

General Terms and Conditions

1. Scope

These General Terms and Conditions ("GTC") are an integral component of the agreement between the graphic industry company ("COMPANY") and the customer ("CUSTOMER") if they have been provided to the CUSTOMER during the course of the business relationship. The CUSTOMER confirms that it is in possession of the COMPANY'S GTC. Any terms and conditions of the CUSTOMER to the contrary shall only be valid if they have expressly been accepted by the COMPANY in writing. Explanations in text form that are transmitted via electronic media are equivalent to written form. Individual arrangements in the Agreement between the CUSTOMER and the COMPANY take precedence over these GTC.

2. Offers

Offers with no deadline for acceptance are binding for 60 days. Information in prospectuses, catalogues, etc. (physical or online) are only binding if they are explicitly warranted in the agreement between the CUSTOMER and the COMPANY.

3. Electronic transmission of data

The CUSTOMER may transmit data to the COMPANY electronically. The COMPANY is not responsible for the dispatch, transmission or receipt of data or for any damages arising therefrom. If an order is automatically deleted by the COMPANY'S IT system (e.g. by the spam filter), the CUSTOMER shall not be notified. The COMPANY may deactivate the electronic order system for justified reasons without notifying the CUSTOMER (e.g. if there is a suspicion of viruses, interventions by third parties, etc.).

4. Order confirmation and agreement

The agreement is concluded upon receipt by the COMPANY of the offer countersigned by the CUSTOMER or the electronic offer confirmation or the countersigned or electronic order confirmation. The agreement as well as all side agreements and legally relevant declarations must be in writing to be valid (e-mail and other written communication channels meet the written form requirement).

5. Subsequent changes

The work of the COMPANY ("WORK") is, subject to these GTC, specified conclusively in the order confirmation (incl. appendices). Subsequent additional orders or changes to the order by the CUSTOMER will be confirmed by the COMPANY in writing or electronically, making them binding ("CHANGE CONFIRMATION"). If the CUSTOMER does not object in writing within eight (8) days, the CHANGE CONFIRMATION shall be accepted without reservation. For the price of the order change, see para. 8.

6. Fulfillment by third parties

The COMPANY is entitled to transfer performance of the contractual services to third parties in full or in part. Doing so does not require the consent of the CUSTOMER, nor is it obliged to inform it of such transfer.

7. Assignment

Claims arising from the agreement may not be assigned.

8. Prices

All prices are net, incl. packaging, excl. pallets, transport containers and value added tax as well as any other taxes, levies, fees and customs duties, in Swiss francs or in another currency selected by the parties at the current exchange rate (UBS AG) with no deductions of any kind. Ancillary services that are not specified in the agreement are not included in the agreed price. The prices are subject to any increases in prices for materials or wage increases as a result of collective wage bargaining that occur between the offer and the completion of the WORK. The CUSTOMER agrees to pay the full amount of such additional costs (i.e. material costs, additional work, etc.) in addition to the agreed price. The price adjustment as a result of the change does not entitle the CUSTOMER to withdraw from the agreement. In the event of price reductions as a result of order changes, the COMPANY shall no longer be bound by any rebates and discounts it has granted.

9. Additional costs

Additional costs caused by the CUSTOMER after the conclusion of the agreement (such as additional waiting times, the correction or revision of artwork and manuscripts, additional processing of data carriers or text/image data, sample copies for customers and documents that deficient, missing or poorly suited for reproduction, etc.) as well as author corrections (subsequent text changes, rearrangement of images, changes in transition, etc.) are not included in the offered price and shall, without a CHANGE CONFIRMATION, be invoiced additionally following prior notice. Para. 8 applies.

10. Invoicing

The CUSTOMER must review invoices immediately upon receipt. The invoiced amount shall be deemed accepted if the CUSTOMER does not object in writing, providing justified reasons, within eight (8) days of receipt of the invoice. The COMPANY shall review the objection and adjust the invoice if it considers the objection to be justified.

11. Payment terms

The invoiced amount must be paid within 30 days (value date received in the COMPANY'S account) of the invoice date, with no deductions. Payment deadlines must also be met if the delivery is delayed for reasons that are not within the COMPANY'S control. In the event of the entry of a retention of title in the title retention register, the delivered WORK shall remain the property of the COMPANY until payment of the invoice amount, including the costs of registration. The COMPANY may, before and after the conclusion of the agreement, demand payment guarantees and/or advance payments. After the payment deadline, the CUSTOMER shall be deemed in default without notice and shall owe the Company late payment interest of 5% (Art. 104, para. 1 SCO) and, where applicable, compensation for damages. In the event of partial payments, the entire amount shall be due in the event of default. Furthermore, in the event of default by the CUSTOMER, the COMPANY is no longer obliged to honor rebates and discounts it has granted. The CUSTOMER may not offset claims against the COMPANY against any counter claims (prohibition of offsetting).

