

International Terms and Conditions for Customers not Resident in Germany

I. Application of the International Terms and Conditions

1. These International Terms and Conditions apply to all customers of SÜDDEKOR Art Design + Engraving GmbH - hereinafter referred to as SD Art - if the relevant place of business of the customer is **not in Germany**. For customers whose place of business is in Germany, the General Terms and Conditions for trade within Germany ("Allgemeine Geschäftsbedingungen gültig für den Warenverkehr innerhalb Deutschlands") of SD Art apply, which will be forwarded on request. In each case, the relevant place of business is the one which concludes the contract in its own name.
2. These International Terms and Conditions apply to all contracts made on or after 1 November 2015 whose preponderant object is the **development of designs and/or decors, the performance of engraving works, the supply of rotogravure printing cylinders and/or the supply of embossing rollers** (hereinafter individually and collectively referred to as "subject matter of the contract") to the customer. Additional obligations assumed by SD Art do not affect the application of these International Terms and Conditions.
3. Conflicting or differing **terms of business of the customer** do not bind SD Art, even if SD Art does not object to them or even if SD Art unconditionally renders performance or accepts the customer's performance. The provisions of this paragraph equally apply insofar as the terms of business of the customer, irrespective of the contents of these International Terms and Conditions of Business, deviate from statutory provisions.
4. These International Terms and Conditions do not apply, if the customer buys the subject matter of the contract for **personal, family or household use** and if SD Art knew or should have known that at the conclusion of the contract.

II. Formation of the Contract

1. The customer is under an obligation to give **written notice to SD Art** prior to the formation of a contract if the subject matter of the contract is to be fit not only for normal use or will be used in circumstances which are unusual or which present a particular risk to health, safety or the environment, or which require a more demanding use or if there is a risk of atypical damages or unusual amounts of loss of which the customer is or ought to have been aware.
2. **Orders of the customer** are to be put in writing. If the customer's order deviates from the proposal or the tender submitted by SD Art, the customer will emphasize the differences as such.
3. All orders, in particular also those received by employees of SD Art, will **take effect exclusively if followed by a written acknowledgement** of the order by SD Art. The actual delivery of the subject matter of the contract, any other conduct of SD Art or silence on the part of SD Art does not allow the customer to assume the formation of the contract. SD Art can dispatch such written acknowledgement of the order up to and including **fourteen (14) calendar days after** the customer's order has been received by SD Art. Until this time, the customer's order is irrevocable.
4. The written **acknowledgement of the order** by SD Art shall be **received in time**, if it is received by the customer within fourteen (14) calendar days after its date of

issue. The customer will inform SD Art without delay, if the written acknowledgement of the order is received with some delay.

5. The written acknowledgement of the order by SD Art sets out all the **terms of the contract** and brings the contract into effect even if - except for the price and the quantity to be delivered - the written acknowledgement is not consistent with the declarations of the customer in every respect, especially with reference to the exclusive application of these International Terms and Conditions. Particular wishes of the customer, namely warranties or guarantees with reference to the subject matter of the contract or the performance of the contract therefore require express written confirmation by SD Art in every case. The contract will only fail to come into existence if the **customer objects in writing** that the acknowledgement of the order by SD Art is not completely consistent with the declarations of the customer, the customer specifies the deviations in writing and if the objection is received by SD Art within a short time, at the latest seven (7) calendar days, after receipt of the written acknowledgement of the order by the customer.
6. Confirmations produced by the customer are of **no effect** without any objection by SD Art being necessary. In particular, neither the actual delivery or other performance of the subject matter of the contract, any other conduct of SD Art or silence on the part of SD Art shall give rise to any belief by the customer in the relevance of his confirmation.
7. SD Art's **employees**, commercial agents or other sales intermediaries are not authorized to dispense with the requirement of a written acknowledgement of the order by SD Art or to make promises which differ from its content or guarantees. If and to what extent such persons are authorized to make or receive declarations with effect for or against SD Art, is to be determined according to German law.
8. **Amendments** to the concluded contract always require written confirmation by SD Art.

