

# General Terms and Conditions of Delivery of digiCon AG

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## **1. Scope**

- 1.1 The following General Terms and Conditions of Supply (hereinafter referred to as "Contract Terms") shall apply exclusively to all supply contracts concluded between digiCon AG (hereinafter referred to as "digiCon") and Customers, for the provision of services and for the performance of repro and glass mastering work. The contractual terms and conditions shall also apply to future business relations in these areas, even if no express reference is made to them.
- 1.2 Amendments or supplements as well as conflicting or deviating contractual terms and conditions of the Customer shall only apply if digiCon has expressly agreed to them in writing. If the Customer does not agree to them, he must notify digiCon of this immediately in writing. The following contractual terms and conditions shall also apply if digiCon executes the Customer's order without reservation in the knowledge of conflicting or deviating terms and conditions of the Customer.
- 1.3 The contractual conditions shall apply exclusively to companies and other commercially active customers (hereinafter both also referred to as "companies"). Private individuals may not obtain services from digiCon.

## **2. Offer and conclusion of contract**

- 2.1 digiCon may accept an order from the Customer, which is to be qualified as an offer to conclude a purchase contract, within four weeks by sending an order confirmation or by sending the ordered products within the same period.
- 2.2 Our offers are subject to change and are non-binding unless digiCon has expressly designated them as binding.

## **3. Manufacturing or production material / obligations to cooperate**

- 3.1 The Customer shall provide digiCon with all documents required for production (e.g. masters / replicas, DLTs, blanks, label films or data as well as electronic data etc.) free of charge, as duplicates (copy) in accordance with the specifications provided. The Customer alone shall be obliged to check the content and format of the manufacturing or production documents provided to digiCon. Documents provided shall be deemed to have been released for production per se - unless written reference is made in the Customer's order to a release to be granted.
- 3.2 All items produced for the execution of an order (e.g. glass masters, stampers, matrices, replicas, films, proofs, printing plates etc.) shall remain the property of digiCon, even if the Customer bears the costs of production. Other sketches, drafts, sample typesetting, sample prints, samples and similar preliminary work arranged by the Customer may be charged to the Customer, even if the order is ultimately not placed. These items shall likewise remain the property of digiCon.
- 3.3 digiCon shall have the right to place its company name, the title or any other reference to the origin or manufacturer of the product on the inner ring data carrier.
- 3.4 The Customer shall be obliged to notify digiCon in writing without delay of any changes in his company name, registered office, ownership structure and creditworthiness.

#### **4. Terms of delivery / delivery and performance time**

4.1 Delivery dates or periods that have not been expressly agreed as binding are exclusively non-binding information. The delivery period specified by digiCon shall commence when the order is placed and the complete manufacturing or production materials in accordance with the specifications are handed over and - insofar as this has been requested by digiCon in accordance with Section 13.4 of these contractual terms - when the questionnaire is submitted and supplementary factual and legal information is obtained. If the manufacturing or production material provided still has to be processed first or if further agreed obligations to cooperate on the part of the Customer still have to be fulfilled, the delivery time shall be extended accordingly. If the originally agreed delivery date is postponed by more than four weeks as a result of obtaining the questionnaire and clarifying questions, the provision in section 13.4 sentence 3 shall apply.

4.2 The delivery owed by digiCon shall take place at digiCon's registered office. The time of provision at digiCon shall be decisive for compliance with the delivery dates and deadlines.

4.3 digiCon shall be entitled to make partial deliveries and/or provide partial services insofar as this is reasonable for the Customer. Production-related excess or short deliveries are permissible as follows:

0 to 2000 pieces: +/- 10% of the ordered number of pieces  
2000 to 5000 pieces: +/- 5% of the ordered quantity from  
5000 pieces: +/- 3% of the ordered quantity

Invoicing shall be based on the actual number of units delivered.

