



# General Terms of Delivery and Payment

Effective 01.01.2016

## I. Scope

(1) The following General Terms of Delivery and Payment of Walter Musterkollektionen AG (hereinafter called supplier) shall apply exclusively vis-a-vis companies, legal entities of public law and special funds under public law.

(2) All deliveries, services, offers and confirmations of order of the supplier shall be executed solely on the basis of these General Terms of Delivery. The General Terms of Delivery and Payment constitute an integral part of all contracts which the Supplier concludes with his contractual partners (hereinafter also called „Principals“). They shall also apply in the case of all future deliveries, services, offers and confirmations of order to the Principal, even if they are agreed upon again in a separate context.

(3) The Terms of Business of the Principal or of third parties do not apply, even if the Supplier does not specifically contradict their validity in individual cases. Even if the Supplier makes reference to a letter, which contains Terms of Business of the Principal or of a third party or refers to such, this shall not constitute any consent to the validity of those Terms of Business.

## II. Offer and conclusion of contract

(1) All offers of the Supplier are without engagement and non-binding, insofar as they are not expressly marked as binding or contain a certain term of acceptance. If an order of the Principal is to be regarded as an offer, then the contract including these General Terms of Delivery and Payment shall come into being by means of the written confirmation of order from the Supplier. If the confirmation of order deviates from the order, then this shall be deemed to be a binding offer from the Supplier

(2) Legal relations between Supplier and Principal are governed exclusively by the Purchase Contract concluded in writing including these General Terms of Delivery and Payment. This sets out all agreements in their entirety as concluded between the contractual partners on the subject matter of the agreement. Verbal promises made by the Supplier prior to conclusion of this contract are not legally binding and verbal agreements made by the contractual parties are to be replaced by a written contract, unless it is evident in the specific case that they continue to be binding.

(3) Information provided by the Supplier referring to the subject matter of the delivery or service (e.g. weights, measurements, standard values, load capacities, tolerances and technical data) and descriptions of the same (e.g. drawings and illustrations) only need to be approximate unless the applicability for the purpose provided for in the contract requires an exact agreement. These are not guaranteed quality features but rather descriptions or designations of the delivery or service. Customary deviations and deviations as a consequence of legal regulations or technical improvements are permissible insofar as they do not restrict the applicability for the purpose provided for in the contract.

(4) The Supplier reserves right of ownership or copyright concerning all offers and quotations which he submits and concerning drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids which he makes available to the Principal. The Principal may not make these objects accessible to third parties without the express consent of the Supplier, either as such or with regard to content, make them public, use them himself or via third parties or duplicate them. At the request of the Supplier, he must return these objects in their entirety to the latter and must destroy any copies which he may have made, if they are no longer

required by him in the course of orderly business activities or if negotiations do not lead to the conclusion of a contract.

### **III. Prices and payment**

(1) The prices shall apply to the quantity of services and deliveries listed in the confirmation of order. Extra or special services shall be charged separately. Prices are ex works, including packaging, excl. statutory VAT, customs in the case of exports and fees and other public levies.

(2) The Supplier reserves the right to alter his prices accordingly if, after expiry of two months following conclusion of contract, cost reductions or cost increases occur - particularly on the basis of collective agreements or changes to material prices. On request, the Supplier shall provide the Principal with evidence of these amendments.

(3) Unless otherwise agreed, the purchase price shall be payable within 30 days net after receipt of invoice. The invoice shall be issued on the date of the delivery, partial delivery or date when made available. Cheques and bills of exchange, which the Supplier reserves the right to accept, are only be valid as payment after redemption. Any interest and expenses will be charged to the Principal. Should the Principal be in default of payment, the Supplier is entitled to enforce the statutory rights which ensure form this situation.

(4) The Purchaser is only entitled to set-off rights if his counter-claims have been established as legally enforceable, undisputed or recognised by the Supplier. Furthermore, he is only authorised to exercise a right of retention to the extent that his counter - claim is based on the same contractual relationship.

(5) The Supplier shall be entitled to execute or perform outstanding deliveries or services only against advance payment or provision of security if circumstances become known to him after conclusion of the contract which could realistically mean a significant deterioration in the creditworthiness of the Principal and as a result of which payment by the Principal of the unpaid claims of the Supplier ensuing from the respective contractual relationship is endangered (also ensuing from other individual orders, for which the same framework contract applies).

(6) The prices and delivery dates indicated in the offers apply to the information relating to the order, on which the offer is based. Should the Principal make subsequent changes to this information, the Supplier shall adjust the prices and delivery date accordingly.

