

General Terms of Business of A. Sutter Fair Business GmbH

I. General Conditions, Area of Validity

1. These General Terms of Business are valid only in relation to enterprises, which act in performance of a commercial or independent professional activity. Enterprises in sense of these General Terms of Business are natural and juridical persons, personal companies with legal capacity and public special assets. By issuing an order the Customer recognizes the General Terms and Conditions of Business of A. Sutter Fair Business GmbH (SFB). Only these Terms and Conditions are valid. Any terms and conditions on the part of the Customer which conflict with or deviate from these Terms and Conditions will not be recognized unless agreement to such terms and conditions is expressly given in writing by SFB.
2. German law applies exclusively to all contractual relations between SFB and the Customer.

II. Conclusion of Contract, Responsibility

1. With the placing of order, which can take place orally, in writing or electronically (via E-Mail, telefax or internet), the Customer expresses his order bindingly. The order issued is valid only for the work specified in the order form or agreed verbally. In case of the electronic placing of an order the Customer obtains an affirmation of access. A written confirmation of acceptance, which can also be transferred by electronic means, is done before publication by SFB.
2. SFB is entitled to deny acceptance of the order or SFB reserves the right to withdraw from any order up to editorial deadline date, should fault be found with the said order as regards its content, origin or technical form, should its publication be unreasonable for SFB, should the Customer be in payment arrears with regard to previous or current orders or should a subcontractor of SFB not be able to fulfill the required contractual obligation.
3. The Customer bears full liability for the accuracy, completeness and legal admissibility of all details given to SFB. That applies especially for texts, graphics, films and music given as well as for text, graphic, film and music data being accessible by a link. The publication of personal data pertaining to third parties requires the prior approval of such third parties. The Customer is deemed to have fulfilled this requirement when placing his order with SFB. The Customer bears sole liability for any infringements to the rights of third parties arising from the fulfillment of the Customer's order, in particular those rights in respect of copyright, registration of trademarks, and fair competition. This also applies to any rights to Internet domains, including the registration of such domains and/or the content/layout of homepages and Websites. The Customer hereby releases SFB from liability for all claims made by third parties resulting from such infringements of rights and from the costs to defend its rights.

III. Documentation, Amendments and Presentation of Content

1. The Customer is responsible for the delivery of data and documents in time. Advertisement texts, logos, composition patterns, drawings, data and films and any other material to be provided by the Customer for contractual purposes are to be attached to the order or supplied to SFB automatically and without further reminder within 14 days of the order having been placed at the latest. Should the Customer not make available the documentation required by the due deadline, SFB is entitled, after the setting and the expiry of a suitable period of time, to cancel the contract and to demand damages for non-performance. The Customer bears unlimited liability with regard to the transferred and stored material being free from computer virus, Trojans, etc. SFB is entitled to erase these data without any claims of the Customer. Material made available to SFB will only be returned to the Customer after fulfillment of the order at the express request and at the expense of the Customer. Without the express request of the Customer the duty of the storage of material ends three months after the publication. After the expiry of this period SFB is entitled to destroy data and documents.
2. The Customer is obliged to inform SFB in writing of any changes occurring in sufficient time to enable such changes to be implemented. Amendments and updates to the original order will be subject to charge. Proof sheets will be sent only for graphic art advertisements and only at the express request of the Customer. This condition does not apply in cases where the Customer makes available complete films or reproducible copy without requests for amendments or where the Customer adopts the text from the previous edition without alteration. If the Customer does not return the correction proof or demands corrections by writing before the deadline set, the print sample will be considered to have been passed for publication. Consideration will only be given to orders requiring special placement within the publication where such special placement does not give rise to production problems. SFB is unable to guarantee the publication dates set by the publishing house for the appearance of individual projects. SFB bears no liability for the observance of that date.
3. The information of the publisher of a work (the trade fair company or organizer) is decisive for the compiling of an entry in the trade fair catalogue or in the online document. SFB can bring no influence to bear on the content and makeup of such information, in particular with regard to the indexes of products in the fair catalogues. Even in cases where the order states otherwise, it is only possible to publish data proved valid by the publisher. In order to achieve uniformity of appearance, SFB bears responsibility for all decisions regarding design (composition of text, font, dimensions, and graphics). The Customer agrees to a suitable shortening of the text if the dimension of the entry ordered prove insufficient. The Customer remains liable for the accordingly reduced payment of the abridged entry.

IV. Cancellation, Force Majeure

1. In case of cancellation or limitation of orders issued by the Customer, SFB is entitled to demand a processing fee of up to 50% of the order amount without having to provide proof of the amount of damage incurred. The Customer is permitted to provide evidence that no damage at all has been incurred or that the damage is significantly less than the blanket fee.
2. SFB does not bear liability for the impossibility or delay of performance, as far as these are caused by Force Majeure or other events unforeseeable at the time of concluding the contract which are not under control of SFB, such as labor disputes, power outages or measures implemented by official authorities, and other operational disruptions which are not caused by SFB or its vicarious agents.

In case such acts of Force Majeure make it extremely difficult or impossible to fulfill the contract, SFB is entitled to withdraw from the contract. Should restraints of a temporary nature occur, the fulfillment of the contract will be delayed only for the duration of such restraint plus an adequate restarting period. In case the Customer cannot reasonably be expected to hold on to the contract as a result of the delay, the Customer can withdraw from the contract by issuing a direct declaration of withdrawal in writing.

