

General Terms and Conditions of Westermann Druck GmbH

1. Scope – Exclusiveness

1.1 The following terms conditions apply exclusively to offers, deliveries and services of the printing shop. Printing shop and the customer agree upon first conclusions of a contract that these terms and conditions are also taken as basis for all subsequent transactions – also for those concluded verbally, especially on the phone. Terms of purchase and other terms and conditions of the customer which conflict with our terms and conditions, deviate from them or contain supplementary regulations will in no case become a component of the contract. This also applies where we execute the order without reservation while knowing of conflicting or deviating terms and conditions of the customer.
1.2 Special agreements and collateral agreements only become effective if they are confirmed by us in writing.

2. Offer, conclusion of contract, change and cancellation

2.1 Our offers are subject to change.
2.2 A contract only comes into existence with our order confirmation.
2.3 The customer is bound by orders for 3 weeks. If the order confirmation deviates from the order, the customer has to object within 7 days of receipt of the order confirmation, however at the latest 10 days after the date of the order confirmation in writing. Otherwise, the contract comes into existence with the terms and conditions named in the order confirmation. The printing shop undertakes to draw customer's attention to this fact at the start of the period.
2.4 Cancellations require our written consent. In case of cancellation, we are entitled to 20 % of the original net order amount plus the material costs already disbursed (especially for paper). However, customer is entitled to prove to us that we incurred no or only slightly less damage. In case of higher damage incurred by us, we will also be entitled to assert such higher damage. The aforementioned regulation applies correspondingly to the changes of the order desired after the order confirmation.
2.5 We are also entitled to invoice sketches, designs, press proofs or samples, respectively, if the order is not placed. The same applies to data transfer (e.g. via ISDN).
2.6 If the customer does not determine expressly whether the setting by the printing shop during the transition period until 1 August 2005 has to be effected in old or new German spelling, the printing shop has the right to choose.
2.7 The printing shop may refer to its company on the publication in suitable form unless the customer contradicts expressly.

3. Prices, terms of payment

3.1 Our displayed prices are – unless expressly noted otherwise – subject to change. We invoice the day price valid at the time of transfer for paper, films and binding material and other consumption parts. Increases of wage costs under collective bargaining agreements entitle us to a corresponding adjustment of our displayed prices.
3.2 Unless otherwise noted in the order confirmation, invoices are payable immediately without deduction. Notwithstanding we are entitled at any time without stating reasons to make a delivery dependent on delivery versus payment unless payment in advance has been agreed anyway.
3.3 Payments have to be effected to the bank accounts of the printing shop stated in the invoice without costs and expenses. Bills of exchange and cheques are only accepted on account of performance. Unless otherwise agreed, all costs and expenses are borne by the customer.
3.4 Payments are settled exclusively pursuant to § 366 BGB [German Civil Code] even in case of other provisions on part of the customer.
3.5 All prices are plus turnover tax to the legal amount as of the day of invoicing. Changes of the turnover tax rate entitle the printing shop to corresponding price adjustments.

4. Default of payment

4.1 If customer is in arrears with payment for more than 10 days or if it causes bills of exchange or cheques accepted by us to be protested or if an application for opening of insolvency proceedings is filed, we will be entitled notwithstanding any other rights:
a) to retain all deliveries or services as well as the return of provided printing material from the contract affected by the default. We are entitled to the same right also with regards to other contracts not yet performed by us;
b) to assert all rights under reservation of ownership (clause 12).
c) to withdraw completely or for subsequent contracts already concluded from the contract.
4.2 Furthermore, the printing shop is entitled to claim default interest amounting to 8 % above the base lending rate as default damage. The claim for compensation of the default damage is to be increased if the printing shop proves a higher damage.
4.3 Until the complete fulfilment of all claims from the business relationship, the printing shop is entitled to a right of retention regarding the materials/documents left pursuant to § 369 HGB [German Commercial Code] vis-à-vis merchants.

5. Set-off, retention

5.1 The customer may only declare set-off of claims of the printing shop if the claims of the customer are undisputed and legally ascertained.
5.2 The customer may only assert a right to refuse performance or a right of retention if the payment claim of the printing shop and the counterclaim of the customer are based on the same contractual relationship.

