

Terms and Conditions of Sale Caleas Case

1 General conditions

These terms and conditions are valid for all our business organisations, corporate bodies and separate estates under public law. Conditions provided by a contractual partner apply only if we acknowledge this in writing.

2 Prices and offers

2.1. The goods are delivered at the listed prices valid for the respective day of shipment or at the respective offered price, including general sales tax. Postage, packing, and insurance are not included and will be charged for separately.

2.2. Our prices are freely disposable in every way until our written confirmation of the order.

2.3. Our prices are net prices per unit in Euro, unless otherwise agreed in writing.

2.4. All other agreements at and during contract conclusion are subject to our written acknowledgement in order to become valid.

2.5. The minimum order sum is specified in the currently valid price list. A surcharge will be imposed for orders below the specified sum. The exact amount of the surcharge can be gleaned from the same price list.

2.6. If the buyer requests any subsequent alterations, following the respective production, printing or embroidery release, s/he will bear the expense.

2.7. We have endeavoured to estimate all specifications (measurements, materials, colours, weights, positioning diagrams, descriptions, and sketches) in all our catalogues and price lists to our best ability; however, we are not bound to the same in any way as they can only be approximations. They are mere descriptions of our deliveries and services, not warranted qualities of our products. We reserve the right to effect technical and optical alterations, changes of our product lines, as well as product improvements, without prior notice.

2.8. In single cases we reserve the right to amend our prices if between our submittal of quotation and the job execution, prices alter due to fluctuating exchange rates, or if the commodity prices have changed. The buyer is entitled to withdraw from the contract, should such an increase amount to more than 10% of the previously agreed price. Any expenses on wages or material until that date must be borne by the buyer.

3 Transfer of risk

3.1. The goods are delivered ex works at the buyer's risk and account, which also applies to free deliveries. As soon as the goods have been passed over to the transporting person the risk is transferred to the buyer. Any delay of the transfer caused by the buyer will result in the transfer of risk at the day Caleas Case was ready to ship the goods.

3.2. We reserve the right to choose the type and mode of despatch unless otherwise specified in the respective order. Special transport insurance is only taken out at the buyer's request and expense.

3.3. In case the buyer requests a delivery delay of more than 2 weeks after we have communicated our will to despatch the items, we will charge storage fees of 0.5% of the respective delivery price, the maximum being 5% in total.

3.4. For technical reasons, the delivery quantity can be 5% more or less than the ordered quantity, and the buyer cannot object to the variations.

4 Delivery

4.1. Delivery time commences as soon as we receive the order, but not before all details required for processing the order have been clarified. Delivery dates and terms only apply if we have expressly confirmed them. They begin with the date of our written order confirmation, but not before all the necessary details have been specified, and therefore not before all required documents have been provided by the buyer (e.g. printing lay-out, sketches and drawings, colour specifications etc.). If a part prepayment or prepayment in full has been agreed, the delivery term does not commence prior to payment receipt.

4.2. The delivery term ends on the day the goods leave the factory, resp. are stored there in case of impossible despatch.

4.3. If we cause a delivery term to be exceeded by more than 14 days, and if an additional period of respite, set by the buyer at the time of delay in writing, has expired, the buyer is entitled to withdraw from the contract. However, we do default in delivery if the delay is caused by force majeure or other obstacles that could not have been averted by due diligence, such as transport delays, and strikes and industrial conflicts of our suppliers.

4.4. No damages are granted for delay or in case of subsequent objective impossibility of dispatch, except for intent or gross negligence.

4.5. Call-off and blanket orders are fixed orders with acceptance duty, in which case the agreed quantity released must be purchased within 12 months of first delivery unless other periods have been specified in writing for the term of the agreement. We reserve the right to fully dispatch the residual goods of a delivery after runtime expiry.

4.6. In case of non-acceptance or delay of performance through the buyer, the risks of loss by accident or accidental deterioration of the goods are passed over to the buyer at the exact time s/he fails to accept the goods. We are entitled to set an adequate additional respite and to repossess the goods the buyer has not collected according to 3.1.3 of our Terms and Conditions of Sale. This leaves any rights of withdrawing from the contract, or of claiming damages, unaffected.

