

## **General Terms and Conditions of Sale**

### **I. Application**

1. These General Terms and Conditions of Business, Delivery, Payment and Sale (hereinafter, "Conditions of Sale") shall apply to all offers, sales and deliveries made by WEBER Verpackungen GmbH & Co. KG to the customer, even if they are not expressly referred to in subsequent contracts. They shall apply exclusively in national and international business transactions with companies, legal persons under public law and special public funds.
2. Terms and conditions of the customer that conflict with, supplement or deviate from these Conditions of Sale shall not become part of the contract unless their application is expressly approved by WEBER Verpackungen GmbH & Co. KG in writing. These Conditions of Sale shall apply even if WEBER Verpackungen GmbH & Co. KG makes a delivery to the customer without reservations while being aware of the customer's conflicting or deviating terms and conditions.
3. Individual agreements with the customer shall, in any case, take precedence over these Conditions of Sale. Any rights beyond these Conditions of Sale to which WEBER Verpackungen GmbH & Co. KG is entitled by law shall remain unaffected.

### **II. Formation of contract**

1. All offers and cost estimates from WEBER Verpackungen GmbH & Co. KG shall be subject to change and non-binding unless they are expressly designated as binding offers.
2. Purchase orders shall not become binding until they have been confirmed by WEBER Verpackungen GmbH & Co. KG in writing or by fax or in text form by means of an order confirmation, unless the delivery is made and/or the invoice issued immediately. Order confirmations that are generated using automatic devices and, therefore, do not contain a name and signature shall be deemed to be in writing. To the extent that an order confirmation contains obvious errors, misspellings or calculation mistakes, it shall not be binding upon WEBER Verpackungen GmbH & Co. KG.
3. The customer shall be bound by its purchase order/offer for a period of 10 working days. The aforesaid period shall commence at the time of receipt of the purchase order/offer by WEBER Verpackungen GmbH & Co. KG.
4. The information that is contained in the specifications provided by WEBER Verpackungen GmbH & Co. KG shall be decisive for the quality of the delivery item owed by WEBER Verpackungen GmbH & Co. KG. The information contained in catalogues, brochures, circulars, advertisements, illustrations and price lists shall not determine the quality of the

delivery item unless expressly included in the specifications by reference to the specifications.

5. If the customer subsequently wishes any changes to be made to the order, such changes shall only be effective if mutually agreed between the parties.
6. Any illustrations, drawings, weights, measures and other descriptions of the goods or services which are contained in the records of WEBER Verpackungen GmbH & Co. KG shall be approximations only, to the extent not expressly designated as binding in a commitment made in writing or electronically. Such items shall not constitute an agreement on, or guarantee of, an according quality of the goods or services. In the event that a binding agreement on the target quality of the goods or services is made with the customer, changes by WEBER Verpackungen GmbH & Co. KG shall continue to be permitted to the extent that such changes are made because of mandatory legal requirements and that they are not unreasonable for the customer. WEBER Verpackungen GmbH & Co. KG reserves the right to make changes to the design and form of the goods to the extent that such changes are insignificant and not unreasonable for the customer. In the event that changes are unreasonable, the customer shall have the right to rescind the contract. All further claims shall be excluded.
7. Guarantees shall only be deemed given or the procurement risk be deemed assumed if the parties have made an express agreement to this effect in which it is expressly stated that a guarantee is given and/or that the procurement risk is assumed.

### **III. Delivery; delivery periods; default; force majeure**

1. Except to the extent expressly otherwise agreed, deliveries shall be made from the distribution warehouse of WEBER Verpackungen GmbH & Co. KG, Westerhaar 38, 58739 Wickede/Ruhr, which shall also be the place of performance. At the request and expense of the customer, the goods shall be shipped to another destination (hereinafter, "sale including shipment"); in that case, WEBER Verpackungen GmbH & Co. KG shall have the right to determine the manner of shipment (in particular, the transport company, the route of shipment, and the packaging) itself and deliver the goods to the person in charge of carrying out the transport. At the request and expense of the customer, WEBER Verpackungen GmbH & Co. KG shall take out a transport insurance policy and insure the goods against the risks specified by the customer.
2. The scope of the delivery shall be determined by the written order confirmation from WEBER Verpackungen GmbH & Co. KG. Any changes to the scope of the delivery and to the

delivery item itself which are requested by the customer must be confirmed by WEBER Verpackungen GmbH & Co. KG in writing to be valid.