12. Delivery deadlines

Guaranteed delivery deadlines only apply if the data and materials necessary for the completion of the WORK (image and text templates, manuscripts or data, print approval, graphical products, raw materials, production approval, etc.) ("DATA" and "MATERIALS") are received by the COMPANY on the agreed date. Agreed delivery deadlines start to run with the conclusion of the agreement (see para. 4) AND the receipt of the DATA and MATERIALS by the COMPANY. If the print approval or production approval are not issued by the deadline or if the CUSTOMER otherwise does not meet its contractual obligations, the COMPANY shall no longer be obliged to meet the agreed delivery deadline. In print media processing, production approval is equivalent to authorization to bind. The COMPANY may carry out preparatory work (trimming, folding, pre-gluing, gathering, etc.) irrespective of the production approval and charge for such work. If the delivery deadline is exceeded or is not met and the COMPANY is not at fault (e.g. operational disruptions caused by work stoppages or strikes, lockouts, a lack of power, a lack of raw materials, late delivery of materials and force majeure) shall not entitle the CUSTOMER to withdraw from the agreement or to make the COMPANY responsible for any damages incurred.

13. Place of performance

The place of performance for both parties is the place specified by the CUSTOMER for delivery.

14. Benefits and risks

The benefits and risks of the WORK, irrespective of any deficiencies in the WORK, shall be transferred to the CUSTOMER upon delivery of the WORK (EXW 2020, CUSTOMER headquarters or production site). If such transfer is delayed for reasons not attributable to the COMPANY, the benefits and risks shall be transferred to the CUSTOMER on the date duly agreed for the ex works delivery. Art. 376, para. 3 SCO also applies.

15. Delivered data and materials

The DATA and MATERIALS delivered by the CUSTOMER for the production of the WORK remains the property of the CUSTOMER. Any remaining signatures, pallets and packaging materials made from the CUSTOMER'S materials that are no longer needed shall be disposed of at its cost. If the CUSTOMER delivers materials for further processing, it must disclose, without being prompted to do so, all technical information and prior processing of the materials to the COMPANY. The COMPANY is not obliged to inspect materials delivered by the CUSTOMER. The CUSTOMER shall be liable to the COMPANY for damages as a result of material defects and/or deficient information. The CUSTOMER shall grant the COMPANY an unrestricted right to use, at no charge, all of the DATA and MATERIALS subject to copyright that it provides to the COMPANY.

The work documents produced by the COMPANY (photographic shots, data, typesetting, montages, printing plates, sketches, samples, etc.) ("WORK DOCUMENTS") and tools (cutting dies, printing plates, etc.) ("TOOLS") are the property of the COMPANY. There is no obligation on the part of the COMPANY to handover WORK DOCUMENTS and TOOLS, irrespective of the obligation to pay for them.

16. Confidentiality

The disclosure of the COMPANY'S WORK DOCUMENTS to third parties as well as the creation and dissemination of copies are prohibited. All of the COMPANY'S work documents and other confidential information and documents may only be used for the purpose for which they were disclosed. The duty of confidentiality commences with the start of contract negotiations and continues after the end of the contractual relationship. The CUSTOMER shall owe a contractual penalty of CHF 3,000,000 for each breach of this obligation, plus compensation for damages in the amount of 15% of the offered work price. If no offer has been made, the contractual penalty shall equal CHF 3,000.00, plus compensation for the costs incurred by the COMPANY (materials and work).

17. Industry standard tolerances

Industry standard deviations in execution and materials, in particular trimming precision, the fidelity of the reproduction to the original, tonal value and quality of the print substrate (paper, cardboard, etc.) remain reserved (e.g. ISO standards and viscom tolerances in accordance with appendixes, available at www.viscom.ch). If the COMPANY is subject to tolerances by its suppliers, the CUSTOMER shall be subject to such tolerances as well.

18. Excess or short delivery

Objections may not be lodged against excess or short deliveries up to 10% of the ordered quantity – for special production of the materials up to 20%. Subject to an agreed flat rate, the amount actually delivered shall be invoiced.

19. On-demand orders

The additional costs incurred for the use of storage space and the interest on the capital tied up in the order (labor, materials) in the case of on-demand orders shall be borne by the CUSTOMER.

20. Deliveries, packaging

Pallets and transport containers shall be exchanged or invoiced at the net cost price if they are not returned to the COMPANY within four (4) weeks after receipt of the shipment in good condition and free of all charges. The performance-related heavy vehicle charge (LSVA) as a proportion of tax shall be stated clearly on invoices as a separate surcharge on deliveries.

