

# General Terms and Conditions of xmedia Agentur für Markt-Kommunikation GmbH (Agency for Market Communication)

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## §1 General - Scope of application

(1) Our terms and conditions of sale apply exclusively, we do not recognise any terms and conditions of the customer that conflict with or deviate from our terms and conditions of sale, unless we have expressly confirmed their validity in writing. Validity agreed. Our terms and conditions of sale shall also apply if we make delivery to the customer without reservation in the knowledge that the customer's terms and conditions conflict with or deviate from our terms and conditions of sale.

(2) All agreements which are made between us and the customer for the purpose of executing this contract are in this contract in writing.

## §2 Offer - Offer Documents - Conclusion of Contract

(1) If the order is to be qualified as an offer according to § 145 BGB, we can accept it within 2 weeks.

(2) All our offers are subject to change without notice. Declarations of acceptance and orders require the following to be legally valid our written confirmation. The information in the order confirmations regarding scope of delivery, appearance, Services, dimensions and weights are to be regarded as approximate and do not represent warranted characteristics.

(3) For illustrations, drawings, calculations, tools, printing documents, stencils, samples and other materials We or our suppliers reserve ownership rights and copyrights to all documents, even if the costs for the preparation of these documents and tools will be charged to the customer. This also applies to such written documents designated as "confidential". Before passing them on to third parties, the customer requires our express written consent.

(4) For artwork, films, clichés and other documents provided by the customer, the following shall be borne exclusively the customer is responsible. A print release declared by the customer is binding. If the customer objects to a proof not sent within 3 days, it becomes binding.

(5) The customer is liable for the fact that the documents made available by him are free of rights of third parties. A We are not obliged to check. By placing an order, the customer releases us from all claims, which will be raised against us for possible violations of the law. We are not obliged to accept orders or may withdraw from orders which entail an infringement of the rights of third parties or which entail the risk of of such injuries.

(6) Excess or short deliveries of 10% are permissible and reserved for technical reasons. When ordering from than the minimum quantities stated in catalogues or advertising brochures, we reserve the right to charge a minimum quantity of a separate handling fee or a surcharge for small quantities.

(7) In the event of non-delivery or delayed delivery to us and in cases of force majeure, we shall be entitled to withdraw from the contract. In these cases there are no claims for compensation for the customer.

(8) The customer is obliged to state in the order whether he will resell the goods to an end consumer. In the event of a breach of this obligation or if the goods are sold to an end consumer in breach of the rights from § 478 BGB (German Civil Code) are considered as waived.

## §3 Prices - Terms of payment

(1) Unless otherwise stated in the order confirmation, our prices shall apply "ex dispatch point", exclusive of VAT. Packaging, freight, postage, insurance and other shipping costs; these will be invoiced separately.

(2) The statutory value-added tax is not included in our prices; it is charged at the statutory rate on the day of delivery. of the invoice are shown separately in the invoice.

(3) The deduction of cash discount requires a special written agreement.

(4) Unless otherwise stated in the order confirmation, the net purchase price (without deduction) is due for payment immediately from the invoice date. The legal regulations apply with regard to the consequences of default in payment.

(5) The customer is only entitled to offsetting rights if his counterclaims have been legally established, undisputedly or recognized by us. Furthermore, he is only entitled to exercise a right of retention to the extent that his counterclaim is based on the same contractual relationship.

(6) We reserve the right to make the delivery of new customers dependent on prepayment. If deliveries or partial deliveries are not paid for on time, we reserve the right to postpone delivery of current orders or new orders or to make them dependent on advance payment.

(7) The customer does not accept properly ordered goods that are ready for delivery even after setting a reasonable period of grace, we are entitled, at our discretion, to demand performance of the contract or to withdraw from the contract and claim damages for non-performance in the amount of 25% of the order value (excluding VAT). The customer reserves the right to prove a lesser damage.

(8) In the event of unforeseeable changes in customs duties, value added tax, exchange rates, freight costs, insurance premiums and other charges incurred when the order is placed, we are entitled to change the price in accordance with the change in favour and at the expense of the customer without this giving rise to a right of withdrawal.

