

IMAGE Vertriebs GmbH: General Terms and Conditions

I. **General:**

For the business relationship between IMAGE Vertriebs GmbH, Dorfstrasse 3, D-56288 Braunschorn (IMAGE Vertriebs GmbH) and the customer, the following general conditions apply in the version that is valid at the time an order is placed.

Deviating agreements, amendments, representations, etc. are only binding if IMAGE Vertriebs GmbH confirmed these in writing or in written form and in this case only for the order, for which they were agreed.

IMAGE Vertriebs GmbH expressly rejects any purchase conditions provided by the customer.

In addition to the written approval (signing the order confirmation or confirmation of an electronic order) the following events represent the customer's agreement to these terms and conditions: a) failure to object to the terms and conditions within 10 days of notice, b) the accepting a delivery goods, c) partial or full settlement of an invoice.

II. **Offers and contracts:**

1. All of the offers and prices stated in catalogs, price lists, advertisements, electronic media and such, printed or saved, by IMAGE Vertriebs GmbH are not binding and without obligation.
2. The customer should check before ordering in his own responsibility whether the ordered goods or ordered services meet his wishes and needs. If in doubt, the customer should seek pre-contractual expert advice.
3. An effective contract is only binding upon acceptance of the customer's order by IMAGE Vertriebs GmbH. Hereby, the client renounces the receipt of an acceptance, according to § 151 sentence 1 BGB. The customer will be informed about the contract by IMAGE Vertriebs GmbH either by an order confirmation or no later than by delivery of the goods ordered, by supply of goods for collection or by offering or performing other services.
4. If the customer orders by electronic means IMAGE Vertriebs GmbH reserves the right to electronically confirm the reported content with the order by an automated electronic explanation. Such an automated electronic response is not a binding acceptance of the offer by the customer.
5. If IMAGE Vertriebs GmbH notices after the contract was closed that the goods ordered are no longer available at IMAGE Vertriebs GmbH, or if they are not deliverable for legal reasons, or any other reasons that are not justifiable by IMAGE Vertriebs GmbH, IMAGE Vertriebs GmbH may offer goods or services in either an equivalent quality and price or cancel the contract. Received payments will be refunded by IMAGE Vertriebs GmbH immediately following the cancellation of the contract.

III. **Revocation according to § 312d BGB:**

1. In the event that the customer is a consumer according to § 13 BGB he has the right to revoke his order submitted through distance selling contracts (§ 312b BGB). In this case the customer can cancel the contract

within 14 days in writing (e.g. letter, fax, e-mail) or by returning the goods without giving reasons. The period begins with receipt of goods, but no earlier than with the receipt of this information.

2. This right does not apply to audio or video recordings (e.g. CDs, video tapes, DVDs) or software that has been unsealed by the customer, and not to services that are provided electronically (e.g. software for downloading). The revocation is also excluded for goods that are produced according to customer specifications (i.e. screens, cables, etc.), clearly tailored to the customer's personal needs or those that are not suitable for return due to their nature.
3. To meet the revocation period it is sufficient to send a cancellation or return the goods. The revocation must be sent to: IMAGE Vertriebs GmbH, Dorfstrasse 3, D-56288 Braunschorn.
4. In the case of an effective return the already received goods and services have to be returned. If the customer cannot return these in whole or in part, or only in deteriorated condition, the customer must provide appropriate compensation. This does not apply if the deterioration of the goods is based solely upon their examination.
5. When returning from a delivery with an order value up to EUR 250.00 the customer has to bear the cost of return if the delivered goods are conform to the ordered goods. In other cases, IMAGE Vertriebs GmbH will pay the costs of return. Returns are generally only reimbursed by IMAGE Vertriebs GmbH up to the cheapest shipping method (standard package Deutsche Post AG).

