

TERMS AND CONDITIONS OF SALE

1. GENERAL

In these conditions:

- The Buyer means the person, firm or company who accepts a quotation from the Seller for sale of the goods or whose order for the goods is accepted by the Seller.
- The Seller means Flight13 Duplication, Bjoern Bieber, Sophienstrasse 232, 76185 Karlsruhe, Germany.
- The Goods means the goods and or materials, which the Seller is to supply and which are the subject of the Contract between the Seller and the Buyer.
- The Contract between the Seller and the Buyer shall be subject to these conditions which shall govern the said Contract to the exclusion of any other terms and conditions subject to which any quotation is accepted or purported to be accepted or any order is made or purported to be made by the Buyer.
- The Contract between the Seller and the Buyer does not affect the Buyers statutory rights.
- No variations of these Conditions shall be binding unless agreed in writing by a Director of the Seller.
- Any typographical, clerical or other error or omission in any sales literature, quotation, list price, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- The headings in these conditions are for convenience only and shall not effect their interpretation.
- If any provision of these conditions is held by a competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected thereby.

2. QUOTATIONS AND PRICE

- Unless previously withdrawn by the Seller, quotations and tenders are open for acceptance for the period stated therein or if no period shall be stated therein within one month from the date thereof.
- All prices specified in quotations and tenders are subject to variation by the Seller without prior notice after the date specified in the document to the Buyer.
- Quotations and tenders are subject to confirmation by the Seller upon receipt of orders from the Buyer.
- All prices quoted or accepted are exclusive of VAT and in the contract price shall be such quoted or accepted price plus VAT at the appropriate rate.
- All prices unless otherwise stated are exclusive of all freight charges which shall be added to the Buyer's account. All freight charges are charged to the Buyer at cost.
- Subsequent to the date of any quotation or tender any changes in specification made by the Buyer that increases the cost of fulfilling the contract by the Seller for any reason whatsoever prior to the date of delivery shall be charged to the Buyers account.
- Notwithstanding that the price paid by the Buyer to the Seller includes the cost of CD's / DVD's, labels and/or sleeves to be used in the production and packaging of the goods to be supplied by the Seller. Any overs will be offered to the Buyer at the agreed quotation price, and if not accepted will be held by the Seller.

3. TERMS OF PAYMENT

- Cheque (cleared funds) or Bank transfer (Terms: 50% with purchase order and 50% on despatch of goods from the Seller)
- 30 day credit account by pre-arrangement (Setup of a 30 day credit account takes approx three weeks.)
- Credit Accounts: Payment to be received by the Seller on the next working day of the month following the month during which the invoice was raised.
- In the case of contracts involving more than one delivery, default in payment by the due date shall entitle the Seller at its option to treat the contract and any other contract between the Buyer and Seller as repudiated by the Buyer and to claim damages accordingly.
- Interest at the rate 2% per annum over the base rate for the time being of HSBC Plc shall be charged on overdue payments and payment of interest shall not prejudice the Seller's rights under any contract.

4. DELIVERY

- Time shall not be of the essence for the purpose of delivery of Goods by the Seller unless stated as part of a contractual agreement between both parties. Delivery terms are quoted without guarantee or penalty and the time for delivery shall run from the date the order is received or the tender or quotation accepted or the date on which sufficient information is received from the Buyer to enable the Seller to proceed with the execution thereof whichever is the later.
- Subject to the provisions of paragraph (a) above:
 - Where contracts provide for a single delivery without specifying date goods shall be delivered and accepted as soon as available for delivery.
 - Where contracts provide for deferred delivery without specifying a date or dates for such deferred deliveries, delivery shall be made and accepted within six months of the specified first delivery date.
 - In the event of failure by the Buyer to accept any delivery, that delivery shall be deemed to have occurred and any storage or other costs incurred by the Seller as a result of the Buyer's failure shall be added to the Buyer's account with interest as aforesaid.
 - Where any subsequent deviation is made from these terms at the request of the Buyer any additional costs incurred by the Seller as a result thereof shall be added to the Buyer's account.
 - Every effort shall be made by the Seller to affect delivery in accordance with these terms and conditions but the Seller will not be liable for any loss or damage arising due to delay on delivery however caused.
 - Each delivery shall constitute a separate contract, which shall be subject to these terms, and conditions and any failure or defect in any one delivery shall not entitle the Buyer to repudiate the contract as to the remaining deliveries.

