

General Terms and Conditions of AZ Direct GmbH

for Deliveries and Services relating to the Production and Processing of Advertising Materials

AZ Direct GmbH
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AZ Direct GmbH (hereinafter "AZ") provides the following services: Production and processing of advertising materials exclusively in accordance with these General Terms and Conditions ("GTC Advertising Materials"), which the Customer acknowledges by placing the order or by accepting the service. They also apply to all future business with the Customer. The validity of deviating and supplementary terms and conditions of the Customer is excluded, even if AZ does not expressly object to them.

Insofar as the delivery and performance of addresses/data and/or list broking services in connection with services mentioned in these GTC are to be provided by AZ, the General Terms and Conditions of AZ Direct GmbH for Addresses, Data and Multi-Channel Services apply exclusively to these services.

1. Conclusion of Contract

1.1 AZ's offers are subject to confirmation. An order signed by the Customer is a binding offer that AZ can accept within two weeks of receipt at AZ by means of an order confirmation by letter or e-mail or by providing the service. A contract is concluded by AZ's written order confirmation or the execution of the order by AZ and is based exclusively on the content of the order confirmation (if issued) and these terms and conditions. Verbal agreements or promises must be confirmed in writing to be effective.

1.2 Insofar as AZ is required to use the addresses, data and/or services of third parties for the provision of its services as specified by the Customer, the Customer is responsible for the granting of the rights of use to AZ by the third party necessary for the fulfilment of the order.

1.3 AZ reserves all rights to the offer documents prepared by AZ (in particular illustrations, text proposals, etc.). They may not be made accessible to third parties and must be returned to AZ immediately upon request.

2. Scope of Services

2.1 The content of the services and its scope are described in more detail in these GTC, unless they are described in the offer. In particular, the following services are included:

- Production of advertising materials: Printing and further processing (e.g. stapling, punching, gluing, binding)
- Processing of advertising materials: Labeling & Lettershop

2.2 AZ is entitled, at its discretion, to have the order carried out in whole or in part by using qualified third parties. The above services are described in more detail in Sections 3 - 4 below.

3. Production of Advertising Materials

3.1 AZ produces advertising media (e.g. newspaper advertisements, supplements for daily newspapers or magazines, posters, advertising films) physically by printing or recording and duplicating photos, films or digital images (hereinafter also referred to collectively as "works") and processes them further (e.g. stitching, punching, gluing, binding) and makes the works directly available to the Customer or, at the Customer's instruction, to third parties for dispatch to the addressees of advertising or to the addressees of advertising within the framework of the lettershop services regulated in Clause 4.

3.2 AZ provides its services in accordance with the agreements with the Customer and in accordance with customary business practices in the advertising media industry.

3.3 AZ implements the drafts made available by the Customer for the works technically and provides the Customer with proofs (for printed products) or raw versions (for film material) for checking and correction.

3.4 After submission of the proofs or raw versions in accordance with Section 3.3, the Customer must immediately notify AZ of its requests for changes. AZ will implement these change requests and proceed again in accordance with Section 3.3.

3.5 If the Customer has no (further) change requests in the case of Section 3.3 or Section 3.4, it must immediately release the work for production in the agreed number of copies (release).

3.6 After release by the Customer, AZ will produce the work accordingly.

3.7 Unless the parties have agreed otherwise, the spelling is based on the current edition of the Duden at the time the contract is concluded.

3.8 AZ is entitled to adjust the print run without consultation with the Customer to a reasonable extent and in accordance with the production processes. Excess or short deliveries are reasonable, provided that they do not deviate by more than 10 % upwards or downwards from the agreed circulation. AZ shall invoice the quantity actually produced and delivered for each work.

4. Processing of Advertising Materials

4.1 AZ physically processes the advertising material created or provided by the Customer within the scope of the above Section 3 by addressing, folding, sorting, enveloping and postal delivery. The details are set out in the order confirmation.

4.2 Unless otherwise agreed in the order confirmation, the AZ is entitled to produce a number of up to 50 of the advertising material covered by the contract for its own purposes (Customer acquisition). These advertising materials will not be invoiced to the Customer.

5. Legal Regulations, Rights of Third Parties, Data Protection

5.1 The Customer must ensure that the drafts made available to AZ (Section 3.3) or requests for changes to proofs or raw versions (Section 3.4) comply with statutory provisions and do not infringe the rights of third parties.

5.2 By releasing the works (Section 3.5), the Customer confirms in particular that they comply with the legal requirements of competition law, industrial property protection and data protection law and are legally compliant.