III. Obligations of SD Art

1. Subject to an exemption according to section VII.-1. b) SD Art must **deliver the** subject matter of the contract specified in the written acknowledgement of the order and transfer the property in the goods and/or in case of sole development of designs and/or decors provide those. SD Art is **not obliged to perform obligations** not stated in the written acknowledgment of the order by SD Art or in these International Terms and Conditions, in particular SD Art is under no obligation to transmit working instructions, if not explicitly agreed upon in writing to furnish information, documents or certificates, or to deliver accessories or to advise the customer.
2. SD Art's obligations under the contract made with the customer are owed only to the customer. Third parties not involved in the conclusion of the contract, in particular the **customer's clients**, are not entitled to request delivery to be made to them or to assert any other claim arising from the customer's contract with SD Art. The customer gives SD Art an unlimited indemnity against all claims made by third parties against SD Art out of the contract made with the customer. The customer's responsibility to take delivery continues to exist even if he **assigns rights to third parties**.
3. Taking account of the **tolerances customary** in trade SD Art undertakes to deliver to the customer the subject matter of the contract of the agreed kind and quantity which meet the common standards applicable in Germany. In the case of sole development of designs and/or decors, SD Art has to provide them in a way that they meet the common standards applicable in Germany taking account of the tolerances customary in trade. Divergences in measure and size, structure and

colour are reserved as far as they result from the nature of the materials used and are customary in trade. SD Art is entitled to make **part deliveries** and to invoice them separately and ensures that at the time of delivery the subject matter of the contract is free from rights or claims of third parties which could prevent its use within the European Union.

4. If further **specification** is required in relation to the subject matter of the contract, SD Art will carry this out having regard to his own interests and to the identifiable and legitimate interests of the customer. A request to the customer to specify the subject matter of the contract, or to participate in the specification, is not required. SD Art does not undertake to inform the customer of the specification he has made or to give the customer the option of a differing specification.
5. Subject to the provisions of section III.-6. SD Art undertakes to place the subject matter of the contract packaged and marked according to SD Art's standard **at disposal for collection by the customer FCA (Incoterms 2010)** at the place of delivery indicated in the written acknowledgement of the order or - if a place of delivery is not indicated - at the premises in 47877 Willich/Germany at the agreed time of delivery. Previous separation or marking of the subject matter of the contract or notification to the customer of the subject matter of the contract being placed at disposal is not required. Under no circumstances, not even when other Incoterms are agreed is SD Art obliged to inform the customer of the delivery, to examine the subject matter of the contract with respect to its conformity with the contract on the occasion of delivery, to check the operational safety of the means of transport and the transportation safe loading or to furnish proof of the delivery being effected. The agreement of other Incoterms or of clauses such as "delivery free....." or similar ones merely involve a variation of the provisions as to the transportation and the transportation costs; besides that, the provisions laid down in these International Terms and Conditions remain applicable.
6. Deviating from section III.-5., in the case of sole development of designs and/or decors, these are to be delivered to the customer by courier or other postal services or provided electronically at the agreed time of performance. In these cases, the **place of performance is SD Art's place of business.**
7. The **organization of the transport** and the insurance of the subject matter of the contract beyond the place of delivery decisive according to section III.-5. is none of SD Art's obligations, but is incumbent to the customer. If the customer does not give a counter instruction in writing in time, SD Art is entitled - without the customer asking for it or without existing such a commercial practice - to contract on terms usual in Germany in the customer's name and at the customer's risk and expense for carriage and/or insurance of the subject matter of the contract to the destination indicated in writing by the customer and - if such a destination is not indicated - to the place of business of the customer. Insurance of the subject matter of the contract is also none of SD Art's obligations in the cases stipulated in section III.-6.
8. Agreed **delivery time periods or delivery dates as well other performance dates** are subject to the customer's procuring any required documents, releases, permits, approvals, licences or any other authorizations or consents in sufficient time, opening letters of credit and/or making down-payments as agreed and performing all other obligations incumbent upon him properly and in good time and subject to no delay caused by pre-shipment inspections mandated by authorities. Moreover, agreed delivery and other performance time-periods begin on the date of the written acknowledgement of the order by SD Art. SD Art is entitled to deliver or otherwise perform earlier than at the agreed delivery or other performance time or to select the date of delivery or date of performance within the agreed period for delivery or performance.
9. Without prejudice to his continuing legal rights, SD Art is entitled to fulfil his obligations **after the delivery time agreed upon**, if the customer is informed that

SD Art will exceed the delivery time limit and of the time period for late performance. Subject to the aforesaid conditions, SD Art is entitled to make repeated attempts at late performance. The customer can object to late performance within reasonable time, if the late performance is unreasonable. An objection is only effective, if it is received by SD Art before commencing late performance. SD Art will reimburse necessary additional expenditure, proven and incurred by the customer as a result of exceeding the delivery time to the extent that SD Art is liable for this under the provisions laid down in section VII.

