

GENERAL TERMS AND CONDITIONS OF BUSINESS FOR PSBRANDS GMBH

I. SCOPE OF APPLICATION / CONCLUSION OF CONTRACT

Orders shall be processed exclusively in accordance with the following terms and conditions. Deviating provisions require confirmation in writing.

II. PRICES

1. The prices listed in the offer of the Contractor apply subject to the condition that the order data on which the offer is based remains unchanged; however, they apply for no longer than four months following receipt of the offer by the Client. In the case of orders with delivery to third parties, the ordering party shall be deemed the Client, insofar as no other express agreement has been made. The prices stated by the Contractor do not include VAT. The prices stated by the Contractor apply ex works. They do not include packaging, freight, postage, insurance or other shipping costs.
2. Subsequent changes at the request of the Client, including machine idle times resulting from this, shall be invoiced to the Client. Subsequent changes are also understood here to include repetition of print proofs which are requested by the Client due to minor deviations from the master copy.
3. Sketches, drafts, sample typesetting, sample prints, proofreading proofs, changes to delivered/transferred data and similar preparatory work that is initiated by the Client shall be invoiced. The same shall apply for data transfers (e.g. via ISDN).

III. PAYMENT

1. Payment must be made immediately on receipt of invoice without any discount. Any agreement regarding a discount shall not apply to freight, postage, insurance or other shipping costs. The invoice shall be issued on the day of delivery, partial delivery or readiness for delivery (obligation to collect, default of acceptance). Bills of exchange are only accepted as payment upon special agreement and without any discount. The Client shall bear any interest and expenses. They must be paid immediately by the Client. The Contractor shall not be liable for the timely presentation, protest, notification or return of a bill of exchange if it has not been honoured insofar as the Contractor or its vicarious agents is/are not liable for wrongful intent or gross negligence.
2. A reasonable advance payment can be demanded in the case of unusual preliminary work.
3. The Client can only offset or exercise a right of retention with an undisputed or legally determined claim.
4. If, upon the conclusion of the contract, it becomes apparent that the Client may not be able to meet the payment obligations, the Contractor shall be entitled to demand advance payment, withhold goods not yet supplied and cease any further work relating to the order. The Contractor shall also be entitled to these rights if the Client is in default with the payment for deliveries that relate to the same legal relationship. § 321 II of the German Civil Code remains unaffected.
5. In the event of a delayed payment, default interest shall be charged at 8 percentage points above the base rate. This does not exclude the right to claim further damages arising from delay. The Client shall be in default of payment even without a reminder if the Client has not paid the price inclusive of incidental costs in accordance with section II ("Prices") within 10 days after receipt of invoice and delivery of the goods.

IV. DELIVERY

1. Should the goods be sent, the risk is transferred to the Client as soon as the consignment has been handed over to the person in charge of the transportation.
2. Delivery deadlines are only binding if they have been explicitly confirmed by the Contractor. If the contract is concluded in writing, the confirmation of the delivery deadline must also be in writing.
3. If the Contractor should delay delivery, the Client shall only be justified in exercising their rights in accordance with § 323 of the German Civil Code if the Contractor is liable for the delay. An alteration to the burden of proof is not implied by this regulation.
4. Disruptions to business operations – not only in the business of the Contractor but also that of a supplier – such as strike, lockout and all other cases of force majeure shall only entitle the Client to terminate the contract in the event that the Client can no longer reasonably be expected to wait any longer; in all other cases, the agreed delivery deadline shall be postponed by the duration of the delay. However, the earliest possible date of termination is four weeks following a disruption to business operations as described above. In these cases any liability on the part of the Contractor is excluded.
5. The Contractor shall have a right of retention to all artwork and dies, manuscripts, raw materials and other items supplied by the Client in accordance with §369 of the German Commercial Code until all claims resulting from the business transaction have been met.
6. The Contractor shall accept returned packaging to the extent of their obligations under German packaging regulations (Verpackungsverordnung).

The Client may return packaging to the premises of the Contractor during usual business hours following prior notification in due time, unless the Client has been notified of another acceptance/collection point. The packing can also be returned to the Contractor at the time of delivery, unless the Client has been notified of another acceptance/collection point. Returned packaging shall only be accepted either immediately following delivery of the goods or in the course of a subsequent delivery if appropriate prior notification has been given and the packaging has been prepared for collection. The Client shall bear the costs for the transport of the used packaging. Should the indicated acceptance/collection point be further away than the premises of the Contractor, the Client shall only bear such transportation costs as would be incurred for the distance to the Contractor's premises. The returned packaging must be clean, free from foreign materials and sorted according to type of packaging. The Contractor shall otherwise be entitled to charge the Client for any additional disposal costs.

