

Validity

These terms apply to all contracts, deliveries and other services including consultations in business relations with companies as described in § 14 BGB (Federal German Law) and judicial persons under public law.

I. Orders & tenders

1. With the exception of those offers explicitly listed as binding, offers described in our sales brochures or on the internet are non-binding and to be considered as requests for the submission of offers only.
2. Sales contracts become effective upon confirmation by the vendor, and solely on the basis of the General Terms of Delivery and Payment as set out below.
3. Agreements made verbally and over the telephone are only binding if they are confirmed in writing or by fax.

II. Delivery, delivery times

1. Delivery is ex works in all cases.
2. Delivery times are to be regarded as approximately agreed, and begin with the receipt of the customer's permission to print, or, should this not be required, the confirmation of order.
3. In the event that unforeseen circumstances should occur that are outside our control, we reserve the right to extend the delivery time by a set period until said circumstances have been remedied.
4. Should the circumstances preventing delivery last longer than three months, then the customer has the right to withdraw from the order, insofar as it has not yet been filled; in this event, however, the customer is not entitled to compensation. Datacolor likewise has the right of withdrawal under such circumstances.

III. Packaging and shipment; passing of risk

Packaging and shipping of the merchandise will be arranged by us at the expense of the principal according to our best judgement: in this respect we do not guarantee that the most cost-saving alternative will be chosen. As far as the merchandise is brought to shipment and accepted by the shipper or carrier without claim this is considered as confirmation of correct packaging.

The risk passes to the buyer when the merchandise leaves our works or dispatch warehouse. Transport insurance will only be taken out at the buyer's express request and at his expense.

IV. Payment

1. Payment of the net price plus VAT at the current rate is due within 30 days of the invoice date without deduction. If payment is made within 8 days of the invoice date, the contractor will allow 2 % discount on the invoice amount, but not on any freight, postage, insurance or other shipping costs. The invoice will be dated with the date of delivery, part-delivery or ability to deliver (obligation to be performed at the debtor's place of residence).

Bills of exchange will only be accepted by special agreement in lieu of payment and without any discount on the invoice amount being granted. Discount and expenses on such bills will be paid immediately by the customer. The contractor is not responsible for presentation within the prescribed period, for protesting the bill, for notification and return of the bill in the event that it is not honoured, unless it can be shown that he or his agents have acted deliberately or with gross negligence.

Payments will always be used for settlement of the oldest amount due plus any related interest. Discounts are not granted in cases where the buyer is in arrears for any previous deliveries.

2. Should Datacolor, after order confirmation and before delivery of goods, become aware of facts giving rise to doubt to the solvency or credit of the contractor, payment for goods already produced will be due immediately and is to be paid upon invoice without deductions. A cancellation of this partial payment is excluded.
3. If large quantities of paper or card, special materials or other services such as data service or program development are made available for longer than 1 month, the contractor can demand advance payment herefor.
4. The customer can only offset amounts owed against an undisputed or legally recognised and non-appealable claim. A customer who is not a businessman in the sense of the German Commercial Code has no rights of retention or offsetting. The rights granted by the German Civil Code (§ 320 BGB) are upheld, however, for as long as the contractor fails to fulfil his obligations.

V. Production and/or forwarding of advertising material, lettershop services

1. Datacolor will be in sole charge of the production and delivery of advertising mail, which will be done according to normal industry standards.
2. Amendatory, if a question of postage payments, under the performance of the Deutsche Post AG, the contract partner of the contractor is solely the Deutsche Post AG and their General Terms of Business apply additionally. Pending postal charges are demanded by Datacolor as a postal charge lump sum for external charges and will be passed on to the Deutsche Post AG, these must be credited irrevocably at the latest three days before the postage date with indication of intended purpose. We are not under any obligation to send out the mail before payment is received. The actual postage costs incurred, including any postage due to the German Post Office for excess weight, will be invoiced after the completion of the order, with the advance flat rate payment being deducted from the outstanding amount payable by the customer.
3. Datacolor is under no obligation to check the mailings before processing them to ensure that the customer has complied with the postal weight/size limits and other postal regulations.
4. Provision of materials
Materials to be provided by the customer (e.g. printed matter) must be delivered to Datacolor free of charge and in perfect condition. Datacolor will not subject the materials to a quantity or quality check. In order to account for differences in print runs and return losses, e.g. when preparing the mail, 5 % more material should be supplied than needed.
5. The customer bears sole responsibility for the compliance of printed matter and advertising material he supplies with the relevant legal provisions; in particular, he is responsible for ensuring that the execution of his order does not violate the rights of third parties. The customer undertakes to exempt Datacolor from possible claims of third parties arising from any such violation of their rights.
6. The customer bears the risk for the processability of the materials he supplies. Faults caused by insufficient processability of the materials supplied exempt Datacolor from all liability. Any additional work necessary as a result of insufficient processability of the materials supplied gives Datacolor the right to make appropriate additional charges for increased difficulty.
7. After the order has been completed, Datacolor will destroy any advertising material left over, unless the customer stipulates otherwise within 2 weeks of receiving the remainder notification from Datacolor. Datacolor will specifically draw the customer's attention to this point when sending the remainder notification. Leftover material, typesetting copy, manuscripts, documents and other items supplied by the customer will be returned at his expense. Shipping occurs at the customer's risk.
8. Datacolor accepts liability for dispatch errors resulting from its own negligence in accordance with clause IX. In the event of loss of or damage to materials placed at its disposal, Datacolor will only be liable for the value of the material or production costs.

