

General Terms of Delivery and Payment for Printing Inks

- State of January 01st, 2017 -



I. Validity

1. We (supplier) exclusively deliver at these general terms of delivery and payment. They apply to all our deliveries in so far as the contracting parties have not agreed on variances explicitly and in writing. In addition, the statutory regulations are in force.
2. General business conditions of the customer are not valid in any case, even if we do not contradict the customer's reference - no matter in which form at what time it is made - to his general business conditions. General business conditions of the customer can only become valid for us if we have acknowledged them explicitly and in writing. Deliveries do not represent an acknowledgement of the customer's general business conditions.
3. The acceptance of the delivery is regarded as acknowledgement of these General Terms of Delivery and Payment.
4. Our General Terms of Delivery and Payment are also valid for bargains made perhaps later between us and the customer, even if they are not referred to in the individual case.

II. Conclusion of contract

1. Orders are only regarded as accepted if they are acknowledged by the supplier in writing. In order to be legally binding, verbal orders and orders by telephone as well as agreements, additions and amendments of an order require the written confirmation of the supplier; the receipt of the delivery note on the part of the customer or the execution of the delivery are regarded as confirmation, too.
2. The offers of the supplier are subject to change.
3. If the supplier encloses documents in an offer - such as illustrations, drawings, indications of weight and measurements - these are only valid approximately in as far as they are not called legally binding explicitly and in writing.

III. Prices

1. The prices effective are always the prices according to the price list of the supplier at the time of ordering unless a fixed price has been agreed explicitly.
2. Prices in inquiries and price lists are excluding the legal VAT.
3. The minimum value of order is Euro 500,00. For orders of a value lower than Euro 510,00, a lump sum is charged. Freight costs and packing charges are chargeable to the customer.
4. In the case of some articles, delivery is made in the packing units indicated. Lower order quantities are rounded up.
5. For all shades not contained in the price list (i.e. special colours) delivery only from 1 litre on in full litre quantities. We reserve, however, tolerances in the quantity delivered of 10% up and down.

IV. Terms of payment

1. Invoices of the supplier are to be paid according to the terms of payment contracted individually between the supplier and the customer. If there is no individual agreement, invoices of the supplier are to be paid within 30 days from the date of the invoice. In case of payment within eight days after the date of the invoice, the customer is authorized to deduct 2 % discount from the net order value.
2. The supplier is authorized to execute deliveries COD.

3. The supplier reserves the right to accept bills of exchange and cheques. In any case, the acceptance is only effected as payment. The customer pays the costs of discounting and collecting. The supplier does not guarantee the presentation and entry of protest in time. In case of payment by bill of exchange, the cash discount is not granted.
4. Payments are always regarded as effected when the supplier can definitely dispose of the amount.
5. If the customer is in default of payment with regard to one of the contracts existing for more than 10 days, or if he has stopped his payments, or if there has been a substantial deterioration of his financial circumstances, the amounts owing of the supplier from all existing contracts with the customer become due for payment at once; extensions of credit or other deferments of payment - by accepting acceptances, too - end; the supplier can demand security for deliveries not yet executed.

V. Delivery time

1. Dates of delivery and delivery times are always only valid approximately.
2. The obligation to deliver of the supplier ceases as long as the customer is in arrears with an obligation unless the customer has given security in the amount of the obligation.
3. Force Majeure, breakdowns, subcontractors exceeding delivery time, deficiency of raw material, energy, labour shortage, strikes, lockouts, difficulties in providing means of transport, traffic hold-ups, orders of state authorities or the lack of approvals by the authorities or of other approvals necessary for the execution of the delivery exempt the supplier from the obligation of performance for the period of the disturbance and in the extent of its effect unless the disturbance has been caused by the supplier deliberately and by gross negligence. The supplier is not responsible for the circumstances mentioned above either if they arise during a delay existing already.
4. Provided that unforeseen events within the meaning of paragraph 3 considerably change the economic significance or the contents of the performance of the supplier or have a considerable effect on our business, the supplier has the right to withdraw from the contract. In this case, the customer is only entitled to claims for restitution; claims going beyond, particularly claims for damages, are excluded.
5. The supplier is entitled to partial deliveries; partial deliveries can always be charged separately.
6. If the supplier falls behind with the performance, the customer can withdraw from the contract if he has given the supplier an appropriate period of grace and this period has expired without effect. If the delay is limited to a part performance, the customer can only withdraw from the entire contract under the circumstances mentioned above if he is not interested in the partial performance. Claims for compensation of the damage caused by default and claims for payment of damages instead of performance are limited to the damages which could be foreseen by the supplier at the moment of concluding the contract and limited to ten times the value of the merchandise as for the amount. This does not apply if default and non-performance have been caused by the supplier deliberately and by gross negligence.

