

GENERAL SALES CONDITIONS of

Tubex Wasungen GmbH, Aluminiumstraße 1, D-98634 Wasungen
(valid from: September 2012)

The general sales conditions (hereinafter: The "**Sales Conditions**") are applicable to all statements of intent that we, Tubex Wasungen GmbH, Aluminiumstraße 1, D-98634 Wasungen (hereinafter: "**TUBEX**") make in connection with the production, sale or delivery of aluminium tubes, plastic tubes, aluminium cartridges, cigar tubes, tablet cans, products and services (hereinafter together the "**Products**"); as well as to any other actions or declarations of TUBEX legally relevant in this respect. The acceptance of an offer of TUBEX by the customer (hereinafter the "**Client**") shall at the same time be deemed acceptance of the Sales Conditions and waiver of the Client's right to refer to his own general terms and conditions, e.g. his purchasing conditions.

Any contractual agreements entered into between TUBEX and Client shall be recorded in writing. Changes to and supplementations of a contract shall require written form.

TUBEX shall not accept any contrary conditions or conditions deviating from the sales conditions, unless TUBEX had expressly consented to their application in writing. The sales conditions shall apply even if TUBEX performs the delivery to Client without reservations in spite of knowing of the Client's conditions that are contrary to or deviating from the sales conditions.

Non-enforcement of provisions of the sales conditions by TUBEX shall not be deemed waiver of the right of TUBEX to enforce these provisions; such rights of TUBEX shall also not be affected as a consequence of delayed or neglected enforcement of such provisions.

The sales conditions shall only apply towards entrepreneurs in the sense of § 14 para. 1 German Civil Code, legal entities under public law and public-law special funds; they shall not apply towards consumers in the sense of § 13 German Civil Code. They shall also apply to any future transactions with Client in the scope of his work from a current business relationship.

1. Conclusion of the Contract

The offer of TUBEX shall be subject to confirmation unless the order confirmation indicates anything deviating or TUBEX has not expressly declared something deviating in writing. A contract shall only enter into effect if TUBEX has confirmed a request from Client in writing or if TUBEX performs an order or has started to prepare for this.

TUBEX reserves title and copyright in figures, leaflets, calculations and other documents; they must not be made accessible to any third parties. This shall specifically apply to such written documents that are designated as "confidential"; before they are passed on to any third parties, Client shall require the express written consent of TUBEX.

Where nothing different is agreed on in the written acceptance of the order, such documents shall not be included in the order by reference. Where required, Client shall review the documents and ensure before construction and production of the product that the product is suitable for its intended use, if required by performing the corresponding tests. The sole warranty of TUBEX is provided for below (in section 8 of the sales conditions). Client shall be solely responsible for collecting or performing all permits, approvals or other legal requirements on time or to meet them, which are required, among others, for currency control, import of the product into the state of delivery or payment of the products sold. Client shall inform TUBEX of the receipt or performance of such permits, approvals or other legal requirements in writing.

2. Prices

Where nothing different is agreed on in the written order confirmation, all prices of the product are deemed "ex works" (Ex Works ICC Incoterm 2010), excluding freight and the respective applicable VAT. The price indicated in the written order confirmation may be changed by TUBEX by the delivery and performance date if one or several of the factors used for specification of the price change, even if the change was foreseeable at the time the offer was made. TUBEX shall inform Client of such increases. Notwithstanding the above, our prices and rates shall be updated at least once a year. Client shall pay the taxes and duties arising for the products that are currently or in future raised in connection with the production, sale, transport, use or disposal of the products.

3. Payment

Subject to deviating rules, all invoices shall be payable without deduction within thirty (30) days from the date of the invoice at the latest.

Set-off against payment claims of TUBEX shall only be possible against undisputed or legally validly determined counter-claims. Payments also must only be held back, delayed, made under reservations or interrupted where undisputed or legally validly determined counter-claims are present.

Where nothing different is agreed on in writing and expressly, the product prices shall not be subject to any deductions or discounts by TUBEX.

Notwithstanding any damages claims of TUBEX, interest at 8 % above the base interest rate shall be charged for amounts in arrears without requiring dunning from the due date onwards (§ 247 German Civil Code). This default interest shall start on the first day after the day on which the payment is due, without previous information. Furthermore, TUBEX shall have the right in case of payment default (i) to suspend performance of all of its obligations, (ii) to cancel all open orders with Client within eight (8) days from receipt of a formal payment request to Client by registered mail with return receipt, and (iii) to demand from Client that he return the products at his own expense.

Notwithstanding any damages claims of TUBEX against Client, TUBEX shall also have the right to demand immediate payment of any other invoices that become due as a consequence of default by registered letter with return receipt.