5.3 Insofar as copyrighted reproduction and exploitation rights or other rights of third parties or applicable law are infringed by the creation of the work contrary to Sections 5.1 and 5.2, the Customer shall indemnify AZ upon first request from all claims of third parties (including the necessary reasonable costs of legal defence).

5.4 AZ points out to the Customer that personal data, also for advertising purposes, may only be used within the framework of the statutory provisions, in particular the General Data Protection Regulation (GDPR) and the Federal Data Protection Act (BDSG). The Customer itself is responsible for compliance with these provisions.

6. Material Provision by the Customer

6.1 Insofar as it is expressly agreed with the Customer that the Customer is required to provide materials for the production, in particular the printing of the works or within the framework of further processing of the works, these materials/advertising materials are to be delivered to the delivery address stated in the order confirmation in accordance with the specifications agreed in the order confirmation at the Customer's expense and risk. The Customer shall also bear the costs of disposal of the packaging material.

6.2 Unless otherwise agreed in the order confirmation, the material required by AZ for the production of the works or other advertising material to be provided shall be supplied by the Customer for 105 % of the agreed circulation. After processing the order, AZ will inform the Customer whether there is any remaining material. If the Customer then does not determine within two weeks what is to be done with the material, it will be destroyed at the Customer's expense. If the Customer requests the return of the remaining material, such return shall be at its own risk and expense.

6.3 Quantity or quality control by AZ shall take place upon delivery of the materials and other advertising materials to be provided only with regard to obvious deviations or defects.

6.4 If the materials supplied by the Customer do not comply with the agreed specification, the Customer shall bear the risk of resulting additional expenses and delays in delivery.

6.5 The provisions of Clause 5 apply accordingly to materials provided by the Customer.

7. Deadlines and Dates for Deliveries and Services

7.1 Deadlines and dates for deliveries and services are only binding if they have been confirmed in writing by AZ and the Customer has provided AZ in good time with all information and documents required for the performance of the services in accordance with the agreements made and effected any agreed down payments in accordance with the agreement. Agreed periods shall commence on the date of order confirmation. In the event of additional or extension orders placed at a later date, the periods shall be extended accordingly.

7.2 If AZ's performance is delayed, the Customer is only entitled to withdraw from the contract if AZ is responsible for the delay and a reasonable deadline set by the Customer for performance has elapsed without success.

7.3 If there are delays in the provision of services for which the Customer is responsible, for example due to subsequent requests for changes or delayed procurement of information, the delivery may be postponed beyond the delay period. In this case, AZ is not obliged to provide the correspondingly delayed services as a matter of priority.

7.4 Unforeseeable, unavoidable events of force majeure beyond AZ's control and for which AZ is not responsible, such as war, acts of terrorism, natural disasters, fire, sabotage, official orders or industrial disputes release AZ from its obligation to deliver or perform on time for their duration. Agreed periods shall be extended by the duration of the disruption. AZ shall inform the Customer of the occurrence of the disturbance in an appropriate manner. If the end of the disruption cannot be foreseen or if it lasts longer than three months, each party is entitled to terminate the contract extraordinarily or to withdraw from it.

8. Dispatch, Acceptance, Transfer of Risk

The dispatch, acceptance (duty of inspection) of the work and the transfer of risk shall be carried out in accordance with the procedure contractually agreed by the parties:

8.1 Delivery to the Customer

8.1.1 If the parties have not made any special agreement on delivery to the Customer, AZ hands over the manufactured or processed works to the Customer or to a transport company for transport to the Customer.

8.1.2 Unless otherwise indicated by the Customer, the goods shall be shipped in usual packaging by an appropriate means of transportation.

8.1.3 The Customer is obliged to examine the works provided to him immediately upon receipt for completeness and obvious defects and to inform AZ immediately in writing of any damage ascertained. The Customer must notify AZ in writing of any hidden defects immediately after they are discovered.

8.1.4 The risk shall pass to the Customer when the work is handed over to the transport company or the Customer himself. If the handover or dispatch is delayed for reasons for which the Customer is responsible, the risk shall pass to the Customer on the day of notification that the work is ready for dispatch. The Customer must take out transport insurance itself.

8.2 If AZ is contractually obliged to send the produced (or processed) works to third parties, in particular to the advertising recipients themselves, the following shall apply:

8.2.1 AZ shall send or hand over the contractually agreed number of works to the Customer for inspection after their production. The Customer is obliged to examine these works immediately and to notify AZ immediately in writing of any complaints found or to release the works in writing for dispatch to third parties/addressees.

