiry of a reasonable additional period of time set for performance.
- 11.2 VW-WEST may rescind the contract without setting an additional period of time for performance if the customer ceases to make payments or applies for the institution of insolvency proceedings or of similar debt settlement proceedings against its assets.
- 11.3 After notice of rescission has been given, the customer shall, without delay, grant VW-WEST or VW-WEST's agents access to the items to which title has been retained and surrender these items. After giving sufficient advance notice to this effect, VW-WEST shall have the right to sell the items to which title has been retained elsewhere, or dispose otherwise of them, with a view to achieving the settlement of its claims due from the customer. The proceeds from

- such sale or other disposition shall – upon deduction of reasonable sales or disposition costs – be credited against the customer's liabilities.
- 11.4 The provisions of this clause 11 shall not restrict any statutory rights or claims.
- 12. Confidentiality**
- 12.1 The customer is obliged to maintain the confidentiality of all information to which the customer gains access via VW-WEST and which is designated as confidential or can be identified as a trade or business secret based on other circumstances for an unlimited period of time and to desist from recording, disclosing, or otherwise exploiting any such information.
- 12.2 The customer shall make suitable contractual agreements with the employees and agents working for it to ensure that they, too, desist for an unlimited period of time from any exploitation, disclosure, or unauthorised recording of such trade and business secrets.
- 12.3 The obligation to maintain confidentiality does not apply to information which is demonstrably already lawfully known to the customer or which demonstrably becomes known to the customer outside the contract without violation of any obligation of confidentiality. A disclosure of trade or business secrets of VW-WEST which is demonstrably required for the fulfilment of statutory obligations shall be permitted; in such case, the customer must inform VW-WEST without delay in text form of the impending disclosure or, where applicable, of the disclosure made.
- 13. Data Protection**
- 13.1 The processing of personal data (hereinafter "Data") by VW-WEST shall be carried out in accordance with the applicable data protection laws, in particular, the General Data Protection Regulation (hereinafter "GDPR"). Verpackungswerk West GmbH, Schwarzer Weg 95, 52459 Inden, telephone: 02465 990050; email: [datenschutz@vwwest.com](mailto:datenschutz@vwwest.com), is controller of the data processing within the meaning of the GDPR.
- 13.2 The data protection officer of VW-WEST can be reached at: [datenschutz@vwwest.com](mailto:datenschutz@vwwest.com).
- 13.3 Your Data will only be processed if it is
- necessary for the performance of a contract (Art. 6 Para. 1 lit. b GDPR). The data processing is necessary, in particular, to ensure the completeness and correctness of the data and to be able to execute the contract;
  - necessary for compliance with a legal obligation (Art. 6 Para. 1 lit. c GDPR). The data processing is necessary, in particular, to ensure the completeness and accuracy of tax data in accordance with the German Fiscal Code (AO).
- The Data collected by us for the order will be stored until the statutory warranty obligation expires and then automatically deleted; unless we are obliged to keep such for longer storage due to retention periods. As the provision of your abovementioned Data is necessary for the conclusion of the contract, the failure to provide this Data means that the sales contract cannot be concluded.
- 13.4 We shall pass on your Data to third parties if, in accordance with Art. 6 Para 1 lit. b GDPR, this is necessary for the execution of the contractual relationship. This shall include, for example, passing on the necessary Data to service partners or to processors. All Data shall of course be treated as strictly confidential. Our service providers and processors are obliged by us in writing to adhere to the strict requirements of the GDPR and may not use the Data for any other purposes. If we make advance payments on a purchase made by you, we shall obtain credit information from the following company in accordance with Art. 6 Para. 1 lit. f GDPR in order to protect our legitimate interests with regard to payment defaults:  
Creditreform Pinneberg Wall KG, Waldstrasse 5, 25421 Pinneberg, [www.creditreform-pinneberg.de](http://www.creditreform-pinneberg.de).
- 13.5 The general duration of the storage of your Data depends on the conclusion of the contract.
- If you do not enter into a contract with us, your Data will be deleted 12 months after the last contact between you and VW-WEST.
  - Your Data which is relevant to a contract, in particular, Data relevant under tax law, will be deleted after the statutory retention periods expire.
- 13.6 In accordance with Art. 21 GDPR, you have the right to object to the processing of your Data on the basis of a legitimate interest on our part or on the part of a third party, insofar as there are reasons for this which arise from your particular situation or the objection is directed against general or direct advertising tailored towards you. In the latter case, you have a general right to object, which will be implemented by us without you having to refer to a particular situation. If you would like to exercise your right of withdrawal or objection, please send an email to [datenschutz@vwwest.com](mailto:datenschutz@vwwest.com) or contact us by another means of communication.
- 13.7 You have the following rights regarding your Data that is processed by us:
- the right to access the personal data that we have stored in accordance with Art. 15 GDPR;
  - if applicable, the right to rectify inaccurate personal data, or the right to have incomplete personal data completed, that is stored by us in accordance with Art. 16 GDPR;
  - the right to erasure of your Data stored by us, and the right for it to be forgotten, in accordance with Art. 17 GDPR;
  - the right to restrict or block the processing of your Data in accordance with Art. 18 GDPR;
  - if applicable, the right to data portability in accordance with Art. 20 GDPR;
  - the right to object to your Data being processed in accordance with Art. 21 GDPR;
  - the right to withdraw any consent if given in accordance with Art. 7 Para. 3 GDPR;
  - the right to lodge a complaint with a supervisory authority in accordance with Art. 77 GDPR.
- 14. Return of Packaging**
- 14.1 If the customer decides to return packaging, in particular shipping packaging and transport packaging, which is subject to the take-back obligation of VW-WEST, this packaging shall be returned to the premises of VW-WEST.
- 14.2 If this packaging also includes packaging which does not originate from supplies of VW-WEST and if the quantity of this packaging exceeds the usual quantities and the take-back capacities of VW-WEST, the take-back of this packaging can be refused. The assessment of the usual quantities and the capacities shall be made by VW-WEST.
- 14.3 Upon request of VW-WEST, the customer shall furnish proof by means of suitable documents (e.g. delivery documents) that the returned packaging are those from deliveries of VW-WEST.

