

General Terms and Conditions of Business, Delivery and Payment of the **schmitz** druck & medien GmbH & Co. KG

I. Scope

These general terms and conditions of business, delivery and payment (GTCs) apply to all business relations with entrepreneurs (Article 14 of the German Civil Code), legal entities under public law or special funds under public law. Corresponding Orders shall be exclusively carried out on the basis of the following conditions, other terms and conditions shall not become part of the contract, even if we do not expressly object to them. Individual contractual agreements take precedence over these GTCs.

II. Prices, Conclusion of Contract

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 weeks after submission of the Estimate to the Customer. 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 to the contractual services 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 that do not, however, warrant complaint.
3. If sketches, drafts, type specimens, specimen sheets, samples, proof sheets, changes to delivered/transferred data and similar preparatory work, which are not the subject matter of the Order, are ordered by the Customer, these shall be separately charged for.
4. 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.

III. Invoicing and Terms of Payment

1. Payment shall be due in full. Any discount granted shall be exclusive of freight, postage, insurance and other shipping costs. The due date for payment is governed by the statutory provisions.
2. The Customer may only assert a right of set-off or exercise a right to retention in respect of claims that are undisputed, ready for a decision or legally established. This does not apply in relation to any claims by the Customer for the costs of completion or the elimination of defects.
3. 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 refuse performance. The right to refuse performance lapses if the consideration is paid or security is provided. Article 321 II of the German Civil Code remains unaffected. If the Company has a claim against the Customer that is due and arises from the same legal relationship, the Company may also refuse performance until the performance/payment due to the Company has been made. Article 273 III of the German Civil Code remains unaffected.
4. If the Customer fails to pay the price including the costs specified under II (Prices, Conclusion of Contract) within 14 days after delivery of the goods he shall be deemed to be in default even without a reminder being issued. In the event of default, the Company shall be entitled to charge interest on arrears at the rate of 9 percentage points above the base rate. Further claims are hereby not excluded. In the event of default, the Company shall also be entitled to claim payment of a lump sum in the amount of 40 Euros. The lump sum shall be taken into account towards compensation owed for losses based on the cost of asserting the Company's legal rights.

IV. Delivery

1. Delivery dates shall be agreed individually upon conclusion of the contract at the latest. If this does not occur, the statutory provisions shall apply in this respect.
2. The Company shall only be entitled to make partial deliveries if this is appropriate having regard to the principles of good faith in accordance with Article 242 of the German Civil Code. This may particularly be the case if
 - partial deliveries are of use to the Customer according to the purpose of the contract, and
 - the delivery of the remainder of the ordered goods is still guaranteed.This shall not affect any rights/claims of the Customer arising from a breach of duty in this respect for which the Company is responsible.
3. If the goods are to be delivered, the risk of accidental loss and incidental deterioration of the goods shall pass to the Customer as soon as the person in charge of transport has taken delivery of the shipment.
4. Where the Company is in default of performance, the Customer may only withdraw from the Contract under the conditions of Article 323 of the German Civil Code if the delay is the responsibility of the Company. This shall not affect Clause IV.5. This provision does not alter the burden of proof.
5. Events that temporarily delay delivery for which the Company is not responsible – especially operational disruptions, transport delays, strikes, lock-outs, official measures, non-delivery, incorrect delivery or late delivery by suppliers – as well as all cases of force majeure shall only entitle the Customer to withdraw from the Contract if the Customer cannot objectively be expected to continue to adhere to the Contract, otherwise the delivery period will be extended by the duration of the delay caused by the disruption plus a reasonable start-up period. The delivery period will also be extended if the disruption is caused by circumstances within the Customer's sphere of risk for which the Company is not responsible. Any liability of the Company is excluded in the aforementioned cases. The Company shall inform the Customer in a timely manner about the occurrence of events as described in sentence 1.
6. 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.
7. In the case of Orders in respect of which a previously determined total order quantity is to be delivered in instalments to be separately called off and paid for by the Customer (call-off orders), the Customer shall be obligated, unless otherwise agreed, to accept the total order-quantity underlying the call-off order within 12 months of conclusion of the contract. The Customer's obligation to call constitutes a primary obligation. If acceptance of the total order quantity has not taken place within the acceptance period, the Company shall at its option have the right to either
 - deliver the remaining quantity and demand payment of the outstanding part of the purchase price,
 - store the remaining quantity at the cost of the Customer or
 - set a suitable deadline for the Customer to accept the remaining quantity and, upon the fruitless expiry of this deadline, to withdraw from the contract pursuant to Article 323 of the German Civil Code.Further rights of the Company shall not be affected.

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. This Work may be neither pledged nor transferred to third parties by way of security before it is fully paid for. The Customer shall notify the Company immediately in writing if and to the extent that third parties seize any Work belonging to the Company.

2. 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.
3. If the realizable value of the securities exceeds the claims of the Company by more than 10%, the Company shall – on demand by the Customer – release such securities as the Company shall choose.
4. In the processing or transformation 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 or transformation, the Company is co-owner only up to the amount of the invoice price (total amount of the invoice including VAT) 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 any 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 any 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 rectification or replacement fails 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 that part of the Work which is free from defects is of no value to the Customer.
5. No claims may be made for usual colour-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.
6. The Company is not obliged to inspect deliveries (in particular data media, transferred data) by the Customer or a third party on the Customer's behalf. This shall not apply to the technical suitability of deliveries required for the proper completion of the order, if the lack of suitability would have been apparent to a contractor acting diligently. Prior to data transfers, the Customer shall be obliged to apply state-of-the art protective programs against computer viruses.
7. 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 Company shall be liable
 - for death, personal injury or injury to health for which it is culpable and
 - for other damage caused intentionally or by gross negligence, including where the breach of duty is based upon the analogously culpable conduct of a legal representative or vicarious agent.
2. The Company shall also be liable even in the case of a slightly negligent breach of essential contractual duties, including by its legal representatives or vicarious agents. Essential contractual duties are duties which must be fulfilled for the contract to be properly performed at all, the breach of which endangers the achievement of the contractual purpose and which customers can legitimately expect to be complied with. In cases of slight negligence, the liability of the Company pursuant to sentence 1 is limited to damage typical for the type of contract and foreseeable.
3. Finally, the Company shall be liable
 - in the case of fraudulently concealed defects and warranties relating to the quality of the goods as well as
 - in the case of claims under the German Product Liability Act.
4. All other liability on the part of the Company is excluded.

VIII. Limitation

The Customer's claims for defects 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. 1. and arising under the German Product Liability Act. This shall not apply, if the Company fraudulently concealed the defect or insofar as it guaranteed the quality of the item.

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. Archiving

Only under an express agreement and against special reimbursement shall products, materials and data to which the Customer is entitled, 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. Where there is no agreement, the Customer himself must provide any insurance.

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 three (3) months is given.

XII. Rights of Third Parties

The Customer shall ensure that his order requirements and, in particular, submissions delivered by him, do not infringe the rights of third parties e.g. copyright, trademarks or rights of personality. The Customer shall fully indemnify the Company in this respect against all claims of third parties, including the costs of defending and/or bringing legal actions, unless the Customer proves that he was not at fault and that he complied with all of his duties to take care and review.

XIII. Place of Performance, Jurisdiction, Applicable Law

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 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.