

General Terms and Conditions of Supply and Payment of Services by Four Manufacturing Services GmbH

§ 1 General Provisions – Scope of Application

- (1) Solely the sales conditions set forth hereinbelow shall apply to all orders now and in future, irrespective of whether they are executed without reservation with knowledge of conditions of the purchaser deviating herefrom, insofar and as long as in an individual case no deviation is explicitly effected herefrom in writing.
- (2) All agreements reached between us and the purchaser for the purpose of executing this contract shall be documented in writing in this contract. This shall also apply, in particular, to agreements of the purchaser with one of our sales representatives. In particular oral supplementary agreements are only binding if they are confirmed by us in writing.

§ 2 Offer

If the order is to be classified as an offer pursuant to Section 145 German Civil Code (BGB), we have two weeks time in which to accept it.

§ 3 Documentation - Tools

- (1) The purchaser shall enclose, free of charge, the documentation required for the production of the audio media and printed matter with the order in clear form in writing. If the materials are not directly usable for the production process applied by us, we have the right – without any further consultation with the purchaser – to perform any necessary extra processing at the purchaser's expense and for the purchaser's account at the hourly rate applying at the respective time. If additional costs are incurred on the production of the audio media or printed material as a result of false, ambiguous or delayed details from the purchaser, then these shall be borne by the purchaser.
- (2) Master copies, graphic documentation, lithographs and films the purchaser makes available to us for production of an audio medium, may be returned following the use thereof at the expense and risk of the purchaser subject to § 4 (1). In the event of loss for which we are responsible of tapes, graphic documentation, lithographs or films owned by the purchaser, we shall replace the value of the raw materials of the lost item. We do not have to refund the renewed manufacturing costs or any damages in excess of this. The purchaser is responsible for producing back-up copies.
- (3) The master copies, graphic documentation, films, lithographs and tools made by us to produce the audio media shall remain our property and are not included in the production price.

§ 4 Storage Costs

- (1) Surplus printed materials and packaging materials ordered by the purchaser and printed materials provided by the purchaser shall be stored for up to 18 months free of charge after the order without any repeat order.
- (2) If no repeat order is placed after expiry of this 18 month period, the materials set forth in (1) shall be returned pursuant to § 3 (2) at the purchaser's request, which has to be notified within a further two week period, otherwise they shall be destroyed.

§ 5 Prices – Terms of Payment

- (1) We reserve the right to amend our prices accordingly if there should be any rise or fall in costs after the contract has been entered into, e.g. as a result of increases in the price of materials. We shall evidence these to the purchaser upon request.
- (2) Statutory Value Added Tax is not included in our prices. It shall be itemized separately in the invoice at the statutory rate applying on the invoice date.
- (3) A special written agreement is required for deduction of a discount.
- (4) Save as otherwise provided in the order confirmation, the net purchase price (without deduction) is payable immediately. The invoice amount for audio media productions is generally payable cash in advance unless otherwise agreed. If the purchaser is in default of payment, we have the right to demand default interest in an amount 5% p.a. above the respective discount rate of the German Federal Bank (Deutsche Bundesbank). If we are able to prove any further damages due to default, we have the right to claim such further damages. The purchaser is, however, entitled to prove to us that no damage or considerable less damage was incurred by us due to the default of payment.
- (5) Our consent is required for bills of exchange; the fees and charges thereof and the risk of punctual presentation and protest are to be borne in full by the purchaser.
- (6) The purchaser only has a right of offset if its counterclaims have been recognized by final and binding judgment, if they are undisputed or have been recognized by us. The purchaser has no right of retention on account of disputed counterclaims.
- (7) A cancellation fee of EUR 50 is levied for the cancellation of orders.
- (8) The purchaser is obliged to take delivery of the goods immediately after completion thereof or on the delivery date advised. The purchaser shall ensure that the goods can be delivered to the consignee at the delivery destination during the specified timeframe. If this should not be the case, a second delivery charge will be levied.
- (9) If it is not possible to effect delivery ex works during the specified timeframe because the respective preconditions have not been met or have only been partially met by the purchaser side, we shall levy a storage charge of EUR 50 plus VAT per month from the date of storage of the goods or for holding them in readiness. This charge shall fall due for the first time when the goods have been ready for delivery for longer than four weeks from the delivery date advised. The timeframe for delivery indicated in the prepayment invoice is decisive for this.

