

## **I. Scope**

1. The following Terms & Conditions apply to all business relations with Heuschkel & Freund GbR. Our Terms & Conditions apply exclusively. References or counter-confirmations of the Customer with reference to their own General Terms & Conditions of Business are herewith expressly contradicted. Terms & Conditions of the Customer differing from our Terms & Conditions of Business are not valid.

## **II. Formation of the Contract**

1. The Order is a binding Offer. We can choose to accept this Offer within four weeks by sending a written Order Confirmation or by sending the ordered goods to the Ordering Party within this period. This period begins from the time at which the Order is received by us and receipt of the necessary documents and materials of the Ordering Party. However, the starting materials must be in perfect condition.

2. Our Offers can be withdrawn by us at any time, until the legally binding Acceptance by the Customer.

3. The information about work and services, dimensions, weights, prices, etcetera, given in catalogues, brochures, circulars, advertisements, figures and price lists are non-binding, unless they expressly become the subject matter of the contract.

4. We reserve the right to refuse orders where offensive, abusive, racist, pornographic, violence-glorifying or -softening, immoral, extremist or infringing content is represented.

## **III. Prices**

1. Unless stated otherwise in the Order Confirmation, our prices apply ex works and plus the relevant rate of VAT in the Federal Republic of Germany.

2. Our invoices are due for payment in EUROS within 30 working days from invoice date, without any deduction whatsoever: payment shall be made by cheque or bank transfer.

3. In the case of new clients, we reserve the right to require advance payment of 100 % of the net Order sum.

4. The day on which the sum is shown as being credited to our account is deemed to be the date on which payment is received.

5. If the payment is not made we can retain the ordered goods. Any expenses incurred shall be borne by the Customer.

6. If the Customer fails to pay by the due date, we are entitled to charge late payment interest equal to 5.00 percentage points above the base interest rate. If we are able to show that we have incurred higher losses as a result of the late payment, we are entitled to claim these.

7. If the delivery item or the agreed service is provided within four months of the signing of the Contract, we are bound to the agreed prices. In the event of a longer delivery period, for which we are not responsible, we are entitled to make a reasonable price adjustment, if our purchase prices, production or transport costs have increased significantly. If the price increase is more than 5.00 %, the Customer can withdraw from the Contract, provided they do so in writing within two weeks of receiving notification of this price increase.

8. The Customer is only entitled to offset, if their counter-claims are finally determined without further recourse, are undisputed or recognised by us.

#### **IV. Delivery and Dispatch**

1. The delivery takes place within 40 working days at the latest, following receipt of the necessary documents and materials. The starting materials must be in perfect condition. If we are in default of delivery, the Customer must set us a grace period of at least 6 weeks before they can withdraw from the Contract.
2. If we are unable to fulfil our delivery obligations due to force majeure, armed conflicts, increased volume of orders or infringements by our Contractual Partner, we will be released from our obligation to perform.
3. Meeting our delivery commitment presupposes the Customer's punctual and proper fulfilment.
4. The delivery period does not begin before provision of the documents, approvals, releases, etc. to be procured by the Customer or before receipt of an agreed down-payment.
5. Delivery is free ex works. The delivery period is met if the item to be delivered has left the works by the end of the delivery period. The delivery period is extended appropriately in the event of labour disputes, in particular strike and lockout and in the event of unforeseen obstructions, which are outside our control, provided such obstructions verifiably have a significant influence on the completion or delivery of the item to be supplied.
6. If dispatch is delayed at the Customer's request, starting from one month after notification of readiness for dispatch they will be billed for the costs incurred for storage, if stored in our works, at least one half percent of the invoice amount for each month. However, after setting and fruitless expiry of a reasonable period, we are entitled to otherwise dispose of the item to be delivered and to supply the Customer with a reasonably extended period.
7. Unless instructed otherwise by the Customer, the means of transport and transport route will be determined by us.
8. Dispatch is at the cost and risk of the Customer.
9. The risk transfers to the Customer at the latest with dispatch of the delivery, even if part deliveries are made. At the request of the Customer, at their cost, we will insure the consignment against theft, breakage, transport, fire and water damage and other insurable risks.
10. If the dispatch is delayed as a result of circumstances for which the Customer is responsible, the risk is transferred to the Customer from the day of readiness for dispatch; however, we are obliged to provide the insurance demanded by the Customer at their request and cost.
11. Goods, materials, disks etc. sent to us, must be clearly labelled with sender/client and catalogue number. In addition, they must be complete and contain all the necessary papers. For fast processing the delivery note should be sent 24 Hours in advance by email (versand@randmuzik.de) or fax (++ 49 (0) 3 41/6 88 43 92).

#### **V. Change in Item to be Delivered/Part Performances/Additional or Reduced Production**

1. Provided there is no unreasonable negative effect for the Customer as a result, we reserve the right to make technical changes to the item to be delivered, if this does not impair its technical function.
2. Despite machine cleaning sporadic colour impurities may occur for production reasons. These minor colour variations do not entitle a complaint.
3. In the case of pressing orders, additional or reduced production is unavoidable. Over or under-deliveries up to 10 % are to be accepted by the Customer. They will be billed accordingly.
4. We are entitled to provide part performances, provided the Customer can be reasonably expected to accept them.

