

**TERMS AND CONDITIONS
OF SALE AND DELIVERY**
HUECK FOLIEN Gesellschaft m.b.H.
(FN 80720g)



1. **Scope**
- 1.1 Each purchase order, transaction, and contract for the delivery of Products and Services with the business partner ("BP") is subject to these Terms and Conditions of Sale and Delivery ("TSD").
- 1.2 BP's terms and conditions deviating from these TSD shall not apply without the prior express approval of HUECK FOLIEN Gesellschaft m.b.H. ("HUECK"). These TSD shall also apply if they were taken as basis for an initial order and are not explicitly taken as basis for a later order for another business transaction or recurring services and call-off orders.
- 1.4 The TSD are on display in the premises of HUECK and can be downloaded at www.hueck-folien.at.
2. **Quotations and formation of contract**
- 2.1 HUECK makes no warranties with respect to the accuracy of quotations. Quotations are subject to a fee, unless otherwise agreed.
- 2.2 The fee charged for a quotation is based on the compensation agreed between the contracting parties. Unless otherwise agreed the fee is equivalent to 10 % of the net amount stated in the quotation.
- 2.3 If in the performance of a contract the price set out in the relevant quotation is exceeded by more than 15 %, HUECK must give notice to BP. BP may then declare rescission of contract in writing within 5 work days of the date of notice, with BP being required to reimburse HUECK for all expenses already incurred and to pay the pro rata compensation for the Products and Services provided up to that time. If BP does not declare rescission of contract, the budget overrun shall be deemed to have been approved by BP.
- 2.4 The quotations and offers submitted by HUECK as well as the underlying plans, drafts and drawings shall not be made accessible or submitted to third parties for inspection without HUECK's express approval.
- 2.5 Quotations provided by HUECK are non-obligatory. A contract with HUECK is established only when a written order confirmation is issued.
- 2.6 The content of the order confirmation must be checked by BP immediately. BP is obligated to immediately give notice in writing of any content deviating from the message sent by BP, otherwise the transaction will be effected with the content confirmed by HUECK.
- 2.7 Any information provided in catalogs, brochures etc. is non-binding and will only become content of contract if specific reference is made to it in the order confirmation.
- 2.8 If no period for delivery of Products or Services is agreed upon, a contract will be established even without an order confirmation, if HUECK delivers the Products or Services within a period of 4 weeks of the ordering date.
3. **Prices, payment terms and default in payment**
- 3.1 All prices quoted by HUECK are FCA 4342 Baumgartenberg (according to INCOTERMS as amended at the relevant time) and shall be exclusive of any value added tax, surcharges resulting from changes in prices (see 3.2) and foreign exchange fluctuations. For delivery to other places, the additional cost in each case but in any case a manipulation fee at a rate of 1 % of the net value of the Products delivered will be charged.
- 3.2 HUECK reserves the right to adequately increase its price if after submitting its quotation the prices for raw materials and auxiliary materials or wages, salaries, fees, taxes, other charges or similar price-relevant parameters increase.
- 3.3 Where no value added tax is payable on Products and Services delivered to a BP in a Member State of the European Union, BP must immediately and on its own initiative provide HUECK with the relevant documents, in particular with respect to value added tax, which are necessary for HUECK to prove to the tax authority that the Products and Services are tax exempt under the statutory provisions. This includes particularly the proof of delivery of the Products to another Member State of the European Union, the value added tax registration number (VAT Reg. No.) or a personal exemption of BP, where applicable.
- 3.4 For price, delivery and payment terms, the content of the contract and the order confirmation shall be authoritative.
- 3.5 For price calculation and other assessments of the Products the units of measurement determined in the HUECK plant (weight, number of units, length, width etc.) shall be authoritative in all cases.
- 3.6 Freight invoices shall be paid to HUECK free of expense by the payment deadline shown on the invoice or, if no deadline is shown, within 8 days of the invoice date. Other (partial) invoices are payable to HUECK free of expense within 30 days of the invoice date. Where an invoice is issued by the carrier, the invoice amounts shall be paid to the carrier within the deadlines mentioned above. HUECK is not obligated to accept bills of exchange or checks. Where bills of exchange or checks are accepted, it will only be on account of payment. Any discount and collection expenses or other costs related to noncash payments shall be at the expense of BP and must be refunded to HUECK. Moreover, HUECK is not obligated to present or protest the bill of exchange in a timely manner.
- 3.7 HUECK may credit any incoming payment by BP to any outstanding account payable by BP.