§ 6 Delivery – Passing of Risk

- (1) Unless otherwise agreed, delivery is ex works.
- (2) If delivery free domicile is agreed, the precondition for delivery is the prior receipt of payment of the purchase price. Delivery shall be effected by the most economic means of dispatch.
- (3) We reserve the right to effect partial deliveries.
- (4) If returns are justified, we shall bear the cost of the most economic form of dispatch.

§ 7 Delivery Period

- (1) The precondition for commencement of the delivery period indicated by us is that all technical questions have been clarified and that in particular the full production documentation has been received.
- (2) If we are in default of delivery for reasons for which we are responsible, liability for damages is excluded in the event of ordinary negligence.
- (3) If, after we are already in default, the purchaser stipulates a reasonable additional period for performance by us, threatening to refuse acceptance, then the purchaser has the right to rescind the contract after expiry to no avail of this additional period. The purchaser is only entitled to claims for damages on account of non-performance in the amount of the foreseeable damages if the default is based on intent or gross negligence. In other respects liability for damages is limited to 50% of the damages incurred.
- (4) The limitations of liability pursuant to paras 2 and 3 do not apply insofar as a transaction has been agreed to be performed at a specific point in time (Fixgeschäft). The same shall also apply if the purchaser can assert that, on account of the default for which we are responsible, its interest in performance of the contract has ceased.
- (5) We are not responsible for delays to delivery on account of force majeure or due to events which make delivery significantly more difficult or impossible for us – such events being circumstances which it is impossible to prevent with the care of prudent business management, in particular non-imputable technical problems or impairments to performance at our suppliers and their sub-suppliers – even in the event of dates and periods agreed as binding. In such a case we have the right to postpone supply by the period of time of the impairment plus a reasonable start-up period or to rescind the contract in whole or in part with respect to that part thereof not yet performed.
- (6) If the impairment lasts for longer than three months, the purchaser has the right, after stipulating a reasonable additional period for performance, to rescind the contract with respect to that part thereof not yet performed. If the delivery period is extended or if we are released from our obligations, the purchaser may not derive any claims for damages therefrom. The precondition for invoking the aforementioned circumstances is that the purchaser is notified immediately.

§ 8 Quantity and Production Tolerance

- (1) In the event of a minor shortfall in the quantity supplied, the purchaser has no right to claim subsequent delivery insofar as the delivery tolerance is within acceptable limits. In this case no charge shall be made for the shortfall in quantity.
- (2) Minor additional quantities arising will be included in the delivery and charged for insofar as the delivery tolerance is within acceptable limits.
- (3) Delivery tolerance is deemed to be within acceptable limits provided that it does not exceed 20% in the case of orders for quantities of below 1000 items and 10% in case of orders for quantities above 1000 items and provided that this is due to technical production reasons.
- (4) Final products with deviations for technical reasons from the graphic samples and master tapes, are also deemed to be in compliance with the contract, insofar as the deviations are within the bounds customary in the trade.