8.2.2 If the Customer fails to make the flat-rate postage charge to be paid in advance in accordance with Section 9.3 available to AZ in good time, AZ shall not be obliged to deliver the work to the post even after release in accordance with Section 8.2.1; in this case the Customer shall bear the additional costs arising therefrom. AZ reserves the right to assert further rights.

8.2.3 The risk shall pass to the Customer upon delivery to the post office. If the handover or dispatch is delayed for reasons for which the Customer is responsible, in particular due to an unjustified failure to release in accordance with Clause 8.2.1, the risk shall pass to the Customer on the day of notification that the work is ready for dispatch. The same applies if the Customer does not pay the flat-rate postage costs in time. The Customer must take out transport insurance itself.

9. Prices, Terms of Payment

9.1 If the contracting parties have not agreed on a certain price, the price of the work shall be determined according to AZ's price list valid at the time the contract is concluded.

9.2 All prices of AZ are exclusive of the respective statutory value added tax as well as packaging and shipping costs (freight, postage, customs duties, etc.), which are each charged separately.

9.3 Unless it has been separately agreed with the Customer that the carrier will collect the postage separately in the billing procedure, AZ will charge a flat-rate postage fee for the postage costs to be paid in advance. This is based on the rates specified by the carrier. AZ must be able to dispose of this amount at least three days before the agreed date of postal delivery. The exact settlement of the postage costs will be made with the issue of the invoice. For this purpose, the actual postage costs incurred shall be offset against the lump sum already paid; surpluses shall be offset accordingly and reduced amounts, e.g. due to weight overruns, shall subsequently be invoiced.

9.4 Each invoice is due for payment immediately without deduction. Payments by the Customer are only deemed to have been made when AZ can dispose of the amount. Bills of exchange and cheques shall only be accepted by special agreement and free of costs and expenses for AZ on account of performance.

9.5 In the event of late performance, AZ is entitled to charge the statutory default interest applicable at the time. The assertion of further damage caused by default remains unaffected.

9.6 If, after conclusion of the contract, AZ becomes aware of the risk of the Customer's inability to perform, AZ is entitled to perform outstanding services only against advance payment or provision of security. If the advance payments or securities have not been provided even after expiry of a reasonable grace period, AZ may withdraw from individual or all of the contracts concerned in whole or in part. AZ reserves the right to assert further rights.

9.7 The Customer is only entitled to set-off if its counterclaim is undisputed or legally binding.

9.8 The Customer is only entitled to assert a right of retention if its counterclaim is based on the same contract, is undisputed or has been legally established.

10. Rights of Customer in Case of Defects, Duty of Inspection

10.1 Upon transfer of risk, the work shall be of the agreed quality; it shall be measured exclusively in accordance with the specific agreements made in writing between the parties regarding the characteristics, features and performance characteristics of the work and the proof approved by the Customer or, in the case of direct dispatch to the advertising recipients, in accordance with the advertising media (works) released for dispatch by the Customer.

10.2 AZ does not assume any liability or guarantee for the quality of the work vis-à-vis the Customer beyond the quality agreement in accordance with Section 10.1.

10.3 Information in catalogues, price lists and other information material provided by AZ to the Customer is not to be understood as such guarantees for a particular quality of the work.

10.4 If the Customer asserts a defect, AZ is entitled to inspect and examine the work complained of. The Customer shall grant AZ reasonable time for this. AZ may also request the Customer to return the work complained of to AZ at AZ's expense. If a complaint proves to be unjustified, the Customer is obliged to reimburse AZ for all expenses incurred in this connection.

10.5 AZ shall remedy defects at its own discretion by remedying the defect free of charge for the Customer or by supplying a defect-free part or the entire work ("subsequent performance") as a substitute.

10.6 The Customer shall grant AZ a reasonable period of time for this. Only in order to prevent disproportionately large damage or if AZ is in default with subsequent performance, the Customer has the right to remedy the defect itself or have it remedied by third parties and to demand compensation from AZ for the necessary costs incurred by it as a result of the subsequent performance.

10.7 The Customer's rights in the event of defects shall lapse if the defects occur for reasons caused by the Customer.

10.8 AZ shall bear the material, dispatch/ labour costs and other expenses incurred for the purpose of subsequent performance, unless the Customer has to bear them in exceptional cases in accordance with Section 10.4, last sentence.

10.9 If subsequent performance fails, if it is unreasonable for the Customer or if AZ has refused to perform due to disproportionate costs, the Customer can withdraw from the contract, reduce the purchase price and/or claim damages (or, if applicable, reimbursement of his expenses) at his discretion in accordance with statutory provisions.

