

GENERAL CONDITIONS OF SALE AND DELIVERY OF FUJIFILM Recording Media GmbH

I. General Conditions – including Place of Performance and Place of Jurisdiction

(1) Unless other arrangements are specifically confirmed in writing by us, the business relationships between us and our customers shall be exclusively subject to the following General Conditions of Sale and Delivery (GCSO), even if we do not expressly make reference to these in ongoing business relationships.

Our GCSO shall be deemed accepted no later than when delivery or any repairs by us are accepted.

Unless otherwise expressly agreed in writing, the conditions of business of the customer, regardless of their content or designation, shall only apply to the extent that they do not deviate from our GCSO, this shall even apply if we do not specifically object to such customer's conditions of business.

- (2) Offers by us are subject to change without notice. Technical details and descriptions of delivery items in offers for sale, prospectuses and other information material shall not be binding. Orders, requests for repair, contracts, amendments or additions to contracts and any other arrangements or statements, including warranties as to quality, shall only be binding on us if we have expressly confirmed this in writing (cf. section II. (2) below re delivery deadlines).
- (3) Any amendments to these GCSO and/or to any provisions contained in the contract shall be made in writing. This shall also apply to any contracting-away or deviation of the requirement of written form.
- (4) Should individual stipulations in these GCSO or provisions of the agreement be invalid, this shall not affect the validity of the other stipulations. If a provision is invalid of unenforceable owing to any stipulation providing for a specific quantity or time (date or deadline), then the legally permissible quantity shall be deemed to be agreed on that is coming as close as possible to the invalid stipulation.
- (5) Unless otherwise stipulated, the place of performance for all financial and other obligations shall be the location of the company's registered office. Place of performance for deliveries shall be the place from where the goods are dispatched.
- (6) The exclusive place of jurisdiction for all legal disputes (except those referred to in the next sentence) with registrable businessmen (as defined in the German Commercial Code – HGB), including any disputes about the validity of agreements, these GCSO, this agreement on jurisdiction or any procedures concerning bills of exchange or cheques, shall be D-47533 Kleve. Notwithstanding sentence 1 supra, the exclusive place of jurisdiction for any legal disputes with businessmen concerning copyrights, trademarks and other industrial property rights or competition (based on the Unfair Competition Act, related ancillary statutory texts and antitrust law) shall be D-40213 Düsseldorf. With respect to all legal disputes, however, we reserve the right to take legal action against the customer at the location of his registered office.
- (7) These GCSO shall be subject to substantive law applying in the Federal Republic of Germany, except for regulations on conflict of laws, the Vienna UNCITRAL Convention of the International Purchase of Movable Goods or other internationally standardized legal regulations on purchase agreements and contracts for work and services. This shall even apply if the customer has its registered office abroad or if goods are delivered abroad (cf. also section V. [9] below).
- (8) The contractual rights of our customers shall not be transferable.

II. Delivery, Passing of Risk, Default

(1) The scope of our obligation to deliver is set out exclusively in our written offer and/or written confirmation of an order. The quality of products to be manufactured by us or by enterprises commissioned by us is dependent on the master tapes, master diskettes and other material to be provided by the customer.

(2) We shall endeavour to meet the delivery dates and/or deadlines stated. However, unless as specific written guarantee is given, the delivery dates and/or deadlines states are only approximate and are in particular subject to goods being duly supplied in good time and in sufficient quantity by our supplies, and to any material or information required from the customer being provided in good time. Dates for delivery stated in our confirmations of orders shall not be considered guaranteed. Unless otherwise agreed in writing, the period allowed for delivery shall begin when the confirmation of order is sent or when the master tapes, master diskettes and other material to be provided by the customer is received by us.

If shall all cases be a precondition for the delivery deadline being met that documents and working materials to be provided by the customer are made available in good time and that the customer complies with the agreed terms of payment and other obligations. Partial deliveries shall be permitted and may be invoiced separately.