V. Rates and Conditions of Payment

1. Advertisement rates result from the statements on the order form of SFB. The advertisement rate does not include costs for the production of print documentation and media made by SFB such as final artwork and films. The same is valid for the inlaying of advertising fixings or the fixing of bookmarks. These will be invoiced separately. If the publication in online documents will be offered for a certain period as a whole and the Customer places his order for publication later, SFB is entitled to invoice the whole time of the online-object independent from the individually ordered publication.

2. The VAT rate legally effective on the date the order is assigned must be added to all listed prices. Should the tax rate change between the date the contract is concluded and the date of publication of the work, SFB is entitled to either reimburse any excess tax paid or present a retroactive bill for any shortfall, insofar as applicable law does not provide otherwise.
3. SFB is at liberty to charge her services via letter or electronically via e-mail or via telefax. The Customer agrees to an electronic delivery of the invoice.
4. Regardless of the date of publication of the book or document, the invoice is payable immediately upon issue without reduction. SFB hereby expressly reserves the right to collect payment in advance. In case of payment arrears or prolongation of the payment deadline, a handling fee and interest of 8% above the current base lending rate will be due. A charge of 3.00 € will be made for every additional Reminder. Payments are only to be made to one of the SFB accounts specified on the invoice with reference to the Customer's invoice number and customer number.
5. The Customer only enjoys rights of set off or retention if his counter-claims are legally established or undisputed by SFB. Besides this, the Customer enjoys the right of retention only insofar as the counter-claim has its origin in the same contractual relationship.

VI. Warranty

1. SFB is to be advised of any recognizable defects without let or hindrance, at least within a period of 7 days after publication, via letter, E-Mail or telefax. SFB will give no consideration to complaints received at a later date; in such cases the entry will be deemed to be approved.
2. Should the entry commissioned in the order not be published, be published only in part or with changes in content in printed catalogues, the Customer does not enjoy the right to subsequent performance and in particular not to reprint, insertion or the dispatch of supplementary correction sheets. The Customer is entitled to claim a reduction of the invoice amount for the according entry or rescission of the contract or to compensation in accordance with paragraph VII. Where complaints concern electronic documents, SFB is obliged to implement subsequent performance under the exclusion of all other claims. It will be done from Monday to Friday in times customary to business. In the case of delayed, defaulted, refused or unreasonable subsequent performance, the Customer is entitled to withdraw from the contract or to demand a reduction of charges.
3. No warranty or damage claims will be assumed for texts or text amendments dictated over the telephone.

VII. Liability

1. SFB bears unlimited liability with regard to amount and kind for damage caused by willful action or gross negligence in the case of claims for damages based on breaches of duty by SFB, its legal representatives or its vicarious agents. SFB is not liable for damage resulting from simple negligence, unless such damage involves the breach of material contractual obligations. Material contractual obligations are such obligations, the fulfillment of which is essential to the purpose of the contract and of which the customer can constantly rely on.
2. In the case of breach of material contractual obligations resulting from simple negligence, SFB bears liability only for damage typical to the contract which could be reasonably foreseen upon conclusion of the contract. In such cases, SFB is not liable for indirect consequential damage or lost profit.
3. The limitation of liability as stated in paragraph 2 is also valid in case of damages caused by employees or vicarious agents of SFB, as long as they are not managers or managing executives, due to gross negligence or willful action.
4. SFB's liability to pay compensation is limited to 12,500 € per case for all damage caused by SFB, unless such damage can be attributed to willful action or gross negligence.
5. The aforesaid limitations of liability as stated in paragraphs 1 to 4 do not apply in the event claims are asserted based on damage to life or health or bodily harm, in the event liability is mandatorily based on the Product Liability Act or other laws or in the event a guarantee or a case of fraudulent concealment of a defect is involved.
6. In case the liability of SFB does not apply or is limited, this is also valid regarding personal liabilities of employees, representatives and vicarious agents of SFB.
7. Any more extensive liabilities are excluded, regardless of the legal nature of the asserted claims.
8. SFB will commit the order for the publication of online documents prompt to order. SFB does not bear liability in case of a delay, if the publication can be published delayed due to the fact of a bottleneck in the working process. A confirmation of the publication in a certain time is only valid in writing.
9. In the event the advertisement ordered appears in an online product, failure of the system for a short period of time for reasons of technical necessity does not result in entitlement to claims for damages.
10. If catalogues or any other ware should be delivered, the risk passes to the Customer as soon as the ware will be given to the person responsible for the transport. A confirmation of the time of delivery is only valid in writing.

VIII. Limitation of Claims

Any claims of the Customer based on defects or compensation for damage expire within one year of commencement of the legal limitation period. This does not apply to the limitation of demands in respect of claims based on breaches of duty caused by willful action or gross negligence or to the cases specified in VII (5) hereof.

IX. Advertising Agents

SFB will not pay commission for the procurement of advertisements through advertising agents if they are not partner of a contract.

X. Place of Performance, Place of Jurisdiction, Law in Force

The place of performance will be Essen. Should the Customer be a merchant entered in the Commercial Register, a legal person under public law or a separate estate under public law, the place of jurisdiction will be Essen. However, SFB is also entitled to institute legal proceedings against the Customer at the court of the Customer's domicile. Should the Customer transfer its domicile or usual place of abode to a location outside the jurisdiction of the Federal Republic of Germany after conclusion of the contract, the place of jurisdiction will be Essen. This likewise applies in the event the domicile or usual place of abode is unknown at the time at which legal proceedings are instituted.

XI. Data

The name and address of the Customer as well as all the data required for the fulfillment of the order are stored in automated files.