IV. Place of fulfillment and transfer of perils:

1. If not agreed differently, the place of fulfillment is the registered office of IMAGE Vertriebs GmbH in Braunschorn or at the dispatch of goods of the first sender who is acting for IMAGE Vertriebs GmbH.
2. The risk of accidental loss and accidental deterioration passes with delivery of the goods to the carrier or with the indication that the goods are ready for pick up through the customer at the place of fulfillment. When returning goods to IMAGE Vertriebs GmbH, the risk is passed on to IMAGE Vertriebs GmbH with the delivery of goods at the business premises or storage of IMAGE Vertriebs GmbH.
3. The above rules do not apply for consumer goods.

V. Delivery:

1. Subject of the delivery is entirely the good with the product features and specifications that result from the product description by IMAGE Vertriebs GmbH. Other properties listed or warranties are only agreed upon if they are confirmed in writing by the supplier.
2. Unless otherwise agreed, the delivery takes place from stock and usually within four weeks after the contract was closed to the customer's delivery address. A shipment of goods is always on behalf and at the expense of the customer through a carrier of choice by IMAGE Vertriebs GmbH. IMAGE Vertriebs GmbH is entitled to carry out partial deliveries.

3. Commercial customers are responsible to inspect the goods in accordance with § 377 HGB for obvious defects, other variations and shortfalls without delay. Insignificant deviations of the goods are not considered. If no complaint is received by IMAGE Vertriebs GmbH within eight working days from receipt of delivery, the goods will be deemed approved. Claims for hidden defects remain unaffected.

VI. Dates:

1. Agreements or details on the performance and delivery date are only binding if stated in writing. All reminders and deadlines by the customer also need to be in writing. Grace periods must be reasonable. They should not be shorter than 15 days.
2. For the period in which IMAGE Vertriebs GmbH has to wait on information or cooperation by the customer, delivery and performance periods are extended accordingly. The same applies if IMAGE Vertriebs GmbH is prevented to properly execute the contract due to unforeseen circumstances that neither IMAGE Vertriebs GmbH nor an agent of IMAGE Vertriebs GmbH can influence. Such circumstances are presumed to exist in case of labor strikes or lockouts, and the occurrence of unforeseen obstacles where IMAGE Vertriebs GmbH does not have the possibility to take influence on. IMAGE Vertriebs GmbH will notify the customer immediately after learning about the preventative, its beginning and end, and the nature of the preventative. If the customer is responsible for the delay, IMAGE Vertriebs GmbH will charge the incurred additional costs.
3. If IMAGE Vertriebs GmbH should default or not be able to perform their services as owed to the customer and the customer is eligible for choice between delivery, cancellation and/or claims for damage, the customer has to exploit this option within one week after the option becomes valid. This has to be done in written form, addressed to IMAGE Vertriebs GmbH. Otherwise it will be assumed that IMAGE Vertriebs GmbH is entitled to further performance and that the customer will not assert any claims.

VII. Reservation of ownership:

1. IMAGE Vertriebs GmbH reserves the ownership of the delivered goods to the final and complete settlement of all existing and future claims from the business relationship with the customer.
2. The customer is obligated as depository of the goods under retention of title for the proper care and protection. Reselling, processing, mixing, assembly, and other recovery of the goods are allowed only in the common course of business. Any receivables arising thereof shall be settled in advance to IMAGE Vertriebs GmbH (extended retention of title), without the need for a separate assignment statement by the customer addressed to IMAGE Vertriebs GmbH. The receivables may not be provided by the customer in an open account. The customer is entitled to collect the receivables until further notice, and be obliged to keep exposures collected separately and immediately pay them to IMAGE Vertriebs GmbH.
3. The customer may not pledge the goods, nor deposit them as security. Impairments of the subject property (particularly pledges) have to be announced by the customer immediately without delay and the existence of a reservation of ownership has to be announced to third party trustees.

4. If the collateral value surmounts the amount to which IMAGE Vertriebs GmbH is entitled hereunder, the outstanding amount of their claim against the customer to more than 10% sustainably, then IMAGE Vertriebs GmbH will release IMAGE Vertriebs GmbH securities in that regard to the customer's request by choice.