If TUBEX is obliged to make an advance performance and if TUBEX gains knowledge of any circumstances according to which an essential deterioration of assets of Client can be expected, TUBEX may, at its own choice, either demand collateral within an appropriate period (e.g. advance payment) or payment step by step against delivery. If Client does not meet this obligation, TUBEX shall have the right to declare rescission of the contract, subject to further statutory rights.

TUBEX shall at all times have the right to set off amounts that TUBEX owes to Client against amounts that Client owes to TUBEX. Bills of exchange and cheques are - if at all - only accepted in lieu of performance. Costs for bills of exchange and cheques shall be at the expense of Client. The payment day shall be the day on which TUBEX can dispose of the counter-value.

4. Delivery Time

The commencement of the delivery time specified by us shall require clarification of all questions required and compliance with the obligations of Client.

Where nothing different has been agreed on or results from the contractual relationship, the delivery time indicated by us shall always be non-binding. If Client does not comply with any contribution obligations, the delivery period shall extend appropriately.

Force majeure, impairment of operations, strike, lock-out, lack of transport, problems in procurement of resources or other obstacles not due to the fault of TUBEX that happen to TUBEX or its suppliers shall release TUBEX from the obligation to perform for the duration of the impairment or its effects. If the impairment takes longer than one month, TUBEX and Client shall have the right to declare rescission of the contract regarding the part not performed yet after expiration of an appropriate grace period that was set. Damages claims shall in this case be excluded.

If Client sets an appropriate grace period of at least two weeks for TUBEX after its default, he shall have the right to declare rescission of the contract after unsuccessful expiration of this grace period; damages instead of performance for non-performance at the amount of the foreseeable damage shall only be due to Client where the default is due to wilful intent or gross negligence or due to negligent considerable violation of obligations. In case of simple negligence of TUBEX, liability shall always be limited to the foreseeable damage. The limitations of liability provided for in this paragraph shall not apply if a fixed transaction between merchants has been agreed on; this shall also apply if Client can assert that his interest in performance of the contract has been lost due to the default caused by our fault. In such cases, liability shall be limited to the foreseeable damage typical for the contract.

Where Client enters default of acceptance or has violated any other contribution obligations, TUBEX shall have the right to demand reimbursement of any damage arising for it, including any additional expenses. In this case, the risk of accidental destruction or accidental deterioration of the purchased object shall pass to Client at the time at which he enters acceptance default.

TUBEX shall have the right to make partial deliveries and deliveries before the end of the delivery period where this is not opposed by any recognisable interest of Client.

Client is obliged to declare in writing within an appropriate period upon our demand whether he declares rescission of the contract and/or demands damages due to delivery delay on our side or not. Unless the order confirmation states something different, TUBEX reserves the right to demand from Client that he accept any ordered products in a single delivery.

5. Serial Delivery, Long-Term and On-Call Contracts

Contracts without limitation in time may be terminated with a period of six months at the end of the month unless something different is provided for.

If an essential change to the wage, material or energy costs occurs in contracts with a term of more than twelve months or in contracts without limitation of time after the end of the first four weeks of the contractual term. Either of the contracting parties shall have the right to demand appropriate adjustment of the price under consideration of these factors, unless something different is agreed on.

Our prices have been calculated based on the agreed ordered amounts. If no binding order volumes have been agreed on, our calculation is according to the agreed target volumes. If the ordered or target amount is undercut by more than 20 %, we shall have the right to increase the price per unit appropriately. If Client exceeds the amount by more than 20 % with our consent, he may demand an appropriate price reduction if he reports this in writing no later than two months before the agreed delivery date. The amount of reduction or increase shall be determined according to the basics of our calculation.

In delivery contracts on call, binding amounts must be reported to us no later than three months before the delivery date by call unless agreed on differently. In this case, we shall only be released from our delivery obligation if the call is not made on time for reasons that are due to Client's fault. If we deliver anyway, additional costs that have been caused by delayed call or subsequent changes to the call regarding time or amount by Client shall be at the expense of Client.

6. Passing of Risk, Shipping and Packaging

Where nothing different is agreed on in writing, the delivery clause is deemed "ex works" (Incoterms 2010). This shall apply even if we have committed to assuming the transport costs.

Only at the express wish of Client shall we cover the delivery with transport insurance; the costs arising for this shall be assumed by Client.

If there is no special instruction, the transport medium and transport path shall be chosen according to our discretion.

Disposable packaging is not taken back. Borrowed or replaceable packaging media (e.g. pallets) shall be returned or replaced within 2 months at the latest.

