

# Standard Terms of Business of Kontext Druckerei GmbH

As of July 2019

## I. APPLICABILITY

- (1) The contractor shall provide its goods, services and offers solely on the basis of these Standard Terms of Business (STBs). These STBs shall also apply to all future business relationships, even if this is not expressly agreed upon. Counter-confirmations by the client, which refer to its own STBs or Terms of Delivery, are hereby rejected.
- (2) Deviations from these Standard Terms of Business shall only be valid if confirmed in writing by the contractor.
- (3) These Standard Terms of Business shall continue to be binding even if individual parts thereof are found to be invalid on whatever ground.

## II. DATA PROTECTION

We process your personal data to perform the contract or implement pre-contractual measures, as well as for informational and marketing purposes. Without this data, we cannot conclude or implement a contract with you. For purposes of contract implementation, it is necessary to forward your personal data to internal and external service providers. The aforementioned third parties are hired by us as processors within the meaning of Art. 28 GDPR and are required to provide data security under Arts. 24 and 32 GDPR. Your data will only be processed within the EU. We only store your personal data in accordance with statutory obligations. Every customer who discloses personal data to us has a right to information under Art. 12/13 GDPR, access under Art. 15 GDPR, and rectification or erasure of personal data and restrictions on processing under the GDPR. If you have a complaint, you can contact the relevant authority.

To assert your rights as a data subject, please contact us at the e-mail address [datschutz@kontextdruck.at](mailto:datschutz@kontextdruck.at).

## III. PRICE QUOTATIONS

- (1) The prices quoted by the contractor in its offer are subject to the reservation that the order data on which the offer was made must remain unchanged. The contractor's prices do not include the value-added tax. The contractor's prices apply ex works. They do not include freight, postage, insurance and other shipping costs. Unless otherwise specified in the offer, all order-related materials are quoted at daily rates, which may be adjusted to reflect the price situation at the time of production. The prices only include simple packaging of the print products.
- (2) Orders that differ in their formulation from the offer in any way shall require the contractor's confirmation to make them binding. Objections based on any deviation of the contents of an order confirmation from the order itself must be raised within two business days after receipt of the order confirmation. Otherwise, the content of the order confirmation shall be deemed to have been agreed upon.
- (3) In other respects, price quotations are generally non-binding, unless they have been expressly declared to be binding. An increase in the relevant direct costs or an increase in personnel costs due to a provision of law, which occurs after the price has been quoted but before the delivery has been billed, shall entitle the contractor to bill for the resulting price increase, even without prior notice that the cost estimate is being exceeded. The client expressly agrees to this condition.
- (4) The client shall be charged for subsequent changes made at the client's request.
- (5) Costs that exceed the offer, but which were incurred due to the actions of the client, shall be deemed to have been approved by the client even without notice from the contractor. The client waives its right of rescission in such cases. Change orders and additional orders can be billed at appropriate prices.
- (6) Samples and drafts created at the request of the client shall remain the property of the contractor in all cases and shall be billed separately, even if the order is never executed.
- (7) The contractor assumes no liability and gives no warranty with respect to data transfer errors.

## IV. INVOICE PRICE

The contractor shall invoice its goods and services on the day it makes delivery, including partial delivery, places the goods in storage for the client or holds them available on demand for the client. The invoice price may differ from the order price if the aforementioned changes in the basis for calculation occur or if the client makes changes after the order has been established.

## V. PAYMENT TERMS

- (1) Payment (net price plus value-added tax) shall be made within 14 calendar days after the invoice date without any deductions.
- (2) If large quantities of paper, special materials or preliminary work

are provided, the contractor can demand advance payment for this.

- (3) The contractor shall have no obligation to execute the order before the required advance payment is made. Any resulting consequences (e.g. failure to meet delivery deadlines) shall be to the detriment of the client.
- (4) The client can only set off a claim that is uncontested or legally established. A client that is a general merchant within the meaning of the Commercial Code shall have no rights of withholding or set-off.
- (5) Legitimate complaints do not entitle the client to withhold the entire invoice amount but only a reasonable portion thereof.

