



# General Terms and Conditions of Sale of Rose Druck GmbH

## § 1 Scope, Form

1. These General Terms and Conditions of Sale ("**Sales GTC**") apply to all our contractual and business relationships with our customers ("**Customer**"). The Sales GTC only apply if the Customer is an entrepreneur (§ 14 German Civil Code ("**BGB**")), a legal entity under public law or a special fund under public law.
2. The Sales GTC apply in particular to contracts for the sale and/or delivery of movable goods ("**Goods**"), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers (§§ 433, 650 BGB). The Sales GTC also apply to future contracts without our repeated reference in each individual case. If we amend the GTCS and send the amended version to the Customer in text form or publish it on our website at <https://rose-druck.de/de/downloads-de>, the amended version last sent or announced at the time of the respective order apply to future contracts.
3. Our Sales GTC apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Customer only become part of the contract if and to the extent that we have expressly agreed to their validity in writing. This requirement of consent applies in any case, for example even if the Customer refers to his general terms and conditions within the scope of the order and we do not expressly object to this and/or perform the service with knowledge of these.
4. Individual agreements made with the Customer in individual cases (including ancillary agreements, supplements and amendments) in any case take precedence over these Sales GTC. Subject to proof to the contrary, a written contract or our written confirmation will be authoritative for the content of such agreements.



5. Legally relevant declarations and notifications by the Customer with regard to the contract (e.g. setting of deadlines, notification of defects, withdrawal or reduction) must be made in writing. Written form within the meaning of these Sales GTC includes written and text form (e.g. letter, e-mail, fax). Legal formal requirements remain unaffected.
6. References to the applicability of statutory provisions are for clarification purposes only. Even without such clarification, the statutory provisions will therefore apply unless they are directly amended or expressly excluded in these Sales GTC.

## **§ 2 Conclusion of Contract**

1. Our offers are subject to change and non-binding. This also applies if we have provided the Customer with catalogues, technical documentation (e.g. drawings, plans, calculations, calculations, references to DIN standards), other product descriptions or documents - also in electronic form - to which we reserve property rights and copyrights.
2. The order of the Goods by the Customer will be deemed a binding offer of contract. Unless otherwise stated in the order, we are entitled to accept this contractual offer within two (2) weeks of its receipt by us.
3. Acceptance may be declared either in writing (e.g. by order confirmation) or implied (e.g. by performance or invoicing) to the Customer.
4. The Customer's order shall specify the details of the respective order, in particular the type and scope of the services. If the Customer does not determine these details, we may determine them ourselves at our reasonable discretion.

## **§ 3 Delivery Time and Delay in Delivery**

1. A performance period (e.g. delivery period) or a performance date (e.g. delivery date) will be agreed individually or stated by us upon acceptance



of the order. If this is not the case, the delivery period will be four (4) weeks from the conclusion of the contract.

2. We are entitled to partial performance.
3. If we are unable to meet a binding performance deadline or a binding performance date for reasons for which we are not responsible (non-availability of the performance), we will inform the Customer thereof and at the same time notify the Customer of the expected new performance deadline or the new performance date. If the service is also not available within the new performance period or on the new performance date, we will be entitled to withdraw from the contract in whole or in part; we will refund any consideration already paid by the Customer. Non-availability of the service will be deemed to exist, for example, in the event of late delivery by our supplier, if we have concluded a congruent covering transaction, in the event of other disruptions in the supply chain, for example due to force majeure, or if we are not obliged to procure in the individual case.
4. Whether we are in delay with our performance (e.g. default in delivery) will be determined in accordance with the statutory provisions. In any case, however, a written reminder by the Customer is required. If we are in default of performance, the Customer may only claim a lump-sum compensation for the damage caused by delay. The lump-sum compensation will amount to 0.5 % of the net price of the delayed performance (e.g. delivery value) for each completed calendar week of the delay, but in total not more than 5 % of the net price of the delayed performance. We reserve the right to prove that the Customer has not suffered any damage at all or that the damage is significantly less than the aforementioned lump sum.
5. Our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance) remain unaffected.



