Terms and conditions of delivery and payment - Kölle Etiketten GmbH (Status: June 2015)

I. Validity

1. These terms and conditions of delivery and payment shall apply for all our contracts – including those entered into in the future and other commercial services (for businessmen and businesses). By placing an order with us the Buyer recognises these terms and conditions.
   The validity of the Buyer's terms and conditions differing from ours is hereby expressly rejected. Such terms and conditions differing from our own shall not place us under an obligation, even in those cases in which we have not expressly raised a further objection to them following their receipt.
2. Amendments or supplements to these terms and conditions of delivery and payment as well as a waiver of the requirement for written form must be made in writing.

II. Offer and order

1. Our offers are always subject to change without notice. The documents belonging to our offer such as diagrams, drawings, drafts, catalogues, leaflets etc only contain non-binding approximate information and description unless individual dimensions such as weights, measures, colour tones etc. have been expressly designated by us in writing as being binding.
2. It shall be our written order confirmation which counts. We reserve the right to effect modifications to our performances as the result of technical developments.
3. Since we carry out manufacturing in a single operation, subsequent order modifications cannot generally be accepted. Any modification shall be subject to our written consent, whereby the additional costs incurred as a result shall be for the Buyer's account.

III. Drafts, tools and printing plates

1. We alone shall hold the title and copyrights to our drafts as well as the right to carry out the work. Drafts or other documents prepared by us may not be reproduced, copied or handed over to third parties.
2. If an order fails to materialise, we shall be entitled to invoice the costs we have incurred for drafts, sketches etc. we have prepared. Detailed work on drafts and redesigning trade marks, corporate logos, brand names etc. shall be invoiced separately.
3. If the Buyer provides us with documents, drawings, drafts etc. of his own accord or at our request to allow us to design a draft or to carry out by other means an order placed with us, he shall consequently furnish us with an assurance by handing over such material that he owns the copyrights and all the relevant rights of use to such material and no third party rights of any sort shall be breached as a result of reproduction by us. The Buyer shall exempt us from all claims which may be asserted against us by third parties.
4. All for production established layouts, tools, printing cylinders, etc. will remain our property even so they are invoiced as special settlement. Printing plates and punching tools will be kept up to at most five years after last order.
5. Proofs submitted by us are to be checked carefully and the Buyer must state in writing that they are ready for printing. The Buyer shall vouch that his statement with regard to the proof being ready for printing is correct and in the event that it is not correct he shall bear the additional costs incurred as a result.

IV. Scope of delivery, Delivery time and Dispatch

1. It shall be our order confirmation that shall determine the scope of delivery. For technical production reasons we shall have to reserve the right to deliver up to ten percent more or less than the agreed quantity stated in our order confirmation. It shall always be the amount actually delivered which shall be invoiced. We shall be entitled to make part deliveries.
2. Risk shall pass over to the Buyer as soon as the goods leave our works. This shall also apply in the event that a delivery has been agreed freight-free or postage free.
3. We shall endeavour to observe the stated delivery times and deliver punctually. Binding delivery periods or dates must be agreed in writing. Any delivery periods that may be shall begin on the date of our order confirmation, but no earlier than the day on which we receive the final order with all technical and design queries clarified and when we have received any down-payment which may have been agreed. If the Buyer wishes to amend his order after we have confirmed it, any delivery period which may have been agreed shall be extended as appropriate as a result if we agree to the modification requested.
4. Moreover, deadlines and periods shall be extended in cases of force majeure, war, strike, lock-out, political unrest, transport difficulties, official measures etc. as well as in the event of unforeseen difficulties beyond our control (E.g. operational disruptions, fire damage, unforeseen difficulties in the procurement of materials etc.) by the duration of the difficulty plus a reasonable start-up time. This shall also apply if our suppliers are affected by the above difficulties.

V. Prices and Payment

1. Unless an express agreement has been made to the contrary, our prices shall apply free destination including packing, whereby we shall generally select the most economic method of dispatch. Special wishes with regard to packing or transport shall be invoiced separately.
2. Increases in the price of materials and costs of employees occurring after the contract has been signed but prior to delivery may be passed on to the Buyer. This shall not apply for goods and services to be delivered or rendered within four months of the contract being signed.
3. Unless an agreement has been made to the contrary, payments are to be made in full straight net. When presenting an invoice value added tax shall be shown separately at the statutory amount. If prompt payment discounts have been agreed, they shall not apply for delivery costs or ancillary costs.
4. We shall not be obliged to accept drafts. If we do accept drafts, we shall only do so with a view to payment and only against remuneration of the discount and collection fees by the Buyer.
5. Counter-claims contested by us or which have not been declared final and absolute in a court of law shall not entitle the Buyer to withdraw from the contract or to offset. This shall not apply for rights to withhold performance based on the same contractual relationship.
6. In the event that the Buyer is in arrears with payment, or if there has been a significant deterioration in his creditworthiness after the contract has been signed, all accounts shall become payable immediately in cash, even in the event that a forbearance with payment has been granted or if drafts or cheques have been received. Moreover, we shall in this case be entitled to demand payment in advance or that a security is furnished and, after having set a reasonable period of time, to withdraw from all existing contracts in the event of non-compliance.

