

# **General Terms and Conditions of Business of Marschall GmbH & Co. KG governing the sale of new and used technical equipment, labels and new printing systems to other companies:**

## **I. Preliminary remarks**

1. The following terms and conditions apply to business relationships between MARSCHALL and its purchasers and govern, in particular, the sale of new and used technical equipment, labels and new printing systems (in each case: "object of purchase").

Deliveries shall be based solely on the following terms and conditions of supply and payment. Other terms and conditions of business and purchase that contradict or supplement these terms and conditions are only binding on the vendor if the vendor has explicitly accepted the same.

2. The prices quoted and terms offered for the vendor's merchandise are non-binding. Verbal agreements are only valid if confirmed in writing.

3. The display of merchandise on the internet is a non-binding invitation to clients to order merchandise and does not constitute an offer submitted by the vendor.

4. In the context of these terms and conditions of business, consumers are individuals with whom MARSCHALL enters into a business relationship but who are not acting as commercial business or self-employed individuals.

In the context of these terms and conditions of business, entrepreneurs are individuals, legal entities or private companies that are legally entitled to conduct business with whom MARSCHALL enters into a business relationship and who are acting as commercial or self-employed business entities.

## **II. Purchase contract**

1. Orders are binding on the purchaser. The purchase contract is deemed to be validly concluded when the vendor has confirmed in writing its acceptance of the order for the object of purchase within a period of four weeks or has delivered the same within this said period.

2. Rights and obligations arising from the purchase contract may only be transferred with the prior written approval of the other contract partner.

3. All agreements must be recorded in writing. This applies equally to supplementary agreements and guarantees and to subsequent contract amendments.

4. In the case of certain types of contract, the purchaser, who is also the consumer, is entitled to revoke a contract signed by itself within a period of 14 days. This right of revocation applies, in particular, to distance selling contracts, contracts governing hire purchase agreements and instalment payments, and instalment supply contracts.

a) Distance selling contracts are agreements governing the supply of merchandise that are negotiated solely by means of distance communication. Means of distance communication are means of communication that can be used to initiate or conclude

an agreement between a consumer and an entrepreneur without requiring the physical presence of the contract parties, and can include above all letters, catalogues, telephone calls, facsimiles, e-mails and other teleservices and media services.

b) Hire purchase transactions are transactions that entitle the consumer to pay its debt in instalments.

c) Instalment supply contracts are agreements governing the supply in instalments of several objects sold as a whole, whereby payment for the full order is affected in instalments. Instalment supply contracts are also agreements governing the regular supply of objects of any nature or the obligation to recurrently acquire or purchase objects.

d) In these aforementioned cases, the consumer is entitled to exercise its right of revocation, as a result of which it is no longer bound to its declaration of intent aimed at concluding the agreement provided it has exercised its right of revocation within the allowed period. No reason must be given for the revocation, which must be notified to the vendor in writing or by returning the purchased object within two weeks. Punctual despatch is deemed to be sufficient for adhering to the allowed period. The period commences from the time the purchaser has been notified clearly and in writing about its right of revocation, such notification to also contain the name and address of the vendor. If such information on the right of revocation is not notified prior to the conclusion of the contract, the period is deemed to be one month. In the case of merchandise deliveries, the period does not commence until the day on which the merchandise is received by the purchaser. The right of revocation lapses 6 months after completion of the contract at the latest.

A right of revocation is excluded in the case of merchandise supplied to customer specifications or merchandise from which the seal has been removed.

e) If the consumer wishes to exercise its right of revocation, it must return the merchandise if the latter can be despatched by parcel service. If the purchaser exercises its right of revocation, it must bear the costs of returning merchandise with an order value of less than EUR 40 unless the merchandise is not supplied as ordered. Purchasers must not bear the costs of returning merchandise with an order value in excess of EUR 40.

f) If the consumer has used the merchandise for its intended purpose, it must compensate the ensuing depreciation in the value of the merchandise. Upon receipt of the merchandise, the consumer may apply due diligence to inspecting the merchandise, as it would in a normal shop. The consumer bears the cost of any depreciation in value caused by any utilisation of the merchandise over and above the pure inspection of the same, as a result of which the merchandise can no longer be sold as "new".

### **III. Prices and terms of payment**

1. The purchaser must pay the agreed purchasing price at the time of transfer of the object of purchase. The registered office of the vendor is deemed to be the place of performance.

2. Payments must be effected in cash to the registered office of the vendor. Payment instructions, cheques and bills of exchange will only be accepted as payment upon specific written agreement. All collection and discounting expenses will be charged.