14.4 If the returned packaging does not originate from deliveries of VW-WEST, the Customer shall be obliged to reimburse VW-WEST for the costs arising from the disposal.

### **15. Governing law, place of jurisdiction**

15.1 The legal relations between the customer and VW-WEST shall be governed by the laws of the Federal Republic of Germany, without regard to the provisions of private international law and without regard to the United Nations Convention on Contracts for the International Sale of Goods (CISG).

15.2 The exclusive place of jurisdiction and place of performance for all domestic (German) disputes in connection with this contract, or with regard to its validity, vis-à-vis businesspersons and legal persons under public law shall be Jülich, Germany, whereas the Local Court of Jülich shall be the sole competent court for disputes that are allocated by law to the local courts. VW-WEST may also sue the customer at the customer's seat or at any other permitted place of jurisdiction.

15.3 Any dispute, controversy, or claim arising in the context of cross-border (international) business relations out of, or in relation to, this contract, including its validity, invalidity, breach, or termination, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution, as in force on the date on which the notice of arbitration is submitted, without recourse to the ordinary courts of law. The exclusion of recourse to the ordinary courts of law does not apply to proceedings to obtain a preliminary injunction, nor to proceedings to contest or enforce the award.

15.4 The arbitral tribunal shall be composed of three arbitrators. The arbitrators must be in command of the language that is to be used in the arbitral proceedings.

15.5 The language to be used in the arbitral proceedings shall be German for contracts with customers who are based in a German-speaking country or area and English for all other contracts with customers, unless the parties have agreed that another language is to be used in the arbitral proceedings.

15.6 The seat of the arbitration shall be Cologne, Germany.

### **16. Miscellaneous**

16.1 Any transfer of rights and obligations of the customer to a third party shall require the written consent of VW-WEST.

16.2 The contractual language shall be German for contracts with customers who are based in a German-speaking country or area and English for all other contracts with customers.

16.3 The place of performance for all obligations to be performed by the customer and by VW-WEST shall be VW-WEST's seat.