

General Terms and Conditions of Business of PAGO AG

1. Applicability

The General Terms and Conditions of Business (AGB) of Pago AG are binding if reference is made to them in the offer and/or in the order confirmation. Different conditions of the client shall be valid only insofar as Pago AG has expressly agreed to them in writing.

2. Content of the Print/Labelling Service/Consultancy Contract

Pago AG gives an undertaking to perform the order placed with it (production of printed matter, labelling service, consultancy etc.) and the client undertakes to pay all the costs incurred. These include the costs of production of films or data processing, which will be shown separately. However, there is no obligation on the part of Pago AG to hand over these films, this data, these working documents and tools unless this is expressly agreed.

Pago undertakes to develop customized solutions in cooperation with the client and the client undertakes to pay the consultancy and material costs incurred. The models and solutions developed with the client remain the property of Pago AG.

3. Prices

Unless agreed otherwise, the prices offered or confirmed are understood as being net, excluding value added tax, ex-works, excluding packaging and without any deductions.

Pago AG reserves the right to adjust prices in the event of any changes in the rates of pay or prices of materials between the date of the offer and delivery. Prices can also be adjusted if the documents supplied by the client did not correspond to the actual conditions or were incomplete. The right is also reserved to adjust prices for additional costs, caused directly or indirectly by the client (such as changes to masters, additional editing of data carriers or text/image data as well as for incorrect or missing documents, or for documents which are poorly suited for the purpose of reproduction).

4. Terms of Payment

Payment of the invoiced amount must be made within 30 days after issue of the invoice, in Swiss Francs without any deduction. If the client does not meet this payment date, he must pay interest on arrears from the agreed due date for payment, without the need for any reminders.

5. Delivery lead-times

Firmly assured delivery dates shall only apply to print orders if they have been expressly agreed as such and providing the necessary documentation (image and text masters, films, manuscripts or data, approval for printing etc.) are received at Pago AG by the agreed date. Agreed delivery lead-times commence on the date of receipt of the complete and error-free print documentation at Pago AG, as well as any official approvals required, and shall end on the date on which the printed matter or consignments leave Pago AG. If approval for printing is not given within the agreed period, Pago AG shall no longer be bound by the agreed delivery lead-time.

Overruns of the delivery date or failure to adhere to the delivery lead-time for which Pago AG is not at fault (e.g. business interruptions caused by work stoppages or strike, lockout, power cuts, lack of raw materials as well as all Acts of God) shall not entitle the client to withdraw from the contract nor make Pago AG liable for any losses incurred.

In the event of any overruns on delivery dates, Pago AG shall be liable at the maximum up to the amount of the value of the goods and only if written confirmation of the delivery date has been given.

6. Conditions of Supply

Deliveries with Switzerland and Liechtenstein as the place of destination are made CPT (Incoterms® 2010). FCA (Incoterms® 2010) CH-9472 Grabs SG applies for the international trading of goods unless agreed otherwise in the confirmation of order. In particular, postage and freight costs will be charged in special cases (e.g. express surcharges).

7. Surplus or Short Delivery

Unless agreed otherwise, no complaints can be made in respect of surplus or short deliveries up to 10% of the ordered quantity in the case of print contracts. The client will be billed for the actual quantity supplied.

In the case of the labelling service, the quantity of containers agreed between Pago and the client will be labelled. If the client makes a different quantity of containers available on the agreed date, the agreed number of containers to be labelled will be billed in the event of a delivery shortfall, but if more containers than agreed are delivered only the agreed quantity will be labelled and billed.

8. Warranty, Liability for Defects

The warranty period is 12 months and commences on despatch of the deliveries ex-works, insofar as no restrictions are applied to this warranty period in the clauses below. The right is reserved for standard and process-related deviations in execution and materials, in particular to cutting precision, closeness to the original on the part of the reproduction, sound quality and quality of the print carriers (paper, cardboard etc.).

9. Complaints Regarding Print Orders

On receipt, the client must inspect the work supplied by Pago AG. Any complaints relating to quality and quantity must be submitted in writing no later than within 8 days after receipt, otherwise the consignment is deemed to have been accepted.

10. Special quality agreement for sleeve orders

Sleeve labels are exposed to various extreme conditions during the application process (heat, humidity etc.) which have a significant influence on the labelling outcome. Account of these influences will be taken with extended tolerance ranges in respect of labelling accuracy, closeness of the reproduction to the original, distortion etc. Pago calls specific attention to the fact that these extended tolerance values apply to sleeve orders. Process-related differences within the tolerance ranges therefore do not constitute non-performance or poor performance of the labelling by Pago and do not under any circumstances entitle the client to make claims against Pago in respect of defects or to seek replacement.