10.10 The limitation period for the Customer's rights to subsequent performance, withdrawal or reduction is 12 months from the date of delivery to the Customer or handover to the post office. The statutory limitation periods shall apply to claims for damages on the part of the Customer for reasons other than defects in performance and with regard to his rights in the event of fraudulently concealed defects or defects caused intentionally.

11. Damages and limitation of liability

11.1 Subject to clause 11.2, AZ's legal liability for damages is limited as follows: AZ's liability is limited to the amount of damage typically foreseeable at the time the contract was concluded for the slightly negligent breach of material obligations arising from the contractual relationship; AZ is not liable for the slightly negligent breach of insignificant obligations arising from the contractual relationship.

11.2 The aforementioned limitations of liability shall not apply in cases of intentional or grossly negligent conduct on the part of AZ, in cases of mandatory statutory liability (in particular under the Product Liability Act), or in cases of assumption of a guarantee or culpably caused damage to body, health or life.

11.3 The Customer is obliged to take appropriate measures to damage prevention and mitigation.

12. Retention of title

12.1 The delivered works remain the property of AZ until full payment of all claims of AZ arising from the business relationship with the Customer, whereby AZ declares release under the conditions of Clause 12.7. In the case of current accounts, the reserved title shall apply to secure the balance claim due to AZ.

12.2 The Customer is only permitted to sell the works delivered under reservation of title in the ordinary course of business. The Customer is not entitled to pledge the works delivered under retention of title, to assign them as security or to make any other dispositions endangering AZ's ownership. The Customer already now assigns the claim from the resale to AZ; AZ already now accepts this assignment. If the Customer sells the works after combination, mixing or blending with other objects, the assignment of claims shall only be agreed in the amount of the part corresponding to the price agreed between AZ and the Customer plus a safety margin of 10% of this price.

12.3 The Customer is revocably authorised to collect the claims assigned to AZ in trust for AZ in its own name. AZ can revoke this authorization and the authorization to resell if the Customer is in arrears with material obligations such as payment to AZ.

12.4 If the works delivered under reservation of title are combined, mixed or mixed with other objects, AZ acquires co-ownership of the new object in proportion to the value of the objects subject to reservation of title to the other objects at the time of combination, mixing or mixing. If the combination, mixing or blending takes place in such a way that the Customer's item is to be regarded as the main item, it is agreed that the Customer assigns co-ownership to AZ on a pro rata basis. The Customer shall keep the co-ownership thus created in safe custody for AZ.

12.5 The Customer shall provide AZ at any time with all desired information about the works delivered under reservation or about claims which have been assigned to AZ thereafter. The Customer must notify AZ immediately of any access or claims by third parties to the works delivered under reservation and hand over the necessary documents. The Customer shall at the same time inform the third party of AZ's retention of title. The costs of a defence against such access and claims shall be borne by the Customer.

12.6 The Customer is obliged to treat the works delivered under reservation of title with care for the duration of the retention of title.

12.7 If the realisable value of the securities exceeds AZ's total claims to be secured by more than 10%, the Customer is entitled to demand release in this respect.

12.8 If the Customer defaults on essential obligations such as payment to AZ, AZ may, without prejudice to other rights, take back the works delivered under reservation. In this case, the Customer will grant AZ or AZ's agents immediate access to the works and publish them. If AZ demands surrender on the basis of this provision, this shall be deemed to be AZ's withdrawal from the contract. AZ is only entitled to exploit the works delivered under reservation after withdrawal from the contract.

12.9 In the case of deliveries to other legal systems in which the above retention of title provision does not have the same security effect as in Germany, the Customer will do everything in its power to order AZ appropriate security rights without delay. The Customer shall participate in all measures such as registration, publication, etc. which are necessary and conducive to the effectiveness and enforceability of such security rights.

12.10 At AZ's request, the Customer is obliged to adequately insure the works delivered under reservation, to provide AZ with the corresponding proof of insurance and to assign the claims from the insurance contract to AZ.

13. General provisions

13.1 Changes and additions to the contract and/or these GTC Advertising Materials as well as ancillary agreements must be made in writing. This also applies to an amendment of this written form requirement.

13.2 The invalidity of individual provisions of these GTC Advertising Materials shall not affect the validity of the remaining provisions. In this case, the parties undertake to replace the invalid provision with a valid provision that comes as close as possible to the economic and legal content of the invalid provision.

13.3 If the Customer is a merchant, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising from the contractual relationship is Gütersloh. This also applies if the Customer has no general place of jurisdiction in the Federal Republic of Germany or has moved his usual place of residence abroad after conclusion of the contract. However, AZ is entitled to sue the Customer at any other legal venue.

13.4 The law of the Federal Republic of Germany shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).