

# General Terms and Conditions of Processing and Delivery (GTCP)

## Classic Printing

### DRUCKEREI MACK GMBH & CO. KG.

Date of issue January 2017

#### § 1 Scope

1. In addition to other contractual agreements, these GTCP shall exclusively apply to all transactions between DRUCKEREI MACK GMBH & CO. KG. Druck und Verlag, hereinafter known as DRUCKEREI MACK GMBH & CO. KG., and the purchaser or customer, hereinafter known as the Customer. Even if the service is provided or payment accepted, DRUCKEREI MACK GMBH & CO. KG. shall not acknowledge other terms issued by the Customer unless DRUCKEREI MACK GMBH & CO. KG. expressly agrees to their being valid in writing.
2. These GTCP shall only apply to business transactions with enterprises in the sense of § 14 of the German Civil Code [BGB]; they shall also apply to all future business relationships without having to be included on each occasion until DRUCKEREI MACK GMBH & CO. KG. issues new GTCP.
3. All agreements made between us and the Customer as part of contract negotiations must be set out in writing for verification purposes and must be confirmed by both parties.
4. Side-agreements, retrospective contract amendments and the acceptance of a guarantee, particularly assurances of properties or the acceptance of a purchasing risk must be made in writing if they are made by persons who have no rights of representation.

#### § 2 Advice

1. DRUCKEREI MACK GMBH & CO. KG. shall only advise the Customer if such advice is expressly requested. Failure to make statements shall not constitute advice.
2. Advice provided by DRUCKEREI MACK GMBH & CO. KG. shall extend exclusively to the properties of our own products but not to their use by the Customer or its customers; any advice provided relating to the use of the products by the Customer shall be non-binding (contract-dependent advice).
3. DRUCKEREI MACK GMBH & CO. KG.'s product and service-related advice shall only extend to the products and services provided by DRUCKEREI MACK GMBH & CO. KG.. It shall not extend to advice outside of the contract, in other words to statements which are made without products being sold or services provided by DRUCKEREI MACK GMBH & CO. KG..
4. The advice services provided by DRUCKEREI MACK GMBH & CO. KG. shall be based exclusively on empirical values from its own business and shall only include the state of the art on a non-binding basis.

#### § 3 Contract conclusion

1. DRUCKEREI MACK GMBH & CO. KG.'s quotations shall be non-binding, they shall be regarded as a request to submit a quotation.
2. The initial charge for processing a quotation shall generally be zero. Additional quotations and design work shall only be free if the contract of supply is valid and remains so.
3. Details, descriptions and images of our goods and products especially in technical documents, catalogues, brochures, circulars, advertisements and price lists shall be non-binding unless their inclusion in the contract has been expressly agreed; they shall not release the Customer from conducting its own inspections.
4. Colour and light fastness, moisture, heat and weather resistance and drawings, images, dimensions, weights and other performance data should be agreed in writing for verification purposes.
5. In principle the order issued by the Customer shall be regarded as an offer to conclude a contract.
6. All the details for completing the order must be set out in the order. This applies to all goods, works and other services to be provided by DRUCKEREI MACK GMBH & CO. KG.. These shall particularly, but not exclusively, include details of item designation, quantity, dimensions, material, material composition, pre-treatment, processing specifications, treatment guidelines, storage, standards and all other technical parameters and characteristic physical data. Missing, incorrect or incomplete details shall be regarded as expressly not agreed and shall not give rise to any obligations on

DRUCKEREI MACK GMBH & CO. KG.'s part, either in the sense of fulfilment and warranty or in the sense of compensation claims.

7. If the order issued by the Customer differs from DRUCKEREI MACK GMBH & CO. KG.'s quotation, the Customer must specially highlight the differences.
8. DRUCKEREI MACK GMBH & CO. KG. shall be entitled to obtain further information for the purpose of ensuring that the order can be completed properly.
9. Orders should be issued in writing or in (electronic) text form; orders placed orally or by telephone shall be completed at the Customer's risk.
10. The order should be accepted within 3 weeks of the receipt of the order unless a longer acceptance period has been agreed.
11. DRUCKEREI MACK GMBH & CO. KG.'s services shall be set out in the order confirmation.
12. DRUCKEREI MACK GMBH & CO. KG. reserves the right to process the goods or services or to have them processed at a different plant at no added cost to the Customer.
13. If the Customer cancels an order which has already been placed, DRUCKEREI MACK GMBH & CO. KG. shall be entitled to charge 10% of the price for the goods or services for the costs incurred by processing the order and for loss of profit, notwithstanding the possibility of claiming higher actual damages. The Customer shall be at liberty to provide evidence that our costs were in fact less than this.
14. The production of samples of any type, for example drafts, blind samples, test prints, test lithographs, etc. shall be specially made for the Customer and on the basis of its specifications only after an order has been placed for them. These samples shall be invoiced separately to the Customer.

