

Delivery terms and conditions for the Printing Industry

filed on January 8, 2002 under no. 6/2002 with the clerk of the District Court of Amsterdam

KVGO

© 2002
Koninklijk Verbond van Grafische Ondernemingen
(Royal Dutch Association of Printing and Allied Industries)
at Amstelveen, The Netherlands.

Contents:

Art. 1: Definitions
Art. 2: General
Art. 3: Offers, quotations
Art. 4: Cancellation
Art. 5: Price
Art. 6: Price changes
Art. 7: Payment term
Art. 8: Delivery method; reservation of ownership
Art. 9: Delivery time
Art. 10: Inspection upon delivery
Art. 11: Contents of and changes in contracts

Art. 12: Typesetting proofs, printing proofs and other proofs
Art. 13: Deviations
Art. 14: Contracts for an indefinite period of time; periodic publications
Art. 15: Copyright, etc.
Art. 16: Ownership of means of production, etc.
Art. 17: Ownership of the principal; lien
Art. 18: Materials and products delivered by the principal
Art. 19: Force majeure
Art. 20: Liability
Art. 21: Disputes; Board of Arbitration for the Printing Industry
Art. 22: Governing law

Article 1: Definitions

The following definitions shall apply to the present delivery terms and conditions:

- a. **Principal:** the natural or legal person who has given the supplier an order for the production of goods or the performance of work;
- b. **Supplier:** the natural or legal person who has accepted the order referred to under a. or who has made an offer or quotation preceding a possible order;
- c. **Data carriers:** magnetic tapes and discs, optical discs and any other materials that are meant for recording, processing, forwarding, transmitting, multiplying or publishing texts, pictures or other data by means of equipment, all this in the widest sense of the word;
- d. **KVGO:** Koninklijk Verbond van Grafische Ondernemingen (Royal Dutch Association of Printing and Allied Industries), established at Amstelveen, The Netherlands.

Article 2: General

1. These delivery terms and conditions shall be applicable to the formation and the contents of and the compliance with all contracts entered into between the principal and the supplier.
2. General (buying) terms and conditions of the principal shall solely be applicable if it has been expressly agreed in writing that such terms and conditions shall be applicable to the contract between the parties to the exclusion of the present delivery terms and conditions.

Article 3: Offers, quotations

1. The mere submission of a quotation, estimate, preproduction estimate or similar information, whether or not designated as an offer, shall not entail an obligation on the part of the supplier to enter into a contract with the principal.
2. Any offers made by the supplier shall always be without engagement and can solely be accepted without any deviations. An offer shall in any case be deemed to have been rejected if it has not been accepted within a month. An offer shall be understood to mean a proposal made by the supplier to enter into a contract which is defined in such a manner as to result into a contract immediately upon acceptance of the proposal concerned.

Article 4: Cancellation

1. The principal shall be entitled to cancel a contract prior to the execution thereof by the supplier provided that he indemnifies the supplier in respect of any losses incurred by the latter as a result. Such losses shall include any losses as well as loss of profit incurred by the supplier and shall in any case include any costs that have already been incurred by the supplier preparatory to the execution of the contract, including those of reserved production capacity, purchased materials, services supplied by third parties and storage costs.
2. Cancellation of contracts for the production of periodic publications as referred to in paragraphs 2 and 3 of article 14 shall not be possible.

Artikel 5: Price

1. All prices stated shall be exclusive of Value Added Tax (VAT) and any other levies imposed by the government.
2. The prices stated by the supplier in respect of the prestation to be performed by the latter shall solely apply to the prestation in conformity with the agreed specifications.
3. In the event of composite offers the supplier shall not be obliged to supply part of the total prestation at the amount stated in respect of this part in the offer or at a proportionate part of the price stated for the total prestation.
4. If no price has been agreed upon between the parties but if the parties entered into one or several contracts to an identical or virtually identical effect during the year preceding the contract, the price shall be calculated on the basis of the production methods and calculation rates used for the former contracts.
5. If, other than in those cases in which the stipulations of the previous article are applicable, no price has been agreed upon between the parties, or if only a price by way of estimate was given or if the agreed price may be changed in pursuance of these general terms and conditions, the price or the change in the price shall be determined at an amount which is considered to be a fair price in the printing trade.