5 Payment

5.1. Our invoices become payable within 8 days of receipt or immediately when choosing credit card as payment method at net price, unless otherwise agreed in writing.

5.2. We reserve the right to deliver to buyers personally unknown to us by COD, payment in cash, or against cash in advance

5.3. Incoming payments are always allocated to the earliest account payable. We only accept cheques and bills of exchange on account of fulfilment and free of costs. In case of overdue accounts we reserve the right to charge default interest of 8% above the respective prime rate p.a. This does not, however, prevent us from asserting other damages caused by delay.

5.4. If the payment conditions are not observed without any obvious reason, all our claims become due immediately, including those for which payment in instalments or a respite has been agreed. The buyer is only permitted to offset the sum or retain the goods against our claims with indisputable and valid counter-claims. We only grant discounts if all payments from earlier deliveries have been duly paid.

5.5. In case of significant deteriorations of the buyer's property that give rise to justified doubts as to his/her solvency, we reserve the right to withdraw from the contract, or else to retain our goods and services and to set the buyer a time limit for advance payment, or for providing securities of our choice. After this deadline has expired we also have the right to withdraw from the contract.

5.6. The buyer is to notify us of any errors in our invoices and bills within 8 days of invoice receipt, otherwise the buyer tacitly accepts its correctness.

6 Retention of title

6.1. Ownership of goods supplied shall not pass to the buyer until all outstanding debits have been paid in full. The buyer is permitted to either resell the goods purchased conditionally according to the rules of business, or else process them if s/he has made sure that all receivables from the resale are transferred to us, and that our retention of title regarding the buyer is passed on to the respective client.

6.2. Even if the goods sold conditionally have been altered or processed, the buyer does not acquire ownership of them. If the goods supplied are incorporated or processed together with other items, this is done at our request and does not create any obligations on our part.

6.3. If the buyer sells the supplied goods, either on their own or in connection with other items, to third persons prior to payment which is permitted in the course of day-to-day business, especially in case of resale transactions the buyer commits him/herself to reserve the respective property rights. At this stage already, the buyer assigns to us the claim against the client resulting from the resale of the goods, at the sum still owed to us. This applies regardless of whether the goods supplied have been processed, altered, or aligned with other items. If the goods supplied by us are resold after alignment or alteration, or together with other items, the buyer conveys the claim against his/her client to us at the amount of the original price agreed between the buyer and Caleas Case.

6.4. We reserve the right to inform the client of the assignment of the claim. The buyer authorises us at this stage already to assert the claims assigned to us vis à vis his/her client directly on our own behalf. On the buyer's request, we commit ourselves to release the claims assigned to us insofar as their total amount exceeds the sum total of our receivables by more than 20%.

6.5. On our request, the buyer is bound to inform us of the whereabouts of the conditionally delivered goods, and of the claims resulting from the resale, at any time. In particular, the buyer must supply us with the name and address of his/her client, as well as the exact amount of the assigned accounts, and to provide us with all the information required for asserting our claims to the assigned accounts.

6.6. Other acts of disposal, such as pledging of our goods or transfers by way of security are prohibited. Furthermore, the buyer is duty bound to notify us immediately of any pledging of the goods and/ or the conveyed claims or any other claims, raised by third persons regarding the goods or the conveyed claims. In case of pledging, a copy of the pledging document is to be sent to us immediately. In case of a third party claim the buyer is to bear all expenses of lifting the claim, especially in case of third party proceedings, and for recovery of the goods.

7 Release of refinement orders

7.1. The buyer is to check all proofs, and printing or embroidery patterns for position, number, printing, colour or other errors, and to release them for us resp. to notify us of any alterations in writing. We are not liable for any errors overlooked by the buyer. Any alterations or corrections communicated to us via telephone require a written follow-up as confirmation.

7.2. Extensive alterations, such as the resetting of films, or the new encoding of embroidery or similar programmes, which exceed the usual extent after proof samples have been generated, are effected at the buyer's expense if they deviate from the pattern provided in advance.

