

# General Terms and Conditions, Terms of Delivery and Payment

- as at: August 2002 -

## I. Scope/Conclusion of Contract

These Terms and Conditions apply to all Work unless such other terms have been agreed in Writing.

## II. Prices

1. The prices indicated in the Company's Estimate apply provided that the specifications in the Order are the same as those in the Estimate, but no longer than four months after submission of the Estimate to the Customer. Where Work is to be supplied to a third party, the party placing the Order shall be deemed to be the Customer, provided no other explicit agreement has been made. All prices and charges indicated by the Company are exclusive of value added tax. The prices of the Company are quoted ex works. They are exclusive of packing, freight, postage, insurance and other shipping costs.
2. Subsequent amendments made at the Customer's request, including the resultant machine down-time, shall be charged to the Customer's account. Subsequent amendments are also understood here to mean repeated specimen sheets required by the Customer because of minor deviations from copy.
3. Sketches, drafts, type specimens, specimen sheets, samples, proof sheets, changes to delivered/transferred data and similar preparatory work ordered by the Customer, shall be charged. The same applies for data transmission (e.g. via ISDN).

## III. Invoicing and Terms of Payment

1. Payment shall be due in full without delay on receipt of invoice. Any discount granted shall be exclusive of freight, postage, insurance and other shipping costs. The invoice shall bear the date of delivery, partial delivery or readiness to deliver (obligation to be performed at debtor's residence or place of business, default in acceptance). Bills of exchange shall only be accepted on account of payment after special agreement, without any cash discount. Discount and charges shall be paid by the Customer without delay. The Company shall not be liable for timely presentment, protesting, notification and returning of the bill of exchange on dishonour provided that it or its agent did not act with intent or gross negligence.
2. Reasonable advance payment may be demanded in the case of unusual preliminary inputs.
3. The Customer may only offset undisputed or legally enforceable claims or exercise a right of retention.
4. Where after the conclusion of the Contract the satisfaction of a claim for payment is evidently jeopardized due to the Customer's inability to pay, the Company may demand advance payment, retain goods not yet delivered and suspend the execution of unfinished Work. The Company shall also be entitled to do this if and when the Customer enters arrears for the payment of goods delivered to which the same legal relationship pertains, without prejudice to Art. 321 II of the German Civil Code.
5. If the Customer fails to make payment in full on the due date, the Company shall be entitled to charge interest on arrears at the rate of 8 per cent (8%) above the base rate without prejudice to any further claims for damages arising from default. If the Customer fails to pay the price including the additional costs specified under II (Prices) within 10 days after receipt of invoice and delivery of the goods he shall be deemed to be in arrears even without a reminder being issued.

## IV. Delivery

1. If the goods are to be delivered, sole risk shall pass to the Customer as soon as the person in charge of transport has taken delivery of the shipment.
2. The delivery dates shall apply only if expressly confirmed by the Company. If the contract is in Writing, the confirmation of the delivery date must also be in Writing.
3. Where the Company is in default of performance, the Customer may only exercise rights under Article 323 of the German Civil Code, if the delay is the responsibility of the Company. This provision does not alter the burden of proof.
4. Stoppages - in the Company's or a supplier's business - such as strikes, lockouts and events of force majeure, shall only provide sufficient grounds to terminate the Contract if the Customer can no longer reasonably be expected to wait any further. Otherwise, the date of delivery shall be extended by the period of delay. At the earliest, however, the Contract may be terminated four weeks after commencement of the above mentioned stoppage. In no event shall the Company be held liable in such cases.
5. The Company shall be entitled to retain the printing and punch copy, manuscripts, raw material and other items made available by the Customer in under Article 369 of the German Commercial Code until full payment of all claims arising from the business transaction.

6. In compliance with obligations in pursuance of the German Packaging Ordinance, the Company shall take back the packaging. With due prior notice, the Customer can return the packaging to the business premises of the Company during business hours, unless another collection or acceptance point has been specified to the Customer. Packaging may also be returned on delivery of the goods unless another collection or acceptance point has been specified to the Customer. Packaging will only be accepted immediately after delivery and in the case of subsequent deliveries only after due notice and provision. The costs of transport of used packaging shall be borne by the Customer. If the acceptance/collection point is further away than the business premises of the Company, the Customer shall only bear the costs that would be incurred for transport to the Company's premises. The returned packaging must be clean, free of any other materials and sorted by type. The Company shall otherwise be entitled to charge the Customer for any additional costs of disposal.

