

# marcapo GmbH General Terms and Conditions of Business for Customers of the Online Marketing Platform

## 1 Scope

1.1 These marcapo GmbH (hereinafter: marcapo) General Terms and Conditions of Business (hereinafter: GTC) apply to all contracts on goods and/or services (hereinafter: services) from marcapo in their version valid at the time of concluding the respective contract between marcapo and a registered user of the online marketing platform (hereinafter: customer).

1.2 Our deliveries, services and offers are intended solely for buyers, who can be regarded as merchants within the meaning of § 14 (1) German Civil Code.

1.3 Special terms and conditions of business apply on a supplementary basis to individual services from marcapo (known as "information sheet"). If there are conflicts, the respective special conditions take precedence over these GTC. Special conditions (information sheet) for individual services can be consulted during the order procedures, saved as an annex and printed out.

1.4 The inclusion of the customer's terms and conditions are hereby repudiated, unless marcapo has confirmed agreement to these expressly or in writing. These GTC also apply exclusively, if, in the knowledge of conflicting conditions of the customer or of customer's conditions, which deviate from these conditions, marcapo performs the delivery to the latter without specific reservation.

## 2 Conclusion of the contract

2.1 The product and service descriptions displayed on the marketing platform do not represent a binding offer in the legal sense from marcapo, but are without obligation and serve to issue a binding offer from the customer.

2.2 The customer can issue the offer via the online order form integral to the marketing platform, in writing, by fax or by e-mail. When placing an order via the online order form by clicking on the "Send order against payment" button in the final step in the order process, the customer issues a legally binding contractual offer with respect to the services in the shopping cart.

2.3 marcapo may accept the offer by electronically transmitted (e-mail or fax) or written (letter) order confirmation or invoice or by delivering the goods. marcapo is entitled to refuse to accept the order.

In this case marcapo shall notify the customer by e-mail of the refusal to accept the order.

2.4 As a rule, the order is processed and contact made by means of the automatic order processing procedure on the marketing platform. The customer must ensure that the e-mail address provided by him for processing the order is a current address, which can receive e-mails sent by marcapo. In particular the customer must use spam filters to ensure that he receives all the e-mails sent by marcapo or third parties involved in the order process.

2.5 If the parties have agreed special conditions, as a matter of principle these do not apply to concurrent routine and future contractual relationships with the customer.

2.6 To a reasonable extent discrepancies due to the technical design remain reserved.

### 3 Prices and payment conditions

3.1 The prices specified by marcapo are net prices and are exclusive of statutory value added tax. Payment is due immediately on conclusion of the contract (prepayment).

3.2 Unless otherwise stated in the respective product specification, the prices are inclusive of packaging costs. Unless otherwise expressly agreed, shipping costs, loading, insurance (in particular transport insurance), Customs duties and fees are calculated separately.

3.3 For deliveries within Germany marcapo offers the option of payment by direct debit, unless otherwise specified in the respective product specification.

3.4 If shipment abroad is offered for the respective service, the customer has the option of payment by direct debit, unless otherwise specified in the respective product specification.

3.5 In individual cases for deliveries to countries outside Switzerland further costs may be incurred, which are not attributable to the vendor and must be borne by the customer. For example, this includes costs for currency exchange transactions through credit institutes (e.g. transfer charges, exchange rate fees) or import duties or taxes (e.g. Customs duties).

3.6 In the case of the method of payment by direct debit and the transmission of the customer's bank details marcapo is revocably authorised to draw the invoiced amount from the account specified by the customer. If the direct debit is not redeemed for lack of sufficient funds or because false bank details have been given or if the customer objects to the withdrawal, although he is not entitled so to do, the costs incurred by the chargeback by the respective bank must be borne by the customer, if this can be attributed to him.

3.7 Payment is deemed to have been received when the equivalent value has been credited to one of marcapo's accounts. In the case of default of payment marcapo has a claim to interest on arrears in the amount of 9 percentage points above the respective base lending rate. In addition, in the case of a claim for payment where the debtor is in default, marcapo may claim payment of a fixed rate sum in the amount of 40.00 euros. Other rights or claims of marcapo remain reserved. If accounts receivable are overdue, payments received shall be deducted in the first instance on any costs and interest, and after that on the oldest debt.