3. In the case of export orders, the purchaser is responsible for commissioning the forwarding agent.

4. Pursuant to the provisions of Section 313 Commercial Code, the vendor is entitled to demand the renegotiation of prices if unforeseen changes to raw material, wage, energy or other costs occur, which render the performance of the contract on the part of the vendor no longer reasonable. If agreement cannot be reached, the vendor is entitled to rescind the contract.

5. If advance payment obligations are agreed in the contract and the purchaser does not comply with the same, the vendor is entitled to rescind the contract and to demand compensation for non-performance if it becomes clear that the satisfaction of the purchase price claim is at risk due to the inability of the purchaser to perform the contract. Such a risk must be assumed, in particular, when the vendor becomes aware of circumstances that could raise pertinent doubts about the purchaser's ability or willingness to pay.

The vendor's right to refuse performance lapses once the purchase price has been paid or the purchaser has provided security in an amount equivalent to the purchase price.

6. If the purchaser does not effect payment after receipt of a reminder sent after payment has become due, the purchaser is deemed to be in default by virtue of the reminder. The purchaser is deemed to be in default at the latest if payment is not effected within 30 days from the due date and receipt of an invoice or equivalent payment schedule. In the case of a purchaser who is also a consumer, this only applies if special notice of these legal consequences is included on the invoice or payment schedule.

7. If the parties have agreed payment in instalments, the entire outstanding amount becomes immediately due for payment – irrespective of the due dates of any bills of exchange - if the purchaser wholly or partially defaults on at least 2 consecutive instalments and is at least 10% behind payment schedule, and the vendor has unsuccessfully granted the purchaser a two-week period of grace to pay the outstanding amount and has notified the purchaser of its intention to demand payment of the entire outstanding amount if payment is not effected within this period.

8. The purchaser may only offset payments against the vendor's claims if such counter-claims asserted by the purchaser are undisputed or have been legally ascertained. The purchaser may only assert a right of retention to the extent that such right relates to claims arising from the purchase contract.

9. Default interest will be charged at 5 % p.a. above the Deutsche Bundesbank discount rate. Such interest will be set at a higher or lower rate if the vendor can prove it has suffered more or if the purchaser can prove that the vendor has suffered less financial damage.

#### **IV. Delivery and delays in delivery**

1. The vendor is obliged to deliver the sold object to the purchaser and to ensure that the latter acquires title to the same. The properties of the merchandise must comply with the specifications defined in the contract and must be appropriate for the utilisation specified in the contract and comply with the performance features

indicated in the order confirmation. Statements contained in brochures or issued by manufacturers are only pertinent to the extent that they relate to binding descriptions of performance features that have been explicitly made the subject of the contract. Non-binding descriptions are features that do not characterise the product in terms of its quality, performance scope and functionality, such as purely external features.

None of the performance features described in the contract constitute guarantees for which the vendor can be held liable pursuant to Section 443 Commercial Code. During the delivery period, the vendor reserves the right to amend the design and shape, or slightly change the colour of the sold object to the extent that the changes to the object are not significant and the purchaser can reasonably be expected to accept them.

2. All delivery dates as indicated are initially non-binding. They must be confirmed in writing by the vendor. Brief delays are not deemed to be cause for complaint unless the parties have explicitly defined the delivery date as binding in the contract. Delivery periods commence upon conclusion of the contract. Delivery dates that have already been agreed are extended if subsequent amendments to the contract are agreed. The extension of the delivery period corresponds in principle to the time that passes between the conclusion of the contract and the amendment of the same unless the parties agree otherwise.

3. The vendor is not deemed to be in default of its delivery obligations until it has received a reminder containing the specification of a new delivery deadline from the purchaser following expiry of the initial delivery period. The subsequent period of grace specified by the purchaser must be at least 2 weeks. The vendor can seek a further extension of the deadline if the delay is caused by circumstances beyond its control.

4. In cases of force majeure or interruptions in operations, which affect the vendor or its suppliers, such as upheavals, strikes or lockouts, and prevent it temporarily from supplying the object of purchase on the agreed date or within the agreed delivery period through no fault of its own, the agreed delivery dates and periods are extended for the duration of the interruptions caused by these circumstances. The purchaser is entitled to rescind the contract if the vendor is prevented by such circumstances from performing the contract for more than 4 months. Other rights of rescission remain unaffected.