## VI. PAYMENT DEFAULT

- (1) If the contractor becomes aware of a substantial deterioration in the client's financial situation or if the client is in payment default, the contractor shall have the right to demand immediate payment of all invoices, including those that are not yet due. In addition, the contractor shall have the right to condition further work on outstanding orders on pro rata payments. Furthermore, the contractor shall have the right to withhold goods that have not yet been delivered and to discontinue further work on outstanding orders if the pro rata payments are not made. The contractor shall also be entitled to these rights if the client fails to make payment despite a default warning.
- (2) In the event of payment default, default interest at the rate of 4 percentage points above EURIBOR (Euro Interbank Offered Rate) shall be paid. This shall not preclude the assertion of additional default damages.
- (3) In the event of default, the client agrees to reimburse the contractor for its dunning and collection costs to the extent that they are necessary for the purpose of legal prosecution. Dunning fees shall be as follows: first reminder € 5; second reminder € 10; third and last reminder: € 15.

## VII. DELIVERY PERIOD

- (1) The delivery period shall commence on the day the contractor receives the order, if the contractor has all the work documents and they are clear and unambiguous and no deviations are noted in the order confirmation. The delivery period shall end on the day that the goods leave the contractor's business premises.
- (2) In general, the agreed-upon delivery times are approximate dates unless fixed dates were expressly promised in writing. If a fixed deadline is agreed upon, the client's duty of cooperation (e.g. provision of defect-free data, review of the preliminary and interim results, delivery of templates, author's corrections, etc.) and the deadlines for these actions shall be specified when the order is issued. If the client does not fulfill its duty of cooperation or meet the agreed-upon deadlines, the contractor shall not be liable for meeting the agreed-upon delivery deadline. This shall also apply to subsequent changes to the order by the client.
- (3) The running of the delivery period shall be interrupted for the duration of the client's review of the brush proofs, print proofs or outturn samples [Ausfallmuster].
- (4) If there is default in delivery, the client must provide a reasonable grace period before seeking performance and damages for delay. The nature and scope of the grace period must be appropriate to the order.
- (5) In the event of force majeure or other unforeseeable or unusual circumstances, which arise through no fault of the contractor – including when they arise with upstream vendors or subcontractors – the delivery time shall be extended to a reasonable extent if the contractor is prevented from fulfilling its obligations on time. If the aforementioned circumstances render delivery of goods or performance of services impossible or unreasonable, the contractor shall be released from its duty to perform. If the delay in performance continues for more than two months, the client shall be entitled to rescind the contract. The client shall have no claims for damages if the delivery period is extended or the contractor is released from its duty to perform. The contractor can only rely on the aforementioned circumstances if it gives the client prompt notice.

## VIII. DELIVERY

- (1) Deliveries are made from the contractor's business premises for the account and at the risk of the client, unless otherwise agreed. Transportation insurance will only be purchased at the express request of the client and at the client's expense. The risk shall pass to the client as soon as the consignment is handed over to the person providing transportation or leaves the contractor's warehouse for the purpose of shipment.
- (2) The delivery of up to 10% more or less product is permitted and will be billed pro rata based on the print run.

## IX. TYPESETTING AND PRINTING ERRORS, CORRECTIONS

- (1) The contractor shall correct typesetting errors free of charge if they are the contractor's fault.
- (2) Changes as compared to the print template shall be charged to the client based on the time expended (author's corrections). Changes ordered by phone, fax, or e-mail shall be made by the contractor without liability for their correctness.
- (3) The client shall only be provided with galley proofs upon express request. However, the contractor shall be entitled to submit galley proofs without agreement. If the contractor refuses to submit a galley proof, it

shall be liable for any inaccuracies in print execution that are its fault.

## X. DEFAULT OF ACCEPTANCE

(1) The client shall promptly accept contract-conforming goods that are shipped or made available for pick-up. If the client does not meet this obligation, delivery shall be deemed to have been made on the day on which the goods should have been accepted under the contract. Thereupon, the risk of accidental loss shall pass to the client.

(2) If there is a default of acceptance or if delivery becomes impossible due to force majeure, the contractor shall be entitled to store the goods in its own warehouse or with a freight forwarder at the expense and risk of the client.

