

Standards Terms and Conditions of Business, Payment and Delivery

I. Scope of application

Orders will be executed solely on the basis of the following terms and conditions, and no other terms or conditions will form part of the contract, even if we do not expressly repudiate them. Section 305b German Civil Code (*Bürgerliches Gesetzbuch, BGB*) remains unaffected.

II. Prices, conclusion of contract

- The prices contained in the contractor's quotation are valid for a maximum period of four weeks following the receipt of the quotation by the customer. This is subject to there being no changes to order data underlying the quotation. For orders delivered to third parties, the party placing the order is deemed to be the customer, unless explicitly agreed to the contrary. The contractor's prices do not include value-added tax. The contractor's prices apply ex works. They do not include packaging, shipping, insurance and other costs of consignment.
- Subsequent changes instigated by the customer, including the machine downtime this entails, will be charged to the customer. Subsequent changes are deemed to also include the repetition of sample proofs, demanded by the customer due to minor deviations from the template.
- Sketches, drafts, typesetting specimens, galley proofs, specimen prints, editing the data delivered or transmitted and similar preparatory works requested by the customer.
- For orders delivered to third parties, the party placing the order is deemed to be the customer, unless explicitly agreed to the contrary.

III. Payment

- Payment shall be made without deduction. Any agreement made in relation to cash discounts does not include freight, postage, insurance or other costs of shipment. The invoice will be issued on the day of delivery, partial delivery, or the readiness for delivery (customer is responsible for collection, default of acceptance).
- The Customer only has a right of set-off or right of retention in respect of uncontested claims or claims upheld by a final legal judgement. This does not apply to the customer's claims to the costs for production or fault elimination.
- If, following the conclusion of the agreement, it is apparent that the claim to payment is jeopardised by the customer's inability to service its debts, the contractor may refuse to render performance, demand an advance payment, withhold goods not already delivered, and suspend continued work on the order. The contractor can exercise these same rights if the customer is in default of payment in respect of deliveries duly made and based on the same legal arrangement. Section 321 II German Civil Code remains unaffected.

IV Delivery

- The delivery period is agreed on a case-by-case basis, or specified by the contractor upon accepting the order.
- The contractor is entitled to make partial deliveries only if this is reasonable, based on the principle of good faith in accordance with Section 242 BGB. This may be the case, particularly if
 - the part delivery can be used by the Customer for the contractually agreed purpose,
 - the delivery of the remaining ordered goods is ensured and
 - the customer does not thereby experience any considerable additional effort or costs.
- If the goods are dispatched, the risk of accidental loss and accidental deterioration of the goods passes to the customer once the consignment has been handed over to the individual performing the transport.
- If the contractor is delayed in delivering the contractual performance, the customer may exercise the rights set out in Section 323 BGB, only if the contractor is responsible for the loss. This provision does not entail any reversal of the burden of proof.
- In the event of operational interruptions outside of the control of the contractor, whether these occur within its own enterprise or that of any supplier – such as strikes, lock-outs, as well as all other incidences of force majeure – shall only justify the rescission of the contract, if the customer cannot be reasonably expected to wait any longer, otherwise the agreed delivery period will be extended by the length of the delay. However, any termination of the contract is possible no earlier than four weeks following the occurrence of the operational disruption described above. The contractor does not accept any liability in these cases.

- In the case of make-and-hold orders, the customer is obliged to accept the full quantity upon which the make-and-hold order is based. The customer's "call obligation" is a principle obligation. In the absence of any agreement to the contrary, the acceptance period for make-and-hold orders is 6 months, starting from the day of the completion. If no acceptance takes place by that time, the contractor shall be entitled to grant the customer shall be entitled a time limit of 2 weeks in which to accept the outstanding order quantity. I, at the request of the Customer, all or some of the goods produced remain with the contractor, until the goods are called, the storage will take place at the cost and risk of the customer. The invoicing will be based on the day the goods are moved into storage. The total invoice is due for payment once it is received, irrespective of the time the call is performed.

V. Retention of title

- The delivered goods shall remain the contractor's property until complete payment of all the contractor's claims existing against the customer to the date of the invoice. These goods may not be pledged to third parties, nor used as collateral until full payment is made. The customer will promptly notify the contractor in writing, if and to the extent that there is any third-party interference of the goods belonging to the contractor.
- The Customer is entitled to resell the goods only in the course of its normal business. The customer **here and now assigns to the contractor the receivables from the resale**. The contractor hereby accepts the assignment. If the realisable value of the collateral securities exceeds the contractor's claims by more than 10%, the contractor shall, upon demand by the customer, release collateral securities of its choice. In the event of the reworking or transformation of the goods delivered by the contractor, and to which it retains the title, the contractor is deemed to be the manufacturer in accordance with Section 950 BGB, and it will acquire ownership over the products at the time of the transformation. If other parties are involved in the reworking or transformation process, the contractor will acquire a co-ownership share limited to the amount of the invoice value (final invoiced sum incl. VAT) of the goods subject to retention of title. The ownership acquired in this way is deemed to constitute a retained title.