**§ 4 Delivery, Transfer of Risk, Acceptance, Default of Acceptance**

1. Delivery will be EXW Incoterms 2020 (ex-works loading ramp of the printing house at our place of business), which is also the place of performance for the delivery and any subsequent performance. At the request and expense of the Customer, the Goods will be shipped to another destination (sale by delivery according § 447 BGB, “*Versendungskauf*”). Unless otherwise agreed, we are entitled to determine the type of shipment (in particular transport company, shipping route, packaging) ourselves.
2. The risk of accidental loss and accidental deterioration of the Goods will pass to the Customer at the latest upon handover. However, in the case of sale by delivery, the risk of accidental loss and accidental deterioration of the Goods as well as the risk of delay will pass to the Customer upon delivery of the Goods to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment. If acceptance has been agreed, this will be decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services according to §§ 631 et altera BGB (“*Werkvertrag*”) also apply accordingly to an agreed acceptance. The handover or acceptance will be deemed equivalent if the Customer is in default of acceptance (“*Annahme*”).
3. If the Customer is in default of acceptance (“*Annahmeverzug*”), fails to cooperate or if our delivery is delayed for other reasons for which the Customer is responsible, we will be entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs/transport). For this purpose, we will charge the actual costs incurred or EUR 6.00 per m<sup>2</sup> per calendar day for storage in our factory, starting with the delivery deadline or - in the absence of a delivery deadline - with the notification that the Goods are ready for dispatch.
4. The proof of higher damages and our statutory claims (in particular compensation for additional expenses, reasonable compensation, termination) remain unaffected; however, the lump sum will be offset against further monetary claims. The Customer will be entitled to prove



that we have not incurred any damage at all or only significantly less damage than the aforementioned lump sum.

## **§ 5 Force Majeure**

1. **"Force Majeure"** means the occurrence of an event or circumstance which prevents us from performing one or more of our obligations under the contract and which is beyond our reasonable control, could not reasonably have been foreseen at the time of entering the contract and could not reasonably have been avoided or overcome by us.
2. Unless proven otherwise, we will be presumed to have suffered force majeure in the following events: (i) war (declared or undeclared, including wars existing at the time of conclusion of the contract), hostilities, attack, acts of foreign enemies, large-scale military mobilisation; (ii) civil war, riot, rebellion and revolution, military or other seizure of power, insurrection, acts of terrorism, sabotage or piracy; (iii) monetary and trade restrictions, embargo, sanctions; (iv) lawful or unlawful acts of government, compliance with laws or government orders, expropriation, seizure of works, requisition, nationalisation; (v) plague, epidemic, pandemic (including COVID-19 pandemic), natural disaster or extreme natural event; (vi) explosion, fire, destruction of equipment, prolonged failure of transportation, telecommunications, information systems or power; (vii) general industrial unrest such as boycotts, strikes of any kind and lockouts, slowdowns, occupation of factories and buildings.
3. We will notify the Customer immediately of an event of Force Majeure and will then be released from our obligation to perform the contractual obligations and from any liability for damages or any other contractual remedy for breach of contract from the time when the impediment makes our performance impossible. If the notice is not given immediately, the release will take effect from the time the notice is received by the Customer. If the effect of the alleged impediment or event is temporary, the consequences just set out apply for as long as the alleged impediment prevents our performance of the contract. If the duration of the alleged impediment has the effect of substantially depriving the parties of what they could reasonably expect by virtue of the contract, either party will be

entitled to terminate the contract by giving notice to the other party within a reasonable period of time. Unless otherwise agreed, the parties expressly agree that the contract may be terminated by either party if the duration of the impediment exceeds 90 calendar days and at least 14 calendar days' prior written notice of the intention to terminate has been given. However, the Customer will no longer be entitled to terminate the contract if we have announced the ability to deliver within a further 90 calendar days at the latest after notification of the intention to terminate.