11. Inspection of Machinery, Systems and Software

The parties shall agree on the methods of delivery and inspection.

Insofar as no special inspection procedure is agreed, the client must personally inspect the services rendered.

In the absence of any special agreement, the client must report any defects in writing. If he fails to report these within four weeks after receipt of the delivery, all functions are deemed to have been met, and the consignment approved as error-free.

12. Liability Restrictions in Respect of Printing

The manuscripts, data, films, originals, photographs etc. handed over to Pago AG, as well as print materials stored or other items supplied, will be treated with the habitual due care. In the absence of any written agreement, the client must insure himself against further risks or meet the costs thereof. Any warranty or liability over and beyond the value of the order, including in particular for direct or indirect losses arising from defects, is excluded.

13. Liability Restrictions in Respect of Machinery, Systems and Software

The warranty and liability do not cover defects and faults which cannot be proven to have been caused by poor materials, faulty design or defective execution, e.g. as a result of normal wear and tear, faulty maintenance, failure to follow the operating instructions, excessive strain, inappropriate operating materials, extreme environmental influences, construction or installation work not carried out by Pago AG and as a result of other reasons for which Pago AG is not to blame.

Pago AG gives an undertaking, at the written request of the client, to repair or replace, at its choice and as quickly as possible, all parts of the deliveries which are proven to be faulty or unusable as a result of poor materials, faulty design or defective execution, prior to expiry of the warranty period. If the defect cannot be remedied in this way then the client shall be entitled to a reduction in price and reimbursement of the proven direct losses, up to a maximum however of 20% of the order value of the defective products. Further claims arising from warranty are excluded; in particular the client is not entitled to withdraw from the contract or demand reimbursement for consequential losses.

14. Liability Restrictions in respect of Electronic Data and Data Acceptance

Pago AG accepts no responsibility whatsoever for data supplied by the client that is incorrect or incomplete. Any liability is also rejected if data supplied cannot be processed or used in standard form and this has a detrimental effect on the quality of the printed product. Pago AG accepts no liability for the loss of data from data files that have been supplied for further processing. Pago AG's liability is limited to the errors caused by it and which are attributable to gross negligence.

15. Liability Restriction in General

All cases of breaches of contract and the legal consequences thereof as well as all claims of the client are regulated to binding effect in these conditions. In particular, all claims to damages, reduction, cancellation of the contract or withdrawal from the contract are excluded unless these are expressly stated. On no account does the client have any claims to reimbursement of losses that have not been incurred on the object of the delivery itself, such as in particular lost production, loss of use, lost orders, lost profits as well as other indirect or direct losses. This liability exclusion does not apply to unlawful intent or gross negligence on the part of Pago AG. Moreover, this liability exclusion does not apply insofar as it contradicts statutory law such as the law on product liability.

16. Software and Know-how

The client may personally utilise the software, know-how, data carriers and documentation provided within the scope intended, but may not forward these to third parties. Ownership and the right to further use of these remain with Pago AG or its licensors, even if the client subsequently modifies software programs or know-how records.

17. Retention of Title

The goods remain the property of Pago AG until full and final payment is received. Where the goods are mixed or processed with other goods, Pago AG is granted co-ownership of the new product. In the event of onward sale of the goods the client must expressly reserve the continuing co-ownership of Pago AG and insist on payment of the purchase price to Pago AG. In the event of further sale on credit, the retention of title passes to the purchase price claim. Pago AG can inform the debtor to this effect at any time, with the client being under an obligation to inform Pago AG of the debtor's name. Pago AG must be immediately informed of any measures, which might jeopardise the retention of title; the attention of the third party must also be drawn to the retention of title.

18. Invalidity Clause

Should any one of the conditions of these AGB prove to be invalid in whole or in part then the parties to the contract shall replace this provision with a new agreement that most closely reflects the legal and financial outcome.

19. Acknowledgement

The placing of an order constitutes acknowledgement of these General Terms and Conditions of Business by the client. In the event of any differences between the various language versions of the AGB, the German version shall be definitive for the purpose of interpretation.

20. Applicable Law - Jurisdiction

Swiss law applies to the contractual relationship, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods dated 11.4.1980. Jurisdiction for PAGO AG and the client is at the registered offices of PAGO AG. However, PAGO AG is entitled to also file legal proceedings against the client at the client's registered offices.

Pago AG

Grabs, December 2010