

# Standard Conditions of Sale

## Clause 1 Applicability

(1) Our Standard Conditions of Sale apply in all cases to the exclusion of all differing or conflicting conditions of the purchaser except in cases where we have issued express written acceptance of such conditions. Our Standard Conditions of Sale also apply in cases where we supply goods and services to the purchaser without reservation even though we are aware of conditions stipulated by the purchaser which differ from or conflict with our Standard Conditions of Sale. They further apply to all future business relations with the purchaser even in cases where their agreement has not been expressly restated.

(2) All agreements reached between us and the purchaser on the execution of this contract are set out in writing in the contract.

(3) Our Standard Conditions of Sale apply solely to persons defined as businesses within the meaning of Section 310, Paragraph 1 of the German Civil Code (BGB).

## Clause 2 Offer, offer documents

(1) On receipt of an order from the purchaser which can be construed as a proposal for conclusion of a purchase contract we have the option of either acknowledging this by issue of an order confirmation or by delivering the products ordered, in both cases within two weeks of date of receipt of the order.

(2) Unless otherwise expressly stated, all offers issued by us are without engagement and not binding.

(3) We reserve all copyrights and other intellectual property rights to illustrations, drawings, calculations and other documents of any kind whatsoever, in particular, sketches, printing blocks and lithos produced by us. The same applies to all written documents classified as 'Confidential'. The purchaser is not entitled to transmit any of the foregoing items to any third party without our prior express written consent. In the event of our non-acceptance of the purchaser's proposal within the period stipulated in Paragraph 1 above the purchaser must return all such documents to us without delay.

## Clause 3 Prices, payment terms

(1) Unless otherwise stipulated in our order confirmation, all prices quoted by us are 'ex factory'.

(2) A proportion of the cost of sketches, printing blocks, lithos and similar items produced by us will be charged to the purchaser. First proofs will be supplied free of charge. Any further proofs necessitated by subsequent amendments on the purchaser's part and pulls featuring alternative design options or using multicolour printing will be charged separately at the relevant hourly rates. It is technically impossible for us to supply proofs or pulls of intaglio work.

(3) Except in fixed-price contracts, we reserve the right to make reasonable upward or downward amendments of our quoted prices in cases where changes in collective wage agreements or raw material prices occur after contract date. We will supply documents in support of any such amendments to the purchaser on request.

(4) All prices quoted by us are subject to value-added tax at the legally applicable rate on invoice date, the amount of which will be shown separately on the invoice.

(5) Deliveries to purchasers not known to us will be made solely against payment in advance or cash on delivery. Payment in all other cases must be remitted to one of the bank accounts listed on our invoice. The purchaser bears the risks and costs of the remittance.

(6) Unless otherwise expressly agreed, the purchase price falls due for payment (net without any deductions) within 30 days of invoice date, receipt of payment being hereby defined as the date on which the amount is placed at our disposal.

(7) The relevant German legal provisions apply in all cases where the purchaser defaults on payment.

(8) Should the purchaser suspend payments or become insolvent or should an application for institution of insolvency proceedings be filed against him, the full amount owed to us shall fall due for immediate payment. The same shall apply in the event on any other deterioration in the purchaser's financial circumstances. In all such cases we can require the purchaser to furnish adequate security, in the absence of which we shall be entitled to either refuse delivery or withdraw from the contract and also to claim compensation.

(9) The purchaser is not entitled to make deductions based on complaints or counter-claims except in cases where these are either undisputed or recognised by us or where the counterclaims are *res judicata*. The purchaser is not entitled to exercise right of retention except in cases where his counterclaim arises from the same contract.

(10) Notwithstanding the provisions of Section 195 of the German Civil Code (BGB) all our claims lapse on expiry of 5 years from the date stipulated in Section 199 of the German Civil Code (BGB).

## Clause 4 Lead time

(1) Unless expressly agreed as firm, all order lead times and delivery dates are without engagement. Any lead time agreed by us will not commence until all technical details have been settled and is subject to the proviso that our own suppliers deliver goods and services promptly and correctly. We will notify the purchaser as soon as possible of any anticipated delivery delays.

(2) Compliance with our delivery obligation is also conditional on prompt and correct fulfilment of the purchaser's own obligations. We reserve the right to claim non-performance of contract.

(3) A delivery date is deemed to have been met in cases where the ordered items have either left our factory or been notified as ready for despatch on or before the relevant date.

