

**SALES CONDITIONS**  
(the “Sales Conditions”), *Version 2020*

**Art. 1 Applicability and entire agreement**

These Sales Conditions apply to any order and order confirmation related to sale of paper and board (the “Goods”)

1. through legal entities of Sappi Europe (the “Seller”);
2. through agents of legal entities of Sappi Europe;
3. to a buyer (the “Buyer”).

jointly the “Parties” or individually the “Party”.

References by the Buyer to its own purchasing conditions in an order or other written document are not binding despite a subsequent sale of Goods by the Seller in response to this solicitation. Any conditions used by the Buyer are herewith explicitly excluded.

Together with any terms accepted by the Seller in connection with an order (see [Article 3](#)) these Sales Conditions constitute the entire agreement between the Seller and the Buyer in relation to the Goods ordered and supersede all other agreements (the “Contract”). Any amendments to the Contract must be expressly agreed in writing by authorised representatives of the Parties.

**Art. 2 Notification of Order**

Every purchase order (the “Order”) for the Goods must be transmitted in such a way that the Seller is given at least the following information clearly and unambiguously:

1. Reference to a possible quotation (exchange of correspondence, a visit, sending of price lists...);
2. Quantity;
3. Quality, with reference to a grade, a brand or samples supplied, as well as any other indication which may be necessary;
4. Requested type of forest certification such as FSC™ or PEFC™;
5. Presentation type of packing;
6. Delivery dates, destinations and method of delivery (incl. applicable Incoterm);
7. Agreed price;
8. Agreed conditions of payment;
9. In the case of reels:
  - width of reels;
  - diameter of reels;
  - interior diameter of cores;
  - basis weight (grammage per m<sup>2</sup>) or thickness (in hundredths of mm).

In the case of sheets:

- dimensions;
- machine direction, if appropriate;
- basis weight (grammage per m<sup>2</sup>) or thickness (in hundredths of mm).

### **Art. 3 Formation of Contract by Order Confirmation (Confirmation of receipt of order)**

The Contract is formed and the Parties are bound by this Contract when the Seller has confirmed the Order in a manner which covers all or substantially all the points mentioned in Article 2 (the "Order Confirmation"). The Order Confirmation constitutes the basis of the Contract. The details listed in the Order Confirmation are considered correct and accepted by the Buyer. If after entering into the Contract the total costs of production and transportation increase ten (10) per cent or more, the Seller has the right to increase even firm prices by the corresponding proportion (from the day the increases/introduction become effective). The Buyer has the right to cancel the undelivered part of the contractual quantity in writing within five (5) business days after the announcement of the price increase.

### **Art. 4 Specifications**

The Seller will deliver the Goods in accordance with the specifications regarding quantity and quality as specified in the Contract (**the "Specifications"**).

### **Art. 5 Transfer of risk and title**

#### **a) Risk**

The risk of loss or damage to the Goods will pass to the Buyer in accordance with the agreed Incoterm.

#### **b) Title**

The Seller reserves ownership of the Goods delivered to the Buyer until the Seller has received payment for the Goods concerned and all sums owed by the Buyer through their business relationship.

The Buyer may convert or resell the Goods in the course of normal commercial operations and hereby assigns to the Seller all claims arising from the conversion or resale of the Goods concerned.

The Buyer further acknowledges that until ownership passes

- it must hold the Goods on a fiduciary basis as the Seller's bailee;
- it must store the Goods separately and be able to identify them as the Seller's property;
- it must insure the Goods against loss or damage and has a duty to inform the Seller immediately of any action taken by third parties against the reservation of ownership (for example any seizure etc.);
- the Seller is entitled, without previous notice, to enter the Buyer's premises for the purpose of retaking possession of the unpaid Goods if payment of an invoice is not received in full by the respective due date and/or an insolvency proceeding<sup>1</sup> has been opened or rejected due to lack of funds.

### **Art. 6 Delivery and Force Majeure**

The delivery period begins with the date of the Order Confirmation. The place of delivery is defined by the agreed Incoterm. The Seller will inform the Buyer of foreseeable delays in delivery.

The Seller is freed of its obligation by any event beyond his reasonable control which prevents or delays delivery of the Goods such as lack of raw materials and other indispensable supplies, machine breakdowns or lack of motor power, labour problems, lack of means of transport (**the "Force Majeure Event"**).

The Seller is responsible for notifying the Buyer of the existence of, and reasons for, any temporary delay or his complete inability to supply due to a Force Majeure Event. If the non-performance is only temporary, performance of the Contract will be suspended. If, however, its duration exceeds consecutive fourteen (14) calendar days, either Party has the right to terminate the Contract without compensation. If, at the time the Force Majeure Event arises, the Seller has already produced part

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<sup>1</sup> In the meaning of Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast).

of the Order, the Buyer is obliged to take delivery of the quantity made under the conditions already agreed.