## **§ 6 Prices and Terms of Payment**

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1. Unless otherwise agreed in individual cases, our prices current at the time of conclusion of the contract apply, namely EXW Incoterms 2020 (ex-works loading ramp of the printing house at our place of business), plus the statutory value added tax applicable at the time.
2. In the case of a sale by delivery (§ 4 para. 1 of these Sales GTC), the Customer will bear the transport costs from the loading ramp of the printing house at our place of business and the costs of any transport insurance requested by the Customer. The transport costs agreed in the order confirmation apply. Any customs duties, fees, taxes and other public charges will be borne by the Customer.
3. If the agreed delivery time is more than four (4) months after conclusion of the contract and if the costs for the required raw materials have changed more than insignificantly since conclusion of the contract, we may adjust the prices to the increased raw material prices.
4. The basis of the business relationship and the contract is that the execution of the contract is and remains economical for us. If the manufacturing costs for the Goods (e.g. energy, inflation, raw materials, purchased parts) increase beyond the usual level, the parties will agree on an appropriate price adjustment at our request within a negotiation period of a maximum of three (3) weeks. The usual level is regularly exceeded if the manufacturing costs for the Goods have increased by 5 % since the conclusion of the contract. The reasonable price adjustment regularly amounts to at least 50 % of the increased manufacturing costs.



If the parties do not find a solution within the negotiation period, we will be entitled to a right of retention after expiry of the negotiation period and we will be entitled to temporarily refuse future deliveries until agreement has been reached on the price adjustment. The same applies in the event of a cost reduction for the Customer.

5. Unless otherwise agreed, the purchase price is due and payable without deduction within 10 calendar days from the date of invoice and delivery or acceptance of the Goods. However, we are entitled at any time, also within the framework of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. We will declare a corresponding reservation at the latest with the order confirmation.
6. The Customer will be in default upon expiry of the aforementioned payment deadline. During the period of default, interest will be charged on the purchase price at the applicable statutory default interest rate. We reserve the right to assert further damage caused by default.
7. If it becomes apparent after the conclusion of the contract (e.g. by filing for insolvency proceedings) that our claim to the purchase price is jeopardised by the Customer's inability to pay, we will be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of unjustifiable items (custom-made products), we may declare withdrawal immediately; the statutory regulations on the dispensability of setting a deadline remain unaffected.

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## **§ 7 Retention of Title**

1. Until full payment of all our present and future claims arising from the contract ("*Eigentumsvorbehalt*") and an ongoing business relationship with the Customer ("*Kontokorrentvorbehalt*"), we retain title to the Goods sold.
2. The Goods subject to retention of title may not be pledged to third parties or assigned as security before full payment of the secured claims. The Customer must inform us immediately in writing if an application is made



to open insolvency proceedings or if third parties (e.g. seizures) have access to the Goods belonging to us.

3. In the event of conduct by the Customer in breach of contract, in particular in the event of non-payment of the purchase price due, we will be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the Goods based on the retention of title. The demand for return does not at the same time include the declaration of withdrawal; we are rather entitled to demand only the return of the Goods and to reserve the right of withdrawal. If the Customer does not pay the purchase price due, we can only assert these rights if we have previously set the Customer a reasonable deadline for payment without success or if setting such a deadline is dispensable according to the statutory provisions.

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4. The Customer is authorised until revoked in accordance with § 7 para. 4.3 of these Sales GTC below to resell and/or process the Goods subject to retention of title in the ordinary course of business (*“verlängerter Eigentumsvorbehalt”*). In this case, the following provisions apply in addition.

4.1 The retention of title extends to the products resulting from the processing (*“Verarbeitung”*), mixing (*“Vermischung”*) or combining (*“Verbindung”*) of our Goods at their full value, whereby we are deemed to be the manufacturer. If, in the event of processing, mixing or combining with Goods of third parties, their right of ownership remains, we will acquire co-ownership in proportion to the invoice values of the processed, mixed or combined Goods. In all other respects, the same applies to the resulting product as to the Goods delivered under retention of title.

4.2 The Customer hereby assigns to us by way of security any claims against third parties arising from the resale of the Goods or the product in total or in the amount of our co-ownership share, if any, in accordance with the preceding paragraph. We accept the assignment. The obligations of the Customer stated in § 7 para. 2 of these Sales GTC also apply in view of the assigned claims.





- 4.3 The Customer remains authorised to collect the claim in addition to us. We undertake not to collect the claim as long as the Customer meets his payment obligations towards us, there is no deficiency in his ability to pay and we do not assert the retention of title by exercising a right pursuant to § 7 para. 3 of these Sales GTC. If this is the case, however, we may demand that the Customer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. Furthermore, in this case we are entitled to revoke the Customer's authority to further sell and process the Goods subject to retention of title.
5. If the realisable value of the securities exceeds our claims by more than 10 %, we will release securities of our choice at the request of the Customer.