(4) In cases of force majeure or other occurrences beyond our control we are entitled to postpone delivery for the duration of the occurrence plus a reasonable period for recommencement of operations. Should such occurrences make full or partial delivery impossible, we shall be entitled to either withdraw from the contract completely or from that part of the contract which has not yet been executed and shall be under no obligation to procure replacement. The purchaser shall be entitled to request confirmation of our ability to deliver within a reasonable period or to withdraw from the contract. Failure on our part to reply to the request for confirmation shall entitle the purchaser to withdraw from the contract.

(5) Should it become evident that we shall definitely be unable to perform the contract in full prior to the time at which the risk passes to the purchaser, the purchaser shall be entitled to withdraw from the contract without notice. He shall also be entitled to withdraw from contract if it becomes evident that we shall only be able to effect part-delivery of the order and he can show good cause for refusing such part-delivery. In this case the purchaser shall be liable for payment of that proportion of the price attributable to the part-delivery. The same shall apply in the event of our inability to perform the contract.

(6) In cases where the contract is for delivery on or before a fixed date as defined in

Section 286 (Paragraph 2, Item 4) of the German Civil Code (BGB) or Section 376 of the German Commercial Code (HGB), our liability is limited to the relevant provisions stipulated in German law. The same shall apply in the event of a failure on our part to meet a delivery date which entitles the purchaser to cancel further performance of the contract on the grounds that this is no longer in his interest. Our liability in this case is limited to the typically occurring, foreseeable loss which would have been suffered in a case where the delay in delivery had not been attributable to a deliberate breach of contract on our part, whereby a breach of contract on the part of our representatives or vicarious agents shall be deemed to be attributable to us.

(7) We are also liable to the extent stipulated under German law in cases where delayed delivery is attributable to deliberate or grossly negligent breach of contract on our part or on the part of our representatives or vicarious agents. Our liability in this case is limited to the typically occurring, foreseeable loss which would have been suffered if the delay in delivery had not been attributable to a deliberate breach of contract on our part.

(8) We are also liable to the extent stipulated under German law in cases where delayed delivery is attributable culpable breach of a material contractual obligation on our part or on the part of our representatives or vicarious agents. Our liability in this case is limited to the typically occurring, foreseeable loss.

(9) We are also liable for payment of compensation in cases where the purchaser can show proof of loss suffered as a result of delayed delivery through our fault. This compensation shall be payable at a fixed rate of 0.5% of the value of that part of the total delivery rendered unusable either at the time or for the purpose intended when placing the contract for each completed week of delay up to a maximum of 5% of the aforesaid value.

(10) We accept no further liability whatsoever for delivery delays arising through our fault. This does not affect any further claims or rights available to the purchaser under German law relating to compensation for delivery delays occurring through our fault.

(11) We are entitled to effect part-deliveries of goods and services except in cases where the purchaser can show that this is contrary to his interests.

(12) Should the purchaser fail to accept delivery, we shall be entitled to claim compensation for loss and additional expense thereby incurred. The same shall apply in cases where the purchaser culpably fails to comply with his obligations to assist us in performance of the contract. The risk of accidental damage to or loss of the goods or services supplied passes to the purchaser at the time of commencement of his failure to accept delivery or to give due assistance. We reserve the right to press further claims for compensation.

## Clause 5 Delivery, transfer of risk, packaging

(1) Unless otherwise stipulated in our order confirmation, all deliveries are ex factory.

(2) The risk passes to the purchaser at the time of transfer of the goods or services to either the purchaser, the carrier or any other person authorised to make collection or on the date on which the purchaser should have accepted delivery, whichever is the earlier.

(3) Should despatch of the goods be delayed at the request or through the fault of the purchaser, we shall make arrangements for their storage at our sole discretion and at the purchaser's expense and risk. Our notice of availability of the goods for despatch shall in this case be deemed equivalent to actual despatch. We shall charge compensation at the rate of 0.5% of invoice amount for each week or part week up to a maximum of 5% of invoice amount without having to furnish vouchers in support of this charge. Should the actual costs incurred by us be demonstrably higher, we shall be entitled to claim reimbursement of these from the purchaser.

(4) Arrangements for return of packaging materials are covered by separate agreements. When purchasing standard Folia items, the vendor pays the charges for the „Duales System Deutschland“ (DSD) for the Federal Republic of Germany only. Unless otherwise agreed, the respective buyer is obliged to report and pay the charges for customised orders. For deliveries abroad, the buyer must pay the recycling charges incurred in the respective country.

## Clause 6 Tolerances

(1) In the case of production orders for standard items we reserve the right to deliver to a tolerance of  $\pm 5\%$  of the ordered quantity. The corresponding tolerance for non-standard items is  $\pm 20\%$ .

