

impress decor GmbH General Conditions of Sale

§ 1 General – Geographical limits

1. Our General Conditions of Sale shall be the only ones applicable; we shall not recognise any customers' conditions which contradict or differ from our General Conditions of Sale, unless we have expressly consented thereto in writing. Our General Conditions of Sale shall apply even if, aware of conditions which contradict or differ from our General Conditions of Sale, we fulfil the customer's order without reservation.
2. All agreements entered into between us and the customer for the purpose of performing this contract, shall be recorded in writing. Additional duties assumed by Impress decor GmbH shall not affect the validity of these Conditions of Sale.
3. Our General Conditions of Sale shall only apply with regard to companies as defined in Article 310 para. 1 BGB.
4. Where, in international business, INCOTERMS are to be used for a specific order, the provisions of these General Conditions of Sale shall take precedence over the provisions contained in the INCOTERMS, insofar as the subject matter of the provisions are the same. The parties agree that the INCOTERMS shall be amended such that provisions in the INCOTERMS which contradict the General Conditions of Sale, shall not apply.
5. Our General Conditions of Sale shall also apply to all future business with the customer.

§ 2 Tender – Tender documentation

1. If the order is classifiable as a tender in accordance with Article 145 BGB, we can accept this within 2 weeks.
2. We shall retain title and copyright to illustrations, drawings, calculations and other documentation. This shall apply even in respect of written documents which are described as "confidential". The Customer shall require our express, written consent before passing them on to third parties.

§ 3 Preparation work

1. Drafts, specimen prints and similar preparatory work, together with confirmed changes to print layouts, printing blocks or raw materials, shall be charged for, even if the order is not then given for the whole production.
2. This shall also apply in the event that we are instructed to design decor and to carry out trial runs.

§ 4 Prices – Terms of payment

1. Unless stated otherwise in the order confirmation, our prices shall be "ex works", excluding packaging.
2. Statutory value added tax is not included in our prices; it shall be shown separately on the invoice at the rate applicable as at the date of issue of the invoice.
3. The deduction of any discount shall be by written agreement only.
4. Unless stated otherwise in the order confirmation, the purchase price shall be payable net (without deduction) within 30 days from the date of invoice. The statutory regulations regarding the consequences of delayed payment shall apply.
5. The Customer shall only be entitled to offset amounts if its counterclaims are formally noted by the courts, undisputed or recognised by us. Furthermore, the Customer shall only be entitled to exercise a right of retention insofar as its counterclaim is based on the same contract.
6. In particular, we shall be entitled to invoke the objection of uncertainty in accordance with Article 321 BGB, if the Customer does not comply with its existing financial obligations on time or if the limit set by a credit insurer is exceeded or would be exceeded with the forthcoming delivery.
7. Claims for purchase money shall fall due immediately if the Customer has given false information about its creditworthiness or if the cover approved by a credit insurer is reduced for reasons attributable to the Customer.

