

## GENERAL TERMS AND CONDITIONS OF BUSINESS

### I. General

1. All orders and deliveries are subject to the general terms and conditions of business given below.
2. Any agreements otherwise are only valid once they have been set out in written form. Verbal agreements, either in person or over the phone, need to be confirmed in writing, otherwise they are deemed not binding.
3. These general terms and conditions stay valid and binding even if parts of it are not applicable for any reason.
4. Any deviations in the general terms of purchasers or third parties are not binding for Jodl, even if such conditions have not been explicitly contradicted by us in individual cases or we have already commenced performance.

### II. Offers and conclusion of contract

1. Unless agreed separately, all our offers are without obligation (non-binding).
2. Acceptance of orders via our free sales representatives or our sales managers are – even in written form – only a customer's offer to conclude a contract.
3. Should any circumstances arise on the Purchaser's side that jeopardise the unrepeining acceptance or payment of the ordered merchandise – or should these conditions be considered as endangering the process – JODL redeems the right to cancel already confirmed orders or to postpone the fulfilment of the contract to a moment given in time, which indemnificates correct acceptance and payment of the ordered merchandise in question. These cases do not constitute any form of delayed delivery on JODL's side.
4. Just in time business or businesses connected with a fixed date of completion have to be shown separately on JODL's order confirmation. No order with fixed completion date is in force.
5. Any information, drawings, pictures, samples, brochure, technical information or catalogue as seen and received in catalogues, brochures, advertisements or pricelists or in any document that is an integral part of the submitted offer is not binding. This information has the sole purpose of description and depiction and shall therefore only visualise the merchandise in question. The aforementioned information only becomes part of the contract only if and when formally confirmed in written form by JODL. If it is enclosed, attached or used as a basis for the offers and order confirmations submitted by JODL the information is only approximately binding. We reserve the right to make changes, corrections and developments as well as deviations in quality, design and colour pursuant to the duly agreed commercial and material standards.

### III. Prices

1. Prices are only binding if they are either explicitly offered as binding by JODL or confirmed in written form in an order confirmation by JODL.
2. Irrespective of this, JODL reserves the right, if there is no separate explicit agreement to the contrary, to increase the agreed prices upon changes in the general economic conditions, especially

in the event of pay rises, price increases for raw materials and auxiliary materials, taxes, transport costs, cost of waste disposal and utilisation cost, and exchange rate movements by the pro rata additional cost of prime costs.

3. Deliveries of merchandise with an overall value below €1,000.00 (one thousand euros) – excl. VAT – for domestic sales and €1,000.00 EUR (one thousand euros) for inner-European deliveries are subject to INCOTERMS 2010 EX WORKS. Deliveries with an overall value higher than the aforementioned sum are subject to INCOTERMS 2010 FOC. All deliveries to countries outside of the European Union are subject to INCOTERMS 2010 EX WORKS.
4. All prices are exclusive of cliché and design costs. Production of film, print clichés as well as costs for typesetting will be charged separately. The produced clichés will be invoiced on a pro rata basis and remain the property of JODL. Any sample produced in the development process remains the property of JODL and may not be used without the prior written consent from JODL.

#### **IV. Conditions of payment**

1. All payment has to be made 30 days net. If JODL receives payment within the first fortnight after the date of invoice 2% discount can be applied. The period of time for this discount starts with the respective date of invoice.
2. Payments are considered as effective once the positive bank confirmation of payment has been received by JODL.
3. If these payment terms are disregarded, the Purchaser will receive no further notice and entitles JODL to charge default interest. Except when otherwise stipulated, JODL has the right to charge interest of 5% above the respectively valid bank rate of the Austrian National Bank, in any case at least 12% p.a.. In the event of delayed payment, the Purchaser agrees to reimburse any costs incurred by JODL in the process of claim assertion. This includes any cost, charges and cash expenditure as well as any cost arising from the assertion of payment claims and rightful prosecution of the aforementioned claim, especially all costs in relation to licensed agents of debt collection.
4. JODL accepts cheques or bills of exchange only on account of performance. Any payment via bills of exchange is subject to a separate agreement between the parties. Any interests and costs for discount or collection of the aforementioned payment methods are to be paid and settled by the Purchaser.
5. Non-fulfilment of payment terms due to circumstances which might insinuate a lessened creditworthiness of the Purchaser and which are brought to JODL's notice by the aforementioned Purchaser only after conclusion of the contract bring about the immediate settlement of payment, even though deferment might have been agreed. JODL has the right to demand immediate and full cashpayment if any bills of exchange have not yet been collected in this case.
6. Any changes in the Purchaser's creditworthiness, e.g. delayed payment and disregard of payment deadlines set as well as notice of disadvantageous credit information, etc. entitle JODL to ask for indemnification or payment in advance, even if this was not initially agreed.
7. The Purchase can only offset or file a right of retention against claims that we have towards the Purchaser if the Purchaser's counterclaim has been established in a court or law or is undisputed.