4.4 digiCon shall not be responsible for delays in delivery and performance due to force majeure and due to events that make delivery significantly more difficult or impossible for digiCon, not only temporarily - this includes in particular strikes, lockouts, official orders, machine failure etc., even if they occur at suppliers of digiCon or their sub-suppliers - even in the case of bindingly agreed deadlines and dates. They shall entitle digiCon to postpone the delivery or service for the duration of the hindrance plus a reasonable start-up period. If it becomes impossible for digiCon to fulfil its contractual obligations for the aforementioned reasons, digiCon shall be released from its obligation to perform. obligation to perform. If the performance of the aforementioned contractual obligations is delayed by more than 1 month, digiCon shall be entitled to withdraw from the contract. The Customer shall be informed immediately of any such obstacles to performance. Any counter-performance already rendered by the Customer shall be reimbursed to him.

4.5. If digiCon does not provide services owed at the agreed time, the Customer shall set digiCon a reasonable grace period of at least 2 weeks. If delivery is subsequently not made within the period of grace, the Customer may withdraw from the contract by means of a written declaration. An insignificant breach of duty shall not entitle the Customer to withdraw from the contract. If the contracting parties have agreed on a transaction for delivery by a fixed date, the period of grace to be set by the customer shall be at least 5 days, unless this is unreasonable for the customer or the contractual performance is demonstrably no longer usable for the customer.

4.6. If the Customer is in default of acceptance, digiCon shall be entitled to demand compensation for the damage incurred and any additional expenses. The same shall apply if the Customer culpably breaches duties to cooperate. The rights of digiCon under Section 643 of the German Civil Code shall remain unaffected. The risk of performance (e.g. risk of accidental deterioration and accidental destruction) shall pass to the Customer upon the occurrence of default in acceptance.

#### **5. Transfer of risk / shipping and packaging**

5.1. The risk of performance (e.g. damage, destruction, as well as effects of any kind of force majeure, transport barriers and the like) shall pass to the Customer as soon as the goods that are the subject of the contract have been handed over to the carrier or have left digiCon's warehouse for the purpose of shipment. If dispatch is delayed at the Customer's request, the risk shall pass to the Customer upon notification of readiness for dispatch.

5.2 Shipment shall be at the Customer's risk, even in the case of carriage paid delivery. Liability on the part of digiCon is excluded. The method of dispatch, the transport route and the suitable packaging material shall be determined exclusively by digiCon. If the Customer requests express delivery or the conclusion of transport insurance for the goods, any additional costs shall be borne by the Customer.

- 5.3 digiCon does not take back transport packaging and all other packaging in accordance with the Packaging Ordinance; EURO pallets are excluded. The Customer shall dispose of the packaging at its own expense.

## **6. Prices**

- 6.1 digiCon's prices are exclusive of value added tax, which is shown separately in the invoices. The shipping costs are shown separately.
- 6.2 The agreed prices shall be binding for a period of 3 months from the conclusion of the contract. digiCon shall be entitled to increase its prices accordingly in the event that after expiry of this period, before the contractual service has been provided by digiCon, cost increases occur for which digiCon is not responsible, such as increases in material or wage costs or public charges or fees. At the Customer's request, the cost increases shall be proven in detail.
- 6.3 digiCon shall be entitled to charge the Customer for subsequent changes at the Customer's instigation due to newly submitted production documents, including the machine downtime caused thereby. Subsequent changes shall also include repetitions of test prints requested by the customer due to minor deviations from the original.

