

**Zellstoff Pöls AG Sales and Delivery Terms for Pulp**  
**as amended in July 2013**

**I. Terms of Contract and Terms of Business**

1. The offers made by Zellstoff Pöls AG (hereinafter referred to as „seller“) are non-binding. The contract shall be deemed to be closed when following the receipt of the buyer's order the seller has sent a written declaration of acceptance in the form of an order confirmation, on his part accepts the buyer's offer by written or telex declaration or the seller begins with acts of performance within an reasonable period following the sending of the order confirmation.
2. The seller's contracts for the sale and delivery of pulp ("goods" collectively) are the basis of these terms of business for pulp, to the extent that the parties do not otherwise expressly agree it in writing. For the sale and delivery of pulp, the additional regulations according to Article VI apply. The buyer's terms of business do not apply, even when not expressly objected to following their receipt by the seller. Even if the order confirmation refers to earlier orders or other documents from the buyer, their conditions and terms do not apply unless they are expressly repeated in the seller's order confirmation.
3. Objections due to order confirmation content deviation from the order must be raised within two business days following the arrival of the order confirmation; if this is not the case, the contents of the order confirmation is considered as fully recognised.
4. Changes or amendments to these terms of terms of business are only effective with express and special written agreement.
5. The seller is authorised at any time - without consequences of liability to him - to immediately cancel the sales contract with the buyer by written notification, if the buyer`s contractual duty to perform is endangered because of the buyer`s bad pecuniary circumstances, forced sale of the buyer's collaterals that are not adjusted within 30 days of execution, the buyer assigns his assets to his creditor, a trustee is authorised for the creditor or the buyer defaults on payments for longer than 30 days. If one of these situations occurs or if substantial adverse changes to the economic situation of the buyer occurs, the seller alternatively can also demand advance payment.
6. The agreed amount can also be exceeded or fall below by up to 10% without the notation "ca., approximately, around".
7. If not otherwise agreed in writing, the goods are delivered in market condition in median quality packed and labelled as usual.
8. Specific quality as well as uniformity of the goods is not guaranteed when irregular qualities are agreed (e.g. Ib, II, III in the case of pulp).

**II. Prices**

1. The pulp is calculated gross for net, independent of type and quality of the casing.
2. The price is calculated for the air-dry weight. These are based on a rate of 90% absolutely dry pulp and 10% water.

3. The prices are calculated based on the cheapest shipping options in each case. If this option is not available on the shipment day or the buyer demands a more expensive mode of shipping, the additional costs are borne by the buyer.
4. Should increases to the purchase price or production costs of more than 10% (ten percent) occur following the closing of the sales contract, the seller has the right to demand a price reassessment in order to cover his increased costs for the duration of the cost increase. The reassessment includes all goods pending delivery later than 14 days following the receipt of demand by the buyer. Should an agreement not be reached during these 14 days, the seller can withdraw from the contract for the part not yet delivered contract amount.

### **III. Currency Regulations**

1. Loss in value and on exchange in terms of currency, of whatever type, which occur regarding the intrinsic value of the goods from the day of notification of the order confirmation to the payment date and are reduced by the seller's sales profit are at the cost of the buyer, in whichever currency the sales price is in, who is indemnifiable to the seller.
2. If the value of the currency agreed in the sales price compared to the intrinsic value of the goods in the time between the issue of the order confirmation and the delivery date by more than 5%, the seller is entitled to withdraw completely or partially from the delivery.
3. If the contractual adherence to the payment conditions, in particular in relation to the possibility of the payment in the agreed currency (transference), should be endangered by official financial measures, the seller then has the option to withdraw completely or partially from the delivery or to deliver subject to the condition of advance payment in the agreed currency or home currency at the discretion of the seller so far as this should be possible. The seller is generally exempt from the obligation to deliver when conditions occur in the business or payment relationship between the country of the seller and that of the buyer, which would make the contractual development of the business impossible or when conditions are such that the seller cannot be expected to fulfil the terms of the contract.

