

General Terms & Conditions

for print and pre-press orders of

Messe Frankfurt Medien und Service GmbH (status May 2013)

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1. Scope, conclusion of contract

All print and pre-press orders, including those in the future, governing goods deliveries such as print products, and services such as print setting, graphic and lithographic design and layout, between Messe Frankfurt Medien und Service GmbH (MFS) and the Client (buyer) shall be governed exclusively by the following Terms & Conditions of Business. Any conflicting terms and conditions, or conditions different from these Terms & Conditions, issued by the Client shall not be recognised, unless MFS has agreed expressly and in writing thereto.

2. Prices

1. The prices stated in the offer by MFS shall apply under the proviso that the order details on which the offer is based shall remain unchanged, but for no longer than two months following receipt of the said order by the Client. In the case of orders involving delivery to Third Parties, the Client shall be deemed to be the ordering party unless an express agreement otherwise has been reached. The prices of MFS shall be in Euros and shall not contain any Value Added Tax. The prices of MFS shall be ex works. They shall not include freight, postage, insurance or other shipping costs.
Each order shall only be legally valid in all its details if it has received a written confirmation by MFS. Initial samples, proofs, press proofs etc. must be checked by the Client and returned to MFS certified ready for processing. MFS shall not be liable for errors not identified by the Client.
2. Subsequent changes at the Client's instance must be in writing and shall be charged to the Client, to include the machine stoppage caused thereby. Subsequent changes shall be deemed to include repetitions of press proofs which the Client has required due to a minor deviation from the copy.
3. A charge shall be made for sketches, drafts, specimen print-offs, proofs, amendments to data delivered or transmitted and similar preliminary work produced at the Client's instigation.

3. Payment

1. The invoice shall be payable immediately following issue, strictly net. MFS hereby expressly reserves a right of cash in advance. Payments must be made to one of the accounts named on the invoice, stating invoice and client number. No discounts shall be granted on early payments. Invoices must be protested in writing within an exclusion period of 14 days following their receipt.
2. The Client may only offset undisputed claims against MFS, or claims which have been finally confirmed at law. This shall also apply in trading transactions. The Client shall enjoy the right of retention under Section 273 of the German Civil Code (BGB) only insofar as the counterclaim arises from the same contractual relations. Sections 273 and 230 of the Civil Code (BGB) and Section 369 of the German Commercial Code (HGB) shall not apply in business transactions with traders.
3. Should fulfilment of a claim to payment be endangered by a serious deterioration in the Client's assets only revealed following conclusion of contract, MFS may require payment in advance, retain goods not yet delivered, and suspend further work. MFS shall also enjoy these rights if the Client is in arrears of payment for deliveries based on the same legal relations.

4. Delivery

1. If goods are to be shipped, risk shall pass to the Client as soon as the shipment is transferred to the person effecting the transport. MFS shall have no duty to take out insurances against loss or damage of any kind.
2. Shipment shall be on the account and at the risk of the Client. Unless agreed otherwise, MFS shall choose the packaging, the dispatch route and the mode of carriage as it shall deem fit. The Client shall pay the costs of packaging.
3. Delivery deadlines shall only be binding if they have been expressly confirmed by MFS. Should the contract be concluded in writing, confirmation of the delivery deadline must also be in writing.
4. The Client shall have a duty to accept the goods on the agreed delivery date. The Client shall be charged for the costs of repeated deliveries and/or waiting times. In the case of deliveries to a trade-fair stand, MFS hereby reserves the right to deliver the goods at the stand without personal acceptance by the Client. Delivery by MFS in accordance with contract shall then have been made.
5. Should MFS be in arrears, a reasonable period of grace must first be granted.
6. Interruptions to business, both to the business of MFS and that of its supplier – such as strike, lock-out, and all other instances of force majeure – shall only justify withdrawal from contract when the Client cannot reasonably be expected to wait any longer, otherwise the agreed delivery time shall be extended to include the period of the delay. Withdrawal shall be possible, however, no earlier

than four weeks following eventuation of the foregoing interruption to business. Any liability in these cases on the part of MFS is hereby excluded.

7. In commercial transactions MFS shall enjoy a right of retention under Section 369 of the German Commercial Code (HGB) to such artwork and stamp work, manuscripts, raw materials and other items as have been supplied by the Client until complete fulfilment of all receivables due under business relations.

