

# GENERAL TERMS AND CONDITIONS OF SALE

impress surfaces GmbH

## § 1 General Information—Area of Application

1. Our Terms and Conditions of Sale shall apply exclusively; we shall not accept any conditions put forward by the Ordering Party which contradict or differ from our Conditions of Sale, unless we have expressly agreed to their validity in writing. Our Terms and Conditions of Sale shall apply even if we carry out the delivery to the Ordering Party without reservation in awareness of the Ordering Party's conflicting conditions or conditions which may be different from our Conditions of Sale.
2. All arrangements which are made between us and the Ordering Party for the purpose of executing this contract must be put in writing. Additional duties assumed by impress surfaces GmbH shall not affect the validity of these Terms and Conditions of Sale.
3. Our Terms and Conditions of Sale shall apply only in connection with entrepreneurs as defined in Section 310 paragraph 1 of the German Civil Code (BGB).
4. Inasmuch as, in international business activities, INCOTERMS are to be used for a specific order, the provisions of these Terms and Conditions of Sale shall take precedence over the provisions contained in the INCOTERMS as long as the subject matter of the provisions is the same. The Parties are in agreement that the INCOTERMS should be amended in such a way that the INCOTERMS provisions which contradict the Terms and Conditions of Sale no longer apply.
5. Our Terms and Conditions of Sale shall also apply to all future business transactions with the Ordering Party.

## § 2 Offer—Offer Documents

1. If the contractual partner's order can be qualified as an offer in accordance with Section 145 of the German Civil Code (BGB), we can accept it within 2 weeks. All offers are non-binding. Contracts of purchase are not concluded until there is written confirmation or acceptance by the Seller. Arrangements, amendments or collateral agreements made verbally, by telephone or telegraph must have our written confirmation in order to be valid.
2. We reserve the proprietary rights and copyrights to all illustrations, drawings, calculations and other documents. This also applies to written documents which are marked as "confidential." The Ordering Party must have our express written consent before passing these to third parties.
3. Specifications quoted in documents, illustrations, brochures, catalogs and other sales literature as well as drawings, including the details regarding units (pieces), weights and measurements listed therein are nonbinding unless they are expressly designated as binding.

## § 3 Preparation Work

1. There will be a charge for drafts, proof copies and similar preparatory work and also changes made to print layouts, printing forms or raw materials which have been confirmed by the Ordering Party, even if the order for the entire production is not subsequently placed.
2. This shall also apply in the event that we are commissioned to design and undertake sample trials.
3. Unless other arrangements have been made, first-time (pilot) orders will be carried out according to the samples submitted by impress surfaces GmbH and confirmed by the Ordering Party. In cases where samples prepared in a laboratory facility are used, there is the possibility that, based on different printing conditions when compared to the production facility, unavoidable differences may result in the printout. Significantly greater color deviation tolerances will be required where pearlescent colors are used. Subsequent orders will be based on the master sample provided with the first order. Requests deviating from this must be confirmed in writing. Once the original (master) sample is used up, a new master sample with the same design will be made to replace the old master sample on which future productions will then be based.
4. impress surfaces GmbH reserves the right to undertake technical

modifications at any time. This applies to individual orders as well as follow-up orders.

## § 4 Prices—Payment Terms

1. Unless otherwise specified in the order confirmation, our prices shall be "ex works," excluding of packaging. All shipments are undertaken at the expense and risk of the Ordering Party and are not insured by the Seller.
2. The statutory sales tax is not included in our prices; it will be separately shown on the invoice in the lawful amount on the day the invoice is issued.
3. The granting of a discount requires a special agreement in writing.
4. Unless otherwise specified in the order confirmation, the net purchase price (without deductions) is due for payment within 30 days of the invoice date. Statutory regulations regarding the consequences of default in payment apply.
5. The Ordering Party shall have the right of offset only if the counterclaims have been legally established, are undisputed or have been acknowledged by us. In addition, the Ordering Party shall be authorized to exercise the right of retention only if the counterclaim relates to the same contractual relationship.
6. We shall be entitled to the defense of insecurity pursuant to Section 321 of the German Civil Code (BGB) in particular if the Customer is not meeting the existing financial obligations in a timely manner, or the limit set by a credit insurer has been exceeded or would be exceeded with the upcoming delivery.
7. The purchase price claims become due for payment immediately if the Ordering Party has not provided correct information regarding its creditworthiness or if the cover the credit insurer has committed to is reduced on grounds for which the Ordering Party is responsible.

