

Special Terms and Conditions for Packaging Services (VPD)

(Version 09/2018)



MARBACH

Scope

The conditions of the following sections apply as supplementary and more specific special provisions to the General Terms and Conditions of business of MARBACH for all services and works described, which are not merely secondary obligations of a purchase contract. If the services described in sections 1 to 5 are essential content of the contract, the General Terms and Conditions of business of MARBACH

Section 3 Duties: Drawings, certificates, models, samples

Section 12 Third Party Intellectual Property Rights, Confidentiality
do not apply. These are replaced by the following special regulations. The remaining sections apply analogously to the delivery of agreed performance results in the case of a contract for work and services. For services only, the clauses of the general terms and conditions of business do not apply, which require a delivery (purchase contract) or successful performance (contract for work and services).

Section 1: General special conditions for packaging services

1. Performance obligations, subcontractors, third-party services

- 1) We only have to provide services that are expressly listed in our offers and order confirmations or are included in a specification sheet agreed with us. In particular, personal presentations of interim results or work results or the participation in customer appointments including an appointment for examination or acceptance are not binding without agreement. Additional meetings requested by the customer will be charged at the hourly rates agreed per section 1 number 2 paragraph (2) per person per hour. If an hourly fee has not been agreed, paragraph (7) shall apply analogously.
- 2) The subject matter of any contract is the provision of the agreed service by us, but not certain economic successes hoped for or planned for by our customers (for example, optimization or advertising success).
- 3) If consulting or creative services are due on the basis of an hourly fee, the service will be the main duty, even if concrete work results are developed in the course of the service.
- 4) Specifically defined order results (e.g. the design and creation of a layout design for the customer packaging, the manufacturing of CAD packaging constructions, platter patterns, sample die sets, etc.) are understood as services, even if the focus of the activity is on the creative performance in the individual case.
- 5) The delivery of samples or small batches is subject to purchase regulations (purchase contract or contract to supply labour and materials).
- 6) In the quotation positions of our offers and order confirmations, we indicate which type of contract this VPD (VPD) is based on.
- 7) We may use third parties (in particular subcontractors and / or freelancers) to carry out any service, work or sales contract. Subcontractors commissioned by us are our vicarious agents.
- 8) In all cases of subsequent change in the content of service or scope of service for which we are not responsible, both contracting parties have the right to demand that the originally agreed terms of the contract and the originally agreed price be adjusted if no hourly fee has been agreed. If a new price agreement is not reached and the customer nevertheless requests the carrying out of the altered service or delivery, we are entitled to settle the altered remuneration offered by us on the basis of the conditions offered by us. If a concrete price offer has not been made, the additional expenses must be settled according to the agreed hourly rate. If an hourly rate is not agreed, our general hourly rate, valid at the time of provision of the service, will be charged.

