

# Terms and conditions of delivery and payment

B.V. Handelmaatschappij v/h W.J. Stoelman

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## **1. General**

1.1 These general terms and conditions of delivery and payment, form the basis of and are part of the agreement for the delivery of recovered paper and board by B.V. Handelmaatschappij v/h W.J. Stoelman hereafter named: Stoelman Papierrecycling, concluded between Stoelman Papierrecycling and another party, and of the execution thereof. These terms and conditions also apply to any submitted offers.

1.2 Purchase conditions of the other party, if any, shall not be affected, provided and insofar as they are not in conflict with these terms and conditions.

1.3 For the purpose of these terms and conditions the other party' shall be understood to mean the natural or legal person who has concluded or intends to conclude an agreement with Stoelman Papierrecycling. Stoelman Papierrecycling' shall be understood to mean the natural or legal person who shall deliver the goods or on whose behalf they shall be delivered.

1.4 By placing an order and/or taking delivery of the goods, the other party accepts these terms and conditions and explicitly waives his own terms and conditions insofar as these are in conflict with these terms and conditions. By placing an order, whether verbally, by telephone, facsimile, email or in any other way, the customer shall be deemed to have accepted the applicability of these terms and conditions and to have waived his own terms and conditions insofar as they are in conflict with these terms and conditions.

## **2. Quotations**

2.1 Quotations are valid for the term to be indicated by Stoelman Papierrecycling. If no such term has been stipulated, the offer is without obligation. Offers are deemed to be based on the information supplied by the other party, whereby Stoelman Papierrecycling assumes that this information is correct.

2.2 In the event of compounded quotations, there is no obligation to deliver a part of the quoted goods against the corresponding part of the price quoted for the goods.

### **3. Agreement**

3.1 Stoelman Papierrecycling shall not be bound to an order until it has confirmed the order in writing. The order confirmation shall be deemed to represent the agreement fully and correctly and shall include a description of the quantity and composition of the goods as well as the time when and manner in which they shall be delivered.

3.2 Any subsequent written and/or oral additional arrangements and/or changes to the agreement between the other party and Stoelman Papierrecycling shall only be binding if confirmed in writing by Stoelman Papierrecycling.

3.3 With respect to deliveries and/or activities for which no quotation or order confirmation has been sent, the invoice shall be considered to be the order confirmation.

### **4. Purchase price**

4.1 All quotations are subject to price changes.

4.2 If, after the agreement has been concluded, changes occur in one or more of the cost components, Stoelman Papierrecycling shall be entitled to adjust the purchase price accordingly, in which case Stoelman Papierrecycling shall inform the other party in writing.

4.3 If the prices change by more than 10%, the other party shall be entitled to terminate the agreement by written notice sent by registered post. In this event the agreement shall be terminated within seven days after the other party has been informed by Stoelman Papierrecycling of the adjustment of the price. If the other party fails to terminate the agreement by registered post, he shall be deemed to have accepted the price adjustment.

4.4 Except when otherwise noted, the agreed purchase price shall be exclusive of VAT, charges, customs duties and any other taxes and levies.

4.5 The purchase price shall be expressed in an agreed currency. The purchase price shall state whether the price is 'ex works' or 'free delivered'. 'Ex works' shall mean that the other party shall collect the goods from Stoelman Papierrecycling premises. 'Free delivered' shall mean that Stoelman Papierrecycling delivers the goods at the agreed location. In the latter event, the Stoelman Papierrecycling shall arrange transport. In the event that the goods shall be delivered, the transportation costs shall be included in the price 'free delivered', except when explicitly stated otherwise.

4.6 Any costs arising from cancellation of and/or additions or changes to the agreement shall be for the other party's account. If the other party cancels the agreement, the other party shall compensate any and all damage suffered by Stoelman Papierrecycling as a result, including any loss of profit.

The same applies in the event of changes to the agreement resulting in a reduction of the quantity of the goods to be delivered.

## **5. Payment and period of delivery**

5.1 The goods shall be deemed to have been delivered:

- a. as soon as the goods have been collected by or on behalf of the other party, after the consignment note has been signed;
- b. in the event of free delivered, when the goods have been delivered at the location stated on the consignment note, after the consignment note has been signed;
- c. in the event of delivery or storage as set forth in article 5.5.

All this regardless of conditions to the contrary, if any, on the consignment note or in the terms of transport of the haulage company.

5.2 The agreed period or date of delivery shall not be regarded as final period or date. Exceeding the period or date shall not result in a right to claim damages from the other party, nor in dissolution or suspension of the agreement.

5.3 If Stoelman Papierrecycling exceeds the date of delivery, it shall indicate a new delivery date. If this date is again exceeded, the other party shall be entitled to dissolve the agreement, whereof he shall notify Stoelman Papierrecycling immediately in writing by registered post. If within three days after the second time the recovered paper delivery has exceeded the delivery date, the Stoelman Papierrecycling has not received the said notification, Stoelman Papierrecycling may assume that the other party does not want to dissolve the agreement. In this event the parties shall determine a new period or date of delivery in mutual consultation.