§ 5 Delivery period

1. Delivery times shall commence no sooner than when the contract is entered into. Commencement of the delivery period shall be conditional upon clarification of all technical matters.
2. Without prejudice to obtaining the supplies in good time.
3. If the delivery period is exceeded, the Customer shall stipulate a reasonable additional period.
4. Compliance with our duty to supply shall, furthermore, be subject to proper and timely compliance with the Customer's duty. Without prejudice to the defence of non-performance of the contract.
5. Should the Customer fall behind in accepting the goods or negligently breach any duties to cooperate, we shall be entitled to claim compensation to the extent of the losses suffered by us, including any additional expenditure. Subject to further rights to claim.
6. Where the conditions in para. (4) are met, the risk of any loss or deterioration of the object of sale shall pass to the Customer at the time when the latter defaults on acceptance or payment.
7. Impress decor GmbH shall be entitled to perform duties after the proposed deadline, unless subsequent performance is unacceptable for the Customer.
8. Business interruptions, exceeding delivery times or non-delivery by our suppliers, shortages of raw materials, energy or labour, strike, lock-outs, difficulties in obtaining means of transport, traffic problems, acts of the authorities and acts of God shall, for the period of the interruption and to the extent of the effect thereof, relieve the affected party of the duty to supply/accept, provided that the affected party is not responsible for the events. The party prevented from performing the contract shall notify the other party without delay, stating the circumstances preventing it from performing the contract; furthermore it shall do everything within its power to overcome the obstacle to supply/acceptance as quickly as possible.
9. We shall be liable in accordance with the statutory provisions where the underlying purchase contract is a firm deal as defined in Article 286 para. 2 no. 4 BGB or Article 376 HGB. We shall also be liable in accordance with the statutory provisions where, as a result of delayed delivery attributable to us, the Customer is entitled to claim that its interest in further performance of the contract has ceased to exist.
10. We shall further be liable in accordance with the statutory provisions where the delayed delivery is the result of a wilful or grossly negligent breach of the contract attributable to us; fault on the part of our representatives or agents shall be attributable to us. Where the delayed delivery is not the result of a wilful breach of the contract, our liability for damages shall be limited to the foreseeable loss which might typically occur.
11. We shall also be liable in accordance with the statutory provisions where the delayed delivery attributable to us is the result of a negligent breach of a significant contractual duty; in this case, however, liability for damages shall be limited to the foreseeable loss which might typically occur.
12. We shall not have any further liability.

§ 6 Transfer of risk – Cost of packaging

1. Unless stated otherwise in the order confirmation, it is agreed that delivery shall be "ex works". Packaging shall be charged for at cost price.

2. Transport packaging and all other packaging in accordance with the packaging regulations shall not be taken back; with the exception of pallets. The Customer shall be responsible for arranging for the disposal of the packaging at its own expense.
3. Where the Customer expressly so wishes, we will cover the shipment under a transport insurance; the costs thereof shall be met by the Customer.
4. Where packaging is expressly shown on the invoice or delivery note/waybill as packaging on loan, such packaging shall, immediately after use and no later than within a period of 3 months from the date of invoice, be returned in usable condition freight and cost free. If such packaging is not returned on time or is returned in a condition which prevents it from being re-used, we shall be entitled to charge the replacement costs to the purchaser at the relevant day rate and to demand immediate payment.
5. Even in the case of Group F INCOTERMS being agreed, Impress decor GmbH shall not be obliged to submit certificates or documents which have not been expressly agreed, nor to complete customs formalities or to comply with systems of weights and measures, packaging, labelling or marking regulations or certification requirements applicable outside Germany.

§ 7 Advice - Information

1. Information about possible ways of processing and using our products, technical recommendations or advice and other information do not constitute secondary contractual obligations, are given to the best of our knowledge but are not binding and are given without prejudice to liability of any kind.
2. The giving of such information shall not constitute an independent advice contract unless specifically so agreed in writing and shall not extend our secondary obligations unless specifically so agreed in writing.

§ 8 Assignment

The assignment of claims against us shall only be valid with our agreement.

