

Terms and Conditions of Delivery and Payment

1. Validity

Topac GmbH (hereinafter referred to as „Topac“) produces its deliveries, services and offers solely on the basis of the present „Terms and Conditions of Delivery and Payment“ (hereinafter referred to as „Terms and Conditions“) as stipulated herein. The Terms and Conditions remain authoritative in future unless other divergent agreement or agreements are made between Topac and its customers. These Terms and Conditions remain effective in the event that they are not enclosed with or specifically referred to within each individual sales contract. Contrary purchasing terms and conditions have no authority over or effect on the stipulations herein.

2. Conclusions of contract and prices

2.1

Topac shall only be bound to the offers and quotations submitted after the reciprocal orders have been confirmed.

2.2

Topac is entitled to adjust prices mentioned in the order confirmation, to the extent to which the calculation-based costs (wages and salaries, material, general business expenses) have actually increased.

2.3

In the event that necessary additional work arises which was unforeseen at the time the contract was concluded, Topac is entitled to forward the arising costs. In the event that these extra charges exceed 10 per cent of the total price, the principal is entitled to withdraw from the contract. The principal must explicitly reject any such price increase in writing within one week (mail or fax).

2.4

Topac can forward costs and charges for preparatory work, e.g. samples, drafts, sketches etc.

2.5

Should the principal request any modification after having issued his permission to print or embossment clearance, he shall bear all costs arising therefrom. This stipulation also includes the costs arising from production standstill.

3. Terms of payment

3.1

Invoices shall be made out under specification of delivery date, partial delivery or readiness for delivery (liability for collection ex works, default in taking delivery) unless settlement (debit note) is made on the basis of open account terms on a weekly, fortnightly or monthly basis.

3.2

Time limits for payment begin with the date of invoice. Unless otherwise agreed, payment of invoice amount shall be made within 30 calendar days as of date of in-

voice without deductions. Cash discounts are only granted upon previous agreement.

3.3

Costs for shipping (freight, customs, postage etc.) and packaging must be settled as stipulated under sub-clause 3.2 herein without deductions.

3.4

Payment by bill of exchange shall be subject to previous agreement as a form of conditional payment subject to protest and on condition that the bill is eligible for discount. Discount charges incurred shall be charged to the principal's account as of the date of maturity for the invoice amount.

3.5

Topac can make out interim invoices and request their settlement for orders performed on a partial quota basis.

3.6 In the event that the principal is in arrears or Topac extends the term of the amount due, the latter is entitled to claim for damages at a rate of 2 per cent above the basic rate of interest according to the discount rate of the German Central Bank as of the respective date. Interest shall be set at a lower rate if the principal can prove a lower rate of loss. Topac is entitled to produce evidence of higher losses. Proof of payment shall be the date on which checks and banker's transfers are credited to Topac's account.

3.7

In the event that the principal does not meet his financial obligations, Topac is entitled to make payable the entire contractual balance. This stipulation is also effective for payment check or bill of exchange. This is particularly applicable whenever the principal does not honor a check or bill of exchange or it can be proven that execution procedures were futile, the purchaser has suspended payment, or an application for bankruptcy procedures or court or extrajudicial composition proceeding has been submitted. In addition, Topac can in this case demand advanced payments or security for other existing and valid contracts.

4. Right of retention, setoff of invoices

4.1

Topac is entitled to refuse any incumbent performance until the principal has effected the return service or presented security therefor should the principal's economic situation worsen after the conclusion of the contract as such that there is cause to believe that the principal cannot fulfil an essential part of his obligations, e.g. application for bankruptcy or court or extrajudicial composition proceedings.

4.2

Topac retains the right of retention for materials and other objects supplied or delivered to the principal in accordance with Article 369 of the German Commercial Code until

complete settlement of all outstanding accounts receivable which arise from the business relations.

4.3

Topac is entitled to set off all of its principal's accounts receivable against all accounts receivable arising from companies affiliated with Topac (hereinafter referred to as „affiliated company“). In addition, Topac can set off its own accounts receivable against counterclaims which the principal has presented against an affiliated company. This remains effective in the event of cash payments from one party and payment by bill of exchange or by way of provisional performance on behalf of the other party and the due dates vary. The supplier or customer respectively can request information on the current status of affiliated companies.

4.4

The principal is only entitled to set off, retention, or reduction, even in the event of notice of defects or counterclaims, if the counterclaims have been legally ascertained or are undisputed. The principal is, however, entitled to retention for counterclaims emerging from the same contractual relationship.

5. Retention of title

5.1

Ownership of goods supplied is reserved until all accounts receivable presented by Topac have been settled in full or until all checks and bills of exchange as issued for settlement have been honored. As for open account terms, the retention of title secures the balance due arising from the comprehensive business relationship.