## V. Delivery

1. Terms and methods of delivery are – if not otherwise stated separately – are subject to JODL's discretion. Any delivery is executed at the Purchaser's risk.
2. Unless a specific delivery date has been set, the delivery period (estimated date of arrival) marks the period between order confirmation and information upon readiness for delivery based upon the agreed deadline. The period of delivery time starts in any case only after acceptance of proof copies/trial proof by the Purchaser and arrival of all necessary material for fulfilment of the order.
3. All information on delivery times is indicative.
4. In the event of non-fulfilment in time the Purchaser has to set a subsequent period of at least 21 working days. All reminders and deadlines on the Purchaser's side require written form.
5. Call-off orders need to be executed fully and without delay, unless otherwise agreed in the order confirmation, within a period of 6 months with monthly deliveries. Any merchandise or any product subject to a partial delivery that has not been called off within the set deadline will be stored at the risk and expenses of the Purchaser. JODL has the right to ask for immediate payment of the merchandise or to deliver without prior notice to the Purchaser's premises. Any additional cost incurred through and during this process will be invoiced separately to the Purchaser.
6. Any merchandise that is not called off in time can, at JODL's discretion and will, be stored either at JODL's premises or in a public warehouse at the Purchaser's expense.
7. Prevention clause – In case of circumstance beyond the reasonable control of the parties, force majeure, such as natural disaster, fire, flood, earthquake, war, military operation of any kind, blockade, embargo, etc. or sanction and or interventions by public authorities, interruption of operations, disruption of transport, etc. JODL is partially or totally freed from compliance with its liabilities without any entitlement of the Purchaser to reimbursement or cancellation of the order.
8. Any damage during transport can only be accepted if declared in written form upon acceptance of the merchandise on the attached delivery documents.
9. If deliveries to the agreed fulfilment place upon agreed routes or within agreed timeframes are impeded without any culpability on the part of JODL, JODL has the right to deliver via other routes or to another place; any additional cost incurred will be charged to the Purchaser. The Purchaser will have the opportunity to respond to this beforehand.
10. If the Purchaser declares prior to production of ordered merchandise that it will not accept the goods JODL is entitled to charge 40% of the total order's worth as recompensation for lost profits and costs incurred. Proof of higher or lower damage worth is obligatory for both parties.
11. Storage of cylinders for rotocalc motifs: Cylinders with customised engravings are stored up to 14 months after fulfilment of last order. After this period they will be released for general usage. If the Purchaser wishes to extend the period of storage it will be subject to separate agreement and a storage fee.

## VI. Reprocessing fees – ARA

1. Unless otherwise agreed and stated, all packaging material that is brought into domestic circulation is licensed by JODL via the ARA system under the code 880 (the Altstoff Recycling Austria AG ("ARA AG")) or by any other reprocessing company acknowledged by the Federal Government.

2. At the Purchaser's request, JODL will also dispose of merchandise that has been classified by the Federal Government as packaging via the ARA sSystem, using our service contract No. S 80173 or any other reprocessing company acknowledged by the Federal Government.
3. If the Purchaser disposes of the merchandise or the packaging on its own by a system of its choice, it needs to provide JODL with a corresponding written confirmation without being asked to do so.
4. JODL is to be held indemnified and harmless if the Purchaser does not send the written confirmation of reprocessing the goods on its own via a system of its choice OR either the ARA or the Federal Government approach JODL with financial or material recompensation claims due to the non-conformity of the Purchaser's actions with regard to its liability to pay costs incurred during reprocessing.
5. No licensing for export goods.

## VII. Deviations

1. Any deviation between order and order confirmation must be objected to within 6 days date of order confirmation in written form. Otherwise the information stated in the order confirmation including delivery terms is deemed to be agreed.