VIII. Payment terms:

1. Unless expressly stated as gross prices or prices with VAT, all price statements by IMAGE Vertriebs GmbH are stated net. Net prices will be added with the statutory tax in their respective current statutory
2. As far as prices or costs for other services, travel, expenses, postage and telecommunications costs have not been expressly agreed by contract, IMAGE Vertriebs GmbH is entitled to charge these according to current price lists. IMAGE Vertriebs GmbH will forward valid price lists upon request.
3. The surrender or delivery of goods is always against advance payment, check or cash on delivery. Deliveries against an invoice, however, are subject to successful testing. Invoices by IMAGE Vertriebs GmbH are immediately due upon receipt and have to be settled by the customer within two weeks without deductions.
4. If the customer is in arrears with his payment obligations IMAGE Vertriebs GmbH is entitled to charge the customer a reasonable fee in the amount of at least Euro 8.00 for each reminder, unless the customer proves that the actual costs are lower. The right to claim higher damages remains unaffected.
5. If the customer fails to fulfill his payment obligations in spite of notice, stops his payments or a bank redeems a check or a debit due to insufficient coverage, IMAGE Vertriebs GmbH can validate all existing claims due for payment immediately.
6. In addition to hedge the credit risk, IMAGE Vertriebs GmbH reserves the right to exclude certain types of payment methods in single cases and to carry out requested deliveries only against advance payment, COD or immediate payment upon delivery. If facts become known after the contract was closed, that objectively justify doubt that the due fulfillment of the contract by the customer will not take place, such as an inability to pay or a refusal to perform, IMAGE Vertriebs GmbH has the right to require prepayment or similar guarantees and in case of refusal to rescind the contract.

IX. Liability for defects:

1. IMAGE Vertriebs GmbH guarantees that new products are free of defects at the time of delivery to the customer, i.e. that they are usable in a way that is quoted in the contract or that they are suitable for common use and are in a condition that is common for products of the same type. They are in a condition that may be assumed by the buyer and/or meets the announcement that IMAGE Vertriebs GmbH and/or the manufacturer states. IMAGE Vertriebs GmbH is not liable for consumer goods and also not liable for defects of used goods.
2. If there is a defect in the purchased goods, and this deficiency is not authorized by the customer, the customer may require subsequent

performance by IMAGE Vertriebs GmbH. Deficiencies have to be announced in writing. The remedy is chosen by IMAGE Vertriebs GmbH, either by replacement or repair. The customer can then require replacement or repair if one or the other form of remedy is not reasonable to him.

3. The customer shall take, within reasonable limits, all necessary measures to detect, contain and document deficiencies. He will provide IMAGE Vertriebs GmbH in any case with all the available information and supports the removal of defects in the context of his contractual obligations to cooperate. As far as appropriate and reasonable for the customer, remedies may also be performed by giving instructions on the phone, in written form or by means of internet communication.
4. If the final remedy fails after three attempts, despite a written reasonable time-limit of at least two weeks, the customer has the right to reduce the fees or cancel the contract. Other rights of the customer due to the defect, such as reimbursement of expenses for removal of defects by third parties, new delivery, and contract costs are excluded. If a defect cannot be removed after a third attempt to repair, the customer is entitled according to § 439 BGB, to demand delivery of conforming goods or to reduce the purchase price or to cancel the contract. The cancellation is excluded if the defect is minor and insignificant.
5. If the customer receives a new good in the subsequent performance, or if he resigns the contract, he is obliged to return the first item delivered and to pay compensation, in addition, he has to pay for the benefits derived. If the customer cannot prove lower usage or the supplier cannot prove higher usage, the parties anticipate a user fee from the following amounts: for usage of one to three months 10% of the sales price, 20% for use up to six months, 30% when used up to twelve months and 50% in case of use of more than twelve to 24 months.
6. If it is found that a deficiency has been shown to be wrong or if IMAGE Vertriebs GmbH operates in case of faults or problems caused by the environment of the contractual software and hardware, changes carried out by the customer or inadequate operation, then IMAGE Vertriebs GmbH can charge the caused effort.
7. For goods that are purchased to be used for commercial or independent professional purposes, warranty claims expire after 12 months from the transfer of risk.

