



Certo Auctore
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China
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TERMS OF SALE AND DELIVERY

of Certo Auctore,
955, 602/F, House 1, Luo Xiu Lu, Minhang District, Shanghai, China

I. SCOPE OF VALIDITY

Even in the absence of an explicit reference, any quotations, order confirmations, deliveries and other services and legal transactions provided by our company occur exclusively based on these Terms of Sale and Delivery. We already contradict any other terms of the Principal differing from our Terms and Conditions (especially terms and conditions). Any deviations from these Terms of Sale and Delivery must be agreed in writing.

II. QUOTATIONS, ORDER TAKING

Our quotations are subject to change without notice, without obligation, and not binding. Any quotations, orders, purchase orders, order changes, order cancellations and other agreements must be confirmed by us in writing to be valid. Silence should not be construed as agreement. The contract shall be deemed concluded upon our sending a written confirmation of order or dispatching the items directly, in the case of drop shipment, also indirectly. Our quotations are subject to the correct and punctual supply to ourselves by our own supplier(s), in the case of a drop shipment, subject to the reservation of the capability to deliver of the producer or supplier. Our Terms of Sale and Delivery shall apply as framework agreement for all further legal transactions with additional orders, even in the absence of an explicit agreement on their validity.

III. PRICES

Our prices are ex factory Hong Kong, China or the respective distribution warehouse and do not include taxes, charges, customs duties, freight, postal charges, insurance and other shipping costs unless explicitly mentioned in the written quotation. Prices only include simple packaging (wrapping) of the products. Any necessary special packaging (transport packaging) must be ordered and paid additionally. Prices are determined based on current daily wage, material, and supplier prices. We are entitled to subsequently increase our prices accordingly following a cost increase. For this reason, the Principal shall have no right of cancellation nor may he invoke the frustration of the contract. Subsequent alterations carried out at the initiative of the Principal (e.g. also within the frame of so-called customer and author correction) including resulting machine and production d own times are charged to the Principal. Subsequent alterations shall also include repeat print proofs and sample productions that are requested by the Principal due to minor differences from the supplied model or his specifications. Any excess of the quotation (cost estimate) caused by alterations of the Principal is also deemed approved by the Principal without notification on our part.

IV. DELIVERY

Guaranteed delivery times are subject to detailed order and due provision of all necessary products, data, and information. We are entitled to execute and charge for partial deliveries. Excess and short deliveries up to 10% are allowed and are setoff or credited. Scheduled shipping dates are deemed kept if the product left the works in due time or – in the case of self-collection by the Principal – the consignment is ready for dispatch and the Principal was notified in due time. In the event that the Principal fails to accept the goods as agreed (delay in acceptance), we are entitled after setting a fruitless additional time for delivery, to store the goods either on our premises, for which we may charge storage fees of 0.5% of the gross invoice amount per broken calendar day, or in the warehouse of an authorized company at the cost and risk of the Principal. In this case, the delivery is deemed completed. Unless otherwise agreed, deliveries are performed on account and at the risk of the Principal. Transit insurance is only provided at the explicit request and expense of the Principal. Delivery dates are extended or postponed in case of delays caused by the Principal, suppliers, official decrees, force majeure and other circumstances for which we are not responsible, by the duration of the impairment and a reasonable lead time. To the exclusion of any damage claims, events of force majeure further entitle us on account of the unfulfilled part to cancel the contract in whole or in part, if in spite of customary and reasonable efforts, the delivery cannot be performed. Force majeure include all circumstances that cannot be attributed to us which significantly aggravate or make deliveries impossible, e. g. currency, trade policy or other official measures, strikes, lockouts, operational breakdowns as well as impairments of traffic routes, regardless of whether or not these circumstances happen to us, the supplier, or a subcontractor. Delays in delivery shall not entitle the company to assert damage claims and/or claims for avoidance on account of a mistake. Subject to changes in delivery and service insofar as they are reasonable for the supplier.