Article 6: Price changes

1. The supplier shall be entitled to increase the agreed prices should one or several of the following circumstances occur after the conclusion of the contract: rise in the costs of materials, semi-finished products or services required for executing the contract, rise in the cost of forwarding, wages, employers' contributions to social insurances, or costs of other employment conditions, the introduction of new and the increase in existing government levies on raw materials, energy or residues, substantial changes in currency rates or, generally speaking, other circumstances that are comparable with the above.
2. Extra laborious texts, unclear text copies, indistinct pictures, drawings or models, faulty data carriers, faulty computer software or data files, faulty method of delivery of materials or products to be supplied by the principal and all similar deliveries by the principal entailing more work or costs for the supplier than could reasonably have been expected at the time of entering into the contract shall constitute grounds for increasing the agreed price. Any exceptional or reasonably unforeseeable processing problems resulting from the nature of the materials and products to be processed shall also constitute grounds for increasing the agreed price.
3. The supplier shall be entitled to increase the agreed price or be obliged to reduce the price if the principal makes any changes in the originally agreed specifications, including author's corrections or changed instructions after the receipt of working drawings, models and typesetting, printing and other proofs. The supplier shall cooperate within reasonable limits to implement such changes, provided that the contents of the prestation to be performed by him does not essentially deviate from the originally agreed prestation.

Article 7: Payment term

1. Unless otherwise agreed, the principal shall pay the price and the remaining amounts due pursuant to the contract within 30 days from the invoice date, without being able to invoke any discount, compensation or suspension. Payment has to take place in cash, however, if the principal is a natural person who is not acting in the exercise of a profession or trade. In the event of failure to pay as referred to above, the principal shall be in default without notice of default having to be served by the supplier.
2. In the event of an agreed delivery in parts, the supplier shall, after delivery of the first part, not only be entitled to demand payment for this part, but also payment of the costs incurred for the entire delivery, such as costs of typesetting, lithographs and proofs.
3. The principal shall at all times and irrespective of the agreed payment conditions be obliged to provide security for the payment of the amounts to be paid to the supplier pursuant to the contract, on the supplier's first demand. The security provided shall be such that the claim together with any interest and costs due in respect thereof shall be adequately covered and that the supplier may have recourse to same without any problem. Any security that has subsequently become inadequate shall be supplemented up to an adequate security on the supplier's first demand.
4. If the principal fails to pay in time as referred to in paragraph 1 of this article, he shall, owing to late payment of the amount due by him, owe the statutory interest on this amount from the invoice date. The supplier shall be entitled to charge one-twelfth part of this interest in respect of each month or part of a month, in which the principal has failed to comply with his payment obligations in full.
5. In the event of late payment as referred to in paragraph 1 of this article, the principal shall, in addition to the amount due and the interest due in respect thereof, be obliged to pay in full both extrajudicial and legal costs of collection, including the costs of lawyers, proces-servers and collecting agencies. The extrajudicial costs are fixed at at least 15% of the principal sum together with interest, with a minimum of € 100.00.

Article 8: Delivery method; reservation of ownership

1. Unless otherwise agreed, delivery shall take place at the place where the supplier carries on his business.
2. The supplier shall not be obliged to deliver the goods produced in instalments.
3. The principal shall be obliged to fully cooperate in the delivery of the goods to be delivered by the supplier pursuant to the contract. The principal shall, without having been summoned, be in default if he fails to collect the goods to be supplied on

the supplier's first demand or, if delivery to his address has been agreed, refuses to accept the goods to be delivered.