- 3.8 Payments shall be deemed to have been made on the day HUECK has the money available.
- 3.9 BP shall not have the right to offset any alleged counterclaims against any amount owed to HUECK, also if the counterclaims are raised on the basis of notices of defects, or to refuse payment/performance, unless a court has finally determined that the counterclaims are permissible.
- 3.10 All outstanding accounts shall become immediately due and payable by BP if BP fails to make any payment due to HUECK by the due date of payment or ceases payment. In such case HUECK shall have the right to terminate the contract immediately.
- 3.11 In the event of late payment HUECK shall have the right to charge interest for default in accordance with § 456 Austrian Commercial Code. HUECK may separately claim compensation for any damage exceeding penalty interest. HUECK shall have the right to claim dunning, collection and legal fees as far as such measures are required to adequately assert HUECK's legal rights. This includes for entrepreneurs a lump sum of EUR 40,00, without prejudice to any collection cost (as defined by § 1333 para 2 Austrian General Civil Code) exceeding the penalty. Moreover, HUECK shall have the right to receive compound interest from the day the Products were delivered.
- 3.12 Moreover, HUECK shall have the right to make the delivery of further Products or Services contingent on advance payments or collateral, to claim damages for non-performance or to terminate the contract in whole or in part, without limiting its right to claim damages.
- 5.13 Only intact goods ("Products") in sealed packaging units are taken back for a refund equivalent to 90 % of the value of the goods. Collection expense will be invoiced separately.
4. **Delivery, passage of risk, default in taking delivery, and force majeure**
- 4.1 The goods are delivered FCA 4342 Baumgartenberg (as defined by INCOTERMS), unless otherwise indicated in the order confirmation. HUECK shall have the right to make partial or advance deliveries and invoice them separately. The goods are packed as deemed necessary by HUECK; packaging material will not be taken back. If BP requests different packaging, it will be provided against reimbursement of costs. Extra freight costs in the context of security transports and the cost of insuring the shipment at BP's request shall be paid by BP.
- 4.2 Any delivery dates quoted by HUECK are nonbinding. Generally, the delivery date is the day the goods leave the HUECK works. In case of call-off orders the Products will be considered to have been called off one year after the purchase order at the latest, and HUECK shall have the right to invoice the rest of the order and storage costs until the Products are collected, if applicable. Shipping and delivery does not include unloading the Products and carrying them to a place beyond the place of destination.
- 4.3 The – nonbinding – delivery period begins at the:
 - a. date of order confirmation,
 - b. date of fulfillment of all technical, commercial and other requirements by BP (e.g. all details sorted out, printing documentation provided, consent to the execution templates given, etc.),
 - c. date on which HUECK will receive a required down payment or guarantee before the Product is delivered, or the
 - d. date on which third-party approvals to be obtained by BP are available, whichever is the latest.
- 4.4 HUECK shall have the right to deliver Products with production-related deviations between the quantity delivered and the quantity ordered of plus/minus 10 %; in case of orders below 5000 m2 deviations of up to 20 % are permissible. The same applies to each partial shipment. At the same time BP accepts a production-related waste of 5 % length per reel of production material and process at HUECK.
- 4.5 If HUECK exceeds the ordered quantity significantly (i.e. by a percentage higher than specified in 4.4) BP may cancel the contract after having granted a six weeks' respite in writing. The grace period begins the day HUECK receives the advice of cancellation. Any further claims by BP are excluded to the extent permitted by law.
- 4.6 Any permits by authorities or third parties that are required for the performance of a contract shall be obtained by BP, who shall keep HUECK informed and, if applicable, indemnify and hold HUECK harmless in this respect. HUECK is not obligated to start work before such permits have been granted in a legally effective manner.
- 4.7 The place of delivery is the place or the person/carrier (FCA) specified in the order confirmation.
- 4.8 If BP fails to take delivery of the Goods at the date of delivery or performance agreed upon, the Goods will be stored for a period of 4 weeks or shipped at BP's risk and expense. The storage and shipping charges shall be paid by BP. At the same time HUECK shall have the right to insist on contract performance or, after grant of a reasonable respite, cancel the contract and make other use of the Goods. In the latter case a penalty equal to 10 % of the value of the Goods (exclusive of value added tax) will be charged. In the case of minor defects BP shall not have the right to refuse acceptance - without prejudice to any warranty rights.