5. Reservation of title

1. Goods delivered or services rendered shall remain the property of MFS until payment in full of all receivables due as of the invoice date to MFS from the Client.
2. The Client shall be entitled to undertake resale only in the course of due and proper business. The Client shall hereby assign to MFS its receivables due under such resale. MFS hereby accepts the said assignment. The Client shall have a duty, in case of default at latest, to state the debtor of the receivable so assigned. Should the value of the securities existing for MFS exceed its receivable by a total of more than 20%, MFS shall have a duty, if so required by the Client or a Third Party disadvantaged by MFS's over-securitisation, to release securities to this extent as MFS may choose.
3. Should goods delivered by MFS to which it enjoys title be worked or processed, MFS must be viewed as the manufacturer under the terms of Section 950 of the German Civil Code (BGB) and shall retain title to the said products at every stage of their processing. Should Third Parties be involved in the said processing or working, MFS shall be restricted to proportionate joint ownership in the sum of the invoice value of the said reserved goods. The title so acquired shall be deemed to be a reserved title.

6. Withdrawal from contract

Should the Client withdraw from the contract, MFS not being culpable, he shall be liable for the costs incurred until delivery of his written declaration to this effect.

7. Complaints, guarantees

1. The Client must in every case immediately check goods delivered or service rendered and such preliminary and interim products as have been sent, to ensure that they are in accordance with contract. The risk of any errors shall pass to the Client upon declaration of print-readiness or production-readiness or final release, providing the errors concerned are not errors which have only been created or could only be identified in the production process subsequent to declaration of print-readiness or production-readiness or final release. The same shall apply to all other declarations of release made by the Client.
2. Complaints shall only be permitted within one week following receipt of goods. Any claim for concealed defects, not to be found following immediate inspection, must be brought within the statutory guarantee period.
3. Should complaints be justified, MFS shall have a duty, to the exclusion of other claims, either to rectify the error or to supply a replacement delivery, as it may choose. Should rectification be delayed, should it fail to be made, or should it not succeed, the Client may require a reduction in payment (abatement) or, having set an appropriate period of grace, withdrawal from contract.
4. Defects in one part of goods delivered or service rendered shall not justify a complaint of the whole delivery, unless the partial delivery is without interest for the Client.
5. No complaint can be made of minor deviations from the original in coloured reproductions resulting from any production processes. The same shall apply to the comparison between other copy (e.g. digital proofs, test proofs) and the end product.
6. MFS shall undertake no guarantee that the products are suitable for the purpose envisaged by the Client, particularly in the case of unsuitable or improper use. This shall apply in particular to self-adhesive products, since in their case the reaction of the adhesive to particular materials (e.g. plastic, fine leather, textiles etc.) cannot be seen in advance. It is therefore requisite that the Client should carry out his own adhesive tests on the original material.
7. Technologically justified tolerances in size, colour, adhesive coating, material, weight, quality and other finishing shall not be grounds for complaint on the part of the Client. Carbon papers and under-copy papers, plastic sheets and similar special materials shall be governed, as regards their quality, print-colour fluctuations, or capacity for under-copying, processing or storing, by the terms and conditions of the manufacturer and/or supplier of these basic materials in question.
8. In case of justified complaints, MFS shall be liable for deviations in the characteristics of the material employed only up to 50% of the order value.

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9. Deliveries (including data carriers, transmitted data and reproductions) by the Client or by a Third Party employed by the Client shall not be subject to any duty of scrutiny on the part of MFS. This shall not apply to data which are obviously not suitable for processing or which are not legible. In the case of data transmissions the Client must employ prior to transmission such proper programs for protection against computer viruses as correspond to the latest state of technology.

The Client shall be solely responsible for data backup. MFS shall be entitled to make a copy.

10. No complaint may be made of over-deliveries or under-deliveries of up to 10%. The charge shall be made for the amount delivered. In case of deliveries of special paper productions of under 1,000 kg, the percentage shall be increased to 20%, under 2,000 kg to 15%.

8. Liability

1. MFS shall not be liable for loss or damage caused by simple negligence, unless essential contractual duties are breached thereby, fulfilment of which is necessary for attainment of the contractual purpose (breach of cardinal duties).