5. The purchaser is entitled to demand compensation for damages suffered by delays caused by premeditation or gross negligence on the part of the vendor or a vicarious agent of the vendor. Any claims for compensation of damages caused by delays are limited to maximum 5 % of the purchase price (excl. VAT) if the vendor or its agent are only guilty of negligent breaches of their obligations. Their liability for damages relating to injuries to life or limb or damages to health remains unaffected.

6. The registered office of the vendor is deemed to be the place of performance. The vendor bears the costs of delivery. If the merchandise is to be delivered to a different address, this must be explicitly agreed. If the merchandise is despatched to a location other than the place of performance, the purchaser itself is responsible for paying the associated cost of transportation. The purchaser bears the costs of transport insurance, loading, transportation and any other agreed ancillary services.

## **V. Acceptance and inspection**

1. The purchaser is entitled to inspect the object of purchase at the agreed acceptance location within eight days of receipt of the notification of readiness for delivery and is obliged to accept the object of purchase within this same period.

2. This right of inspection is implicitly waived if the inspection is not performed within the aforementioned period or if the shipping order is issued. The object of purchase is deemed to be transferred and properly supplied upon delivery to the purchaser or its agent. Transportation of the object of purchase by the vendor is performed at the expense and risk of the purchaser.

3. If the purchaser has not accepted the object of purchase after more than 14 days from receipt of the notification of readiness for delivery, provided that it is not temporarily prevented from taking delivery of the offered article, the vendor is entitled to set the purchaser a subsequent period of grace of 14 days and to notify the purchaser of its intention to refuse delivery of the purchased article after expiry of this subsequent period.

4. If the subsequent period of grace expires without acceptance by the purchaser, the vendor is entitled to issue a written declaration rescinding the contract or to demand compensation for non-performance of the contract.

5. A subsequent period of grace need not be set if the purchaser seriously and finally refuses to accept the merchandise or is clearly unable or unwilling to honour its payment obligations arising from the purchase contract within this period.

6. If the vendor asserts claims for damages, these will amount to 15 % of the agreed purchase price excluding VAT. The claim for damages will be set at a higher or lower amount if the vendor can prove that it has suffered more or if the purchaser can prove that the vendor has suffered less financial damage. The purchaser is also entitled to prove that the vendor has not suffered any financial damage at all.

## **VI. Retention of title**

1. The object of purchase remains the property of the vendor until such time as the amount payable to the vendor based on the purchase contract has been paid. The retention of title also persists for all claims subsequently acquired by the vendor against the purchaser in connection with the object of purchase, e.g. repairs or the supply of spare parts or other services rendered.

At the purchaser's request, the vendor is obliged to waive its retention of title if the purchaser has met all of its obligations relating to the object of purchase and has provided reasonable security for any other claims arising from the ongoing business relationship.

If the purchaser is a merchant entered in the commercial register or a legal public-law entity and the contract forms part of the operations of its commercial business, the retention of title also applies to any claims owing to the vendor from its ongoing business relations with the purchaser.

2. The object of purchase may not be sold, pledged, transferred as security, rented or otherwise made available to others in whole or in parts while the vendor retains title without the written approval of the vendor.

3. If a claim of any kind, and especially a garnishment, is asserted against the object of purchase, the purchaser is obliged to send immediate notification to the vendor

together with the record of garnishment. The purchaser must reimburse all court and out-of-court expenses incurred in obtaining release of the garnishment and re-procuring the object of purchase.

4. The purchaser is obliged to maintain the object in proper condition during the retention of title.

## **VII. Warranty**

The following applies to the sale of new technical equipment, labels and printing systems:

1. The vendor must procure the object free of any material defects and defects of title for the purchaser. The object is deemed to be free of material defects when it demonstrates the agreed properties at the time of transferring the risk. The shipment by the vendor of a different object or insufficient quantity constitutes a material defect.

Minor deviations in size, colour, quality and other design features compared with templates, order confirmations, etc., do not constitute defects. The vendor reserves the right to deliver up to 10% fewer or more labels than ordered. In the case of rolls of labels, an unusable portion of 2 % is deemed to be customary in the trade. Defective parts of a shipment do not constitute grounds for claims against the entire shipment.

The purchaser is responsible for performing adhesive tests with the materials offered to it to ensure their suitability for the intended use. The vendor accepts no liability for the labels being suitable for the intended purpose. Complaints must be notified within 14 days from notification of readiness for delivery.

