

General terms and conditions

GZ DIGITAL MEDIA a.s.

GENERAL TERMS AND CONDITIONS

Unless otherwise agreed in writing, the terms contemplated herein ("General Terms and Conditions") shall apply to and govern any purchase arrangement between GZ Digital Media a.s. ("GZ") and a customer ("Customer") to supply products, including but not limited to, optical discs in miscellaneous packaging, vinyl discs in miscellaneous packaging and printed parts ("Products"). These General Terms and Conditions supercede any terms and conditions contained in any document supplied by the Customer.

1. Order and Order Acceptance

1.1.

All orders must be in writing and shall be considered accepted if confirmed in writing by GZ.

1.2.

Prices are understood Ex-Works GZ, Lodenice, Czech Republic, excluding VAT, if applicable.

1.3.

GZ's volume tolerances for Products are plus minus 10% for orders up to 500 units, plus minus 5% for orders in the range 501 to 1000 units, plus minus 2% for orders in the range 1001 to 5000 units and plus minus 1% for orders greater than 5001 units. (For the avoidance of doubt, if the Customer orders 2000 units GZ shall be entitled to supply any number of units between 1960 and 2040.) GZ shall in any event charge the Customer on a per unit basis based on the actual number of units supplied.

2. Delivery Time and Delivery

2.1.

The delivery time quoted by GZ is in calendar days and shall start at the time when GZ receives all the production specifications and production parts, including but not limited to, master tapes, films and artwork ("Production Parts") and the exact packaging instructions, according to GZ's technical conditions. If the production specifications and Production Parts are supplied after 12.00 PM in a given day, the delivery date quoted by GZ shall be increased by one calendar day. If the Customer supplies Production Parts and specifications that require further clarification or correction from the Customer, GZ does not guarantee its previously confirmed delivery date and will quote the Customer a new delivery date on a best efforts basis.

2.2.

GZ shall use all reasonable endeavours to deliver the products to the Customer in accordance with any delivery date agreed in writing with the Customer. All delivery dates, whether agreed in writing or otherwise, are estimates only and, while GZ will endeavour to comply with any such date, it shall not be responsible for late delivery. Without prejudice to the generality of the foregoing, GZ shall not be liable for late delivery or failure to deliver through any cause which is beyond the control of GZ. GZ shall not in any event be liable to the Customer in contract or tort or otherwise for any indirect or consequential loss or damage whenever or howsoever arising, including without limitation, loss of profit, loss of revenue, economic loss, depletion of goodwill and pecuniary loss of any kind whatsoever.

3. Force Majeure

3.1.

GZ reserves the right to defer the date of delivery or to cancel the contract or reduce the volume of the products ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of GZ including, without limitation, acts of God, governmental actions, war or natural emergency, acts of terrorism, protest, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce) or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

4. Invoicing, Terms of Payment

4.1.

Invoices shall be paid when due without any deductions.

4.2.

Payments shall be deemed received by GZ when credited to GZ's account.

4.3.

The time of payment shall be of the essence of the contract. All sums due to GZ shall be paid according to the due date stated on each GZ's invoice.

4.4.

GZ shall have a right to withhold delivery of Products to the Customer if the Customer has outstanding debts to GZ that are past due.

4.5.

The Customer is not allowed to withhold any payment due to GZ to set-off his/her counterclaim for whatever reason, unless previously agreed in writing with GZ.

4.6.

GZ is authorized to use funds received from the Customer to settle the Customer's invoices which are past due.

4.7.

The Customer shall be obliged to reimburse GZ for any VAT charges levied from GZ by the relevant authorities if the Customer supplies GZ with an incorrect VAT number or incorrect information about his/her VAT registration status.

4.8.

If payment is not made on or before the due date, GZ will exercise its statutory right to claim interest and compensation for debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998 and the Late Payment of Commercial Debts Regulations 2002 or under such equivalent legislation as exists in the country where the Customer has its registered office or permanent residence.

5. Third Party Rights

5.1.

