

TERMS OF DELIVERY AND PAYMENT

DZA Druckerei zu Altenburg GmbH

I. Scope of application

Orders will be carried out according to the following conditions. Other regulations require the written form.

II. Service

1. The prices named in the contractor's offer are valid with the reservation that the data at the basis of the offer made remain unchanged.
The prices of the contractor do not include value added tax.
The prices of the contractor are calculated ex works. They do not include costs for packaging, freight, postage, insurance and other costs for shipping and handling.
2. Subsequent changes at the instigation of the customer and the machine down-time will be passed to the account of the customer. Anew print proofs ordered by the customer due to minor variations from the original are also regarded as subsequent changes.
3. Sketches, drafts, test layouts, test prints, samples and similar preliminary work that are ordered by the customer will be billed.
4. For orders with delivery to third parties, the ordering party is the customer. If the delivery is carried out to third parties of their favour or if the addressee of the delivery will be enriched in another way by the appropriation and further usage of the delivery, the ordering party and the addressee are together regarded as the customer. By placing such an order the ordering party guarantees implicitly that the approval therefore had been obtained by the addressee. The ordering party and the addressee of the bill are regarded as the customer for orders to the account of third parties – no matter if on its own behalf or on behalf of other. A subsequent change of the bill to another bill addressee at the request of the ordering party after the invoicing had already been carried out is regarded as an implicit suretyship of this bill addressee in the sense of the regulations mentioned above. By placing such an order the ordering party guarantees implicitly that the approval therefore had been obtained by the bill addressee.

III. Payment

1. Payment (net price plus value added tax) has to be carried out immediately after receipt of the bill without deductions unless otherwise expressly agreed in writing. Any possible agreements regarding a trade discount does not relate to freight, postage, insurance, or other delivery expenses.
Exchanges are only accepted after special agreement and in lieu of payment without discount. Interest and fees are to be born by the customer. They are to be paid by the customer immediately. The contractor is not responsible for timely presentation, protesting, communication and return of exchanges in the case of non-redemption unless he or his assistants are at fault because of intention or gross negligence.
2. If exceptionally high volumes of paper and cardboards, special materials or an advance performance are provided, commensurate pre-payment can be required of at least 10%.
3. The customer can only charge against uncontested or legally determined payment requests. The customer, which is a registered trader in the sense of the German Commercial Code, is not entitled to any rights of retention or set-off. The rights according to §320 of the German Civil Code remain untouched as far and as long as the contractor has not fulfilled its obligations according to section VI3.
4. If it becomes recognisable after conclusion of the contract that the fulfilment of the pecuniary claim is endangered by the lack of ability to pay on the part of the customer, the contractor can require pre-payment, retain goods that have not yet been delivered and stop further processing. The same rights apply for the contractor if the customer is in arrears regarding the payment of deliveries.

IV. Arrears

1. If the fulfilment of the pecuniary claim is endangered due to a material worsening of the pecuniary condition of the customer, which occurred or became known after conclusion of the contract, the contractor can require pre-payment and the immediate payment of all bills for which the customer is in default, retain goods that have not yet been delivered and stop further processing or running orders. The same rights apply for the contractor if the customer does not make a payment despite of a reminder due to the arrears.
2. In the case of arrears, interest on arrears in the amount of 8% over the base rate is to be paid. The assertion of further damages for arrears is not excluded.

V. Delivery

1. The place of execution is the actual office of the contractor. The contractor assumes the shipment of the goods for the customer with due diligence as far as a delivery obligation has been agreed and the contractor is only liable for intention or gross negligence even though he employs its own transfer personnel. The goods are covered by the respective shipping or freight conditions of the transporting party.
2. Delivery dates are only valid when they have been explicitly confirmed by the contractor. If the contract is concluded in writing, the confirmation of the delivery date must be in the written form.