V. PERFORMANCE, PASSING OF THE RISK AND EXPORT

Regardless of each individual agreement on the place of delivery and the assumption of any shipping costs, the agreed place of performance shall be at our option either our company headquarters or the respective branch where the order was placed. Regardless of any separately agreed price regulation, the price and performance risk shall pass to the Principal with our signaling our readiness to dispatch to the Principal, yet at the latest upon the consignment leaving our warehouse, and in the case of direct delivery, from our supplier's warehouse. Delivery to one defined address means delivery without unloading by the supplier and on the condition of a suitable access road. The recipient must initiate unloading immediately; any delays in unloading shall be at the Principal's expense. When exporting the purchased products, the Principal undertakes to obtain the necessary export or customs authorizations and similar at his own expense. We do not issue any guarantee for the permissibility of the export of the purchased goods.

VI. PAYMENTS

Payment is to be effected within 10 calendar days of invoice date net and without deductions. Bills and cheques are only accepted upon special agreement and on account of payment insofar as the bank confirmed acceptance thereof. Discount and other bank charges are at the Principal's expense. In the case of bills, cheques or transfers, the date on which the bank credits the due amount is authoritative. Within the same claim, incoming amounts are first set off against any incurred extrajudicial or judicial collection costs, then against interest, and finally against the capital itself. In the case of partial payment agreements, a date shall be deemed missed upon defaulting on a partial amount. If, following the conclusion of the contract, it becomes apparent that our payment entitlement is at risk due to deteriorating financial circumstances of the Principal that were not known to us at the time of the conclusion of the contract, or if the Principal defaults in the agreed payment, we are entitled to:

- a) Postpone the performance of our own obligations,

- b) Accept an extension of the delivery time;
- c) Demand payment of the still outstanding full purchase price;
- d) Demand guarantees for claims still not due at our option;
- e) Set off default interest amounting to the usual bank rate for current account credits, however, at least 12% p.a., as well as all costs and bank charges incurred as a result of collection (attempts);
- f) In case of non-observance of a reasonable additional time for payment, cancel the contract, where we are not obliged to set an additional time for payment upon threat of cancellation;
- g) To postpone and withhold any service to be supplied to the contractual party from another title, regardless of which type, until the outstanding payment is recovered.

This also applies in the event that a credit insurance company contracted by us if necessary refuses to take over the business case due to the poor credit rating of the Principal. The Principal must refrain from setting off any claims against us owed to him against claims owed to us or from assigning any claims against us to third parties with the exception of mere monetary claims (contractual exclusion of set-off and assignment). The Principal cannot assign any right of retention towards any existing claims against us. In case of default, we are entitled to order a debt collection agency to recover the claim. Any resulting costs incurred are at the Principal's expense. Insofar as we carry out the dunning process ourselves, the Principal undertakes to pay an amount of \$ 50.00 as well as an amount of \$ 10.00 per half-year for evidence keeping of the obligation in arrears-billing per invoice. In the case of export business, the Principal undertakes to return to us all original export and customs and similar documents, failing which the Principal undertakes to pay any due VAT.

VII. RETENTION OF TITLE, TRANSFER

The products are delivered subject to retention of title and remain our property until they have been paid in full. For current accounts, the retention of title also serves as surety for the balance claim. When claiming the retention of title, this shall only lead to a cancellation of the contract if it is explicitly stated. When taking back products, we are entitled to set off any shipping and handling expenses incurred. In case of third party access to the goods sold subject to retention of title, the Principal undertakes to refer to our ownership and notify us thereof immediately. The Principal undertakes to bear all costs and measures for the elimination of the intervention, especially, the costs for intervention and similar proceedings. The Principal bears the full risk for the goods sold under retention of title, especially the risk of loss or deterioration. In case of processing, joining or mixing our products with other material, we acquire joint ownership of the thus created product in proportion of the value of our product to that of the other material. The Principal already assigns to us all claims out of the sale of products under rights of retention of title in our favor – if necessary in the amount of our joint ownership share – for securing and satisfying our claims. We accept the assignment. The Principal may neither assign this claim to third parties as surety nor for satisfaction purposes. We may only use our rights from this transfer if the Principal defaults on his payment obligations towards us. The Principal undertakes to give us the name and address of his customers, the existence and amount of the claims resulting from resale, and to demonstrably notify these customers of the assignment of claims. Furthermore, the Principal undertakes to show us the assignment of these claims in his accounting books in a suitable manner. We are entitled to notify the Principal's customer of the transfer at any time.