#### § 4 Blanket contracts

1. If DRUCKEREI MACK GMBH & CO. KG. has agreed a blanket contract with the Customer under which the complete annual requirement is manufactured and stored for call orders, the Customer undertakes to accept all the remaining volume which is in storage or has yet to be manufactured after the elapse of one year from the date of the order. During the term of the blanket contract, an amendment of the ordered volume of goods or services shall only be possible by means of a separate contractual agreement between DRUCKEREI MACK GMBH & CO. KG. and the Customer.
2. Unless otherwise agreed, all call orders must be accepted within one year of the order being placed without this requiring any request to accept such orders. If this deadline passes, DRUCKEREI MACK GMBH & CO. KG. shall be entitled to invoice the goods and ship them at the expense and risk of the Customer or to cancel the contract with immediate effect.

#### § 5 Contract amendments

1. A separate contractual agreement shall be required if the Customer requires any modifications to the goods or services after the contract has been concluded.
2. Sketches, drafts, test setting, test prints, initial sample parts, correction proofs and similar preparatory work shall only be supplied to the Customer if it expressly requests them in writing.
3. Subsequent changes at the request of the Customer including machine down times which result from them shall be charged to the Customer. Repeat test prints requested by the Customer as a result of minor differences from the original shall also be regarded as subsequent changes.
4. DRUCKEREI MACK GMBH & CO. KG. reserves the right to modify the goods or services within reason in the event that DRUCKEREI MACK GMBH & CO. KG. has not received the required information or have received incorrect information. Negative effects caused by a lack of information or incorrect information, in particular additional costs or damages, shall be paid by the Customer.
5. DRUCKEREI MACK GMBH & CO. KG. reserves the right to make technical modifications to the goods or services which do not jeopardise the objective of the contract, particularly in terms of material and finish.

#### § 6 Lead time

1. If a lead time has been agreed for the goods or services, this

shall commence when the order confirmation is sent but not before all details of the order have been clarified and all the Customer's duties of cooperation have been fulfilled properly; the same shall apply to delivery dates for the goods or services.

2. In the event of mutually agreed modifications to the goods or services, new lead times and delivery dates for said goods and services must be agreed.

This shall apply even if the fresh negotiations are held about the goods and services after the contract has been concluded without any modification being made to the goods or services.

3. Lead times and delivery dates for the goods and services are agreed subject to the raw materials being supplied to us in perfect condition and promptly and that no unforeseeable production problems are encountered.

4. Delivery deadlines for goods and services shall be automatically extended by the period in which the Customer fails to meet its obligations to DRUCKEREI MACK GMBH & CO. KG.. In particular the delivery deadlines for goods and services shall be suspended for the duration of the review of prints, correction proofs, samples, etc. by the Customer from the time at which these items are sent to it until final approval has been granted. This shall also apply as and where appropriate to lead times for goods and services.

5. The lead time for goods and services shall be deemed to have been met if the goods or services have left DRUCKEREI MACK GMBH & CO. KG.'s plant before its expiry or DRUCKEREI MACK GMBH & CO. KG. has sent notification that they are ready for collection.

6. DRUCKEREI MACK GMBH & CO. KG. shall be entitled to deliver the goods or complete the service before the agreed date.

7. Part consignments or services shall be permitted and may be charged separately.

8. DRUCKEREI MACK GMBH & CO. KG. undertakes to compensate the Customer with any damages it suffers within the framework set out in law in the event that it is culpable for a late delivery. This shall not apply to loss of profit and damages caused by interruptions to operations.

#### § 7 Acceptance delay

1. If the Customer fails to accept the goods by the agreed delivery date or lead time for reasons that are its responsibility, DRUCKEREI MACK GMBH & CO. KG. may demand compensation for any additional costs MUSTERDRUCK incurs as a result.

2. If the acceptance of the goods or services by the Customer is delayed, DRUCKEREI MACK GMBH & CO. KG. may charge storage costs for each month or part thereof in the amount of 0.5% of the price of the goods or services, subject to a maximum of 5%. Either of the parties to the contract shall be entitled to provide evidence that the actual storage costs were higher or lower than this figure.