## XI. COMPLAINTS/WARRANTY

(1) The client shall check whether the delivered goods and the preliminary and interim results sent for corrections are contract-conforming in every case. The risk of errors shall pass to the client with the declaration that the materials are print-ready, unless they are errors that did not occur or were not known until the production processes following the declaration of print-readiness. The same shall apply to all other release declarations made by the client relating to production.

(2) Complaints (notices of defects) due to obvious defects shall be provided to the contractor with particularity promptly after delivery. However, hidden defects must be reported to the contractor promptly after their discovery, but no later than within three months after the goods left the contractor's business premises or control.

(3) The warranty periods for movable goods are three months. The presumption provisions of § 924 of the Austrian Civil Code [ABGB] shall not apply. The client must prove that the defect existed at the time of delivery.

(4) The right to recourse under § 933 b, second sentence, of the ABGB shall be time-barred in two years after the contractor provides the service.

(5) If there are legitimate complaints, the contractor shall, at its option and to the exclusion of other claims, rectify the defect and/or deliver a replacement. This remedy shall be limited to the value of the order at the maximum, unless a promised feature is missing or the contractor or its agents is guilty of wrongful intent or gross negligence. The same shall apply to legitimate complaints regarding the rectification of the defect or the replacement delivery. If rectification of the defect or the replacement delivery is delayed, fails, or is omitted, the client can demand a reduction of the compensation or can rescind the contract. The client waives the right to rescind the contract for substantial defects. The contractor shall have no liability for consequential damages caused by the defect, unless the contractor or its agents are guilty of wrongful intent or gross negligence.

(6) If the order relates to contract processing work or further processing of print products, the contractor shall not be liable for any harm caused to the products, which are to be processed or further processed, unless the harm was caused through wrongful intent or gross negligence.

(7) If partial deliveries are made, the provisions shall apply to the portions delivered. Defects in a portion of the goods delivered shall not justify a complaint against the entire delivery.

(8) In the case of color reproductions in all processes, minor deviations from the original cannot be complained of. The same applies to the comparison between proofs and final prints, particularly if the paper for the proof does not match the paper for the final print.

(9) If the client is presented with a digital proof as a correctable intermediate product for a declaration of print-readiness, it is expressly noted that the end product may contain color variations caused by the various production processes. If a binding master is desired for production, an additional proof must be prepared for an additional charge.

(10) The tolerances that are indicated in the relevant supplier delivery terms or are customary in the industry shall apply to the materials used.

(11) The contractor shall have no liability for losses incurred due to improper storage of the products by the client.

(12) If complained-of print products cannot be returned to the contractor, the client shall only be entitled to a warranty or compensatory damages if precise documentation of the defect, which conforms to a recognized quality control method, is presented to the contractor.

## XII. LIMITS ON LIABILITY

(1) Damage claims are excluded, unless the loss is caused by intentional or grossly negligent action. Damage claims for impossibility of performance are limited to compensation for foreseeable losses and the value of the contract, unless the loss is caused by intentional or grossly negligent action. The above limitations on liability apply to the same extent to the contractor's agents and servants. Moreover, in commercial transactions, the contractor is not liable for the gross negligence of its agents or servants, unless the charge of gross negligence relates to an executive of the contractor.

(2) Moreover, if there is liability, only monetary damages can be demanded, and the liability shall be limited to the value of the order. In this regard, it is recommended that the client purchase additional insurance. To the extent that a loss is the fault of the contractor (except for gross negligence), liability shall be limited to the value of the order (i.e. own performance, excluding preliminary work and materials). Lost profit cannot be claimed.

(3) Claims for damages must be filed with a court within six months of awareness of the loss or within three years of delivery of the goods or performance of the services, or the claims will be forfeited. After one year from the delivery of goods or the performance of services by the contractor, the client shall bear the burden of proof.

(4) If the contractor may be liable, it shall be released from liability in the amount of the existing and enforceable claims against suppliers or processors that it assigns to the client.

(5) Any compensation claim for damage to property under the Product Liability Act and any product liability claims which can be derived from other provisions are excluded.