7.3. Without a proof print resp. embroidery pattern we cannot guarantee for the quality or either printing or embroidery. If the buyer does not send any such pattern or proof we are only liable in case of gross negligence. Proof prints and embroidery patterns are charged for even if the order is cancelled.

8 Warranty / liability

8.1. The buyer must immediately check all products for any faults. Notice of defects due to obviously faulty or deviant qualities of the goods, or due to the delivery of items obviously different to those ordered, must be effected in writing within three days of delivery, or if the buyer cannot identify the defect in the course of a first checking procedure, one week after receipt. If obvious defects are not reported to us in a timely manner, and in the required form, no warranty is granted in this regard. If neutral, unrefined items are sent to a refiner (printer, embroiderer) commissioned by the buyer, s/he must check the goods prior to refinement in the above manner.

8.2. We are entitled to either repair or replace the faulty goods. If we fail to improve the goods the buyer has the right to withdraw from the purchase contract, or to reduce payment. We are only liable for damages caused by us or by our factors or assignees in case of intent or gross negligence. This applies to all damages regardless of whether they are based upon legal regulations, offensive activity, contractual terms or other legal grounds. This limited liability does not, however, pertain to damages directly caused by the lack of warranted qualities, or to damages against which the buyer was to be protected through the warranted qualities. For all other consequential harms caused by defect we are liable only to the extent specified above.

8.3. We are liable for the lightfastness, the variability and variation of print and material dyes, as well as for the quality of fabrics and coatings, and impregnation only insofar as defects of the materials would have become obvious to an expert checking them with due diligence prior to their further processing or use. In all the utilised printing processes, minor variations within the product range or between the proof and the serial production can arise. These deviations do not, however, constitute a valid reason for a notification of defects.

8.4. No claims exist in case of insignificant variation from the agreed condition or texture, or in case of minor impairment of serviceability. Tolerances customary for a particular trade branch do not entitle the buyer to a notification of defect. Defective part deliveries cannot lead to a complaint about the entire delivery.

8.5. If part of a delivery or the entire delivery is rejected, no item of the rejected goods must be consumed or passed on. Should this happen, the complaint becomes null and void.

8.6. We cannot guarantee for the printing or embroidery if the buyer does not provide a sample pattern.

8.7. Any other claims for damages resp. for the reimbursement of expenses on the buyer's part are excluded, especially on the grounds of breach of rights and duties arising from the obligation and from liability in tort. In case of statutory liability, e.g. according to product liability, or for intent, gross negligence, physical injury, or due to breach of contract, this does not apply. However, the claims for damages for breach of contract is limited to typical, foreseeable damages and covered only to the sum injured through liability insurance, unless in cases of gross negligence or intent, or physical harm.

9 Copyright and publishing details

9.1. When the buyer commissions the refiner s/he declares that the respective trademark may be reproduced or displayed lawfully, resp. with the trademark owners' agreement. The buyer assumes liability for preventing the infringement of third-party rights through the use of the trademark. We cannot guarantee that the rights of third parties are not impinged upon through the use of the brand. Any legal expenses arising for us from such infringements must be advanced by the buyer to an appropriate extent.

9.2. The copyright, and all rights of use, on all our models, patterns, designs, collages, drafts, diagrams, films and embroidery programmes remain with us, unless otherwise agreed or specified in writing.

9.3. We reserve the right to affix our company emblem or trademark to the goods we have produced. Moreover, we reserve the right to use any items commissioned by the buyer as samples or for advertising purposes.

10 Concluding conditions (Choice of law / partial nullity / place of performance and competent court

10.1. Austrian law applies exclusively to this contractual relationship, especially for overseas manufacturing. The Viennese UN Convention of the International Sale of Goods (CSIG) from 11 April 1980 and additional provisions do not apply.

10.2. Should single conditions of these Terms and Conditions be or become invalid this does not affect the validity of all other conditions.

10.3. The place of performance / fulfilment for deliveries and payments, and the legal venue for all disputes based on this contract is Vienna. However, we are also entitled to appeal to the competent court at our contractual partner's business location.