§ 9 Seller's warranty

1. The parties agree that the goods are free from defect provided that they correspond with the description given in the confirmed order/specification. Should the goods not be suitable for usage other than the usual usage, this shall not constitute a defect unless the parties have agreed specific usability in writing.
2. The use of keyword-style descriptions, reference to generally accepted norms, the use of trademarks or quality marks or the submission of samples or specimens shall only describe the nature of the goods and shall not in themselves constitute the acceptance of a warranty or guarantee.
3. Claims by the Customer in respect of defects shall be subject to the Customer complying properly with his duties under Article 377 HGB to inspect the goods and give notice of defects. This shall also include, if necessary, trial processing. This shall also apply to correcting primary and interim products which have been sent. The risk of any defects shall pass to the Customer when the go-ahead is given for printing, except in the case of defects which do not occur or cannot be identified until the completion process following the go-ahead to print is given. This shall apply to all other go-aheads by the Customer during completion.
4. Deviations in structure, colour and size within commercial tolerances shall not constitute defects. Where there is a defect in the object of sale, the Customer shall be entitled, at its option, to subsequent performance in the form of rectification of the defect or the supply of new, defect-free goods. In the event of rectification of the defect, we shall be responsible for all the costs necessary for rectifying the defect, notably the cost of transport, labour and materials, provided that these are not increased as a result of the object of sale being taken to a location other than the place of performance.
5. If the subsequent performance fails, the Customer shall be entitled, at its option, to cancel the contract or demand a reduction. In this respect the parties agree that Impress decor GmbH may also make several attempts at putting the situation right, provided that this is acceptable to the Customer.
6. We shall be liable in accordance with the statutory provisions where the Customer claims damages on the basis of wilful misconduct or gross negligence, including wilful misconduct or gross negligence on the part of our representatives or agents. Unless we are found liable for deliberate breach of contract, liability for damages shall be limited to the foreseeable loss which might typically occur.
7. We shall be liable in accordance with the statutory provisions where we commit a negligent breach of a significant contractual duty; in this case, however, liability for damages shall be limited to the foreseeable loss which might typically occur.
8. Where the Customer is entitled to claim damages instead of performance, our liability under para. (3) shall be limited to damages for the foreseeable loss which might typically occur.
9. Liability for negligent harm to life, body or health shall not be affected; this shall also apply to strict liability pursuant to the products liability law.
10. Unless agreed otherwise above, we shall not be liable.
11. The time limit for bringing all actions in respect of defects shall be 12 months, calculated from when the risk is transferred.
12. The time limit for bringing actions in the case of recovery against a supplier under Articles §§ 478, 479 BGB shall not be affected; it is five years from when the defective goods are supplied.

§ 10 Joint liability

1. We shall not be liable in excess of the damages as referred to in Article 9, irrespective of the legal nature of the claim made. This shall apply in particular to claims for damages arising out of fault when entering into the contract, other breaches of duty or claims based on tort for compensation for property damage in accordance with Article 823 BGB.
2. Where our liability for damages is excluded or limited, this shall also apply in respect of the personal liability for damages of our staff, employees, workers, representatives and agents.

§ 11 Over- or Under-deliveries

The parties agree that over- or under-deliveries of up to 10% of the amount ordered shall not constitute a defect and shall not give rise to a complaint. In the case of the supply of paper products made to order below 3,000 kg, this percentage shall increase to 20%.

§ 12 Securing reservation of title

1. We shall retain ownership of the object of sale until receipt of all payments arising out of the contract. In the event of the Customer acting in breach of the contract, especially in the case of late payment, we shall be entitled to take back the object of sale. Our taking back of the object of sale shall not constitute cancellation of the contract, unless we specifically so state in writing. Seizure of the object of sale by us shall always constitute cancellation of the contract. After taking back the object of sale, we shall be entitled to sell it and to use the proceeds of the sale to offset the Customer's debts, less reasonable costs thereof.
2. The Customer shall treat the object of sale with care; in particular, the Customer shall be obliged to arrange, at its own expense, adequate replacement value insurance in respect of the object of sale, against loss or damage by fire, water and theft, and, if so requested by Impress decor GmbH and at the Customer's expense, store the goods separately or in a sufficiently demarked area, to visibly mark the goods as the property of Impress decor GmbH and to take all such measures as are necessary to fully secure the reservation of title. By way of security, the

Customer hereby irrevocably assigns the full amount of any claims under the insurances to Impress decor GmbH. Impress decor GmbH accepts the assignment thereof. Where maintenance and inspection work is required, the Customer must carry this out in good time at its own expense.

