

## General Terms and Conditions of Business (GTC)

### 1. General Provisions and Scope of Application

- 1.1. The following General T & C of Business apply only in relation to entrepreneurs in the sense of section 310 I of the German Civil Code [BGB].
- 1.2. Contracts and deliveries shall materialise exclusively on the basis of the following Terms and Conditions. We shall not accept terms and conditions of the customer which conflict with or differ from our Terms and Conditions, unless we have given our explicit written consent to their applicability. Our Terms and Conditions shall apply, even if we unconditionally make delivery or render performance to the customer knowing of terms and conditions of the customer which conflict with or differ from our Terms and Conditions.
- 1.3. Our Terms and Conditions of Sale shall equally apply to all future transactions with the customer.
- 1.4. Assurances, collateral agreements, amendments and supplements to these Terms and Conditions of Sale must be in writing. This equally applies to amendments to this written form requirement.

### 2. Offer and Prices

- 2.1. Offers made by us in electronic, written or verbal form shall not constitute an offer in the legal sense. They shall only be regarded as a request to the customer to place a purchase order.
- 2.2. A contract shall only materialise upon Epson's written acknowledgement of the order, latest upon the customer's acceptance of the delivery.
- 2.3. Our offers and order acknowledgements shall always be subject to a positive credit check in respect of the customer and shall be subject to proper and timely delivery by our suppliers.
- 2.4. In principle, the prices quoted in the order acknowledgement shall apply. However, we reserve the right to increase our prices appropriately, if costs rise after the conclusion of the contract. We shall furnish the customer with proof thereof on request. Price reductions which we have announced publicly shall be automatically incorporated into the order acknowledgement.
- 2.5. Our prices are quoted net, "ex works" exclusive of statutory value-added tax and transportation charges, which shall be added.

### 3. Deliveries and Services

- 3.1. The subject-matter and scope of the deliveries and services owed by Epson shall be set out in Epson's order acknowledgement.
- 3.2. All deliveries shall be made in accordance with the German Freight Forwarders' General Terms and Conditions [AdSpB].
- 3.3. Except where otherwise indicated in our order acknowledgements or in our cost estimates, delivery ex our distribution centres is agreed upon. The customer shall bear the cost and risk of transportation.
- 3.4. Reasonable partial deliveries shall be permissible and may be separately invoiced.

- 3.5. Transport packaging and other packaging as defined by the Packaging Regulation [Verpackungsverordnung] shall not be taken back. Costs for disposing of packaging shall be borne by the customer. In Germany transport packaging can be disposed free of charge via the Vfw AG, sales packaging via the DSD [Dual System Germany]. This excludes Euro pallets, which shall be exchanged upon delivery. A charge of EUR 6.00 may be levied for every pallet not exchanged immediately or within 30 days.
  - 3.6. Dates for delivery shall not be binding, unless explicitly agreed upon in writing as binding. The order acknowledgement is no such agreement. If we fail to meet a date for delivery agreed upon in writing and fail to meet a reasonable extension period granted by the customer, the customer may cancel the contract.
  - 3.7. We shall be liable in accordance with legal regulations where default in delivery is due to an intentional or grossly negligent breach of contract for which we are responsible. Furthermore, liability for compensatory damages shall be limited to foreseeable damages typically occurring.
4. Acceptance and Inspection of Delivery
    - 4.1. The customer shall be obliged to accept deliveries as quickly as possible, particularly where prior notification of delivery has been given.
    - 4.2. The customer shall without undue delay check that the consignment is complete, is consistent with the delivery documents and is in apparent good order and condition. The customer shall without undue delay give written notification of apparent deviations and defects. Furthermore, transport damage or deficiencies in quantity which are apparent upon delivery shall be noted on the acknowledgement of receipt from the carrier in accordance with section 438 of the German Commercial Code [HGB]. If no complaint is made within 7 business days from receipt at the customer's address, the delivery shall be deemed to be in conformity with the contract, unless a deviation was not apparent despite a thorough examination.
5. Return Shipments
    - 5.1. All return shipments shall only be accepted subject to our inspection.
    - 5.2. Return shipments of used and/or defective goods (DOA) shall be sent to our service centre. Refer also to point 8.11 further below in this connection.
    - 5.3. Return shipments of new goods shall be sent to our distribution centres. Except where otherwise agreed upon in writing, we shall only be able to process such return shipments, if a return shipment delivery note is enclosed with the return shipment, and if the RMA number and the customer number are quoted on the return shipment delivery note. The customer shall receive the RMA number and the customer number from the appropriate employee dealing with the order. However, allocation of an RMA number shall in no event signify acknowledgement of a defect or acknowledgement of any other complaint by the customer.
    - 5.4. In any event, return shipments shall occur at the customer's risk. This includes the risk of accidental destruction. The customer shall bear return shipment costs.
    - 5.5. In the case of return shipments, we shall deduct a flat-rate restocking fee of 2 % from credit notes in excess of 2,500.00 €. In the case of amounts below 2,500.00 €, this flat-rate fee shall be 50.00 €. This shall apply even in cases of return shipment due to refusal by the customer to accept delivery.

