

# General Terms of Business of Industrie Betriebe Swatek GmbH<sup>1</sup>

## 1. Scope of Application

The General Terms of Business (GTBs) apply to all present and future deliveries and to any other services provided by Industrie Betriebe Swatek GmbH, hereinafter called the 'Contractor', and to all its contractual business partners, hereinafter called the Customer. The term "Customer" in the present General Terms of Business refers to the Customer himself, and in the event that an order is placed with a third parties, also refers to the said third parties, as well as to the Customer's assistants. The Contractor will not accept any GTBs other than his own, and such GTBs of the Customer shall only be valid if the Contractor provides written confirmation of their validity, while at the same time expressly waiving the validity of his own GTBs. The GTBs are part and parcel of every contractual relationship which the Customer may enter into with the Contractor.

## 2. Commencement of the Contract

All offers made by the Contractor are non-binding, whereby the Contractor shall, in particular, reserve the right to change the content and the scope of the offer concerned. The contract with the Contractor shall come into effect as soon as the order placed by the Customer has been accepted by post, by fax, by e-mail or by telephone. Should the acceptance of the order by the Contractor not take place expressly, but instead through the actual carrying out of the order, the Contract shall be deemed as having come into effect on commencement of carrying out the order.

## 3. Specification of services

The Contractor shall use normal printing colours for printing; the Contractor reserves the right to print slight deviations in the colours. Such slight deviations shall not affect the contractual relationship and shall, in particular, not entitle the Customer to demand redhibitory action, price reductions, improvements, compensation for damages, to withdraw from the Contract or to assert any comparable claims.

Should the Customer request it in writing, sample extracts shall be submitted to the Customer before going to press. Any correction extracts and print-outs shall be checked by the Customer and the Contractor shall be immediately informed as to whether or not they are ready for press/production. The risk of any errors shall be transferred to the Customer upon his declaration of readiness for press/production, provided no errors exist which came into being, or which it was possible to recognise as being errors, in the course of the production process following the declaration of readiness for press/production. The same shall apply to any other declarations of product clearance on the part of the Customer.

The Contractor shall be entitled to carry out the following excess deliveries or short deliveries: in the case of all orders and indeed in the case of small quantities (under 5,000 pcs. or 10,000 running metres), up to 20% above or below the order quantity; and in the case of larger delivery quantities, up to 10% above or below the order quantity. Furthermore, the Contractor shall be entitled to deviate from the specified measurements in the case of bags and carrier bags, by up to 5 mm in width and by up to 10 mm in length; in the case of specified weights, the Contractor shall be entitled to deviate by up to 5 % above or below them.

Delivery shall be carried out at the expense and risk of the Customer. The Customer shall bear the transportation risk even in the event that the Contractor has already declared his willingness to bear the freight costs in an individual case. The right of use and risk shall be transferred to the Customer from the moment that the Contractor hands over the contractually agreed delivery goods to the means of transport concerned.

Delivery times/dates are non-binding; any delivery dates we specify are to be regarded as approximate guidelines, although we always endeavour to adhere to the dates given. Partial deliveries shall, in particular, also be permissible, and will be invoiced for upon delivery. Moreover, in the event of a temporary supply shortfall, the Contractor shall be entitled to carry out partial deliveries, in accordance with the available stocks and the existing orders. Force majeure, disruption of operations, the impossibility of procuring any or sufficient raw materials, as a result of circumstances outside the Contractor's control, shall, at all events, release the Contractor from his obligation to adhere to the specified delivery dates, and shall entitle him to postpone these at his own discretion and shall entitle the Contractor to withdraw from the contract unilaterally. The term of a specified delivery period shall commence on the date on which all the documents and specifications, as well as the printing blocks that must be provided by the Customer for carrying out the printing, become available. In light of the fact that delivery times/dates are non-binding, in the event that delivery times/dates are overrun, the Contractor shall not be liable for any loss of business suffered by the Customer.

## 4. Printing material

Should printing material or objects of any other kind be provided by the Customer, and should it emerge that they are not suitable for production, the Contractor shall at any time be entitled to withdraw from the Contract. The Contractor shall be solely and finally responsible for checking and assessing the said printing material or objects. In the event that he withdraws, any liability of the Contractor is precluded under these GTBs. Any applications carried out by the Contractor up to that date can be charged to the Customer.