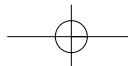
4. Each and every delivery of goods by the supplier to the principal shall take place while reserving the ownership of these goods until such time as the principal has paid all that he is obliged to pay pursuant to the contract, including interest and costs.
5. If transport of the goods to be delivered has been agreed, this shall take place for the principal's account, unless free delivery has been agreed. The principal shall always bear the risk during transport. Transport shall also be understood to mean transmission of data by means of the telephone network and every comparable kind of transmission by means of any technical device. The acceptance of goods from the supplier by the transport company shall be proof that these goods were in an externally proper state and condition, unless the contrary appears from the contract of carriage or the receipt.
6. The supplier shall not have to store the goods to be delivered, unless this has been explicitly agreed. If storage takes place, this shall be at the principal's risk and expense.

Article 9: Delivery time

1. A delivery time stated by the supplier shall only be of an indicative nature unless it has been explicitly stated in writing that it concerns a latest delivery time. The supplier shall, even when a latest delivery time has been agreed, only be in default after notice of default has been served on him by the principal.
2. The supplier shall no longer be bound by an agreed latest delivery time if the principal requires changes to be made in the specifications of the work or if he fails to comply with the stipulations of paragraph 1 of article 12 of the present terms and conditions, unless the minor significance of the change or the minor delay does not reasonably necessitate the supplier to make any changes in his initially planned use of the production capacity in time.
3. During the execution of the contract by the supplier the principal shall be obliged to do all that is reasonably necessary or desirable in order to make a timely delivery by the supplier possible, in particular by immediately answering any questions the supplier may have, by preventing faulty deliveries as referred to in paragraph 2 of article 6 and by observing the stipulations contained in paragraph 1 of article 12 and paragraphs 1 and 2 of article 18 of the present delivery terms and conditions.
4. If the principal fails to comply with the stipulations of the previous paragraph of this article and paragraph 3 of article 7, an agreed latest delivery time shall no longer be binding and the principal shall be in default without written notice of default by the supplier being required. Without prejudice to the rights due to him pursuant to the law, the supplier shall in such an event be entitled to suspend the performance of the contract until the principal has rectified this default. The supplier shall subsequently still perform the contract within a reasonable term.

Article 10: Inspection upon delivery

1. The principal shall be obliged to inspect with due haste whether the supplier has performed the contract properly and shall furthermore be obliged to inform the supplier immediately in writing if the contrary appears to him. The principal shall carry out the inspection referred to above and give the relevant notice at the latest 14 days from delivery.
2. The supplier shall always be entitled to replace an earlier improper prestation with a new proper prestation, unless the default cannot be remedied.
3. The performance of the contract shall be considered to be a proper performance if the principal has failed to carry out the inspection or to give notice as referred to in paragraph 1 of this article in time.
4. If the period of 14 days, referred to in the first paragraph of this article has to be considered as unacceptably short according to reasonable and fair norms, even where a careful and alert principal is concerned, this period will have to be extended until at the latest the first moment on which it is reasonably possible for the principal to carry out the inspection or notify the supplier, as the case may be.
5. The supplier's prestation shall in any case be considered to be a proper prestation between the parties if the principal has put into use, processed, worked or delivered to third parties the goods or part of the goods delivered or if he has caused same to be put into use, processed, worked or delivered to third parties, unless the principal has observed the stipulations



contained in the first paragraph of this article.

Article 11: Contents of and changes in contracts

The principal shall bear the risk of misunderstandings with regard to the contents and implementations of the contract if such misunderstandings are caused by the fact that the supplier failed to receive or failed to receive correct, timely or complete specifications or other communications that were made orally or by a person designated by the principal for that purpose or that were transmitted while using any technical means such as the telephone, fax and similar transmission media.

Article 12: Typesetting proofs, printing proofs and other proofs

1. The principal shall be obliged to carefully examine any typesetting proofs, printing proofs or other proofs received by him from the supplier for errors and mistakes, irrespective of the fact whether such proofs were received at the principal's request, and to return such proofs to the supplier expeditiously after correction or approval.
2. The principal's approval of the proofs shall be considered to constitute recognition of the fact that the supplier has correctly carried out the work preceding the proofs.
3. The supplier shall not be liable for any deviations, errors and faults that remained unnoticed in the proofs that were approved or corrected by the principal.
4. Each proof produced at the principal's request shall be charged in addition to the agreed price, unless it has been expressly agreed that the costs of such proofs are included in the price.