DRUCKEREI MACK GMBH & CO. KG. shall be entitled to select a suitable storage site at the expense and risk of the Customer and to insure the goods or services.

3. The products for supply to the Customer, in particular data and data media, shall only be archived by DRUCKEREI MACK GMBH & CO. KG. by express agreement and against separate payment beyond the date of delivery of the goods.

4. If DRUCKEREI MACK GMBH & CO. KG. is entitled to demand compensation rather than payment, it may demand 15% of the price as compensation, notwithstanding the possibility of demanding higher actual damages, unless the Customer can provide evidence that DRUCKEREI MACK GMBH & CO. KG. has not suffered any damages or its damages were considerably lower than this lump sum.

#### § 8 Forces majeures

1. In cases of forces majeures, DRUCKEREI MACK GMBH & CO. KG.'s lead times and delivery dates shall be extended by the duration of the problem which has occurred.

2. These shall include circumstances which occur but for which DRUCKEREI MACK GMBH & CO. KG. is not responsible such as war, fire damage, strikes, lock-outs, traffic problems, official orders, plant shut-downs or major operating problems such as lack of material or energy suffered by DRUCKEREI MACK GMBH & CO. KG. and its sub-contractors and suppliers.

This shall apply even if DRUCKEREI MACK GMBH & CO. KG. was already in default when these circumstances oc-

curred.

#### 3. After becoming aware DRUCKEREI MACK

GMBH & CO. KG. shall notify the Customer without delay of the start and end of such problems.

4. If the goods or services are delayed by more than six weeks, both the Customer and DRUCKEREI MACK GMBH & CO. KG. shall be entitled to cancel the contract relating to the scope of the contract affected by the delay.

#### § 9 Payment

1. Unless otherwise agreed, the agreed prices in euros shall be on the basis of the EXW (ex works) clause set out in INCOTERMS 2010 excluding value-added tax, duties, freight, packaging and transport insurance costs and other shipment costs.

DRUCKEREI MACK GMBH & CO. KG. shall only provide insurance cover for the goods during shipping at the express written request and at the expense of the Customer.

2. DRUCKEREI MACK GMBH & CO. KG. shall be entitled to change the agreed price within reason in the event that increases in costs, in particular due to collective wage-bargaining agreements or material or energy price changes, occur after the conclusion of the contract. Evidence of the change in costs shall be supplied to the Customer on request.

3. DRUCKEREI MACK GMBH & CO. KG. shall be entitled to change the price within reason if changes occur before or during the completion of the order because the information provided by the Customer and the documents supplied by it were incorrect or the Customer requests other modifications.

4. Sketches, drafts, test setting, test prints, initial sample parts, correction proofs, changes to supplied or transferred data and similar preparatory work requested by the Customer as well as data transfers shall be charged separately. This shall apply even if a series order is placed.

5. DRUCKEREI MACK GMBH & CO. KG. shall be entitled to demand a reasonable advance payment when the contract is concluded. Interest shall not be payable on this.

6. Unless otherwise agreed, invoices shall be payable within 30 days of the invoice date on a strictly net basis. They shall be payable without any deductions. In the event that they are not paid, the Customer shall be in default on the due date without this requiring any further warnings.

Discounts and rebates shall only be granted by special agreement. Part payments shall require separate written agreement.

7. Settlement by bills of exchange shall require DRUCKEREI MACK GMBH & CO. KG.'s separate prior agreement. Discount charges and bills of exchange costs shall be paid by the Customer. Invoice settlement by cheque or bill of exchange shall only be for the purpose of fulfilment and shall not be regarded as payment until they have been redeemed without reservation.

8. If the Customer has several outstanding invoices from DRUCKEREI MACK GMBH & CO. KG. and if payments are not made by the Customer against a specific invoice, DRUCKEREI MACK GMBH & CO. KG. shall be entitled to decide to which of the outstanding invoices the payment shall be assigned.

9. In the event of default, forbearance or part payment, DRUCKEREI MACK GMBH & CO. KG. shall be entitled to charge default interest at a rate of 8 percentage points per annum above the relevant base rate and to withhold further goods and services until all outstanding invoices have been settled. DRUCKEREI MACK GMBH & CO. KG. reserves the right to provide evidence that DRUCKEREI MACK GMBH & CO. KG. suffered higher damages.

10. By placing the order the Customer confirms that it is solvent and creditworthy.

If there are justified doubts about the Customer's solvency or creditworthiness, DRUCKEREI MACK GMBH & CO. KG. shall be entitled to demand payment in advance or suitable security for the service to be provided on behalf of the Customer.