7. Dimensions, Weights, Colours, Delivery Quantities, Compatibility with Filled Goods

Compliance with measures shall be according to the DIN and EN standards. Apart from this, we shall indicate the sizes and weights in our offers and order confirmations according to the best of our knowledge, but they are only approximately correct/accurate and specifically do not comprise any property guarantees or information. Minor deviations, especially technically caused common deviations, shall not entitle Client to any complaints and claims for defects, unless something different is agreed on.

As compared to the ordered volume, over- or under-delivery of up to 10 % shall be permitted – even at partial deliveries – under consideration of commercial use.

Colour deviations after printing:

If TUBEX produces sample jars or tubes to present the print image as a very small batch in "jog mode" on the sample print machine or a production line, TUBEX cannot guarantee that identical reproduction of the print image, and specifically the shades in industrial production will be possible. Client is obliged to accept such colour value changes and colour tolerances in later industrial production that are originally due to influences and conditions of the industrial production; Client shall also accept such influences on the print image that are originally due to tolerance differences in the paint application.

Interactions of products with filled goods:

TUBEX shall not be liable for the durability and resilience of the products against chemical and physical impairment by filled goods unless something deviating has been agreed on. Rather, the parties expressly agree that far-reaching tests must have been performed by Client before starting industrial serial production to confirm the compatibility of the filled goods with the products (migration, diffusion, as well as compatibility of filled goods and varnish, foils, labels or paints etc. used for producing the product), any production and bottling processes applied at the client's and the storage conditions before, during and after bottling.

TUBEX cannot perform such tests directly for practical reasons, since all of the processes just listed take place at the client's site; especially, the original filled goods and the original filling conditions are controlled by him.

If errors occur in the area of the product produced by TUBEX that could have been recognised by the above tests, no claims shall be applicable against TUBEX.

In addition to this, we refer to possibly applying requirements under food law that are not known to TUBEX in detail and that also must be reviewed exclusively by Client.

Where nothing else is expressly agreed on, TUBEX shall observe the recognised rules of the art, standards and provisions in Germany for the objects to be delivered by it, and shall not perform own research on standards and provisions applicable abroad. If Client desires compliance with any foreign standards and provisions, Client shall inform TUBEX of such standards and provisions at conclusion of the contract, and in any case in time so that TUBEX can consider them; he shall further explain them to TUBEX on request.

8. Warranty

TUBEX warrants according to the following conditions that the products correspond to the contractually agreed technical data and that they are within the common or agreed tolerances. Client shall report all claims under the warranty for obvious defects before use/processing of the products to TUBEX in writing within fifteen (15) days from the delivery. Client shall report any other claims under the warranty for errors and defects, except for obvious defects, in writing within six (6) months of their delivery. In any case, Client shall report any such claims to TUBEX within five (5) days of discovery of the error or defect.

The liability of TUBEX under this warranty does not apply if Client does not report within the respective period of time. There shall be no claims for defects if only inessential deviations from the properties or only inconsiderable impairment of usability are present. All of our specifications shall only be performance descriptions, rather than guarantees, unless something different is expressly agreed on.

If Client does not enable TUBEX to inspect the defect subject to the complaint on site and/or if he does not provide samples of the goods subject to the complaint on request or if he performs any changes to the goods subject to complaint without our consent, he shall lose his warranty claims. Review shall take place by TUBEX without delay if Client presents any interest in immediate performance.

If there is any error or defect, TUBEX shall either (i) revise the defective product at its own expense, (ii) exchange the product at its own expense or (iii) reimburse Client for the price of the defective product proratedly. Where any defect due to the fault of TUBEX is present, TUBEX shall, at our discretion, have the right to remove defects or to perform subsequent delivery. Removal of defects or subsequent delivery performed according to the warranty shall be limited to the above warranty period. Before Client may assert any other claims or rights (rescission, reduction, damages or reimbursement for expenses), TUBEX shall initially be given opportunity for subsequent performance within an appropriate period of time where TUBEX has not provided any guarantee to the contrary. If subsequent performance fails in spite of two subsequent performance claims, if it is impossible, unreasonable for Client or if TUBEX refuses subsequent performance, Client shall have the right to declare rescission of the contract or reduction of the compensation.

Any claims against TUBEX shall be raised by Client within two (2) years from arising of the claim; afterwards, all claims shall expire. Client shall comply with any instructions of TUBEX, e.g. regarding storage and use of the products, and shall inform his own customers or subcontractors of this. If Client does not observe such instructions or does not inform his customers of this, TUBEX shall not be liable under this warranty, or for any loss and damage incurred by Client or a third party. Client shall assume any risks and liabilities resulting from use of the products.

