



General Terms and Conditions of Sale and Delivery for NYCO Flexible Packaging GmbH (Solithurnstrasse 28, 3422 Kirchberg), hereinafter referred to as "NYCO"

Version dated September 2019

1. VALIDITY OF THE GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

1.1. Scope: These General Terms and Conditions of Sale and Delivery (hereinafter referred to as "GCS") shall apply to all supply relationships between NYCO and the PURCHASER, including the ordering of products and/or services (hereinafter referred to as "Products") provided by NYCO to the PURCHASER and/or its customers and for the licensing of software.

Subject to revocation by NYCO, these GCS shall also apply to all future deliveries by NYCO, even if they are not expressly agreed again.

1.2. Changes: The PURCHASER will be informed of any changes to the GCS without delay. If the PURCHASER does not raise a justified objection in writing within 30 calendar days of delivery of the changes, they shall be deemed accepted by him and shall enter into force simultaneously.

1.3. No validity of the PURCHASER's GTCs: General Terms and Conditions or other PURCHASER documents which replace, amend, supplement or contradict these GCS shall be expressly rejected and have no legal effect even if referred to in business correspondence.

2. CONCLUSION OF CONTRACTS AND FORMAL REQUIREMENTS

2.1. Conclusion: NYCO's offers are always subject to change without notice. Orders from the PURCHASER shall be deemed to be an application for the conclusion of a contract. The contract shall become binding when NYCO confirms the PURCHASER's order in writing or by actual fulfillment.

2.2. Product specifications, product photos, technical specifications, etc.: All product specifications, product photos, technical specifications, etc. are provided without guarantee. NYCO's valid specifications at the point in time of the order confirmation shall be deemed decisive.

2.3. Ownership and copyrights: NYCO reserves the right of ownership and copyrights for samples, formulae, drawings and further documents. The PURCHASER is expressly prohibited from making such documents accessible to third parties without prior agreement in writing.

2.4. Reservation regarding form: Changes and additions to written agreements not in these GCS must be made in writing with agreement by both parties in order to attain validity. This shall also apply to any relinquishment of the requirement of the written form.

2.5. Oral agreements: All types of oral agreement by NYCO employees shall be conditional and only become effective with the corresponding written confirmation by NYCO.

3. PRICE AND PAYMENT TERMS

3.1. Principle: Prices are deemed DAP (Delivered At Place according to the Incoterms 2010), in as far as nothing else has been agreed in writing. The legally applicable VAT is charged extra.

3.2. Preparatory work: NYCO shall reserve the right to set off the costs for preparatory work (e.g. samples, models, sketches, drafts, etc.) even if no supply contract is concluded between the parties.

3.3. Invoicing: NYCO shall be free to deliver invoices by electronic means. Invoices from NYCO shall be deemed recognised if the PURCHASER does not raise an objection to them within ten (10) calendar days following their issue.

3.4. Term of payment: The purchase price stated in the invoice is to be paid strictly net within 30 days of the invoice date. Unauthorised discounts and further deductions shall be charged subsequently.

Discounts agreed with the PURCHASER and further benefits assume the punctual and full settlement of the respective invoice.

3.5. Default in payment: If the purchase price is not paid within 30 days of the invoice date, the PURCHASER shall automatically be in default of payment, also without a reminder. In case of default in payment by the PURCHASER, NYCO shall in particular be entitled to stop its services, retain products not delivered and to demand default interest. Furthermore, NYCO shall retain the right to exercise its statutory rights of default.

3.6. Deduction: Payments received by NYCO shall first be credited against costs and interest, then against unsecured claims and otherwise against the oldest claims, even if the PURCHASER provides deviating instructions.

3.7. Offsetting prohibition: The PURCHASER shall not be entitled to offset his claims against NYCO's claims.

3.8. Worsening of the PURCHASER's financial circumstances: Any deterioration in the PURCHASER's financial circumstances, in NYCO's opinion, as well as the non-payment of previous invoices and/or the opening of insolvency proceedings (or other similar proceedings) against the PURCHASER's assets, shall entitle NYCO, without regard to the agreed terms of payment and delivery, to make delivery dependent on advance payment of the entire purchase price and to postpone execution of the order or cancel orders and demand compensation for the loss incurred as a result of the rescission. Neither the threat nor setting of a grace period shall be required for exercising this right.