2. Remuneration, prices and expenses

- 1) The agreed remuneration or the purchase price is stated in our order confirmation (section 4 (1) of the General Terms and Conditions of business of MARBACH).
- 2) Fees for services shall be charged at the hourly rate as offered or confirmed. Fees will be charged for every 6 minutes begun. The fee is due after invoicing. If a time or budget framework is estimated when placing the order, we will inform the customer if it is expected to exceed 10% of the original estimate. If no differing invoicing period has been agreed, we shall be entitled to submit an invoice at the end of the month for the services rendered in the billing period. If the invoicing period only includes minor claims by us (up to a maximum of 2 hours/billing period), invoicing may be postponed maximally to the end of the calendar year of the service to be invoiced, as long as the customer does not object. The time billed by us is considered acknowledged, if the customer does not contradict this within a one-month period after receipt of the invoice together with time registration. Objections to time registration must be submitted in writing or text form within one month (cut-off period).
- 3) Work performances shall be settled with the agreed flat-rate remuneration for the services rendered. The prices quoted are net without expenses and Value Added Tax (VAT). Unless otherwise agreed, we are entitled to demand 50% of the fee as advance or as down payment. For completed partial services, we are entitled to demand advance payments, paid advances or down payments will be credited accordingly. Our remuneration is due immediately after completion and delivery / transfer of services and invoicing without deduction. If acceptance has been agreed, the due date of the remuneration shall be in accordance with the statutory provisions (§ 640 BGB).
- 4) Expenses for necessary additional costs shall be reimbursed by the customer on provision of proof, unless otherwise agreed. We refer in our quotation to additional costs not included in our service but which are already recognizable at the time of placing the order.
- 5) Section 4 paragraphs (6) and (7) of the General Terms and Conditions of business of MARBACH regulates the additional remuneration in the event of subsequent changes in service. The price adjustment rules shall apply accordingly if the agreed-upon performance subsequently changes at the request or instruction of the customer and we agree to this change or follow these instructions. The agreement of additional services requires our consent, which can also be implicitly accounted for by performance of the additional service.
- 6) If costs for additional travel are required due to subsequent changes in service or additional services, these shall be refunded or assumed by the customer in accordance with paragraphs (4) and (7).
- 7) For travel, which is required to complete the order, we will bill travel- and transport costs as well as any further expenses incurred. On flights, the paid costs including all ancillary costs will be reimbursed without Value Added Tax (VAT). In the case of rail travel, the charge for transportation, including ancillary costs for seat reservation, is calculated without Value Added Tax (VAT). For journey by car the actual driven kilometers will be calculated with the kilometer allowance valid from MARBACH at the time of the journey plus Value Added Tax (VAT), as well as expenses for toll, ferry transport, parking garage or parking place without Value Added Tax (VAT). If an hourly rate for travel times has not been agreed, MARBACH's standard hourly rate valid at the time of provision of the service will be charged, unless the travel time can be used and billed as working time in accordance with the remuneration agreement. For multi-day trips, the customer must reimburse or assume the costs of adequate accommodation. The appropriate accommodation corresponds to the 3-star standard of the German Hotel and Restaurant Association. If a daily rate for expenses has not been agreed upon, the expenses will be charged on the basis of the rate of Marbach applicable at the time the service is rendered, depending on the place of deployment.

3. Rights to use work results, royalties, copyright notice, references

- 1) All drafts, drawings, print templates, concepts, ideas, etc. produced by us and our vicarious agents are copyright works within the meaning of § 2 UrhG (German Copyright Act), even if they do not meet the requirements of § 2 UrhG (German Copyright Act). Customer proposals or other customer co-operation does not justify co-copyright, unless this has been expressly agreed. Therefore, all services may not be exploited, used or processed or changed without our consent. Any copying, including imitation of parts of designs, drawings, artwork, concepts, ideas, etc. is prohibited. In the event of non-compliance, the customer will be obliged to desist and pay compensation in accordance with the principles of license analogy. If infringement occurs without any reference to our copyright, the compensation payable will be in double amount. The right to determine the amount of compensation in individual cases lies with us. Our decision is subject to judicial review.
- 2) Commercial property rights (especially design rights) are the property of the contracting party whose creative performance has ensured the uniqueness and innovation within the meaning of § 2

Paragraph (1) DesignG (German Design Law). In case of doubt, the party who hired or commissioned the designer is eligible.