## § 5 Delivery Period

1. Delivery periods shall begin at the earliest when the contract is concluded. The beginning of the delivery period we have indicated is subject to the clarification of all technical issues.
2. We reserve the right to stipulate that deliveries are subject to the condition that we ourselves receive punctual deliveries from our suppliers.
3. If the delivery deadline is exceeded, the Ordering Party shall be required to allow a reasonable additional period.
4. The fulfillment of our delivery obligation is furthermore subject to the timely and proper fulfillment of the Ordering Party's obligations. The right to defense of unperformed contract remains reserved.
5. If the Ordering Party falls into default of acceptance or culpably breaches other obligations to cooperate, we shall be entitled to claim compensation for the damages incurred to us as a result, including any additional expenses. The right to further claims remains reserved.
6. If the conditions of paragraph (4) exist, the risk of accidental destruction or accidental deterioration of the purchase object passes to the Ordering Party at the point in time when the Ordering Party falls into default of acceptance or debtor's default (mora solvendi).
7. impress surfaces GmbH shall be entitled to fulfill its contractual obligations after the originally scheduled delivery date unless this subsequent fulfillment is unacceptable for the Customer.
8. Operational malfunctions/business disruptions, delayed deliveries or non-deliveries on the part of our suppliers, shortages of raw materials, energy or labor, as well as strikes, lockouts, difficulties in procuring means of transportation, traffic disruptions, acts of State/governmental actions and events of force majeure shall, for the duration of the disturbance and the extent of its effect, release the affected party from the delivery, respectively, acceptance obligation as long as the affected party is not responsible for the events. The party prevented from performing the contract shall be under obligation to notify the other party without delay, explaining the circumstances; furthermore, it shall do everything within its power to correct the situation which prevents the delivery/acceptance

as quickly as possible.

**9.** We shall be liable in accordance with the statutory provisions insofar as the underlying sales contract is a “firm deal”, within the meaning of Section 286 paragraph 2 no. 4 of the German Civil Code (BGB) and Section 376 of the German Commercial Code (HGB). We shall also be liable in accordance with the statutory provisions where, as a result of delayed delivery attributable to us, the Ordering Party is entitled to claim that its interest in further performance of the contract has ceased to exist.

**10.** We shall furthermore be liable in accordance with the statutory provisions where the delayed delivery is the result of intentional or grossly negligent breach of the contract attributable to us; culpability on the part of our representatives and vicarious agents shall be attributed to us. Where the delayed delivery is not the result of intentional breach of the contract attributable to us, our liability for damages shall be limited to the foreseeable loss or damage which may occur naturally in the ordinary course of events.

**11.** We shall also be liable in accordance with the statutory provisions insofar as the delayed delivery attributable to us is the result of a culpable breach of a material contractual obligation; in such case, however, the liability for damages shall be limited to the foreseeable loss or damage which may occur naturally in the ordinary course of events.

**12.** Any further liability shall be excluded.

## § 6 Transfer of Risk—Packaging Costs

**1.** Transport packaging and all other packaging in accordance with the specifications of the Packaging Ordinance is non-returnable; pallets are an exception. The Ordering Party shall be obligated to dispose of packaging material at its own costs.

**2.** Insofar as packaging is expressly identified on the invoice or the delivery note/waybill as returnable packaging, such packaging shall be returned to us immediately after use, at the latest, however, within a period of 3 months from the date of the invoice, in usable condition with the freight prepaid and toll-free. If the packaging is not returned on time or is in a condition which excludes its reuse, we shall be entitled to charge the Purchaser for the replacement costs at the respective per diem rate and demand immediate reimbursement.

**3.** Even if INCOTERMS of the group F was agreed upon, impress surfaces GmbH shall not be obligated to provide certificates or documents not expressly agreed upon, look after customs clearance or comply with measurement and weight systems, packaging, labeling or marking regulations or certification requirements applicable outside of Germany.

## § 7 Advice—Information

**1.** Information regarding the processing and application options our products offer as well as technical recommendations or advice and other particulars are not stipulated by way of secondary contractual obligations and will be provided to the best of our knowledge, yet on a non-binding basis and to the exclusion of any form of liability.

**2.** The provision of such information without an explicit written agreement shall not constitute an independent consulting contract and shall not extend our secondary obligations without an explicit written agreement.

## § 8 Assignment

The assignment of claims directed against us shall be effective only with our consent.

## § 9 Seller’s Warranty

**1.** The Parties are in agreement that the goods shall be deemed to be defect-free as long as they correspond to the condition (quality) specified in the confirmed order / specification. In the event that the goods are not suitable for a purpose other than the customary one, this shall not constitute a defect unless the Parties have agreed in writing to specific

application properties.

**2.** The use of catchphrase-style descriptions, references to generally recognized standards, the use of trademarks or quality marks or the submission of samples or specimen merely describe the composition or nature of the goods and shall not by themselves constitute the assumption of a guaranty or contractual commitment.