The following defects and errors are expressly not included in the warranty:

- Defects due to non-compliance with information or instructions of TUBEX,
- Defects due to regular wear,
- Defects due to transport or the means of transport used (if ex works),
- Defects due to storage conditions at storage that has not been performed or ordered by TUBEX,
- Defects due to changes to the products or their use by Client or any third party without the written consent of TUBEX,
- Defects that were not present at the time of delivery of the product to Client,
- Defects of a product that was not intended for sale or other form of distribution,
- Defects that are due to the final product that has been installed in the product or into which the product has been installed or due to instructions to the Manufacturers of the end product,
- Defects that did not have to be known at the production time in light of the scientific and technical standards

Client shall be liable towards TUBEX and reimburse TUBEX for any consequences arising from third-party claims regarding the products if the products have been delivered in correspondence with their technical data.

If Client improperly complains about the presence of a defect due to the fault of TUBEX for reasons for which TUBEX is not responsible, TUBEX shall have the right to charge any expenses incurred by TUBEX for removal and/or determination of the defect to Client.

9. Indemnification

Client shall indemnify TUBEX against any claims, especially to damages - including those with punitive character (especially in the USA and Canada) that are asserted against us by third parties, including consumers (and their legal successors) independently of their legal basis due to the goods packed in the products, including tobacco products. This shall also apply regarding the ingestion of tobacco products generally being hazardous to health and/or having caused (or possibly causing) damage to health in the specific case or that the – also unintended – use of the products in our packaging leads or has led to injury, property or other damage. This shall also apply to any claims for execution based on a decision passed in the USA or Canada or any state that is not part of the EU and the EEA due to filled goods contained in our packaging, which are asserted against us in Germany, the USA or any other state. The indemnification claim of TUBEX includes appropriate lawyer's fees and expenses for defence against such claims.

10. Reservation of Title

TUBEX reserves full and exclusive title in the products until receipt of all payments from the business relationship with Client. In case of non-contractual behaviour of Client, especially at payment default in spite of an appropriate grace period, TUBEX shall have the right to take back the delivered object. This shall not apply where Client has already applied for insolvency proceedings or where insolvency proceedings have been opened due to which immediate recovery of the delivered objects by TUBEX is not permitted. The recovery of the object by TUBEX shall not constitute rescission of the contract unless TUBEX has declared this expressly in writing. After recovery of the delivered object, TUBEX shall have the right to utilise it; the utilisation revenue shall be set off against liabilities of Client - minus appropriate utilisation costs. The utilisation rules of the InsO (insolvency rules) shall not be affected.

Client shall be obliged to treat the object of the delivery with care; especially, he shall be obliged to sufficiently insure it against fire, water and theft damage at the new value at his own expense. Until complete payment, Client shall take any measures required to ensure that the delivered products are properly stored and marked clearly as property of TUBEX, so that they can be identified and will not be mistaken for the products of other suppliers, to protect the rights of TUBEX in these products and to inform TUBEX of any third-party claims in respect of the products without delay. The products must not be transferred, sold on or pledged on, and generally not be subject to any rights granted to third parties. Client shall have the right to sell on the object of the delivery in the proper course of business, but hereby assigns any claims at the amount of the final invoiced amount to TUBEX (including VAT) that arises to him against his purchasers or third parties from the further sale, no matter if the delivered object has been sold on without or after processing. Client shall remain entitled to collect the claim even after assignment. TUBEX shall, however, have the right to collect the claims itself if Client no longer meets his payment obligations from the revenue received, enters default of payment or an application for opening of insolvency proceedings for his assets has been filed by him or someone else or if he ceases payments. In such cases, TUBEX may demand that Client disclose the assigned claims and their debtors, provide all information required for collection, release the associated documents and inform the debtor (third party) of the assignment.

Collection of the claim by TUBEX shall, however, not be possible if the insolvency rules are opposing this. Client shall process or transfer the goods subject to retention of title for TUBEX, without any obligations arising to TUBEX from this. If Client combines, mixes, meshes or processes our goods subject to retention of title with any other goods, TUBEX shall be due joint title at the amount of the value invoiced for our combined, mixed, meshed or processed goods in the resulting goods. The respective goods shall be deemed goods subject to retention of title in the sense of these conditions in this respect. TUBEX commits to releasing any collateral due to TUBEX on request of Client also in so far as the value of our collateral exceeds the value of the claims to be secured by more than 20%; selection of the collateral to be released is subject to TUBEX.