If the Customer is not prepared to make payment in advance or provide security, DRUCKEREI MACK GMBH & CO. KG. shall be entitled, after setting a reasonable extended deadline, to cancel these contracts and demand compensation for non-fulfilment.

11. Terms of payment shall be cancelled and outstanding accounts shall become payable immediately if an application is made to open insolvency proceedings against the Customer's

assets or if the Customer has provided inaccurate information about its creditworthiness or if there are other justified doubts about the Customer's solvency or creditworthiness.

12. The Customer shall only be entitled to set off claims against DRUCKEREI MACK GMBH & CO. KG.'s claims if the counter claim is undisputed or has been fixed in a court of law. The assignment of debts payable to DRUCKEREI MACK GMBH & CO. KG. shall require DRUCKEREI MACK GMBH & CO. KG.'s consent.

13. The Customer shall only have a right of retention if the counter claim is based on the same contract and is undisputed or has been fixed by a court of law or if DRUCKEREI MACK GMBH & CO. KG. commits a major breach of duties from the same contract despite receiving a written warning and has not offered reasonable safeguard.

If a service provided by DRUCKEREI MACK GMBH & CO. KG. is undisputedly defective, the Customer shall only have a right of retention for a reasonable amount relative to the defects and the likely costs for their rectification.

14. The payment deadlines shall remain in force even if delays occur to the delivery through no fault of DRUCKEREI MACK GMBH & CO. KG.'s.

15. In addition to the contractually agreed prices for the goods, DRUCKEREI MACK GMBH & CO. KG. shall be entitled to charge reasonable and normal one-off programming and setting costs for initial orders.

16. If value-added tax is not included in the invoice of DRUCKEREI MACK GMBH & CO. KG., in particular because DRUCKEREI MACK GMBH & CO. KG. has assumed, on the basis of information provided by the Customer, that the goods have been supplied or the services provided on the basis of a "single market transaction" in the sense of § 4 No. 1 b together with § 6 a of the Value-Added Tax Law [UStG], and DRUCKEREI MACK GMBH & CO. KG. is retrospectively charged with a value-added tax debt (§ 6 a IV of the Value-Added Tax Law), the Customer undertakes to reimburse DRUCKEREI MACK GMBH & CO. KG. with the amount which has been charged. This duty shall apply regardless of whether DRUCKEREI MACK GMBH & CO. KG. is retrospectively charged with value-added tax, import value-added tax or comparable taxes in Germany or elsewhere.

#### **§ 10 Fulfilment services**

1. The place of fulfilment for the services and payments specified in the order shall be DRUCKEREI MACK GMBH & CO. KG.'s plant. Unless otherwise agreed in writing, the Customer should collect the goods from there after being notified that they are ready.

2. The place of fulfilment for payments to be made to DRUCKEREI MACK GMBH & CO. KG. from the business relationship shall be DRUCKEREI MACK GMBH & CO. KG.'s registered office.

3. The Customer undertakes to complete an acceptance procedure as soon as DRUCKEREI MACK GMBH & CO. KG. has notified it that the services it ordered have been completed. If the Customer does not complete this acceptance procedure within two weeks of such notification, the services shall be deemed to have been accepted.

4. The risk of any errors affecting the goods shall be transferred to the Customer when the goods are declared ready for printing unless the errors occur or could only be identified during production after this declaration is made.

5. The risk of destruction, loss or damage to the goods shall be transferred to the Customer when notification is given that the goods are ready.

If shipment has been agreed, the risk shall be transferred to the Customer when the goods are dispatched or they have been handed over to the transport contractor.

6. Unless agreement has been made to the contrary, DRUCKEREI MACK GMBH & CO. KG. shall determine the type and scope of packaging. Single use packaging must be disposed of by the Customer.

7. If the goods are shipped in loaned packaging, the packaging must be returned free of charge within 30 days of receiving the shipment. The Customer must pay compensation for any loss or damage to the loaned packaging.

Loaned packaging must not be used for any other purposes or for holding other goods. They may only be used for transporting the supplied goods. Labels on loaned packaging must not be removed.

8. In the event of the goods being damaged or lost en route, an inspection should be carried out immediately and DRUCKEREI MACK GMBH & CO. KG. is to be notified of the results. Claims relating to any transport damage must be made without delay to the forwarder by the Customer.