6. Delivery, time of delivery and availability of supplies

6.1 For compliance with the agreed delivery dates it is required that the necessary documents and all materials to be provided by the customer are available in good time and, if setting is carried out by the printing shop, the setting approval has been given. If this is not the case, the time of delivery will be prolonged by a reasonable period of time. The time of delivery will also be prolonged by the period of time for checking blueprints, press proofs or type samples. No transactions for delivery by a fixed date are entered into.
6.2 The time of delivery is deemed as adhered to if the ordered goods left the printing shop or the notice of readiness for collection has been made before its expiry.
6.3 If the non-compliance with the agreed time of delivery is attributable to force majeure, labour dispute, fire, machinery breakage, unforeseeable obstacles or other circumstances beyond the control of the printing shop, the time of delivery will be extended by the duration of such event. This applies correspondingly in case that the printing shop is in default of delivery upon occurrence of those events.
6.4 In case of a duration of the prevention to perform within the meaning of clause 6.3 of more than 3 months, the customer and we are, in case of non-compliance with the delivery date for other reasons than the ones listed in clause 6.3 only customer is, entitled to withdraw from the contract. However, it is a prerequisite for the withdrawal on part of the customer that it has set a reasonable period of grace, however amounting to at least 2 weeks.
6.5 If the printing shop is obliged to pay damages, clause 10 applies (claims for damages and liability).
6.6 We are entitled to carry out premature as well as partial deliveries. Partial deliveries may be immediately invoiced by us.
6.7 We are only bound by the agreed times of deliveries if our sub-suppliers effect a correct and timely delivery to us.

7. Passing of the risk, acceptance, packaging

7.1 The customer is obliged to accept the goods upon handing over, otherwise within 8 days after receipt of the notice of readiness for collection.
7.2 The handing over is effected at the premises of the printing shop. If the customer requests the delivery to another place, this is effected at risk and for account of the customer.
7.3 Cost of packaging (paperboard, cardboard, boxes) are borne by the customer; Euro pallets must be exchanged.
7.4 The risk passes to the customer upon acceptance of the goods, however at the latest upon handing over the goods to the forwarder. This is also the case if partial deliveries are made or if we have taken over additional services, e.g. transport costs or delivery.
7.5 If the customer is in default of acceptance or if the delivery is delayed for other circumstances at customer's fault, the risk passes to the customer on the day of the notice of readiness for collection. In these cases, additionally the maturity of the purchasing price occurs with the date of notice that the goods are ready for dispatch. Cost of storage at the printing shop or at third parties' premises are borne by the customer. The assertion of damages in excess thereof against the customer remains unaffected.
7.6 The printing shop will take up a transport insurance exclusively upon special written instruction for customer's account.

8. Warranty, proof sheets, quantity deviations

8.1 Customer is obliged to check the goods upon receipt immediately for defects and completeness. This also applies where customer previously received proof sheets. We only accept liability for recognizable defects if they are notified in writing immediately, at the latest within 2 weeks after receipt of the goods. We only accept liability for non-recognizable defects if they are notified immediately upon discovery.

8.2 In the following cases, we only accept warranty upon express agreement:

- for the identity of press proof and production print or between original and production print;
- for the stability of colours and paintings.

8.3 Minor or customary deviations in shades or format do not constitute a defect obliging to warranty. Excess or short deliveries of up to 5 % - in case of multi-colour works of up to 10 % - constitute a proper execution and will be charged under the conditions of the order.
8.4 Unless setting approval is required, the printing shop submits proof sheets and other proofs to the customer upon request. If the customer has received a proof, this proof will be deemed as approved if the customer does not object immediately upon receipt in writing (and in urgent cases via fax or e-mail).
8.5 In case of subsequent changes upon customer's request (especially after layout and print approval), the customer has to bear the additional costs including cost of machine down-time.
8.6 To the extent that there is a defect in the goods at our fault, we are at our own discretion entitled to supplementary performance, i.e. removal of defects or substitute delivery. If we are not willing or not able to execute supplementary performance, if supplementary performance is delayed beyond the reasonable period for reasons at our fault or if the supplementary performance fails in any other way, the customer will be entitled to claim reduction of remuneration (reduction in price) or cancellation of the contract (rescission).
8.7 With regards to possible obligations to pay damages on part of the printing shop, clause 10 (claims for damages and liability) applies.

9. Material provided and order documents, storage and insurance

9.1 Any material to be provided by customer (paper, films, inserts etc.) has to be delivered free domicile. We only confirm receipt of the delivered material but not the amount or quality stated in the delivery documents. We will only carry out an examination of the materials in the course of the production; we will not take out an insurance. If the provision of paper is carried out by the customer, customer will be liable for any damage caused by paper defects.
9.2 We will store manuscripts, drafts, films, slides as well as other documents or materials of the customer up to 4 weeks after delivery/notice of readiness for collection. We are entitled to charge storage costs in this respect. We will not take out insurance for such documents or materials. After that point in time we are entitled to destroy the documents/materials, if the customer does not collect the documents/materials within an expiry of four weeks after the delivery.
9.3 The devices, tools and materials used by us for execution of the order also remain our property if we charge their costs of production to customer entirely or in parts.