VI. Delayed payment

If the customer delays payment for or acceptance of the merchandise ordered, the vendor is entitled after a grace period of 14 days either to demand compensation for non-performance of obligations, in addition to default interest, or to withdraw in whole or in part from the contract. However, the vendor also has the right to demand that the customer accepts the quantities hitherto not accepted by him; in this event, the vendor is under no obligation to carry out the rest of the order. The same applies if the customer delays acceptance of only one of a number of individual orders. If the buyer defaults on payment or fails to make a payment transfer by the agreed payment deadline, then we have the right to repossess the goods ordered, if necessary by means of entering the premises of the buyer. We can also prohibit the sale or removal of the said goods. Repossession of the goods ordered does not imply cancellation of the contractual agreement.

VII. Warranty, Claim

The principal is obliged to examine all documents forwarded immediately and in case of deviations the principal is obliged to forward a written notification to the agent immediately. Otherwise these deviations or defects will be considered as approved. If the buyer renounces the submission of a proof, we are in no case liable.

1. Deviations in arrangement and measurements, register and colours caused by differences in the material used and by technical conditions between the rough copy, the final copy, the litho, the printer's proof and the final print are not excluded by any guarantee and do not constitute a defect. Furthermore, match-up differences of up to 1 % of the paper size both in height and in width may arise from other influences, in particular from the hygroscopicity of the paper and all other materials such as films, polycarbonate, plastics etc., also from the mechanical processing and collating of continuous lengths of paper and film. Such deviations likewise do not constitute a defect. The colours and types of paper and carbon paper earmarked for use in a particular job are to be regarded only as guidelines. Deviations from one consignment to the next, especially as regards quality, composition of the material, tensile strength, paper colour and weight, are beyond the control of the paper manufacturer/supplier. Thus the customer cannot make any claims for breach of guarantee.

2. Any other proven material defects will be rectified either by new delivery or by remedy of the defect, whichever we think fit. If neither a new delivery nor remedy of the defect is possible, or could not be effected within a reasonable period of time, the customer can demand an appropriate reduction in the price payable, or cancellation of the contract.
3. Obvious defects in delivery or performance must be reported to Datacolor in writing immediately, and at the latest within a week of receipt of the goods. Hidden defects must be reported in writing immediately, and at the latest within two weeks after the defect is discovered. Any complaints made at a later date cannot be considered.
4. Business customers do not have the right to withhold the agreed payment in the event of complaints which we have not recognised in writing as justified, nor do they have the right to deduct such payment from claims due to us from other orders.
5. Excess or short deliveries of up to 10 % of the print run ordered do not constitute cause for complaint. Where delivery of products using customized paper with a total weight of under 1,000 kg is made, this percentage rises to 20 %, under 2,000 kg to 15 %.

VIII. Errors

Errors made by us when presenting our tender or when the order is placed, including errors connected with price quotation, entitle us to dispute or to withdraw from the contract.

IX. Exclusion of liability, copyright, limitation

1. We do not check whether goods and services supplied by us, in particular rough copies, violate any rights of third parties (copyright, trademarks, corporate rights etc.), or whether they are or could be protected trademarks. Thus we expressly disclaim any liability, also for indirect damage suffered by the customer.
2. The customer's rights are set out under section VII above (Guarantee, complaints). Any other contractual rights, including all rights to damages, here including the right to compensation for consequential damages, are excluded, as long as gross negligence on our part cannot be proven. In this event, we accept liability only up to a maximum of the invoice sum or the value of the order (without carriage) invoiced by us.

