

**TERMS AND CONDITIONS OF SALE AND DELIVERY**  
**of Birkelbach Kondensatortechnik GmbH**  
**(Date March 2006)**

The following terms and conditions Number 1.-15. shall apply for commercial transactions with all customers who are not consumers within the meaning of § 13 of the (German) Civil Code [BGB] and which are based in Germany. Only Numbers 16. – 16.18 apply to customers not based in Germany.

#### 1. General

1.1 Goods, services and offers shall be made solely on the basis of these terms and conditions of business.

1.2 This means that they apply for all future business relationships, even if they are not expressly agreed again. These terms and conditions shall be regarded as having been agreed by no later than the receipt of the goods or performance. Counter-confirmations by the customer referring to his terms and conditions are hereby rejected. This shall also apply in the event that the customer has specified that rejection of his terms and conditions of business has to take a specific form. Differences from these terms and conditions of business shall only be valid if we confirm them in writing.

1.3. Orders and verbal side agreements to orders which are made with our commercial representatives must be confirmed by us in writing to be valid.

#### 2. Offers, Entering into a contract

2.1. Our offers are subject to change without notice and non-binding. We reserve the right to make technical modifications within the scope of what is reasonable and likewise to adjust products to standards coming into force subsequently.

2.2. By placing an order for goods the customer is making a binding statement that he intends to buy the goods he has ordered (Offer to enter into a contract). We are entitled to accept this offer to enter into a contract within two weeks from the date on which we receive it. Acceptance may either be made expressly in writing or text or by forwarding the ordered goods.

2.3. A contract will be entered into subject to the reservation of us being supplied by our supplier with the correct goods and on time. This shall only apply in the event that we are not to blame for non-delivery by us. In particular we shall not be to blame for non-delivery if we take out a proper congruent covering transaction.

2.4. Confirmation of order receipt in an electronic legal relationship does not yet constitute a binding statement of acceptance of an offer to enter into a contract unless acceptance is stated expressly in the confirmation of receipt.

2.5. In so far as the order is made electronically, the contract will be saved by us and forwarded to the customer upon request together with these T&Cs by e-mail. Otherwise the duties to provide information in § 312 e Section I No 1-3 BGB (Making available technical aids to eliminate incorrect entries, making available information in accordance with the duties to provide information ordinance, immediate confirmation of receipt) shall be ruled out.

#### 3. The use of our products, Application consultancy

3.1. All the documents generally handed out by Birkelbach the objective of which is to support the assembly, arrangement and processing of our products, just like the reports on combinations and products already carried out, only constitute suggestions for applications without being a binding technical statement on a specific case. The customer alone shall be responsible for the application, use and processing of our products in his production division on account of the large number of possible factors having an impact which are beyond our control and knowledge. On every occasion on which the customer uses our documents he shall have to check closely whether the proposals made for his specific use are suitable and apt in every respect, since the large number of parameters occurring in practice in processing cannot be recorded in documents of this type. The customer is therefore obliged to conduct his own review of our notes of advice and our products with regard to the specific suitability of the processes and purposes intended by the customer and to conduct production trials.

3.2. Technical application advice in word and diagrams and by trial will consequently be based on the best knowledge but shall however only apply as non-binding information, even with regard to any third party proprietary rights there may be. They shall not substantiate any consultancy contract and liability for consultancy errors based on such a contract.

3.3. If binding information is required by the customer, in particular with regard to the mechanical and electrical characteristics or other physical problems such as thermal behaviour, moisture behaviour and fire-retardant properties etc., specialist engineers or specialists are to be instructed. Such specialist planning and services are not covered by our offer and the purchase contract, unless an express agreement is made with regard to this in writing.

#### 4. Pricing, Packing, Dispatch

4.1. Prices are in EURO/kg ex Works excluding freight, insurance and value added tax. The prices and value added tax stated in our order confirmation shall apply in all cases. Surcharges for minimum volumes shall be invoiced by separate agreement.

4.2. Prices confirmed in an order will certainly not be binding for follow-up orders for similar parts.

4.3. If the prices have been set for a period of time longer than three months, we shall consequently be entitled to demand that prices are adjusted as appropriate, if exceptional increases in wages, primary material or other costs occur which cannot be foreseen when the contract is signed. The agreed prices cannot be amended for other reasons, in particular if a competitor makes a lower offer.