Goods ordered deliverable on call shall be delivered to the customer within 3 months. A period of at least 1 month must elapse between the request for and the actual delivery of the goods in question.

(3) If, after a contract has been entered into, the customer requests changes to his order which affect production period for such order to be met, then the (agreed) period within which delivery is to be made shall begin to run anew, but not until the change of order has been confirmed and fully clarified. In this event, the date for delivery shall be deferred by a period equivalent to the additional time required to meet the changed order.

(4) The time allowed for delivery shall be extended appropriately in the event of any exceptional circumstances outside our control or that of our suppliers or agents. If the circumstances are such that delivery is impossible or cannot be reasonably expected, then we shall be entitled to withdraw partially or entirely from the contract.

Exceptional circumstances within the meaning of the above paragraph shall be any event that is beyond our control and that prevents, hinders or delays, in full or in part, the manufacture, delivery or transport of the goods; exceptional circumstances within the meaning of this provision shall not only include cases of force majeure, but above all also any acts of war or similar disturbances, civil turmoil, decrees, ordinances or other intervention by government authorities, strikes or lock-outs, unforeseeable shortages of raw materials, bans on import, export or transit shipments.

(5) We shall be entitled to withdraw from the contract if the necessary permits are not granted in connection with transactions involving imports or exports.

(6) We shall also be entitled to withdraw from the contract if, following its conclusion, facts become known which indicate that the customer is not sufficiently sound in financial terms and is not prepared to meet our request to make payment concurrently with our performance or to provide sufficient for our claims to payment.

(7) Claims for damages for failure to deliver/provide the goods ordered, or for failure to do so in good time, shall be ruled out in circumstances as set out in para (4) and (5) above.

(8) If we delay in supplying goods ordered, then the customer shall be entitled to withdraw from the contract if a grace period of at least 4 weeks, of which notification shall be given in writing, expires without such delay being remedied. The customer shall only be entitled to withdraw from the contract if, at the same time as fixing the grace period, if gives notice that such a step shall be taken.

Any further claims, in particular claims for damages for non-performance or compensation for damages suffered due to any delay, shall be ruled out unless we acted with intent or through gross negligence. The same shall apply with regard to conventional penalties for late delivery. The question of liability shall otherwise be subject to the arrangements set out in section VII. (9)-(13).

(9) If the customer delay in calling for, accepting or picking up the goods in question or is responsible for any delay in their dispatch or delivery, then we may, without affecting any additional claims we may have,

a) withdraw from the contract with respect to any goods of which the customer did not take delivery; or

b) store the goods at the customer's risk and cost in our or third party's warehouse, whereby the customer shall be charged warehouse costs of no less than 0,5% of the invoice value of the goods concerned for each week or part thereof the goods are stored; and/or

c) after the expiry of a reasonable final deadline set by us, any goods of which the customer failed to take possession may be sold to a third party, in which event the customer may be held liable for any difference between the contractual price payable by the customer and the sum paid by such third party.

In this event, all risks of loss of or damage to the goods shall pass to the customer upon notification by us that we are ready to dispatch the goods ordered.

(10) Goods shall be packed and dispatched at the customer's expense. Unless otherwise stipulated in writing, any transport or other insurance coverage shall be the responsibility of the customer.

(11) Unless otherwise stipulated in these GCSO and the written contract, the terms and definitions set out in the INCOTERMS 2000 shall apply with respect to claims concerning costs.

(12) In the case of all deliveries – even of, for or free to customer's address or if the goods are picked up by the customer – transport – related risks shall pass to the customer as soon as the goods have left the respective premises or our warehouse or have been handed over the transportation, including transport by us or a forwarder or carrier at our production or storage site; this shall apply regardless of who is to bear the freight costs.