(2) We reserve the right to supply to a weight tolerance of  $\pm 10\%$ .

(3) We reserve the right to deliver to unit tolerances of  $\pm 3\%$  in orders comprising less than 5,000 sheets and  $\pm 2\%$  for orders comprising more than 5,000 sheets.

(4) We reserve the right to supply variances in raw material colour, customary variances from sample, variances between proof and printing run arising for technical reasons, colour variances from specimen documents supplied to us and colour variances within a printing run. We reserve the right to supply variances in printing inks and product colours within the tolerances customarily permitted in the printing trade.

(5) Minor variances in print position and waste rates of 3% for both printing work and bags are customary in the printing trade and are technically unavoidable. The same applies to variances in quality and dimensions of foils and bags.

## Clause 7 Liability for defects

(1) The purchaser's right to claim compensation for defects is subject to the proviso that he has correctly complied with his obligations to examine deliveries and file complaints as set out in Section 377 of the German Commercial Code (HGB). Complaints must be filed in writing, stating nature and extent of the defect and enclosing specimens of the defective material for examination. Further processing of items which are the subject of a complaint requires our prior consent.

(2) Discovery of defects in parts of a delivery do not entitle the purchaser to reject the whole delivery.

(3) We reserve the right to stipulate the nature of the remedial action to be taken in the event of delivery of goods containing defects caused through our fault. If goods are reworked to eliminate defects, we shall bear the expenses thereby incurred, in particular, transport and travel expenses and labour and material costs, provided that these are not increased by the fact that the goods have been removed from the original place of performance. Returns of defective goods are not accepted unless agreed in advance.

(4) Should we fail to remedy the defect, the purchaser shall be entitled at his sole discretion to either withdraw from the contract or claim a price reduction.

(5) We are liable to the extent stipulated under German law in cases where the purchaser files compensation claims based on alleged deliberate act or gross negligence on our part or on the part of our representatives or vicarious agents. In cases where no deliberate act on our part is alleged, our liability for compensation is limited to the typically occurring, foreseeable loss in the relevant case.

(6) We are liable to the extent stipulated under German law in cases where we are in culpable breach of contract. In this case our liability for compensation is limited to the typically occurring, foreseeable loss.

(7) Nothing in the preceding paragraphs shall affect our liability for death, health impairment or other bodily injury suffered through culpable act on our part or the mandatory provisions on liability contained in the German Product Liability Act.

(8) No liability is accepted in cases not complying with the foregoing provisions. This applies, in particular, to deliveries lying within the tolerances defined in Clause 6. Neither do we accept any liability for variances in composition, as long as the goods supplied are still suitable for customary use, nor for minor limitations in usability, natural deterioration, normal wear and tear or damage resulting from incorrect or negligent handling or storage, excessive loads, contact with unsuitable substances or other external influences occurring after risk has passed to the purchaser, except in cases where relevant properties have been expressly stipulated in the contract. We also accept no liability for consequential losses attributable to incorrect modifications to our products performed by either the purchaser or a third party. Nor do we accept liability for printing errors overlooked by the purchaser in a proof approved by him.

(9) We give the purchaser no warranties in the legal sense.

(10) Complaints relating to defects must be filed with us within 12 months of the date on which the risk passed to the purchaser. This does not affect claims based on Sections 478, 479 of the German Civil Code (BGB), which lapse 5 years from date of delivery of the defective item.

#### **Clause 8 Overall liability**

(1) All further liability for compensation over and above that stipulated in Clause 7 is excluded irrespective of the legal nature of the relevant claim. This applies, in particular, to compensation claims alleging negligence in conclusion of contract, other breaches of obligations or claims in tort for compensation for material loss or damage pursuant to Section 823 of the German Civil Code (BGB), and also to compensation claims for unproductive expenditure in lieu of contract performance. In particular, we accept no liability for infringements of third-party rights by products ordered from us by the purchaser.

(2) Exclusions and limitations of our liability apply equally to the personal liability of our employees, workers, assistants, representatives and vicarious agents.

#### **Clause 9 Retention of title**

(1) We retain title to goods supplied (seller's lien) until receipt of all outstanding payments resulting from our business relationship with the purchaser. In the event of breach of contract by the purchaser, in particular, default in payment still not remedied after expiry of a reasonable period specified by us in our payment reminder, we shall be entitled to repossess goods subject to seller's lien. Any such repossession of goods subject to seller's lien constitutes withdrawal from the contract on our part. Attachment of goods subject to seller's lien also constitutes withdrawal from the contract on our part. After repossession of goods subject to seller's lien we shall be entitled to dispose of these, thereby crediting any proceeds therefrom - after deduction of a reasonable amount for disposal costs - against the purchaser's outstanding liabilities.