10. **Risks as to price and performance** even in relation to subject matters of the contract which are not clearly identifiable to the contract and without it being necessary for SD Art to give notice, pass to the customer with delivery pursuant to section III.-5. respectively transmission pursuant to section III. 6., albeit irrespective of delivery as soon as the title has passed to the customer. In the cases stipulated in section III.-5. the **loading of the** subject matter of the contract is part of the customer's obligations. The agreement of other Incoterms or of clauses such as "delivery free....." or similar ones merely involve a variation of the provisions as to the transportation and the transportation costs; besides that, the provisions laid down in these International Terms and Conditions remain applicable.
11. SD Art is not obliged to clear the subject matter of the contract for export. However, if applicable SD Art will apply for necessary export licences and any **customs formalities** necessary for the export after the customer has furnished SD Art with the data essential for the export in a written notice attending to this purpose exclusively. The agreement of other Incoterms or of clauses such as "delivery free....." or similar ones merely involve a variation of the provisions as to the transportation and the transportation costs; besides that, the provisions laid down in these International Terms and Conditions remain applicable.
12. SD Art is **not obliged** to procure documents or certificates not expressly agreed, to obtain any licences, authorizations or other **documents** necessary for the export, transit or import, or to provide security or customs **clearance**. The agreement of other Incoterms or of clauses such as "delivery free....." or similar ones merely involve a variation of the provisions as to the transportation and the transportation costs; besides that, the provisions laid down in these International Terms and Conditions remain applicable.
13. SD Art is in no case liable to perform duties associated with the making available of the subject matter of the contract on the market **outside Germany**, to bear levies, duties and charges accruing outside Germany, to comply with weight and measuring systems, packaging, labelling or marking requirements or registration or certification obligations applicable outside Germany or to comply with any other legal provisions applicable to the subject matter of the contract outside Germany. The customer will arrange for translations in any language other than German of instructions, safety information, performance declarations or other written materials about the goods required by law or called for otherwise at his risk and expense.
14. Without prejudice to his continuing legal rights and without a previous notice to the customer being necessary, SD Art is entitled to **suspend the performance of his obligations** so long as, in the opinion of SD Art, there are grounds for concern that the customer will wholly or partly fail to fulfil his obligations in accordance with the contract. In particular, the right to suspend arises if the customer insufficiently performs his obligations to enable payment to SD Art or a third party or pays late or if the limit set by a credit insurer has been exceeded or will be exceeded with the forthcoming delivery. Instead of suspending performance SD Art is entitled at his own discretion to make future deliveries, even if confirmed, conditional on payment in advance or on opening of a letter of credit confirmed by one of the big German commercial banks. SD Art is not required to continue with performance of his obligations, if an assurance given by the customer to avoid the suspension does not provide adequate security or could be challenged pursuant to an applicable law.

15. Except as provided in section III.-10., SD Art is only obliged to inform the customer of **possible disruption in performance**, once the commencement of the disruption is definitely certain for SD Art.