## VIII. Defects and complaints

1. The Purchaser is legally obliged to check the delivered goods immediately upon arrival in its warehouse for defects. In the course of this inspection random samples must be taken.
2. In the event of no detailed written instruction from the Purchaser, all orders are executed with material usual in the industry and according to known production methods. Therefore no notice of defect with regard to any correlation of reactions between packaging material and bulk material can be made if there has been no explicit and detailed reference to special characteristics of the bulk material prior to production and a written statement from JODL given in response.
3. The Purchaser acknowledges that the items delivered are mass production merchandise and can therefore contain slight deviations. Due to this fact the Purchaser concurs to accept slight deviations and not to regard these as the subject for a claim. A defect rate of 3% in the overall delivered quantity does thus not substantiate any claim.

Production-related tolerances of +/- 4mm in width, +/- 6mm in length and +/- 4mm depth as well as deviations in the strength of materials are due to the manufacturing process and totally unavoidable. The same applies to printing ink/printing colours, pigmentation and print positioning tolerances of +/- 3mm in the length and +/- 4mm in the width. All these aforementioned criteria are no cause for claims. For pre-made bags with Thürling holes or die-cut windows tolerances of +/- 2mm in relation to the width and +/- 4mm with regard to length apply. Deviations in the coating by unit area (grammage) for paper of plastics of +/-10% do not justify a claim. Product-related colour deviations are possible.

4. Quantity tolerances of +/-20% for small quantities (up to 50,000 pcs. or 30,000 rm) as well as tolerances of +/-10% for larger production quantities (more than 50,000 pcs. or 30,000 rm) are inherent to the production process and unavoidable. Should the Purchaser wish to apply smaller tolerances this needs to be stated in writing on the order confirmation.

5. Any material provided by the Purchaser, such as labels, etc., must show a quantity tolerance of +15%.
6. We do use printing colours in line with the industry standard, which with regard to abrasion resistance, lightfastness, and water resistance correspond to the current industry standard. In the event of special requirements with regard to the colour used, e.g. residual solvents < 20g/m<sup>2</sup>, abrasion resistance, special brightness/brilliance, sealability of colours used, etc. the Purchaser must state this separately in explicit and written form.
7. If the ordered material is destined for food the Purchaser has to state this explicitly in written form and refer to the required food regulatory clearances. Please note that the print may never be in direct contact with the filled product.
8. The Purchaser has to check the film proofs with due diligence and sign for approval on the delivered proof (printing approval). The Purchaser is not entitled to claim any incorrect text, type and motif presentation or any textual errors which have not been corrected and claimed in the approved print proof. No warranty and compensation for damage shall apply unless JODL or one of its vicarious agents or has shown gross negligence or wilful intent.
9. If the Purchaser is a business – the following shall apply:
  - a. Warranty rights of the Purchaser foresee that it has effected its obligation imposed by law to inspect and to notify defects (§§ 377,378 UGB). An application of presumption rule according to § 924 ABGB is expressly excluded.
  - b. Any apparent claim arising and not noted immediately or later than a week upon acceptance of goods cannot be considered. Defects which were not apparent upon delivery and not visible after inspection in accordance with §§ 377,378 UGB must - in order to apply with warranty rules – be notified in written form immediately and not later than 2 weeks after they first become known. In parallel, all handling and conversion processes must be brought to an immediate stop and the notification has to state the defect extensively.
  - c. All defective merchandise must be kept in the condition it was in when the defect was noticed. JODL has the right to investigate on site whether the complaints are justified. Reservation and/or conditional acceptance stated on delivery documents do not constitute proof of defective merchandise. As far as claims are attributable to incomplete or imprecise information given by the Purchaser on the final use or burden on the material, JODL will not be held responsible for any warranty claim.
  - d. If the merchandise is to be delivered to a third party, the Purchaser is obligated to inform the third party of its duties to inspect and notify. It is the Purchaser's obligation to agree this procedure with its subcontractor the same way as this obligation is in force between the Purchaser and JODL. The Purchaser has to notify JODL immediately in written form in the event of notices of defect from the third party and forward the documents to JODL.

## **IX. Warranty**

1. Upon a justified notice of defect brought to our attention in a timely manner, JODL guarantees in accordance with the rules of warranty legislation and stipulation the rules listed below for the agreed appearance and workmanship of the delivered merchandise.