## §4 Graphics Service

We assume that the documents provided to us for graphic work are reproducible and in perfect condition. If this is not the case, we reserve the right to recreate or improve the templates in order to achieve a perfect result. The costs required for this are calculated according to time and material costs. Data carriers or similar materials that are sent to xmedia as a basis for production are also considered as templates. Before sending the respective data carrier, the client shall make at least one backup copy of it, check it for legibility and store it securely. The same applies before each new shipment. Final drawings, stand specifications, dimensions and colour samples or colour specifications are binding for us. If certain colour specifications according to HKS, RAL or Pantone are implemented in photographic technology/digital printing technology, we guarantee colour accuracy of 70-80%. If we do not receive any further stand details from the client, we reserve the right to determine these ourselves according to design principles. This does not imply any claim to liability for defects on the part of the customer. The same applies to the dimensioning of negatives, slides and other templates. Any dimensioning will be invoiced additionally on a time basis. Any wishes of the customer with regard to colouring, density, contrast, light-dark etc. must be expressly stated in writing when placing the order. If wishes are expressed later, we will endeavour to fulfil them as far as possible. In principle, subsequent changes to the order placed are possible. Additional costs, author corrections, all ancillary work such as creating phototypesetting from manuscript, creating a reproducible original, corrections and changes to final artwork, retouching and exemptions or similar. Design or conceptual work such as the creation of a layout, a stand sketch or a final artwork etc. is not included in the prices and will always be charged on a time basis.

## §5 Delivery time

(1) The beginning of the delivery period stated by us presupposes the clarification of all technical questions. In particular, delivery dates shall only apply from receipt of the complete documents, data and other information to be provided by the customer. The delivery dates refer to the issue of the goods at the production location and not to the receipt at the recipient.

(2) Compliance with our delivery obligation further presupposes the timely and proper fulfilment of the customer's obligation. We reserve the right to plead non-performance of the contract.

(3) If the customer defaults in acceptance or culpably violates other duties to cooperate, we shall be entitled to claim compensation for the damage incurred to us in this respect, including any additional expenses. We reserve the right to assert further claims.

(4) If the requirements of paragraph (3) are met, the risk of accidental loss or accidental deterioration of the object of purchase shall pass to the customer at the time at which the latter is in default of acceptance or debtor's default.

(5) We shall be liable in accordance with the statutory provisions if the delay in delivery is due to an intentional or grossly negligent breach of contract for which we are responsible or to a breach of essential contractual obligations; a fault on the part of our representatives or vicarious agents shall be attributable to us. If the delay in delivery is not due to an intentional breach of contract for which we are responsible, our liability for damages shall be limited to the foreseeable, typically occurring damage.

(6) In all other cases of delay in delivery, we shall be liable for a lump-sum compensation for delay amounting to a maximum of 15% of the delivery value.

(9) Further legal claims and rights of the customer remain reserved.

## §6 Transfer of risk - packaging costs - dispatch

(1) Unless otherwise stated in the order confirmation, delivery is agreed "ex shipping point".

(2) If, at the request of the customer, the goods are delivered to a place other than the place of performance of the seller, the following shall apply

the risk when the goods are handed over to the forwarding agent, carrier or any other person designated to carry out the shipment.

(3) Transport packaging and all other packaging in accordance with the packaging regulations will not be taken back; except pallets. The customer is obliged to dispose of the packaging at his own expense. and I'll take care of you.

(4) If the customer so wishes, we shall cover the delivery with transport insurance; in this respect, we shall not be liable for any loss or damage to the goods. costs incurred shall be borne by the customer.

(5) The customer shall be obliged to immediately inspect the goods for packaging damage and freedom from defects.

(6) We shall select the shipping route and mode of shipment in accordance with the best economic conditions, without obligation for a possible cheaper mode of dispatch. Special shipping methods must be specified by the customer in writing. will be communicated.

## §7 Liability for defects

(1) Claims for defects on the part of the customer presuppose that he has fulfilled his inspection and inspection obligations pursuant to § 377 HGB (German Commercial Code). obligations to give notice of defects has been properly fulfilled. The complaint period is a maximum of 3 working days after receipt of the Goods. Any warranty is excluded for improper storage of the delivered goods at the customer's premises.

(2) We deliver the ordered goods in commercial quality. In the case of a purchase according to sample, the preceding sampling is decisive for the quality to be maintained. Through technical innovation or further development and reasonable changes caused by the manufacture are approved by the customer as being in accordance with the contract.

(3) If there is a defect in the object of purchase, the customer is entitled to choose between supplementary performance in the form of an correction of defects or the delivery of a new defect-free item. In the case of remedying the defect

We are obliged to pay all expenses necessary for the purpose of remedying the defect, in particular transport costs, travel expenses, etc., in full, labour and material costs, insofar as these are not increased by the fact that the object of purchase has been replaced by another place of performance.

(4) If the subsequent performance fails, the customer is entitled, at his discretion, to withdraw from the contract or to reduce the purchase price. demand. The return of rejected goods requires our prior consent.

(5) We shall be liable in accordance with the statutory provisions if the customer asserts claims for damages which intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents. If we are not accused of an intentional breach of contract, then the liability for damages is limited to the foreseeable, typically occurring damage.