(13) If, in exceptional circumstances resulting from possible doubts about who is to bear transport-related risks, claims are nevertheless asserted against us with regard to damage or loss during transport, the customer may only enforce such claims if, before paying the freight charges, he ensures that proper notice of damage and/or loss is given on the forwarding documents and invoices and that the damage is properly recorded, and if the notifies us or the transport firm(s) if such damage or loss within a pre-clusive period of 10 days following arrival of the goods at their destination or, in the event that the goods are not to be delivered, within 10 days following receipt of notification that they are ready for consignment and he keeps the goods together with their packaging available for inspection by us.

III. Deliveries of Printed Materials Exceeding or Falling Short of the Quantity Ordered

The number of copies of printed material as confirmed in writing (e.g. packaging, handbooks, labels, inlays etc) shall in general be supplied. However, the customer shall be obliged to accept excess or short deliveries of printed material ordered which we ourselves are obliged to accept under arrangements with suppliers/printing firms. Generally, the customer shall not be obliged to accept excess or short deliveries deviating by more than 10% from the quantity ordered. This percentage figure shall increase to 20% in the case of polychromatic or particularly difficult prints. The customer shall also accept that this percentage may be increased by the rates allowed by the associations of the paper industry, provided that the paper and/or boxes were provided by us – or the suppliers/printers commissioned by us – on the basis of the conditions of delivery of these associations.

IV. Prices, Terms of Payment, Security

(1) Delivery shall be effected at the prices specified in the confirmation of order (plus VAT at the applicable rate). If no confirmation of order is issued, then the prices specified on the delivery note shall apply. The prices shall not include packaging costs and freight costs for delivery from our storage facilities.

The customer shall also bear the licence fee to be paid by us to Duales System Deutschland GmbH or its successor with regard to sales packaging bearing the "green dot" (der Grüne Punkt).

Unless otherwise stipulated in writing we shall be entitled to increase the contractually agreed purchase price in line with any subsequent introduction of or increase in charges taxes or other levies imposed in the goods, especially EC/EU discharge and anti-dumping duties or countervailing charges and the like, or in line with any change in currency parties.

(2) In the absence or any written agreement specifying otherwise, the customer shall be entitled to deduct a 2% cash discount from any invoice settled by him within 14 days after the invoice date. Any payment shall be deemed to have been made on the date as of which the sum concerned is actually at our disposal.

(3) Bills of exchange will only be accepted by us on account of performance if explicitly agreed in advance, whereby any liability on our part of timely and proper presentation of the bill or any protest shall be ruled out; moreover, we shall only accept bills of exchange which are rediscountable and with respect to which all taxes have been paid. The same shall apply to any cheques.

The sum of any bills of exchange or cheques shall be credited subject to collection and the value date shall be the day on which the sum of such bill or cheque is actually at our disposal. Any discount, collection or other charges and expenses shall be borne by the customer. Before taking any other action, we shall initially seek satisfaction by turning to account any bills, cheques or other instruments provided on account of performance.

(4) If more than on financial commitment of the customer is outstanding, the customer shall have no right to determine to which of these commitments any payment made by it shall be credited. Rather, we shall be entitled under §§ 366, 367 of the German Civil Code (BGB) to credit any payments received to any claim for payment of principal, costs or interest we may have against such customer.

(5) In the event of any delay in payment, we may, notwithstanding any additional claims we may have, charge default interest at a rate equivalent to that payable by us for credits taken out by us, but no less than 3% above the discount rate of the German Bundesbank applicable at the relevant time.

(6) All our claims, including claims with respect to which we may accepted bills or cheques, shall be due and payable immediately if the customer delays in payment, violates other major obligations under the contract or these GCSO, or if we become aware of any facts or circumstances that may adversely affect the customer's creditworthiness, such as in particular the institution of composition or bankruptcy proceedings. In such a situation, we may withhold any deliveries that may be outstanding or make such deliveries conditional on payment effected in cash or on securities being provided. We may also require the customer in such cases to return any goods that are still unpaid and to bear all costs incurred in connection with the of such goods.

However, this shall not constitute a withdrawal from the contract.