V. RETENTION OF TITLE

1. The delivered goods shall remain the property of the Contractor until the Client has paid all amounts due to the Contractor in full by the date indicated on the invoice. The Client shall be entitled to resale only in the normal course of business. The Client thus assigns the claims arising from the resale to the Contractor. The Contractor hereby accepts this assignment. The Client must inform the debtor of the assigned claim at the latest in the event of a default in payment. If the total value of collateral security for the Contractor exceeds its claim by more than 20%, the Contractor must release securities at the discretion of the Company on the request of the Client or a third party who is adversely affected by the Contractor's excess security.
2. In the working and processing of goods supplied by the Contractor, which are also the property of the Contractor, the Contractor shall be considered to be the producer pursuant to § 950 of the German Civil Code and shall have the right of retention to the products during all processing phases. If third parties are involved in the working or processing of the goods, the Contractor is limited to a co-ownership share equivalent to the invoice value of the reserved goods. Property thus acquired shall be deemed as reserved property.

VI. COMPLAINTS/WARRANTIES

1. The Client shall in all cases immediately confirm that the delivered goods and the initial and interim copies provided for corrections have been produced in accordance with the agreement. The risk of any errors is transferred to the Client once permission to print has been given, providing that the errors concerned do not occur or cannot be identified until the completion process after permission to print is given. The same shall apply to all other release declarations of the Client.
2. Obvious defects must be reported in writing within a period of one week after receiving the goods, and hidden defects must be reported within one week of discovery, otherwise the assertion of any warranty claim shall be excluded.
3. In case of justified claims, the Contractor is obliged and entitled to rectify defects and/or deliver replacement products at their own discretion. Should the Contractor fail to fulfil this obligation within a reasonable period of time or should the rectification of the defect fail despite repeated attempts, the Client can demand a reduction in price or cancellation of the contract.
4. Defects encountered on partial quantities of the total delivery shall not constitute the right to reject the entire delivery, unless the partial delivery is of no value to the customer.
5. No claims can be accepted regarding slight deviations from the original for all manufacturing processes involving coloured reproductions. The same shall apply for the comparison between other model samples (e.g. digital proofs, proof copies) and the final product. Moreover, liability is excluded for deficiencies that do not or only marginally impair the value or utility of the goods.
6. The Contractor shall only be liable for deviations in the quality of the materials used up to the amount of the order value.
7. The materials (including data storage media and transferred data) delivered by the Client or by any third party engaged by the Client shall not be subject to any obligation of examination on the part of the Contractor. This shall not apply to data that is unreadable or obviously cannot be processed. When transferring data, the Client shall deploy virus protection programs that comply with the latest technical standards before the data is transmitted. Data protection is solely the responsibility of the Client. The contractor shall be entitled to make a copy.
8. Over or under supply of up to 10% of the ordered amount is not deemed a reason for complaint. An invoice shall be issued for the volume delivered. In the case of deliveries of custom-made paper products under 1,000kg, the percentages increase to 20%; under 2,000kg: 15%.

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VII. LIABILITY

1. Claims for damages and compensation of expenses, irrespective of their legal grounds, are excluded.
2. This liability exclusion is not valid:
 - for damages caused deliberately or due to gross negligence;
 - in the case of breach of material contractual duties due to ordinary negligence, including by legal representatives or vicarious agents of the Contractor; in this respect the Contractor shall only be held liable for foreseeable, direct, average damages typical for the contract, depending upon the type of product;
 - in the case of culpable injury to life, limb or health of the Client;
 - in the case of fraudulent concealment of defects and assumed guarantee for the quality and nature of the goods;
 - for claims under the German Product Liability Act.

VIII. LIMITATION PERIOD

The Client's claims to warranty and compensation (sections VI. and VII.) shall lapse in one year beginning with the handover or delivery of the goods with the exception of the claims for damages specified in section VII. 2. This shall not apply if the Contractor has acted in a fraudulent manner.

IX. COMMERCIAL PRACTICE

In business transactions the commercial practices of 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

Products that belong to the Client, and in particular data and data storage media, shall only be archived by the Contractor pursuant to an express agreement and for separate remuneration beyond the date of the hand-over of the end product to the Client or its agents. If the aforementioned items are to be insured, the Client must provide for this in the case that there is no agreement.

XI. COPYRIGHT

1. The Client is responsible for ensuring that execution of the order does not violate the rights of third parties, in particular rights of reproduction. The Client fully releases and discharges the Contractor from all claims asserted against the Contractor by third parties owing to the execution of an order from the Client.
2. All copyrights and related rights of exploitation of sketches, drafts, originals, films, files, etc. created by the Contractor as part of the fulfillment of the order remain with the Contractor, unless other legally valid provisions have been agreed upon with the Client. In the event that rights of exploitation are transferred according to individual agreements and where the Contractor itself derives these rights from third parties, the rights shall be transferred

XII. § PLACE OF FULFILMENT, PLACE OF JURISDICTION, VALIDITY

1. If the Client is a merchant, legal person governed by public law or special fund under public law, or has not defined a general place of jurisdiction within Germany, the registered office of the Contractor shall be the place of execution and place of jurisdiction for all disputes resulting from the concluded agreement including involving cheques, bills of exchange and documents. This contractual relationship is governed by German law. UN sales law is excluded.
2. Should one or more provisions be invalid, this shall not affect the validity of the remaining provisions.

As at 01/2023