In cases of justified complaints, the vendor is entitled to offer rectification or a replacement delivery. The purchaser is entitled to rectification or a replacement delivery until such time as the rectification or replacement delivery fails to remedy the defect. If the rectification or replacement delivery fails to remedy the defect (definition in (5)), the purchaser is entitled to opt for a reduction in the purchase price or to rescind the contract at its discretion.

2. If the purchaser demands supplementary performance, the vendor will first attempt to rectify the defect. The purchaser's right to demand the delivery of an object that is free of defects instead of supplementary performance is restricted pursuant to Section 439 (3) Commercial Code to the extent that the delivery of an object that is free of defects would incur unreasonable costs or is not reasonable in view of the long delivery periods. In this respect, account must be taken of the value of the object in impeccable condition, the significance of the defect and the question as to whether it would be possible to resort to the alternative approach of supplementary performance without causing considerable disadvantages to the purchaser. The preconditions are deemed to be met when the object of purchase has been manufactured to the customer's specifications or is otherwise a single unit production.

3. If the purchaser asserts a right of supplementary performance in respect of the article purchased by it, it must deliver the object to the vendor's operating premises for the purpose of supplementary performance since this is where the vendor would generally keep the tools needed for the supplementary performance. Merchandise must always be returned with carriage paid. The purchaser bears the ensuing additional costs if it demands supplementary performance at a different location.

4. An object that is free of defects will be delivered upon the return of the defective object.

5. Supplementary performance is deemed to have been unsuccessful after the second attempt at rectification has failed. Under certain circumstances the vendor is entitled to perform further attempts at rectification. Such special circumstances are deemed to apply if the supplementary performance fails through no fault of the vendor. This is particularly applicable if the purchaser has breached any obligations to cooperate or if the vendor's suppliers do not comply with their contractual obligations towards the vendor on time and this has a negative impact on the vendor's attempt at rectification.

If the supplementary performance is deemed to have failed or the vendor refuses to deliver an object that is free of defects, the purchaser may rescind the contract and demand compensation for damages and reimbursement of any expenses incurred in vain. The purchaser is also entitled to reduce the purchase price instead of rescinding the contract.

6. The purchaser's rights in respect of a defect are excluded if it was aware of the defect at the time of concluding the contract. This applies, in particular, to the sale of used merchandise. If the purchaser remains unaware of a defect as a result of gross negligence, the purchaser can only assert its rights in respect of the defect if the vendor has breached its duty of disclosure and deceitfully kept quiet about the defect.

7. If the vendor has guaranteed the properties of an object, it must honour the same. Such properties include all features included in the purchase contract or referred to in the purchase contract.

8. If a third party, e.g. one of the vendor's suppliers, has provided a manufacturer's warranty, the parties agree that the vendor will first assert its own claims arising from the manufacturer's warranty since the services provided as part of the manufacturer's warranty are frequently more extensive than the supplementary performance obligation of the vendor, e.g. global service. This agreement does not, however, restrict the legal claims of the purchaser against the vendor. As such, the purchaser can approach the vendor directly at any time without indication of reasons for the purpose of supplementary performance.

9. The vendor guarantees the freedom from defects of new technical equipment, labels and new printing systems sold by it for a period of one year from the date of delivery.

10. The following applies to the sale of used printing systems and other technical equipment: Used printing systems and other technical equipment are carefully inspected before being offered for sale. Warranty for any material defects is, however, excluded.

## **VIII. Notification of defects**

1. Material defects that are obvious to the purchaser must be notified immediately after receipt of the merchandise. Upon receipt of the merchandise, the purchaser is obliged to unpack the goods and, to the extent possible, ensure that they function.

2. If the purchaser is informed, e.g. by a forwarding company, the postal service or any other service responsible for delivering the merchandise, that the merchandise ordered by it has been damaged in transit or stolen, the purchaser must demand that the appropriate delivery service provides a damage appraisal report, which the purchaser must immediately forward to the vendor. The packaging used by the vendor is approved by the postal service and the federal railway company and is appropriately insured. As such, reimbursement is secured, in principle, in the case of damages.

3. The purchaser's warranty rights could become impaired, in principle, if it is grossly negligent in breaching its obligations to cooperate as outlined above.

## **XI. Transfer of risk**

1. In the case of purchasers who are consumers, the risk of accidental loss and incidental deterioration of the sold merchandise is transferred to the purchaser upon delivery of the merchandise.

In the case of purchasers who are not consumers, the risk of accidental loss and incidental deterioration of the sold merchandise is transferred to the purchaser upon delivery of the merchandise to the forwarding agent, carrier or other individual or body commissioned to perform the shipment in the case of contracts of sale involving the carriage of goods.