IV. Obligations of the Customer

1. Irrespective of continuing obligations of the customer to guarantee or to enable payment, the customer undertakes to pay the **agreed price for the subject matter of the contract** in the currency specified in the written acknowledgement of the order transferring it without deduction and free of expenses and costs to one of the financial institutions designated by SD Art. Insofar as the delivery or other performance shall not take place within four (4) months after the conclusion of the contract, SD Art can replace the agreed price by the price which is SD Art's usual price at the time of delivery or performance respectively. To the extent that a price for the subject matter of the contract has not been agreed, the price which is at the agreed time of delivery or performance SD Art 's usual price for the subject matter of the contract will apply. SD Art 's employees, commercial agents or other sales intermediaries are not authorized to accept payments.
2. The payment to be made by the customer is in any event **due for payment** at the time specified in the invoice. The due time for payment arises without any further pre-condition and, in particular, does not depend on whether the customer has already taken delivery of the subject matter of the contract and/or the documents and/or has had an opportunity to examine the goods. The **periods granted for payment** will cease to apply and outstanding accounts will be due for immediate payment, if insolvency proceedings relating to the assets of the customer are applied for, if the customer without providing a justifiable reason does not meet fundamental obligations due towards SD Art or towards third parties, if the customer has provided inaccurate information regarding his creditworthiness or to the extent that the cover given by a credit insurer is reduced on grounds for which SD Art is not responsible.
3. The customer warrants that all legal requirements and documentations for the handling regarding **customs laws and value added tax** of the delivery and/or any service will be fulfilled. To the extent that SD Art has to pay German and/or foreign customs duties and/or value added tax, the customer will indemnify SD Art in all and every respect without prejudice to any continuing claim by SD Art. The indemnity is granted by the customer waiving any further requirements or other defences, in particular waiving the defence of limitation or prescription and also includes the reimbursement of the expenses incurred by SD Art.
4. Regardless of the currency and of the jurisdiction of any court, SD Art is entitled at his own discretion to **set off** incoming payments against claims existing against the customer by virtue of his own or assigned rights at the time of payment.
5. Any statutory rights of the customer to **set-off** against claims of SD Art, to **withhold payment** or taking delivery of the subject matter of the contract, to **suspend** the performance of his obligations or to **raise defences or counterclaims** are excluded, except where the corresponding claim of the customer against SD Art is in the same currency, is founded in the customer's own right and is either due and undisputed or has been finally adjudicated or where despite written warning by the customer SD Art has committed a fundamental breach of his obligations due and arising out of the same contractual relationship, and has not offered any adequate assurance.
6. The customer undertakes to furnish SD Art with the data to apply for the customs formalities according to section III.-11. reasonable time ahead, **to take delivery** of the subject matter of the contract in the cases governed by section III.-5. either by

himself or by a person appointed by him to SD Art at the delivery time without taking any additional period of time and at the place of delivery resulting from section III.-5. and shall fulfil all the duties imposed by the contract, by these International Terms and Conditions, by the rules of the ICC for the use of Incoterms® 2010 and by statutory provisions. The customer is only entitled to refuse to take delivery of the subject matter of the contract if he avoids the contract in accordance with the rules in section VI.-1.

7. Irrespective of any statutory provisions, the customer shall at his own cost take care of or in any other way ensure renewed utilization, material recycling or otherwise prescribed **waste-disposal** of the subject matter of the contract delivered by SD Art to the customer and of the packaging material.

V. Delivery of non-conforming subject matters of the contract or subject matters of the contract with defective title

1. Without prejudice to any exclusion or reduction of liability of the seller provided by law, the subject matter of the contract does **not conform with the contract** if the customer proves that, taking into account the terms in section III., at the time the risk passes the packaging, quantity, quality or the description of the subject matter of the contract is significantly different to the specifications laid down in the written acknowledgement of the order, or in the absence of agreed specifications, the goods are not fit for the purpose which is usual in Germany. Natural divergences in structure, colour and grain do not constitute a non-conformity. Regardless of the stipulation established in sentence 1, the subject matter of the contract shall be deemed to conform with the contract to the extent that the legal regulations applicable at the place of business of the customer do not prevent the usual use of the subject matter of the contract.
2. To the extent that the written acknowledgement of the order by SD Art does not contain an explicit statement to the contrary, SD Art is in particular **not liable** for the subject matter of the contract being fit for a purpose which is not usual in Germany or for complying with further reaching expectations of the customer or for possessing the qualities of a sample or a model or for their compliance with the legal regulations existing outside of Germany, for instance in the customer's country. In addition, SD Art is not responsible for the results of working the subject matter of the contract with other materials; rather the customer is obliged prior to the commencement of the work to know the suitability of the subject matter of the contract to being worked with particular materials and/or with particular techniques. SD Art shall also not be liable for any non-conformity with the contract that did not exist at the time the risk has passed. To the extent that the customer, either himself or through third parties, initiates the removal of non-conformities without the prior consent of SD Art in writing, SD Art will be released from his liability.
3. The customer is obliged vis-à-vis SD Art to **examine or to have examined** every single delivery and other performance comprehensively for any discoverable or typical lack of conformity with the contract and moreover as required by law.
4. Without prejudice to any exclusion or reduction of liability of the seller provided by law, the subject matter of the contract has a **deficiency in title** if the customer proves that the subject matter of the contract is not free from enforceable rights or claims of third parties at the time risk passes. Without prejudice to further legal requirements, third parties rights or claims founded on industrial or other intellectual property constitute a deficiency in title only to the extent that the rights are registered, made public and in legal force in Germany and prevent the usual use of the goods in Germany. Regardless of the stipulation established in sentence 1, title to the subject matter of the contract shall be deemed not to be defective to the extent that the legal regulations applicable at the place of business of the customer do not prevent the usual use of the subject matter of the contract.