4.1 QUANTITY DEVIATION (CD & DVD Replication only)

The Seller reserves the right to supply up to 5% +/- on any one title. Maximum deviation 1000 units. All overs will be charged at the agreed "Buyers' purchase price

5. CLAIMS

The Buyer shall inspect the goods forthwith upon delivery or deemed delivery as specified in clause 4(b) (iii) and shall within three days of such delivery notify the Seller in writing of any matter or thing by reason whereof the Buyer alleges that the goods are not in accordance with the contract. The return of any goods will not be accepted unless the Seller or its authorised representative shall first have had the opportunity of considering the Buyer's reasons for returning the goods and to accept the return thereof.

6. DAMAGES or SHORTFALL POLICY & PROCEDURE

Upon receipt of the goods, any damages or shortfall noticed must be reported immediately by telephone 0049 (0) 721 8315415 and in writing (e-mail) to office@flight13-duplication.com

7. LIMITATION OF SELLER'S LIABILITY

Any express or implied statement, condition or warranty, statutory or otherwise, not stated herein is hereby excluded and deemed to be inconsistent herewith, and no responsibility is accepted by the Seller for any damage or loss arising directly or indirectly out of goods, supplied or for any damage or loss arising by reason of any failure of goods to comply with the specification or with statutory requirements whether attributable to Seller's negligence or otherwise save to the extent that exclusion of liability is prohibited by law. Subject to paragraph 5 and 6 the Seller's liability for any loss and or damage whether direct or indirect consequential or howsoever caused shall be limited, at the Seller's discretion, to:

- 95 Replacement of the goods delivered and or
- 95 Return of the purchase price and or the price paid for services
- 95 The re-supply of the services.

8. BUYERS PROPERTY

Any property of the Buyer supplied to the Seller (e.g. Data Masters) for the purposes of the Contract will be held by the Seller, and only returned to the Buyer on written request. Every care will be taken to secure the best results where materials are supplied by the Buyer but no responsibility will be accepted for imperfect work caused by any defects or the unsuitability of materials so supplied.

9. FORCE MAJEURE

The Seller shall not be liable to the Buyer or deemed to be in breach of contract by reason of any delay in performing or failing to perform any of the Seller's obligations in relation to the goods if the delay or failure was due to any cause beyond the Seller's control. Without prejudice to the generality of the foregoing any act of God, war, strikes, flood, lockouts, fire, tempest and inability of the Seller to procure materials or articles required for the performance of the contract which may prevent the fulfilment thereof shall be regarded as causes beyond the Seller's reasonable control. In the event of any failure or delay to perform any contract as a result of the said causes such contracts, at the Seller's discretion, may be varied or cancelled by the Seller or delivery may be wholly or partly suspended and time for delivery may be extended by the Seller without the Seller being liable to the Buyer or being deemed to be in breach of contract.

10. PROPERTY IN GOODS

- Risk of damage to or loss of the Goods shall pass to the Buyer:
 - In the case of Goods to be delivered at the Seller's premises at the time when the Seller notifies the Buyer that the goods are available for collection; or
 - In the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery.
- Notwithstanding delivery and the passing of risk in the Goods, or any other provisions of these Conditions, the property in the Goods or any part of them shall not pass to the Buyer until the Seller has received in cash or cleared funds payment the full price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- As from the time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds.
- Until such time as the property in the goods passes to the Buyer and provided the Goods are still in existence and have not been resold, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

11. LIMITS OF CONTRACT

Quotations or tenders include only such goods and work as are specified therein. Each order shall be deemed to be a separate contract to which these terms and conditions shall apply (and no liability can be accepted by the Seller for the working in combination of goods, which have been ordered in separate parts and/or at different times).

12. DESIGN

- The Buyer will indemnify the Seller against all damages, penalties, costs and expenses to which the Seller may become liable as a result of work done in accordance with the Buyers specification which involves the infringement of any letters, patents or registered design. In the event a third party makes a claim against the Seller that any work done in accordance with the Buyer's specification infringes the third party's intellectual property rights, Buyer will be liable to Seller for any reasonable loss, liability, damages or costs suffered by Seller but only if Seller:
 - notifies Buyer's Company Secretary promptly in writing not later than 30 days after Seller receives notice of the claim, or sooner if required by applicable law; and
 - gives Buyer sole control of the defence and any settlement negotiations; and
 - gives Buyer all the necessary information, authority and assistance Buyer needs to defend or settle the claim."
- The Seller gives no warranty or representation that the Goods do not infringe any letters patents trademarks, registered designs or other industrial rights.
- Artwork Design Jobs must conform to Flight13 Duplications' graphics specification and template layout. Any correction work that is authorised by the Buyer will be charged at 45 EURO + vat per hour
- If a PDF proof is required by the Buyer, then the production of the job will be held until written authorisation is received by the Seller. This confirmation can only be accepted as by e-mail or letter (verbal confirmation is not accepted)
- minor fault that are due to technical reasons have to be accepted. This is for example colour variations at CD prints or marbled vinyl when a pure colour was ordered.