Article 13: Deviations

1. Deviations between, on the one hand, the work supplied and, on the other hand, the original design, drawing, copy, manuscript or model and the printing proofs, typesetting proofs or other proofs respectively, cannot constitute a ground for rejection, discount, the setting aside of the contract or damages, if such deviations are of minor importance.
2. In order to assess the question whether or not deviations in the totality of the work are to be considered minor deviations, a representative sample will be taken from the work, unless it concerns individually determined items.
3. Deviations that do not reasonably have any influence or only a minor influence on the useful value of the work, taking all circumstances into account, shall always be deemed to be deviations of minor importance.
4. Deliveries in excess or short of the number agreed shall be allowed if such deliveries are not in excess or short of the following percentages:
 - number of copies up to 20,000: 10%
 - number of copies in excess of 20,000: 5%
 However, with regard to excess or short deliveries of packaging printwork, labels and continuous forms a percentage of 10% shall always be allowed. The number delivered in excess or short of the agreed number shall be charged or deducted.
5. As regards the quality and gramme weight of paper and cardboard, deviations of minor importance shall be considered to be the deviations allowed under the tolerance standards stated in the General Terms and Conditions of Sale of te 'Vereniging van Papiergroothandelaren' (Association of Paper Merchants). The relevant terms and conditions are open for inspection at the supplier's office. The supplier shall send the principal a free copy of these terms and conditions at the latter's request.
6. Deviations in the remaining materials and semi-manufactured products used by the supplier that are allowed under the general terms and conditions of sale applying to the delivery of such materials and semi-manufactured products shall be considered as deviations of minor importance. The relevant terms and conditions are open for inspection at the supplier's office. The supplier shall send the principal a free copy of these terms and conditions at the latter's request.

Article 14: Contracts for an indefinite period of time; periodic publications

1. A contract for the production of periodicals shall be deemed to be a contract for an indefinite period of time and can only be terminated by giving notice while observing a period of notice, unless the contrary has been expressly agreed in writing. Such a period of notice shall be one year if it concerns a periodical appearing four times a year or more and 6 months if it concerns a periodical appearing less often.
2. A periodical within the meaning of paragraph 1 of this article shall be understood to mean a publication which is appearing on a regular basis.
3. Production within the meaning of paragraph 1 of this article shall also be understood to mean the production of semi-manufactured products or auxiliaries such as separate quires, litho work and typesetting work as well as work connected with the finishing and distribution of the publication.
4. A contract within the meaning of this article may only be terminated by means of a letter sent by registered mail or a letter with confirmation of receipt.
5. The provisions of this article may only be deviated from by means of a written contract.

Article 15: Copyright, etc.

1. The principal guarantees towards the supplier that the performance of the contract and in particular the reproduction or publication of materials received from the principal such as copy, manuscripts, type, models, drawings, photographs, lithographs, films, data carriers, computer software, data files etc. do not infringe any rights that third parties may enforce under the Copyright Act 1912 ('Auteurswet 1912') or other national, supranational or international regulations in the area of copyright law, industrial ownership law or the law of torts. The principal shall hold the supplier harmless, both in law and otherwise, against all claims that any third parties may have under the Act or regulations referred to above.
2. If any doubt arises or continues to exist as to the accuracy of the rights claimed by third parties as referred to in paragraph 1 of this article, the supplier shall be entitled but not obliged to suspend the performance of the contract until such time as it has been irrevocably established in law that the supplier will not infringe such rights by performing the contract. The supplier shall subsequently still carry out the order within a reasonable period of time.
3. Unless it has been expressly agreed to the contrary in writing, the supplier shall always remain the party entitled to the copyright that may arise on the works produced by him in performing the contract, such as copy, manuscript, type,

design drawings, models, working and detail drawings, data carriers, computer software, data files, photographs, lithographs, films and similar means of production and aids, even if the activities concerned are stated as a separate item in the offer or on the invoice.