21. Notice of defects

The COMPANY'S WORK must be inspected after delivery at the place of performance. Any complaints regarding quality and quantity must be submitted in writing no later than eight (8) days after delivery by the COMPANY, otherwise the delivery will be deemed to have been accepted and defect-related rights expired.

22. Defect-related rights

The COMPANY may, at its own discretion, correct defects in full or in part by fixing the defective goods and/or replacing them with goods of the same type that are not defective or through rescission or reduction. All other claims by the CUSTOMER are excluded.

23. Storage, archiving

The interim storage of WORK DOCUMENTS, in particular, finished and semi-finished products, shall be subject to a charge. There is no obligation on the part of the COMPANY to archive delivered DATA and MATERIALS, WORK DOCUMENTS and TOOLS. If the archiving of the delivered DATA and MATERIALS, WORK DOCUMENTS and TOOLS is contractually agreed, such archiving shall be carried out at the risk of the CUSTOMER.

24. Third-party rights

By concluding the agreement, the CUSTOMER confirms that it has all of the necessary reproduction rights, distribution rights, trademark rights, etc. for WORKS protected by copyright (image and text templates, samples, etc.). This also applies for saved archive data and the reuse of such data. The CUSTOMER is responsible for safeguarding the personal rights that may be affected by the WORK.

The CUSTOMER agrees to defend the COMPANY against all types of claims as a result of breaches of third-party rights (copyrights, trademark rights, personal rights, patent rights, business secrets, etc.) to the extent such claims are asserted in connection with the production of the WORK. The CUSTOMER shall reimburse the COMPANY for claims for damages as well as all other costs, expenses and expenditures incurred by the COMPANY to defend itself against these claims.

25. Liability limitations

In particular, the COMPANY assumes no liability for language characteristics, grammar, syntax, substantive errors, incompleteness, breaches of rights in accordance with para. 24 above in DATA and MATERIALS provided to the COMPANY. Likewise, all liability is rejected if the delivered DATA cannot be processed or used in the standard manner and thus results in qualitative defects to the WORK. The COMPANY shall not be liable for the loss of DATA and MATERIALS provided to it by the CUSTOMER. In general, all liability on the part of the COMPANY is excluded if the CUSTOMER cannot prove that the defect is the result of poor materials provided by the COMPANY or defective workmanship. There shall be no liability if the WORK is modified by the CUSTOMER or a third party in any way. The CUSTOMER is obliged to check the control and review documents (proofs, samples, packaging, copies, files, etc.) sent to it prior to final production of the order for errors and to return these documents with the print approval or production approval signed in its own hand as well as any correction instructions by the agreed deadline.

The COMPANY shall not be responsible for any errors overlooked by the CUSTOMER. Corrections and changes provided by phone must be confirmed by the CUSTOMER in writing within 24 hours, otherwise there shall be no legal consequences. The CUSTOMER shall bear the risk if it chooses not to provide control and review documents.

Furthermore, the COMPANY shall only be liable in the case of intent or gross negligence. The COMPANY entirely excludes contractual as well as non-contractual liability for the conduct of its agents and auxiliaries as well as for accidents and force majeure. In particular, the CUSTOMER cannot assert claims for indirect damages, consequential damages, damages by third parties or lost profits against the COMPANY. The utilization or performance of a warranty does not extend the warranty, nor does it commence a new warranty period.

26. Severability

If individual provisions of these GTC are or, after the conclusion of the agreement, become ineffective or unenforceable, the agreement and the other provisions of these GTC shall not be affected. In this case, the ineffective or unenforceable provision shall be interpreted or amended in a way that the intended purpose is achieved to the greatest extent possible.

27. Amendment of the GTC

These GTC may be changed unilaterally at any time, in full or in part. The CUSTOMER shall be informed of significant changes and adjustments after the conclusion of the agreement that are disadvantageous for it in a suitable manner. If the CUSTOMER does not submit written objection to the changes and adjustments to the COMPANY in writing within 30 days of receipt, they shall be deemed accepted.

The new GTC shall replace the previous GTC in full.

28. Place of jurisdiction

The ordinary courts at the COMPANY'S headquarters shall be responsible for adjudicating all disputes arising from the relationship between the CUSTOMER and the COMPANY. Swiss law applies, to the exclusion of the conflict of laws provisions of the Swiss Federal Act on International Private Law (IPLA) and the United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention).

Appendixes (accessible at www.viscom.ch):

viscom, Technical requirements and tolerance values for print media processing (2016)
viscom, Guidelines and definitions for acceptance tolerances (2016)

viscom and print & communication, Aarau

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