## XIII. MATERIALS AND DATA TO BE PROVIDED BY THE CLIENT

(1) Materials supplied by the client, such as templates, printing plates, data carriers of all kinds, paper, etc., shall be delivered to the contractor's business premises freight prepaid. Receipt shall be confirmed but there shall be no guarantee of the accuracy of the quantities listed in the delivery documents. The contractor is not able to conduct a proper acceptance and review until the production process and shall only be liable for losses caused by its own negligence (see Section XI). The contractor shall have no duty to inspect and warn regarding materials, data and printing equipment delivered or transferred by the client or by a third party brought in by the client. In particular, the contractor will not inspect the data carriers or the transferred data supplied by the client for the accuracy of the data stored (text, images). The contractor shall have no liability for errors in and with printing equipment directly or indirectly supplied by the client and for errors in the end product, which are attributable to faulty data supplied by the client. If the client requests a review by the contractor, the review and any corrections will be billed separately.

(2) Templates used by the client for the order (e.g. digital proofs) are not binding. It is expressly noted that the end product may have color variations caused by the different production processes.

(3) Data shall only be processed at the express request of the client, and this shall be billed separately.

(4) The obligation to back up data is the sole responsibility of the client. Regardless of this, the contractor shall be entitled to make a copy.

(5) The following additional items shall apply to the receipt of data supplied by the client: The client shall deliver a composite file in PDF format. Fonts contained in the document shall be embedded. Imported image files and fine data (OPI) shall also be delivered.

The source profile for the data and the output printing conditions [Ausgabedruckbedingungen] used in the test print shall be made available (ICC profile). An Ugra/Fogra media wedge CMYK TIFF must also be printed on a digital proof. A print control strip must also be printed on an analog proof on which the solid color and the CMYK dot gains and custom colors can be measured.

To avoid quality degradation, the client must deliver the images as CMYK data.

The client warrants that only licensed fonts (PostScript only) will be used to create the data carriers.

(6) The contractor shall be entitled to bill for all the costs associated with the examination and storage of the supplied materials.

## XIV. ORDER DOCUMENTATION

(1) The contractor shall be liable for manuscripts, templates, data carriers and other documents within the meaning of Section XII (1) until four weeks after completion of the order. In addition, the contractor shall have no liability whatsoever for documents the return of which is not requested. The contractor is also under no obligation to retain these documents and the reusable items beyond the aforementioned date.

(2) The aforementioned items, which have been supplied by the client, shall be treated with care until the delivery date. The contractor shall be responsible for damage only in the case of wrongful intent or gross negligence. The contractor shall be liable as a bailee within the meaning of the Austrian Civil Code.

(3) If the aforementioned items are to be insured, the client itself must obtain the insurance.

## XV. STORAGE OF PRINT PRODUCTS AND THE LIKE; ARCHIVING OF DATA

(1) The contractor shall have no obligation to store print products, work tools, intermediate products and printing equipment (such as film-ready data, dies, paper, etc.) after completion of the order, unless there is a separate agreement with the client in this regard. In the latter case, the client shall bear the costs and risk of storage.

(2) If temporary storage with the contractor has been expressly agreed upon, the contractor shall be liable for damage that occurs to the goods in storage only in the case of wrongful intent or gross negligence. The contractor is not required to obtain insurance to cover the risks to the goods in storage.

(3) The contractor shall charge the client for the storage of finished or semi-finished products. A temporary waiver of the storage fee does not include a waiver of the storage fee for products still stored with the printer. The calculation shall be made *ex post* for three months.

## XVI. OWNERSHIP RIGHTS

(1) The production items, work tools and intermediate products used by the contractor to produce the contract products, particularly

data carriers, printing plates, dies and other tools necessary for the production process (printing equipment) and the processed data shall remain the property of the contractor and shall not be delivered, even if the client has paid compensation for this work or is billed for it separately. There shall also be no transfer for use. This shall also apply to work tools (printing equipment) and data, which were manufactured by another company on behalf of the contractor required to make delivery under the order.

(2) The contractor is allowed to produce samples or reference pieces of all orders to submit them to potential customers.