3. WEBER Verpackungen GmbH & Co. KG may carry out partial deliveries unless this is unreasonable for the customer.
4. Unless otherwise agreed, where deliveries on call have been agreed, the customer shall be obliged to determine in advance delivery schedules that cover a period of at least 6 months and issue its requests for delivery timely before the respective delivery date in accordance with the delivery schedules so determined. If the customer does not comply with this obligation, or if it does not do so as determined, WEBER Verpackungen GmbH & Co. KG shall have the right, after setting a reasonable deadline and making an according announcement in that notice, to issue the request for delivery and/or perform the scheduling itself, deliver the goods, or rescind the contract. The right to claim damages for breach of an obligation shall not be excluded as a result of the contract being rescinded.
5. Except to the extent otherwise agreed, the time of delivery shall be the delivery date specified in the order confirmation. Where the customer has not provided all documents, permits, approvals, etc. that have to be obtained by the customer at least one month before the agreed delivery date, the set delivery date shall be postponed for a month, commencing at the point in time at which the above-mentioned documents, permits, approvals, etc. have been received in full by WEBER Verpackungen GmbH & Co. KG.
6. The delivery period shall commence when WEBER Verpackungen GmbH & Co. KG dispatches the order confirmation, but not before all documents, permits and approvals that may have to be obtained by the customer have been provided in full, the agreed down-payment, if any, has been received, and the customer has timely and properly provided any further cooperation owed.
7. An agreed delivery period shall be deemed met if, by the time the delivery period expires, WEBER Verpackungen GmbH & Co. KG has made the goods available at the place of delivery or – in the event of a sale including shipment, as defined in the second sentence of clause III.1 above – has handed the goods over to the person in charge of carrying out the transport or the customer has announced that it will refuse acceptance.
8. WEBER Verpackungen GmbH & Co. KG shall not be liable if delivery is impossible or there is a delay in delivery to the extent that this is due to force majeure or other events that could not be foreseen at the time of formation of the contract (e.g. operational disruptions, of whatever type, difficulties encountered in procuring materials or energy, delays in transport, strike, lawful lock-outs, shortage of labour or of energy or raw materials, pandemics, epidemics, difficulties in obtaining any required official permits, official measures, or no receipt of supplies, or the receipt of incorrect supplies or late receipt of supplies, from suppliers) and WEBER Verpackungen GmbH & Co. KG is not responsible

for such impossibility or delay. If such events make the delivery of goods or provision of services significantly more difficult or even impossible for the customer and the impediment is not merely temporary in nature, the customer shall have the right to rescind the contract. Where impediments are temporary in nature, the delivery period or time allowed for performance shall be extended, or the delivery date or date of performance postponed, for a period of time equal to the duration of the impediment plus a reasonable start-up period.

9. To the extent that, due to the delay, the customer can no longer reasonably be expected to accept the delivery or services, the customer shall have the right to rescind the contract by providing WEBER Verpackungen GmbH & Co. KG without undue delay with written notice to this effect. This right to rescind the contract shall only exist if WEBER Verpackungen GmbH & Co. KG is responsible for the delay.
10. To the extent that the goods were delivered to the customer on Euro pallets or wire mesh containers (load carriers), the customer shall be obliged to return the same number of load carriers of the same type and quality to WEBER Verpackungen GmbH & Co. KG at the place where the original delivery took place.
11. Without prejudice to the provisions of clause XII.1 below, the customer shall be obliged to examine the goods upon delivery for externally visible damage and report the damage, if any, to the transport company that carries out the delivery and ask the latter for an according confirmation in writing. If the customer fails to comply with this obligation, it shall be liable to compensate WEBER Verpackungen GmbH & Co. KG for any damage suffered as a result of such failure.

#### **IV. Passing of Risk**

1. The risk of accidental loss or destruction or accidental deterioration of the goods shall pass to the customer as soon as WEBER Verpackungen GmbH & Co. KG has made the goods available at the place of performance mentioned in the first sentence of clause III.1 above or – in the event of a sale including shipment, as defined in the second sentence of clause III.1 above – as soon as the goods have been handed over to the person in charge of carrying out the transport. This shall also apply if partial deliveries are made or if, unlike provided in the second sentence of clause III.1 above, WEBER Verpackungen GmbH & Co. KG has agreed to bear the transport costs in any particular case.
2. If the customer is in default of acceptance, WEBER Verpackungen GmbH & Co. KG may claim compensation for the damage suffered as a result of such default as follows: an amount equal to 0.5% of the net price of the delivery per day of default, but not more than 5% of the net price of the delivery in total. The parties may assert further claims for damages or prove that the amount of damage actually suffered was smaller. The risk of accidental

loss or destruction or accidental deterioration of the goods shall pass to the customer at the time the customer starts to default on its obligation to accept the goods.

3. Without prejudice to the customer's claims for defects, if any, the customer shall be obliged to take delivery of the goods supplied even if they contain minor defects. The customer shall further be obliged to take delivery of the goods supplied if the goods made available exceed or fall short of the quantity ordered by up to 5% or if the goods made available are delivered early, provided the delivery does not take place significantly ahead of schedule.

## **V. Prices**

1. The agreed price shall be the price in euros that is stated in the order confirmation, plus value-added tax. The statutory value-added tax is not included in the price and shall be stated separately on the invoice at the statutory rate applicable on the invoicing date. The cost of transport, insurance, customs, etc. shall be charged separately, unless otherwise agreed between the parties.
2. If the period between the order confirmation and the delivery exceeds four months and there is an increase in prices during this period of time, in particular because of an increase in wages or in the cost of raw materials, a general increase in prices due to inflation, or similar circumstances, WEBER Verpackungen GmbH & Co. KG shall have the right to charge an appropriately increased price. This shall also apply if, following the submission of the offer or order confirmation by WEBER Verpackungen GmbH & Co. KG, or the conclusion of a framework agreement providing for fixed prices by WEBER Verpackungen GmbH & Co. KG, the prices of the raw materials used for the goods concerned from time to time or other significant cost factors, in particular, energy, wage, transport or insurance costs, increase significantly (i.e. by at least 10%). In that case, WEBER Verpackungen GmbH & Co. KG shall have the right to raise the prices appropriately to the extent that they are affected by this increase in costs. WEBER Verpackungen GmbH & Co. KG shall carry out such price increases taking into account the customer's legitimate interests, in particular with regard to any commitments already made by the latter to resell the goods at a particular price. Upon request, WEBER Verpackungen GmbH & Co. KG shall furnish the customer with evidence of the factors leading to the change in prices. The above shall apply vice versa in favour of the customer upon an according reduction in prices. To the extent that one of the parties cannot reasonably be expected to adhere to the contract as a result of the price

adjustment, this party may rescind the contract by providing the other party without undue delay with notice to this effect.