(7) In den event of any delay in payment we may, after the expiry of a final deadline set by us at our reasonable discretion, withdraw from the contract and hold the customer liable for damages for non-performance.

(8) The customer may not declare any set-off with respect to any claims against us, which have not been acknowledged by us or awarded to the customer in a final court ruling. Nor shall the customer have any right of retention with respect to such claims, in particular warranty claims.

V. Reservation of Title

(1) Any goods supplied shall remain our property ("reserved goods") until full and final settlement of all claims which have arisen or will arise under the contract or, in the case of payment by cheque or bill of exchange, for as long as we remain liable with respect to any bill of exchange or cheque being honoured. If several claims exist on the basis of this contract, the reservation of title shall serve as security of payment of any outstanding balance even if individual deliveries of goods have already been paid for.

(2) The customer shall not be entitled to resell goods subject to our reservation of title and only in the course of normal business, and shall not be entitled to pledge such goods, transfer ownership thereof by way of security or make any other dispositions relating thereto. The customer hereby agrees that any claims arising from such resale shall be deemed assigned to us. The customer may collect these claims, but any sums received shall be held in trust by the customer on our behalf on a separate account. However, if the customer fails to meet his obligations towards us or encounters serious financial difficulties, then he shall allow us to collect such claims. The customer shall fully support our efforts in such cases. To this end, he shall provide us with all necessary documents and information, if the reserved goods are resold together with other goods, then the above advance assignment shall only apply to the value of the reserved goods.

(3) Processing of the goods shall be carried out by the customer on our behalf without our being placed under any obligations in this respect. If the reserved goods are processed or combined or mixed with other goods, we shall as a matter of principle be entitled to a co-ownership share in the new product: in the case of processing, this share shall correspond to the value of the reserved goods (= gross invoice value including ancillary costs and taxes) in relation to the value of the new product; in the case of combination or mixing, the share shall correspond to the value of the reserved goods in relation to the value of the goods they were combined or mixed with. If the customer becomes the sole owner of the goods, he hereby and as of now grants us co-ownership rights in the ratios referred to above and shall keep the goods in safe custody on our behalf without consideration. If the goods are resold, then the above-mentioned advance assignment of claims shall also apply to any claims of the customer deriving from such resale, whereby the value of the claims assigned shall not exceed the value of the reserved goods.

(4) The customer shall take out appropriate insurance coverage for the reserved goods against all the usual risks and shall store the reserved goods separately, treat them with care and label them reserved goods at our request. The customer hereby and as of now agrees to transfer to us any claims against the insurance company with respect to any event insured against, whereby such assignment shall be limited to the value of the reserved goods.

(5) Written notification of the levying of execution on the reserved goods or any other seizures by third parties shall be given to us without delay along with the name and address of the party levying execution or the third party concerned.

(6) If the customer delays in effecting payment of fails to comply with other contractual obligations, we may demand the surrender of the reserved goods and then dispose thereof at our discretion. The customer shall accept such measures and allow his offices and business premises to be entered. This shall not constitute withdrawal from the relevant contract. However, if we have fixed a deadline for performance (and stipulated that performance will not be accepted after its expiry) and sell the goods after such deadline, then the customer shall be liable for payment of any sum by which the proceeds from such sale fall short of the price agreed on with the customer. The customer shall also bear the costs incurred in connection with the taking back of the reserved goods.

(7) If the value of all collateral provided exceeds the value of the claims secured by more than 20%, then the customer may request that he be released from his obligations as regards a certain portion of the collateral to be stipulated by us.

(8) Financing agreements (e.g. leasing) involving the transfer of ownership of reserved goods by way of security shall require our prior written consent unless the party providing the financing is obliged under the agreement to pay to us directly the portion of the purchase price to which we are entitled.

(9) In legal actions in connection with our reservation of title, we shall be free to pursue claims against former customers in the courts of their home state and under the laws of such state. In the latter case, the provisions of the foreign jurisdiction concerning reservation of title which come closest in economic terms to what is set hereunder shall be deemed to have been agreed on.