4.4. If there are no specific instructions to hand from the customer for packing and dispatch, we shall consequently reserve the right to select the packaging and transport route. Non-returnable packaging will be invoiced by us at cost.

4.5. Transport packing is to be returned to us in accordance with the (German) packing regulations. We shall invoice packing materials not covered by the packing regulations at cost.

#### 5. Terms and conditions of payment

5.1. Unless otherwise agreed, our invoices shall be payable to us within 10 days from the date of invoice to qualify for a prompt payment discount of 10%, or within 30 days in full. Our representatives are not entitled to collect debts. The customer will be under a contractual obligation to pay the purchase price within 30 days from the receipt of the goods. Once this period has expired, the customer will be in default with payment.

In spite of any terms and conditions to the contrary the customer may have, we shall be entitled to offset payments first of all against his older debts. If costs and interest have been incurred, we shall consequently be entitled to offset the payment first of all against the costs, and then against the interest and finally against the main account.

5.2. A payment shall only be regarded as having been made once we are able to dispose of the sum paid to us. In the event that payment is made by paper (bills, cheques, security) the discounting of which we reserve on a case-by-case basis, payment will only be regarded as having been paid once the paper has been honoured. The costs and fees for this shall be for the customer's account.

5.3. The customer shall have to pay interest on money owed by him at base rate plus 7 % in accordance with § 247. We expressly reserve the right to assert a claim for default damages over and above this amount if we can actually prove them. Likewise the customer reserves the right to prove that he interest damage as a result of default is less than base rate plus 7%.

5.4. If the customer fails to fulfil his payment obligations, in particular by dishonouring his cheque or draft obligations or if we become aware of other factors raising doubts as the creditworthiness of the customer to a significant extent with regard to our business relationship, we shall consequently be entitled to make the residual debt payable and to be more precise, even in those cases in which we have accepted cheques and drafts. Besides which, we shall in this case be entitled, to demand payment in advance or the furnishing of a security.

5.5. The customer is only entitled to offset, retain or reduce the purchase price, even if defects or counter claims have been asserted, if the counter claims have been declared final and absolute in a court of law or are not contested. A right of reservation may only be exercised if the counter-claim is based on the same legal relationship.

#### 6. Delivery periods, Delays in delivery, Liability for default in delivery

6.1. Delivery periods shall not begin before all details concerning a contract being carried out have been fully clarified.

6.2. Compliance with the delivery periods assumes that the customer has fulfilled his contractual duties.

6.3. We shall not be to blame for delays in delivery and performance based on force majeure and based on events which make it much more difficult or impossible to deliver (These include for example strike, lock-out, official regulations etc.), even

if they occur to our suppliers or their suppliers, even with delivery periods and dates agreed on a binding basis. They will entitle us to postpone the delivery and / or performance by the duration of the delay plus an appropriate start-up time or to withdraw from part, or all, of the contract not yet fulfilled.

6.4. If the delay lasts for more than 2 calendar months, the customer shall be entitled, having set a reasonable subsequent period, to withdraw from the part of the contract not yet fulfilled. The customer shall not be able to derive any compensation claim for damages if the delivery period is extended or if we are exempted from our obligation.

6.5. We may only rely upon the circumstances in No 6.3 and 6.4 if we inform the customer straightaway of the occurrence of these events.

6.6. We shall be liable for default in delivery in accordance with the statutory provisions provided that this is the result of an intentional or grossly negligent breach of contract for which we are to blame. Provided that default in delivery is not based on an intentional breach of duty for which we are to blame, our duty to pay compensation for damages shall be limited to the foreseeable damages typically occurring for this type of contract.

Otherwise we shall be liable in accordance with statutory provisions, to the extent that the default in delivery for which we are to blame is based on the culpable breach of an important contractual obligation. In this case too, our liability to pay compensation for damages shall be limited to the foreseeable damages typically occurring for this type of contract.

Moreover we shall be liable in the event of a default in delivery for which we are to blame for each full week of default for a lump sum default compensation amounting to 0.5 % of the delivery value of the goods affected by default up to a maximum however of 5 % of the delivery value of the goods affected.

The customer reserves the right to assert other statutory claims and rights.