## 6. Payments, Setting Off and Withholding Payments

- 6.1. If a credit limit has been granted, and in the absence of any differing agreement on payment, payments shall be due within 7 days of the invoice date without any deduction. Otherwise, the payment terms shall ensue from the offer, the order acknowledgement, the cost estimate or the invoice from Epson.
- 6.2. Payment shall only be deemed made when it is credited to one of Epson's bank accounts.
- 6.3. If the customer fails to meet granted periods for payment, we shall be entitled to claim default interest at the rate of 5 % p.a. above the respective base interest rate in accordance with section 288 I of the German Civil Code [BGB]. This shall not affect the right to compensatory damages over and above this.
- 6.4. Payment terms granted to the customer shall only apply, if there is an adequate credit limit available for each individual order. If the order exceeds the available credit limit, or if after having acknowledged the order we become aware of circumstances which justify doubts about the customer's credit-worthiness, or if the customer is in arrears with other amounts owed, we shall be entitled to demand advance payment or the provision of other security before delivering the goods ordered, or other goods ordered, and shall be entitled to cancel the contract in the event of non-performance. Deliveries may be stopped, and goods in transit may be called back.
- 6.5. If the customer wholly or partly fails to settle a receivable by the agreed net due date, Epson shall be entitled to revoke the agreement on a cash discount and the payment terms for all receivables outstanding at this point in time and shall be entitled to exercise its right under reservation of ownership and/or be entitled to refuse to make further deliveries and call back goods in transit.
- 6.6. The customer shall be responsible for obtaining information required by the credit insurer.
- 6.7. The Customer may only set off with counterclaims which have been upheld by a final and non-appealable court judgement, are undisputed or have been acknowledged by us. In the event of infringement, Epson shall have the right to suspend further deliveries.
- 6.8. The customer shall not have the right to withhold payment on the basis of disputed counterclaims.

## 7. Reservation of Ownership

- 7.1. We reserve ownership of the goods until complete payment of all existing receivables and receivables arising in future from an ongoing business relationship with the customer, including our current account receivables and all balance receivables from a current account.
- 7.2. If the customer acts in breach of the contract, particularly if the customer defaults on payment or breaches any of the aforementioned duties in this provision, we shall be entitled to cancel the contract and reclaim possession of the goods.
- 7.3. The customer shall be entitled to resell the goods in the ordinary course of business. The customer hereby assigns to us, in the sum of the invoiced amount, all receivables which accrue to it against a third party from reselling. We accept this assignment of receivables. Subject to revocation, the customer shall be authorised to collect receivables despite this assignment of claims. This shall not affect our authority to collect receivables ourselves. However, we undertake to only collect receivables, if the customer fails to meet its payments, is in arrears or, in particular, a petition for insolvency proceedings is filed or payments are suspended. We may then, however, demand that the customer notify us of the assigned receivables and the debtors. In this event, we shall be entitled to disclose the assignment of receivables to the customer's customer.

- 7.4. Any reworking or processing of the goods by the customer shall always occur in our name and on our behalf. If the goods are processed together with items not belonging to us, we shall acquire co-ownership of the new article in the ratio of the value of the goods delivered by us to the value of the other items processed. Furthermore, the same terms applicable to purchase items delivered under reservation of ownership shall apply to articles created as a result of processing or mixing.
  - 7.5. We undertake to release, at the customer's request, security items to which we are entitled to the extent that the realisable value of our security items exceeds by more than 20% the receivables to be secured. We shall be responsible for selecting the security items to be released.
  - 7.6. Levies of execution or other seizures by third parties which jeopardise our rights shall be notified to us in writing without undue delay.
8. Warranty
- 8.1. Claims of the customer based on defects shall only be valid, if the customer has duly and properly complied with its obligations to inspect the goods and give notification of defects in accordance with section 377 of the German Commercial Code [HGB]. There shall be no warranty whatsoever for used goods sold.
  - 8.2. Claims based on defects shall not exist in cases of only minor deviation from the agreed quality.
  - 8.3. We shall provide warranty for defects of the goods by, at our option, repairing or replacing defective goods. If we are not prepared or able to repair or replace defective goods, or if we fail to do so, the customer shall be entitled to claim, at its option, cancellation of the contract or a corresponding reduction in the purchase price. The granted right to supplementary performance does not apply to minor defects.
  - 8.4. Only our product description, not advertising or public statements etc., shall be deemed to be the contractually agreed quality of the goods.
  - 8.5. Consultancy services provided by Epson shall be without obligation. All information provided in writing or verbally in this connection regarding the suitability or possible applications of our products shall be based on our best knowledge. However, such information shall only represent our experience, which shall not be deemed guaranteed. On the contrary, the customer itself shall check and make sure that the products are suitable for the intended purpose.
  - 8.6. The exact procedure for claiming liability for defects in quality and fee-based repairs is set out in the current provisions on after-sales service, which can be downloaded at <http://www.epson.de/support/warranty/index.htm>.
  - 8.7. If a defect in quality becomes apparent in an Epson product within 30 days of the date of purchase by the end-user, and if this would be treated as a warranty claim outside of this period, the product shall be deemed a "Defect on Arrival" (DOA). Reversal of the transaction shall occur via Epson's direct partners. The products concerned and the exact procedure and requirements are set out in the current provisions of the "Information Sheet - DOA", which can be downloaded at [www.epson.de/doa](http://www.epson.de/doa).
  - 8.8. Warranty claims for products from the Retail Systems Division (RSD) and the Factory Automation (FA) Division shall be subject to a 12-month limitation period from the time of delivery. IIP products shall remain subject to the 24-month statutory limitation period.