**3.** If warranty claims are to be asserted by the Ordering Party, it is necessary that it has duly complied with the inspection and notification duties which are obligatory pursuant to Section 377 of the German Commercial Code (HGB). If necessary, this shall also include Trial processing. It also applies to preliminary (semi-finished) and intermediate products forwarded for correction. The risk of any defects shall be transferred to the Ordering Party at the time of the declaration of readiness for printing/readiness for production, unless it is a question of defects which did not occur and could not be identified until the production process following the readiness for production declaration was underway. This shall apply to all other release declarations provided by the Ordering Party during the production/manufacture.

**4.** Deviations in structure, color and dimensions within the usual commercial tolerances shall not constitute defects. Insofar as a defect is present in the object of sale, the Ordering Party shall have the right, at its discretion, to request subsequent performance in the form of removal/repair of defects or with the delivery of a new, defect-free object. In carrying out the removal of the defect, we shall be obligated to absorb all the expenditures necessary for the removal of the defect(s), in particular the costs for the transport, labor and material, provided that these are not increased as a result of the object of sale having been taken to a location other than the place of performance.

**5.** If the subsequent performance proves to be unsuccessful, the Ordering Party shall have the option to either cancel the contract or demand a reduction of the price. In this respect, the Parties are in agreement that impress surfaces GmbH will also be allowed to undertake multiple attempts at rectification as long as it is reasonable for the Ordering Party.

**6.** We shall be liable in accordance with the statutory provisions if the Ordering Party asserts claims for compensation of damage based on intent and gross negligence, including intent and gross negligence on the part of our representatives or vicarious agents. Unless we are charged with deliberate breach of contract, the liability for damages shall be limited to the foreseeable loss or damage which may occur naturally in the ordinary course of events.

**7.** We shall be liable in accordance with the statutory provisions if we culpably commit a breach of a material contractual obligation; however, in such case, the liability for damages shall be limited to the foreseeable loss or damage which may occur naturally in the ordinary course of events.

**8.** If and when the Ordering Party is entitled to claim compensation for damages instead of performance, our liability within the scope of paragraph (3) shall be limited to the foreseeable loss or damage which may occur naturally in the ordinary course of events

**9.** The liability for culpable injury to life, body or health remains unaffected; this shall also apply to compulsory liability as defined in the Product Liability Act.

**10.** Unless otherwise agreed above, all other liability is excluded.

**11.** The period of limitation for all defect claims shall be 12 months, calculated from the transfer of risk.

**12.** This shall not affect the limitation period for the right of recourse against the supplier as provided for under Sections 478, 479 of the German Civil Code (BGB); it comprises five years, calculated from the delivery of the defective object.

## § 10 Joint Liability

**1.** Any damage liability in excess of the liability provided for in Section 9 shall be excluded, regardless of the legal nature of the claims that are been asserted. This applies in particular to claims for damages arising from fault or negligence when the contract is concluded, damages because of other breaches of duty or based on tort claims for compensation in cases of property damage as defined in Section 823 of the German Civil Code (BGB).

**2.** Where the liability for damages is excluded or limited for us, this shall also apply with regard to the personal liability for damages of our

employees, workers, staff members, representatives and vicarious agents.

### § 11 Delivery Surpluses or Shortfalls

The Parties agree that in the case of order quantities of  $\leq 10,000$  kg, delivery surpluses or shortfalls by up to 20% of the amount ordered and in the case of order quantities of  $> 10,000$  kg, delivery surpluses or shortfalls by up to 10% shall not constitute a defect and shall not give rise to a complaint.

### § 12 Contract Printing

1. If the Ordering Party supplies the paper, the delivery must be made free of charge. The Seller shall assume no responsibility for the quantities and qualities confirmed in the shipping documents. Should additional costs be incurred on account of quality fluctuations, the Ordering Party must bear these costs.
2. The Seller will make every effort to keep maculature (paper waste) to a minimum.
3. Our printing on the material results in us acquiring co-ownership of the final product thus manufactured and likewise in cases where transformations/processing and mixing with other materials take place; the co-ownership shall continue until the full payment of all claims to which we are entitled arising from our business relationship with the Ordering Party in proportion to the value of the performance provided by us.