5.4 If no new period of delivery has been agreed upon after one month after the agreement has been entered into:

-The other party shall be entitled to propose by registered letter a period for the delivery of the agreed quantity of goods by Stoelman Papierrecycling. This period shall be at least one month after the date of the registered letter, unless the parties agree to a shorter period in mutual consultation;

Stoelman Papierrecycling shall be entitled to demand by registered letter of the other party a period to take delivery of the entire quantity agreed upon. The other party shall subsequently set a period within which it shall take delivery of the goods, and this period shall not be shorter than one month as from the date of the registered letter.

5.5 If the other party does not claim full delivery within the agreed period or within the period determined pursuant to the provisions of article 5.4, or if one month has lapsed after the demand as set forth in article 5.4 without the other party having set a period, Stoelman Papierrecycling shall be entitled – without notice of default being required – to deliver the goods to the other party or to store the goods for the account and risk of the other party.

5.6 If the goods are stored, within the meaning of article 5.5, the other party shall be notified thereof immediately in writing. Stoelman Papierrecycling shall be entitled, after the goods have been store for a period of four weeks, to sell the goods. If the proceeds of such sale are less than the purchase price, the difference shall be for the account of the other party, as well as the storage costs and the costs for selling the goods, without prejudice to any of the other rights of Stoelman Papierrecycling.

Any transportation costs incurred with respect to storing the goods shall be for the account of the other party.

5.7 If the goods are delivered within the meaning of article 5.5, the other party shall owe the actual transportation costs, also if the agreed price is 'ex works'. If a price has been agreed 'free delivered' and the costs for delivering the goods are higher than the agreed transportation costs, the other party shall owe the actual transportation costs instead of the agreed transportation costs.

5.8 The goods shall be for the risk of the other party from the moment they are delivered.

5.9 In the event of disputes regarding the quantity of goods delivered, the weighbridge weight of the Stoelman Papierrecycling shall be binding.

## **6. Nature and quality of the goods to be delivered**

6.1 The delivered goods shall comply with the terms of the agreement.

6.2 The delivered goods will not comply with the terms of the agreement if they deviate from what has been agreed upon between the Offerer and Stoelman Papierrecycling as regards the composition and quantity thereof and the manner in which they are delivered.

## **7. Complaints, liability and indemnification**

7.1 Complaints concerning the delivered goods shall be made to Stoelman Papierrecycling in writing, by facsimile, or email within twenty-four hours after delivery of the goods, whereupon Stoelman Papierrecycling shall be granted opportunity to inspect the goods or have them inspected.

7.2 By approval upon delivery, by processing the delivered goods entirely or in part, or by expiration of the term as set forth in article 7.1, the other party shall be deemed to have approved the delivered goods. Thereafter, a complaint can no longer result in claims on Stoelman Papierrecycling, including downward value adjustment and returning of the goods.

7.3 Shortcomings in part of the delivered goods shall not result in a right to reject the entire shipment.

7.4 There are shortcomings in the delivered goods if they do not comply with the agreement as set forth in article 6.

7.5 A complaint does not release the other party from his payment obligations towards Stoelman Papierrecycling.

7.6 After the complaint as set forth in article 7.1 has been received, Stoelman Papierrecycling has eight working days in which to decide whether:

- a. it deems the complaint unfounded;
- b. to replace the goods found to be defective;
- c. to reach a settlement with the other party;
- c. to hire an expert to verify and determine the extent of the damage. The expert must be acceptable to the other party. If Stoelman Papierrecycling and the other party fail to

reach agreement on the expert, they shall each appoint one expert, who shall jointly appoint a third expert.

These three experts thus appointed shall subsequently carry out an investigation in order to verify and determine the extent of the damage. The assessment of the expert, or experts, shall be regarded as a binding advice.

7.7 Until a final solution has been agreed upon, the other party shall be liable for the delivered goods.

7.8 The delivered goods may only be returned after the explicit approval of Stoelman Papierrecycling, under the conditions to be set by Stoelman Papierrecycling. Approval for return shipment shall not be construed to mean that Stoelman Papierrecycling considers the complaint to be well founded or that Stoelman Papierrecycling accepts any liability. The costs of the return shipment shall be for the account of the other party, unless Stoelman Papierrecycling states in writing that the complaint was well founded or that it accepts liability, or if this is irrevocably determined by law.

7.9 The right to claim damages from Stoelman Papierrecycling is limited to the damage suffered by the other party being directly and exclusively the result of the culpable acts of Stoelman Papierrecycling and shall not exceed the net amount of the invoice relating to the shipment, or part thereof, which resulted in the damage.

7.10 The other party shall indemnify Stoelman Papierrecycling against all claims for damages from third parties related to the execution of any agreement concluded between Stoelman Papierrecycling and the other party and shall be liable for all resulting costs.

## **8. Non-attributable failing (force majeure)**

8.1 Failure to comply with the execution of the agreement by Stoelman Papierrecycling shall not be attributed to Stoelman Papierrecycling if and to the extent the failure may not be attributed to wrongful act, nor shall such failure be for the account of Stoelman Papierrecycling pursuant to the law, the contents of the agreement, or according to generally accepted standards.