#### 7. Quantities supplied, Call-off delivery contracts

7.1. Our products are mass-produced and therefore excess or under deliveries of up to 10% of the quantity ordered or called off are normal within our line of business and shall be regarded as fulfillment in accordance with the contract.

7.2. We are to be notified of call-off quantities and delivery dates for call-off orders to be delivered on a continuous basis at the same time as when the order is placed. We are entitled to manufacture the total quantity of the order in accordance with our production planning at any point in time we wish, unless express agreements have been made to the contrary. Subsequent order amendments will not be possible once the total quantity has been manufactured.

7.3. The customer shall be under a contractual obligation to divide up and accept the ordered quantity over the duration of the contract. If the ordered quantity has not been accepted during the duration of the contract, we shall consequently be entitled, irrespective of our other statutory rights, to demand acceptance of, and payment for, the entire outstanding quantity. The customer shall be in default with the part of the ordered quantity not divided up and called off when the duration of the contract expires.

7.4. If a call-off period has not been stipulated, and in the event that the customer has not called off an order within a period within which he would no made a call-we shall consequently be entitled to set a period for a call-off. Once it has expired unsuccessfully we shall, irrespective of our other statutory rights, be entitled to demand acceptance of and payment for the entire residual quantity amount to be ordered.

#### 8. Passing of risk, Acceptance

8.1. Risk shall pass over to the customer as soon as the consignment has been handed over to the person transporting the goods or have left our stores for the purpose of dispatch. This shall also apply if delivery franco domicile has been agreed. If it becomes impossible to dispatch the goods without us being to blame, risk shall pass over together with notification that the goods are ready for dispatch. The choice as to method of dispatch shall be left up to us, unless the customer has passed out specific instructions with regard to this. Transport damage is to be notified straight away upon receipt of a consignment to the carrier or freight forwarder. A certificate is to be issued confirming the damage.

8.2. We shall only take out a transport insurance policy if the party placing an order requests this and bears the costs incurred as a result.

8.3. In the event that the goods are to be collected by the customer, the party placing the order shall have to collect the goods notified to him as being ready for collection straight away. If the party placing the order fails to fulfil these duties within three working days after receiving notification that the goods are ready for delivery, we shall consequently be entitled to at our choice to dispatch or put into store the goods at the cost and risk of the party placing the order. Goods notified as being ready for dispatch shall be invoiced as if they have been delivered. The risk passes over to the party placing the order once he has been notified that they are ready for delivery.

#### 9. Notification of defects, Warranty, Compensation for damages

9.1. We shall furnish a warranty for the goods delivered by us in accordance with the provision below which is a definitive account of the warranty provisions and which do not constitute a guarantee in a legal sense. Any manufacturer's guarantee there may be for marketable goods shall not be affected by these provisions. A customer must fulfil the duties of inspection and notification incumbent upon him properly (See below 9.3) for his warranty claims to be valid.

9.2. The warranty period is 12 months, provided that the delivered product has been used in accordance with its normal application for a building and defects have not been caused as a result of non-compliance with this requirement. The warranty period shall begin on the delivery date. If our technical leaflets or information are not obeyed or if products are modified, the warranty shall lapse as a result unless the customer can prove that the notified defect is not attributable to these circumstances.

9.3. The customer is obliged to notify us in writing of manifest defects within no later than two weeks from the receipt of the delivered item and in doing so to describe the fault in detail. Defects which cannot be discovered within this period, even with a thorough examination, are to be notified to us in writing straight away once they have been discovered. Failure to comply with these regulations will render the warranty invalid. The full burden of proof that all preconditions for asserting a claim under warranty have been satisfied shall be on the customer. This applies in particular to the defect itself, the point in time at which it was discovered and notification having been submitted on time.

9.4. In the event of notified defects being justified, subsequent fulfillment will only be effected by a new of exchange part being supplied since repairs cannot be made for technical reasons.

9.5. If the subsequent fulfillment is unsuccessful within an appropriate period of time set by the customer, the customer may consequently at his choice demand a reduction in price or the cancellation of the contract. If the breach of contract with regard to the performance is minor, in particular if the defects are minor, the customer will not however be entitled to withdraw from the contract.