X. Retention of title

1. Datacolor retains title of ownership of all goods and services until the entire amount due to us from the business relationship (including any ancillary claims) has been paid.
2. If we make use of the right to repossess the objects supplied, this shall only constitute a withdrawal from the contract if we so declare.
3. The customer has the right to dispose of the goods supplied, within the scope of normal business operations, and in particular, unless agreed to the contrary, to sell them. The claims due to the customer from such resale shall be deemed to be assigned to us with the act of resale to the amount invoiced for the deliveries made. The customer undertakes to give us the name and address of such third parties on request, and to inform the third party of the assignment.
4. If the reserved goods are attached to other goods, then our partial property rights on the new goods will be considered to be that proportion of the calculated value of the reserved property to that of the other goods plus the related administrative costs. If our property rights are terminated as a result of contractual obligation or through processing, then the buyer submits his property rights on the new goods to us at the point in time as designated by contract in the amount of the calculated value of reserved goods and keeps these goods in safe custody at no charge. The consequently resulting property rights are to be considered reserved property rights as described in paragraph X. 1.
5. The buyer is obliged to inform us of any potential access of third parties to the reserved property and any related demands derived thereof. The buyer is only permitted to sell the reserved property as part of common sales activities, according to his standard terms of business, under the condition that he has not defaulted on payment and under the condition that the claims resulting from the resale of the goods are submitted to us in accordance with paragraph X. 6 below. The buyer is not permitted to dispose of the reserved property by any other means.
6. The buyer's claims resulting from the resale of reserved property will be conveyed to us at this point in time. We accept this assignment. They serve as security in the same magnitude as the reserved property. If the reserved property is sold by the buyer along with other goods not delivered by us, then the claims resulting from the resale will be conveyed in the proportional amount of the calculated value of our goods to that of the other goods. In cases of the sale of goods on which we have partial property rights according to paragraph X. 4. a claim proportional to our property rights will be conveyed to us.
7. The limitation period for titles and authorisations concerning deficiencies of delivery – regardless of which cause in law – is one year.
8. The statutory periods of limitations also apply for all deficiency-related claims against the agent irrespective of the claim's legal basis. As far as there are any sort of non-deficiency-related claims against the agent, the limitation corresponds to paragraph X.7.
9. The limitation period for all claims starts with delivery of the good.
10. Unless otherwise expressly appointed the legal requirements concerning the commencement of limitation, suspension of the period of limitation, estoppels and restart of deadlines and terms remain unaffected.

XI. Setting copy, printer's proofs

The first proof will be supplied free of charge. It can be drawn or film-set. All subsequent proofs necessary to incorporate changes requested by the customer will be charged for at cost price.

If the customer requests changes after he has given permission to print, the vendor will charge separately for the costs arising therefrom.

For the execution of the order, the last copy or proof passed for printing by the customer is definitive. The customer must check whether the copy or proof is suitable for his purposes. The vendor cannot be held liable for any errors not corrected by the customer. Printing can only start once written permission to print has been given.

XII. Storage, insurance

1. Copy, raw materials, print carriers and other objects intended for re-use, also semi-finished and finished goods, will only be stored beyond the delivery date according to prior agreement, and such storage will be charged for separately. The supplier is only liable for damage caused intentionally or by gross negligence.
2. The above-mentioned objects will be handled with care up to the delivery date, insofar as the customer places them at our disposal. The supplier is only liable for damage caused intentionally or by gross negligence.
3. If the above-mentioned objects are to be insured, the customer himself is responsible for arranging the insurance.

XIII. Periodic work

Contracts covering periodically recurring work can only be terminated by giving notice of at least 6 months to the end of a month.

XIV. Ownership, copyright

The materials and objects used by the supplier to manufacture the contractually agreed products, in particular films, printing plates, lithos and data stocks, remain the property of the supplier and will not be handed over. We retain copyright in all logos, drawings, drafts, data structures, programs etc. which we have developed.

XV. Customer's general terms and conditions of business

The customer's general conditions of Sale/Purchase shall under no circumstances apply to the contractual relationship between the customer and Datacolor, regardless of when attention was drawn to such conditions of business or when they were handed out by the customer. For all orders placed with us - including future orders - in the area of business described above, these General Terms of Delivery & Payment shall apply exclusively.

XVI. Miscellaneous

1. The place of performance for delivery and payment is the company's offices in Lüneburg, Germany.
2. The court of jurisdiction for all legal disputes arising from the business relationship with the customer is likewise Lüneburg, Germany.
3. The law of the Federal Republic of Germany shall apply to the judgment of all legal relations between Datacolor and the customer. The application of the International Laws on the Sale of Goods is excluded.
4. The invalidity of any part of the contract or any provision of these General Terms of Delivery & Payment shall not affect the validity of the rest of the contract or of any of the other provisions. In the place of an ineffective clause, a clause pertaining to the purpose of the contract or these General Terms of Delivery and Payment Conditions and according to the objective content of the contract will be implemented.