2. In case of breach of cardinal duties through simple negligence, MFS shall be liable only for such loss or damage as is contractually typical and foreseeable upon conclusion of contract. It shall not be liable in this case for indirect consequential loss.

3. The liability of MFS shall be limited to a foreseeable amount of loss or damage and shall be restricted in its amount to the payment due for the print or pre-press order in question.

4. The foregoing limitations of liability shall not apply if claims are brought for damage to life, limb or health, if the liability is compulsory under the Product Liability Act, if the matter involves a guarantee or a case of malicious concealment of a defect, or in case of deliberate intention and gross negligence.

9. Commercial usage

In transactions with traders the commercial usages of the printing industry shall apply (e.g. no duty to surrender interim products such as data, lithographs or printing plates which have only been created to manufacture the end product due), unless an order to the contrary has been issued.

10. Archiving

Products due to the Client, particularly data and data carriers, shall only be archived beyond the time when the end product is transferred to MFS or its vicarious agents following express agreement and in return for separate payment. If the foregoing items are to be insured, in the absence of any agreement the Client must take out such insurance himself.

11. Commercial protective rights, copyrights, property

1. The Client shall be responsible for ensuring that all statements made and data delivered to MFS are complete and legally permissible. Use of data of Third Parties shall require their permission and shall be deemed to have been obtained upon issue of order to MFS. Should rights of Third Parties be breached by execution of his print or pre-print order, particularly copyrights, trademarks or rights of competition, the Client shall be solely liable. This shall also apply with respect to rights to internet domains and to the contents and designs of home pages and websites. In this connection the Client shall release MFS from all claims by Third Parties for such an infringement of the law.

2. Licences (e.g. for illustrations) shall only be acquired by MFS to the Client's order and only for the scope of use stated in the order. MFS shall not be liable for loss deriving from secondary uses which are not covered by the licence pursuant to contract.

3. Samples, sketches, drafts and test prints produced by MFS or to its order shall remain its property.

4. All rights of MFS to drafts, final artwork, originals, films, printing, stamping and indenting tools etc. used in every process and for every purpose shall remain with MFS, unless expressly agreed otherwise in writing. The right to the intellectual property of MFS shall not be affected thereby. Work by MFS must not be duplicated, copied, imitated, or supplied to Third Parties.

5. Lithographs, stamping tools and printing tools manufactured by MFS or to its order and other mechanical aids and apparatus shall remain the property of MFS, even if the manufacturing costs thereof have been invoiced wholly or in part and paid by the Client. MFS shall have no duty to surrender these items to the Client.

6. Printing tools and documents supplied by the Client shall only be stored by MFS if this is expressly required.

12. Place of fulfilment, place of jurisdiction, German law

1. The Contracting Parties hereby expressly agree, providing they are traders, legal entities under public law or special public assets, that Frankfurt am Main shall be the place of fulfilment and place of jurisdiction for all claims or disputes arising from this Contract. The same shall apply if one Contracting Party has no general place of jurisdiction in Germany.

2. In lieu thereof, the particular place of jurisdiction of the place of fulfilment under the terms of Section 29 of the Civil Proceedings Code shall be deemed to be agreed, arising from the nature of the terms of debt.

3. Frankfurt am Main as the place of jurisdiction shall also apply to contested summary proceedings for debt. As soon as the reminder process passes to contested summary proceedings and a referral has been officially made to the court materially competent for the debtor's general place of jurisdiction, an application must be made to refer the case further to the materially competent court in Frankfurt.

4. Beyond this each Contracting Party shall be entitled to sue the other at its place of resident or business.

5. Should any individual provisions of these Terms & Conditions be invalid, the validity of the remaining provisions shall not be affected thereby. The Contracting Parties hereby agree, in lieu of the invalid provisions, to agree other valid provisions which shall correspond as closely as possible to the commercial intention of the said invalid provisions.

6. Interpretation of these General Terms & Conditions of Business and of all other terms and conditions shall be governed by the German text and German law.

13. Data protection

MFS shall collect personal data and process and use the information supplied by the Client by in the course of order issue only insofar as this is necessary to carry out the order.

Messe Frankfurt Medien und Service GmbH
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