## 4 Accounting

Individual invoices are generated for all deliveries of goods and other services.

## 5 Provision of electronic billing services

### 5.1 Range of services

On accepting our GTC for the electronic version of the invoice by marcapo the customer shall receive invoices from marcapo in electronic format. Once these invoices have been generated they can be accessed in his personal area in our online shop. The customer waives postal despatch of the invoice. marcapo is not obliged to accept an instruction for the electronic despatch of the invoice by e-mail.

### 5.2 Presentation of invoice

As the recipient the customer must ensure that there are all the technical facilities to access the invoices. Technical facilities, such as filter programs or firewalls must be adapted appropriately. No automated electronic reply messages to marcapo (e.g. notice of absence) can be taken into consideration and do not conflict with valid delivery.

### 5.3 e-mail address

The customer must notify marcapo without delay in writing and in a legally valid manner any change in his e-mail address, to which the invoice should be sent. If invoices are sent by marcapo to the e-mail address last used by the customer, these are deemed to have been received by the latter, if the customer has not notified marcapo of his new e-mail address.

### 5.4 Security

marcapo accepts no liability for losses arising from the increased risk of electronic despatch of the invoice as against the risk arising from a postal despatch. The enhanced risk of access by unauthorised third parties by virtue of storage of the electronic invoice shall be borne by the customer.

## 5.5 Termination / Revocation

The customer may at any time revoke participation in the electronic formulation of the invoice. Once the written notice of termination has been received and processed by marcapo, the customer shall receive, subject to a charge, future invoices by post to the postal address most recently notified to marcapo. marcapo reserves the right independently to send the electronic provision of the invoice in marcapo's portal to the postal address most recently notified to marcapo.

### Information on the Tax Simplification Act of 23.09.2011

By the amendment of § 14 (1) and (3) German VAT Act by Article 5 (1) of the German Tax Simplification Act 2011 of 1 November 2011 (Federal Law Gazette I p. 2131) the regulations on value added tax for electronic invoices were amended on 1 July 2011. In accordance with § 14 (1) sentence 8 VAT Act in its new version an electronic invoice is an invoice, which is issued and received in electronic form. The requirements on the transmission of electronic invoices have been significantly reduced in comparison with the previous legal position. Henceforth invoices inter alia, which are transmitted by e-mail (where applicable with image data or a text document as an annex) or which can be accessed in the protected area of an online portal, give entitlement to deduction of input tax.

## 6 Delivery and shipping terms

6.1 Goods are routinely delivered by the delivery route and to the delivery address specified by the customer.

6.2 Specified delivery periods/ delivery deadlines/ shipment deadlines are without obligation, unless the binding nature of the specified period or specified deadline has been confirmed by marcapo. Requests by the customer for modifications or extensions postpone agreed deadlines where applicable.

6.3 marcapo is entitled to part-consignments, provided that this is reasonable for the customer. In the case of permissible part-consignments marcapo is also entitled to issue partial invoices.

6.4 marcapo reserves the right to be released from the obligation to fulfil the contract, if the goods are to be delivered by a supplier on the date of shipment and there is failure in whole or in part to make the delivery. This reservation of timely and correct supply of incoming goods applies only if the failure to deliver cannot be attributed to marcapo. Failure to perform the service cannot be attributed to marcapo, insofar as what is known as a congruent covering transaction has been concluded for the fulfilment of the contractual duties. If the goods are not delivered, marcapo shall

notify the customer without delay of this circumstance and shall refund any purchase price already paid, together with shipping costs.

6.5 The risk of accidental destruction and accidental deterioration of the goods, together with the risk of delay (cf. also Point 6.6) passes with sale by despatch on the delivery of the goods to the shipper, freight forwarder or other person appointed to perform the shipment. Transport insurance shall be organised only at the specific request and on the account of the customer.

6.6 For the case where the shipment of the product to the customer is delayed for reasons attributable to the latter the risk passes on notification to the customer that the goods are ready for despatch. Subsequent to the passing of the risk any incidental storage costs must be borne by the customer.

6.7 Insofar as a delivery is impossible for reasons attributable to the customer, e.g. because the customer cannot be found at the delivery address specified by him, the costs incurred by marcapo for the unsuccessful delivery shall be borne by the customer.