#### **§ 11 Delivery**

1. DRUCKEREI MACK GMBH & CO. KG. shall not accept liability for damage caused by incorrect or inaccurate labelling and identification of goods or other deliveries supplied by the Customer. DRUCKEREI MACK GMBH & CO. KG. shall not be obliged to inspect goods or other deliveries supplied by the Customer or a third party engaged by it, in particular data media and transferred data.

2. The goods for processing will only be inspected by DRUCKEREI MACK GMBH & CO. KG. for defects and damage which are externally visible. DRUCKEREI MACK GMBH & CO. KG. shall not be obliged to conduct any other inspections. Any defects found will be reported to the Customer within 10 working days of the discovery of the defect.

3. The Customer undertakes to reimburse DRUCKEREI MACK GMBH & CO. KG. with all damages including loss of profit which DRUCKEREI MACK GMBH & CO. KG. incurs as a result of its being supplied with material or data which is not suitable for processing.

4. DRUCKEREI MACK GMBH & CO. KG. shall be entitled to a right of retention under § 369 of the German Commercial Code [HGB] for any print or stamp originals, manuscripts, raw materials and other items supplied by the Customer until all due accounts from the business relationship have been paid in full.

5. The items supplied to DRUCKEREI MACK GMBH & CO. KG. by the Customer shall be stored for a maximum of two years after their last use. After the elapse of this period, DRUCKEREI MACK GMBH & CO. KG. shall be entitled to destroy them unless the Customer has expressly requested their return in writing from DRUCKEREI MACK GMBH & CO. KG. before the elapse of this period.

#### **§ 12 Duty to inspect and complain**

1. The Customer undertakes to inspect the goods immediately after delivery in accordance with § 377 of the German Commercial Code for defects and damage, and in particular to inspect initial and intermediate items or documents supplied for proofing and to notify DRUCKEREI MACK GMBH & CO. KG. of any defects and damage identified during this inspection or at a later date without delay after their discovery and to send DRUCKEREI MACK GMBH & CO. KG. a reference sample of the affected consignment. The provision of § 377 of the German Commercial Code shall apply as and where appropriate for general and works services. Complaints must be made in writing.

2. Defective goods or services must not be used. If it was not possible to detect a defect on receipt of the goods or after the provision of the service, all further use of the goods or services must be stopped immediately after the discovery of the defect. The burden of proof for concealed defects shall be borne by the Customer.

3. The Customer shall send DRUCKEREI MACK GMBH & CO. KG. the defective goods and shall provide us with sufficient time to inspect the defect. In the event of unjustified complaints, DRUCKEREI MACK GMBH & CO. KG. reserves the right to charge the Customer with the inspection costs it has incurred.

4. The complaint shall not exempt the Customer from its duty to comply with its payment obligations.

5. Defects affecting part of the supplied goods shall not entitle the Customer to complain about the entire shipment unless the part shipment is of no interest to the Customer.

6. No complaints about dimension discrepancies affecting the goods or services to be provided by DRUCKEREI MACK GMBH & CO. KG. shall be accepted if these discrepancies can be classed as normal for the industry or sector.

7. No complaints shall be accepted about minor discrepancies from the original on reproductions made using any production process. The same shall apply to a comparison between other original documents (for example proofs and hardproofs) and the end product.

#### **§ 13 Warranty**

1. If DRUCKEREI MACK GMBH & CO. KG.'s goods or services are defective, DRUCKEREI MACK GMBH & CO. KG. shall be entitled at its discretion to rectify the defect, supply replacement goods or provide the Customer with a credit note.
2. Refinishing work may also be completed by the Customer by agreement with DRUCKEREI MACK GMBH & CO. KG..
3. Claims by the Customer relating to the costs required for the purposes of repeat fulfilment, in particular transport, travelling, labour and material costs, shall not be permitted if these costs are increased because the goods were subsequently transported to a place other than the Customer's site.
4. No complaints shall be accepted about excess or short deliveries of up to 10% of the ordered volume. The supplied volume shall be invoiced. This percentage shall be increased to 20% for consignments of less than 1,000 kg or 15% for consignments of less than 2,000 kg for goods made using special paper products
5. Warranty claims for defects which do not affect the value or suitability of the goods or only affect it to a small extent shall be excluded.