5.2 In the event of an exchange of check-against-bill of exchange ownership devolves upon the principal when Topac must no longer fear it must protest the bill of exchange.

5.3

With the conclusion of the contract the principal thereby cedes all accounts receivable emerging from the resale of the goods subject to reservation (hereinafter referred to as „conditional commodities“). Topac accepts this transfer. Irrespective of the transfer and of Topac's rights to seizure, the principal is entitled to seizure as long as he meets his financial obligations towards his supplier and remains financially sound. Upon Topac's demand the principal shall present the former with the necessary information about the assigned receivables and to inform the debtors of such transfer. Should by means of the resale of the conditional commodities to a third party, in particular a customer, the principal raise accounts receivable through the utilization of existing open account terms, the respective balance shall be considered ceded and assigned to Topac to the amount of the principal's outstanding balance.

5.4

The principal is only entitled to resell conditional commodities

if the accrued receivables are transferred to Topac. The principal is not entitled to any form of disposition of the conditional commodities (e.g. pledging, transfer of ownership by way of security). Should the principal default on payment, he shall inform Topac of the transfer for payment to a third party as well as provide the necessary information and documents.

5.5

Any further processing of the conditional commodities is carried out by the principal in the name and on behalf of Topac without the creation of obligations for the latter. Whenever conditional commodities are processed, connected, mixed or blended with other goods which do not belong to Topac, the latter is entitled to a co-ownership of the resulting product in proportion to the outstanding invoice value of the conditional commodities to the processed goods at the time of processing, connecting, mixing or blending. Should the principal be sole owner of the newly created object the parties to the contract agree that the principal shall grant Topac co-ownership to the object proportionate to the invoice value of the processed, connected, mixed or blended conditional commodities and duly keep such objects for Topac free of charge.

5.6

Should the conditional commodity be subject to resale together with other goods irrespective of whether with or after processing, combining, mixing or blending, the above stipulated transfer shall be limited to the invoice amount of the conditional commodity at the time of resale.

5.7

A lien to all raw materials entrusted by the principal shall be established with delivery to secure all current and future accounts receivable arising from the supply of goods.

5.8

Should the value of securities seized exceed the total sum of accrued receivables by more than 20 per cent, Topac shall by order of the principal release any excessive securities, the choice of which remains at Topac's discretion.

6. Risk, shipment

6.1

The cost and risk of shipment shall fall to the principal. Risk passes to the principal as soon as the consignment has been handed over to the person responsible for transport or has left the Topac works for the purpose of shipment. Should the goods be ready for dispatch and the shipment or removable be subject to delay for reasons beyond Topac's control (force majeure), risk passes to the principal with receipt of advice of dispatch.

6.2

The means and routes of transport shall be left to Topac's discretion unless otherwise agreed.

6.3

The consignment shall only be insured for shipment upon expressed written request of and to the expense of the principal.

6.4

Any necessary packaging material shall be supplied at cost price plus current German Value Added Tax and charged to the principal's account, unless otherwise agreed.

6.5

Topac shall only take back packaging material when it is legally obliged to do so. Inasmuch as Topac has taken back transport packaging material, the cost of backhaul shall be borne by the principal. Print-standard transport cartons are returnable and remain legal property of Topac. Such cartons will be taken back by Topac with each new delivery.

7. Delivery time, delivery

7.1

Delivery times shall be approximate, unless delivery times have been explicitly set down in writing.

7.2

Should the delivery time be measured in time periods, the latter begins with the date of issue stated in the order confirmation. It ends with the course of the day during which goods have left the Topac works or have been stored due to indispatchability.

7.3

The delivery time is interrupted for the duration and examination of transferred data, prints, finished samples, blueprints etc. by either the contractor or his principal. The interruption begins with the shipment to the principal and ends with receipt of either the contractor's or his principal's comments.

7.4

Any later amendments to the contract which can influence the delivery dates extends the latter appropriately unless there are agreements to the contrary.

7.5

Any delay in delivery or fulfilment due to force majeure or occurrences impeding, aggravating or rendering the delivery impossible, e.g. strike, lockout, official order etc., or when such events affect Topac's suppliers or their sub-suppliers, Topac shall not be made responsible for adhering to definite and binding delivery dates. The occurrence of any such incidences entitles Topac to postpone delivery or fulfilment for the duration of the impediment plus an appropriate reinitialisation period or to withdraw in part or entirely from the contract on the grounds of inability to fulfil contractual obligations.

7.6

Should the duration of impediment exceed three months,

the principal is entitled after adequate and reasonable extension to withdraw from the contract on the grounds of non-fulfilment of contractual obligations. Should delivery time be subj

ect to prolongation or Topac is relieved of its obligations, the principal cannot derive any claims for damages therefrom. Topac, however, can only plead force majeure if it immediately informs its principal.