VI. Safekeeping, Return and Insurance of Material Provided

(1) For the duration of any assignment, the picture, data and sound/recording media made available to us as well as composition patterns and other materials shall be held in safekeeping by us free of charge for a maximum of 3 months. These materials etc. shall only be stored for a longer period subject to payment of a separate fee and on the basis of a separate written agreement.

(2) The customer shall be obliged to properly insure the materials provided to us against theft, fire, water/related damage and other risks.

(3) After completion of the order, we shall be entitled to send the materials provided to us back to the customer at the latter's expense and risk. Any storage of material beyond such time shall be subject to a separate fee and shall be conditional on specific arrangements being made.

In the event that the customer refuses to accept materials returned to him or that the materials are returned to us as undeliverable, we shall be entitled to place them in storage with a third party or to destroy them at the customer's expense in each case. Additionally, the customer has to bear the delivery expenses.

(4) For all objects and other materials etc. made available to us by the customer we shall assume liability only to the extent of the care we usually employ in our own affairs. However, the customer shall bear the risk of any loss of programs of data on the picture, sound-recording or data media. Our liability shall otherwise be subject to the arrangements in section VII. (9)-(13).

VII. Notice of Defects, Warranty and Other Liability

To the extent that no special written or printed provisions, with overriding priority, concerning warranties, guarantees or liability exist or were agreed in writing in individual instances or with respect to individual areas of activity of our enterprise, the following shall apply:

(1) The customer shall be obliged to carefully and fully examine every delivery without delay following receipt thereof. He shall give written notice of any defects apparent form such examination within 8 days of receipt of the goods. The entire consignment shall otherwise be deemed to have been accepted. If a defect is later revealed which was not apparent during the initial examination of the goods, then the customer may only assert claims in this respect within the warranty period set out in paragraph (7). Notice of the defect shall in this case be given immediately. Otherwise the goods shall be deemed approved.

When giving notice of any defect, the customer shall give a detailed description of the defect concerned and shall in particular state how and under what circumstances the defect arose.

(2) Our warranty shall cover the qualities of the goods specifically warranted in writing and their faultlessness as regards the materials and their processing according to the state of the art.

(3) When duplicating diskettes for us on PCs or other EDP facilities, we shall endeavour to ensure that no so-called computer viruses slip onto duplicate diskettes when master diskettes or sub-masters respectively are duplicated. Should we discover any computer virus, we shall notify the customer immediately. We shall not assume any liability for damages caused by computer viruses which were already present on master diskettes provided to us. If the customer wishes to claim compensation form us for damages brought about by computer viruses, he shall be required to prove that not viruses were present on the mater diskette provided to us for duplication purposes. Our liability shall otherwise be subject to the arrangement under paras (9) to (13) below.

(4) We shall, however, only be subject to warranty obligations if a defect occurs despite proper use, treatment, maintenance, utilization and storage of the product by qualified personnel of the customer in accordance with any instructions, and if such defect does not arise from normal wear and tear or corrosion of individual parts or from the product being stored at normally unsuitable temperature and humidity levels or as a result of modifications made by third parties. No warranty obligations shall arise in the event of minor variations in colour, dimensions and/or other qualities or properties in the event that the poorer quality derives from the master tapes, master diskettes or other materials provided by the customer.

(5) With respect to printed materials, no complaints by the customer concerning the nature of the materials used to produce the printed matter ordered (e.g. paper, cardboard etc.) shall be valid if such materials have been declared acceptable in the general conditions of sale of graphics paper and cardboard for printing applications of the Verband Deutscher Papierfabriken e.V. as published in the Federal Gazette (Bundesanzeiger) on Maz19, 1983 (p. 4534) and January 26, 1984 (p. 785) or as subsequently revised.