4. PACKAGING AND SHIPPING

4.1. Packaging material: Packaging shall be made at NYCO's option. If not otherwise agreed, the packaging material included is sold to the PURCHASER in combination.

4.2. Shipping: NYCO normally ships the products DAP (Delivered At Place) by truck or rail. Shipping instructions shall only be binding for NYCO if NYCO has confirmed them in writing.

4.3. Additional expenses: If additional expenses are incurred by NYCO due to circumstances at the PURCHASER's (for example relating to unloading) or at the PURCHASER's request (for example express deliveries), the additional expenses shall be borne by the PURCHASER.

5. DELIVERY, DELIVERY DATES AND DEADLINES

5.1. Production site, place of dispatch and collection: The production site, place of dispatch or collection can be freely selected by NYCO.

5.2. Delivery dates and deadlines: Delivery deadlines and dates shall only be binding if they have been agreed in writing. The delivery deadlines run from the date of order confirmation by NYCO in as far as not otherwise agreed in writing. If the PURCHASER fails to comply with any advance performance and/or cooperation obligations (e.g. regarding artwork, binding nature of the colour sample, good for printing, etc.), the delivery periods shall not commence until these obligations have been met in full.

NYCO reserves the right to postpone the delivery date at short notice prior to delivery by notifying the PURCHASER accordingly.

5.3. Default in delivery: Non-adherence to delivery dates shall not entitle the PURCHASER not to adhere to the commitments to NYCO, to change them, to withdraw from the contract or to claim any kind of damages – unless the non-adherence to the delivery date is based on intent or gross negligence.

5.4. Force majeure: If performance of the contract is disturbed or rendered impossible due to force majeure or events beyond NYCO's control, NYCO may extend the delivery periods or withdraw from the contract without becoming liable to pay costs or compensation to the PURCHASER. If NYCO has culpably failed to meet the deadlines or dates for its deliveries, the PURCHASER shall be entitled, after granting a grace period of 60 days and if passing unmet, to withdraw from the contract or, in the case of deliveries from a total order, to waive partial delivery. The PURCHASER explicitly waives the right to assert claims for damages and any claims arising from delayed or non-delivery unless the PURCHASER's claims are based on NYCO's gross negligence.

5.5. Call-off purchase contracts If no call-off from call-off purchase contracts takes place within six (6) months, NYCO can demand fulfillment or withdraw from the contract after giving prior notice. Any entitlements to claims for damages shall remain unaffected by this.

5.6. Storage of manufactured products and default in acceptance: If products manufactured for delivery remain as agreed stored at NYCO and available to the PURCHASER or if the PURCHASER is in default of collection or acceptance of the products, NYCO may immediately issue the invoice and demand payment. The products are then stored at the PURCHASER's expense and risk.

6. THE PURCHASER'S DUTIES

6.1. Reproduction records: The PURCHASER provides NYCO all necessary data in digital form on the usual data carriers or via electronic transfer. The PURCHASER bears the consequences of insufficient data contents (for example relating to resolution, colour definition, breaks, etc.) for his own templates. NYCO shall neither be bound to store these print templates nor to return them to the PURCHASER.

NYCO shall not be bound to check the data delivered by the PURCHASER for its legal permissibility. However, NYCO reserves the right to refuse the acceptance of data in as far as NYCO has doubts regarding its legality. **The PURCHASER's control measures:** Prior to or during all processing, the PURCHASER alone is responsible for appropriate product controls and must withdraw damaged packaging from circulation and inform NYCO of this. The PURCHASER is obliged to ensure that safety measures in accordance with the state-of-the-art are adhered to with due diligence during processing.

6.2. Legal warranty: Reproduction and printing / The PURCHASER shall be liable for the instructions, information or templates concerning forms, versions and that decors do not intervene in copyrights or further third-party industrial property rights and must indemnify NYCO of suchlike. If NYCO becomes involved in litigation with any third party, the PURCHASER shall be notified and shall be obligated from that time to unconditionally assist NYCO or its contractual partners in conducting the litigation out of court and/or in court.