3. If the contractor delays in carrying out the service, an appropriate period of grace has to be granted at first. After an unsuccessful expiry of this period the customer is entitled to withdraw from the contract. A compensation of the damages caused by the delay can only be demanded till the amount of the contract price (in-house effort exclusive of advance performance and material) unless the delay had been caused by the contractor intentionally or grossly negligent.
4. Business disruptions – both in the operations of the contractor and those in a supplier – such as strikes, lock-outs, as well as all case of acts of God – do not entitle the customer to cancel the contract. The principals regarding the frustration of the contract remain untouched.
5. The delivered goods remain property of the contractor until complete payment of all standing claims of the contractor against the customer existing on the date of the bill. The customer is only entitled to further sale in normal business operations. The customer hereby transfers his claims arising from the further sale to the contractor. The contractor hereby accepts the transfer. At the latest in the case of arrears, the customer is obligated to name the debtor of the transfer claim. If the value of the securities exceeds the value of the contractor's claims by more than 20% total, the contractor is obligated to release securities according to the choice of the contractor upon request of the customer or a third party affected by the value of the security being higher than the remaining debt. During the handling or processing of goods delivered by us we are to be seen as the manufacturer pursuant to Section 950 of the German Civil Code and retain ownership of the products at every point in the processing. If third parties are involved in the handling or processing, we are limited to co-ownership in the amount of the billed value of the goods subject to retention of ownership. The acquired property is considered property subject to retention of ownership.
6. The contractor is entitled to the right of retention according to § 369 of the German Commercial Code regarding all films, manuscripts, raw materials and other items delivered by the customer till all due claims are completely paid.

VI. Objections

1. The customer has to check for the contractual compliance of the goods as well as of the preproduction and intermediate production goods in every case in a timely manner. The risk of possible errors is transferred to the customer with the declaration of readiness to print as far as these are errors did arise in the manufacturing processes following the declaration of readiness to print or if they could only be recognised at this stage of the process. The same applies for all other release declarations of the customer.
2. Obvious defects are to be reported within a week of receipt of the goods. Hidden defects, which can not be found during the immediate inspection, can only be reported within the legal warranty period.
3. In the case of warranted claims the contractor is at first obligated and entitled to his choice of improvement and/or replacement delivery and other claims are excluded. The improvement respectively the replacement delivery can be provided up to the value of the contract price unless any warranted characteristics are missing or the contractor or his assistants can be accused of intention or gross negligence. The same applies for a warranted claim regarding the improvement or replacement delivery. In the case of a delayed, defaulted or failed improvement or replacement delivery, the customer can claim the reduction of the remuneration (mitigation) or require rescission of contract (withdrawal). A withdrawal is excluded if the defect only slightly reduces the value or the efficiency of the delivered goods. A liability for consequential damages is excluded unless the contractor or his assistants can be accused of intention or gross negligence. If the order contains job processing or the subsequent treatment of print products the contractor is not liable for any impairment caused thereby of the products to be processed or treated.
4. Defects in one part of the delivered goods do not entitle the customer to object to the entire delivery unless the partial delivery is of no interest to the customer.
5. In the reproduction of colours in all production methods, slight deviations from the original cannot be objected. The same applies to the comparison of other samples (e.g. digital proofs, press proofs) and the final product.
6. The contractor is liable for deviations in the used materials only up to the value of the own claim against the respective supplier. In such a case the contractor is released from his liability if he assigns his claim against the supplier to the customer. The contractor is liable like a bailman unless there are no claims against the supplier due to a default of the contractor or if such claims cannot be enforced.
7. Excess or short deliveries of up to 10% of the ordered run cannot be objected to. The delivered amount is billed. For deliveries from specially manufactured paper under 1,000 kg, the percentage is increased to 20%, under 2,000 kg to 15%.

VII. Storage, insurance

1. Samples, raw materials and other items intended for reuse and all semi-finished and finished products will only be stored beyond the delivery date pursuant to explicit agreement and special remuneration. The contractor is only liable for intention or gross negligence.
2. The items mentioned above are plant objects of the contractor if they are produced by him and remain in the possession of the contractor unless agreed otherwise.
3. If the items mentioned above are provided by the customer will be handled carefully till the delivery date. The contractor is only liable for damages cause by intention or gross negligence.

4. Should the items mentioned above be insured, this is to be obtained by the customer himself unless agreed otherwise.

VIII. Periodic Jobs

Contracts regarding regularly repeating jobs can be cancelled with a period of at least three months before the end of a month.

IX. Copyright

The customer is solely liable if the execution of his order breaches the rights of third parties, especially copyrights. The customer is to release the contractor from all claims of third parties on account of such infringements.

X. Imprint

The contractor can refer to his company on the contract product with approval of the customer. The customer can refuse his approval only if he has an overriding interest in this refusal.

XI. Place of execution, jurisdiction, validity

1. Place of execution and jurisdiction for all claims and lawsuits including exchange and document trials arising from the contract is the domicile of the contractor, if he and the customer are registered traders in the sense of the German Commercial Code.
2. The possible invalidity of one or several provisions does not affect the validity of the other provisions.

as of 2012