10. Claims for damages and liability

10.1 Claims for damages and reimbursement of expenses of the customer for whatever legal ground especially due to default or impossibility, the violation of consulting or contractual collateral duties, pre-contractual duties, positive breach of contract, the violation of industrial property rights of third parties and tort are excluded.
10.2 This exclusion of liability does not apply

- in case of damage caused intentionally or in a grossly negligent manner,
- in case of violation of material contractual duties in slightly negligent manner, also by legal representatives or vicarious agents of the printing shop; to that extent, we are only liable for such average damage which is foreseeable according to the product type, typical for the contract and immediate, but not for the lost profit,
- in case of culpable injury of life, body or health of the customer,
- in case of fraudulently conceived defects and accepted warranties for the condition of the goods,
- in case of claims under product liability law.

10.3 The liability for complaints regarding advertisements in magazines and similar publications is limited to the pro rata printing and paper costs for taking out a replacement ad free of defects.

11. Statute of limitation

Claims of customer for warranty and damages (clauses 8. + 10.), with exception of the claims for damages named in clause 10.2, become statute-barred in one year starting with the delivery of the goods. This does not apply to the extent that the printing shop acted fraudulently.

12. Reservation of ownership

12.1 The printing shop reserves the ownership of the goods delivered to the customer (reserved goods) until the complete payment has been effected. The reservation of ownership also covers all claims already arisen at the time of the conclusion of the contract; furthermore it extends to all claims from subsequent transactions.
12.2 The customer is entitled subject to revocation to resell the reserved goods in the proper course of business unless the customer falls in default with payment to the printing shop. The customer is not entitled to pledging or transfer by way of security of the reserved goods. The customer is obliged to reserve the ownership for itself if it resells the reserved goods on credit.
12.3 Customer assigns all claims to which it is entitled from the resale or any other legal ground (e.g. tort, insurance claims) regarding the reserved goods and remuneration claims amounting to the invoice value of the reserved goods – in case of agreed current account amounting to the balance claim – to the printing shop already now irrespective of whether the reserved goods have been processed or not. The printing shop herewith accepts the assignment.
12.4 The customer is entitled to collect the assigned claims for account of the printing shop in own name. We may revoke this collection authorization and notify the assignment if one of the cases described in clause 4.1 occurs with regard to the customer or if an application for opening of insolvency proceedings on its assets has been filed and the customer does not remove the application within a period of 4 weeks. In this case, the customer is obliged to name third party debtors and the respective claims to us and to provide all documents required for the collection of the debts.
12.5 The processing or mixing of reserved goods is always carried out for us. If the processing/mixing is effected with goods not belonging to us, we acquire the co-ownership in the proportion of the respective value. The same regulations apply to the product originating from the processing/mixing as to reserved goods.
12.6 In case of access of third parties to the reserved goods, the customer has to point to our ownership and to inform us immediately. The customer is jointly liable with the third party for the reimbursement of judicial and extra-judicial costs of an action pursuant to § 771 ZPO [Code of Civil Procedure].
12.7 If the value of the securities to which we are entitled under the reservation of ownership exceeds our total claim against the customer by a total of more than 20 %, we are obliged upon customer's request to release the securities to which we are entitled under this agreement at own choice until the named value limit.
12.8 We are entitled to utilise the reserved goods after announcement while crediting them against the liabilities of the customer; costs of utilisation are at the customer's expenses.

13. Copyrights

13.1 We are entitled to the exclusive right to use the duplications (setting, films and the like) for production of duplicates. We are not obliged to hand out such means of duplication.
13.2 The customer warrants that it is entitled to duplicate the artwork or to use it otherwise in the intended way. The customer is obliged to exempt us from all claims which are raised by third persons for violation of copyrights, ancillary copyrights, other industrial property rights or privacy rights.
13.3 We are entitled to imprint our company name to the printed matters produced by us even without the express consent of the customer.

14. Place of performance, place of jurisdiction

Place of performance and jurisdiction for all disputes resulting from the contractual relationship including summary proceedings based on checks, promissory notes and bills of exchange are at the registered office of the printing shop if the customer is a merchant, legal entity under public law or special fund under public law or does not have a domestic general place of jurisdiction.

15. Applicable law, effectiveness, written form

15.1 The law of the Federal Republic of Germany applies. The application of the UN Sales Convention is ruled out.
15.2 Changes of and supplements to the provision contained in these terms and conditions must be made in writing and agreed in the contract between printing shop and the customer in order to be effective. The possible ineffectiveness of one or several provisions does not affect the validity of the remaining provisions.
15.3 Verbal or written collateral agreements are only binding for us after written confirmation.