

Terms of Service (Terms) of Etiketten CARINI GmbH, Bildgasse 42, A-6890 Lustenau (hereinafter "CARINI")

§ 1 General – scope of application

(1) The following terms of service ("Terms") are applicable to all our services. We do not accept any terms and conditions which deviate from these Terms or any other terms and conditions of the customer inconsistent with these Terms, unless we have expressly approved their application in writing. Our Terms apply even if we unconditionally accept the customer's application to conclude a contract or his service, aware that the customer's terms are contrary to or derogate from our Terms.

(2) All future contracts relating to services which CARINI provides to the contracting party shall be governed by Terms valid on the contract execution date.

§ 2 Binding effect – prices – costs – delivery

(1) Our offers are always no-binding.

(2) Our staff are not entitled to provide binding oral information or give binding statements on the phone on behalf of CARINI. CARINI is only bound by agreements and statements reached or issued in writing, whereby electronic communications shall fulfil the written form requirement.

(3) The prices we offer are presently based on purchase prices and wages and salaries payable by us.

(4) We will charge any change requests of the customer after sending the confirmation of order separately based on time and cost of material; these are not covered by the prices mentioned in the confirmation of the order.

(5) The shipping costs will be borne by the customer. Shipments to the customer are not covered by cargo insurance.

(6) Differences in quantities actually supplied and those ordered may occur due to technical processes and quality control. Any excess or shortfall of up to 10% is allowed and will be charged at the agreed price. Partial deliveries are permitted.

(7) Any stated time for delivery starts to run on the date on which an order is confirmed. If the customer is required to provide technical documentation, material, auxiliary material or tools or to make advance payments, the time for delivery starts not until we have received these. The delivery time is reasonably extended if the customer does not complete and return to CARINI the "good to print" form within one work day or within a consensually agreed shorter time from sending the proofs and/or if changes in the services are agreed later on.

(8) The delivery period can be observed only if CARINI itself receives correct supplies in due time. If the delivery time is exceeded for reasons within our control, the customer may withdraw from the contract with reasonable prior notice. Any further claim is due only if we have acted with at least gross fault.

(9) If there is any delay in shipment or acceptance of the deliverable for reasons within the customer's control, the costs incurred due to such delay will be borne by the customer.

(10) The customer is responsible for the correct specification of the deliverable. Any indications or suggestions of CARINI relating to the fitness of the deliverable are non-binding.

(11) Statements, including but not limited to "good to print" confirmation, may be issued also by the customer's employees as well as by third parties within the scope of liability of vicarious agents (Section 1313a Civil Code) on behalf and for the account of the customer.

§ 3 Transfer of risk – production delays

(1) The shipments are made at the customer's risk.

(2) We have fulfilled our delivery obligations as soon as the goods were properly handed over to postal services, rail company, carrier, forwarding agent or loaded onto our own vehicles. The customer will assume the risk from that moment.

(3) If any circumstances occur beyond our control and not due to any fault of our own, which render the production or supply of the ordered goods excessively difficult or temporarily impossible, for example in cases of force majeure and war, as well as government action, business interruptions, strikes, lockouts, affecting both us and our suppliers, we will be released from our supply obligation for the duration of the impediment and its aftermath.

§ 4 Customer's infringement of property rights

(1) When we execute an order according to the customer's instructions, the customer is responsible to ensure that he holds the necessary rights for the exploitation of the design elements and does not infringe any rights of third parties, including but not limited to copyright and neighbouring rights, industrial designs, trademarks, name rights and other rights to signs.

(2) The customer shall hold harmless and indemnify us if an order is executed based on information, designs, drawings, models or other specifications of the customer in breach of rights of third parties. The same applies in case of alleged infringements.

(3) In case of a dispute relating to an (alleged) infringement of such rights, the customer shall advance reasonable legal fees and litigation expenses and shall reasonably assist us in defending these claims and make available in particular the necessary information and documents.

§ 5 Terms of payment

(1) Payments shall be made within 21 days without any deduction; subsequent prints are payable immediately. Payments shall be deemed to have been made in due time if the money is credited on our account on the date of which the payment is due.

(2) Unless otherwise agreed, the customer shall pay interest at a rate of 5% p.a. as well as default interest after delivery and maturity of an invoice.

(3) Unless other provisions are in place, payments will be credited towards the earliest outstanding debt, including related ancillary claims (e.g. interest, legal enforcement expenses etc.).

A flat-rate fee of EUR 15.00 (agreed prices in EUR) and CHF 18.00 (agreed prices in CHF), respectively, plus VAT, will be charged for each dunning letter sent after the customer's default.

(4) We will accept bills of exchange only subject to prior agreement. Discounting depends on our bank rate and will be charged from the date on which invoices are due. Discounting and collection expenses for bills of exchange and checks shall be borne and are immediately payable by the customer. Bills of exchange and cheques constitute payments only after they were cashed.

(5) The customer may not exercise a right of retention.

(6) The customer may only set off finally established counterclaims with our own claims.