## **V. Retention of Title**

1. The Work delivered shall remain the property of the Company until payment of all claims of the Company against the Customer up to the invoice date. The Customer is only entitled to further sale in the ordinary course of business. The Customer hereby assigns its claims from the further sale to the Company. The Company hereby accepts the assignment of such claims. When payment is in arrears at the latest, the Customer shall be obliged to name the debtor of the assigned claim. If the total value of collateral security for the Company exceeds its claim by more than twenty per cent (20%), the Company or an interested party to the excess security of the Company must on the Customer's request release securities to such extent at the discretion of the Company.
2. In the processing of goods supplied by the Company and owned by it, the Company shall be deemed to be the manufacturer within the meaning of Article 950 of the German Civil Code and the products shall remain its property at all stages of processing. If a third party is involved in the processing, the Company is coowner only up to the amount of the invoice price of the goods to which it retains title. The property thus acquired shall be deemed as conditional property.

## **VI. Complaints, Warranties**

1. The Customer shall, in all cases, inspect the goods supplied and the pre-products and intermediate products forwarded for proofreading immediately to ensure that they comply with the contract. Risk of errors, if any, shall pass to the Customer as soon as the Work has been signed for press/cleared for production except for such errors as occur or which could only be detected during the production process following the signing for press/clearance for production. The same shall hold for all other releases by the Customer.
2. Notification of evident defects must be made in writing within one week of receipt of the goods, notification of concealed defects within one week after detection; otherwise no warranty claim may be made.
3. If complaints are justified, the Company shall, at its option, be obliged and entitled to rectify the defect claimed or replace the goods. If the Company does not perform this obligation within a reasonable period or if the corrections made repeatedly fail to meet requirements, the Customer may require a reduction of the purchase sum (abatement) or the cancellation of the contract (withdrawal).
4. Defects in part of the Work supplied shall not entitle the Customer to make a claim for the entire Work, unless partial delivery is of no value to the Customer.
5. No claims may be made for minor deviations from the original in colour reproductions during all printing processes. The same holds for the comparison between other proofs (e.g. digital proofs and print proofs) and the final product. Moreover, no liability shall be borne for deficiencies that do not impair the value or utility of the goods or do not impair these to a material degree.
6. For quality defects in the material used, the Company shall be liable only to the value of the order.
7. The Company is not obliged to inspect deliveries (including data media, transferred data) by the Customer or a third party on the Customer's behalf. This shall not apply for obviously unprocessable or unreadable data. Prior to data transfers, the Customer shall be obliged to apply state-of-the-art protective programs against computer viruses. The Customer shall be solely responsible for data security. The Company is entitled to make a copy.
8. No claims can be made for deliveries of quantities ten per cent (10%) more or less than the quantities of copies ordered. The quantity delivered shall be charged. For deliveries made on the basis of paper manufactured to the Customer's specifications, this margin shall be increased to twenty per cent (20%) for deliveries of less than 1,000 kg and to fifteen per cent (15%) for deliveries of less than 2,000 kg.

## **VII. Liability**

1. The Customer may make no claims for compensation or repayment of expenses on whatever legal grounds.

2. This exclusion of liability shall not apply
  - for damage caused intentionally or through gross negligence,
  - for violation of material contractual obligations through ordinary negligence, also by legal representatives or persons employed in performing an obligation of the Company; in so far, it shall only be held liable for foreseeable, contractually typical, immediate average damages, depending on the type of product,
  - for culpable injury to the life, physical integrity body or health of the Customer,
  - for concealment of deficiencies with intent to deceive and for warranty borne for the composition of the Work,
  - for claims under product liability law

## **VIII. Limitation**

The Customer's claims to warranty and compensation (VI. and VII.) shall lapse in one year beginning with the handover or delivery of the goods with the exception of the claims for damages specified in VII. 2. This shall not apply where the Company has acted with intent to deceive.

## **IX. Customs of the Trade**

In business transactions the customs of the trade in the printing industry shall apply (e.g. no obligation to surrender possession of semi-finished products such as data, lithographies or printing plates produced for the production of the final product on order), provided the order does not specify otherwise.

## **X. Archival**

Only under an express agreement and against special reimbursement shall products to which the Customer is entitled, particularly data and data carriers, be archived by the Company beyond the time of handing over the final product to the Customer or persons employed by him in performing an obligation. If the prespecified items are to be insured, the Customer himself must provide for this where there is no agreement.

## **XI. Periodical Publications**

Notice to terminate contracts with respect to periodical publications may not be given by either party unless a period of notice of not less than three (3) months is given, with the notice being effective at the end of the month.

## **XII. Commercial Property Rights/Copyright**

The Customer alone shall be liable if in the execution of its order the rights of third parties are infringed, particularly copyrights. The Customer must exempt the Company from all claims of third parties arising from any such infringement of a right.

## **XIII. Place of Performance, Jurisdiction, Validity**

1. If the Customer is a merchant, a legal person under public law or a public fund as defined within the meaning of the German Commercial Code or is not subject to general jurisdiction in Germany, the place of performance and jurisdiction for all disputes arising from the contract, including all proceedings relating to cheques, bills of exchange and documents shall be the Registered Office of the Company. The Contract shall be governed and construed according to the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.
2. If any or several provisions of these Terms and Conditions are held to be invalid or unenforceable the validity of the other provisions of these Terms and Conditions shall remain in force.