5. Without prejudice to the statutory obligations of the customer to give notice within reasonable time, the customer is obliged vis-à-vis SD Art to give notice to SD Art of any lack of conformity with the contract or any deficiency in title at the latest within one (1) year after taking delivery in accordance with section IV.6 respectively transmission pursuant to section III.-6. Such **notice** has to be made in writing and directly to SD Art and to be formulated in such a precise manner as to enable SD Art to effect remedy measures without need for further inquiries at the customer and to secure claims against SD Art's suppliers and moreover as required by law. SD Art's employees, commercial agents or other sales intermediaries are not authorised to accept notices outside SD Art's premises or to make any statements concerning lack of conformity with the contract or of title and its consequences.
6. Following **due notice** according to section V.-5., the customer can rely on the remedies provided by these International Terms and Conditions. The customer has no other rights or claims whatsoever and no claims of a non-contractual nature. In the event of **notice not having been properly given**, the customer may only rely on remedies if SD Art has fraudulently concealed the lack of conformity with the contract or the deficiency in title. Statements by SD Art as to the lack of conformity with the contract or as to the deficiency in title are for the purpose of explaining the factual position only, but do not entail any waiver by SD Art of the requirement of proper notice.
7. The customer is **not entitled to remedies** for delivery or other performance of a non-conforming subject matter of the contract or a subject matter of the contract with a deficiency in title, insofar as the customer is liable vis-à-vis third parties for conditions of the subject matter of the contract or its fitness for a use which is/are not subject of the agreement with SD Art, or if the customer's claim is based on foreign law not in force in Germany.
8. To the extent that the customer in accordance with the terms of these International Terms and Conditions is entitled to remedies because of delivery or other performance of a non-conforming subject matter of the contract or a subject matter of the contract with defective title, he is entitled to demand in accordance with the terms of the UN Sales Convention **delivery of a substitute subject matter of the contract or repair or to reduce the price**. The delivery of a substitute subject matter of the contract or repair does not lead to a recommencement of the limitation period. The reduction of the price is limited to the damages suffered by the customer. Further claims for performance are not available to the customer. Irrespective of the customer's remedies, SD Art is always entitled in accordance with the provision in section III.-9. to repair a subject matter of the contract which does not conform with the contract or to supply a substitute subject matter of the contract or to avert the customer's remedies by giving him a credit note of an appropriate amount.

VI. Avoidance of the Contract

1. The **customer** is entitled to **declare the contract avoided**, if the respective applicable legal requirements are complied with, after he has threatened SD Art with avoidance of the contract in writing and an additional period of time of reasonable length for performance fixed in writing has expired to no avail. If the customer claims delivery of substitute goods, repair or other performance, he is bound for a reasonable period of time to the chosen remedy, without being able to exercise the right of declaring the contract avoided. In any event, the customer must give notice of avoidance of the contract within reasonable time in writing and to SD Art directly.
2. Without prejudice to his continuing legal rights, **SD Art** is entitled to avoid the contract in whole or in part if the customer objects to the application of these

International Terms and Conditions , if on grounds for which SD Art is not responsible the written acknowledgement of the order by SD Art is received by the customer more than fourteen (14) calendar days after its date of issue, if insolvency proceedings relating to the assets of the customer are applied for, if SD Art through no fault of his own does not receive supplies properly or on time, or if for other reasons SD Art cannot be expected to fulfil his obligations by means which - taking into consideration his own interests and that of the customer as far as ascertainable and legitimate at the time of formation of the contract - are unreasonable, in particular in relation to the agreed counter-performance. Likewise SD Art is entitled to avoid the contract after prior warning if the customer does not furnish SD Art with the data necessary to apply for customs formalities in due time, if the customer without providing a justifiable reason does not meet fundamental obligations due towards SD Art or towards third parties, if the customer has provided inaccurate information regarding his creditworthiness or to the extent that the cover given by a credit insurer is reduced on grounds for which SD Art is not responsible.