#### **§ 14 Intellectual property rights**

1. Orders based on drawings, sketches or other information supplied to DRUCKEREI MACK GMBH & CO. KG. shall be completed at the risk of the Customer. If DRUCKEREI MACK GMBH & CO. KG. breaches intellectual property rights owned by third parties as a result of such purchase orders, the Customer shall exempt DRUCKEREI MACK GMBH & CO. KG. from claims by the owners of such rights. The Customer shall be responsible for all further damages.
2. DRUCKEREI MACK GMBH & CO. KG.'s liability for any breaches of intellectual property rights which relate to the use of the goods or services or with the connection or use of the goods or services with other products shall be excluded.
3. In the event of legal defects, DRUCKEREI MACK GMBH & CO. KG. shall be entitled at its discretion, to obtain the required licences for the breached intellectual property rights or to rectify the defect affecting the goods or services by supplying modified goods or services in a reasonable form for the Customer.
4. DRUCKEREI MACK GMBH & CO. KG.'s liability for breaching third party intellectual property rights shall otherwise only extend to intellectual property rights which have been registered and published in Germany.
5. The transfer or grant of intellectual property rights and copyrights, particularly of DRUCKEREI MACK GMBH & CO. KG.'s existing commercial intellectual property rights to the Customer shall not be part of the goods or services to be provided by DRUCKEREI MACK GMBH & CO. KG.. The type and scope of utility or intellectual property rights to be granted by us shall be set out in a separate contractual agreement.
6. The equipment used by DRUCKEREI MACK GMBH & CO. KG. to complete the order, such as data, films, lithographs, tools and print substrates shall remain the property of DRUCKEREI MACK GMBH & CO. KG. even if they are invoiced separately and shall not be delivered; any copyrights shall be the property of DRUCKEREI MACK GMBH & CO. KG..
7. All ideas and documents created by DRUCKEREI MACK GMBH & CO. KG., in particular samples, dummies, sketches, designs, technical information, lithographs, test prints, etc. shall be subject to the protection of the intellectual property of DRUCKEREI MACK GMBH & CO. KG. and may not be used or exploited in any form without DRUCKEREI MACK GMBH & CO. KG.'s consent unless these products were manufactured exclusively on the basis of the Customer's information and specifications.
8. If DRUCKEREI MACK GMBH & CO. KG. manufactures products on behalf of the Customer on the basis of drawings, models, samples of other technical documents provided by it (the Customer), or on the basis of process requests made by the Customer, the Customer shall take responsibility for such items not breaching third party intellectual property rights. If third parties prohibit DRUCKEREI MACK GMBH & CO. KG. from manufacturing and supplying such products on the basis of existing intellectual property rights, DRUCKEREI MACK GMBH & CO. KG. shall be entitled, without having to review the legal situation, to stop all work in this re-

spect and to demand compensation from the Customer.

9. The provision of such drawings, documents and the like and the requested process successes and the specified recipes and relevant material usages etc. shall result in the Customer indemnifying DRUCKEREI MACK GMBH & CO. KG. from all claims lodged by third parties in this respect.

#### **§ 15 Liability**

1. DRUCKEREI MACK GMBH & CO. KG. shall only accept liability for the outstanding accounts of the company up to the value of the company's assets.
  2. In the event of simple negligence DRUCKEREI MACK GMBH & CO. KG. shall only accept liability in the event of a breach of a major contract duty. For gross negligence DRUCKEREI MACK GMBH & CO. KG. shall also accept liability for breaches of non-major contract duties. Major contract duties are those duties whose fulfilment makes the implementation of the contract possible in the first place and on compliance with which the party to the contract should be able to depend. In the event of simple negligence the liability shall be limited to the foreseeable damages which are typical for these contracts.
  3. In the event of assured properties, DRUCKEREI MACK GMBH & CO. KG.'s liability shall be limited to the scope and the amount of DRUCKEREI MACK GMBH & CO. KG.'s product liability insurance policy. The scope of coverage corresponds to the non-binding recommendations for product liability insurance policies made by the German Insurance Industry Federation. The level of coverage for the claims set out in the insurance policy shall be EUR 2 million per claim and insurance year.
  4. Compensation claims due to a malicious breach of contract duties by DRUCKEREI MACK GMBH & CO. KG., claims for bodily injuries and claims under the German Product Liability Code shall be subject to the statutory regulations.
  5. DRUCKEREI MACK GMBH & CO. KG. shall accept liability for tortious claims on the basis of contract liability.
  6. All liability other than that described in the provisions above shall be excluded.
  7. Recourse claims on the part of the Customer against DRUCKEREI MACK GMBH & CO. KG. shall only exist as long as the Customer has not made any agreements with its clients which go beyond the statutory defect and compensation claims.
  8. DRUCKEREI MACK GMBH & CO. KG.'s liability shall be excluded if the Customer has effectively limited its liability to its own clients.
  9. If DRUCKEREI MACK GMBH & CO. KG.'s liability is excluded or limited, this shall also apply to the personal liability of DRUCKEREI MACK GMBH & CO. KG.'s staff, workers, colleagues, representatives, agents and vicarious agents.
  10. If liability is excluded or limited under the provisions set out above, the Customer also undertakes to indemnify DRUCKEREI MACK GMBH & CO. KG. from claims by third parties when first requested to do so.
  11. With regard to items supplied to DRUCKEREI MACK GMBH & CO. KG. by the Customer, in particular documents or data media, DRUCKEREI MACK GMBH & CO. KG.'s liability shall be restricted to the level of care that DRUCKEREI MACK GMBH & CO. KG. normally uses in its own affairs ("diligentia quam in suis").
  12. The statutory provisions shall otherwise apply.
  13. The Customer undertakes to notify DRUCKEREI MACK GMBH & CO. KG. in writing without delay of any claims lodged by third parties and to reserve DRUCKEREI MACK GMBH & CO. KG.'s right to use all possible means of defence and settlement negotiations.
- #### **§ 16 Statute of limitations**
1. The statute of limitations for claims and rights relating to defects affecting DRUCKEREI MACK GMBH & CO. KG.'s products, services or works services and resultant damage shall be one year. The start of this statute of limitations period is based on the statutory regulations. This shall not apply if the law specifies longer periods in cases pursuant to §§ 438 Para. 1 No. 2, 479 and 634 a Para. 1 No. 2 of the German Civil Code.
  2. The statute of limitations period of one year set out in Number 1 above shall not apply in cases of malice if DRUCKEREI MACK GMBH & CO. KG. has deliberately not dis-