## **7. Terms of payment**

- 7.1 digiCon may, at its discretion, supply the customer exclusively by advance payment. In this case, payment for the goods must be made before the start of production. If the Customer requests delivery on open account (credit), the Customer shall give digiCon the opportunity to carry out a credit check. A prerequisite for delivery on account is positive and complete cover from a credit insurance company (Hermes, Creditreform etc.) in the amount of the gross value of the goods.
- 7.2 Unless otherwise agreed, digiCon's invoices shall be due for payment within 30 days of receipt and without deduction. If it is uncertain when the Customer received the invoice, the Customer shall be in default of payment no later than 30 days after the due date and receipt of the service. digiCon shall be entitled, despite the Customer's provisions to the contrary, to first offset payments against the Customer's older debts and shall inform the Customer of the nature of the offset
- 7.3 In the event of the provision of unusually large quantities, special materials or advance services, the customer may be required to make an advance payment or provide a bank guarantee.
- 7.4 If a significant deterioration occurs in the Customer's financial circumstances after conclusion of the contract, or if such a deterioration becomes apparent after conclusion of the contract, for example if the Customer ceases payment or an application is made to open insolvency proceedings against the Customer's assets, digiCon shall be entitled to demand advance payment of the purchase price or the provision of security.
- 7.5 Bills of exchange and cheques shall only be accepted following special written agreement. Payment shall only be deemed to have been made when digiCon can dispose of the amount. In the case of cheques, payment shall only be deemed to have been made when the period for revoking the cheque has expired. If protests against bills of exchange and enforcement measures against the Customer become known, all claims of digiCon against the Customer shall become due immediately.
- 7.6 If the customer is in default, digiCon is entitled to demand interest at a rate of 8 percentage points above the base rate. DigiCon can assert further claims for damages, in particular higher interest, additional costs and reminder fees of € 10 for a second and € 15 for a third reminder, without prejudice to digiCon. Bank costs that digiCon incurs due to incorrect account data or unauthorized rejection can be passed on to the customer by digiCon, unless the customer is not responsible for the incorrect information. The customer is entitled to provide evidence that digiCon incurred no or less damage.
- 7.7 If the customer does not meet his payment obligations in the remaining or circumstances become known which are suitable to question the creditworthiness, all claims become due for payment immediately. Any

payment terms already agreed shall become invalid. As a result, digiCon shall be entitled to issue a delivery stop for existing orders.

- 7.8 digiCon charges a processing fee of 2% of the invoice amount for payments by credit card. The "Payment by credit card" form is available for download at <https://digiCon-dvd.com/en/services>.

## **8. Rights of set-off and retention**

- 8.1 The Customer may only declare a set-off against claims of digiCon if his claim is undisputed or has been established as final and absolute.
- 8.2 The Customer may only assert a right to refuse performance and a right of retention if digiCon's payment claim and the Customer's counterclaim are based on the same contractual relationship.
- 8.3 Should digiCon still have claims against the Customer, digiCon shall have a right of retention to the production documents until the respective claims against the Customer have been satisfied.

## **9. Retention of title**

- 9.1 The products that are the subject of the contract (hereinafter referred to as "Reserved Goods") shall remain the property of digiCon until full payment of all existing and future claims arising from sales under the business relationship with the Customer.
- 9.2 In the event of the Customer acting in breach of contract, e.g. default in payment, digiCon shall have the right to take back the reserved goods after setting a reasonable deadline in advance. If digiCon takes back the reserved goods, this represents a withdrawal from the contract. If digiCon seizes the reserved goods, this is also a withdrawal from the contract. DigiCon shall be entitled to realize the goods subject to retention of title after taking them back. After deduction of a reasonable amount for the costs of realisation, the proceeds of realisation shall be offset against the amounts owed by the Customer to digiCon.
- 9.3 The Customer shall treat the reserved goods with care and insure them adequately at replacement value against fire, water and theft at its own expense. He shall hold the (co-)owned goods in safe custody for digiCon free of charge. The Customer shall be entitled to sell and/or use the reserved goods properly in the course of business as long as he is not in default of payment. Pledging or transfer of ownership by way of security shall not be permitted. The Customer hereby assigns to digiCon by way of security all claims arising from the resale or any other legal reason (insurance, tort) in respect of the reserved goods (including all current account balance claims); digiCon hereby accepts the assignment. digiCon revocably authorizes the Customer to collect the claims assigned to digiCon for its account in its own name. The direct debit authorization may be revoked at any time if the Customer does not properly meet his payment obligations. The Customer shall also not be authorised to assign this claim for the purpose of collecting the claim by way of factoring unless the obligation of the factor is simultaneously established to effect the counter-performance in the amount of the claims directly to digiCon for as long as digiCon still has claims against the Customer.
- 9.4 Any processing or transformation of the reserved goods by the Customer shall in all cases be carried out on behalf of digiCon. If the reserved goods are processed with other items not belonging to digiCon, digiCon shall acquire co-ownership of the new item in the ratio of the value of the reserved goods (final invoice amount including VAT) to the other processed items at the time of processing. The same shall apply to the new item created by processing as to the reserved goods. In the event of inseparable mixing of the reserved goods with other items not belonging to digiCon, digiCon shall acquire co-ownership of the new item in the ratio of the value of the reserved goods (final invoice amount including VAT) to the other mixed items at the time of mixing. If the Customer's item is to be regarded as the main item as a result of the mixing, it is agreed between the Customer and digiCon that the Customer shall transfer pro rata co-ownership of this item to digiCon; digiCon hereby accepts this transfer. The right of digiCon to this  
The Customer shall store any sole or co-ownership of an item created in this way for digiCon free of charge.
- 9.5 In the event of access by third parties to the reserved goods, in particular seizures, the Customer shall draw attention to digiCon's existing ownership rights and notify digiCon without delay so that digiCon can enforce its ownership rights. Insofar as the third party is not in a position to reimburse digiCon for the judicial or extrajudicial costs incurred in this connection, the Customer shall be liable for these.