VII. Damages

1. Without waiving the legal requirements **SD Art** is only obliged to **pay damages** due to the violation of obligations resulting from the contract with the customer, the contractual negotiations carried on with the customer or the business relation with the customer in accordance with the following provisions:

a) The customer is required in the first instance to **rely on other remedies** and can only claim damages in the event of a continuing deficiency. The customer cannot claim damages as an alternative to other remedies.

b) **SD Art is not liable** for the conduct of suppliers, subcontractors, carriers or freight-forwarders or for damages to which the customer has contributed. Neither is SD Art liable for impediments which occur, as a consequence of natural or political events, acts of state, industrial disputes, sabotage, accidents, terrorism, biological, physical or chemical processes or comparable circumstances and which cannot be controlled by SD Art with reasonable means. Moreover, SD Art is only liable to the extent that the customer proves that the executive bodies or members of staff of SD Art have deliberately or negligently breached contractual obligations owed to the customer.

c) In the event of liability SD Art will compensate within the limits of lit. d) the **losses** of the customer to the extent that the customer proves that he has suffered an unavoidable loss caused by the breach of obligations owed to the customer by SD Art and **foreseeable** to SD Art, at the time of the formation of the contract in respect of the occurrence of the loss and its amount. Moreover, the customer is required to **mitigate his loss** as soon as a breach of contract is or ought to be known.

d) SD Art is **not liable** for loss of profit or damage to reputation. Moreover, the **amount of damages** for late or non-existent delivery or other performance is limited to 0,5 per cent for each full week of delay, up to a maximum of 5 per cent, and in case of remedies because of delivery of a non-conforming subject matter of the contract and/or a subject matter of the contract with a deficiency in title is limited to an amount of 200 per cent of the value of the non-conforming part of the contract. However, this subparagraph does not apply to injury of life, body or health, to fraudulent concealment of a non-conformity or deficiency in title and to other breaches of contractual obligations due to intentional harm or gross negligence.

e) For breach of contractual, pre-contractual and/or obligations resulting from the business relation owed to the customer, SD Art is obliged to pay damages exclusively in accordance with the provisions of these International Terms and Conditions . Any recourse to **concurrent bases of claim**, in particular of a non-

contractual nature, is excluded. Equally excluded is any recourse against SD Art's company organs, employees, servants, members of staff, representatives and/or those employed by SD Art in the performance of his obligations on grounds of breach of contractual obligations owed by SD Art.

f) Insofar as the limitation period may not already have barred the claim, claims for damages brought by the customer are excluded after **six (6) months** beginning with the rejection of the claim for damages by SD Art.

2. Irrespective of continuing legal or contractual claims the **customer** is obliged to pay **damages** to SD Art as follows:

a) In the event of **delay in payment** the customer will pay the costs of judicial and extra-judicial means and proceedings, usual and accruing within the country and abroad, as well as (without evidence being necessary) interest at the rate applicable in 47877 Willich/Germany for unsecured short-term loans in the agreed currency, at least however interest at 9 per-cent points over the base rate of the German Federal Bank (Deutsche Bundesbank).

b) In the case of a failure to take delivery of the subject matter of the contract by the customer or of seriously **late taking delivery** of the subject matter of the contract by the customer, SD Art is entitled to claim damages without evidence being necessary up to 15 per cent of the agreed price.

3. Within the bounds of what is legally possible as well as within what is usual in the trade, the **customer** is in his commercial relationships with his clients obliged to **limit his liability** both in principle and in amount.

VIII. Other Provisions

1. **Title of the subject matter of the contract** that has been delivered **remains with SD Art** until settlement of all claims existing against the customer. The allocation of risk as to price and performance in section III.-10. is not affected by the reservation of title.

2. The customer shall, without any demand being necessary, inform SD Art in writing if SD Art has to observe any particular duties of reporting or registration or providing information or prior notification or **retaining documents** or any other **requirements for access to market**, under the provisions in force in the customer's country or in the country where the subject matter of the contract is to be used. Moreover, the customer will **monitor the subject matter of the contract** in the market and inform SD Art directly and in writing of any concern that the subject matter of the contract might pose a risk to third parties.

3. Without prejudice to SD Art 's continuing claims, the customer will indemnify SD Art without limit against all claims of third parties which are brought against SD Art on the grounds of **product liability** or similar provisions, to the extent that the liability is based on circumstances which - such as, for example, the presentation of the product - were caused by the customer or other third parties without express written consent of SD Art. In particular, the indemnity also includes the reimbursement for expenses incurred by SD Art and is granted by the customer waiving further conditions or other objections, in particular without requiring compliance with control and recall obligations, and waiving any defence of limitation.