closed the defect or for compensation claims due to personal injury or loss of freedom of a person, for claims under the Product Liability Law and for a grossly negligent breach of duty.

3. Refulfillment action shall not interrupt the statute of limitations for the original provision of the service nor shall it cause the statute of limitations to restart. § 212 of the German Civil Code remains unaffected.

#### **§ 17 Transfer of title**

1. DRUCKEREI MACK GMBH & CO. KG. reserves title to all contract goods until all DRUCKEREI MACK GMBH & CO. KG.'s claims from the business relationship with the Customer have been settled in full.

DRUCKEREI MACK GMBH & CO. KG. reserves all title rights and copyrights to supplied illustrations, drawings, calculations and other (technical) documents.

2. If DRUCKEREI MACK GMBH & CO. KG.'s property is processed, connected or mixed with property owned by others, DRUCKEREI MACK GMBH & CO. KG. shall acquire title to the new item as set out in § 947 of the Civil Code.

3. If the processing, connection or mixing takes place in such a way that the third party property is regarded as the main item, DRUCKEREI MACK GMBH & CO. KG. shall acquire title in the proportion of the value of DRUCKEREI MACK GMBH & CO. KG.'s goods or services to the other goods

or services at the time of the processing, connection or mixing.

4. If DRUCKEREI MACK GMBH & CO. KG. acquires title to an item as a result of our goods or services, DRUCKEREI MACK GMBH & CO. KG. shall reserve title to this item until all the outstanding claims from its business relationship with the Customer have been settled in full.

5. The Customer undertakes to keep the reservation of title goods safely and, if necessary, to complete any servicing and maintenance work at its expense promptly. The Customer must insure the reservation of title goods at its own expense against loss and damage. Any security claims accrued in the event of damage must be assigned to DRUCKEREI MACK GMBH & CO. KG..

6. The Customer shall be entitled to resell the item which is DRUCKEREI MACK GMBH & CO. KG.'s (joint) property as part of its normal business as long as it fulfils its duties from its business relationship with DRUCKEREI MACK GMBH & CO. KG.. In this event the claim resulting from the sale shall be considered assigned to DRUCKEREI MACK GMBH & CO. KG. in the proportion of the value of DRUCKEREI MACK GMBH & CO. KG.'s goods or services secured by the reservation of title to the total value of the sold goods. The Customer shall retain entitlement to collect this claim even after this assignment. DRUCKEREI MACK GMBH & CO. KG.'s authority to collect these claims itself shall not be affected.

7. The right on the part of the Customer to dispose of the goods subject to DRUCKEREI MACK GMBH & CO. KG.'s reservation of title and to collect the claims assigned to DRUCKEREI MACK GMBH & CO. KG. shall become null and void as soon as the Customer fails to meet its payment duties or an application is made to open insolvency proceedings against its assets. In the above cases and in the event of any other action by the Customer in breach of the contract, DRUCKEREI MACK GMBH & CO. KG. shall be entitled to take back any goods supplied with reservation of title without notice.