X. Compensation for damages:

1. IMAGE Vertriebs GmbH is fully liable for intent and gross negligence. In addition, claims for damages, on whatever legal grounds, to the extent where there is no compelling legal liability, particularly under the Product Liability Act, injury to life, body or health, because of a warranty, or breach of contract.
2. Liability for culpable violation of essential contractual obligations by IMAGE Vertriebs GmbH is limited to foreseeable, typically occurring damage.
3. For the replacement of data IMAGE Vertriebs GmbH is liable only if the customer has the data backed up regularly in such manner that the data in machine-readable form data sets is reproducible with reasonable efforts.

4. If the liability is excluded or limited for IMAGE Vertriebs GmbH, this also applies to the personal liability of employees, representatives and agents.
5. For customer claims outside of the defects liability a limitation period of one year is valid. It begins with the end of the year in which the claim arose, and the customer obtained knowledge of the damaging event.
6. Samples, prototypes or products that are supplied for purposes of a technical inspection, are expressly provided without guarantee and without any warranty.

XI. Consolidation for compensation of damages:

1. In case of compensation of damages due to non-fulfillment IMAGE Vertriebs GmbH is entitled to charge the customer 20% of the invoiced amount as liquidated damages position without evidence of real harm. Claims for further damage remain unaffected. In both cases the customer is free to provide evidence of minor damage. The aforementioned flat-rate compensation is particularly true in case the customer does not accept the delivery of goods, which entitles us to resign the contract after a reasonable period and to charge a compensation for damages as named above. In case the customer definitely does not accept the delivery, a notification period is no longer required. The calculation is based on the complete invoice price net.

XII. Data protection:

1. The address of the customer is stored electronically for fast and accurate processing. With the placing of an order the customer expresses his consent to the processing of his data through us in the context of the purpose of the contract, to the extent necessary for implementation or execution of the contract. The treatment of personal data shall be in accordance with the provisions of the Federal Data Protection Act and the Teleservices Data Act.
2. For the purposes of credit assessment and credit control IMAGE Vertriebs GmbH is entitled to exchange data with credit-service companies such as Schufa or Hermes.
3. Any intellectual property of IMAGE Vertriebs GmbH, including but not limited to, technical and commercial information, data, diagrams, designs, manufacturing processes and ideas that were supplied by IMAGE Vertriebs GmbH to the customer or will be made available (with the exception of publicly available information) are used by the customer only to assist him to evaluate and use the goods. The information and data received may be used only for that purpose. The disclosure to third parties is prohibited. Any drawings, models or designs remain the property of IMAGE Vertriebs GmbH. The sale of goods to the customer does not transfer any rights on such information, data, schematics, design, manufacturing processes etc.

XIII. Miscellaneous:

1. The contractor is granted a right to offset counterclaims only when they have been legally established or recognized by IMAGE Vertriebs GmbH in writing. A lien can be based only on the customer claims from the actual contract. An assignment of rights is permitted only with prior written consent by IMAGE Vertriebs GmbH.

2. For the legal relationship between IMAGE Vertriebs GmbH and the customer, and the respective terms and conditions, the law of the Federal Republic of Germany applies. The UN Convention on Contracts for the International Sale of Goods is excluded.
3. Should any of these conditions in whole or partially be legally invalid, this will not affect the validity of the remaining provisions. In that case, the parties are required to replace the invalid provision by valid ones, as far as legally possible and it should come closest to the economic purpose of the ineffective regulation in the light of this contract to the expressed interest of the parties. The same applies if the contract shows a contractual gap that is not foreseen by the parties.
4. If the customer is a commercial customer, equivalent to one, or if he is a corporation that is governed by public law, Simmern in Hunsrück is regarded as agreed as the solely court of jurisdiction. IMAGE Vertriebs GmbH is also entitled to carry out a dispute at the headquarters of the customer.

IMAGE Vertriebs GmbH, Braunschweig May 2010

URL of this website: <http://www.image.ag/agb.php>

© 2005 kinozuhaue.de · All rights reserved