(2) The purchaser must treat goods subject to seller's lien with due care and, in particular, insure them at replacement value and at his own expense against fire and water damage and theft. In cases where maintenance or inspection of goods subject to seller's lien is necessary, the purchaser must perform this punctually at his own expense.

(3) Should any third party attempt to seize goods subject to our seller's lien, in particular by application for a writ of attachment, the purchaser must disclose our rights of lien and use his best endeavours to prevent any action detrimental to these rights. He must also help us to protect our title by informing us immediately and handing over to us any relevant documents. The purchaser shall be liable for payment of any judicial and extra-judicial costs thereby incurred by us in the event of the third party's inability to reimburse these.

(4) The purchaser is entitled to use and/or dispose of goods subject to seller's lien during his normal course of business, but is not permitted to give them in pledge or otherwise use them as security for his debts. The purchaser now hereby assigns to us by way of security claims against customers or other third parties accruing to him either from resale of goods subject to seller's lien or for any other reason whatsoever up to the amount of our invoice (including value added tax). This assignment shall be made irrespective of whether the goods subject to seller's lien are resold without or after further processing. We hereby accept this assignment. The purchaser remains entitled to collect the outstanding claim despite the foregoing assignment. Although our right to make the collection ourselves is not thereby affected, we hereby undertake to refrain from exercising this right as long as the purchaser honours his obligations to pay us from the proceeds of the collection, does not further default on payment and, in particular, no application for institution of composition or insolvency proceedings has been filed against him and he has not suspended payments. Should any of the foregoing cases apply, we shall be entitled to require the purchaser to give us details of the amounts of the assigned claims, the names and addresses of the debtors and any other information required for the collection, and also to hand over to us the relevant documents and inform the debtor (third party) of the assignment of the claim.

(5) All processing or modification of goods subject to seller's lien undertaken by the purchaser is on our behalf. If goods subject to seller's lien are processed together with other items not belonging to us, we thereby acquire co-ownership of the resulting product equivalent to the proportion of the value of the goods subject to seller's lien (final invoice price plus value-added tax) to the other items processed at the time of processing. All other foregoing provisions relating to goods subject to seller's lien apply equally to the product resulting from the processing. If goods subject to seller's lien are mixed with other items not belonging to us, we thereby acquire co-ownership of the resulting product equivalent to the proportion of the value of the goods subject to seller's lien (final invoice price plus value-added tax) to the other items mixed with them at the time of mixing. In cases where the mixing process yields a product which can be regarded as the main object, it is hereby agreed that the purchaser will assign to us the relevant proportion of co-ownership of that object. We hereby accept this assignment. The purchaser is responsible for safekeeping on our behalf of products thus created and solely owned or co-owned by us. The purchaser also assigns to us by way of security for our claims against him any claims against third parties arising from incorporation of goods subject to seller's lien with real estate.

(6) We hereby undertake to release at the purchaser's request securities held by us in excess of an amount equivalent to our secured claims plus a margin of 10%. The choice of securities thus released is at our sole discretion.

#### **Clause 10 Data privacy**

(1) In accordance with the German Data Protection Act, the Interstate Agreement on Media services and the Tele Services Data Protection Act, customers are advised that any personal data provided as part of an order or business relationship may be stored, processed and used by us for internal purposes. We will never disclose your personal information to third parties or use in any other way than the purpose for which it was originally intended without obtaining prior permission from you, unless there is a legal obligation to disclose your information to any relevant regulatory body or pursuant to a court order or a valid request (including processes that we voluntarily comply with), or in order to protect our own rights or those of our customers or as far as is needed to comply with the terms of use and rectify any technical issues. All personal customer details will be handled as stated in the rules of the German Data Protection Act and the Tele Services Data Protection Act.

(2) The customer agrees not to pass on any data generated by this business relationship to unauthorised third parties, and to ensure that such data is stored safely and protected against unauthorised access and misuse.

#### **Clause 11 Place of jurisdiction, governing law, place of performance**

(1) The place of jurisdiction shall be our place of business. We also reserve the right to institute legal proceedings against the purchaser at either his place or residence or his place of business.

(2) The governing law shall be the law of the Federal Republic of Germany. Application of the UN Sales Convention is excluded.

(3) Unless otherwise stipulated in our order confirmation, the place of performance shall be our place of business.