- 4.9 Force majeure events (e.g. war, riots, regulatory interventions and bans, fire, etc.) or any other events preventing performance of an order (e.g. operational disruption at the plants of HUECK or the upstream supplier, delayed delivery by the upstream supplier, shortages of labor, energy or raw materials, strike and traffic disruptions, which are beyond HUECK's reasonable control) release HUECK from its obligation of delivery for the duration and extent of the disruption, and HUECK shall have the right to cancel the contract in whole or in part. Any claims for compensation due to such events by BP are explicitly excluded.
5. **Delay by HUECK**
- 5.1 In the case of a delay for reasons attributable to HUECK BP shall have the right to cancel the contract, provided that BP granted in writing a reasonable respite for delivery of the Products or provision of the Service after the delay occurred, threatening to cancel the contract after the expiration of the respite period. In the case of a delay for reasons attributable to HUECK that affects only part of an order, the aforementioned agreement shall apply with the proviso that the cancellation of contract shall apply only to the delayed partial shipment. A respite shall be considered reasonable if its term is not less than 50 % of the original term for delivery of the Products or provision of the Service.
- 5.2 In the case of a delay for reasons attributable to HUECK and justified cancellation of contract by BP, the latter shall only be entitled to damages if HUECK or its subcontractors caused the delay by intent or gross negligence. The liability for damage caused by delay for reasons attributable to HUECK covers an amount equivalent to 1 % of the value of the delayed Service or Goods in the case of gross negligence but is limited to a maximum of 10 % of the value of the part of the Service or Goods not delivered in time. Any claim for damages above this limit is excluded.
6. **Storage by HUECK**
- 6.1 Any raw materials, semi-finished or finished goods, other items and documentation handed over to HUECK are stored by HUECK at BP's exclusive risk; HUECK maintains elemental damage insurance for stored raw materials and semi-finished or finished goods handed over. At the same time HUECK endeavors to comply as far as possible with storage requirements provided by BP.
- 6.2 HUECK shall not be liable for damage to or loss of the stored items, unless HUECK caused the damage or loss by gross negligence or the damage is covered by insurance and the insurer provides elemental damage insurance cover for the damage. In the latter case, HUECK's liability is limited to the sum insured. In all other respects Article 9 of these TSD applies.
7. **Warranty**
- 7.1 Customary, minor deviations in quality, shape, quantity, measurements, weight or color that do not affect the intended use or are technically unavoidable are considered irrelevant defects and are deemed to have been accepted and do not constitute defects.
- 7.2 HUECK explicitly reserves the right to change and improve the Services and Products agreed upon on the basis of new experience and/or new scientific results.

- 7.3 BP shall examine the Goods and Services provided by HUECK immediately upon delivery and give notice of defect in writing immediately but no later than 14 workdays after taking delivery of the Goods and Services in the case of visible defects, shortfalls in quantity or wrong delivery. In case of hidden defects BP must give notice of defect within 14 workdays after detecting the respective defect. The notice of defect must be substantiated and include evidence. If the notice of defect is not submitted as required, any warranty claims, damages claims and other defect-related claims are excluded.
- 7.4 The warranty period is 6 months from the date of taking delivery, unless mandatory statutory regulations provide for longer periods. The existence of defects must be proved by BP. §§ 924 and 933b Austrian Civil Code shall not be applied.
- 7.5 In the case of established defects HUECK will, at its sole discretion, improve the defect or make subsequent deliveries or replace the Goods within a reasonable period of time. Repeated reworking and replacement are permitted. If work under warranty is carried out at BP's plant, BP shall provide HUECK with the required workers, material and tools free of charge. All incidental expenses incurred in the context of corrective action (e.g. return shipments, shipping, collection, transport, etc.) and the risk shall be borne by BP. If defects are repaired and additional deliveries in cases of shortfall in quantity and replacements are delivered in time, any additional claims such as cancellation of contract (rescission) or price reduction are expressly excluded.
- 7.6 The warranty lapses when the Goods were modified by BP or a third party that was not authorized by HUECK.
- 7.7 HUECK warrants solely that the Products conform to the agreed specifications upon passing of risk. No liability is assumed for any characteristics not included in the written specifications or for specific results of processing and workmanship and suitability of the Products for a particular purpose.
- 7.8 BP shall bear the risk of suitability of the Products for the use intended by BP. BP shall examine whether the printing documentation and execution templates provided by HUECK are fit for their purpose and if they are, confirm this to HUECK in writing. HUECK will not be liable for any faults overlooked by BP in this context. Any corrections requested by BP must be clearly indicated by BP. BP shall also bear the risks arising from handling or use of the Products, whether they are used separately or in combination with other products.