3. In the case of seizures or other third party actions, the Customer shall inform us thereof in writing immediately, so that we can take action in accordance with Article 771 ZPO. Where the third party is not in a position to reimburse us for the court and non-court costs of an action under § 771 ZPO, the Customer shall be liable for our resultant loss.
4. The Customer shall be entitled to sell on the object of sale in the ordinary course of business; however, the Customer shall here and now assign to us all claims up to the amount of the final invoice amount (including VAT) of our claim, which the Customer acquires against its customers or third parties as a result of the re-sale, irrespective of whether the object of sale is sold on without or after being processed. The Customer shall remain entitled to recover this claim even after the assignment. Our authority to recover the claim ourselves shall not be affected hereby. We undertake, however, not to collect the claim provided that the Customer meets its payment obligations out of the proceeds obtained, does not fall in arrears with payment and, in particular, has not made any application for the opening of insolvency proceedings or the suspension of payments. If this is the case, however, we can demand that the Customer informs us of the assigned claims and their respective debtors, gives us all the information necessary for collection, gives us the relevant documents and notifies the debtors (third parties) of the assignment.
5. Preparation or reorganisation of the object of sale by the Customer shall always be carried out on our behalf. If the object of sale is processed with other items, which do not belong to us, we shall acquire joint ownership of the new property in that proportion which the value of the object of sale (final invoice amount, including VAT) bears to the other goods being processed at the time of processing. The item which results from the processing shall otherwise be subject to the same provisions as the object of sale supplied with reservation of title.
6. If the object of sale is inseparably mixed with other items, which do not belong to us, we shall acquire joint ownership of the new property in that proportion which the value of the object of sale (final invoice amount, including VAT) bears to the other mixed goods at the time of mixing. If the mixing is carried out in such a way that the Customer's item appears as the main item, it is agreed that the Customer shall transfer pro rata ownership to us. The Customer shall safeguard the resultant sole or joint ownership on our behalf.
7. The Customer shall also assign to us the claims to secure our claims against it, which arise against third parties as a result of the association of the object of sale with real property.
8. We undertake to release the security available to us, if so requested by the Customer, insofar as the realisable value of our security exceeds the claims to be secured by more than 10%; the security to be released shall be chosen by us.

§ 13 Safekeeping, Title, Copyright, Design Patent Rights, Brand Names

1. The operating materials used by us for the manufacture of the product to which the contract relates, in particular films, printing blocks, print cylinders and print samples shall remain our property, even if charged for separately, and shall not be supplied to the Customer.
2. The Customer shall be responsible for ensuring that the performance of its order does not violate industrial property rights, and in particular third party copyright. The Customer shall hold us harmless against all claims by third parties in respect of such a violation of rights.
3. Copyright, design patent rights and the right to make copies, together with all rights of use in any procedure and for any usage in respect of originals, drafts, print blocks and the like belonging to us or developed by, even on a Customer's instructions, shall remain with us unless specifically stated otherwise in writing. The Customer shall be granted the simple rights of use necessary for the purpose set out in the contract.
4. Models, raw materials, films, print blocks and other re-usable property, together with semi-finished and finished products shall be kept safe by us subject to prior agreement and in consideration of remuneration. As regards this safekeeping, we shall only be liable for wilful misconduct and gross negligence.
5. If the property taken into safekeeping has to be insured, the Customer shall arrange the insurance itself and pay the premium.
6. Where our products bear brand names, the Customer shall not be entitled to remove the brand name without our consent. The application of our brand name shall not be interpreted as approval for the use of the brand name for the products manufactured and further processed by the Customer. A separate agreement shall be required in this respect.

§ 14 Jurisdiction – Place of Performance

1. Our registered office shall be the sole place of jurisdiction for all claims made against us; however, we shall also be entitled to bring action against the Customer in the court where its registered office is located.
2. The law of the Federal Republic of Germany shall apply;
3. Unless stated otherwise in the order confirmation, our registered office shall be the place of performance.