9.6. If the customer chooses to withdraw from the contract on account of a legal or quality defect following an unsuccessful subsequent fulfillment, he shall not be entitled to any further compensation other than his claims for damages on account of the defect. If, following an unsuccessful subsequent fulfillment, the customer demands compensation for damages, the goods shall remain at the customer's premises if it is reasonable to expect him to accept this. The compensation for damages shall be limited by amount to the difference between the purchase price and the value of defective thing. This shall not apply if the breach of contract has been caused by us maliciously.

9.7. In the absence of an express agreement to the contrary, the contractual condition of the metallic film shall be determined only by the contractual product description as well as the description in our technical sales documentation. Public statements, sales talk or advertising shall not constitute a contractual description of condition of the goods.

9.8. Provided that we are working to the customer's specifications we shall not be liable for the suitability of the film with regard to the customer's intended purpose, for the film having been designed properly, for compliance with safety regulations and building regulations and the suitability of the material.

9.9. Only the other parties to the contract shall be entitled to assert claims under warranty against us. These claims cannot be assigned.

9.10. If the customer lays down specifications which we identify as being extremely difficult for technical production reasons or impractical, we shall notify the customer of this and at the same time submit our own proposal. In this case the customer will be obliged at his own responsibility to check our proposal of an amendment to confirm that it is suitable for his purposes, Number 3.1 to 3.3 shall apply accordingly. We shall not furnish any assurances or liability with regard to the suitability of our proposal for the customer's purposes.

9.11. Goods returned which are not defective will not be accepted by us as a matter of principle.

9.12. Birkelbach maintains a quality management system. All products are subjected to constant checks during production in accordance with our QM handbook. The customer is entitled to obtain information as part of an audit on quality examinations conducted in support of production. Inspections other than those laid down in our QM handbook shall be subject to separate agreement in writing between the customer and us stating a precise description of the test parameters and test methods.

9.13. Our quality management system shall not release the customer from the necessity to carry out a proper inspection at his goods inward department (see above No 9.3.).

#### 10. Limitations of liability

10.1. We shall not be liable in the event of breaches of minor contractual duties attributable to ordinary negligence.

10.2. Our liability for other breaches of duty attributable to ordinary negligence shall be limited to damage foreseeable, and typically occurring for the type of goods. This shall also apply for breaches of duty attributable to ordinary negligence by our legal representatives or assistants.

10.3. Liability shall be ruled out unless an arrangement is made to the contrary in these terms and conditions.

10.4. The above limitations of liability shall not apply for a customer's claims based on product liability or in the event that loss of life, personal injury and physical harm suffered by the customer is attributed to us.

10.5. The customer's compensation claims for damages shall become time-barred one year beginning with the delivery of the goods. This shall not apply for customer's claims based on product liability or in the event that loss of life, personal injury and physical harm suffered by the customer is attributed to us.

#### 11. Reservation of title

11.1. We shall reserve title to the delivered goods until all liabilities from the business relationship - including interest and costs - have been settled. Upon request the customer shall be obliged to store the goods separately and to insure the goods delivered subject to reservation of title. At our request he shall have to maintain evidence of this. In the event that the purchase price is paid in full by means of a cheque / draft, our reservation of title shall not expire when the customer's cheque is cashed by, but instead only when the last refinancing cheque has been honoured.

11.2. The customer is entitled to dispose of the goods subject to reservation of title - even if they have been processed by him - in his normal and proper course of business. However, he shall have to reserve title to such goods until his right to the payment of his purchase price has been paid in full. The customer must not pledge the goods subject to a reservation of title or transfer ownership of them by way of security. He must also notify us straight away of levies of execution made by third parties or other third party seizures of the goods subject to reservation of title.

11.3. If the customer processes or treats goods delivered by us or if he combines them or mixes them with other goods not belonging to us, the processing or treatment shall consequently be free of charge for us as manufacturer. We shall consequently acquire title or co-title in proportion to our product to the total value of the goods created by being processed / treated. The customer shall look after the newly created thing for us free of charge. If our goods are processed by the customer together with goods from other suppliers we shall become proportional co-owners of the new thing. In so far as we become the owners or co-owners as a result of new things created by processing or treatment, the terms and conditions applicable for our goods subject to reservation of title shall apply as appropriate to them or to the proportion of them to which we are co-owners.