### **IV. Sample material / supplied materials / data exchange**

(1) Sample material is to be delivered in its entirety and on time, with a clear indication of quantity. It is also to be designated as flawless with sufficient machining allowance and to be delivered ex works of the Supplier and free of the rights of third parties. In the case of non-fulfilment of this prerequisite the delivery period is to be extended accordingly. Except in cases of force majeure the Principal shall bear the additional costs which arise for interruptions of production caused by him and storage of material including customer materials and semi-finished products. With the handing over of the sample material - also by other suppliers - the Principal acknowledges that the material can be processed. The Supplier shall not be liable for deficiencies of the material supplied by the Principal and the consequences there of. There is no later examination of the quality and quantity of the sample material on their arrival. The yardages established during pre-cutting on the premises of the Supplier shall be binding for the quantities delivered

(2) The Principal is obliged to inform the Supplier prior to conclusion of contract about the type, state and quality of the materials to be processed. The same shall apply if there is evidence of shrinkage, increase, discolouring etc. of the material. Should product innovations (equipment, new materials, new material compositions) with altered material behaviour be worked on or processed by the Supplier, the Principal must draw specific attention to this matter in the offer phase. If this does not happen, the Supplier will adjust the prices accordingly Claims because of deficiencies are excluded in these cases, providing the altered material behaviour cannot be recognised in the production process.

(3) If the Supplier is not in a position to complete the order because material, which the Principal is obliged to supply, is missing then the Supplier shall be entitled to invoice all work already done in accordance with the confirmation of order

(4) Material to be provided by the Principal, drafts, films, slides, lithographic materials and all other documents shall be transported and stored at the Supplier's premises, at the risk and on the responsibility of the Principal. The Supplier shall ensure that the Principal's material is stored in an orderly fashion and in a way which is appropriate to the purpose. The customer's material is also not insured at the supplier. The same applies to damage and loss relating to material at the premises of sub-suppliers of the Supplier.

(5) Data delivered or transmitted by the Principal or by a third party called in by him does not need to be inspected by the Supplier. The duty to ensure backup of data is exclusively the responsibility of the Principal. The Principal assures that neither technical copy protection nor copy protection relating to copyright law exists and releases the Supplier from all liability risks.

## **V. Delivery and delivery period**

(1) Insofar as nothing else has been expressly agreed, deliveries shall be carried out ex works.

(2) Periods and dates for deliveries and performances indicated by the Supplier are always to be considered as approximate only, unless a fixed period or a definite date has been expressly promised or agreed. If an agreement has been made to ship the goods, delivery periods and delivery dates refer to the point in time of handing over to the forwarder, carrier or other third party commissioned to carry out transportation.

(3) Delivery periods shall commence after receipt of the last material and all documents and approvals required for fulfilment of the order, as well as the agreed deposits, If the Principal does not deliver material on time, the delivery periods originally stated are no longer binding for the Supplier.

(4) The delivery period is to be interrupted whilst colour patterns, printing, finished patterns, plates, embossing punches, dies, position pulls etc. are inspected and until they have been released by the Principal.

(5) The Supplier - irrespective of his rights which ensue from the delay of the Principal — can demand an extension of delivery and performance periods or a postponement of delivery and performance periods by the same amount of time as the period in which the Principal does not fulfil his contractual obligations vis-à-vis the Supplier.

(6) The Supplier shall not be liable for situations in which it is impossible to deliver or for delays in delivery if these have been caused by force majeure or other events which were not foreseeable at the point in time of concluding the contract (e.g. operational interruptions of every kind, difficulties in procuring material or energy, transport delays, strikes, legal lock-outs, lack of labour, energy or raw materials, difficulties in obtaining necessary approvals by the authorities, failure by suppliers to deliver, incorrect or late delivery by suppliers) and for which the Supplier is not responsible insofar as such events make the delivery or service particularly difficult for the Supplier, or make these impossible, and the impediment is not merely of temporary duration, the Supplier will be entitled to withdraw from the contract. In the case of obstructions of temporary duration, the delivery or service periods shall be extended or the delivery or service dates shall be postponed by the period of the obstruction plus an appropriate lead time. Insofar as the acceptance of the delivery or service cannot be expected of the Principal as a consequence of the delay, he can withdraw from the contract by means of an immediate written declaration vis-à-vis the Supplier.

(7) The Supplier shall be entitled to make partial deliveries and provide partial services at any time, providing this is reasonable for the Principal.