(6) After the customer has returned goods to us with a notification of a defect – with the goods concerned being returned in the original or equally secure packaging –, we undertake, at our option, to either remedy and defect of which notice was properly and justifiably given, or to replace the defective component or article within an appropriate period of not normally less than 4 weeks or to reimburse the customer to the value of the defective article. The customer shall in these instances also bear to risks relating to the transport of goods sent to and returned by us. The customer shall only be entitled to return goods to us on the basis of our express prior written consent.

(7) The customer shall only be entitled to cancel the contract or demand a reduction in price if we refuse to remedy defects or replace any articles, or if we fail to respond to the customer's justified complaint within an appropriate period of at least 3 weeks, or if the defect is not rectified within an appropriate period or the replacement article is also defective and proper notice thereof within the meaning of the paragraph (1) above is given by the customer. If the conditions set out in sentence 1 above are met, the customer may even then only cancel the contract if he cannot be reasonably expected to accept to accept the goods concerned at a reduced price.

In the event of a justified complaint, any costs for the transport of goods sent to and returned by us, as well as the cost of any labour and materials shall be borne by us.

(8) For damage claims asserted by the customer irrespective on whatever legal basis, we shall in each case only be liable for damages which we or persons employed by us in the performance of our obligations have caused with intent or gross negligence, or for damages caused by ordinary negligence in failing to comply with obligations which are essential to the fulfilment of the contract (so-called "cardinal obligations") which the customer could expect to have been complied with. In such instances, the customer shall moreover only be entitled to compensation for so-called "indirect" or "consequential" damage caused by defects to the extent that such damage was foreseeable by us when the contract was entered into or was borne in mind in our warranty respectively.

(10) In terms of amount, our liability shall be restricted to ten times the contract value, but no more than the maximum coverage specified in the confirmation of order.

(11) With respect to picture, sound-recording and data media and other materials provided to us for processing or storage, our liability shall be restricted to the value of unexposed film materials or blank tapes of the same length or to the purely material value of the shall be restricted to the value of unexposed film materials or blank tapes of the same length or to purely material value of the articles concerned. No liability shall be assumed for any damage arising as a result of normal wear and tear.

(12) Our Liability for the absence of warranted qualities or under the Product Liability Act shall remain unaffected by paragraphs (9) and (10) above.

(13) All claims become statute-barred after six months; those based on defects or warranty calculated from the delivery/pick up of the goods; those based on delay calculated from its occurrence.

VIII. Proprietary Right "Grüner Punkt" and Liability of the Customer

(1) The customer shall be obliged to duly acquire at his own costs all copyrights, industrial property rights and other rights necessary for the production, duplication, printing and storage of picture or sound recordings and data media as well as printed materials and packaging, and to file all necessary notifications (especially to GEMA, the German association for the protection of musical performance and recording rights) and pay in good time all licence fees (especially GEMA fees). The customer shall guarantee and give assurance that in connection with the order placed with us he has obtained all rights and licences mentioned above and that he has filed all necessary notifications (especially notification to GEMA) and paid on time all relevant licence fees (especially GEMA fees). The customer shall at any time be obliged, at our request, to provide proof of the above without delay. We shall however, not be obliged to verify compliance with any of the above requirements.

(2) The customer shall not be permitted to advertise using the so-called "green dot" (der grüne Punkt), even if packaging has been labelled with the green dot by us, unless the customer has concluded a separate licensing agreement with Duales System Deutschland GmbH (DSD) or a successor organization entitling him to use the green dot.

(3) The customer shall be obliged to indemnify us against all claims of any kind asserted by third parties. This obligation shall in particular include the assumption of the costs of any legal dispute. However, we shall only be obliged to take legal action to defend ourselves against claims of third parties if this is in our considered opinion appropriate.

IX. Data Protection

Personal data received by us in connection with orders placed shall be processed and stored using EDP by us, companies affiliated to us and possibly also other firms acting on our behalf. Notification of such storage is hereby deemed to have been given.