7. MATERIAL GUARANTEE

7.1. Principle: NYCO shall only guarantee the suitability of the delivered products for the special purposes intended by the customer if these purposes have been assured by NYCO in writing in the contract. The PURCHASER may not use products purchased for a specific purpose for any other purpose. If the state of the delivered products does not deviate significantly from the agreed state, specification and/or quality, the delivered products shall not be deemed defective. Equally, minor colour deviations and technically unavoidable matching differences shall not entitle the assertion of a complaint. With regard to weight, contents, dimensions and print version, if not ruled differently below under Clause 8, the statutory tolerance limits or those customary in the sector shall be valid. Without express written agreement, NYCO does not warrant that the products delivered will comply with the laws and legislation beyond the applicable law according to the following Clause 15. 2..

7.2. Scope: NYCO's warranty complies with the quality guarantee provided by NYCO. NYCO shall only be liable in cases of intent or gross negligence. Furthermore, NYCO shall not be liable for damages which occur to or by the products following delivery.

7.3. Period for notification of defects: The PURCHASER shall examine the products delivered without delay following receipt. Apparent defects must be notified in writing without delay, at the latest five (5) days after receipt of the delivery. Otherwise, the delivery is viewed as rendered properly. Hidden defects must be notified in writing without delay, at the latest three (3) days after they have been discovered. Both apparent and hidden defects must be rebuked specifying the delivery date, article number, quantity and type of complaint as well as the delivery note and invoice number/s. Further-reaching legislative examination and obligation to give notice of defects shall remain unaffected. Complaints made late or not precisely described result in the loss of all of the PURCHASER's entitlements. The passing on of the products to third parties is considered as unconditional acceptance.

7.4. Limitation of material warranty claims: NYCO shall be liable for defects within the scope of statutory provisions for one year from the delivery of the products or the PURCHASER's default in acceptance.

7.5. Examination option for NYCO: If requested, the PURCHASER must provide NYCO with samples of defective products and allow NYCO to conduct examinations at the site where the products are processed and stored.

The costs and expenses for unjustified asserted material warranty claims shall be borne by the PURCHASER.

7.6. Rights arising from product defects: In case of justified and timely notifications of defects, NYCO may at its option rework the products, provide a replacement delivery or implement a price reduction. Replaced parts can be returned to NYCO.

The PURCHASER can only withdraw from the contract if NYCO has let a reasonable grace period set by the PURCHASER in writing lapse without rectifying the defect or providing a replacement. Returns must only be accepted by NYCO if previously agreed to and are made at the customer's risk. As long as the PURCHASER has not fulfilled its contractual obligations, NYCO can refuse to fulfil the PURCHASER's warranty claims.

Claims for damages by the PURCHASER against NYCO can only be asserted within the scope of Clause 5.3.

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8. TOLERANCE LIMITS

8.1. **Upper and lower delivery tolerance limits:** The upper and lower delivery tolerance limits are:

Quantities (m2)	Deviation (%)
0 m2 – 4,999 m2	30%
5,000 m2 – 9,999 m2	20%
Over 10,000 m2	10%

These tolerance limits are also valid for partial deliveries. After conversion to m2, the tolerance limits stated above shall be valid for further delivery units.

8.2. **Thickness, cut and dimension tolerance limits:** The thickness tolerance limits are:

- For aluminium foil, the tolerance limits according to EN 546-3 of $\pm 10\%$ are valid, whereby a confidence range of 90% is used as a basis
- For plastic film and composite film, the tolerance limits of $\pm 10\%$ are valid
- For paper and cardboard $\pm 10\%$ on the average of the delivery
- For further raw materials the customary tolerance limits in the trade

The cut and dimension tolerance limits are:

- ± 1 mm in each direction for formats;
- ± 1 mm in the roll width for rolls.

The diameter of the blanks and printing gaps in accordance with countersigned dimensional drawings.

9. RESERVATION OF TITLE

The delivered products as well as the items resulting from their processing or treatment shall remain the property of NYCO until full payment of the total purchase price including interest and costs.

This reservation of title shall also remain valid in case of further processing by the customer as long as the products have not been paid for in-full. In case of combining mixing or blending the products supplied by NYCO with other products, NYCO becomes a co-owner of the new item with a share corresponding to the ratio of the price of the products supplied by NYCO and the value of the other products. The PURCHASER shall store the new item free of charge to NYCO in all cases.