(6) We shall be liable in accordance with the statutory provisions if we culpably breach an essential contractual obligation; in In this case, however, the liability for damages is limited to the foreseeable, typically occurring damage.

(7) Liability for culpable injury to life, body or health remains unaffected; this applies also for the mandatory liability according to the Product Liability Act.

(8) Unless otherwise agreed above, liability is excluded.

(9) The limitation period for warranty claims is 12 months, calculated from the transfer of risk. For Far East goods and articles is the warranty period for the normal service life of the corresponding article. limited to a maximum of 12 months, calculated from the transfer of risk.

(10) The period of limitation in the event of delivery recourse under §§ 478, 479 BGB remains unaffected; it is 5 years, calculated from delivery of the defective item.

(11) In the event of a sale to an end consumer within the meaning of the German Civil Code (BGB), the following shall apply with regard to liability for defects legal requirements.

(12) Graphic service: Photos, film artwork, final artwork, etc. submitted to us for processing are treated with due care in the usual manner. In the event of damage, incorrect processing or loss, we shall not be liable beyond the value of the material. All documents handed over to us for processing are to be insured against damage, loss, theft, etc. by the customer himself. However, the customer may also instruct us to insure the submitted documents at his own expense.

## §8 Total liability

(1) Any further liability for damages than provided for in § 7 is excluded - irrespective of the legal nature of the asserted claim. This applies in particular to claims for damages arising from culpa in contrahendo, other breaches of duty or tortious claims for compensation for damage to property in accordance with § 823 BGB.

(2) Insofar as our liability for damages is excluded or limited, this shall also apply with regard to the personal liability for damages of our employees, co-workers, representatives and vicarious agents.

## §9 Securing retention of title

(1) We reserve title to the object of purchase until receipt of all payments arising from the supply contract. In the event of breach of contract on the part of the customer, in particular default in payment, we shall be entitled to take back the object of purchase. Our taking back the object of purchase does not constitute a withdrawal from the contract, unless we have expressly declared this in writing. The seizure of the object of sale by us shall always constitute a withdrawal from the contract. After taking back the object of sale, we are entitled to sell it; the proceeds of the sale are to be set off against the customer's liabilities - minus reasonable costs of sale.

(2) In the event of seizures or other interventions by third parties, the customer must inform us immediately in writing so that we can bring an action pursuant to § 771 ZPO (Code of Civil Procedure). If the third party is not in a position to reimburse us for the judicial and extrajudicial costs of an action pursuant to § 771 ZPO, the customer shall be liable for the loss incurred by us.

(3) The customer is entitled to resell the object of sale in the ordinary course of business; however, he hereby assigns to us all claims in the amount of the final invoice amount (including VAT) of our claim which accrue to him from the resale against his customers or third parties, irrespective of whether the object of sale has been resold without or after processing. The customer remains authorised to collect this claim even after the assignment. Our authority to collect the claim ourselves remains unaffected by this. However, we undertake not to collect the claim as long as the customer meets his payment obligations from the proceeds collected, is not in default of payment and, in particular, no application has been filed for the opening of bankruptcy, composition or insolvency proceedings or payments have been suspended. f this is the case, however, we can demand that the customer informs us of the assigned claims and their debtors, provides all information required for collection, hands over the relevant documents and informs the debtors (third parties) of the of the assignment.

(4) We undertake to release the securities to which we are entitled at the request of the customer to the extent that the realisable value of our securities exceeds the claims to be secured by more than 10%; the choice of the securities to be released is incumbent on us.

(5) Suggestions, texts, drafts, drawings and models created by us remain our property with all rights, in particular copyrights. The transfer of ownership and usage rights requires our written consent, as does the rebuilding or reconstruction.

## §10 Miscellaneous

(1) We and our sub-suppliers are entitled to affix our company logo or our company designation to the delivered goods and to use the goods delivered by us for commercial purposes, in particular for exhibition in our business premises and for illustration in catalogues and brochures of all kinds.

(2) We are entitled to store the data that has come to our knowledge in connection with the business transaction and to pass this on to the contractual partners engaged by us for processing.

(3) Should any provision of these general terms and conditions be or become invalid, this shall not affect the validity of the remaining provisions or the underlying contract.

(4) If the word "in writing" is used, the text form pursuant to § 126b BGB, i.e. also email, is sufficient.

## §11 Place of jurisdiction - place of performance

(1) If the customer is a merchant, our place of business is the place of jurisdiction; however, we are also entitled to sue the customer at his court of residence.

(2) The law of the Federal Republic of Germany shall apply; the UN Convention on Contracts for the International Sale of Goods shall not apply.

(3) Unless otherwise stated in the order confirmation, the place of performance is the place of dispatch of the goods.