VI. Dispatch, transfer of risks

1. With the dispatch of the merchandise at the latest, the risk is transferred to the customer. This applies to partial deliveries, too, if the supplier bears transport charges or if he transports the delivery. In all cases, transport is effected ex works or ex warehouse of the supplier at the risk of the customer. There is no responsibility for damages and losses during transport.
2. If dispatch is delayed because of circumstances the supplier is not responsible for, the risk is transferred to the customer with the day of readiness for dispatch.
3. If the customer has not given particular forwarding instructions and these have been confirmed by the supplier in writing, manner and way of dispatch are chosen by the supplier. The supplier is not obliged to insure deliveries.

VII. Retention of title

1. The supplier retains his title of the goods delivered by him until complete payment of all claims from the business connections including all secondary claims and until encashment of the bills of exchange and cheques given for that. The retention of title applies to the products resulting from processing. By processing, combining or mixing goods of the supplier with other material the supplier acquires co-ownership of the product resulting from this in relation of the value of the merchandise of the supplier to the value of the other material. The transfer of title is replaced by the fact that the customer keeps these products for the supplier free of charge with the care of a proper businessman.
2. The customer assigns already now - should the situation arise in the amount of the share of co-ownership of the supplier of the merchandise sold - all claims from the sale of goods in which the supplier is entitled to ownership to the supplier as safeguard.
3. If the merchandise with retention of title is seized by a third party, the customer is obliged to inform the supplier at once enclosing a copy of the record of seizure.
4. The supplier obliges himself to release, on request of the customer, securities he is entitled to with the reservation of choice in so far as the value of the securities exceeds the claims to be insured by more than 30%.

VIII. Warranty

1. Warranty involves according to Marabu decision remedy or supply of substitute goods.
2. In case remedy fails, the buyer is entitled to demand reduction of purchase price (reduction) or termination of contract after a 30 days period has passed after having notified Marabu about the complaint and the defect remaining unremedied after this period has passed.
The buyer is not entitled to withdraw from the contract in case of an insignificant breach of contract, especially with minor defects. Substituted goods become property of Marabu.
3. If the buyer chooses termination of contract after a failed remedy of a judicial or material breach, the buyer is not entitled to demand any further indemnity.
If the buyer chooses indemnity after a failed remedy, the goods remain with the buyer.
Indemnity is limited to the difference amount between the purchase price and the value of the defect goods. This limitation does not apply if breach of contract has deceitfully been caused by Marabu.
4. Visible defects must be notified in writing within one week on receipt of the goods, otherwise assertion of indemnity will be refused. The dispatch of the claim in time is sufficient to keep the deadline. The full burden of proof lies with the buyer for any indemnity preconditions, especially for the inconformity itself, the moment of assessment of the inconformity and for the punctuality of the complaint. Non-visible defects which cannot be detected regardless of a solemn examination of the goods shall be immediately after its detection notified in writing to Marabu.
5. No other product characteristics than those mentioned in the product description are to be considered as agreed on. Public comments, boosting's and advertising do not represent any contractual description of the good's quality.
Warranty is not conceded if the goods have partly or fully been sold to a third party or if these have been processed or used regardless of detection of a non-conformity through the buyer or if non-conformity could have been detected with a solemn examination. Warranty is equally not conceded if the buyer has examined or accepted the goods prior to delivery or if the buyer has explicitly or in fact waived an agreed examination or acceptance.
6. Warranty period is of one year on delivery of the goods.
7. Liability is excluded if operation or processing instructions provided by Marabu are not followed, if changes of the goods are undergone or if consumption materials not in accordance with the original specifications are used. If the buyer makes a respective declaration that only these circumstances have led to the defect and if the buyer cannot disapprove this.

Marabu is obliged to submit a correct processing instruction if the buyer has received an imperfect processing instruction and if the processing instruction's imperfection is the only cause to prevent a regular processing.