- 3) The transfer of rights and license to use our works in accordance with § 37 UrhG (German Copyright Act) is, unless otherwise agreed, shall not take place exclusively and only for the agreed or the underlying product packaging purpose. There shall be no right to publish or transfer further work results (text contents, designs, raw files, demonstration versions, drafts, other preliminary stages and intermediate results). The simple user license for the agreed purpose of the packaging production with the developed, planned, constructed or optimized cutting-dies is covered by the agreed license fee. In the case of delivery of samples or small series by us or our vicarious agents, the license fee for their appropriate use is settled with the purchase price.
- 4) The rights shall only be transferred to the customer upon full payment of the agreed remuneration and license fee or upon payment of the remuneration and the purchase price. The transfer of granted rights of use to third parties and / or multiple uses are, if not regulated in the initial order, subject to license and require our prior approval (consent).
- 5) The granting of further rights requires express agreement. In the case of subcontractor services and third party services, corresponding agreements must be made with the rights holder if required by the customer. The transfer of rights and license must be remunerated separately. Without agreement, the customer is not entitled to further use and exploitation.
- 6) We have the right to sign our works: custom-made tools, samples and packaging in small series, appropriately and customary for the industry (copyright notice) and also to publish the order given showing our works and the tools and packaging for the customer, for self-promotion (references). If this is not desired by the customer and is communicated before placing the order, we offer to waive the copyright notice and reference publication for a 10% surcharge in each case on the remuneration for the work.
- 7) If the customer infringes our right to be named, he will be obliged to pay compensation amounting to 100% of the agreed remuneration of the work concerned.

4. Responsibility for labeling, optics and text and image content, regulations, rights of third parties

- 1) We do not accept print jobs. If printing specifications for our deliveries or services are required, timely, defect-free provision of such, in sufficient number or quantity, shall be incumbent on the customer.
- 2) The customer bears the responsibility for compliance with all legal product labeling requirements and their rule-compliant publication on the packaging.
- 3) After the pattern has been approved, the customer is responsible for the content of the design (texts, images, etc.) as well as for the visual design (color, design, shape) of the packaging.
- 4) The customer bears the responsibility for text content and any errors supplied by him. Editing and proofreading are basically not part of the contract. If errors or unauthorized content are recognized by us or our representatives, we may make corrections. We recommend that all customers engage professional editorial and proofreading services.
- 5) The depiction of identifiable persons on media of any kind generally presupposes that the customer has obtained the consent of the persons depicted (§ 22 KUG) and strictly ensures that no violation of privacy occurs through image capturing (§ 201a StGB).
- 6) The exploitation of images of objects and properties of third parties for commercial purposes, in particular the publication for advertising purposes, generally requires the consent of all entitled parties (proprietors, owners, authorized users and if applicable panorama rights holders). The use of images of copyrighted buildings for commercial purposes, in particular the publication for advertising purposes, requires the consent of the authors (planning architects). Statutory limits (§ 201a StGB: no photographs of a strictly personal nature) must be taken into account when taking pictures.
- 7) The use of depictions of names, companies, brands and designs for commercial purposes, in particular publication for advertising purposes, requires the consent of the owners and authorized users.
- 8) The representation of inventions or newly developed processes prior to filing a patent or utility model may have adverse legal effects. If the customer provides corresponding data, he bears the responsibility for any legal disadvantages which may arise. The consent of the inventor and, if applicable, of the parties entitled to exploitation and use is required for the depiction of third-party inventions or developments.
- 9) If we are held liable due to given or provided content by the customer because it violates legal provisions or infringes the rights of third parties, the customer shall indemnify us on first request from all claims of third parties and reimburse us the costs of all necessary legal defense and legal costs and penalties, fines, administrative or criminal prosecution fines and all other costs based on the infringement. We are entitled, but not obliged, to take up the legal defense.