(7) If the customer is in default, we are not required to supply or manufacture ordered goods until any arrears were paid in full. In these cases and in case of any deterioration in the customer's financial circumstances (e.g. protests of bills and cheques, bankruptcy petition, pending execution proceedings etc.), any transfer of the customer's business to third parties, dissolution of the customer's business or the customer's death, we may insist on advance payments for non-executed supplies and services.

§ 6 Reservation of title

(1) We reserve title to the delivered goods until the price is paid in full. The customer shall notify us without delay if the supplied goods are subject to execution procedure or the opening of bankruptcy proceedings. The costs of the necessary intervention shall be borne by the customer.

(2) If the customer does not pay in due time, we may request that the goods delivered with reservation of title be surrendered as collateral. That request as well as the conduct of an execution procedure with respect to the delivered goods by us does not constitute a withdrawal from the contract, nor does the request to separately store and identify goods under reservation of title constitute a withdrawal from the contract.

(3) The customer may resell goods under reservation of title in the ordinary course of business. Should this be the case, the customer already assigns to us his future claims vis-à-vis his own clients equal to the amount which he charges to his own clients for the goods supplied by us.

(4) At our request, the customer shall submit copies of invoices in order to disclose the names of his clients vis-à-vis whom he has obtained claims by selling our goods, as well as the amounts owed by them.

§ 7 Warranty and liability

(1) Obvious defects shall be notified immediately after receipt of the goods, hidden defects shall be notified immediately after they were discovered, in each case accompanied by the (all) allegedly defective item(s). Any defects that were notified after processing of the goods are not deemed to have been notified at the appropriate time.

(2) Precondition for any warranty is a complaint which was made in due time. The customer shall prove that an item was defective on the date on which the transfer of risk took place. Our warranty obligation ends in any event 6 months of the transfer of risk date. In a warranty event, the customer may insist that we take back and replace the incriminated goods. We may also elect to improve the incriminated goods. Unless the customer allows the necessary time and occasion for us to make the necessary improvements and to supply replacements, we shall be released from any warranty. Should the goods still be defective thereafter, the customer may either insist that we reduce the purchase price or rescind the contract. If we have supplied replacement goods, the customer shall promptly return the defective goods.

(3) Customary variations in the properties of our products do not constitute defects of the supplied goods.

(4) In case of premeditation, severe gross negligence, damage to life, limb or health and in case of claims asserted in reliance on the Product Liability Act, liability is governed by the legal provisions. The customer shall prove that we have acted with premeditation or severe gross negligence. The amount of damages shall be capped with replacing the foreseeable damage typical to the contract. Any further warranty claims and damages shall be excluded.

(5) Consequential damage as well as damage caused by unsuitable or improper use, inadequate application or wrongdoing on the part of our customer or third parties or by transport etc. shall in any case not give rise to warranty claims and damages. Any damage during transit shall be notified to the relevant carrier.



Solutions for
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- (6) The limitations of warranty laid down above apply also to recourse claims according to Section 933b of the Austrian Civil Code.
(7) The customer may not claim any other damages from us, regardless of the legal ground. Any exclusion or limitation of our liability applies also to the personal liability of our legal representatives and vicarious agents.
(8) The customer cannot claim costs incurred for complaints, flat-rate compensations for complaints etc. from us.
(9) The customer cannot lodge claims due to shortfall exceeding fifty percent (*Verkürzung über die Hälfte*) or frustration of contract (*Wegfall der Geschäftsgrundlage*).

§ 8 Working documents

We are liable for manuscripts, drafts, final artwork, films and other documents provided by the customer up to 4 weeks after finishing an order. Within that period, we shall return the documents provided to the customer if he so requests. After the expiration of that time limit, we are no longer obliged to keep or return the documents provided. Furthermore, we do not accept any liability whatsoever for unsolicited documents.

§ 9 Title

The typesets, repros produced by us and other aids provided for the production process will remain our unalienable property even if the customer has compensated us for the value of that work. The same applies to materials provided by another undertaking on our instruction (cutting tools etc.)

§ 10 Privacy statement

Important aspects of data processing are discussed in our data policies available at: <https://www.carini.at/de/datenschutzrichtlinien>.

§ 11 Derogations

Derogations from these Terms are valid only after a written agreement was reached.

§ 12 Severability

If any term hereof is invalid, the remaining terms hereof shall thereby not be affected. In this case and in case the contract should contain a loophole, the invalid, unenforceable or missing term shall be replaced by a reasonable term that closest reflects to the extent permitted by law the parties' intent or what the parties had intended in view of the economic purpose of the contract, had they considered that issue when concluding the contract.

§ 13 Applicable law – place of performance – place of jurisdiction

- (1) The legal relationships between us and our customers shall exclusively be governed by and construed in accordance with Austrian law, to the exclusion of the conflict of law rules. The parties consensually exclude the application of the Uncitral United Nations Convention on Contracts for the International Sale of Goods.
(2) Place of performance for our services is the Company's registered office in Lustenau, which is also the place of performance for the customer's services.
(3) All disputes shall be referred to the court which is competent for the subject-matter at A-6890 Lustenau.

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