

General Terms and Conditions (Ts & Cs) of Marianthaler Pappenverarbeitung GmbH & Co. KG

1. General

Any delivery of goods and services is based on the following Ts & Cs. This also applies in cases in which we do not explicitly refer to them in a continuous business relationship. Any terms and conditions deviating from the above only apply upon prior written acknowledgement by us.

2. Offers / order acknowledgement

Unless agreed otherwise, our offers are subject to confirmation. Orders and agreements will only become binding on us after they have been confirmed by us; a delivery note or commercial invoice will also serve as confirmation. Requested specimens, layouts and drawings will be billed by us as a separate order, if the actual order is not placed.

3. Delivery period, delivery terms

The day of delivery is the day of dispatch. If dispatch is delayed through no fault of our own, the date of provision shall be considered as the date of delivery. If we are prevented from timely delivery through no fault of our own, the delivery period shall be adequately extended. This also applies in the event of industrial actions, disruptions of operations that could not have been averted in spite of reasonable diligence, interferences on the part of freight carriers, interruptions of transport modes, shortages of raw materials and official action, respectively. We will not be liable for any deliveries or services delayed or omitted through the fault of our supplier; in turn, we are obligated to assign our claims for damages against our supplier or against third parties to the customer in the respective amount. If the customer fails to obtain indemnification from our supplier, we shall be subsidiarily liable in this respect. This does not imply any extension of the limitation period.

Partial deliveries are permitted as far as acceptance can be expected from the customer in consideration of all circumstances. If the customer demonstrates that subsequent fulfilment as a result of the delay is of no advantage to it, the customer will be able to rescind the contract to the exclusion of any further claims.

4. Lithographs and die cuts, proofs

We are entitled to all copyrights and industrial property rights in graphic and lithographic work for the production of printing plates and diecutting tools as well as other deliveries made or services rendered by us. The customer shall bear the cost of design, layout and final artwork. Printing plates and tools that may be necessary will be billed by us at cost. All resources, documents and data used and applied by us remain our property. If the customer provides printing plates, it shall hold us harmless from any claims of third parties in respect of copyrights and industrial property rights. The customer shall check proofs for typographical errors and other errors and confirm to us in writing or in electronic form that they are ready for press. Unless this has been done, we will not be required to start production. If the customer does not confirm promptly, our delivery period shall extend accordingly. After having received the confirmation, we will no longer be liable for overlooked faults or neglected changes.

5. Transfer of risks

Even if we bear the freight charges, the risk of accidental loss or deterioration of deliveries or services shall also pass to the customer, if the goods have been handed over to the person designated for dispatch at that company's location. If dispatch is delayed through no fault of our own, the goods will be stored at the customer's expense and risk, in which case the date of notification of their readiness for dispatch is deemed to be the same as the date of dispatch. If we take goods back, the customer shall bear the risk until the goods have been received by us.

6. Prices

Unless agreed otherwise, our prices are calculated ex works and are exclusive of packaging, freight and customs duties (export duties, import duties etc.) as well as tax on imports and statutory sales tax applicable at the time. The cost of special or seaworthy packaging will be billed separately. Shipment of quantities initiated by us will be made in units that are customary in trade.

If the cost of labour and materials increases by more than 7.5 percent between the date of placing the order and the due delivery date, we will be entitled to adjust prices accordingly. If prices increase by more than 5 percent, the customer will be able to rescind the contract within one calendar week of being made aware of the price increase by us.

7. Payment, maturity, creditworthiness

Our invoices fall due and are payable within 30 days. If payment is made within 14 days from the invoice date, we will grant a 2-percent cash discount on the net merchandise value. Deduction of cash discounts on new invoices is not permitted as long as older invoices or receivables have not been paid or settled in full. If invoicing is disputed, the customer will be in default 30 days after receipt of the goods at the latest without having to be reminded. We only accept drafts and cheques, if this has been explicitly agreed upon beforehand and if so, this is only done on account of performance and subject to their eligibility for discount. The remaining time to maturity shall not exceed ninety days from the invoice date. Discount and note charges shall be borne by the customer. The same applies to the cost of collection and write-back. In the case of drafts and cheques, deduction of cash discounts is not possible.

Payments will always be offset against any costs first, then against interest and thereafter against the principal debt, namely against the one that has not been declared legally binding, and thereafter against the older debt. The customer shall have no right to retain payments for any counterclaims including claims for liability for defects, unless the counterclaims are uncontested or have been established as final and absolute.

Should circumstances become known after conclusion of the contract that raise reasonable doubt as to the creditworthiness of the customer, we will be entitled to immediately call in all receivables including note receivables. In particular, this applies to any downgrading of creditworthiness by credit agencies (as of a credit rating described as being "tense") or at least to a comparable deterioration of the rating in our commercial trade credit insurance. In such cases, we will have the right to demand prepayment after the fact; instead, the customer can demand concurrent performance at the location of the goods.

8. Liability for defects, excess quantities and shortage in quantities

Specimens, samples, illustrations and drawings provided will only imply a guarantee or an agreement on properties and condition, if we have confirmed such agreement in writing beforehand. Any claims for liability for defects shall become time-barred within one year from the date of delivery, unless a longer period is required by law.

In the case of colour reproductions, minor deviations from the original and a possible press proof of the production print, respectively, as well as any colour abrasion, especially with a large-area opacity and coverage do not constitute a defect. Material-caused deviations from the colour register, too, do not constitute a defect; these are also due to changes of temperature and moisture content. Incidentally, no deviation from the agreed quality or insignificant impairment of the usability exists (e.g. in the case of deviations that are customary in trade or conditional on production). Technical excess quantities or a shortage in quantities of up to ten percent are deemed contractually agreed; the price shall then be adjusted accordingly.