The merchandise is deemed to have been delivered even if the purchaser delays in taking delivery of the same.

2. The purchaser bears the costs of shipment unless the parties have agreed otherwise.

3. At the request of the purchaser, the vendor is obliged to ensure transportation insurance cover at the purchaser's expense.

4. If upon receipt of the goods the purchaser ascertains that the merchandise has been damaged in transit, it must notify the transport company and the vendor within one week accordingly. If transportation insurance cover has been provided, the insurance company must be notified immediately.

5. The vendor is entitled to decide which transport route, type of despatch or type of packaging to use, taking account of the presumable interests of the purchaser, unless the purchaser explicitly specifies the same. The vendor is not liable for any delays occurring during transportation.

## **X. Liability**

In the case of only a negligent breach of obligations by the vendor or its vicarious agents, the vendor's liability is restricted to the contractually customary, foreseeable damage.

## **XI. Miscellaneous provisions**

1. The purchaser must notify the vendor immediately of any change of address.
2. Pursuant to Section 33 Federal Data Protection Act, the vendor informs the purchaser that the contract data will be stored in a data processing system. Care is taken to ensure that unauthorised individuals cannot access this stored information.
3. The samples, printing plates, blanks and drafts provided by the vendor remain the property of the vendor. They may neither be imitated nor duplicated, nor made available to third parties or competing companies. The costs of the draft will be invoiced even if an order does not ensue.
4. In the case of orders whose execution requires special development works, the purchaser does not acquire any industrial property rights to the developed objects nor to the equipment used to manufacture these objects, irrespective of whether it has paid some of the development costs.
5. To the extent that claims are asserted against the purchaser on grounds of direct breaches of German property rights in respect of merchandise supplied by the vendor pursuant to this contract, the vendor is liable to the purchaser for claims for damages acknowledged or ascertained by means of settlement against the latter, together with any court and legal fees, only and exclusively under the following conditions:
  - a) The vendor has sole entitlement of disposal in respect of the entire claim.
  - b) The purchaser appoints a lawyer to be named by the vendor and who is solely subject to the vendor's instructions to conduct any legal disputes.
  - c) The purchaser informs the vendor immediately and on an ongoing basis about all matters relating to such claims and provides the vendor, in particular, with the requisite information and documentation.

### **Liability is excluded**

- if the breach pursuant to the aforementioned provisions results from adherence to the purchaser's specification, or
  - if the breach results from amendments to subjects of contracts or combinations of subjects of contracts or parts thereof in the course of processing, if the subjects of contracts themselves do not constitute breaches, or
  - for breaches resulting after a purchaser has been warned or obtained knowledge of a potential breach, unless the vendor has approved further breaches in writing.
6. In case of a legal ruling that any further utilisation of the subjects of contracts infringes the German property rights of third parties or if the vendor believes that there may be a risk of action being brought on grounds of an infringement of property

rights, the vendor can opt at its own expense to either acquire the right for the purchaser to continue using the subjects of contracts, or to replace them, or to amend them to the extent that they no longer infringe property rights, or to refund the purchase price after deduction of the usual depletion applied by the vendor.

7. The prices indicated for equipment and materials needed to manufacture the contract products, such as drafts, final artwork, films, printing plates, blanks, tools, etc., are all proportionate costs. These materials remain the property of the vendor and will not be supplied to the purchaser even if they are separately invoiced. They will be stored until the end of the second calendar year following the last order.

8. This contract is subject to the laws of the Federal Republic of Germany. In the case of purchasers who are consumers and who do not conclude the contract for professional or commercial purposes, this specification of the applicable laws applies only to the extent that the protection provided by German laws is negated by pertinent legal provisions prevailing in the country in which the consumer is normally domiciled.

The provisions of the UN Convention on Contracts for the International Sale of Goods are not applicable.

9. The purchaser agrees under waiver of any and all property rights to allow the vendor to use the products manufactured for the purchaser for the vendor's own advertising purposes and to provide the same as samples.

## **XII. Legal venue**

The registered office of the vendor (Minden, Westphalia) is the sole legal venue for all current and future claims arising from business relationships with fully qualified merchants, including claims associated with bills of exchange and cheques.

The same legal venue applies if the purchaser does not have its own general legal venue in Germany, has moved its place of residence or normal domicile from Germany to a foreign country following conclusion of the contract, or its place of residence or normal domicile is unknown at the time of filing legal action.