4. In relation to pictures, drawings, calculations and other **documents** as well as computer-software, which have been made available by SD Art in a material or electronic form, the latter reserves all proprietary rights, copyrights, other industrial property rights as well as know-how rights. However, to the extent the performance of SD Art consists of the development of designs and/or decors, the customer is

granted a non-exclusive and irrevocable right of use of these designs and/or patterns upon complete payment.

5. All communications, declarations, notices etc. are to be drawn up exclusively in **German or English**. Communications by means of fax or e-mail fulfil the requirement of being **in writing**.

IX. General Basis of Contracts

1. The **place of delivery** or other performance results from section III.-5. respectively section III.-6. of these International Terms and Conditions and applies likewise to the delivery of a substitute subject matter of the contract or the repair of a delivered or otherwise performed subject matter of the contract. The **place of payment and performance** for all the rest of obligations arising from the legal relationship between SD Art and the customer is 47877 Willich/Germany. These provisions also apply if SD Art assumes the costs of money remittance, renders performance for the customer somewhere else or payment is to be made in exchange of documents or subject matters of the contract or in the case of restitution of performances already rendered. SD Art is also entitled to require payment at the place of business of the customer. The agreement of other Incoterms or of clauses such as "delivery free....." or similar ones merely involve a variation of the provisions as to the transportation and the transportation costs; besides that, the provisions laid down in these International Terms and Conditions remain applicable.
2. The United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods (**UN Sales Convention / CISG**) in the English version governs the legal relationship with the customer. The UN Sales Convention applies, above and beyond its own area of application, and regardless of reservations adopted by other states, to all contracts to which these International Terms and Conditions are to be applied according to the provisions of section I., especially and expressly including the performance of development of designs and/or decors, the performance of engraving works, the supply of rotogravure printing cylinders and the supply of embossing rollers. Art. 3(2) of the CISG does not apply. Where standard terms of business are used, in case of doubt the Incoterms® 2010 of the International Chamber of Commerce apply taking into account the provisions stipulated in these International Terms and Conditions.
3. The **formation of contract**, including agreements as to the jurisdiction of courts and arbitrators, and the **rights and obligations of the parties**, also including the liability for death or personal injury caused by the subject matter of the contract to any person and breach of pre-contractual and collateral obligations, as well as the interpretation are exclusively governed by the UN Sales Convention together with these International Terms and Conditions. Subject to differing provisions in these International Terms and Conditions, the rest of the legal relationship between the parties is governed by the Swiss Code of Obligations.
4. All contractual and extra-contractual disputes as well as disputes under insolvency law, arising out of or in connection with contracts to which these International Terms and Conditions apply, including their validity, invalidity, violation or cancellation as well as other disputes arising out of the business relationship with the customer shall be finally resolved, without recourse to the ordinary courts of law, by arbitration according to the Swiss Rules of International **Arbitration** (Swiss Rules) in force on the date when the Notice of Arbitration is received in accordance with these Rules. The tribunal shall consist of three arbitrators, one (1) of them shall be nominated by the claimant, one (1) of them by the respondent and the chairman of the tribunal shall be designated by the two arbitrators so nominated, or if the amount in dispute is inferior to €250.000, there shall be one (1) arbitrator appointed according to the Swiss Rules of International Arbitration. The place of the arbitration shall be Zurich/Switzerland, the languages used in the arbitral proceedings shall be

German and/or English. The competence of the Arbitral Tribunal excludes especially every statutory competence, which is provided by reason of a personal or substantive relation. If this arbitration clause is ineffective or ceases to be effective, the exclusive local and international jurisdiction of the courts which have jurisdiction for 47877 Willich/Germany is agreed for all disputes instead. Instead of bringing an action before the arbitral tribunal and irrespective of any ineffectiveness of the arbitration clause, SD Art is also entitled to bring an action before the State Court which has jurisdiction for 47877 Willich /Germany or the State Court of the customer's place of business, or any national court with jurisdiction according to domestic or foreign law.

5. If provisions of these International Terms and Conditions should be or become partly or wholly ineffective, the remaining arrangements will continue to apply. The parties are bound to replace the ineffective provision with a legally valid provision, as close as possible to the commercial meaning and purpose of the ineffective provision.