3. In the event of deviations in quantity or weight that remain within the tolerances set out in clause VIII below, the price shall be calculated based on the quantity or weight actually supplied.
4. For products that are rolled, the weight of the winding core shall be included in the net weight. For packaged products, the net weight shall be determined by deducting the weight of the packaging from the total weight. The total weight comprises the net weight and the packaging and shall be determined by weighing.
5. Notwithstanding Section 195 German Civil Code (*BGB*), WEBER Verpackungen GmbH & Co. KG's claims for payment of the purchase price shall become time-barred within five years.

## **VI. Industrial Property Rights**

1. All printing materials made available by WEBER Verpackungen GmbH & Co. KG, such as drafts, drawings, blocks, films, cylinders and plates, shall remain the property of WEBER Verpackungen GmbH & Co. KG even if the customer pays part of the costs.
2. If any copyrights and/or industrial property rights are created through the development and performance of an order by WEBER Verpackungen GmbH & Co. KG, the sale of the delivery item shall not include the transfer of these rights. This shall also apply if the customer bears a portion of the development costs. In particular, WEBER Verpackungen GmbH & Co. KG shall have the right to exploit such copyrights and/or industrial property rights for the performance of third-party orders .
3. Except to the extent otherwise agreed, WEBER Verpackungen GmbH & Co. KG shall have the right to affix its company sign or a code visibly to the delivery items produced by it.
4. For samples, sketches, drafts, etc. that are expressly ordered or commissioned by the customer, a fee shall be payable even if the principal order for which these samples, sketches, drafts, etc. were created is not placed.
5. The customer shall be responsible for examining whether the documents made available by the customer infringe any third-party rights, in particular, copyrights or industrial property rights (designs, patents, utility models or trademarks). If WEBER Verpackungen GmbH & Co. KG is held liable by third parties for infringing copyrights and/or industrial property rights or for breaching the German Act against Unfair Competition (*UWG*) when using, exploiting or reproducing the documents and/or templates provided by the customer, the customer must support WEBER Verpackungen GmbH & Co. KG in the defence against such infringement and compensate WEBER Verpackungen GmbH & Co. KG for any damage,

including lawyers' fees and legal costs, thereby suffered by WEBER Verpackungen GmbH & Co. KG.

## **VII. Obligations under the German Packaging Act (*VerpackG*)**

1. If WEBER Verpackungen GmbH & Co. KG affixes the symbol of a region-wide system within the meaning of Section 3 (16) German Packaging Act (e.g. "Der Grüne Punkt") to the products on behalf of the customer, the customer will be deemed the "manufacturer" of the symbol within the meaning of the German Packaging Act and, therefore, will be required to pay the fees directly to such system.
2. If the customer violates the provisions of the German Packaging Act and WEBER Verpackungen GmbH & Co. KG is held liable due to such violation, the customer shall be obliged to reimburse WEBER Verpackungen GmbH & Co. KG for all expenses incurred in this connection.
3. If the packaging constitutes service packaging filled with goods within the meaning of Section 3 (1) sentence 1 no. 1 point a) German Packaging Act that is typically used or released by private end users and is placed on the market for the first time by the customer, the provisions set out in clause VII.1 above shall apply accordingly if the customer itself undertakes the participation in a system within the meaning of Section 3 (16) German Packaging Act.
4. If the customer demands in accordance with Section 7 (2) sentence 1 German Packaging Act that WEBER Verpackungen GmbH & Co. KG participate in one or more systems within the meaning of Section 3 (16) German Packaging Act with regard to the service packaging supplied by WEBER Verpackungen GmbH & Co. KG to the customer and that WEBER Verpackungen GmbH & Co. KG carry out the registration, perform the reporting of data and issue the declaration of completeness according to Section 7 (2) sentence 3 in conjunction with Sections 9, 10 and 11 German Packaging Act on behalf of the customer, the following provisions shall apply:
  - a) WEBER Verpackungen GmbH & Co. KG shall only assume the obligations under Section 7 (2) sentence 3 in conjunction with Sections 9, 10 and 11 German Packaging Act if the customer asks WEBER Verpackungen GmbH & Co. KG to do so in writing. In that case, WEBER Verpackungen GmbH & Co. KG must confirm this written request to the customer in writing.
  - b) If WEBER Verpackungen GmbH & Co. KG undertakes the participation in a system within the meaning of Section 7 (2) sentence 1 German Packaging Act and the registration, the reporting of data and the issuance of the declaration of completeness according to Section 7 (2) sentence 3 in conjunction with Sections 9, 10 and 11 German Packaging Act on behalf of the customer, the customer shall be obliged to

fully reimburse WEBER Verpackungen GmbH & Co. KG for the costs thereby incurred, i.e. the costs, including the administrative expenses, for using the region-wide system within the meaning of Section 3 (16) German Packaging Act (e.g. “Duales System”), as well as the cost of the registration, transfer of data and issuance of the declaration of completeness and – if desired – the cost of affixing the symbol of a region-wide system, such as “Der Grüne Punkt”.