### **IV. Default**

1. Should the buyer default on payment, the reimbursement of all reminder fees and expenses of collection as well as interest on late payments in the amount of 3-month-EURIBOR plus 9,2% p.a. applies, irrespective of the seller's other existing claims, as agreed.
2. The debt-discharging effect of the payment first occurs when and as far as the payment is received by the seller. The payment date is the day of receipt at the place of fulfilment.
3. In the case of non-delivery by the seller, with the exception of cases under Article 4, the buyer is to set an appropriate extension of time. In the case that this extension of time elapses unused or the seller declares he is unable to deliver, the buyer is entitled to withdraw from the contract. The cancellation is to occur within one week after the elapsing of the extension of time or declaration of non-delivery in writing or by fax or e-mail. The buyer is not entitled to rights resulting from the right of withdrawal, in particular claims for damages and performance.

4. Business disruptions of all types, in particular in the case of acts of God, war damages, strikes and lockouts, lack of water and raw materials, traffic blocks and the like entitle the seller to postpone delivery according to the proportion of the scope and duration of the events; in the case of business to be settled on a fixed date, he can withdraw from the contract.
5. a) The goods sold remain the property of the seller (goods subject to retention of title) until the full payment of the sales price including all incidental claims (in the case of payment by cheque or draft, until they have cleared). Until that time, the buyer is not entitled to hypothecate goods subject to retention of title to a third party or to assign it as collateral. The buyer is furthermore required to inform the seller immediately of access by third parties to goods subject to retention of title. In the case of a reduction of assets or payment delay by the buyer also with regards to demands by third parties, the buyer is required to return the goods subject to retention of title that have not been paid for to the seller at his request. In the case of processing, joint ownership occurs after the relation of the value of the shares.
- b) The buyer is entitled to further sell the goods subject to retention of title in the normal business operation so long as he is not in arrears in view of the sales price receivables by the seller and other receivables. The demands of the buyer from the resale of the goods subject to retention of title are now already assigned to the seller. They serve in the same scope as collateral as the goods subject to retention of title. The buyer is obligated to inform the seller of the names of the garnishees and the amounts of the demands on demand at any time. The seller is entitled to make the garnishee aware of the resulting assignment of debt and to assert the assigned claim.
- c) Incoming payments from the buyer's customer for goods subject to retention of title are to be primarily used to pay the seller and are to be kept separate from the buyer's other monies as fiduciary deposits.
- d) The retention of title until complete payment also applies if the goods are processed or if the buyer has resold the goods no matter their condition. In this case, the buyer irrevocably cedes all rights from the resell to the seller; it is then fiduciary of the seller for the equivalent amount. Entitlement to benefits for damages from the seller due to unpunctual delivery is excluded.

## **V. Warranty and Liability**

1. All notification of defects, be it concerning the quantity, the quality or, in the case of pulp, the calculated dry content, must be made to the seller by the buyer immediately, within 8 days of receipt of goods or discovery (in the case of hidden defects) at the latest by fax or e-mail.
2. The invoice for rejected goods is to be paid in total when due by the buyer. Corrections of the invoice amount are to be made only after the parties reach an agreement or presentation of an arbitrator's award.
3. In the case of repairable defects to the goods delivered, the seller is entitled of his own choice to correct, discount or exchange goods. In the case of repairable defects to the goods delivered, the seller is entitled of his own choice to exchange the goods or to give a discount; if such defects are not minor, the seller is entitled moreover to choose to withdraw from the contract (redhibitory action). By no means does the buyer have voting rights. Other or further claims against the seller, in particular the right to redhibitory action and execution by substitution are excluded.

4. The seller shall not be liable for damages resulting directly or indirectly from instructions or specifications provided by the buyer, improper handling, willful damage, negligence, abnormal working conditions, or any alteration of the goods by the buyer.
5. In any case (whether defects, delay or in all other cases), the seller's liability is excluded, so far as allowed according to mandatory law, for the replacement of additional personnel costs, freight disbursements, penalty for delay and damages is to be asserted by the buyer's customer for possible shutdown and production loss as well as other consequential damage and indirect damage on the side of the buyer and his customer as well as lost profit. Moreover, all liability for the seller for slight negligence is excluded.