11.4. The customer assigns to us here and now, subject to a suspensory condition of the point in time of its materialisation, the accounts to which he is entitled from reselling the goods. If after being combined - in particular with goods not belonging to us - the goods subject to reservation of title are resold, the assignment of account shall consequently only be for the amount of the sales value of our goods subject to reservation of title. If the third party debt is greater than our account, the account receivable from the third party shall only pass over to us to the extent that it is the same value as that of our goods subject to the reservation of title.

11.5. The customer is entitled to collect the accounts assigned to us from a third party buyer. However, he has to pay over the collected sums to us straight away. We reserve the right to collect the account directly from the third party buyer as well and we are to be notified of his name by the customer for this purpose.

11.6. In the event that the customer's conduct is in breach of contract, in particular he is in default with payment, or in breach of the duties above in Section 1 and 2, we shall be entitled to withdraw from the contract and to demand that the goods are returned irrespective of other statutory rights on account of this breach of duty by the customer.

#### 12. Proprietary rights, Copyright

12.1. The customer has to vouch that goods which we manufacture in accordance with the information he gives us do not breach third party proprietary rights on us manufacturing or delivering such articles, the customer shall consequently have to exempt us from all claims. In such cases we shall only manage legal action to avert claims asserted against us if the customer calls upon us to do so while furnishing us with a binding statement that he will pay our costs. In this case we shall be entitled to demand a security for the costs of legal action.

12.2. The customer shall be subject to a contractual duty to only use documents and drawings handed over to him as well as services rendered by us and proposals made by us for the design of metallic film as a base material for manufacturing condensers for the agreed purpose. It is forbidden for him to allow third parties access to it or to publish articles about it.

#### 13. Means of production, Protection of business secrets

13.1. If it is agreed that the customer is to bear some or all of the manufacturing costs for printing rollers, these shall consequently be shown in the invoice separately from the product price. The reasons for showing these items separately in the invoice are simply for costing purposes; the customer shall not acquire title or a right to assignment as a result.

13.2. The repair and maintenance costs as well as the risk of damage or destruction of the printing rollers up to a total amount to be agreed when the contract is signed shall be borne by us. No 12.1 shall apply for manufacture of replacement printing rollers necessary as a result of wear and tear.

13.3. We shall keep the printing rollers for two years free of charge after the last supply to the other party to the contract as a matter of principle. Once this period of time has expired we shall allow the other party to the contract an opportunity to make a statement within 6 weeks on whether we should continue to keep the printed rollers. The period for which we keep the printed rollers shall expire if we do not receive a statement or no newer order is placed within 6 weeks. If within this period of time a new order is placed, the procedure in this clause will apply all over again as a result.

13.4. Like us, the customer is obliged to treat all obvious commercial and technical details which we / the customer become aware from each other through the business relationship as business secrets. Drawings, models, templates samples, and similar items must not be handed over to third parties or access otherwise be allowed to them. The reproduction of such items is only allowed in line with operational requirements and the copyright regulation.

#### 14. Data protection

The handling of the business relationship will be supported by a data processing system. Accordingly the customer's data (address, products supplied, quantities supplied, prices, payments, cancellations etc) will be recorded in an automated file and saved until the end of the business relationship. The customer shall be informed that such information has been saved. The legal basis for this is § 27 et seq 33 of the (German) Federal Data Protection Act (BDSG).

#### 15. Place of fulfilment, Place of jurisdiction

The place of fulfilment and place of jurisdiction for all disputes, including those based on (dishonoured) bills of exchange shall be the court having jurisdiction Erndtebrück.

#### 16. Customers having their principal place of business outside the Federal Republic of Germany

The UN convention on the international sale of goods (CISG) shall apply to all customers having their principal place of business outside the Federal Republic of Germany, provided that it is not amended or supplemented by the following clauses. In so far as the CISG does not have the relevant regulations, German law shall apply as a supplement. Customers' terms and conditions purchase shall not apply.

16.1. Our offers are binding, unless expressly marked as being subject to change without notice. A contract shall be entered into subject to the reservation of us being supplied with the correct goods on time by our suppliers. This shall only apply in the event that we are responsible for non-delivery. In particular when entering into a proper congruent covering transaction, we shall not be to blame for non-delivery.