2. In case of proven defects JODL shall guarantee through supplementary performance at its choice either to redeliver new, defect-free merchandise (supplementary delivery) or to fix the deficiency (remedy).
3. In case of remedy (fixation of a defect) the Purchaser has – at JODL’s request – to specify the defect, provide written evidence of the defect inspection and provide all other data necessary to analyse the defect. All costs incurred by the process of remedy shall be borne by the Purchaser, as long as the costs have not been incurred due to the fact that the merchandise has been brought to a place other than stated in the delivery address or the contract signed.
4. If the subsequent fulfilment according to §§ 2 and 3 above remains unsuccessful, the Purchaser can withdraw from the contract or reduce the remuneration. In case of minor defects the Purchaser may not withdraw from the contract. In each and every case, as a prerequisite for the Purchaser’s right to withdraw from the contract, a reasonably extended deadline is to be granted in writing to JODL, unless the granting of an extension period is not required by law. After the fruitless expiration of the aforementioned period, the Purchaser may rescind the contract. If the Purchaser chooses to rescind the contract on due to a legal or material defect it has no further right to claim compensation for the defect. In the case of rescission the Purchaser is liable for deterioration, destruction and loss of utilisation caused not only by its own due care but for every act of negligence and intentional fault.
5. JODL's statements regarding the composition and quality of the goods do not represent a guarantee of such composition and quality unless the parties expressly so agree. If the Purchaser is a business, public comments, praise or advertisements shall not constitute any contractual statement regarding the composition of the goods
6. In the event of recourse to the guarantee by the Purchaser following a successful claim against the latter on the basis of recourse exclusion, those recourse claims remain unaffected by the general rules of recourse. §933 letter b ABGB explicitly does not apply.

#### **X. Compensation and product liability**

1. Unsuitable or improper storage or handling by the Purchaser rules out all compensation.
2. All compensation claims based upon positive contract violation, culpa in contrahendo and unlawful acts are excluded against JODL as well as against all other vicarious agents, as long as no wilful or grossly negligent acts of either party named can be proven. This exclusion of liability is especially directed towards any damage, which is ascribed to insufficient abrasion resistance, abrasion, sealability, brilliancy or residual solvent of the colours used.
3. Under no circumstances may the compensation be higher than the original value of goods. In addition, any compensation is also limited to claims that can be brought by the Seller under insurance cover; stating herewith that especially and notably any claims for lost profit and/or the liability for costs of litigation are a priori excluded.
4. For subcontracted commission orders the liability of JODL is restricted to the share of revenues performed by JODL. The only valid exception is gross negligence.
5. Any indemnity claim for secondary or subsequent damage is excluded.
6. Any liability for minor negligence is explicitly waived.

7. The contractual parties explicitly exclude the protective effect of this contract in favour of third parties so that any resulting claims cannot be filed against the Seller.

#### **XI. Intellectual property, copy rights and industrial property rights**

1. Any IP or industrial property rights evolving from the development and production process remains the property of JODL. Those rights are neither sold with the merchandise, nor do they change ownership if the Purchaser bears any portion of the development costs. JODL is allowed to also use these IP and industrial property rights for third-party orders.
2. All material produced by the Seller, including designs, material, drawings and sketches, films, clichés, cylinders, tools, etc. remain in the sole possession of JODL, even though the Purchaser might bear some cost.
3. Unless otherwise agreed, JODL reserves the right to clearly mark the produced merchandise with a logo or code.
4. Samples, sketches, designs, films, etc, which have been explicitly ordered by the Purchaser or for which the Purchaser has given JODL the authorisation to order/produce will be charged to the Purchaser even if the main order, for which those elements had been designed and acquired, should be cancelled.
5. Any checks of intellectual property rights for the material provided by the Purchaser, especially anything connected with copyright, industrial property rights such as industrial design, patent, samples and brands, are the responsibility of the Purchaser. Should JODL be approached by third parties for infringement of property law through usage or duplication of material provided by the Purchaser or any other act against unfair practices, the Purchaser is obliged to support JODL in its defence against the infringement of such rights and reimburse JODL for all damage accruing to JODL, including legal costs.

#### **XII. Retention of title**

1. JODL reserves its right of ownership for any merchandise delivered and any good deriving from secondary processes until full payment or collection of cheques and bills of exchange.
2. The Purchaser is entitled, within the frame of orderly business management, to dispose of the merchandise, especially to process and sell the goods. If the contract goods or a product of those goods is resold before expiry of the reservation of title the Purchaser shall for security waive its request for payment of the purchase price in favour of JODL. The Purchaser is obliged to clearly state this assignment on any invoice to third parties.
3. Any exceptional disposition of the merchandise, e.g. pledging, assignment as security, etc. is only acceptable with the prior consent of JODL. The Purchaser is obliged to immediately notify JODL of any arbitrary access of third parties to the goods supplied under reservation of title (e.g. pledging, etc.). In the event of non-fulfilment of notification JODL reserves the right to compensation.
4. All work tools produced by or ordered by JODL for third-party production remain wJODL's property. Any costs incurred in this process will be invoiced directly to the Purchaser. Clichés, cutting dies and all other necessary tools in the process of cliché production resp. all material produced during the process qualify as work tools.
5. Additional reservation of title:

- a. The Purchaser as the revocable beneficiary is entitled to process and combine goods or deliverables with other items as long as it is part of its orderly course of business. The processing or combination takes effect for JODL, which has the title of the merchandise or deliverables produced or combined without any further obligation. If the ownership of the goods is extinguished by the processing or combination, then the Purchaser shall hereby transfer (co-) ownership of the object arising from the processing to JODL as long as it is the (co-)owner.
- b. The Purchaser is entitled to resell the delivered merchandise or the newly created product due to processing, mixture or combination, within the course of orderly business as long as the reservation of property rights of JODL is clearly stated. Subject to reservation of title or the joint property in the goods created the Purchaser's claims arising from a resale of the reserved goods are hereby already assigned to JODL with all ancillary rights to the amount of the total invoiced sum (including value-added tax). This process aims to safeguard any arising claim of ownership on the part of JODL in this resale, irrespective of whether the merchandise with or without any further processing is sold to one or more re-purchasers. If the reserved goods are sold by the customer together with other goods not provided by us, then the receivable from the resale will be assigned in the ratio of the invoice value of the other goods sold. In the event that goods are sold that we have co-ownership title to pursuant to figure 4, the assignment shall apply to the amount of these co-ownership shares. The same applies if the reserved goods either individually or jointly with other goods are the object or partial object of a works contract, contract for work and material or any similar contract.
- c. The Purchaser is not authorised to make other disposals of the reserved goods; in particular it is not authorised to pledge or transfer receivables as security to factoring banks without JODL's prior written consent. JODL agrees to a full transfer of receivables to factoring banks only if the obligation of the factor to bring the counter-performance in the rate of the demands immediately to JODL as long as JODL have claims against the customer is established simultaneously.
- d. The Purchaser is entitled to collect the assigned accounts receivable as long no default of payment is noted. JODL can revoke any time if - the Purchaser does not obtain a bill of exchange in time or – the prerequisites of the right of repudiation in favour of JODL in accordance with § IV: figure 5 and 6 are given. The Buyer acts as trustee as to collection of accounts receivables and is obliged to pay the equivalents less revenue. JODL's entitlement to collect the receivables on its own is not affected by this. JODL undertakes not to collect the claim as long as the Purchaser meets its payment obligations towards JODL from those revenues, is not in default of payment, no application has been filed for the opening of insolvency proceedings and there is no other deficiency to its ability to pay. However, if this is the case we can request that the Purchaser informs us of the assigned claims and their debtors, provides all information which is necessary for the collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.
- e. JODL undertakes to release the granted securities upon request of the Purchaser to a degree, insofar as the value of the securities exceeds the secured accounts receivable by more than 10% or their nominal value not only temporarily exceeds our claims for more than 50%; we reserve the right to choose the securities to be released.

- f. If the Purchaser plans to transport the delivered goods outside of the country, it shall immediately notify JODL of such plans in writing. Upon request, the Purchaser is to grant JODL a security right that equates to the aforementioned retention of ownership according to the laws of the destination country. JODL has to undertake all measures which are necessary for the establishment and maintenance of such rights.

### **XIII. Right of withdrawal**

1. Events that drastically change, wholly or in part, the implicit basis of the delivery contract, whether they may affect the Purchaser or JODL and its subcontractors or not, shall entitle JODL to adapt, wholly or in part, the contract to the changed conditions, excluding claims for damages, or totally terminate resp. cancel orders.
2. Within the scope of a contract with an entrepreneur JODL is granted a right of withdrawal to such an extent, that upon the base of an internal judgement of insufficient creditworthiness or the lack of granted insurance for the due purchase price JODL may withdraw within 3 days from the contract.

### **XIV. Place of fulfilment and jurisdiction**

1. The place of fulfilment and exclusive place of jurisdiction for all legal discussions that arise based upon the contract is the district court of Vöcklabruck. This exclusive place of jurisdiction is also valid if the Purchaser is not subject to Austrian jurisdiction or its domicile or usual place of residence are not known at the time when court proceedings are started.
2. The contract is subject to the legal provisions of the Federal Republic of Austria; the UN Sales terms (the Hague Sales Convention and the Convention on the International Sale of Goods – CISG) as well as the application of the IPR (Federal law concerning international private law) shall be excluded.

Lenzing, 21.05.2012

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