8.2 Force majeure shall in any event include: war, mobilisation, disturbances, floods, stagnation in or restriction or discontinuation of deliveries by public utilities, lack of fuel or other energy providers, fire, machinery breakdown and other accidents, strikes and other forms of labour unrest restricting the production, government measures, no or insufficient supply of necessary materials or resources to Stoelman Papierrecycling by third parties which may disturb the normal course of affairs and reasonably cause the production and supply of goods to be delayed or impeded.

8.3 In the event of force majeure, Stoelman Papierrecycling shall be entitled either, within reason, to postpone the date of delivery or to dissolve the agreement, without being bound to pay any damages. If the force majeure leads to dissolution, Stoelman Papierrecycling shall be entitled to compensation of the costs incurred with respect to the agreement with the other party.

## **9. Payment and collection costs**

9.1 Payment shall be effected within 30 days after the invoice date by payment directly in to a bank account of Stoelman Papierrecycling, by cheque or in cash in the agreed currency at the offices of Stoelman Papierrecycling or in any other agreed form of payment. The other party may only request settlement with a claim it has on Stoelman Papierrecycling if Stoelman Papierrecycling has acknowledged the other party's claim on Stoelman Papierrecycling.

9.2 Regardless of the agreed payment conditions, Stoelman Papierrecycling shall be entitled, both before and after the agreement has been concluded, to request security for the payment as well as for any of the other obligations of the other party and to suspend the delivery and/or any other agreed activities until this security has been provided. If the other party fails to furnish the required security by Stoelman Papierrecycling, Stoelman Papierrecycling shall be entitled to terminate the agreement, without judicial intervention and without notice of default being required, and without prejudice to any of its other rights.

9.3 Stoelman Papierrecycling shall be entitled to charge a credit restriction surcharge of at least 2%. This surcharge may be deducted from the invoice amount if the invoice amount is paid within 30 days after the date of the invoice.

9.4 The other party shall be in default by law without notice of default being required by the simple expiration of the term of payment as set forth in article 9.1 The other party shall owe interest over the invoice amount as from 30 days after the invoice date. This interest shall amount for each month or part thereof, to one-twelfth part of the legal annual interest as set forth in Section 120, Book 6, of the Dutch civil code.

9.5 In that event, Stoelman Papierrecycling shall be entitled to claim all other legal and extralegal costs as set forth in Section 96, paragraph 2 under c, Book 6 of the Dutch civil code. The extralegal costs shall be fixed at 15% of the amount due, with a minimum of NLG 100.00 (€ 45.00).

## **10. Retention of title**

10.1 In the event of a positive value, Stoelman Papierrecycling shall reserve the ownership rights on the delivered goods, for as long as the other party has not yet, or not fully, complied with the claims regarding the delivered goods, including those that the other party may owe if he fails to comply with his obligations.

10.2 In that event, Stoelman Papierrecycling shall also be entitled to claim back and take possession of the delivered goods as referred to in article 10.1, should the Recovered Paper Company be entitled to dissolve the agreement.

10.3 The goods delivered by Stoelman Papierrecycling that are included under the retention of title pursuant to this article, may only be sold or processed within the context of normal business operations. The other party is not allowed to pledge these goods or to establish any other rights over these goods.

10.4 If the other party resells the goods delivered by Stoelman Papierrecycling which are not paid or fully paid, the other party shall establish an undisclosed pledge on the claims on the other party's purchaser arising from this sale, for the benefit of Stoelman Papierrecycling, as security for everything Stoelman Papierrecycling may have to claim on the other party, including any future claims on the other party.

## **11. Dissolution**

11.1 Without prejudice to any of its other rights, Stoelman Papierrecycling shall be entitled to dissolve the agreement, without legal intervention or notice of default being required, if the other party fails to comply with its obligations under the agreement, has filed for or has been granted suspension of payments, has been declared insolvent or has filed a petition in bankruptcy, or if the goods (part of) to which it is entitled to, have been seized.

11.2 Dissolution may take place by means of a written notice from Stoelman Papierrecycling.

11.3 Without prejudice to the other consequences of dissolution, the other party shall be liable for any damage suffered by Stoelman Papierrecycling, including loss of profit.

## **12. Disputes and applicable law**

12.1 Each quotation, order, order confirmation, agreement and legal act resulting from the above, as well as any change and addition to the agreement, shall be governed by Dutch law. Any dispute resulting from the above shall be settled by the Dutch court. If the Dutch court is the subject-matter court in first instance, the dispute shall be submitted exclusively to the court in the district where the Stoelman Papierrecycling has its registered office. The conditions of the Vienna Sales Convention (CISG) do not apply.

12.2 If the dispute is (partly) caused by the translation of these general terms and conditions for purchases and the provision of services of the FNOI, the text of the Dutch version shall be binding.

12.3 Without prejudice to the provisions of article 7, all legal claims on Stoelman Papierrecycling – including the right to claim damages or performance - shall lapse or become barred one year after the relevant claim arose.