#### **Art. 6A Failure to collect the Goods**

When the Buyer does not collect the Goods when notified that they are available or postpones a due delivery, the Seller is entitled to put the Goods in a warehouse, raise the corresponding invoice and charge any costs related to the Buyer's delayed acceptance incurred between the initially agreed delivery date and the date of the actual physical supply of the Goods to the Buyer. The Buyer agrees that the transfer of risk occurs at the initially agreed delivery date.

#### **Art. 7 Payment and payment delays**

##### **a) Period for payment**

The agreed period for payment always starts on the invoice date.

##### **b) Place of payment**

Unless otherwise agreed, the place of payment is the registered office of the Seller. Commercial representatives or agents of the Seller may not collect the amounts on the invoices unless they carry special authority to do so.

##### **c) Risks and expenses in settlement**

The risks and expenses pertaining to the transfer of funds are the responsibility of the Buyer. Should the Seller accept payment by draft, its cost and any expenses arising from possible discounting will be for the Buyer's account.

##### **d) Letter of credit**

If payment is made by letter of credit, such letter of credit has to be presented to the Seller confirmed by its bank at the set date. If the Buyer does not fulfil this obligation, the Seller is entitled to cancel the Contract.

##### **e) Delays in payment and decrease of the Buyer's creditworthiness**

If payment of an invoice is not received on the Seller's bank account at the latest on the due date, without prejudice to any other right, the Seller is entitled to:

- cancel confirmed Orders, including the right to stop any deliveries in transit and to suspend future deliveries;
- claim interest of eight point five percent (8.5%) p.a.;
- claim an amount of 40 EUR for administrative and internal costs as well as reasonable compensation from the Buyer for any recovery costs exceeding the 40 EUR incurred due to the Buyer's late payment. This includes expenses for, inter alia, instructing a lawyer or employing a debt collection agency;
- ask for immediate payment of all outstanding invoices whether due or not;
- request payment before production or delivery of future Orders.

The Seller is also entitled to cancel confirmed Orders and to suspend future deliveries if the Buyer's creditworthiness has been reduced or if the Buyer has reached its credit limit.

#### **Art. 8 Inspection of the Goods and Claims**

##### **a) Acceptance**

The Buyer must inspect the Goods immediately upon their receipt. If the Buyer notices either a difference between the quantities delivered and the quantities declared on the transport documents, or apparent damage to the Goods, he must immediately state his reservations to the forwarding agent and, at the same time, inform the Seller in writing.

Any complaint which the Buyer may have with respect to the quality of the Goods must be made in

writing immediately and before use but not later than

- ten (10) business days after receipt of the Goods for obvious defects which can be revealed by simple examination or elementary check; and
- not later than six (6) months after receipt of the Goods and within ten (10) business days following the discovery of the defect for concealed defects which can only be revealed by a thorough examination, test or normal passage through the machine.

After notification at the proper time of any defects, the subsequent conversion of the Goods which form the object of the complaint can only take place with the prior written approval of the Seller.

If the Buyer does not observe the time limits stipulated above in this clause, the Goods are considered to have been accepted. Consequently, no claims will be effective against the Seller and the Buyer will lose all right to compensation. The portion of the consignment already converted cannot form the object of a claim and for any claim to succeed, at least ninety (90)% of the quantity of the contested Goods must remain available, intact and readily identifiable. Observation of a defect in one portion of the Goods cannot justify rejection of the whole consignment. A complaint about a portion of the Goods does equally not release the Buyer from the obligation to pay within the agreed period for the whole consignment.

#### **b) Action following a justifiable complaint**

Should a complaint be accepted by the Seller, the Seller will take back or dispose of at his own expense the defective Goods. The Buyer must make them available in good condition (other than the defects notified to the Seller) and in the original or equivalent presentation and packing. The Seller will then replace the Goods at once or as soon as his production capacity and other engagements permit. Such replacement precludes any further compensation to the Buyer.

Should the Seller not supply the replacement Goods within a suitable period, however, or should the new Goods also be defective, the Buyer is entitled to a reduction in the selling price or to cancellation of the Contract. The Buyer is not entitled, however, to claim for any damages and interest to cover consequential losses unless he has received a specific guarantee against such losses or unless the losses are attributable to gross negligence or wilful misconduct on the part of the Seller.

### **Art. 9 Applicable law and jurisdiction**

The Contract is governed by and construed in accordance with the laws of Austria, with the exclusion of its conflict of laws principles and the 1980 United Nations Convention on Contracts of the International Sale of Goods (Vienna Convention).

Exclusive jurisdiction for all disputes arising out of or in connection with the European order for payment procedure (European Payment Orders, EPO)<sup>2</sup> will be the competent court of Vienna (Austria). All other disputes arising out of or in connection with the Contract will exclusively be held at the competent court of Graz (Austria).