VI. Reservation of title

1. We shall reserve the title to items supplied by us until all accounts against the Buyer to which we are entitled under our entire business relationship have been fulfilled in full.
2. In the event that the items supplied by us are processed and combined with items not belonging to us we shall acquire co-ownership to the new thing in proportion to the value of the goods subject to the reservation of title to the value of the new thing created as a result of processing. It shall be the invoiced figure which shall determine the value of the goods subject to the reservation of title and the value of the new thing. Alternatively their respective values may be determined by market value. The processing shall be valued at the point in time at which it took place. The Buyer shall carry out processing for us without however being able to derive any claims whatsoever against us on account of processing.
3. The Buyer shall have to insure the goods subject to the reservation of title against theft, damage, destruction and accidental loss (in particular fire and water) and to submit evidence of such insurance to us upon request. He shall have to provide us with information about the location of the goods subject to the reservation of title and allow us or our agents to enter the premises in which they have been stored. The Buyer is entitled to process or sell goods subject to the reservation of title in ordinary commercial transactions provided that he is not in default towards us. He shall hereby assign to us here and now the accounts to which he is entitled from such sales in full as security. We authorise the Buyer on a revocable basis to collect the assigned accounts in his own name. At our request the Buyer shall disclose the assignment to his buyer and hand over the information and documents required by us to collect an account.
4. If the securities handed over to us exceed the accounts by more than 20 %, we shall consequently be obliged to release any excess amount over and above the securities to which we are entitled to the Buyer at his request or at the request of his creditors.
5. The Buyer shall have to notify us without delay if a claim is enforced against the goods subject to our reservation of title or against accounts which have been transferred over to us by means of an advance assignment.

VII. Liability for defects, Compensation for damages

1. The Buyer shall vouch that any information, notified dimensions and other information and / or stipulations he may submit to us to enable us to carry out the order are correct and complete. We shall not be liable for defects in our performance if they are attributable to mistakes in the above information submitted to us by the Buyer and the Buyer shall not be able to claim compensation for damages as a result. This shall also apply if the Buyer should make any mistakes in granting us permission to print.
2. Manifest defects in our performance are to be notified in writing straight away and no later than ten days from the performance being rendered. Defects which are not manifest must be notified in writing within no later than 10 days from the date of discovery. Items about which a complaint has been raised are to be kept ready in the condition at which the alleged defect was noticed for inspection by us or our agents.
3. We shall rectify asserted defects in our performance which are justified by means of subsequent fulfilment. We shall be entitled to choose whether subsequent fulfilment shall be rendered by means of rectifying the defect or supplying a fault-free thing. If the subsequent fulfilment should be unsuccessful within a stipulated period of time, the Buyer may withdraw from the contract or reduce the remuneration by an appropriate amount. The period covered by warranty is twelve months from the passing of risk.
4. Any liability for a defect shall be subject to the reservation that the delivered goods have been handled properly and if they have been processed, have been processed properly.
5. Compensation claims for damages asserted by the Buyer, regardless of whatever reason on which they are based, in particular on account of a breach against a commitment under the law of obligations and on account of an illegal act shall be ruled out. This shall not apply in the event of intent or gross negligence, for loss of life, physical harm and personal injury, liability under the (German) Product Liability Act, for a guarantee which may have been furnished by us, for damage resulting from a culpable breach of important contractual duties or in other cases in which we have to be held liable by law. Liability for a breach of important contractual duties shall be limited to making good foreseeable damage typical for the contract, provided that we are not guilty of intent or gross negligence and we are not liable for loss of life, physical harm or personal injury. Important contractual duties for the purposes of the above meaning are those duties which jeopardise the contractual objective if they are breached.

VIII. Place of fulfilment, Place of jurisdiction, Final Provisions

1. The place of fulfilment for deliveries is the respective shipping point for the goods. The place of fulfilment for payment – for payment by draft too – shall be our principal place of business.
2. The place of jurisdiction for all disputes arising from the contractual relationship shall be the courts having jurisdiction where our principal place of business is located, provided that the Buyer is a registered business. We are however also entitled to take legal action against the Buyer at the court having jurisdiction for his principal place of business.
3. We shall be entitled to advertise the products manufactured for the Buyer for our own account and in particular to show them in the printed media and / or electronic media (Internet) for our own advertising purposes.
4. All legal relationships existing between us and the Buyer shall be governed by the law of the Federal Republic of Germany. The international law of sales, in particular the standard UN Contract for the International Sale of Goods [CISG] shall not apply.
5. Should part of the contract or these terms and conditions of delivery and payment be invalid, this shall not affect the validity of the remainder of this contract or these terms and conditions as a result.

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Sales tax IS-No.:

DE 145 338 741