The Customer declares that he/she possesses all relevant rights including, inter alia, mechanical duplication rights and author rights ("Third Party Rights") and that all fees and royalties due to beneficiaries of Third Party Rights have been paid or will be paid when due. The Customer agrees to hold GZ harmless and to indemnify GZ in full for any costs and expenses incurred in case of any claim brought against GZ by a third party for breaching Third Party Rights when fulfilling the Customer's order. The Customer agrees that GZ is authorized to inform the relevant authorities (for example BIEM or IFPI) about the Customer's order(s) if required by GZ internal rules regarding Third Party Rights.

6. Right to Reject an Order

GZ shall have a right to reject a confirmed order if:

6.1.

GZ determines, in its sole discretion, that the content to be duplicated is of an offensive nature.

6.2.

GZ does not receive reasonable proof, the reasonableness of which shall be determined exclusively by GZ, that the Customer possesses all the relevant Third Party Rights.

6.3.

GZ does not receive Production Parts according to GZ technical conditions.

7. Storage of Production Parts

7.1.

The manufacturing basis materials mean pursuant to Article 2.1 the data required for the production of the medium and/or printed materials, which are stored in the FTP server of GZ, or are supplied by the Client on a data carrier (CD-R, DVD-R and other carriers specified by Technical Conditions of GZ). In order to ensure smooth cooperation the GZ and Client expressly agreed upon that to each catalogue number of the Client there would be assigned only one single version of the manufacturing basis materials; in the event that for the re-edition the Client would require the change of manufacturing basis materials, the original (out-of-date) basis materials shall be liquidated without giving any notice to the Client (both in physical form and in electronic form, i.e. the data on the FTP server of GZ).

7.2.

GZ shall store Customer's Production Parts free of charge for a period of 24 months. GZ shall be entitled to destroy Production Parts that have not been used for a period longer than 24 months, without further notification of the Customer.

7.3.

GZ shall not be held liable for the loss, for whatever reason, or damage, of whatever nature, of stored Production Parts.

8. Ownership, Responsibility, Delivery

8.1.

Products shall remain the property of GZ as legal and equitable owner until payment of all sums due to GZ from the Customer in respect of the contract have been received in full by GZ in cleared funds.

8.2.

Responsibility for damage of the Products supplied by GZ to the Customer shall be transferred from GZ to the Customer according to the delivery term FCA, as stipulated by INCOTERMS 2000 and unless otherwise stated on GZ's invoice for Products.

9. Claims

9.1.

GZ shall not accept any claim for Product(s) quality unless:

9.1.1.

The Customer notifies GZ in writing immediately after he/she has detected such failure and no later than 14 calendar days after delivery. Hidden defects which could not reasonably be determined within 14 calendar days after delivery shall be notified to GZ in writing immediately after having been discovered.

9.1.2.

GZ is able to have its own personnel inspect the claimed Product at the place of storage or if the Customer delivers the claimed Products to GZ, at GZ's expense.

9.1.3.

The percentage of Products claimed is greater than 1% of the total number of units delivered.

9.1.4.

If the Products delivered show upon delivery visible damage which could have been caused during transportation, the Customer must deliver to GZ a shipping document executed by both the Customer and a representative of a shipping agent stating the nature and scope of the damage.

9.2.

GZ shall not accept any claim for the volume deficiency of an order unless reasonably documented by the Customer and unless GZ is notified within 48 hours after delivery.

9.3.

GZ is entitled to be reimbursed for expenses incurred during the examination of a Customer's claim (for example travel or shipping expenses) if the claim proves grossly unjustified.

10. Jurisdiction

10.1.

The formation, existence, construction, performance, validity and all aspects of the General Terms and Conditions shall be governed by the law of the country where the customer has its registered office or permanent residence and the parties submit to the exclusive jurisdiction of that country's courts.

11. Other

11.1.

No waiver by GZ shown or granted to a Customer whether in respect of these General Terms and Conditions or otherwise shall in any way affect or prejudice the rights of GZ against the customer or be taken as a waiver of any of these General Terms and Conditions.

11.2.

The parties to this contract do not intend that any term of this contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 or under such equivalent legislation as exists in the country where the customer has its registered office or permanent residence by any person that is not a party to it.