The PURCHASER shall be bound to inform NYCO without delay of access to the products delivered by NYCO with reservation of title by third parties (e.g. enforcement measures). If the PURCHASER is in arrears with payment, he must store the products at a location determined by NYCO as a collateral at his own expense or send them to an address to be stipulated by NYCO. Moreover, the PURCHASER waives the right of action for trespass for the case that NYCO collects the products supplied under retention of title.

The PURCHASER shall be authorised to resell the products in the ordinary course of business. He already now assigns NYCO all claims in the amount of the outstanding liabilities to NYCO which accrue to him against a third party through the resale and undertakes to notify the third party accordingly. NYCO accepts the assignment as security for outstanding payments. NYCO reserves the right to collect the claim itself as soon as the PURCHASER fails to meet its payment obligations properly and is in default of payment.

Printing cylinders and embossing rollers or other tools as well as print preparation material supplied by NYCO, such as drawings, clichés, photo work or film, shall remain the property of NYCO, even if they have been paid for in-full or in-part by the PURCHASER. The PURCHASER's right to use these materials for repeat orders without incurring any new costs shall expire one year after the date of the last order executed using them. After expiry of this period, NYCO shall be authorised to dispose of these materials.

10. DISCLAIMER AND LIMITATION OF LIABILITY

10.1. **Disclaimer of liability:** To the extent permitted by law, NYCO shall not be liable for the following, irrespective of the legal grounds:

- Damages to the supplied products themselves or arising through their use or further processing

- Replacement for (defect) consequential damages, atypical damages, direct damages, damages to assets, lost profit and/or damages/losses arising from the interaction of NYCO's products with third party products which arise at the customer's or the third party's
- Claims by third parties against the customer for whatever legal reason, e.g. contractual penalties
- Damages to or loss of samples, drawings and models received.

10.2. **Limitation of liability:** In as far as legally permissible, NYCO's overall liability from this contract or from whatever title, shall not under any circumstances exceed the total ex-works net price of the respective order.

10.3. **Limitation:** The limitation period for the PURCHASER's claims shall be one year following delivery of the products.

10.4. **Extended area of application:** The exclusion and limitation of liability according to Clause 10.1 and Clause 10.2 above shall be applied identically with reference to:

- NYCO's vicarious agents
- Orders to NYCO for all types of services/deliverables and
- Contractual collateral duties.

11. CONFIDENTIALITY

The PURCHASER and NYCO undertake to keep all information confidential which becomes accessible in connection with the contract and which is designated as confidential or is recognisable as a trade or business secret for any other reasons, in particular technical and economic information, and neither to record it nor to pass it on to third parties nor to exploit it in any way whatsoever during the term of the contract. This duty of confidentiality remains for a further five (5) years following the complete fulfilment or termination of the contract.

12. ASSIGNMENT

The PURCHASER's claims against NYCO may neither be assigned nor pledged in whole or in-part without NYCO's prior consent. If the PURCHASER nevertheless assigns his claims against NYCO to third parties or has them collected by third parties, NYCO may, at its option and with discharging effect, make payments to both the PURCHASER and the third party.

13. PLACE OF FULFILMENT

The place of fulfilment for deliveries, payments and all the parties' further duties is the NYCO seat.

14. SEVERABILITY CLAUSE

The invalidity of individual provisions of these GCS or the individual supply contracts shall not affect the validity of the remaining provisions. Ineffective provisions or gaps in the contract shall be replaced by provisions which come as close as possible to the economic meaning and the intended economic purpose of the ineffective or invalid provision.

15. CONTRACT LANGUAGE, LEGAL DOMICILE AND APPLICABLE LAW

15.1. **Contract language:** The contract language is German. Should both parties here use a different language, the German wording shall take precedence.

15.2. **Applicable law:** All legal relationships between the parties shall be governed exclusively by Swiss law, to the complete exclusion of any conflict of law provisions and to the exclusion of the United Nations Vienna Convention on Contracts for the International Sale of Goods dated 11.04.1980.

15.3. **Legal domicile:** The exclusive legal domicile for all disputes arising from or in connection with the individual supply contracts and/or these GCS shall be the competent courts at the seat of NYCO's registered office.

16. COMMENCEMENT

These GCS shall come into force on **01.10.2019** and replace all prior conditions of sale.