

Terms and Conditions Schwarz Druck GmbH

I. Scope

1. All supplies, services and offers from Schwarz Druck GmbH (hereinafter also referred to as the "contractor") are subject to these general terms and conditions. These are elements of all contracts that the contractor completes with its contractual partners (hereinafter referred to as "client") relating to the supplies or services offered. They apply to all future supplies, services or offers to the client, even when they have not been specifically agreed.
2. Terms and conditions of the client or third parties shall not apply, even if the contractor does not specifically contradict their validity individually. Also if the contractor refers to a letter or similar containing the terms and conditions of the client or a third party; this does not constitute an agreement with the validity of said terms and conditions.

II. Offer and Conclusion of the Contract

1. All offers from the contractor are subject to change. Documents (images, drawings, etc.), sizes, colours and other specifications belonging to this offer are only approximate and not binding, unless they were confirmed in the offer as binding. The contracts are considered binding with the written order confirmation from the contractor. The written order confirmation is represented by the invoice if the order is executed immediately.
2. Information given by the contractor regarding item delivery or services (e.g. weights, measurements, utility values, handling, tolerances and specifications) and their designs (e.g. drawings and illustrations) are only approximate, unless exact details are required for the contractually intended purpose. They are not guaranteed characteristics but descriptions or identifications of the goods or services. Customary deviations and deviations which are made as a result of legal requirements or technical improvements are allowed, as well as the replacement of components by equivalent parts, insofar as they do not affect the contractually intended purpose.
3. The seller retains ownership or copyright on all offers and quotes made by him as well as the drawings, diagrams, calculations, brochures, catalogues, models, tools plus other documents and aids supplied to the client. The client may make these items available in full or in part to third parties, may announce them, use them himself or allow third parties to do so or duplicate them; all without express consent of the seller. He must return these items in full to the seller on request and destroy any copies, if they are no longer needed within his normal course of business or if negotiations do not lead to the conclusion of a contract.
4. Sketches, drafts, test set, test print, proofs, and changes to delivered / transferred data and similar preparations, which are caused by the client, will be charged. The same applies to data transfers.

III. Prices, Terms of payment

1. The prices apply to the scope of supplies and services listed in the order confirmation. Additional or special services are charged separately. The final price is calculated according to the extent of actual delivery (see IV.4). The prices are in EURO ex works plus packaging, VAT, fees and other public charges as well as customs for export shipments.
2. If the delivery is to take place more than three months after the conclusion of the contract, the contractor's list prices at the time of delivery shall apply, in the event that these have increased since the contract. Similarly, the contractor is entitled to pass onto the clients any higher purchase prices he himself incurs. In both cases, the adjustment is a percentage of the basic prices at the time of the completion of the contract.
3. Payment (net price plus VAT) is due within 14 calendar days from date of invoice.
4. The client can only apply offset or claim right of retention if his claim is undisputed or has been established in a court of law.
5. In case the fulfilment of the payment claim is endangered because of the deterioration of the financial circumstances of the client which occurred after the conclusion of the contract and which has become known, the contractor may demand payment in advance or immediate payment of all open as well as invoices not yet due, plus retain goods that have still not been delivered and respectively stop further work on current jobs. The contractor can also exercise these rights if the client is in arrears with payments for supplies based on the same legal situation.
6. In the case of a default in payment, default interest is to be paid in the amount of 10% over the respective base interest rate. The enforcement of further damages caused by delay is not excluded by this clause.