#### **XVII. COPYRIGHT**

(1) To the extent that the contractor itself holds the copyright and ancillary copyright rights to use the delivered products or portions thereof, the client shall acquire the non-exclusive right to distribute the delivered products upon acceptance of the delivery. In other respects, the rights of use, particularly the right of reproduction, shall remain in the contractor's hands unaffected. The contractor shall have the exclusive right to use the means of reproduction it has produced (typesetting, processed data, data carriers, and the like) and the print products to make reproductions. It is not obliged to surrender such means of reproduction, even for the purpose of use.

(2) The contractor is not obliged to check whether the client has the right to reproduce templates of whatever kind, to process or change the order or otherwise use it in the intended manner but is entitled to assume that the client has all such rights vis-a-vis third parties that are necessary to execute the order. The client expressly warrants that it has these rights.

(3) If the client supplies fonts or application software so that the data it delivers can be further processed, the client warrants to the contractor that it is entitled to effectuate this limited transfer of use. The contractor warrants to the client that it will only use these fonts or this application software to process the specific order.

(4) The client shall indemnify the contractor and hold it harmless with respect to all claims asserted by third parties alleging infringements of copyrights, ancillary copyrights and other industrial property rights or personal rights. The contractor must promptly notify the client of such claims and implead the client if sued in court. If the client does not join the proceedings as co-defendant of the contractor upon impleader, the contractor shall be entitled to admit the plaintiff's claim and have the client hold it harmless without regard to the liability of the admitted claim.

#### **XVIII. BROKER'S LIABILITY**

If a party acts as a broker for the print order in the name of a third party, the broker shall be liable for the collectability of the contractor's claim as guarantor and payer. However, the contractor shall have the right to demand that the broker pay the outstanding claim only after it has unsuccessfully dunned the principal. The broker agrees to transfer the contractor's rights to its principal.

#### **XIX. RESERVATION OF TITLE**

(1) The delivered goods shall remain the property of the contractor until the delivery price has been paid in full.

(2) The following conditions shall only apply to business relationships with clients that are general merchants within the meaning of the HGB: The goods shall remain the property of the contractor until all the contractor's outstanding claims against the client on the invoice date are paid in full. In the case of a running account, the property to which the reservation applies shall serve as security for the contractor's claim for the balance. The client's claims based on resale of the goods subject to retention of title shall be assigned to the contractor when the order is placed, to secure all the contractor's claims under the business relationship. The client is only entitled and authorized to resell the goods subject to retention of title under a purchase agreement, contract for work, contract for work and materials or similar contract if the claim arising from the resale passes to the contractor.

The client shall obtain or transfer the right to use (exploit) products that are subject to copyright protection to the contractor.

The client is not entitled to otherwise dispose of the goods subject to retention of title. At the request of the contractor, the client shall disclose the assignment to the third-party customer for payment to the contractor. If the value of the contractor's collateral exceeds its total claims by more than 20 %, the contractor shall be obliged to release collateral at the choice of the client, upon the request of the client or a third party that is adversely affected by the over-collateralization of the contractor.

#### **XX. RIGHT OF WITHHOLDING**

Under § 369 HGB, the contractor is entitled to withhold all templates, slides, printing plates, films and repros, manuscripts, data carriers, raw materials and other items supplied by the client until all claims arising under the business relationship are paid in full.

#### **XXI. NAME OR TRADEMARK IMPRINT**

The contractor shall be entitled to place its company name or trademark on the products produced, even without special permission from the client.

#### **XXII. APPLICABLE LAW, PLACE OF PERFORMANCE, JURISDICTION**

(1) Austrian substantive law shall apply. The UN Convention on Contracts for the International Sale of Goods shall not apply. The contract language shall be German.

(2) The place of performance for delivery and payment shall be the contractor's registered office.

(3) For legal disputes regarding the existence or non-existence of a contractual relationship that is subject to these delivery and payment terms, or for legal disputes arising from such contractual relationships, the contractor can choose the courts that have jurisdiction over the contractor or the courts that have general jurisdiction over the client. The client may only file complaints against the contractor with the courts that have general jurisdiction over the contractor.

#### **XXIII. ORDER AGREEMENT**

All order agreements, including subsequent changes, supplements, etc. must be in written form to be valid. Verbal agreements, e.g. those concluded by field sales staff, shall be deemed to be void unless they are confirmed in writing.