- c) The cost of participating in a region-wide system, the cost of the registration, the transfer of data and the issuance of the declaration of completeness and – if desired – the cost of affixing the symbol of a region-wide system, such as “Der Grüne Punkt”, shall be stated separately for the customer on each invoice for the supply of service packaging. The basis for this shall be the table of fees of the region-wide system used.
  - d) WEBER Verpackungen GmbH & Co. KG may freely choose the region-wide system.
5. Clauses VII.1 to VII.3 above shall not apply to packaging that is used or released abroad rather than in the territory of the Federal Republic of Germany and, therefore, does not have to be disposed of in accordance with the German Packaging Act. Instead, the customer shall be responsible for ensuring that the packaging is disposed of in accordance with the provisions of law applicable in each individual case.

**VIII. Packaging and shipment, tolerances**

- 1. WEBER Verpackungen GmbH & Co. KG shall be obliged to supply packaging that is customary in the relevant industry.
- 2. During the production process, inevitable production-related deviations and fluctuations may occur. Unless otherwise agreed, the tolerances set out below shall apply.

a) Paper in relation to the agreed area density:

up to 39 g/m <sup>2</sup>	+/- 8%
40 - 59 g/m <sup>2</sup>	+/- 6%
60 or more g/m <sup>2</sup>	+/- 5%

b) Plastic film in relation to the agreed thickness:

less than 11 my	+/- 20%
less than 15 my	+/- 15%
15 my - 25 my	+/- 10%
greater than 25 my	+/- 8%



- c) Aluminium foil, compound foil, cellophane and other materials in relation to the agreed thickness or the area density (depending on the dimension that is taken as a basis for the contract; applies individually or as part of another product):

+/- 10%

3. The following deviations from the agreed measures must be tolerated by the customer:

- a) Paper and paper combinations

- Bags:

in length	+/- 4 mm
in width for bag widths of less than 80 mm	+/- 3%
in width for bag widths of 80 mm and more	+/- 2%

- Rolls:

in width and in cut section length	+/- 3 mm
in run length	+/- 3%

- Formats:

in length	+/- 5 mm
in width	+/- 5 mm

- b) Plastics and aluminium +/- 5%

- c) The deviations from the agreed measures for the materials mentioned in clause VIII.3.a) in respect of rolls and formats and for the materials mentioned in clause VIII.3.b) above shall also apply to the printing position and any punching and stamping on such materials. For the bags mentioned in clause VIII.3.a) above, the permitted deviation from the agreed measure for the printing position and for punching and stamping is +/- 4 mm in width for bag widths greater than 80 mm and +/-3 mm in width for bag widths of 80 mm and less. When printing on products, deviations from colour register are inevitable due to technical reasons, as these depend on the material, the design and the printing process chosen. Only significant deviations shall entitle the customer to make a complaint.

4. Where goods are manufactured, WEBER Verpackungen GmbH & Co. KG shall have the right to supply quantities that exceed or fall short of the ordered quantity by up to 20%. For sales by quantity (quantities below 50,000 pieces) and for collective print runs with a change in printing during the print run as well as for sales by weight (for weights below 500 kg), up to 30% of the quantity ordered. Where this is unreasonable for the customer, a different rule

should be agreed in the individual case. For all deliveries, the customer shall be fully invoiced for the quantities actually supplied.

## **IX. Printing**

1. WEBER Verpackungen GmbH & Co. KG shall use customary printing colours for printing. Where special requirements exist in respect of the colours, such as high lightfastness, alkali resistance, abrasion resistance, suitability for contact with foodstuffs, etc., these must be specially pointed out by the customer when placing the order.
2. Unless this is unreasonable for the customer, no warranty can be given for the lightfastness of the colour of materials and of the printing colours, as also the suppliers of the raw materials and colours do not give any warranty for the lightfastness of the colours. Similarly, unless this is unreasonable for the customer, no warranty can be given for the abrasion resistance of the printing colours.
3. WEBER Verpackungen GmbH & Co. KG reserves the right to supply goods that show minor deviations in colour where such deviations are customary in the trade, unless this is unreasonable for the customer. Such deviations shall not entitle the customer to refuse acceptance of the goods or reduce the price. Specimen copies shall be submitted prior to printing if the customer expressly so requires, or if WEBER Verpackungen GmbH & Co. KG considers this to be necessary. As no flexographic printing will be used to create such specimen copies (e.g. proof, Cromalin, offset print, etc.), it cannot be prevented that these copies will, in part, differ significantly from the subsequent print run product. Machine proof prints created at the request of the customer will be charged separately at cost.
4. For plastic products, WEBER Verpackungen GmbH & Co. KG cannot give any warranty as to the migration of softening agents or similar migration processes and the related consequences, unless this is unreasonable for the customer. To the extent that WEBER Verpackungen GmbH & Co. KG is liable notwithstanding the first sentence of this clause IX.4, clause XIII of these Conditions of Sale shall apply.
5. WEBER Verpackungen GmbH & Co. KG shall not be responsible for the consequences of any errors contained in the "film masters" or in other, similar materials made available to WEBER Verpackungen GmbH & Co. KG by the customer for the printing of the uniform product code or another, similar code, nor for the difficulties or their consequences that may arise when using the printed code. The "film masters" supplied by the customer shall be understood to include any proof of print work containing a uniform product code that has been approved by the customer.
6. The EAN bar code shall be printed in accordance with the current state of technology taking into account the applicable implementation rules of Global Standards One Germany (cf.