IV. Delivery

1. The terms and dates for deliveries and services from the view of the contractor are only approximate, unless a fixed period or a fixed date is expressly agreed. If shipment has been arranged, delivery terms and delivery times refer to the date of the handover to the shipper, carrier or another third party contracted for the transport.
2. If the contractor is delayed he will be granted an initial appropriate extension of the deadline. If the additional period expires with no effect the client can terminate the contract.
3. The risk of transportation for all shipments - also possible returns - and the transport costs are to be borne by the customer. The risk is passed on to the forwarder with the transfer of the goods (in which the start of the loading process is applicable). This also applies to partial deliveries or if we have taken over other services (such as shipping or installation). Transport insurance will only be included upon the instructions and at the cost of the purchaser.
4. Disruptions to operations - at the contractor's facility as well as his suppliers - specifically strike, lockout, war, riot and any other cases of force majeure, only justify termination of the contract if the client cannot be expected to wait any longer; otherwise the agreed delivery period is extended by the duration of the delay. A termination however is possible at the earliest four weeks after the occurrence of the above mentioned disruption. A liability on the part of the contractor is excluded in these cases.
5. For all orders the contractor reserves the right to deliver higher or lower quantities of up to 10% (in words: 10 percent) of each order. For custom-made products (assemblies) and printed goods we reserve the right to deliver higher or lower quantities of up to 20% (in words: 20 percent) of each order.

V. Warranty

1. In all cases the client must check the contractual conformity of the delivered goods as well as the preliminary and interim goods sent for correction. The risk of errors passes to the client with his declaration to print, unless the errors occur or can only be detected in the manufacturing process that follows the permission to print. The same is true for all other approvals from the client for further production.
2. Goods are to be carefully inspected immediately upon receipt of delivery by the customer or his specific third party. They are considered approved if the contractor does not receive a written complaint, in terms of obvious deficiencies or other defects which were identified after the immediate and thorough investigation, within seven working days after delivery of the goods or otherwise within seven working days after the discovery of the defect, or any earlier date in which the defect was identified by the client without detailed investigation during normal use of the goods. Upon the request of the seller the rejected delivery item is to be returned to the contractor free of delivery charges. In the case of a justified claim the contractor will reimburse the costs of the shipping; this does not apply if the costs are higher because the delivered goods are in a different place to that of the place of intended use.
3. In the case of justified complaints the contractor is obliged and entitled to rectify the defects or provide a replacement delivery within a reasonable time. Should any subsequent remedy prove ineffectual, i.e. the unfeasibility, irrational, refusal or unreasonable delay of the repair or replacement, the client may terminate the contract or demand a reduction in price. If the order concerns contract processing work or further processing of printed products, the contractor shall not be liable for any resulting damage to the product to be refined or further processed, unless the damage was caused intentionally or by gross negligence.

4. Defects in part of the delivered goods shall not entitle the rejection of the entire delivery, unless a part delivery is of no use to the client.
5. With colour reproductions, regardless of the production methods, minor divergences from the original do not constitute a defect. The same applies to the comparison between other templates (e.g. digital proofs, proofs) and the final product.
6. For deviations in the nature of the materials the contractor is only liable to the extent of his own claims against the respective supplier. The terms and conditions of the manufacturer and/or suppliers apply for carbonless paper in terms of quality, copy capability and storage life.
7. Supplies (including media, transmitted data) from the client or by a third party engaged by the client are not subject to an obligatory inspection by the contractor. This does not apply to data which obviously cannot be processed or read. For data transmissions the client must use the latest technical level of appropriate protection programs for computer viruses before sending. The client has the sole responsibility for data backup. The contractor is entitled to make a copy.
8. Level differences up to 0.5 % of the page size do not constitute a defect.
9. Special requirements for the durability of the forms, their separation and cuttability, their writing capability and the copying capability of the paper with regards to the marking condition (e.g. fast printers) and their use in certain machines must be specified in the order. For faults by employees, liability within orders is only according to § 831 BGB.