- 7.9 If a Product is manufactured by HUECK on the basis of design specifications, drawings, plans, models or similar resources provided by BP, HUECK assumes liability solely for careful execution on the basis of BP's specifications.
- 7.10 Where used products are sold or products are subject to premature consumption or wear and tear due to their constituent materials or prior use, HUECK offers no warranty.
- 7.11 The application of § 933a Austrian General Civil Code is expressly excluded. HUECK will assume liability for damage and consequential damage resulting from defects only if they were culpably caused by intent or gross negligence. BP is required to prove the presence of intent or gross negligence.
8. **Retention of title**
- 8.1 HUECK retains full title to the Goods delivered by HUECK until full payment for the Goods, including incidental expenses, has been made and BP has completely fulfilled its obligations under the contracts (retention of title). Where Goods are delivered on open account, the retention of title serves as collateral for balance claims.
- 8.2 BP must keep the Goods supplied by HUECK safe on behalf of HUECK until title passes to BP. BP bears all risks in respect of the goods subject to retention of title, including, but not limited to, the risk of destruction or loss or deterioration.
- 8.3 If the Goods subject to retention of title are resold, BP now assigns to HUECK all its open accounts payable to BP by the purchaser from the resale of the Goods subject to retention of title, including all ancillary rights, for payment of all open accounts payable to HUECK by BP, up to the value of the Goods delivered, without any further act of assignment or communication being required. HUECK accepts this assignment. BP shall transfer to HUECK such part of the proceeds from the resale that corresponds to the outstanding invoice amount immediately after the due date. This arrangement shall apply mutatis mutandis where Goods delivered are processed and adapted, combined or mixed. In this case HUECK acquires joint ownership in the new objects created, in proportion of the value of the Goods delivered to the value of the newly created objects.
- 8.4 BP may resell goods subject to retention of title granting extension of payment of the purchase price to the purchaser only if BP informs the purchaser at the time of purchase in writing about the assignment to the beneficiary HUECK and enters the assignment in its trading books. Moreover, the purchaser must be informed by BP through a written note on the relevant invoices that payment with discharging effect in the amount of the invoice value of the Goods subject to retention of title can only be made to HUECK.
- 8.5 Resale corresponds to use of the Goods subject to retention of title for performance of a contract for services and/or work and delivery.
- 8.6 BP shall have no right to pledge HUECK goods subject to retention of title or assign them as collateral to third parties. In the case of attachment or any third-party claim BP is obligated to assert HUECK's title to the goods, immediately give notice to HUECK and take all measures to safeguard HUECK's interests at its own expense. BP is obligated to provide HUECK, upon request, with the required information with respect to name and data of the third parties and to hand all documents for enforcing claims under the retention of title over to HUECK.
9. **Liability**
- 9.1 Unless otherwise required by mandatory law or provided in these TSD, HUECK will be liable solely for damages if the respective damage was caused by gross negligence or intent. In the case of gross negligence, the liability is limited to the contract value but at maximum the sum covered by HUECK's business third-party insurance. Where penalties have been agreed, any claims exceeding such penalties under whatever title are excluded. These limitations on liability shall not apply to reimbursement for personal injury. HUECK assumes no liability for indirect damage, loss of profit, loss of interest, loss of expected savings, consequential and property losses and losses arising from third-party claims (e.g. penalties) or for damage resulting from inadequate or improper use, natural wear and tear, and incorrect or negligent handling or storage.
- 9.2 The presence of gross negligence or intent must be proved by BP.
- 9.3 BP undertakes to observe all warnings, storage conditions, instructions for use, product specifications and other product declarations etc. ("instructions") provided by HUECK. BP specifically acknowledges the requirement that HUECK materials must be stored at temperatures ranging between 15°C and 25°C (59°F to 77°F) and a relative humidity of 50 % to 60 % and under no circumstances close to heating units, steam pipes, damp walls etc. The materials must be protected from sunlight. Reels and formats must be left in the original packaging until their use. If the appropriate conditions of storage are adhered to, the maximum shelf-life of the materials is six months from the production date. BP must provide its customers with these instructions in writing in their complete and latest version and place its customers under the obligation to observe these instructions. If this obligation is not imposed on the customers, BP undertakes to indemnify and hold HUECK harmless in this respect.
10. **Property rights, confidentiality, tools**
- 10.1 Samples, models, plans, templates, drawings, specifications and any other documentation ("engineering aids") exchanged between HUECK and BP for purposes of conclusion and performance of contract shall remain the property of the party providing such information. No right of use beyond the contractual use is granted. BP may copy these engineering aids only for its own use and neither make them accessible to third parties in any form whatsoever nor exploit them in any other way (in particular intellectual property or patent applications, etc.) without express written permission. Any right to retention of such engineering aids is excluded. BP shall, after providing HUECK with engineering aids, indemnify and hold HUECK harmless with respect to any third-party claims (under whatever title, in particular copyrights, patent, trademark or design rights, etc.).