7.7

Topac is at all times entitled to partial delivery and partial performance inasmuch as this does not result in undue hardship for the principal.

8. Delay in taking delivery of purchased goods

8.1

In the event that after expiration of an appropriate and adequate respite with the warning of challenge the principal continues to refuse acceptance or having seriously and definitely declared his rejection, Topac can withdraw from the contract or sue for damages on the grounds of non-fulfilment.

8.2

In the event that the principal does not accept the consignment within an appropriate and adequate term upon order completion or promptly upon advice of dispatch or the shipment of the consignment be impossible for a prolonged period of time as a result of circumstances beyond Topac's control, Topac can store the consignment either in its own stores or at a forwarding agency at risk and cost of the principal.

9. Complaints

9.1

The principal shall in each individual case examine the goods delivered, including preliminary and interim products presented for proof-reading to determine whether these are conform with the sale contract. This is particularly true for products deemed for further processing, assembly, or any other form of combining or are meant for functional purposes (e.g. bar-codes, computer codes etc.). The principal's obligation to examine goods delivered remains intact when he has received production samples. The risk involving any errors passes on to the principal with his declaration of fair copy, inasmuch as following the declaration of fair copy the arising error or errors are not the result of production procedures or their recognition was dependent upon final completion. This stipulation is effective for all other statements of release as issued by the principal in regards to further production.

9.2

Complaints by reason of obvious defects or flaws shall be submitted within an exclusion period of one week upon receipt of goods. Topac retains the right to re-examine the rejected goods. Hidden defects or flaws which could not be immediately detected upon due examination can

only be asserted if Topac receives notice of defects within six months after receipt of goods.

9.3

Defects or flaws involving a part of the completed order do not entitle the principal to reject the entire consignment.

9.4

Over- or short-shipment of up to 5 per cent of the edition ordered does not represent valid grounds for complaint. Topac shall only invoice the factual quantities delivered. This percentage rate increases to 10 per cent for particularly labor- or cost-intensive production procedures as well as for editions or the number of pieces of up to 10,000 copies.

9.5

Minor complaints about the goods delivered do not entitle the principal to retain a part of the contractor's remuneration. Complaints are deemed minor when the value of the subsequent improvement or redelivery is expected to amount to less than 10 per cent of total remuneration. Any other complaints or objections entitle the principal to retain a maximum of twice the value of the subsequent improvements or redelivery. The principal does not have recourse to commercial lien or remuneration or a partial remuneration inasmuch as Topac has recognized the complaints in writing and committed itself to subsequent improvements or redelivery.

10. Warranty claims for defective quality

10.1

Should the objects delivered prove unsatisfactory or miss guaranteed characteristics or prove defective within the warranty period, Topac shall at its discretion and under exclusion of all other warranty claims on the part of the principal supply replacements or improve subsequently.

10.2

The warranty period begins with the delivery of the goods to the principal and ends six months after the goods have left the Topac works at the latest.

10.3

Should Topac allow an appropriate and adequate respite to expire without providing replacements or remedying defects or flaws or should a subsequent improvement prove ineffective, the principal shall be entitled to withdraw from the contract under exclusion of all other warranty claims. Topac's liability for replacements or subsequent improvements comprises the same rights and obligations as the originally supplied objects. The warranty period begins anew with the replacements.

11. Compensation claims

11.1

Topac is liable for contract-related and at the conclusion

of the contract foreseeable damages unless such damages originate from a willful or premeditated act or gross negligence on the part of Topac's legal representative or managing employee.

11.2

Topac is only liable for damages caused by willful acts or gross negligence on the part of its other employees if such damages are in violation of any primary or secondary obligations (cardinal obligations).

11.3

As a rule Topac is not liable for slight negligence unless such negligence pertains to an essential contractual cardinal obligation, in which the principal particularly trusts.

11.4

Topac is only liable for damages to other products (consequential damages) than those produced or manufactured by Topac for its principal within the legal obligations laid down in the German Act of Product Liability.

11.5

Topac is excluded from liability for damages resulting from inadequate examination (as per Subparagraph 10.1 herein) previous to further processing.

12. Liability for Colour and material deviations

12.1

Immaterial deviations from the original copy ascertained in colour print reproductions are not grounds for rejection. This remains effective for any comparison of test prints and batch prints.

12.2

Topac is solely liable for non-fadingness, fastness and regularity of colours used as well as the quality of adhesive coatings, lacquer finishes, adhesive bonds as well as surface finishes unless such material defects or flaws were distinguishable within the course of proper examination previous to their implementation.

12.3

Topac is not liable for naturally occurring material deviations whenever the principal has directed the implementation of such materials.