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<sup>1</sup> GmbH = Limited company

The Contractor accepts no liability for any printing material provided which may be altered, damaged or which may become unusable during production. Printing material provided shall only be sent back at the request and at the expense of the Customer. The Contractor shall not accept any liability for any results of printing using printing blocks from third parties. In the event of any doubt in the matter, all defects shall be attributed to faulty printing material; the Buyer shall be responsible for providing proof to the contrary.

## **5. Warranty**

Any defects for which the Contractor bears the responsibility shall be rectified at the Contractor's discretion, either through touching up or through replacing the goods concerned, whereby any redhibitory action or price reduction between the contracting parties in such an event is expressly precluded under these GTBs. . In the event of gratuitous transactions, the Contractor shall not be liable for any warranty obligations. Should the Customer refuse to accept a delivery, despite the existence of a legally valid contract, or should the Customer hinder the Contractor in some other way from fulfilling the contractually agreed delivery, the Customer shall pay the Contractor a contractual penalty amounting to 12 % of the value of the goods which he refused to accept even though they were to be delivered by agreement; the Contractor's right to assert further claims, particularly damage compensation claims which exceed the said contractual penalty, shall remain unaffected by the above stipulation.

Moreover, any warranty for the durability or abrasion resistance of printing colours is precluded under these GTBs, even in the event that the said printing colours should, in an individual case, be designated as light-resistant or water-resistant. Furthermore, no warranty shall be accepted for any occurrences of migration, or for consequences of any kind which may result therefrom.

Complaints concerning defects must - irrespective of any legally-stipulated earlier obligation of claims notification - be reported immediately following discovery, but at the latest within 8 days (or 6 weeks in the case of non-visible defects) following the receipt of the delivery. In the case of valid complaints, warranty shall be limited only to the replacement of defective goods with fault-free goods.

The Customer shall tolerate a proportion of defective goods comprising up to 2% of the total volume of a delivery, irrespective of whether the said defects exist in the processing or in the printing or the material. The Customer shall likewise tolerate slight deviations in the colour. The Customer shall specify the alleged defects and shall provide proof of them to the Contractor. At the request of the Contractor, the Contractor shall be given the opportunity of verifying the alleged defects on the spot. In the case of promptly lodged, fully justified complaints concerning defects, the Contractor shall be obliged, at his own discretion, to either touch up the defective goods or to replace them with fault-free goods, whereby the Contractor must be granted the time and opportunity which he estimates to be necessary for rectifying the said defects. Any damage compensation for consequential damage of any kind whatsoever is precluded under these GTBs.

## **6. Prices**

The sales prices communicated to the Customer and/or expressly displayed as of the date of concluding the contract shall apply. Basically, provided nothing else is specified, the information and prices communicated to the Customer by the Contractor shall be in Euros, and shall not include VAT/sales tax. Not included in the price shall be the costs of delivery, customs, charges and duties, etc. Should, for example, any customs, charges and duties be levied in connection with deliveries or with any other services, the Customer shall bear the costs of these.

In the case of any obvious mistakes in the calculation of prices, the Contractor reserves the right to calculate the correct price. Price increases for energy costs of any kind, any wage and salary increases agreed by labour contract, increases in the price of raw, auxiliary and operating supplies as well as of any remuneration components included in the price calculation shall be included in calculating the agreed price if they become effective between the date of signing the contract and the date of delivery. The cost of any subsequent changes made to the order at the instigation of the Customer, including the cost of any idleness of production machines connected with the said changes, shall be charged to the Customer. Any reprints of print proofs which may be requested by the Customer due to any slight deviation from the original shall also be deemed to be subsequent changes.

Should a delivery not be carried out, whereby the Contractor was prepared to carry out the delivery but was prevented from doing so due to circumstances for which the Customer is responsible, the Contractor shall therefore be entitled to receive the agreed remuneration. In this case, the Contractor will not need to offset any income he may earn or refrain from earning through using the goods in any other way. The Customer will be permitted to offset claims of the Customer towards the Contractor with claims of the Contractor towards the Customer only in the case of undisputed or legally established claims of the Customer towards the Contractor.

## **7. Notes of manufacture**

Goods delivered by the Contractor may have the notes of manufacture attached to them.