(8) If the Supplier is in default with a delivery or service or if a delivery or service becomes impossible for him, for whatever reason, then the liability of the Supplier to provide compensation for damages is limited according to section VIII of these General Terms of Delivery

## **VI. Place of fulfilment, despatch, packaging, transfer of risk**

(1) Place of fulfilment for all obligations arising from the contractual relationship is the head office of the Supplier, insofar as nothing else has been stipulated.

(2) The method of dispatch and packaging shall be subject to the discretion of the Supplier in accordance with his obligations in this respect.

(3) The risk shall be transferred to the Principal at the latest on the handing over of the object of

delivery (here the commencement of the loading procedure is decisive) to the forwarder, carrier or other third party commissioned to carry out the despatch. This shall also apply if partial deliveries are carried out or the Supplier has taken over other services (e.g. despatch). If despatch or handing over is delayed as a consequence of circumstances caused by the Principal, the risk shall be transferred to the Principal with effect as from the day on which the object of delivery is ready for despatch, and the Supplier advises the Principal of this.

(4) The consignment is only to be insured by the Supplier against theft, breakage, transport, fire and water damage or other insurable risks, at the express wish of the Principal and at his cost.

## **VII. Guarantee**

(1) The limitation period for claims for defects is one year from handing over of the goods. The period according to the above item 1 shall not apply in the case of culpable violation of essential contractual obligations (obligation, the fulfilment of which enables the orderly execution of the contract at all and in the observation of which the Principal regularly places his trust and may rightly do so), gross negligence, intent, violation of life, of the body, of health, in the case of fraudulent concealment and in cases of recourse of the Principal because of the regulations relating to purchase of consumer goods - in such cases the statutory limitation periods shall apply.

(2) The objects delivered are to be examined carefully immediately after delivery to the Principal or to the third party determined by him. They shall be deemed to be approved if the Supplier has not received a written complaint regarding obvious defects or other defects which were recognisable during an immediate, careful examination within seven days after delivery of the object of delivery or otherwise within seven days after discovery of the defect or every earlier point in time at which the defect was recognisable for the Principal in the case of normal use of the object of delivery without closer examination.

(3) in the case of colour reproductions in all printing processes, no complaints may be made about small deviations from originals. The same shall apply for the comparison between proofs and print runs. The Supplier shall only be liable for light fastness, changeability or deviation of the colours and for the condition of gumming, painting, cellophaning etc. to the extent that defects of the materials were recognisable before they were processed.

(4) In the case of material defects relating to the objects delivered, the Supplier is obliged and entitled to re-work or provide a replacement delivery according to his choice in the case of failure to implement this, i.e. re-working or replacement delivery is impossible, cannot reasonably be expected, is refused or there is an unreasonable delay, then the Principal can withdraw from the contract irrespective of any claims for damage compensation according to the subsequent section VIII or can make a reasonable reduction of the purchase price.

(5) This guarantee provision shall not be applicable if the Principal alters the object of delivery without the consent of the Supplier, or has it altered by third parties and, as a consequence, makes it impossible or unreasonably difficult to correct the defects. In any case the Principal must bear the additional costs of correcting the defects ensuing from the alteration

(6) A delivery of used objects agreed in individual cases with the Principal shall be executed under exclusion of any guarantee relating to material defects.

(7) The Supplier is always to make every effort to deliver the complete run agreed upon. However, excess deliveries or reduced deliveries with a variance of up to 5% do not give any entitlement to make complaints. The quantity actually delivered is to be charged for.

## **VIII. Liability for damages for non-performance**

(1) The liability of the Supplier to pay damages for non-performance, for whatever legal reason, in particular ensuing from impossibility, delay, defective or incorrect delivery, violation of contract, violation of obligations within the scope of contractual negotiations and tort, insofar as culpability is relevant in each specific case, is limited according to this section VIII.

(2) The Supplier will not be liable in the case of simple negligence of his bodies, legal representatives, employees or other vicarious agents, unless it is a case of violating obligations essential to the contract (cf. section VII. (1) on this subject)

(3) Insofar as the Supplier is basically liable according to section VIII (2) for damage compensation, this liability shall be limited to damages which the Supplier has foreseen on conclusion of the contract as a possible consequence of a violation of contract or which he should have foreseen if customary care and attention had been applied. Indirect damage and consequential damage which are the consequence of defects of the object of delivery are, moreover, only liable for compensation insofar as such damages are typically to be expected in the case of appropriate use of the object of delivery.

(4) The above liability exclusions and limitations shall apply to the same extent in favour of the bodies, legal representatives, employees and other vicarious agents of the Supplier.