## 7 Subsequent amendments

7.1 Every modification of the order data (for example change of delivery address, change of delivery deadline), as well as every modification of the production data already released by the customer (for example .pdf file) is deemed an amendment of the order. Subsequently, i.e. after the issue of a binding offer by the customer, changes to the order are as a matter of principle not possible by reason of the automated production processes.

7.2 If it is still possible for marcapo to make a subsequent modification, the changes to the order required and/or initiated by the customer are invoiced separately to the customer. The same applies to similar preparatory work initiated by the customer.

7.3 The amount of the costs incurred by the modification within the meaning of Points 7.1 and 7.2 shall depend on the progress made in production. However, in the event of a modification the customer shall be invoiced as a minimum a flat-rate fee in the amount of 30.00 EUR, unless it has been otherwise agreed in writing between the parties.

## 8 Cancellation

8.1 Once the binding offer has been issued by the customer, cancellation of the order is no longer possible.

8.2 If the customer cancels the order after having issued a binding offer or if the customer fails to provide the data or information required by an agreed deadline, the costs incurred by marcapo up to that point in time (in particular production costs and labour costs already incurred) must be borne by the customer, in an amount, however, of 30.00 EUR as a minimum.

## 9 Customer's obligation to inspect on delivery

9.1 The customer is obliged to inspect the shipment on delivery for evident damage and in the case where a defect is discovered, he must refuse acceptance or obtain written confirmation of the damage from the transport company. Damage and defects must be notified without delay.

9.2 If the delivery is accepted without reservation, the customer confirms that he has received the goods in a flawless condition.

9.3 Otherwise the duty to inspect and give notice of defects pursuant to Paragraph 377 German Commercial Code applies.

## 10 Retention of title

marcapo reserves title in the goods delivered until payment in full of the remuneration owed has been received.

Furthermore, marcapo reserves title in the goods delivered until satisfaction of all its claims arising from the business relationship with the customer. Rights are transferred conditionally on the date of payment in full of the remuneration.

## 11 Delay in performance/delivery – Defect as to quality – Liability – Compensation in damages

### 11.1 Delay in performance/delivery

In case of delay in performance the customer has a right to withdraw and/or a claim to compensation in damages or reimbursement of expenses, only if marcapo has previously set a deadline for completion (reminder) and the delay is attributable to marcapo. Compensation in damages or reimbursement of expenses is set at the order value as a maximum.

### 11.2 Defect as to quality

11.2.1 The provisions of the law apply to material defects with the following stipulation:

- an immaterial defect does not constitute a claim for defects - in particular, places where there are slight colour deviations or differences in further processing, which have occurred during printing, do not constitute defects;
- claims for material defects do not extend to those goods or services, which the customer or a third party has modified without the consent of marcapo. This does not apply, if the customer proves that this modification was not the cause of the defect reported;
- marcapo has the right to select the type of supplementary performance (removal of defects, replacement = delivery of a defect-free object or withdrawal);
- insofar as marcapo opts for removal of material defects, this shall not trigger any re-commencement of the statute of limitations;
- claims of the customer by reason of material defects within the meaning of § 434 German Civil Code become time barred in one year from the passing of the risk, provided that the material defect was not caused by the gross negligence or culpable intent of marcapo. In this case the statutory limitation period in § 438 (3) German Civil Code applies.

11.2.2 The limitations of liability in Point 11.2.1 do not include claims for compensation in damages or reimbursement of expenses, which the customer is entitled under the statutory provisions to assert for material defects. The provisions in Point 11.3.2 apply to claims for compensation in damages or reimbursement of expenses of this nature.

11.2.3 Defects ascertained must be notified by the customer in writing and must be designated and described in sufficiently specific detail.

11.2.4 If marcapo has remedied the defect by a replacement delivery, the customer is obliged to return the defective product delivered in the first instance to marcapo within 30 days and to make payment for use and enjoyment in accordance with the statutory provisions. Other legal claims of marcapo remain unaffected.

11.2.5 Claims for defects do not arise from natural wear or damage, which was caused subsequent to the passing of the risk in consequence of incorrect or negligent handling, unsuitable operating materials or by reason of specific external factors, which were not presumed under the contract. If any inappropriate modifications or commissioning work is undertaken by the customer or by third parties, no claims for defects exist for these and for the consequences flowing therefrom.