VI. Complaints/warranties

- The customer must in any case promptly check the contractual conformity of the goods as well as the pre- and intermediate products sent for the purpose of proofing. The risk of any errors shall pass to the customer with the ready-for-printing/ready-for-production advice, provided the issue does not concern errors which only occur or are identified in the production run following the ready-for-printing/ready-for-production advice. The same applies to all other such release declarations issued by the customer.
- Obvious errors must be reported in writing within one week of receiving the goods, hidden errors within one week of discovery; otherwise the assertion of the warranty claim will be excluded.
- If complaints are justified, the contractor is firstly entitled and obliged to render subsequent improvement and/or replacement delivery, the choice of method resulting with it. If the contractor fails to fulfil this obligation within a reasonable period of time, or if the subsequent performance or replacement delivery fails, the customer may demand a reduction of the fee (diminution), or the rescission of the agreement.
- Defects in a part of the goods delivered do not justify an objection to the entire delivery, unless the customer has no interest in the partial delivery.
- In the event of colour reproductions, normal colour deviations from the original are not grounds for a complaint whatever the manufacturing process. The same applies to the comparison between other such templates (e.g. digital proofs, print proofs) and the end product.
- The contractor shall not be obliged to inspect materials supplied by the customer or its sub-contractors (including data carrier, transferred data). This does not apply to the technical suitability of the supplied materials for duly fulfilling the order, insofar as the lack of suitability should have been recognisable to a contractor acting with care. In the case of data transfers, the customer must use state-of-the-art anti-virus programmes prior to the transfer.
- Objections may be raised in respect of excess deliveries or shortfalls in delivery amounting up to 5% of the ordered print run. The invoice will be issued in respect of the actual volume delivered. In the case of deliveries

comprising custom-made paper types, this percentage rate shall be increased to 15% for weights less than 1,000 kg, and to 10% for those less than 2,000 kg.

VII. Liability

- The contractor is liable
 - for culpably causing death or personal injury, and
 - for other damage/loss caused deliberately or through gross negligence, including if the breach of duty concerns corresponding conduct on the part of a legal representative or a vicarious agent.
- The contractor is liable, moreover,
 - for the slightly negligent breach of material contractual obligations, including those on the part of its legal representatives or vicarious agents. Material contractual obligations are those, which must be fulfilled for the orderly performance of the agreement, and the breach of which jeopardises the achievement of the contractual objective, and are such that the customer would normally rely upon their fulfilment. In the case of slight negligence, the contractor's liability is limited to foreseeable damages typical for this type of contract.
 - The contractor is finally liable for the deceitful concealment of defects and under guarantees extended by it regarding the quality of the goods, and for claims based on the Product Liability Act.
- Otherwise, the contractor accepts no other liability.

VIII. Limitation of actions

With the exception of the compensation claims described in VII. 2., and those established by way of the Product Liability Act, the customer's claims for defects shall become time-barred after one year commencing with the delivery of the goods. This does not apply if the contractor acts deceitfully.

IX. Commercial customs and practices

Commercial transactions are subject to the applicable customs and practices of the printing industry (e.g. no duty to give up interim products such as data, lithographs or printing plates made for the purpose of producing the contractually agreed final product); unless a contrary order has been issued.

X. Archiving

Beyond the time of the delivery of the end product to the customer or its vicarious agents, we will archive the products deliverable to the customer – especially data and data carriers – only on the basis of an explicit agreement and in return for a separate payment. If the aforementioned articles are to be insured, the customer must personally arrange such insurance cover, unless a contrary agreement has been made.

XI. Periodic work

Contracts for regularly recurring work may be terminated with a notice period of 3 months.

XII. Third-party rights

The customer gives an assurance that its job specifications, especially the templates provided by it, do not violate third-party rights, such as copyright, trademark law or personality rights. The customer shall to this extent fully indemnify the contractors in respect of all third-party claims, including the costs of the legal defence and/or the legal action, unless the customer proves that it is not culpable and that it has fulfilled all the duties of care and examination incumbent on it.

XIII. Place of performance, legal venue, enforceability

If the contractual partner is a "merchant", a legal person constituted under public law or a public law special fund, or if it is not generally subject to the jurisdiction of any domestic legal venue, the place of performance is deemed the contractor's registered address, and the legal venue for all disputes arising from this contractual arrangement shall be that court with jurisdiction over that address. This contractual arrangement is governed by German law. The United Nations Convention on Contracts for the International Sale of Goods does not apply.

updated 05/2017

Ernst Kaufmann GmbH & Co. KG,
Druckhaus (printers)
Raiffeisenstraße 29, 77933 Lahr

T +49 7821 945-0
F +49 7821 945-168
info@druckhaus-kaufmann.de
www.druckhaus-kaufmann.de

General partner
Kaufmann Verwaltung GmbH, Lahr
(Amtsgericht [local court of]
Freiburg, HRB 390308)

Limited Partnership with
registered address in Lahr
(Amtsgericht [local court of]
Freiburg, HRA 390926),
Managing Partner
Markus Kaufmann