11. Tool Equipment

Even if compensation is paid for cost shares for tools, master dies, parts of production plants, templates, etc., by Client, they shall remain the sole property of TUBEX. If not utilised, Client shall assume the remaining part of the uncovered costs. Charging on of expenses that arise before commencement of production and that are not included in the product price (costs for project development, samples and sample prints, etc.) are reserved by TUBEX.

12. Costs for Storage

If shipping delays due to circumstances that are due to the fault of Client, storage fees will be calculated from indication of readiness for shipment. They shall be 0.5 % of the invoiced value per month.

13. Compliance with Provisions - Information

By acceptance of the technical data of the products, Client confirms that he is fully aware of the construction and properties of these products, as well as the possible dangers regarding the products. Client shall perform all required inspections and verifications of the products. Client shall be solely responsible for compliance with the applicable provisions regarding the import, sale and use of the products in their delivery states. Client shall be solely responsible for the production of suitable warning notes and information to his customers and end consumers regarding use of the products and/or their possible dangers, as well as any resulting consequences.

14. Force Majeure

TUBEX shall not be liable for violation of its obligations in case of force majeure, which impairs, prevents or delays performance of his obligations. Force majeure includes, among others, natural disaster, storm, fire, flooding, earthquake, accidents, interruption of operations, strikes (including strikes regarding our suppliers), lock-outs, interruptions and/or delays in loading or transport, power outages, embargoes, trading prohibitions, resource scarcity, accidents in connection with tool equipment, sabotage, action of civil or military authorities, war-like actions, hostilities, terrorist actions and unrest. TUBEX shall inform Client in writing without delay of the occurrence of an event of force majeure that refers to the execution of the order. In this case, the obligations of TUBEX shall be suspended and performance and delivery times shall be extended; however, the order continues to remain valid. If an event of force majeure continues for more than three months, either party shall have the right to cancel the affected order with immediate effect by registered letter with return receipt. Client is obliged to accept and pay for any products produced until the day of cancellation, and to compensate TUBEX according to the proviso of section 12 of these sales conditions for any other costs and expenses that have already arisen.

15. Cancellation and Termination of Orders - Transfer of Orders

15.1 Cancellation and Termination of Orders:

Cancellations or revocations of an order or parts of it before deliveries shall require the previous written consent of TUBEX, except if there is any violation of obligations due to the fault of TUBEX. In case of cancellation of an order or part of it, Client shall assume all costs and expenses already incurred by TUBEX and its subcontractors, e.g. for stock of finished and unfinished products or for construction, repro work and tools that have already been produced or rendered or that are being produced, as well as stock of purchased parts.

15.2 Transfer of Orders or Assignment of Rights from Contracts:

The identity of Client is of essential importance for the decision of TUBEX to accept an order. Accordingly, orders must not be assigned or transferred to any third parties wholly or in part without our written consent. Client also shall not have the right to transfer any rights due to him from a contract with TUBEX to any third parties without the consent of TUBEX. TUBEX shall have the right to assign orders of Client to a third party of his choice without limitation and to transfer the respective connected rights and obligations to his holdings, each subject to an appropriate advance written notification of Client.

16. Intellectual Property and Commercial Property Rights

The plans, constructions, drawings, casting dies, photographs, production figures, models, technical and commercial material lists, recommendations, test results, catalogues, brochures, manuals, patents, drafts, comments and generally any documents, as well as any written or oral information disclosed to Client (hereinafter jointly "**Intellectual property**") shall be and remain the property of TUBEX. Accordingly, Client must not use, pass on or reproduce any intellectual property without our written consent. Transfer of intellectual property or know-how of TUBEX to Client or of rights of Client in constructions and models that are installed in products developed by TUBEX shall be on a non-exclusive basis and shall not limit the right of TUBEX to produce products for other customers using this intellectual property or know-how.

17. Partial Invalidity

If any provisions of these sales conditions or the contract are declared non-enforceable or turn out to be invalid, this shall not affect the validity of the remaining provisions of these sales conditions or this contract.

18. Applicable Law, Place of Jurisdiction and Place of Performance

The place of jurisdiction shall be the seat of TUBEX. TUBEX shall, however, have the right to also raise a claim against Client at the court of his seat. Where the order confirmation does not indicate anything deviating, the site of performance for our services shall be the seat of TUBEX. The place of performance for payment obligations shall be the seat of TUBEX.

The effectiveness, interpretation and performance of a purchasing contract for products shall be subject to the law of the Federal Republic of Germany and shall be interpreted and enforced according to the law of this state, notwithstanding its conflict of laws provisions. The Vienna UN purchasing law convention from 11 April 1980 shall not be applied to the sale of products.

As of 01 September 2012