### § 13 Reservation of Title

1. We shall retain ownership of the object of sale until all payments arising from the business relationship have been received. In the event that the Ordering Party acts contrary to the terms of the contract, especially in the case of failure to pay, we shall have the right to reclaim the object of sale. Our reclaiming of the object of sale shall not constitute the rescission of the contract unless we have specifically stated it in writing. If we seize the object of sale, this shall always constitute the rescission of the contract. Once we have taken back the object of sale, we shall be entitled to utilize it and the utilization proceeds—minus reasonable utilization expenses—are to be applied to the Ordering Party's payables.
2. The Ordering Party shall be obligated to handle the object of sale with care; in particular, the Ordering Party shall be obligated, at its own costs, to insure the object of sale adequately at the original value against damage from fire, water and theft and, upon request from impress surfaces GmbH and at the Ordering Party's expense, store the goods separately or in an appropriately isolated area, labeling them in a clearly visible manner as the property of impress surfaces GmbH and take all measures necessary to comprehensively safeguard the retained goods. By way of security, the Customer hereby irrevocably assigns the full amount of the accruing claims against the insurances to impress surfaces GmbH. impress surfaces GmbH accepts the assignment. Insofar as maintenance and inspection work is required, the Ordering Party must carry this out in due time at its own expense.
3. In the case of seizures or other interventions by third parties, the Ordering Party must inform us forthwith in writing, so that we can institute legal proceedings in accordance with Section 771 of the German Code of Civil Procedure (ZPO). Insofar as the third party is not in a position to reimburse us for the judicial and extrajudicial costs of an action pursuant to Section 771 of the German Code of Civil Procedure (ZPO), the Ordering Party shall be liable for any loss we incur.
4. The Ordering Party shall be entitled to sell the object of sale in the ordinary course of business; however, the Ordering Party shall, with immediate effect, assign to us all claims against customers/sub-purchasers or third parties, which accrue to it from the resale, up to the amount of our final invoice figure (including sales tax) of our receivable, irrespective of whether the object of sale was resold without or after being processed. The Ordering Party shall remain authorized to collect this claim even after the assignment. Our authority to collect this claim ourselves shall remain unaffected thereby. We undertake, however, not to collect the claim as long as the Ordering Party meets the payment obligations related to the revenues thus obtained, does not fall into arrears and, in particular, has not made an application for the initiation of insolvency proceedings

or arranged for the suspension of payments. If this is the case, however, we can demand that the Ordering Party disclose to us the assigned claims and the respective debtors, provide us with all the information necessary for collection, hand over the relevant documents and inform the debtors (third parties) of the assignment.

5. Any processing or transformation of the object of sale shall always be undertaken on our behalf. In the event that other objects not belonging to us are processed together with the object of sale, we shall then acquire co-ownership of the new object thus manufactured in the proportion which the value of the object of sale (final invoice amount, including sales tax) has to the other processed objects at the time of the processing. In all other respects, the object resulting from the processing shall be subject to the same provisions as the object of sale delivered subject to retention of title.
6. If the object of sale is mixed or combined inseparably with other objects not belonging to us, we shall acquire co-ownership of the new object in the proportion which the value of the object of sale (final invoice amount, including sales tax) has to the other mixed objects at the time of the mixing. If the mixing is carried out in such a way that the Ordering Party's object is considered to be the main object, it is hereby deemed agreed that the Ordering Party shall transfer pro rata co-ownership to us. The Ordering Party shall safeguard the resultant sole or joint ownership on our behalf.
7. To secure our claims against it, the Ordering Party shall also assign to us the claims which arise against third parties as a result of the association of the object of sale with a plot of land.
8. We undertake to release, at the Ordering Party's request, the securities to which we are entitled to the extent that the realizable value of our securities exceeds the claims to be secured by more than 10%; the selection of the securities to be released shall be incumbent upon us.

### § 14 Safekeeping, Title, Copyright, Design Patent, Brand Name/Trademark

1. Any company inventory we use for the manufacture of the object of sale to which the contract relates, in particular films, printing forms, print cylinders and print samples shall remain our property even if they are charged for separately, and shall not be shipped to the Ordering Party.
2. The Ordering Party shall be responsible for ensuring that the performance of its order does not violate industrial property rights, in particular third-party copyrights. The Ordering Party shall indemnify us against all claims by third parties on account of such violation of rights.
3. Copyright, design patent and the right of duplication/reproduction along with all rights of use in any procedure and for any purpose in respect of originals, drafts, printing forms and the like belonging to us or developed by us, even by Customer order, shall remain with us, unless specifically regulated otherwise in writing. The Ordering Party shall be granted the simple rights of use necessary for the purpose stipulated in the contract.
4. Models, raw materials, films, printing forms and other reusable items as well as 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 be liable only for intent and gross negligence.
5. If the objects taken into safekeeping are to be insured, the Ordering Party must arrange for the insurance itself and pay the premium.
6. Insofar as our products are labeled with brand names or trademarks, the Ordering Party shall not be authorized to remove the label without our consent. The affixing of our label is not to be regarded as approval for the Ordering Party's use of the brand name for products the Ordering Party has manufactured and further processed. A separate agreement must be made in this respect.

### § 15 Jurisdiction—Place of Performance

1. Our registered office shall be the exclusive place of jurisdiction for all claims asserted against us; we shall also be authorized, however, to file an action against the Ordering Party in the court where its registered office is located.
2. The law of the Federal Republic of Germany shall apply.
3. Unless otherwise stated in the order confirmation, our registered office shall be the place of performance.