series of “Co-Organisation” journals, No. 2, “*Der EAN-Strichcode*” (which translates as “The EAN bar code”).

7. Further commitments, in particular commitments regarding the successful reading of such codes at checkouts in trade stores, cannot be made because of possible impacts on the bar codes following delivery by the customer and also because there is no uniform measuring and reading technology.
8. WEBER Verpackungen GmbH & Co. KG shall not be liable for defects caused by printing plates or patterns that have been provided by the customer and/or by persons employed by the customer in the performance of its obligations and/or by the customer’s vicarious agents. In the event that WEBER Verpackungen GmbH & Co. KG discovers any flawed text or illustrations during production and, therefore, discontinues or interrupts the manufacturing process, the customer shall bear the additional costs incurred in this connection.

#### **X. Materials and execution**

1. If the customer does not give any special instructions, all orders shall be carried out using materials that are customary in this trade and well-known manufacturing processes. If the packaging is used for foodstuffs, it must be expressly clarified with WEBER Verpackungen GmbH & Co. KG whether the material is suitable for foodstuffs. As a result, complaints in respect of defects which relate to how the packaging affects the packaged goods and vice versa cannot be made if the customer has failed to expressly point out the special characteristics of the goods to be packaged and/or that the packaging will be used for foodstuffs and to give WEBER Verpackungen GmbH & Co. KG the opportunity to provide its comments. Such information and comments must be provided in writing.
2. WEBER Verpackungen GmbH & Co. KG shall carefully select any recycled substances used. Despite this fact, the surface quality, colour, purity, smell and physical values of regenerated foils and recycled paper may vary from batch to batch and such variations shall not entitle the customer to make a complaint in respect of defects. WEBER Verpackungen GmbH & Co. KG undertakes, however, to assign to the customer any warranty claims and/or claims for damages against the supplier which are based on the quality of the regenerated foils and recycled paper.

#### **XI. Terms of payment**

1. All payments shall be due and payable on the agreed payment date. If no specific date has been agreed, the payments shall be due upon receipt of the invoice or an according payment schedule. Where the receipt of the invoice or of the payment schedule is uncertain,

payments shall be due upon receipt of the goods and services from WEBER Verpackungen GmbH & Co. KG.

2. Payment by cheque is not permitted unless it is separately agreed in any particular case.
3. Unless otherwise agreed upon, all payments shall be made net within 8 days from date of invoice.
4. A payment shall be deemed made at the point in time when WEBER Verpackungen GmbH & Co. KG is able to dispose of the amount.
5. If the time allowed for payment is exceeded, WEBER Verpackungen GmbH & Co. KG shall have the right to demand default interest at the rate of 9 percentage points above the base rate (Section 247 German Civil Code). WEBER Verpackungen GmbH & Co. KG reserves the right to claim further damages.
6. If the customer defaults on a payment, WEBER Verpackungen GmbH & Co. KG shall have the right to demand immediate payment of all claims arising from the business relationship, even if these claims are not yet due. This shall not apply if the customer is not responsible for the default.
7. If there are outstanding invoices from WEBER Verpackungen GmbH & Co. KG, payments shall always be deemed made in settlement of the oldest claim then due, except where the customer has asserted a right of retention in relation to such claim.
8. Counterclaims of the customer shall only entitle the customer to make a set-off or assert a right of retention if these counterclaims are undisputed or have been established in a judgment that cannot be appealed against. The customer may only assert a right of retention if its counterclaim is based on the same contractual relationship.
9. WEBER Verpackungen GmbH & Co. KG shall have the right to make the execution of outstanding deliveries or the provision of services contingent upon prepayment or upon the provision of security if, upon conclusion of the contract, circumstances become known that could considerably reduce the customer's creditworthiness and which jeopardise payment by the customer of outstanding claims of WEBER Verpackungen GmbH & Co. KG from the individual contractual relationship. This shall apply accordingly if the customer refuses or fails to pay outstanding claims of WEBER Verpackungen GmbH & Co. KG and there are no objections against the claims of WEBER Verpackungen GmbH & Co. KG which are undisputed or have been established in a judgment that cannot be appealed against.