### **Art. 10 Confidentiality and data protection**

#### **a) Confidentiality**

The Parties acknowledge that the performance of the Contract may require the access to, disclosure or exchange of certain confidential information of the other Party such as strategic, commercial or technical information or trade secrets (jointly the **“Confidential Information”**). The Parties will make reasonable efforts to duly mark such information as “confidential” or as “trade secret”. The receiving Party commits to:

- not disclose Confidential Information to any third party directly or indirectly;
- make Confidential Information available only to those members of its personnel and affiliates who reasonably need to know the Confidential Information to perform the Contract and who are under a confidentiality agreement;

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<sup>2</sup> Regulation (EC) 1896/2006 of 12 December 2006 creating a European order for payment procedure.

- use the Confidential Information solely for the performance of this Contract and neither commercially nor otherwise utilise the Confidential Information for itself or for the benefit of any other natural or legal person;
- use the same degree of care to protect the Confidential Information received as it does in protecting its own Confidential Information from any unauthorised disclosure, use or loss.

The above obligations will not apply to any information which:

- was rightfully known to the receiving Party prior to the disclosure hereunder;
- was known to the public or generally available to the public, prior to the disclosure hereunder;
- becomes known to the public or generally available to the public, other than by act of the receiving Party, subsequent to disclosure hereunder.

## **b) Processing of personal data**

To perform the Contract and for applicable legitimate business purposes<sup>3</sup>, the Parties will have access to and potentially process personal data of the other Party's personnel or business partners.

When processing any personal data, the Parties agree to comply with the applicable European data protection legislation<sup>4</sup>. Further details on the Seller's data processing are set forth in its Privacy Notice for Business Partners and Website Users<sup>5</sup>.

## **11 Weight tolerances of deliveries**

### **I. Papers and boards in sheets**

As the assessment of the differences between the weight ordered and the weight supplied must be made for each Order or part Order subject to the same delivery date and concerning a single grade (furnish, shade, finish and other specifications) and a single size, the tolerances will be according to the size of the tonnages delivered and based on the CEPAC General Conditions of Sale 1991 (**the "GSC"**).<sup>6</sup>

### **II. Papers and boards in reels**

As a result of variety of reel dimensions it is impossible to fix the quantitative tolerances uniformly. Consequently, the Seller and the Buyer will have to set specific tolerances.

## **Art. 12 Tolerances in counting accuracy**

For Orders based on a counted number of sheets per delivery of printing papers or per wrapped unit or counted unit, the tolerances will be based on the GSC.

## **Art. 13 Basis weight tolerances**

The average basis weight delivered must comply with tolerances stipulated in the Specifications and are based on the GSC.

## **Art. 14 Tolerances on thickness**

If a particular thickness is imperative for a precise end use the Buyer should agree with the Seller on an appropriate tolerance to replace the basis weight tolerance.

<sup>3</sup> The legitimate business purposes include: performance of the Contract; Customer relationship and order management; billing purposes; provision of technical-commercial information on products and services; (direct) marketing; dealing with potential enquiries and requests of customers; communication data (merely to contact someone); public relations; statistics; access control and safety and dispute management.

<sup>4</sup> In particular Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data (EU General Data Protection Regulation or GDPR).

<sup>5</sup> Available on Seller's website [www.sappi.com](http://www.sappi.com) (Privacy notice).

<sup>6</sup> Articles 12 and following of the 1991 "General Conditions of Sale of Paper and Board Manufacturers in EEC" by CEPAC (European Confederation of Pulp, Paper and Board Industries) predecessor of CEPI (Confederation of European Paper Industries), as confirmed by CEPI on 6 March 2007. The GSC are published on Sappi's website or directly available from CEPI. In case of differences between the GSC and the Sales Conditions, the latter prevail.

## **Art. 15 Tolerances on dimensions of paper and board on reels**

### **I. Width**

For reels whose width does not exceed 1.60 m, the width tolerance on the reel is  $\pm 0.5\%$  with a maximum of  $\pm 3$  mm and a minimum of  $\pm 2$  mm. If the Buyer stipulates a maximum or minimum reel width the above tolerance is doubled. For reels whose width exceeds 1.60 m tolerances are to be fixed by separate agreement.

### **II. Diameter**

In the case where the diameter of the reels is specified in the order and where this requirement has been accepted by the vendor, the tolerance concerning variation in diameter is for papers or boards based on the tolerances set out in the GSC. Reels coming at the end of the parent reel of the last consignment will nevertheless have to be accepted by the Buyer provided that their diameters are more than half of the diameters ordered.

## **Art. 16 Tolerances on dimensions and squareness of papers in sheet form**

Tolerances on dimensions and squareness for papers and boards in sheets form or for cylinder boards, boards for special purposes and straw boards are based on the GSC. Lower tolerances can be agreed upon in the respective Contract.

## **Art. 17 Test methods**

Testing specifications will be in accordance with the most recent ISO standards. In the absence of standards, checking specifications applicable in every case will be the subject of a previous or separate agreement.