4. Neither the goods supplied or to be supplied by the supplier according to his own design, such as copy, manuscripts, type, design drawings, models, working and detail drawings, data carriers, computer software, data files, photographs, lithographs, films and similar means of production and aids nor any part thereof forming an essential part of such design may be reproduced within the scope of any production process without the supplier's written consent, even if or to the extent that there is no copyright on or other statutory protection in respect of the design thereof for the supplier.
5. After delivery by the supplier, the principal shall obtain the non-exclusive right of use of the works within the meaning of the Copyright Act 1912 or of the works within the meaning of paragraph 4 of this article, produced by the supplier within the scope of the contract. Such right of use shall be restricted to the right to use the delivered goods in a normal manner and shall expressly not include the use for the reproduction of these works within the scope of any production process.

Article 16: Ownership of means of production, etc.

1. All things produced by the supplier such as means of production, semi-manufactured products and aids and in particular type, design drawings, models, working and detail drawings, data carriers, computer software, data files, photos, lithos, clichés, films, micro and macro mountings, printing plates, screen printing matrices, engraving cylinders, stereotypes, punching knives and moulds, (foil) matrices, embossing plates and peripheral equipment shall remain the property of the supplier, even if they have been stated as separate items on the quotation, in the offer or on the invoice.
2. The supplier shall not be obliged to hand over the things referred to in paragraph 1 to the principal.
3. The supplier shall not be obliged to keep the things referred to in paragraph 1 of this article for the principal. If the supplier and the principal agree that such things will be kept by the supplier, this shall be for a period of one year at the most and without the supplier guaranteeing their suitability for repeated use.

Article 17: Ownership of the principal, lien

1. The supplier shall keep all things, entrusted to him by the principal within the scope of the performance of the contract with the care of a good keeper.
2. Notwithstanding the provisions of the previous paragraph of this article, the principal shall bear all the risks connected with the things referred to in paragraph 1 during the keeping thereof. If insurance is desired, the principal shall take out an insurance for this risk himself.
3. The principal shall be obliged to ensure that before delivering copy, manuscripts, drawings, designs, photos or data carriers to the supplier, a duplicate is made thereof. The principal shall keep such duplicates in case the things supplied are lost by the supplier during the keeping thereof or have become unfit for use due to damage. In that case the principal shall provide the supplier with a new copy at the latter's request against payment of the costs of the material.
4. The principal grants the supplier a lien on all things that are brought within the power of the supplier within the scope of the performance of the contract with the supplier, all this by way of extra security for all that the principal may owe to the supplier in whatever capacity or on whatever account, including non-exigible and contingent debts.

Article 18: Materials and products delivered by the principal

1. If the principal has agreed with the supplier to deliver materials of products for imprinting of processing purposes, the former shall ensure that this delivery takes place in a manner that may be considered timely and proper for a normal, planned production. The principal shall ask the supplier for instructions in respect thereof.
2. In addition to the materials or products required for the prestation agreed, the principal shall be obliged to deliver a quantity for proofs, spoilage, etc. that may be deemed reasonable for the processing work concerned. The principal shall ask the supplier's specification in respect thereof. The principal shall see to it that the supplier receives a sufficient quantity. The supplier's confirmation of receipt of the materials or products shall not imply acknowledgement that a sufficient quantity or the quantity stated on the documents relating to the carriage of the goods has been received.
3. The supplier shall not be obliged to examine the materials or products received from the principal on their suitability for printing or processing prior to such printing or processing.
4. The supplier cannot be held liable for failure to perform the contract if this should be caused by extraordinary processing problems or processing problems that could not reasonably be foreseen by the supplier, and which are the result of the nature of the materials or products supplied by the principal. The supplier cannot be held liable for failure to perform the contract either if this should be caused by deviations between the sample originally shown to the supplier and the materials or products subsequently delivered by the principal for the publication.
5. The supplier shall not guarantee characteristics, such as storage life, adherence, gloss, colour, light or colour fastness or wear-resistance if the principal has failed to give information as to the characteristics and nature of the materials and products supplied by him at the latest at the time of concluding the contract, and has failed to give sound information on the pretreatment and surface treatments applied.
6. Unless it has expressly been agreed to the contrary, the supplier cannot be held liable for the fact that the materials and products received by him from the principal and to be printed or processed by him have become unstuck, are sticking together, have become soiled, have changed in gloss or colour or for any damage caused to such materials and products if these materials and products have been pretreated, inter alia, by the application of varnish, lacquer or anti-stain powder.
7. The principal shall be obliged to point out to the supplier any special difficulties or health risks during the printing or processing process of the materials and products supplied by the principal.
8. The supplier shall be entitled to dispose of the left-overs of the materials and products supplied by the principal, such as offcuts, as if he were the owner. The principal shall, at the supplier's request, be obliged to collect any unused materials and products as well as the left-overs referred to above from the supplier.