Similarly no claims for defects result, unless the customer can prove that the defect reported has not been caused by these modifications or commissioning work.

11.2.6 If the customer has asserted claims for defects, where there is no defect and if he was aware or could have been aware of this, he must bear the costs thereby incurred by marcapo.

## 11.3 Liability

marcapo accepts liability arising from all contractual, quasi-contractual, tortious and other legal claims for compensation in damages and reimbursement of expenses as follows:

11.3.1 marcapo unreservedly accepts liability arising from every legal ground:

- in the case of culpable intent and gross negligence,
- in the case of culpably intentional and negligent injury to life, limb and health,
- by reason of a warranty bond, provided that the latter is not otherwise regulated,
- by reason of mandatory - not alterable subject to mutual agreement - liability, such as under the Product Liability Act.

11.3.2 If by virtue of gross negligence marcapo is liable for a material contractual duty, liability is limited to foreseeable damage, typical of the contract, provided that no unlimited liability arising from Point 11.3.1 exists. Material contractual duties are those duties, the proper fulfilment of which is paramount in the first instance for the proper performance of the contract and on the compliance with which a party to the contract may routinely rely.

11.3.3 If the provision of the agreed service as stipulated in the contract is delayed by force majeure or other unforeseeable events, not attributable to marcapo (e.g. traffic disruptions, strikes, [including in third-party businesses], blackout of the electric power supply), during this period the lapse of any deadline, including any periods and deadlines under binding agreements, is delayed, i.e. the deadline is extended by the duration of the delay. Otherwise marcapo's liability is excluded.

11.3.4 The foregoing provisions on liability apply also with respect to marcapo's liability for its vicarious agents and legal representatives.

## 12 Rights of use

12.1 On receipt of payment in full of the remuneration agreed in the individual order marcapo grants to the customer the non-exclusive (simple) right, which cannot be assigned, sub-licensed or - unless otherwise agreed in the ordering process (e.g. use of image motifs limited in time) – and which are unlimited in time, to use the work results in the context of the individual order, provided that this arises from the purpose and area of deployment of the individual order. Designs, which are delivered as part of a quotation process, interim results, terms of reference and resources are not included, unless otherwise expressly agreed. marcapo reserves all the rights in documents of this and a comparable nature.

12.2 No editing rights are granted. The work results, including the author's designation, may not be modified without agreement from marcapo.

## 13 Rights of third parties, indemnification



13.1 The customer warrants that he possesses the rights necessary for the use of the templates, data, contents and materials (in particular text, image, etc.) provided to him and affirms that the use arising from and in relation to the respective contract does not infringe any rights of third parties (in particular, copyright, trade mark and/or other intellectual property rights of third parties, general personal rights).

13.2 On first demand the customer shall indemnify and hold marcapo harmless from all claims asserted by third parties against marcapo by reason of the infringement of their rights by virtue of objects, data and/or contents (e.g. texts, logos, photographs) provided to the customer. This indemnification applies in particular to claims under competition, copyright, trade mark, patent and naming law. The customer undertakes to compensate marcapo for any loss whatsoever incurred by marcapo by virtue of the rights of third parties and hereby also accepts the costs necessary for defending an action in law, including all Court and lawyers' fees, in the statutory amount.

13.3 The indemnification does not apply, if the infringement of the law is not attributable to the customer. In the event that legal recourse is taken by a third party the customer is obliged to make available to marcapo immediately, truthfully and in full all the information required for the investigation of the claims and any defence.

## 14 Retention, assignment

14.1 Rights of retention and rights to withhold performance by the customer are excluded, unless the underlying counter claims are undisputed by marcapo or the claims are recognised by declaratory judgement (res judicata).

14.2 Assignment by the customer of claims arising from the contract concluded with the customer, including assignment of any claims for defects, is excluded.

## 15 Applicable law, Court of jurisdiction, language of the contract

15.1 Applicable law for all the legal relationships of the parties is the law of the Federal Republic of Germany to the exclusion of the laws on the international purchase of moveable goods and to the exclusion of the conflict of laws.

15.2 If the customer is a merchant, legal entity under public law or special fund under public law, the place of performance is the registered office of marcapo (Ebern) and Court of jurisdiction for all disputes arising from this contract is Bamberg. The language of the contract is German.