9.6 digiCon shall be obliged to release the securities to which it is entitled to the extent that the realisable value of the securities to which digiCon is entitled exceeds the claims to be secured by more than 10%, whereby digiCon shall be responsible for selecting the securities to be released.

## **10. Defects of quality and title**

10.1 If the Customer has ordered the subject matter of the contract as a merchant, he shall be obliged to inspect the subject matter of the contract immediately upon receipt with the care that is reasonable under the circumstances and to notify digiCon immediately in writing of any material defects that can be detected. Material defects that cannot initially be detected must also be notified to digiCon without delay after they have been discovered, in compliance with the notification requirements set out in sentence 1. If the Customer fails to comply with these obligations, the subject matter of the contract shall be deemed to have been approved with regard to this material defect with the consequence that the assertion of claims for defects shall be excluded. This does not apply in the case of fraudulent intent.

10.2 In the event of material defects - subject to the provisions in Section 10.4 - digiCon has the choice within the scope of the subsequent performance to be provided vis-à-vis the company as to whether the subsequent performance should be carried out through subsequent improvement or replacement delivery. digiCon can make supplementary performance dependent on the agreed purchase price being paid at least 50% or a portion that is reasonable considering the defect. If the subsequent performance has failed twice, the customer can reduce the agreed remuneration or, in the event of a significant breach of duty, withdraw from the contract and, if necessary, demand compensation if digiCon is responsible for the defect.

10.3 Subsequent performance in the event of defects of title shall be effected by digiCon providing a legally flawless possibility of use. digiCon may replace the contractual item concerned with an equivalent item that complies with the contractual provisions if this is acceptable to the Customer. If third parties assert property rights against the Customer, digiCon must be informed immediately in writing. If digiCon is responsible for the infringement of rights, digiCon shall, at its own discretion and in consultation with the Customer, defend or satisfy the claims. The Customer may not acknowledge third party claims on its own initiative. digiCon shall be entitled to defend the claims of third parties at its own expense and shall indemnify the Customer against all reasonable costs and damages associated with the defence of the claim, insofar as digiCon is responsible for the infringement of rights.