13. TOOLS

All tools that were manufactured for the buyer in order to press his records/CDs, remain in the property of the seller and will be stored until one year after the actual production. Then, they will be destroyed without any further announcement. Sleeves, labels and other printed material will be also stored one year at fully risk of the buyer. If the buyer wants to store anything longer than one year, the buyer and seller can make an agreement about this. The seller will charge a certain amount for this service.

14. COPYRIGHT

The Buyer will indemnify the Seller against all damages, penalties, costs and expenses to which the Seller may become liable as a result of work done in accordance with the Buyers specification which involves the infringement of any letters patents or registered design on the data disc. In the event a third party makes a claim against the Seller that any work done in accordance with the Buyer's specification infringes the third party's intellectual property rights, Buyer will be liable to Seller for any reasonable loss, liability, damages or costs suffered by Seller but only if Seller:

- notifies Buyer's Company Secretary promptly in writing not later than 30 days after Seller receives notice of the claim, or sooner if required by applicable law; and
- gives Buyer sole control of the defence and any settlement negotiations; and
- gives Buyer all the necessary information, authority and assistance Buyer needs to defend or settle the claim."

Before any replication or duplication can commence the Buyer must complete the Flight13 Duplication "Customer Copyright Certification & / or Licensing Rights & Indemnification" form. The default text for the specification ring on a replicated CD or DVD will read "www.flight13-duplication.com" This text will be printed on all CD & DVD product unless otherwise instructed by the Buyer.

15. WAIVER

No concession or indulgences granted to the Buyer shall prejudice future exercise of the Seller's full right hereunder.

16. ALTERATIONS

Alterations to any orders accepted by the Seller cannot be accepted without the Seller's consent in writing and any additional costs involved will be chargeable to the Buyer.

17. CANCELLATIONS

No order accepted by the Seller can be cancelled without the Buyer's consent in writing (or by e-mail correspondence) and under no circumstances can the Seller allow cancellation of orders for goods made or specially adapted to the Customer's requirements.

18. ASSIGNMENTS

The contract of which the Conditions form part is personal to the Buyer who shall not assign the benefit thereof without the Seller's written consent save within the Buyer's group of Companies.

19. DATA PROTECTION ACT 1998 (Applicable to Sole Traders and Partnerships only)

This clause is only applicable to 30 day Credit Accounts given to sole traders and partnerships (other than limited partnerships)

- We may transfer information about you to our financiers who:
 - may use ,analyse and access information about you, including the nature of your transactions, and exchange such information with other members of their group of companies and others for credit or financial assessment, market research, statistical analysis, insurance claim, underwriting and training purposes and in making payments and servicing their agreement with us;
 - From time to time, may make searches of your record at credit reference agencies where your record with such agencies may include searches made and information given by other businesses; details of their searches will be kept by such agencies but will not be seen by other organisations that may make searches;
 - May give information about you and your indebtedness to the following:
 - Our or their insurers for underwriting and claims purposes;
 - And guarantor or indemnifier of your or our obligations to enable them to assess such obligations;
 - Their bankers or any advisers acting on their behalf;
 - Any business to whom your indebtedness or our arrangements with our financiers may be transferred to facilitate such transfer;
 - May monitor and/or record any phone calls you may have with them, for training and/or security purposes;
 - In the event that they transfer all or any of their rights and obligations under their agreement with us to a third party may transfer information about you to enable the third party to enforce their rights or comply with the obligations.
- We will provide you with the details of our financiers on request, including a contact telephone number if you want to have details of the credit reference agencies and other third parties referred to above from whom they obtain and to whom they may give information about you. You also have the right to receive a copy of certain information they hold about you if you apply to them in writing. However a fee will be payable.

20. LEGAL CONSTRUCTION

Any contract entered into between the Seller and the Buyer shall in all respects be construed and operate as an English Contract subject to the Laws of the federal republic of Germany.