## **XII. Warranty**

1. The customer's rights arising from defects shall be contingent upon the customer performing its statutory obligations to inspect and give notice of defects (Sections 377 and 381 German

Commercial Code (*HGB*)), in particular, upon the customer inspecting all goods supplied without undue delay upon receipt and providing WEBER Verpackungen GmbH & Co. KG without undue delay with written notice of any obvious defects and of defects that could be identified during such an inspection. The customer must provide WEBER Verpackungen GmbH & Co. KG with written notice of any hidden defects without undue delay after they have been discovered. In order for such notice to be deemed given without undue delay within the meaning of the first and second sentences above, it must be given within 3 working days; this deadline is met if WEBER Verpackungen GmbH & Co. KG receives the notice before the expiry of the aforesaid period. If the customer fails to carry out a proper inspection and/or to give notice of defects, WEBER Verpackungen GmbH & Co. KG shall not be liable for the defect. When giving WEBER Verpackungen GmbH & Co. KG notice of defects, the customer must provide a written description of the defects.

2. For the purposes of examining whether the goods supplied contain any defects, representative random checks, i.e. a reasonable number of random checks carried out with the due care of an expert for a sufficiently varied set of samples, shall be sufficient if the consignment consists of a comparatively large quantity of similar goods and a complete inspection of these goods is impracticable within the meaning of Section 377 (1) German Commercial Code and/or is unreasonable for the customer due to the circumstances of the particular case.
3. The customer shall have no right to demand subsequent performance (repair or replacement delivery) if there are only minor deviations which are not unreasonable for the customer. If a portion of up to 3% of the total quantity of flexible packaging supplied contains defects, the customer may not reject the total quantity as being defective or assert claims for defects in respect of this portion of not more than 3% of defective flexible packaging. Whether the defect regards the processing or the printing is irrelevant in this context.
4. WEBER Verpackungen GmbH & Co. KG must be given the opportunity to examine reported defects in the goods supplied at the place where the goods are located.
5. If the goods contain defects, WEBER Verpackungen GmbH & Co. KG may repair the defects or, at its option, deliver goods which are free from defects by way of subsequent performance. WEBER Verpackungen GmbH & Co. KG's right to refuse subsequent performance if the statutory requirements are met shall remain unaffected.
6. The special provisions of law regarding the final delivery of unprocessed goods to consumers shall in all cases remain unaffected, even if the consumer has processed the goods (recourse to the supplier according to Section 478 German Civil Code). Claims arising from the right to have recourse to the supplier shall be excluded if the defective goods have

been further processed by the customer or by another entrepreneur, for example, by integration into another product.

7. After the second unsuccessful attempt at subsequent performance, the customer may rescind the contract or, at its option, reduce the purchase price.
8. If the goods are not at the place of delivery, the customer shall bear all additional costs which WEBER Verpackungen GmbH & Co. KG incurs as a result of this fact when remedying defects, unless the goods were relocated in accordance with their agreed use.
9. Rights arising from defects shall not exist:
  - a) in the event of natural wear and tear;
  - b) in the event of defects resulting from improper handling (for example, other than as described in the operating manual), improper storage or maintenance, or excessive strain or use after the risk has passed;
  - c) in the event of defects resulting from force majeure, from extraordinary external impacts that are not intended according to the contract, or from the goods being used in a manner which does not correspond to their contractually intended or customary use.
10. If a notification of defects is unjustified, WEBER Verpackungen GmbH & Co. KG shall have the right to demand to be reimbursed by the customer for the expenses incurred, unless the customer proves that the unjustified notification of defects was not due to wilful misconduct or negligence on the part of the customer.
11. WEBER Verpackungen GmbH & Co. KG shall not be liable for defects which are due to the fact that the customer demands a manner of processing or choice of materials which deviates from the specifications of WEBER Verpackungen GmbH & Co. KG.

### **XIII. Liability**

1. WEBER Verpackungen GmbH & Co. KG shall be liable without limitation – on whatever legal grounds – in the event of a breach of guarantee or death, bodily injury or damage to health. The same shall apply to wilful misconduct and gross negligence on the part of board members and executive employees. To the extent permitted by law, all liability for persons employed in a non-executive function in the performance of WEBER Verpackungen GmbH & Co. KG's obligations (Section 278 German Civil Code) shall be excluded.
2. Subject to the provisions in clause XIII.1 above, WEBER Verpackungen GmbH & Co. KG shall only be liable for simple negligence in the event of a violation of so-called cardinal obligations. Cardinal obligations are obligations the fulfilment of which is an indispensable

prerequisite for the proper performance of the contract and the observance of which is generally relied upon – and may be relied upon – by the other party to the contract.

3. In cases where a material breach of contract has been caused by negligence only, the amount of damages shall be limited to the damage that is typical of the contract and could be foreseen when entering into the contract. In cases of simple negligence, all liability for damages for loss of production, consequential damage caused by a defect and/or loss of profits shall be excluded. This limitation of liability shall apply accordingly to the conduct of the persons employed by WEBER Verpackungen GmbH & Co. KG in the performance of its obligations and its vicarious agents.
4. Except in the cases of wilful misconduct, gross negligence, and death, bodily injury or damage to health, the damage shall be limited to an amount equal to 50% of the contract value per damaging event.
5. In the event of failure to meet a deadline for delivery, WEBER Verpackungen GmbH & Co. KG's liability for damage suffered by the customer as a result of the delay shall – subject to clauses XIII.1 to XIII.3 above – be limited to a maximum amount equal to 5% of the agreed net price. The parties may assert further claims for damages or prove that the amount of damage actually suffered was smaller.
6. If the delivery items are used items, all claims for defects in quality shall be excluded. This exclusion shall not apply to claims for damages, in the event of gross negligence or wilful misconduct, or where responsibility exists for death, bodily injury or damage to health caused by WEBER Verpackungen GmbH & Co. KG, its executive employees or any persons employed by WEBER Verpackungen GmbH & Co. KG in the performance of its obligations.