VIII. WARRANTY

In case of expiry of other warranty rights, the Purchaser undertakes to examine the products for noticeable defects immediately upon their delivery and to notify us in writing of any existing defects immediately, yet at the latest within 8 days from delivery, in case of hidden defects within 8 days after they are discovered. In case of complaint, the Purchaser undertakes

to first accept, properly unload, keep the packaging and store the products. Any deviations between the ordered and delivered products, like e.g. wrong sizes or wrong product (so-called 'aliud delivery', being a delivery not of the kind as agreed) must be claimed by the Principal within 8 days of receipt of the delivery and still prior to handling or processing, failing which the products are deemed accepted and cannot be taken back or exchanged by us. The Principal must furnish proof of the defectiveness of the supplied products at the time of surrender. We only grant warranty on those products that we ourselves purchased from suppliers within the frame of any warranty claims we are entitled to against the supplier. Regarding the products delivered by us, we only warrant that they show the usually assumed characteristics for these products in commerce. We only grant warranty for additional characteristics, especially included in public statements, like e.g. advertising and information enclosed to the products – if these characteristics were assured in writing during the course of ordering. In case of resale of the goods supplied by the Principal, all claims pertaining to warranty of title against us become void. We are under no testing and/or warning obligation regarding the materials, data, and compression to material provided by the Principal. In particular, we do not verify the accuracy of the data stored on supplied data carriers. We do not assume any liability for direct and indirect damage caused by defects in such data and materials. Whether we fulfil warranty claims through whole or partial exchange, rectification, price reduction or exhibition remains our choice. Any liability on our part for consequential harm caused by a defect is excluded. Warranty claims expire after 6 months of delivery. The Purchaser is not entitled to withhold payments on account of any warranty claims.

IX. DAMAGES, PRODUCT LIABILITY, FORCE MAJEURE

For any damage caused to the Principal within the frame of the business transaction, we only accept liability to the highest amount of the order value ordered from us, and only in case of intent or gross negligence or in case of intent and gross negligence on the part of our vicarious agents, with the exception of personal damage, for which we are already liable in the case of ordinary negligence. Any compensation for consequential damage, mere property damage, loss of profits, and damage out of third party claims are excluded. In the case of drop shipments, we do not assume liability for culpable behavior of the direct contractor (producer/supplier). The direct contractor is not deemed our vicarious agent. The damaged party must prove the existence of gross negligence. In business to business transactions, damage claims expire within one year of becoming aware of the damage and of the damaging party. In the event that the Principal himself is made liable under any product liability law, he hereby explicitly agrees to waive any recourse towards us. If the Principal puts the products supplied by us into circulation (or instructs us to put them into circulation), he undertakes to exclude any liability for damages, respectively to oblige the supplier or contractual partner to which the products are forwarded, to transfer all objective contract items, and to commit any successors to power of disposition in our favor so that we are directly entitled to assert damages from this transfer. In the event that the Principal infringes this provision, he undertakes to indemnify us and hold us harmless in respect of third party legal proceedings and claims.