§ 9 Warranty – Compensation for Damages

- (1) The purchaser must examine the goods supplied for defects without delay upon receipt thereof. Complaints shall only be taken into consideration if they are raised in writing together with evidence within 8 days after receipt of the goods – in case of concealed defects after discovery thereof, but no later than 6 months after receipt of the goods. If the purchaser fails to conduct such an examination and, in the event of a defect, if the purchaser fails to give notification of the defect, the goods shall be deemed accepted.
- (2) Goods objected to may only be returned given our consent.
- (3) Non-receipt of a consignment of goods ordered must be notified no later than 8 days after receipt of the invoice for the goods.
- (4) Liability is excluded for anything other than production faults or defects in the material. A technical production fault of compact disks exists in the event of deviations from the technical data of the Red Book standard.
- (5) In the event of warranty we shall, at our election, either supply a replacement or issue a credit note.
- (6) If the supply of a replacement should be abortive or delayed for a period of time in excess of what is reasonable, for reasons for which we are responsible, the purchaser has the right, at its election, to demand rescission of the contract (Wandlung) or a reduction of the purchase price (Minderung).
- (7) Save as otherwise provided hereinbelow, any further claims by the purchaser are excluded – for whatsoever legal grounds. We are not, therefore, liable for damages not incurred by the item supplied itself. In particular we are not liable for lost profit or other pecuniary loss of the purchaser.
- (8) The foregoing exclusion of liability shall not apply insofar as the cause of the damage is based on intent or gross negligence. Nor shall it apply if the purchaser asserts claims for damages on account of the absence of a warranted characteristic for non-performance pursuant to statutory provisions governing warranty for defects as to quality upon purchase.
- (9) Insofar as we negligently violate a cardinal obligation or a material contractual duty, our compensation obligation is limited to foreseeable damages typical for the contract.
- (10) The warranty period is for two years calculated from the date of passing of risk and subject to non-existence of a preclusion of the rights.

§ 10 Reservation of Title

- (1) The goods sold shall remain our property pending full payment of our accounts receivable under the business relationship with the purchaser. The purchaser has the right of disposal over the goods in the normal course of business.
- (2) The purchaser assigns to us now already as security its claims against third parties arising from the resale of the goods either in full or in the amount of any joint property share we hold. The purchaser is authorized to collect these claims for our account pending revocation of the authorization or suspension of its payments to us. The purchaser is not authorized to assign such claims, including any assignment for the purpose of collecting accounts receivable by means of factoring, unless the obligation of the factor is simultaneously established so that counter-performance is effected directly to us in the amount of our share of the accounts receivable for as long as we still have claims outstanding against the purchaser.
- (3) The purchaser must notify us without delay by letter sent by registered mail of any attachment by third parties of the goods and accounts receivable belonging to us.
- (4) Exercising the reservation of title does not signify rescission of the contract.
- (5) Prior to full payment of our accounts receivable, the goods and the claims by which they are replaced may neither be pledged to third parties nor assigned or transferred as security.
- (6) If the value of the security exceeds our accounts receivable by more than 20%, we shall release security at our discretion to this extent at the purchaser's request.

§ 11 Copyright – Labelling of Goods

- (1) The purchaser guarantees that the manufacture and reproduction of the audio media forming the subject matter of the contract is not opposed by any statutory orders or prohibitions, nor by third party rights, in particular copyright, publishers' protective rights, artist protective rights, trademark rights and protective rights in design. The purchaser indemnifies us from and against all claims asserted against us arising from a violation of the aforementioned rights. This also applies, in particular, to any attorney's fees and court costs arising in this respect.
- (2) All copyright licenses, copyright fees, royalties etc. with respect to all audio media ordered and produced are to be paid by the purchaser to the beneficiaries thereof including, in particular, copyright societies. The purchaser releases us from any responsibility in this respect. If claims are asserted against us by third parties in this respect, the purchaser shall indemnify and hold us harmless with regard to such claims and the damages and costs resulting therefrom.

§ 12 Jurisdiction and Venue – Place of Performance

- (1) If the purchaser is a registered merchant (Vollkaufmann), the courts of Berlin shall have jurisdiction and venue. We also have the right, however, to take action against the purchaser at the court with jurisdiction at its place of domicile.
- (2) Unless otherwise provided in the order confirmation, place of performance is at our principal place of business in Stuttgart.