#### **XIV. Lapse of time**

1. The limitation period for the customer's claims for defects shall be 12 months in deviation from Section 438 (1) no. 3 German Civil Code and shall commence upon delivery of the goods. The limitation period shall further commence upon the customer defaulting on its obligation to accept the goods. Where acceptance of a work has been agreed upon, the limitation period shall commence upon acceptance of that work. The above limitation period shall also apply to tort claims which are based on a defect of the goods. The limitation period shall not start anew as a result of subsequent performance (repair or replacement delivery). In the cases referred to in clause XIII.1 above, the statutory limitation rules shall apply instead.
2. If the goods are items that have been used for a building in accordance with their customary use and have caused this building to be defective (construction material), the limitation period shall be five years from delivery in accordance with the statutory rule (Section 438 (1)

no. 2 German Civil Code). The preceding provisions shall not affect any further special statutory limitation rules.

3. The above limitation periods under the law relating to the sale of goods shall also apply to the customer's contractual and extra-contractual claims for damages which are based on a defect of the goods, unless the application of the regular limitation rules (Sections 195, 199 German Civil Code) leads to a shorter limitation period in the individual case.
4. If WEBER Verpackungen GmbH & Co. KG has given an express guarantee as to the quality of the goods, the claims arising from that guarantee shall become time-barred within 2 years. If WEBER Verpackungen GmbH & Co. KG has given a guarantee as to the durability of the goods, the claims arising from that guarantee shall be time-barred upon expiry of the period of time for which the guarantee as to durability was given.
5. In order for negotiations about claims for defects in quality or other claims for damages to be pending, the parties must have declared that they are in negotiations about such claims.

#### **XV. Retention of title**

1. The goods supplied shall remain the property of WEBER Verpackungen GmbH & Co. KG until they have been paid for in full.
2. Furthermore, WEBER Verpackungen GmbH & Co. KG shall remain the owner of the goods supplied until all claims arising from the business relationship between the customer and WEBER Verpackungen GmbH & Co. KG have been paid in full.
3. The customer shall be obliged to handle the goods which are subject to this retention-of-title clause with due care for as long as title is retained. In particular, the customer shall be obliged to adequately insure the goods at its own expense at replacement value against damage by fire, water and theft. The customer hereby assigns all claims for compensation under such insurance to WEBER Verpackungen GmbH & Co. KG. WEBER Verpackungen GmbH & Co. KG hereby accepts this assignment. If an assignment is not permissible, the customer hereby instructs its insurer irrevocably to make payments, if any, solely to WEBER Verpackungen GmbH & Co. KG. The preceding provisions shall not affect any further claims of WEBER Verpackungen GmbH & Co. KG. Upon request, the customer must furnish WEBER Verpackungen GmbH & Co. KG with evidence of the conclusion of such insurance contracts.
4. Until the secured claim has been paid in full, the goods which are subject to this retention-of-title clause may neither be pledged to third parties nor transferred by way of security. The customer must notify WEBER Verpackungen GmbH & Co. KG without undue delay in



writing if an application is made to open insolvency proceedings or where goods owned by WEBER Verpackungen GmbH & Co. KG are seized by third parties (e.g. by attachment).

5. If the goods which are subject to this retention-of-title clause are combined with other items that do not belong to WEBER Verpackungen GmbH & Co. KG such that they form a single item, WEBER Verpackungen GmbH & Co. KG shall acquire co-ownership of this single item pro rata to the value (final amount invoiced, including value-added tax) of the goods which are subject to this retention-of-title clause as compared to the value of the other items at the time they are combined. In the event that the goods which are subject to this retention-of-title clause are combined with other items in such a manner that the customer's item is to be considered the principal item, the customer hereby transfers to WEBER Verpackungen GmbH & Co. KG proportionate co-ownership of this item. WEBER Verpackungen GmbH & Co. KG accepts this transfer. The provisions of this clause XV.5 shall apply accordingly if the goods which are subject to this retention-of-title clause are mixed or processed with other items.
6. The customer shall have the right, subject to revocation, to sell the goods which are subject to this retention-of-title clause in the ordinary course of business. The customer may not, without the consent of WEBER Verpackungen GmbH & Co. KG, pledge, transfer by way of security, or otherwise dispose of the goods which are subject to this retention-of-title clause in a manner that jeopardises WEBER Verpackungen GmbH & Co. KG's ownership of these goods. In the event of attachments or other encroachments by third parties, the customer must notify WEBER Verpackungen GmbH & Co. KG without undue delay in writing and furnish all the information needed to inform the third party of WEBER Verpackungen GmbH & Co. KG's ownership rights and cooperate in any measures taken by WEBER Verpackungen GmbH & Co. KG to protect the goods which are subject to this retention-of-title clause.
7. The customer hereby assigns to WEBER Verpackungen GmbH & Co. KG its claims arising from the resale of the goods which are subject to this retention-of-title clause, along with all ancillary rights, in an amount equal to the amount invoiced, including value-added tax. WEBER Verpackungen GmbH & Co. KG hereby accepts this assignment. If the goods which are subject to this retention-of-title clause are sold with other goods not supplied by WEBER Verpackungen GmbH & Co. KG, the claim arising from resale shall be assigned pro rata to the value of the goods which are subject to this retention-of-title clause (final amount invoiced, including value-added tax) as compared to the value of the other goods sold. If an assignment is not permissible, the customer hereby irrevocably instructs the third-party debtor to make payments, if any, only to WEBER Verpackungen GmbH & Co. KG.
8. The customer shall have the right, subject to revocation, to collect the claims that have been assigned to WEBER Verpackungen GmbH & Co. KG in its own name as a trustee acting for WEBER Verpackungen GmbH & Co. KG. This shall not affect WEBER Verpackungen