## **VI. Special Rules for the Sale and Delivery of Pulp**

1. Insofar as other rules are not provided by these sales terms, the "General Trade Rules for Wood Pulp" in their current edition are applicable.
2. The agreed amount is understood to be for air-dried goods gross for net (90/100); Article 16 applies analogously.
3. ad price: The pulp is calculated gross for net, independent of type and quality of the casing. The price is calculated for the air-dry weight. These are based on a rate of 90% absolutely dry pulp and 10% water.
4. ad warranty:
  - a) An official letter on the quality or the dry content on the side of the buyer is only possible if at least 60% of the affected shipment is still available for possible arbitrator's awards for testing purposes.
  - b) Should the material share fall short of the air-dry weight by more than 10%, additional costs resulting from shipping and customs are borne by the seller.
  - c) In the case of complaint of the dry content, the buyer must prove that there is a deviation of more than 2%. Additionally, the buyer has to take samples with the seller's consignment, evenly divided from each cargo (carriage, lorry). The samples have to stick to the specifications of ISO 801-1 or ISO 801-2 in the current version. The sample analysis is to be notified by stating the number and the gross and dry weight per bail from the seller. The seller must comment within 8 days of receipt of the analysis. If on this occasion an agreement cannot be made, each contract partner has the right to suggest an expert, authorised tester. If no consensus is reached within 30 days after the receipt of goods at the buyer regarding the selection of the tester or the test results, then the head teacher of the technical university in whose are the goods are to name an existing testing location. The designation is to be calculated within 8 days of the receipt of the request. The approach to the aforementioned drawing of sample is also binding. Buyer and seller or their representatives can participate. The result of this arbitrator's award is conclusive for both parties. The costs are borne by the losing party.

## **VII. General Terms**

1. The shipping of goods, including sales free of carriage charges, takes place exclusively at the cost and risk of the buyer. It is only insured only at the express request and at the cost of the buyer.

2. The place of fulfilment for the seller's duty of delivery is, including sales free of carriage charges, the infeed station of the goods, for the buyer's duty of payment the seller's commercial settlement in Pöls, insofar as nothing else is agreed in writing.
3. An obligation to indemnify according to the Product Liability Act, Federal Law Gazette No. 88/1988 from 12.02.1988, or from other terms derived from product liability claims for property damages in operation use condition by the company is excluded.
4. The buyer is not entitled to offset against counterclaims - except when these are legally adjudicated or determined - or assign further claims against the seller.
5. Austrian law to the exclusion of the rules regarding the conflict of law by the IPR and the Rome Convention. The use of the UN Convention on Contracts is excluded.
6. The seller and the buyer hereby agree that all disputes arising from or in connection with business involving the sale and delivery of pulp is in each case exclusively at the first Viennese Municipal District (1010 Vienna) of the relevant Austrian court. In the case of exports, the seller can, deviating from this place of jurisdiction clause make his complaint also at that court at his place of business or residence according to the regulations of that country, in which the buyer is responsible.
7. As far as these terms of business conflict with other provisions of a contract, such conflicting provisions are applicable in the following order:
  - a) The articles of the contract which are individually negotiated on the face of this order confirmation:
  - b) written amendment of the order confirmation;
  - c) terms from agreed specifications;
  - d) the terms of these terms of business;
  - e) General Trade Rules for Wood Pulp" in their current edition for the deilvery of pulp;
  - f) the intercoms (international rules for the construction of customary contact types);
  - g) commercial usage or practice between the parties.
8. Should individual terms in this contract or these terms of business completely or partially be invalid, the remaining terms remain valid. The contracting parties are obligated in the case of partial invalidity to replace the invalid terms with such terms that most extensively execute the intention of the invalid terms. This also analogously applies to loopholes.