## **§ 8 Claims for Defects of the Customer**

1. The statutory provisions apply to the rights of the Customer in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly/installation or defective instructions), unless otherwise stipulated below. In all cases, the statutory provisions on the sale of consumer goods (§§ 474 et altera BGB) and the rights of the purchaser arising from separately issued guarantees, in particular on the part of the manufacturer, remain unaffected.
2. The basis of our liability for defects is above all the agreement reached on the quality and the presumed use of the Goods. The order confirmation, which contains a precise product and scope of delivery description, as well as all product descriptions that are the subject of the individual contract and/or were publicly announced by us (in particular on our website) at the time of the conclusion of the contract will be deemed to be an agreement on quality in this sense. Insofar as the quality has not been agreed, it will be assessed in accordance with the statutory regulation whether a defect exists or not (§ 434 para. 3 BGB). Public statements made by the manufacturer or on its behalf, in particular in advertising or



on the label of the Goods, will take precedence over statements made by other third parties.

3. In the case of Goods with digital elements or other digital content, we only owe provision and, if applicable, updating of the digital content insofar as this expressly results from a quality agreement in accordance with § 8 para. 2 of these Sales GTC. We accept no liability in this respect for public statements made by the manufacturer and other third parties.
4. As a matter of principle, we will not be liable for defects of which the Customer is aware at the time of conclusion of the contract or is not aware due to gross negligence (§ 442 BGB). Furthermore, the Customer's claims for defects presuppose that he has fulfilled his statutory duties of examination and notification (§§ 377, 381 German Commercial Code ("**HGB**")). If a defect becomes apparent upon delivery, inspection or at any later time, we must be notified thereof in writing without delay. In any case, obvious defects will be notified to us in writing within five (5) working days (Monday - Friday) from delivery and defects not apparent upon inspection within the same period from discovery. If the purchaser fails to carry out the proper inspection and/or give notice of defects, our liability for the defect not reported or not reported in time or not reported properly will be excluded in accordance with the statutory provisions.
5. If the delivered Goods are defective, we may initially choose whether to provide subsequent performance by remedying the defect (rectification, "*Nachbesserung*") or by delivering a non-defective item (replacement, "*Ersatzlieferung*"). If the type of subsequent performance chosen by us is unreasonable for the Customer in the individual case, he may reject it. Our right to refuse subsequent performance under the statutory conditions remains unaffected.
6. We are entitled to make the subsequent performance owed dependent on the Customer paying the purchase price due. However, the Customer is entitled to retain a reasonable part of the purchase price in relation to the defect.
7. The Customer will give us the time and opportunity required for the subsequent performance owed, in particular to hand over the Goods



complained about for inspection purposes. In the event of a replacement, the Customer will return the defective Goods to us at our request in accordance with the statutory provisions; however, the Customer will not have a claim for return.

8. We will bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs and, if applicable, dismantling and installation costs, in accordance with the statutory provisions and these Sales GTC if there is actually a defect. Otherwise, we may demand reimbursement from the Customer of the costs arising from the unjustified request to remedy the defect if the Customer knew or could have known that there was actually no defect.
9. In urgent cases, e.g. if operational safety is endangered or to prevent disproportionate damage, the Customer has the right to remedy the defect himself and to demand reimbursement from us of the expenses objectively necessary for this purpose (right of self-execution, "*Ersatzvornahme*"). We are to be notified immediately of any such self-remedy, if possible in advance. The right of self-execution does not exist if we would be entitled to refuse a corresponding subsequent performance in accordance with the statutory provisions.
10. If a reasonable deadline to be set by the Customer for subsequent performance has expired unsuccessfully or is dispensable according to the statutory provisions, the Customer may withdraw from the purchase contract or reduce the purchase price according to the statutory provisions. In the case of an insignificant defect, however, there will be no right of withdrawal.
11. Claims of the Customer for reimbursement of expenses pursuant to § 445a para. 1 BGB are excluded unless the last contract in the supply chain is a consumer Goods purchase (§§ 478, 474 BGB) or a consumer contract for the provision of digital products (§§ 445c sentence 2, 327 para. 5, 327u BGB). Claims of the Customer for damages or reimbursement of futile expenses (§ 284 BGB) will also exist in the event of defects of the Goods only in accordance with the following § 9 and § 10 of these Sales GTC.