## 9. Liability and Claims Limitation

- 9.1. We shall be liable in accordance with legal regulations where the customer asserts damage claims based on intent or gross negligence, including intent or gross negligence by representatives of Epson or its agents in performance.
- 9.2. Liability for culpable loss of life, bodily injury or impairment of health shall remain unaffected. This equally applies to mandatory liability under the Product Liability Act [Produkthaftungsgesetz].
- 9.3. Epson shall not be liable in the event of slight negligence, except where a material contractual duty (cardinal duty) has been breached. In the case of property damage and pecuniary losses, such liability shall be limited to foreseeable damages typical of this type of contract. Liability shall be limited to 20,000.00 € for every single incident of damage or loss. This equally applies to lost profits and to anticipated savings which failed to materialise. Liability for other more remote consequential damages caused by a defect is excluded.
- 9.4. All claims of the customer shall be subject to a 12-month limitation period, except for warranty claims. These limitation periods shall furthermore not apply to damage claims in cases of loss of life, bodily injury, impairment of health or loss of freedom, to claims under the Product Liability Act [Produkthaftungsgesetz], to grossly negligent breach of duty nor to breach of material contractual duties.
- 9.5. We are a dealer of the products, not the manufacturer of the products.

## 10. Joint Liability

- 10.1 We shall not be liable for compensatory damages beyond liability provided under section 9, regardless of the legal nature of the claim asserted. This particularly applies to damage claims based on culpa in contrahendo, other breaches of duty or tort claims for compensation for property damage in accordance with section 823 of the German Civil Code [BGB].
- 10.2 Where our liability for compensatory damages is excluded or limited, this shall equally apply in respect of the personal liability of Epson's employees, workers, staff members, representatives and agents in performance.

## 11. Exports

- 11.1. Epson shall deliver all products in compliance with the currently valid Foreign Trade and Payments Act [AWG], Foreign Trade and Payments Regulation [AWV], EC Dual-Use Regulation and US export regulations. The products shall be intended for use and retention in the country of delivery agreed upon with the customer. If the customer intends to re-export the products, it shall be obliged to obtain the permits necessary for this. Re-exportation of products, individually or integrated within a system, contrary to this provision is not permitted.
- 11.2. The customer must independently inform itself of the respective valid rules and regulations. Regardless of whether the customer states the final destination of the products delivered, the customer shall be solely responsible for obtaining any and all necessary permits from the respective appropriate foreign trade authority before it exports such products. Epson shall not be under any duty to provide information.
- 11.3. Any further delivery of products by the customer to a third party, with or without Epson's knowledge, shall be subject to simultaneous transfer of the terms and conditions of the export permit. The customer shall be fully liable in the event of non-compliance with relevant regulations.

## 12. Miscellaneous Provisions

- 12.1. All agreements must be in writing, including cancellation of the written form requirement.
- 12.2. Verbal agreements shall only be valid, if acknowledged by Epson in writing within 5 days. An email shall be deemed sufficient to meet the written form requirement.
- 12.3. The non-exercise of rights by Epson shall not constitute a waiver of such rights.
- 12.4. If individual provisions are or become invalid, this shall not affect the validity of the other provisions of these General Terms and Conditions of Business.

## 13. Place of Performance and Jurisdiction

- 13.1. The place of performance for all obligations arising from the contractual relationship is Meerbusch.
- 13.2. In relation to registered merchants, the place of jurisdiction for all legal disputes arising from the contractual relationship and regarding its existence and/or validity is Düsseldorf. However, we shall be entitled to take legal action against the customer at its principal place of business.
- 13.3. The entire contractual relationship is exclusively subject to the laws of the Federal Republic of Germany. The CISG (UN Sales Law Convention of 11 April 1980 on the International Sale of Goods) is excluded.

The Managing Director  
Meerbusch, 1 April 2005