## **VI. Non-Acceptance by the Customer**

1. If, even after expiry of a four week period of grace set, the Customer refuses to accept the good or explicitly declares that they do not wish to accept them for the time being, we can withdraw from the Contract and demand compensation due to non-performance.
2. If we are entitled to claim compensation for non-performance from the Customer due to their non-acceptance, we can demand 25 % of the Order sum from the Customer as compensation.
3. The Customer's right to prove that we incurred lower losses remains unaffected by this.

## **VII. Reservation of Proprietary Rights**

1. We reserve proprietary rights to the delivered item until full payment for the delivered item has been received including any subsidiary claims arising out of the Contract.
2. If the Customer is a businessperson, we reserve proprietary rights to the delivered item until we have received full payment of all accounts receivable arising out of the business relation with the Customer, including any subsidiary receivables.
3. The Customer is not permitted to sell on the delivered item until they have paid our claim in full. If it is the Customer's usual business to sell the items delivered by us to third parties, the Customer is, by way of an exception, entitled to sell on the items delivered by us in their ordinary business. In case of allowed or unallowed sale of the item delivered, the Customer herewith assigns to us all accounts receivable resulting from selling on the goods subject to reserved proprietary rights, which they are in due entitled to from the sale to their customer or from third parties, regardless of whether the delivered item has been sold on with or without processing. In the case of authorised sale the Customer remains empowered to collect the receivables. Our power to collect the receivable ourselves remains unaffected by this. In case of authorised selling on, however, we undertake not to collect the claim ourselves, as long as the Customer properly fulfils their payment obligation to us, in particular is not in default of payment.
4. We undertake to release the collateral to which we are entitled at the request of the Customer, provided the value of the collateral exceeds the value of the accounts receivable to be secured, if unpaid, by more than 20 %.
5. In the event of seizure or other third party interventions regarding the item delivered, the Customer shall notify us immediately in writing and forward to us all documents necessary for our intervention. If the third party is not able to reimburse our costs, the Customer shall bear all legal and out of court costs, that have to be incurred in order to cancel the access and to repro cure the item purchases, especially in response to a case pursuant to § 771 ZPO (German Code of Civil Procedure). This does not apply if the costs are disproportionately high compared to the value of the item sold.

## **VIII. Liability/Warranty**

1. Following completed press mould production the Customer shall receive a test pressing after which they can issue release for the complete pressing. Following the issued release it is no longer possible for the Customer to complain about preceding work operations. If no clear tracklist is specified by the client, we are not liable for any resulting errors, such as incorrect ordering or mixed up sides.
2. The delivered goods, especially the test pressing, must always be checked for correctness following receipt. Identifiable defects and under or incorrect delivery must be reported to us in writing within 8 days of receipt of the goods. Checking by us must be guaranteed.
3. If the Customer fails to send us written notification, they lose all claims regarding this defect.
4. We are solely liable for redhibitory defects, which are verifiably due to fabrication or material defects.

5. If a redhibitory defect for which we are responsible exists we shall either provide a replacement or issue a credit note; the option taken as chosen by us. We shall be granted a reasonable period of time for this. In the case of replacement delivery, we pay the costs and bear the risk.

6. If the Customer makes warranty claims against us and it is established that a warranty claim does not exist (e.g. user error, improper handling of the items, non-existence of a defect), the Customer shall reimburse us for all costs incurred by us in relation to the delivered item, provided they are responsible for our claim due to carelessness, gross negligence or deliberate act.

## **IX. Copyrights**

1. The Customer guarantees that sound recording and storage media, their content, packaging and presentation and similar do not infringe the industrial or intellectual property rights and do not breach statutory laws and prohibitions. A corresponding, signed copyright declaration shall be submitted to us before the order begins. This way the Customer assures that he has unrestricted use of all commissioned services and the associated audio, image, text or other information, and that their exploitation do not preclude any rights of third parties.

2. If claims are made against the Customer due to infringement of third parties' rights or forbearance to continue using the item delivered, they shall inform us immediately.

## **X. Miscellaneous**

1. The pressing moulds made remain the property of the Customer for one year. After that they will be disposed of. Moulds, sleeves and labels will be stored properly for a fee for 12 months at the risk of the Customer.

2. There is no liability for the transmission or storing of graphics, audio or other data transferred. If data is lost during transmitting or storing, or deleted, we don't have to pay for a replacement.

3. Data must be delivered in common file formats. They must be legible and ready for mastering or reproduction.

## **XI. Legal Jurisdiction and Place of Performance**

1. This Contract and the legal relationship between the Parties to the Contract shall be governed by and construed in accordance with the laws of the Federal Republic of Germany.

2. The agreed place of legal jurisdiction and place of performance for all claims arising out of the business relationship with fully qualified businesspersons is Leipzig.