We will only be liable for defects in material properties within the scope of our respective supplier's liability towards us. In turn, we are obligated to assign our claims for damages against our supplier or third parties to the customer in the respective amount. If the customer fails to obtain indemnification from our supplier, we shall be subsidiarily liable in this respect. This does not imply any extension of the limitation period.

If we are liable for defects, we will be entitled to choose between a removal of defects and a replacement against return of the material objected to. If the customer wishes to rescind the contract, reduce the price, demand compensation for damages instead of performance or opts for self-remedy of defects, supplementary performance is only deemed to have failed after the second unsuccessful attempt. Statutory cases of dispensability shall remain unaffected. Any claims of the customer for expenses required for the purpose of supplementary performance, e.g. the cost of transportation, infrastructure, labour and materials, are excluded as far as expenses increase due to the fact that goods supplied by us are sent to a different location than the customer's delivery address, unless shipment has been made in the conventional course of business.

9. Limitation of liability

We will only be liable, if we have caused damage through culpable infringement of a material contractual obligation in a manner that endangers the achievement of the purpose of the contract or have acted grossly negligently or with intent. The claim for damages for infringing material contractual obligations is limited to a foreseeable damage and one that is typical of this type of contract; this also applies to gross negligence. Our liability for any damage to other legal objectives of the customer caused by the delivery item or scope is excluded. Clause no. 9 applies to a compensation for damages in addition to and in lieu of performance for whatever legal ground and is particularly due to defects, a violation of duties as a result of contractual obligations or a tortious act and is applicable to the repayment of futile expenses (for a delay in delivery see clause 3.). It does not apply in the case of an injury to life, body or health.

10. Retention of title

The goods will remain our property until payment of all present receivables, claims for damages, the encashment of cheques and discharge of bills due to us has been made by the customer in full. This also applies, if the price of a particular shipment identified by the customer has been paid. In the case of a current account, the retention of title serves as collateral for any balance claimed by us. If the realisable value of the goods subject to retention of title exceeds our receivables by more than twenty percent, we will be obligated, at the customer's request, to a transfer of title to the extent of such exceedance and the goods subject to retention of title to be transferred will be identified by us in detail.

Our customer will be entitled to use the goods subject to retention of title in the due course of business or sell them to the buyer under retention of its title until payment from the buyer has been received in full. Any other act of disposal shall be forbidden to the customer. Seizures or security interests in the goods subject to retention of title and assigned receivables, respectively, are not allowed. We shall immediately be notified by the customer of any access to the goods subject to retention of title or assigned receivables by third parties (e.g. seizures or other interventions by third parties). The cost of interventions against any access by third parties shall be borne by the customer as far as that cost cannot be recouped by the respective third party.

The customer shall herewith assign to us in advance any and all receivables including turnover tax accrued by it through the use of the goods subject to retention of title. If the customer has sold the receivables within the scope of genuine factoring, it shall herewith assign to us the receivables from the factor already at this time instead. If the buyer pays into one of the customer's bank accounts, the customer shall herewith assign to us the claim against its credit institute resulting from the credit entry already at this time instead. If the goods subject to retention of title are sold or used together with other items not owned by us, the assignment shall only comprise that part of the receivables, which is equal to the proportion of the value of goods to be delivered to the goods' total value. Assignments shall be made in the amount of the gross price based on our billing of the goods subject to retention of title at most. We herewith accept the above assignments. As long as it meets its payment obligations, the customer shall be entitled to collect the assigned receivables in spite of the assignment.

The capacity of the customer to sell the goods subject to retention of title in the due course of business and the collection authorisation granted shall lapse when we revoke them. Even without revocation, both capacities shall lapse, if the customer is in default for more than one month and if its financial situation has materially deteriorated (see end of clause 7.). Our capacity to collect the assigned receivables ourselves will always remain unaffected. We are entitled to notify the customer's clients of the assignment and to demand payment to us as long as insolvency proceedings have not yet been opened over the customer and as orders by the insolvency court are not opposed to such action. The customer shall always be obligated to provide us with any information necessary for asserting the assigned receivables and to allow verification of such information.

In the event of any violation of obligations on the part of the customer, e.g. delayed payment of more than one month or cessation of payment, we are also entitled without prior rescission of the contract and without setting a deadline, respectively, to take possession of the goods subject to title of retention, to satisfy our claims on the goods subject to retention of title and to enter the customer's premises for that purpose, as long as insolvency proceedings have not yet been opened over the customer and as orders by the insolvency court are not opposed to such action. Any costs incurred in this respect shall be borne by the customer. If we take goods back on the basis of the retention of title, this will only constitute a rescission of the contract, if we declare such rescission or realise the goods.

The customer shall store the goods subject to retention of title without any cost to us. The customer shall take out an adequate insurance against common risks (fire, theft, water etc.). The customer shall herewith assign to us its claims for compensation to which it is entitled as a result of losses of the kind mentioned above against insurance companies or other liable persons in the amount of the value of the goods pledged as collateral. We herewith accept the assignment.

11. Effectiveness, applicable law, place of fulfilment, legal venue

In the event that individual provisions of these Ts & Cs are found to be void in whole or in part, the remaining Ts & Cs shall nonetheless continue to be effective. The parties to the contract shall agree on a provision that comes as close as possible to the ineffective regulation.

Contractual relationships between the customer and us are exclusively subject to the laws of the Federal Republic of Germany and to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG). Our registered office is the place of fulfilment for all deliveries, services and payments. The legal venue of these Ts & Cs or this jurisdiction agreement, also in respect of disputes over the effectiveness of this contract, is the competent local court unless an arbitration agreement has been concluded. If contracts have been worded in several different languages, the contract in these Ts & Cs worded in German are the original one.

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