(5) Insofar as the Supplier gives technical information or becomes active in a consultative role and this information or consultation does not belong to the scope of services owed by him and contractually agreed, this shall take place without remuneration and under exclusion of all liability.

(6) The limitations of this section VIII shall not apply to the liability of the Supplier on account of gross negligence or intent, to guaranteed quality features, on account of violation of life, of the body or of health or pursuant to the Product Liability Act.

### **IX. Retention of title, property rights**

(1) The retention of title agreed below serves to secure all existing present and future claims brought by the Supplier against the Principal arising from the business relationship existing between the contractual partners (including balance claims arising from mutual accounts strictly in connection with this business relationship).

(2) The goods delivered to the Principal by the Supplier shall remain the property of the Supplier until complete payment of all secured claims. In the following the goods and the goods replacing them according to the subsequent provisions and covered by retention of title shall be referred to as goods subject to reservation of title.

(3) Plates, embossing plates, die cutters and such like shall remain the property of the Supplier.

(4) The Principal shall keep the goods subject to reservation of title for the Supplier at no charge.

(5) The Principal is obliged to take good care of the goods subject to reservation of title; in particular, he is obliged to insure the latter at his own expense against fire, water and theft damage.

(6) The Principal is entitled to process and sell the goods subject to reservation of title until the enforcement event occurs (section IX (11) in orderly business transactions. Pledges and collateral assignments are not permissible.

(7) If the goods subject to reservation of title are processed by the Principal, then it is agreed that the processing is to take place in the name of and for the account of the Supplier as manufacturer and the Supplier directly acquires ownership or - if the processing is carried out from materials of several owners or the value of the processed object is higher than the value of the goods subject to reservation of title - joint ownership (fractional ownership) of the newly created object in the ratio of the value of the goods subject to reservation of title to the value of the newly created object. In case no such acquisition of ownership should occur with the Supplier, the Principal now already transfers his future ownership or - in the above - mentioned ratio - co-ownership of the newly created object as security to the supplier. If the goods subject to reservation of title are joined with other objects to a uniform object or inseparably mixed and if one of the other objects is to be regarded as the main object, then the supplier transfers, insofar as the main object belongs to him, the co-ownership of the uniform object proportionately to the Principal in the ratio stated in item 1.

(8) In the case of re-selling the goods subject to reservation of title, the Principal now already assigns the claim against the purchaser ensuing from the resale to the Supplier as security - in the case of the Supplier's co-ownership of the goods subject to reservation of title, the claim shall be assigned proportionately according to the joint ownership proportion. The same applies to other claims which take the place of the goods subject to reservation of title or otherwise arise with regard to the goods subject to reservation of title, such as insurance claims or claims arising from tort in the case of loss and destruction, for example. The Supplier authorises the Principal to collect the claims assigned to the Supplier in his own name. This authorisation is revocable.

However, the Supplier may only revoke this direct debit authorisation in the event of enforcement.

(9) If third parties gain access to the goods subject to reservation of title, particularly by means of

pledge, the Principal shall point out to them immediately the ownership of the Supplier and inform the Supplier about this in order to make it possible for him to enforce his ownership rights. Insofar as the third party is not in a position to reimburse the Supplier with the judicial or extra-judicial costs arising in this context, the Principal shall be liable for these vis-a-vis the Supplier.

(10) At the Principals request, the Supplier is obliged to release securities of his own choice, if the value which they can realise exceeds 10% of the Suppliers claims to be secured.

(11) If the Supplier withdraws from the contract (enforcement event) in the case of behaviour by the Principal which is in breach of the contract - in particular, in the case of default of payment - he will be entitled to demand release of the goods subject to reservation of title.

## **X. Copyright law**

The Principal bears sole responsibility for checking copyright regulations relating to duplication of all print and colourtone templates.

## **XI. Place of jurisdiction, applicable law, severability clause**

(1) The place of jurisdiction for all disputes which may arise from the business relationship between the Supplier and the Principal insofar as the latter is a businessman, a legal entity of public law or a special fund under public law is, at the choice of the Supplier, the head office of the Supplier or the business head office of the Principal. For legal actions against the Supplier, the Supplier's head office shall be the sole place of jurisdiction. Mandatory statutory provisions on exclusive places of jurisdiction shall remain unaffected by this provision.

(2) Business relations between the Supplier and the Principal are subject exclusively to the Swiss law.

(3) Should individual regulations of these General Terms of Delivery and Payment be void or ineffective, this shall not affect the efficacy of the remaining provisions.