10.4 The properties of the optical data carriers supplied are subject to the following restrictions:

- a) Insignificant colour deviations in the label printing of optical data carriers (CD/DVD etc.) as well as the printed matter compared to the specification (proof) do not constitute a material defect. Only proofs in accordance with the ISO-coated standard, which must be supplied for each individual product, are binding in terms of colour. Since printed matter is organic material (e.g. paper, cardboard, etc.), there may be deviations in the dimensions and printing compared to the specifications.
- b) If the Customer produces a (Pre)Master (i.e. data) which is described beyond the maximum radius of 57.50, the warranty for material defects by digiCon with regard to operability is excluded, as the data carrier is described with data records outside the specifications.
- c) If the 'layer-break' (layer break) on a dual-layer disc (e.g. DVD-9) - i.e. the change from the lower data substrate (layer 0) to the upper substrate (layer 1) - is only carried out in the rear radii (e.g. >45.00), although this could have been done earlier for reasons of equal distribution of the data between the layers, a read error may occur (time out error). This read error does not constitute a material defect, provided that the layer-break was created on the customer's master or by a third party on the customer's behalf...
- d) A partial 'cloud or streak formation' during the production of optical data carriers does not represent a material defect of the goods, since in this connection it is an optical effect which has its reason in the mechanical moulding of the plastic.

10.5 In the event of fraudulent intent and in the event of a guarantee assumed by digiCon, the statutory Be provisions for material defects and defects of title shall remain unaffected.

10.6 If the Customer or third parties commissioned by the Customer - without the written consent of digiCon - interfere with the delivered products, digiCon shall remedy the defect if the Customer proves that the interference is not the cause of the material defect that has occurred.

- 10.7 If it transpires that a defect reported by the Customer does not actually exist, digiCon shall be entitled to charge the Customer for the expenditure incurred in the analysis and other processing, provided that the Customer is guilty of intent or gross negligence in reporting this defect.

## **11. Liability**

- 11.1. digiCon shall pay compensation for damages or reimbursement of futile expenses, irrespective of the legal grounds (e.g. breach of duty, tort), to the following extent:
- a) in the case of intent also of their legal representatives and vicarious agents in the full amount;
  - b) in the event of gross negligence, also of its legal representatives and vicarious agents, to the amount of the typical and foreseeable damage that should have been prevented by the duty of care;
  - c) for slight negligence, also of its legal representatives and vicarious agents, insofar as an obligation is violated, compliance with which is of particular importance for achieving the purpose of the contract (essential contractual obligation). The liability for each individual case of damage is limited to the contractual remuneration or at most to the typical contractual damage foreseeable at the time of conclusion of the contract by the. In all other respects, liability for damage caused by slight negligence and for loss of profit, additional personnel costs incurred by the customer, loss of use, additional journeys, return actions and/or loss of sales is excluded.
- 11.2 In the event of slight negligence digiCon shall be liable for damage caused by delay in the amount of up to 10 (ten) % of the contractual remuneration.
- 11.3 Liability for the absence of an assumed guarantee, for fraudulent intent, under the Product Liability Act and for damage to life, limb or health shall remain unaffected.

## **12. Limitation**

- 12.1. In the case of contracts with companies, the limitation period for claims for rectification of defects due to material defects or defects of title and any claims for damages arising therefrom shall be one year from delivery of the goods. If the defect in title consists of a right in rem of a third party on the basis of which the subject matter of the contract can be demanded, the statutory limitation periods shall apply.
- 12.2. In the case of other claims by the customer from the contract or from a contractual relationship (Section 311 (2) BGB), a limitation period of one year from the start of the statutory limitation period applies. The claims become statute-barred at the latest with the expiry of the statutory maximum periods (Section 199 Paragraphs 3 and 4 BGB).
- 12.3. In the case of intentional and grossly negligent actions, the statutory limitation periods shall apply.

## **13. Granting of rights / Third party rights / Release from liability**

- 13.1 The Customer shall grant digiCon all necessary rights of use to the documents for the performance of the contractually owed services, in particular for the reproduction, dissemination, making available to the public and editing or modification of the documents on the contractual data carriers and the manufacturing and production media. The Customer warrants that he is the owner of the rights required for the intended use of the documents provided to digiCon in accordance with Section 3.1 of these contractual terms and that persons depicted on the printed documents agree to the intended use and that this does not constitute an infringement of the right to one's own image. Furthermore, the Customer warrants that the rights granted to digiCon for the production of the optical data carriers have not already been fully transferred to third parties or are encumbered with the rights of third parties, that third parties have not been commissioned with their exclusive exercise and that at the time of conclusion of the contract there are no other obligations in connection with the rights of third parties which could prevent the granting of rights be- or.