## **§ 9 Other Liability**

1. Insofar as nothing to the contrary arises from these Sales GTC including the following provisions, we will be liable in accordance with the statutory provisions in the event of a breach of contractual and non-contractual obligations.
2. We will be liable for damages - irrespective of the legal grounds - within the scope of fault liability in the event of intent and gross negligence. In the event of simple negligence, we will only be liable, subject to statutory limitations of liability (e.g. care in own affairs; insignificant breach of duty), in the following cases
  - 2.1 for damages arising from injury to life, limb or health;
  - 2.2 for damages arising from the breach of an essential contractual obligation (obligation the fulfilment of which is a prerequisite for the proper performance of the contract and on the observance of which the contractual partner regularly relies and may rely, "*Kardinalpflicht*"); in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.
3. The limitations of liability resulting from § 9 para. 2 of these Sales GTC also apply to third parties as well as to breaches of duty by persons (also in their favour) whose fault we are responsible for according to statutory provisions. They do not apply insofar as a defect has been fraudulently concealed or a guarantee for the quality of the Goods has been assumed and for claims of the Customer under the Product Liability Act.
4. Due to a breach of duty which does not consist of a defect, the Customer may only withdraw or terminate if we are responsible for the breach of duty. A free right of termination of the Customer (in particular according to §§ 650, 648 BGB) is excluded. In all other respects, the statutory conditions and legal consequences apply.



## **§ 10 Statute of Limitation**

1. The limitation period for claims arising from material defects and defects of title is one (1) year from delivery. Insofar as acceptance has been agreed, the limitation period will begin with acceptance.
2. The above limitation period of the law on sales according to §§ 433 et altera BGB ("*Kaufrecht*") also applies to contractual and non-contractual claims for damages of the Customer based on a defect of the Goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. Claims for damages by the Customer pursuant to § 9 para. 2 sentence 1 and para. 2.2 of these Sales GTC as well as pursuant to the Product Liability Act will become time-barred exclusively in accordance with the statutory limitation periods.

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## **§ 11 Property Rights**

1. We reserve the title and copyright to all offers and cost estimates submitted by us as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents, aids and data made available to the Customer. Such documents are to be used exclusively for the contractual performance and are to be returned to us after completion of the contract. The Customer may not make the documents accessible to third parties without our express written consent. In this respect, the documents must be kept secret from third parties, even after termination of the contract. The obligation to maintain secrecy will only expire if and to the extent that the knowledge contained in the documents provided has become generally known. Special confidentiality agreements and statutory regulations on the protection of secrets remain unaffected.
2. At our request, the Customer will return these items to us in full and destroy any copies made if they are no longer required by him in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. The Customer undertakes not to remove manufacturer's details, in particular copyright notices, or to change them without our prior consent.

## **§ 12 Set-off, Right of Retention**

The Customer may only set off or derive a right of retention from counterclaims which we have acknowledged, which are undisputed or which have been legally established. Furthermore, offsetting by the Customer is possible with claims for damages due to defective performance or non-performance, insofar as they are based on the same contractual relationship, as well as against synallagmatically linked counterclaims. The Customer's rights to refuse performance remain unaffected.

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## **§ 13 Governing Law and Place of Jurisdiction**

1. These Sales GTC and the contractual relationship between us and the Customer are governed by the laws of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.
2. The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our place of business. However, we are also entitled in all cases to bring an action at the place of performance of the delivery obligation in accordance with these Sales GTC or a prior individual agreement or at the general place of jurisdiction of the Customer. Overriding statutory provisions, in particular on exclusive jurisdiction, remain unaffected.

## **§ 14 Severability Clause**

Insofar as the contract or these GTC contain loopholes, the legally effective provisions which the parties would have agreed in accordance with the economic objectives of the contract and the purpose of these Sales GTC if they had known about the loophole will be deemed to have been agreed in order to fill these loopholes.



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## § 15 Prevail Version

These Sale GTC have been drawn up in two languages (German/English). In the event of any inconsistency or conflict between the English and German version, the German version alone shall prevail. The German version is published on our website at <https://rose-druck.de/de/downloads-de>.

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