## **8. Retention of Title**

The delivered goods shall remain the property of the Contractor until all financial claims arising from the business relationships have been paid in full. Prior to full payment for the goods, the Customer shall not be permitted to impawn them, to transfer the title to secure a debt, or to grant third parties any other rights to the Contractor's property. In order to enable the Contractor to assert his proprietary rights, the Customer shall immediately notify the Contractor of any compulsory enforcement measures or other seizures by third parties, in infringement of the rights of the Contractor, of the goods which are subject to

the Contractor's retention of title. The Customer shall be liable to the Contractor for any damage which may arise by reason of his failure to fulfil this duty of notification. The Customer must promptly dispute any such measures undertaken by third parties by pointing out the Contractor's retention of title. Moreover, the Customer shall cede to the Contractor any financial claims that may arise from the resale of the goods subject to retention of title, even in the event that the goods are further processed.

### **9. Limitation of the Right to Return Goods/Exemption from Liability**

Damaged goods shall not be included in the right to return goods, unless such damage verifiably existed at the time of shipment to the Customer. The Contractor shall be exempt from any liability which goes beyond the limits of the above stipulations concerning warranty, provided the damage concerned does not arise from malice aforethought or gross negligence. In particular, these GTBs also preclude any liability for consequential damage, for any other indirect damage, and for any losses or unrealised profits which may be caused by defective, omitted or delayed delivery. Moreover, the Contractor shall not be liable for any damage arising from changes to the delivered goods made subsequently by the Customer or by third parties, or from improper use of the goods. Any damage compensation claims can only be legally asserted in a court of law within six months of the claimant(s)' learning of the damage, but at the latest within three years of the occurrence upon which the claim is based, provided no other mandatory limitation periods are stipulated by law.

In the case of deliveries to entrepreneurs in accordance with the Consumer Protection Law, these GTBs preclude any duty of replacement in the case of property damage claims based on the Product Liability Law or in the case of product liability claims based on any other regulations. Should goods be delivered to entrepreneurs, in accordance with the Consumer Protection Law, these entrepreneurs shall, in contracts with their recipient purchasers, be obligated to agree on the exemption from liability for products as stipulated above. Should they fail to fulfil this contractual obligation, the recipient purchaser shall be liable for any damages resulting from that omission. The delivery item shall offer only the degree of assurance which can be expected based on Austrian Standards (ÖNORMEN), authorization regulations, operating instructions, regulations on handling the delivery item issued by the delivering works, and any other guidelines given.

### **10. Data Protection**

The Contractor agrees to process, use and, if necessary, to draw upon the personal data of the Customer in accordance with the regulations of the applicable Austrian Data Protection Law. In signing the contract, the Customer gives his consent for the Contractor, and for firms and assistants associated with the Contractor, to draw upon, process, store and use his personal data (name, registered office, addresses, date of birth, e-mail address, telephone number, etc.) and his order data for the purpose of drawing up offers, as needed, and of utilising the said data for accounting purposes, for the protection of his own rights and of those of third parties within the framework of the valid legal situation. In order to enable the Contractor to exercise the rights and fulfil the obligations arising from the concluded contract, he shall be entitled to pass the data on to third parties who are involved in executing the terms of the contract. These GTBs preclude any liability on the part of the Contractor for the passing-on or the misuse of the data by any third parties and assistants who may be involved in executing the terms of the contract.

### **11. Industrial Property Rights/Copyright**

The Customer shall assume sole liability in the event that the rights of third parties, particularly copyright or any other industrial property rights, are infringed through the fulfilment of his order. The Customer shall indemnify and hold harmless the Contractor in respect of any such infringements of rights.

### **12. Severability Clause**

Should any individual clauses of the contract concluded between the Contractor and the Customer, and likewise of these GTBs, prove ineffective, either in whole or in part, this shall not affect the validity of the remaining contractual clauses or of any parts of the said clauses. The relevant legal regulations shall take the place of the ineffective or missing clauses. Even in the event that the Contractor either does not exercise, or has not exercised, either individual rights or all of the rights to which he is entitled, it may not be therefore inferred that he has waived the said rights.

### **13. Legal Venue/Applicable Law**

The agreed legal venue for any disputes arising from this contractual relationship shall be Wolfsberg. Austrian law, to the exclusion of the valid conflict of laws standards for private international law, as well as the UN Convention on Contracts for the International Sale of Goods, shall exclusively apply to all legal relations between the Contractor and the Customer. The language to be used in business transactions, the Contract and complaints shall be exclusively German. The place of performance shall be Wolfsberg. The Contractor reserves the right to change the present General Terms of Business for orders, without giving reasons.

### **14. Consumers**

In the case of legal transactions concluded between the Contractor and consumers, the above General Terms of Business shall apply only insofar as they do not contradict any mandatory provisions in the Austrian Consumer Protection Law.