5. Privacy, Confidentiality

- 1) We may store on our computers the data relating to our customers within the framework of the business relationship in accordance with the statutory provisions and process and use this data in accordance with statutory provisions for the purpose of processing and fulfilling our contracts with the customer.
- 2) In the case of the processing of personal customer data (for example, for the production of personalized packaging), the customer will be held responsible for compliance with the statutory provisions of the BDSG and the EU Data Protection Regulation and the legal data source.
- 3) All instructions of the customer and his data protection officer will be implemented at the customer's risk and expense. In the event of obvious data breaches by the customer or illegal instructions, we shall have the right to refuse performance until the illegal handling of personal data has been stopped.
- 4) Personal data will be deleted immediately after completion of the contract.
- 5) Mutually accepted documents, communicated knowledge and information exchanged may be used by both parties exclusively for the performance of the respective contract and may not be made available to third parties, unless they are intended to be made available to third parties or are generally known. Third parties within the meaning of this section are persons / companies that do not participate in the fulfillment of the respective contract as agreed.
- 6) We shall process the data templates provided to us by the customer (e.g. address lists, photos, CDs, samples, etc.) on condition that the customer is entitled to pass them on to us under the conditions of paragraphs (1) to (4) and has the rights of use and permission for the contractually agreed use in accordance with Paragraph 1 No. 4. On request, the documents provided to us will be sent to the customer after the end of the project.
- 7) Subcontractors are obliged to maintain confidentiality and data protection accordingly.

6. Termination, Withdrawal

- 1) If a service contract or a contractual relationship is agreed for business, the customer is entitled to terminate the contract at any time. We will charge for the services provided and costs incurred until the notice of termination has been received.
- 2) If a contract for creative work has been agreed, the right of the customer to exploit and utilize our results shall cease with termination. We shall calculate the agreed remuneration in costs incurred minus any expenses saved until receipt of the notice of termination. The license fees shall no longer apply.
- 3) A contract to supply labour and materials or a purchase contract cannot be terminated or cancelled. In the case of an agreed contract cancellation before production of the object of purchase, we will charge a flat rate of 30% of the total purchase price of the unfulfilled contract. After production, a contract cancellation is excluded.
- 4) If a contract to supply labour and materials or purchase contract is dependent on the resulting work of a contract for creative services and the customer is not satisfied with the result, despite submission of the agreed number of drafts, or the completion of the work or the underlying contract is terminated before completion, the customer can decide, whether he wants to withdraw from the contract for work and materials or purchase contract or wants to create for himself the conditions for the production and delivery according to our specifications. If the customer exercises his right of withdrawal, we will charge a flat rate of 30% of the total purchase price of the unfulfilled contract. By exercising the right of withdrawal, the customer's right to exploit and use our resulting work, which has been provided up to termination, shall cease to apply.

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Section 2: Packaging optimization

1. Business management and service contract, participation and service disruptions

- (1) We provide packaging optimization services based on our experience and knowledge of die-cutting technology. We cannot guarantee that the goals of the customer (increasing productivity) will be achieved. Furthermore, we cannot rule out and be responsible for influences from other sources (gluing, setting up, filling, transport, etc.). We therefore understand our optimization services as business management and service contract. A specific success is not owed, unless a different agreement has been made in individual cases.
- (2) We provide business management and service in accordance with the specifications and instructions of the customer. We require necessary participation and report unsolicited, on the status and results of our activity to the customer. The customer is entitled, as a client and employer, at any time to receive information and can terminate the contract or service relationship at any time by giving notice.
- (3) The customer's CAD data are the basis for optimization services. We check and optimize the individual drawings and layouts (arrangements of individual ups on the printed sheet) and make the modified data available to the customer again.
- (4) If the results of the business management or services are a necessary requirement for the performance of a contract for work and services (e.g. new development or redesign, creation of plotter samples, etc.) or purchase contract for the supply of samples or packaging in small series for test runs, the customer shall, after termination, and in accordance with paragraph (2), create the necessary conditions himself. The timely creation of the necessary conditions is then his obligation, and immediate replacement his obligation to cooperate.