VI. Liability

1. The liability of the contractor for damages is restricted regardless of the legal justification, especially from unfeasibility, delay, defective or incorrect goods, breach of contract, violation of obligations during contract negotiations and tort, according to this clause VII.
2. The contractor is not liable in cases of simple negligence of its agencies, legal representatives, employees or other agents where it is not a breach of contractual obligations. Essential contractual obligations are the timely delivery of goods free of significant defects as well as consulting, protection and care obligations, which allow the client to use the goods according to the contractual agreement or the protection of life or health of the clients' employees or protection of its property from significant damage.
3. Insofar that the contractor is liable for damages in accordance with VII 2, the liability for claim is limited, to those which he foresees at the conclusion of the contract as possible consequences of a breach of contract or which should have been foreseen when using due diligence. Secondary damages and subsequent damages which are the result of deficiencies of the product, are also reimbursable only insofar that such damages are to be typically expected under normal conditions of use of the delivered goods.
4. In the case of liability for simple negligence the contractor's reimbursement obligation for property damage and other resulting financial losses is restricted to an amount of EUR 2.500.000,- per claim, even if it is in regards to a breach of contractual obligations.
5. The above exclusions and restrictions apply to the same extent in favour of the agents, legal representatives, employees and other agents of the contractor.
6. If the contractor provides technical information or advice and such information or advice does not belong to the contractually agreed scope to which he is liable, this is made without charge and without any liability.
7. The limitations of this clause VII do not apply to the liability of the contractor for deliberate conduct, for guaranteed characteristics, injury to life, limb or health or under the Product Liability Act.

VII. Retention of ownership

1. The following agreed retention of ownership shall serve as security to all existing current and future claims of the contractor towards the client from the existing supply relationship made between the parties (including outstanding balances from the current account arising from this supply relationship).
2. The goods delivered by the contractor to the client remain the property of the contractor until full payment of all secured claims. Goods and the goods according to this clause covered in lieu under the retention of ownership are hereinafter referred to as reserved commodities.
3. The client stores the reserved commodities free of charge for the contractor.
4. Up until recovery of payment the contractor is entitled, in the ordinary course of business, to process and sell the reserved commodities (Paragraph 9). Pledging as collateral or transfer by way of security are inadmissible.
5. If the reserved commodities are processed by the client, it is agreed, that the processing and invoice is on behalf of and for the account of the contractor as manufacturer and the contractor acquires ownership or - when the processing is from materials of several owners or the value of the processed item is higher than the value of the reserved goods - acquires joint ownership (co-ownership) of the newly created item in proportion of the value of the reserved goods to the value of the newly created object. In the event that no such acquisition of property by the contractor occurs, the customer transfers his future ownership or - in the above proportion - joint-ownership of the newly created item as security to the contractor. If the reserved commodities are combined with other items into a single item or inseparably mixed and one of the other items is considered the main item, then the contractor shall transfer to the client - insofar that the main item belongs to him - pro rata co-ownership for the single item according to the proportion stated in sentence 1.
6. In the case of resale of the reserved commodities the client relinquishes to the contractor by way of security any resulting account claims against the purchaser - in the case of the contractor's co-ownership the reserved commodities are proportion to the co-ownership share. The same applies to other account claims, which take the place of the reserved commodities or otherwise arise from the reserved commodities, e.g. Insurance claims or tort claims for loss or destruction. The contractor authorises the client revocably, to collect the assigned account claims in his own name. The contractor may revoke this authorization only in the event of exploitation.
7. If a third party accesses the reserved commodities, particularly by seizure, the client is to immediately refer to the ownership of the contractor and to inform the contractor in order to allow him to enforce his property rights. If the third party is not able to reimburse the contractor with the judicial and extra-judicial costs arising in this context, the client will then be liable for this to the contractor.
8. The contractor shall release the reserved commodities as well as their replacement items or the account claims upon demand at his discretion, if their value exceeds the amount of the secured account claims by more than 50 %.
9. If the contractor terminates the contract due to the clients conduct contrary to the contract - in particular delay in payment - he is entitled to reclaim the reserved commodities.

VIII. Intellectual property rights / copyright

The client is personally liable if by execution of his orders, third party rights notably copyrights, are violated. The client shall indemnify the contractor against all third party claims arising from such infringement.

IX. Place of Performance, Jurisdiction, Validity

1. The place of performance and jurisdiction for all claims and legal disputes arising from the contractual relationship, including bill enforcement proceedings and trials by record, is Miesbach, if the customer is a merchant in the sense of the HGB (German commercial code). The contractual relationship is subject to German law. UN-purchase rights are excluded.
2. If one or more clauses of this contract are invalid, this does not affect the validity of the remaining clauses.