Article 19: Force majeure

1. Failure in the performance of the contract on the part of the supplier cannot be imputed to the supplier if the latter cannot be blamed for such a failure or if such a failure is not for his account under the law, the contract or according to common opinion.
2. Any failure on the part of the supplier in the performance of the contract which is the result of war, mobilisation, riots, disturbances, flooding, blocked shipping, other blocking of transport, stagnation in or restriction or termination of supplies by public utility companies, shortage of coal, gas, petroleum products or other means for the generation of energy, fire, breakdown of machinery and other accidents, strikes, lock-outs, actions by the trade unions, export restrictions, other government measures, non-delivery of necessary materials and semi-manufactured products, intent or gross negligence on the part of persons whose services are used and other similar circumstances shall be deemed to be circumstances which cannot be imputed to the supplier and shall not give the principal the right to set aside the contract or the right to damages.

Article 20: Liability

1. The supplier's liability on account of the contract with the principal shall be limited to the amount that is in relation to the price agreed according to criteria of reasonableness and equity.
2. The supplier shall not be liable for damage/loss of whatsoever nature arising from or subsequent upon the principal having taken into use, processed, worked or delivered to third parties the things produced or having caused same to be taken into use, processed, worked or delivered to third parties after the delivery thereof.
3. The supplier shall, furthermore, not be liable for damage in the form of loss of turnover or loss of goodwill in the business or profession of the principal.
4. Neither shall the supplier be liable for damage to materials or products received from the principal which are to be printed, processed or treated by the supplier, if the principal has failed to give the supplier information as to the characteristics and nature of the materials and products supplied by him at the latest at the time of concluding the contract, and has failed to give sound information on the pretreatment and surface treatments applied.
5. If the supplier is held liable by a third party for any damage, for which he is not liable under the contract with the principal or the present terms and conditions of delivery, the principal shall hold him fully harmless and reimburse the supplier in full for all that the latter has to pay to such third party.

Article 21: Disputes; Board of Arbitration for the printing industry

1. All disputes which may arise in respect of the contract between the principal and the supplier or any further contracts entered into between them, shall be decided by arbitration in accordance with the rules and regulations of 'Stichting Scheidsgerecht voor de Grafische Industrie', established at Amstelveen, Startbaan 10 (P.O. Box 220, 1180 AE Amstelveen).
2. The settlement of disputes by means of arbitration as referred to in the previous paragraph of this article shall only be applicable if at least one of the parties was a member or associate of the KVGO at the time of entering into the contract and the principal amount of the claim to be instituted (not being a counterclaim) is in excess of € 2,500.00.
3. A dispute shall exist when either of the parties states that such is the case.
4. The arbitrators shall make an award as good men in accordance with principles of equity, without being bound to the strict rules of law.

Article 22: Governing law

The contract between the supplier and the principal shall be governed by Dutch law.

In the event of any disputes on the interpretation of any of the provisions of these terms and conditions, or any of the provisions included in contracts to which these terms and conditions apply, the Dutch text shall be conclusive.