8. The buyer is not entitled to demand from Marabu guarantee in compliance with § 443 of German BGB (German Civil Code).
9. No guarantee may be claimed for damages arising from the following reasons: Unsuitable or inappropriate use, defective processing through the buyer or a third party, reasonable wear and tear, faulty or neglectful handling, improper tools, unsuitable construction materials or substrates, chemical, electrochemical or electrical influences, if these are not caused by Marabu.
10. The buyer shall provide the necessary time and opportunity for carrying out any repair or delivery of substitute goods of reasonable discretion.
11. Unqualified modifications or unqualified repair work which have been carried out by the buyer or a third party without Marabu permission terminate any liability or guarantee.
12. Returns of goods, even of those which are to be effected on the basis of a justified complaint, need our consent. Otherwise receipt can be refused. We are authorized to make deduction of our costs arising from examination, repair or new presentation together with a handling charge amounting to at least 20 % from the price to credit and based on the prices charged originally. Products which are no longer part of the actual assortment are totally excluded from a credit entry of from exchange. Delivery notes and exact quotations from the invoice must be enclosed in each return.
13. There was a consultancy by the staff of the supplier or by informative technical material to the best of our knowledge. The customer is obliged to check our recommendation by means of suitable tests on his own.

IX Liability limitation

1. Claims for damages are excluded regardless of breach of obligation and including not allowed handling if there is a wilful or grossly negligent handling involved.
2. Marabu is liable for any negligence in case of breach of a substantial contractual obligation. Indemnity for lost profits, saved expenses from third party claims as well as from other direct damages or consequential damages cannot be claimed.
3. Limitation of liability under article 1 and 2 do not apply for claims arising from wilful Marabu breach as well as for liability for eventually confirmed characteristics, for liability in compliance with the product liability law as well as damages from breach of life, body or health of third parties.
4. The extent that Marabu's liability is excluded or limited, this also applies to the personal liability of the employees, workers, representatives and servants of Marabu.

X. Further rights of the supplier and the customer

1. If there are unforeseen events within the meaning of paragraph V.3. and consequently, the economic importance or the contents of the performance change considerably, if such events have considerable effects on the business of the supplier or if the performance agreed proves to be impossible after conclusion of the contract, the supplier is authorized to adapt the contract adequately. As far as an adaptation of the contract is not reasonable economically, the supplier is authorized to back out of the contract totally or partly.
2. The supplier is authorized to back out of the contract if a motion of institution of insolvency proceedings or of a scheme of judicial or out of court arrangement is made concerning the assets of the customer.
3. The customer can back out of the contract if the performance incumbent upon the supplier becomes impossible before passage of risks as a result of a circumstance the supplier is responsible for.

4. Claims for damages because of impossibility are restricted to the damages that could be foreseen at the conclusion of the contract and limited to the amount of ten times the value of the goods. This does not apply if the supplier has caused the impossibility deliberately or by gross negligence.
5. The preceding paragraphs 3. and 4. are valid analogically in cases of incapacity.
6. In as far as rights and claims of the customer are not named explicitly in these General Terms of Sale and Delivery, they are excluded to the extent legally admissible.

XI. Transferability of rights

The customer can only transfer his rights from this contract to a third party totally or partly with previous written consent of the supplier.

XII. Compensation, retention

The compensation with counter-claims or the execution of the right of retention against claims of the supplier are only admissible if the counter-claim is uncontested or legally recorded.

XIII. Data protection

We are authorized to use and store the data received in connection with the business connection and concerning the buyer in the meaning of the federal data protection act.

XIV. Place of performance, place of jurisdiction

1. The place of performance for obligations of the supplier are the respective works respectively the authorized repair shop of the supplier, for the obligations of the customer the headquarters of the supplier.
2. The place of jurisdiction for all claims from the business connection including the claims from bills of exchange and cheques is Stuttgart exclusively. The supplier, however, can also complain with the court competent for the headquarters of the customer.

XV. Final clauses

1. German law is applied exclusively unless there are conclusive legal regulations to the contrary. The application of standard purchase law is excluded.
2. Should individual regulations of the previous regulations be invalid or become invalid, the other regulations from this remain unaffected.

Marabu GmbH Co. KG . Asperger Straße 4 . 71732 Tamm