16.2. Delivery shall be free German border.

16.3. All documents published in general by Birkelbach on the subject of the combination, composition, arrangement and processing of our products, like the reports on combinations and products already carried out only represent proposals for application without being a binding technical statement for a given instance. The application, use and processing of our products in a customer's production department are his responsibility and his alone, since they are beyond our control on account of the large number of possible factors beyond our control and knowledge. On each occasion on which he uses our documents he must always check whether the proposals made for his specific requirement are suitable and correct in all respects, since a large number of the parameters occurring in practice for processing and use cannot be recorded in such documents. The customer is therefore obliged to check our advisory suggestions and products to confirm that they are actually suitable for the process and purposes intended by the customer and he must conduct production trials.

16.4. Technical application advice in word, picture and as a result of trials shall therefore be carried out to the best of our knowledge but shall however only apply as non-binding information even in regard to any third party proprietary rights there may be. They shall not constitute a support contract and shall not constitute liability for advice passed over on the basis of such a contract.

16.5. If binding information is required by the customer, in particular with regard to the mechanical and electrical characteristics or other physical problems such as thermal behaviour, moisture behaviour and fire-retardant properties etc., specialist engineers or specialists are to be instructed. Such specialist planning and services are not covered by our offer and the purchase contract, unless an express agreement is made with regard to this in writing.

16.6. Title to the contractual goods shall only pass over to the customer once they have been paid for in full.

16.7. We shall not be to blame for delays in goods and services as a result of force majeure and events which make it much more difficult or impossible to supply (these include, strike, lock out official instructions for example) even if they have occurred at our suppliers or at their suppliers, and even if we have agreed delivery periods and delivery dates on a binding basis. They shall entitle us to postpone the delivery or performance by the duration of the hindrance plus an appropriate start-up period or to withdraw from part or all of the part of the contract not yet fulfilled.

16.8. The warranty period is 12 months provided that the delivered product provided it has been used for a building in accordance with its normal use and the defect has not been caused by improper use. The warranty period shall begin on the delivery date. If our technical leaflets or instructions are not followed or if modifications are carried out to the products, the warranty shall consequently lapse, unless the customer can prove that the notified defect is not the result of these circumstances.

16.9. Provided that we are working in accordance with the relevant specifications, we shall not be liable for the suitability of the film for with regard to the customer's intended use, or for the film having been properly designed or for compliance with safety regulations and building type regulations as well as the suitability of the material.

16.10. If the customer lays down specifications which we identify as being extremely difficult, for technical production reasons or impractical, we shall notify the customer of this and at the same time submit our own proposal. In this case the customer will be obliged at his own responsibility to check our proposal of an amendment to confirm that it is suitable for his purposes. Number 3.1 to 3.3 shall apply accordingly. We shall not furnish any assurances or liability with regard to the suitability of our proposal for the customer's purposes.

16.11 If it has been agreed that the customer is to bear some or all of the manufacturing costs for printing rollers, these shall consequently be shown in the invoice separately from the product price. The reasons for showing these items separately in the invoice are simply for costing purposes; the customer shall not acquire title or a right to assignment as a result.

16.12. Unless an agreement has been made to the contrary, payment must be made in €. If the customer fails to pay when payment is due, he shall consequently have to pay interest amounting to 7 % above the bank rate charged at that time by the European Central Bank.

16.13. Delivered goods are to be inspected straightaway. Goods in breach of contract are to be notified straight away. In each case notifications of goods being in breach of contract must be notified within 6 months of the receipt of the goods, even if the defects are concealed defects.

16.14. All the customer's claims on account of the goods being in breach of contract shall become time-barred in 6 months, beginning with the day on which a defect is notified on time in accordance with Number 16.13.

16.15. If the goods are not in accordance with the contract, we shall consequently, notwithstanding Article 46 of the convention, be entitled to supply a replacement instead of carrying out a repair. In this case the customer shall have to provide us with the goods in breach of contract at our expense.

16.16. We shall only have to pay compensation for damages on account of the goods being in breach of contract if with regard to this, we are to blame. The compensation claim for damages shall be limited by amount to € 25,000.00.

16.17. The invalidity of individual clauses in these terms and conditions shall not affect the legal validity of the rest of the contract.

16.18. The place of jurisdiction is the court having jurisdiction where the Seller has his principal place of business. However, we are also entitled to take legal action against the customer at his general place of jurisdiction.