8. The Customer shall notify DRUCKEREI MACK GMBH & CO. KG. without delay if there are any risks to its reservation of title goods, particularly in the event of insolvency and enforcement action. At DRUCKEREI MACK GMBH & CO. KG.'s request the Customer must provide all the required information about the whereabouts of the goods which are DRUCKEREI MACK GMBH & CO. KG.'s (joint) property and about the claims assigned to DRUCKEREI MACK GMBH & CO. KG. and must notify its customers of said assignment. The Customer shall provide DRUCKEREI MACK GMBH & CO. KG. with support in all action required to protect DRUCKEREI MACK GMBH & CO. KG.'s (joint) property and shall pay the costs of any such action.

9. To cover all claims under the contract DRUCKEREI MACK GMBH & CO. KG. shall have a right of lien to those goods of the Customer's that have come into DRUCKEREI MACK GMBH & CO. KG.'s possession on the basis of the contract. This right of lien may also be used for claims from goods or services supplied earlier if they are

linked to the goods or services in question.

The right of lien shall apply to other claims from our business relationship as long as they are undisputed or have been fixed by a court of law. §§ 1204 ff. of the Civil Code and § 50 Para. 1 of the German Insolvency Regulation shall apply as and where appropriate.

10. If the realisable value of the securities exceeds DRUCKEREI MACK GMBH & CO. KG.'s claims by more than 10%, DRUCKEREI MACK GMBH & CO. KG. shall release securities covering the excess value at its discretion at the request of the Customer.

#### **§ 18 Confidentiality**

1. The Customer undertakes to treat all aspects of the business relationship which require protection in confidence. In particular it shall treat all commercial and technical details which are not part of the public domain and which come to its attention as a result of the business relationship as confidential. Information or aspects of the business relationship which were already part of the public domain at the time of their disclosure shall not come under the confidentiality obligation nor shall information or aspects of the business relationship for which the party to the contract can provide evidence to the effect that it already knew the information before the disclosure of it by DRUCKEREI MACK GMBH & CO. KG..

The Customer shall ensure that its personnel also take care of DRUCKEREI MACK GMBH & CO. KG.'s justified confidentiality interests.

2. The documents provided to the Customer may only be copied if required for operational requirements and in accordance with copyright regulations.

3. All documents may not be disclosed to third parties in full or in part or used for purposes other than those for which they were supplied to the Customer without DRUCKEREI MACK GMBH & CO. KG.'s written consent.

4. Processes which DRUCKEREI MACK GMBH & CO. KG. has supplied or disclosed to the Customer in any form whatsoever may only be used for the purpose specified or intended in the contract; information on prices must not be disclosed to third parties without DRUCKEREI MACK GMBH & CO. KG.'s express written consent.

5. The disclosure even in part of the business relationship with DRUCKEREI MACK GMBH & CO. KG. to third parties shall only be possible with DRUCKEREI MACK GMBH & CO. KG.'s prior written consent; the Customer shall subject the third parties to a confidentiality agreement of the same type and scope. The Customer may only advertise this business relationship with DRUCKEREI MACK GMBH & CO. KG.'s prior written consent.

6. The Customer undertakes to maintain this confidentiality even after the end of the business relationship.

7. The Customer undertakes not to conduct business identical to the subject of the order with DRUCKEREI MACK GMBH & CO. KG.'s customers either directly or indirectly.

#### **§ 19 Applicable law**

1. The place of jurisdiction shall be the court with jurisdiction for DRUCKEREI MACK GMBH & CO. KG.'s registered office or the place of jurisdiction of the Customer at DRUCKEREI MACK GMBH & CO. KG.'s discretion.

2. The laws of the Federal Republic of Germany shall be exclusively applicable to our business relationships with the Customer. The applicability of the CISG – "Vienna Sales Convention" shall be excluded.

3. If individual parts of these general terms of processing and delivery are invalid, this shall not affect the validity of the other provisions. The parties to the contract shall strive to replace the invalid provision with another provision which is as close as possible to the commercial and legal objective of the original formulation.

#### **§ 20 Precedence**

This is a translated version from the original German version of the "Allgemeine Bearbeitungs- und Lieferbedingungen (ABL) Classic Printing" of DRUCKEREI MACK GMBH & CO. KG.. If there are any differences between the understanding of these GTCP and the German original version the latter prevails and is controlling.

**§ 21 Contact data**

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