- 10.2 With regard to know-how, data and information exchanged between HUECK and BP for the conclusion and performance of contract, paragraph 10.1 shall apply mutatis mutandis.
- 10.3 BP shall not use any HUECK trademarks or company logos without HUECK's express written approval.
- 10.4 Tools or dies (print and embossing rolls, etc.) made or procured by HUECK for performance of contract remain the property of HUECK. HUECK may charge BP a usage fee.
- 10.5 Tools or dies provided to HUECK by BP will be returned by HUECK no later than one year after performance of contract.
11. **Assignment of rights and inclusion of third parties**
- 11.1 BP shall have no right to assign any rights and obligations arising out of the contract to a third party without HUECK's prior written approval.
- 11.2 HUECK may, at its sole discretion, employ third parties in its contractual performance or assign the rights and obligations under the contract, in whole or in part, to third parties. BP agrees to this transfer of title in advance and will be notified.
- 11.3 HUECK may, at its sole discretion, appoint HUECK FOLIEN Vertrieb & Service GmbH, headquartered in Weiden, D-92637, Germany, as mutually agreed alternate and contract broker. The complete legal relationship between HUECK, the aforementioned third party and BP (with respect to all contracts and matters of power of attorney) shall be governed by and construed in accordance with the laws and subject to the jurisdiction specified in paragraph 13.2 and paragraph 13.3.
12. **Miscellaneous**
- 12.1 Notices in writing shall be deemed given when delivered to the address last provided by BP. An email shall be deemed delivered when it is retrievable by BP.
- 12.2 If the Products are used and/or resold, BP shall be obligated to adhere to all statutory/ regulatory regulations.
- 12.3 When placing the order, at the latest, BP must advise HUECK of any country-specific legal requirements applying at BP's location which HUECK must adhere to when providing Goods or Services.
- 12.4 Should any individual provision of the contract or these TSD be or become unenforceable, invalid or void, the remaining provisions will in no way be affected. In this case the provision that is (or has become) unenforceable, invalid or void shall be replaced by a legally permissible, enforceable and valid provision coming as close as possible to the economic effect of the replaced provision.
- 12.5 Unless otherwise expressly provided, the commercial terms used herein shall be interpreted in accordance with the INCOTERMS of the International Chamber of Commerce in Paris as amended from time to time.
- 12.6 No oral agreement, variation or addition to a contract shall be valid unless in writing. The same shall apply to the waiver of these TSD or the formal requirement of express written agreement set forth in these TSD.
- 12.7 In the event of discrepancy between a German and a foreign-language version of these TSD the normative content of the German version shall be exclusively applicable. The German version shall be the sole basis for interpretation of the legal relationship between BP and HUECK. The same applies in the event of discrepancy between a foreign-language and a German version of a contract.
13. **Place of performance, governing law and place of jurisdiction**
- 13.1 The place of performance for the Goods and Services is A-4342 Baumgartenberg, even if they are provided at a different agreed location.
- 13.2 It is expressly agreed that Austrian law shall be the governing law – giving no effect to the conflict of law rules of international private law (e.g. Federal Act on Private International Law, Rome I Regulation) and the UN Convention on Contracts for the International Sale of Goods.
- 13.3 Any dispute arising out of or in connection with the business relationship shall be finally settled under the Rules of Arbitration of the Vienna International Arbitral Center of the Austrian Federal Economic Chamber ("Vienna Rules") by three arbitrators appointed in accordance with the said Rules. The place of arbitration is Vienna. The language to be used in arbitral proceedings is German. HUECK may however invoke the court that has subject-matter and local jurisdiction for the registered office of HUECK to settle any dispute arising out of the contract with BP.
14. **Data protection**
- 14.1 The data used in connection with the business relations (including, but not limited to, name, address, telephone and fax numbers, email addresses, order address, delivery address, and invoice address, ordering date, products ordered and/or delivered, number of units, price, delivery dates, payment and dunning data, etc.) undergo electronic processing by HUECK. BP expressly agrees to its data being processed.
- 14.2 BP confirms having received and read the data protection fact sheet, which contains all the necessary information on the processing of personal data and the rights of data subjects. Our privacy statement is permanently posted at www.hueck-folien.at.