12.4

Inasmuch as Topac has a third party carry out specialised processes or tasks the conditions stipulated under sub-clause 13.1 herein is correspondingly effective.

12.5

Topac is solely liable for considerable deviations in the quality of the materials it procures (paper, plastics, pasteboards etc.) to the amount of its own accounts receivable against the material supplier. Topac is released from liability when it transfers its claims against its supplier to the principal. Topac is liable to the extent of a guarantor as

defined by German law, unless claims against material suppliers etc. remain by way of Topac's own fault or such claims are assertible.

13. Data transfer

13.1

Any and all data entrusted to Topac shall be backup copies.

13.2

The principal is solely responsible for the production, preparation and compiling of data as well for carrying out all correction procedures.

13.3

The principal has been informed and is aware of the information on entrusting data as compiled in the Topac brochure „Standards for Entrusting Data“.

13.4

Topac is neither liable nor responsible for defects or flaws resulting from a data stock that does not fulfil the necessary specifications.

14. Provision of materials

14.1

Materials procured by the principal shall be delivered Franco domicile in perfect condition. Receipt shall be confirmed without guarantee for the correctness of quantities designated in the consignment note. The principal shall refund Topac any costs incurred through payment or the examination of weight as well as storage charges for larger consignment lots.

14.2

The principal shall bear all risks involving the usability of the materials supplied. Topac is entitled to reject materials as far as it finds such materials unsuitable for purpose of completing and fulfilling the sales contract.

14.3

Should the principal make media components available, Topac shall not be made responsible or liable for any losses which are in conjunction with unavoidable waste loss as a part of the processing and the completion of orders. The principal shall take back any and all packaging materials.

14.4

In the event that the material provided by the principal is damaged or lost, Topac shall not be made liable unless its legal representative, managing employee, or other employees have acted either willfully or grossly negligently.

14.5

Material deemed for reuse or further processing as well as semi-finished and finished goods including raw materials belonging to the principal, shall be retained with reser-

vation as to the special provisions preceding beyond the delivery date solely upon previous agreement and against payment. The objects shall otherwise be entrusted to a forwarding agency for warehousing on behalf of and at the risk of the principal, unless the transshipment of such materials has been requested within four weeks after completion of the order. The principal shall provide the insurance for such objects.

15. Copyrights

15.1

The principal is solely responsible for reviewing rights of reproduction for all print and holographic copies. The principal is solely liable if rights and in particular copyrights of third parties are infringed through the execution of his order. With the placement of his order the principal exempts Topac from all third party claims arising any such infringement of rights.

15.2

Topac retains the copyrights and rights of reproduction to its own sketches, drafts, miscellaneous original copies, films as well as any similar objects in each and any procedure and for each and any purpose unless explicitly regulated otherwise.

16. Proof-reading, proofs

16.1

The principal shall examine all proofs, colour schemes and imprints with regard to the correctness of typesetting and miscellaneous mistakes and return them pronounced ready for printing to Topac. The examination through the principal applies to the correctness and usability of computer-readable codes (e.g. bar-codes etc.) which are technically or in any other way linked to the product. Topac shall not be made liable for errors overseen by the principal.

16.2

Topac shall not be liable for delays resulting from late returns.

16.3

For smaller print contracts Topac shall not be obliged to send its principal proofs or supply imprint copies. Should the principal not explicitly demand receipt of proofs, Topac's liability for typesetting errors is restricted to willfulness and gross negligence.

16.4

The latest edition of the Duden standard reference of German spelling is authoritative for all questions of German spelling.

17. Periodical contracts

Agreements on regularly recurring print, production and imprint orders can only be terminated under observance

of a three-month term of notice to the end of the respective month, unless agreements to the contrary have been made. The right to termination without notice for sound reasons remains unaffected hereby.

18. Masthead

Topac can refer to its company on the contracted products with the principal's permission. The principal can only refuse to grant Topac such permission if he can present predominant interests.

19. Place of fulfilment, place of jurisdiction

19.1

Place of fulfilment is Guetersloh, Germany.

19.2

Place of jurisdiction for all disputes between the parties of the contract as far as the principal is a fully qualified merchant under the German Commercial Code is the Regional Court of Bielefeld, Chamber for Commercial Matters.

20. Miscellaneous

20.1

Verbal collateral agreements shall not be effective. Amendments to these Terms and Conditions require the mutually agreed written form. This also pertains to the waiving of the required written form.

20.2

The legal relations between Topac and the principal are solely subject to German law without recourse to UN purchasing rights.

21. General information requirements according to §36 consumer dispute settlement law (Verbraucherstreitbeilegungsgesetz "VSBG")

We are refraining from participation in the dispute settlement procedure as laid down in the VSBG.