X. CANCELLATION

We are entitled to cancel the contract in case of delay in acceptance or other important grounds, like especially bankruptcy, or avoidance of bankruptcy for lack of assets, opening of insolvency proceedings, as well as default of the Principal. In case of cancellation, we may at our option, if the Principal is at fault, demand liquidated damages of 15% of the gross invoice amount or compensation for the actually incurred damage, insofar as it lies above this amount. In case of default of the Principal, we are released from all further obligations to provide products and services and entitled to withhold still outstanding deliveries of products or services, and to demand cash before delivery or guarantees, or cancel the contract after setting a suitable additional time for performance.

XI. APPLICABLE LAW, SALVATORY CLAUSE

All legal transaction underlying these Terms and Conditions are exclusively subject to Hong Kong law, however excluding its conflicting principles, in particular the principles of international private law insofar as they can be applied to foreign law. This also applies to any questions concerning the coming into force or the interpretation of the terms and conditions and the contract. The venue for all legal disputes arising out of or in connection with the existing contractual relationship is exclusively the court competent in the Hong Kong SAR as regards the subject matter for Hong Kong SAR. However, we are also entitled, at our option, to take legal action against the Purchaser before any other court that may be competent under national or international law. Should individual provisions of our terms and conditions be invalid or unworkable, this shall not affect the validity of the remaining provisions of these terms and conditions. The contracting parties undertake to agree upon a new provision that comes closest to the intent and purpose of the invalid provision.

XII. COPYRIGHT AND RIGHT OF REPRODUCTION

Insofar as we ourselves are the owners of the copyright and ancillary copyrights in the supplied products or parts of the same, the Principal only acquires the right to distribute the supplied products upon receipt of the consignment; in other respects, the rights of use, in particular the right of reproduction, remains with us. We are exclusively entitled to use the means of reproduction and products produced by us (displays, flags, printouts, or similar) to make copies. We are under no obligation to issue such copies, not even for utilization purposes. We are not obliged to check whether the Principal is entitled to reproduce any type of artwork (sketches, data, samples, ...), to process or change the order accordingly, or otherwise use it in the expected fashion, rather we are entitled to assume that the Principal is entitled to all third party rights as are necessary for the execution of the order. The Principal expressly assures that he owns these rights. The Principal undertakes to hold us harmless from all claims asserted by third parties out of infringements of copyrights, ancillary copyrights, other industrial property rights or privacy rights. We must notify the Principal immediately of any such claims and help him give third party notice in case of recourse to the courts. If, once litigations were initiated, the Principal does not join in the proceedings on our side as co-defendant, we are entitled to acknowledge the claim of the plaintiff and to hold ourselves harmless towards the Principal without consideration of the legitimacy of the recognized claim.

XIII. NAME OR TRADE MARK IMPRINT

We are also entitled to imprint our company name (logo), our trade name, or Internet address on the products and packages used for execution without the special authorization of the Principal.

XIV. MODIFICATIONS OF SERVICES

Any modifications as compared with the artwork, the data, or the sample are charged to the Principal according to the actually spent working time (author correction). Galley proofs (PDF) are only submitted to the Principal at his explicit request. However, we are entitled to submit galley proofs to the Principal without his explicit request. In this case, the Principal is obliged to approve the galley proofs. For the approval of the galley proofs by the Principal, we are entitled to set a reasonable period of time at the end of which a galley proof is automatically deemed approved. If the Principal distances himself from submitting a galley proof (PDF), the Principal shall be liable for the incorrect print execution that he caused. Minor or reasonable changes in our delivery performance commitment shall be deemed approved by the Principal from the outset. This especially applies to necessary material-related or production-related deviations.

XV. STORAGE OF SEMI-FINISHED/FINISHED PRODUCTS

We are under no obligation to store remaining stock, cutting dies /forming dies and similar production-related tools following the execution of the order, unless a special agreement about it was reached with the Principal, in which case the Principal bears the storage costs and risk. If temporary storage on our premises was agreed, we shall not be liable for any damage incurred during the storage of the products in spite of acting with the due diligence of a prudent businessman. We are not obliged to take on insurance policies to cover risks to stored products