GmbH & Co. KG's right to collect these claims itself. However, WEBER Verpackungen GmbH & Co. KG shall not assert such claims itself or revoke the customer's collection authority as long as the customer properly performs its payment obligations. If, however, the customer breaches the contract – in particular, if the customer defaults on a payment – the customer must disclose the assigned claims and the respective debtors to WEBER Verpackungen GmbH & Co. KG, inform the respective debtors of the assignment, and provide WEBER Verpackungen GmbH & Co. KG with all the records and all the information needed by WEBER Verpackungen GmbH & Co. KG to assert the claims.

9. WEBER Verpackungen GmbH & Co. KG may revoke the customer's right to resell the goods and the authority to collect claims if the customer fails to properly perform its payment obligations to WEBER Verpackungen GmbH & Co. KG, defaults on one or more payments or stops payment, or if an application is filed to open insolvency proceedings against the customer's assets.
10. At the request of the customer, WEBER Verpackungen GmbH & Co. KG shall be obliged to release the security provided to the extent that the realisable value of such security exceeds WEBER Verpackungen GmbH & Co. KG's claims arising from its business relationship with the customer by more than 10%, upon deduction of the mark-downs customary in the banking business. WEBER Verpackungen GmbH & Co. KG shall be responsible for selecting the security that is to be released.
11. If the customer is twice in default with its payments to WEBER Verpackungen GmbH & Co. KG within a period of 6 months and/or the customer is unable to meet its financial obligations when due and/or objective criteria indicate that the customer will become unable to meet its financial obligations when due, WEBER Verpackungen GmbH & Co. KG shall have the right to demand that the delivery item be returned and, in the event of a resale, collect the claims that have been assigned to WEBER Verpackungen GmbH & Co. KG directly from the customer's purchaser. The request that the delivery item be returned does not automatically include notice of rescission; instead, WEBER Verpackungen GmbH & Co. KG shall have the right to merely demand that the goods be returned and reserve the right to rescind the contract.
12. In the event that goods are supplied to destinations with other legal systems where the retention-of-title provisions set out in this clause XV are not legally valid, the customer hereby grants WEBER Verpackungen GmbH & Co. KG an equivalent security interest. If the creation of such a security interest requires further measures, the customer shall do whatever is necessary to grant WEBER Verpackungen GmbH & Co. KG such security

interest without undue delay. The customer shall assist with all measures that are required for, and conducive to, the validity and enforceability of such security interests.

## **XVI. Confidentiality**

1. The customer shall be obliged to treat all information about WEBER Verpackungen GmbH & Co. KG that becomes available to the customer and which is designated as confidential or can be identified as a trade or business secret due to other circumstances as confidential for an unlimited period of time, and the customer may not record, disclose or exploit any such information.
2. By entering into suitable contractual arrangements with the employees and agents working for it, the customer shall ensure that these persons, too, refrain for an unlimited period of time from any exploitation, disclosure or unauthorised recording of such trade and business secrets for their own purposes.

## **XVII. Applicable law; place of jurisdiction**

1. The legal relations between the customer and WEBER Verpackungen GmbH & Co. KG shall be governed by the laws of the Federal Republic of Germany, without regard to the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. The exclusive place of jurisdiction for all disputes arising out of the business relationship shall be the place of business of WEBER Verpackungen GmbH & Co. KG may also file a lawsuit at the customer's registered office or at any other permissible place of jurisdiction.

## **XVIII. Miscellaneous**

1. Any transfer of rights and obligations of the customer to third parties shall require the written consent of WEBER Verpackungen GmbH & Co. KG.
2. The place of performance for all obligations to be performed by the customer and by WEBER Verpackungen GmbH & Co. KG shall be the registered office of WEBER Verpackungen GmbH & Co. KG, to the extent not otherwise agreed.
3. All changes and additions to these Conditions of Sale must be made in writing. This shall also apply to this requirement of the written form. However, this requirement shall not affect the validity of any post-contractual verbal ancillary agreements which do not affect the provisions of these Conditions of Sale.
4. Should any of the above provisions be or become invalid or impracticable, in whole or in part, this shall not affect the validity of these Conditions of Sale and of the contract as a whole. The parties shall be obliged to replace the invalid or impracticable provision from the

commencement of such invalidity or impracticability with a clause that comes closest economically to the invalid or impracticable provision, taking into account the interests of both parties. The same shall apply if there are any gaps.