- 13.2 The Customer shall be liable for ensuring that the documents provided to digiCon do not contain any racist, discriminatory, pornographic, youth-protection-endangering, politically extreme or otherwise illegal content or content that violates official regulations or requirements.
- 13.3 digiCon shall not be obliged to check whether the documents meet the requirements set out in Clauses 13.1 and 13.2 and/or are incomplete or defective. digiCon shall, however, be entitled to refuse performance of the contract until clarification in the event of doubt as to the legality of the documents. If the documents provided by the Customer are obviously incomplete or defective, digiCon shall draw the Customer's attention to this. In the event of urgent suspicion that manufacturing or production documents provided to digiCon by the Customer violate the law, digiCon shall be entitled to withdraw from the contract.
- 13.4 The Customer undertakes to complete the questionnaire handed out by digiCon on intellectual and industrial property rights and competition law issues. digiCon shall only be obliged to execute the order once this questionnaire has been sent to us completed in full, all the questions listed have been answered and any necessary information has been obtained at the Customer's expense (e.g. enquiries with property right holders, with collecting societies and obtaining legal advice). If the originally agreed delivery date is postponed by more than four weeks as a result of this, both parties are entitled to withdraw from the contract. Even in the event of withdrawal, the customer shall bear the costs required for the investigations and obtaining of legal advice. Further claims for damages are excluded on both sides, unless they are based on a grossly negligent or intentional breach of contract.
- 13.5 The Customer shall indemnify digiCon on first demand against all claims by third parties for any infringement of rights of exclusion or rights of use (in particular with regard to technical property rights and property right positions, design patents, trademarks, marks, copyrights, personal rights such as the right to one's own image and other rights) arising from the transfer/use of the documents supplied under this contract and used in accordance with the provisions of the contract. The parties shall notify each other in writing without delay if any claims are asserted against them. In addition, the Customer undertakes to reimburse digiCon for any costs incurred due to a possible infringement of rights. This shall also include the costs of legal advice and legal prosecution. The above claims shall exist independently of any claim for monetary damages. The Customer shall not be liable for any infringement of third-party industrial property rights by digiCon, insofar as this infringement results from exceeding the rights of use granted under this contract.

#### **14. Archiving of the documents provided**

- 14.1. digiCon shall archive the documents and items listed under Sections 3.1. and 3.2. - with the exception of printed matter - for any subsequent orders for a period of 15 months from delivery. After expiry of this period, the documents shall be destroyed unless the customer requests a return or further archiving. Further archiving shall be subject to a charge in accordance with digiCon's current price list.
- 14.2. If the documents and items referred to in Section 14.1 are to be insured for the duration of the archiving, the Customer must arrange this himself or notify digiCon in writing. Our liability for damage to or loss of the documents and items shall be limited to grossly negligent and intentional actions as well as the material value during the free fifteen-month archiving period.

#### **15. Applicable law / place of jurisdiction / assignment / partial invalidity**

- 15.1 These contractual terms and conditions and all legal relations between digiCon and the Customer shall be governed by the law of the Federal Republic of Germany, in particular the German Civil Code and the German Commercial Code, to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- 15.2 Insofar as the Customer is a merchant, a legal entity under public law or a special fund under public law, the local or regional court responsible for the company's registered office in Kornwestheim or Frankfurt am Main shall be the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. digiCon shall also be entitled to assert its own claims at the place of jurisdiction of the Customer. In the remainder of en, the statutory provisions on jurisdiction shall apply.
- 15.3 The Customer may only assign claims arising from contracts concluded with digiCon with digiCon's prior written consent.
- 15.4 Should individual provisions of these contractual terms and conditions be or become invalid in whole or in part, or should there be a gap in these contractual terms and conditions, this shall not affect the validity of the remaining provisions.