Section 3: Packaging development from scratch

1. Contract for work with creative services, participation and service disruptions

- (1) In providing services with creative success, we process the ideas and wishes of the customer through the creative discretion from scratch of our commissioned employees and vicarious agents. We require necessary preliminary decisions for the concretization of the customer's ideas and wishes and report unsolicited on the status and intermediate results of our activities for the customer. We are obliged to submit an agreed number of drafts for the customer to make a selective decision.
- (2) If two or more designs have been agreed upon, the customer has the right to select a design for further processing. We will use his ideas and wishes for further processing up to the finished end product as understood by the service contract. If only one draft has been agreed, then paragraph 2 applies accordingly.
- (3) Should the customer reject all existing drafts, he must decide whether the contract for work is to be terminated or if one or more further drafts are to be drawn up and delivered at their own expense.
- (4) For the duration of the preparation of further drafts according to paragraph (5), the performance time shall be extended in accordance with section 6 paragraph (4) of the General Terms and Condition of business of MARBACH. The same applies when delays are caused by holdups in the selection and decision making process of the customer.
- (5) The completed work must be approved by the customer before further processing or publication. The approval is at the same time the approval of the work by the customer as a contractual work performance (acceptance).
- (6) The customer must check the work performance immediately. Complaints of any kind must be reported to us immediately, at the latest within seven days, in writing or in text form. If this is not done, the work performance will be considered accepted and the risk of possible errors during further processing or publication will therefore pass to the customer.
- (7) Further revisions of the work performed require either a justified customer complaint or an additional order for a renewed revision of the work carried out.
- (8) For the duration of the revision on an additional order of the customer, the performance time will be extended according to section 6 paragraph (4) of the General Terms and Condition of business of MARBACH.
- (9) If the work performance is a necessary requirement for the production and / or delivery of samples or packaging in small series, the customer must create themselves the conditions for the production and delivery according to our specifications after termination of the work contract. The timely creation of the conditions will then be his obligation, the immediate replacement his obligation to cooperate.
- (10) Section 14 paragraph (7) of the General Terms and Condition of business of MARBACH shall apply to defects, or damages, which are the result of the breach of the customer's duty to cooperate.
- (11) Section 6 (2) and (4) of the General Terms and Condition of business of MARBACH, shall apply to delays.
- (12) Additional expenses shall be borne by the customer in accordance with section 4 (7) of the General Terms and Condition of business of MARBACH.

Section 4: Delivery of CAD packaging data (Construction according to customer sample)

1. Work contract without creative services, participation and service disruptions

- (1) In the provision of work without creative success, we only process the specifications, physical samples and instructions of the customer excluding discretionary power of our commissioned employees and vicarious agents. We are not obliged to check the legal rights of the customer. We assume no liability for legal defects. We require cooperation and decisions on the part of the customer, and report unsolicited to the customer, the status and intermediate results of our work. We are obliged to transfer the CAD design data in the agreed data format.
- (2) The completed work must be approved by the customer before further processing. This approval is at the same time the approval of the work by the customer as contractual work performance (acceptance).
- (3) The customer must check the work immediately. Complaints of any kind must be reported to us immediately, at the latest within seven days, in writing or in text form. Should this not happen, the work performance is considered to have been accepted and the risk of possible errors during further processing or publication passes to the customer.
- (4) Further revisions of the work performance require either a justified complaint of the customer or an additional order for a renewed revision of the work performed.
- (5) For the duration of the revision on the additional order of the customer, the service time is extended according to section 6 paragraph (4) of the General Terms and Condition of business of MARBACH.
- (6) If the work performance is a necessary requirement for the production and / or delivery of samples or packaging in small series, the customer must create the conditions for the production and delivery according to our specifications after termination of the contract. The timely creation of the conditions is then his obligation, immediate replacement his obligation to cooperate.
- (7) For defects, or damages, which are based on the breach of the cooperative obligation of the customer, section 14 (7) of the General Terms and Condition of business of MARBACH apply.
- (8) For delays, Section 6 (2) and (4) of the General Terms and Condition of business of AGB MARBACH apply.
- (9) Additional expenses shall be borne by the customer in accordance with Section 4 (7) of the General Terms and Condition of business of MARBACH.

Section 5: Die-cutting samples or small series

1. Contract to supply labour and materials and purchase agreement for samples and small series, tolerances, service disruptions

- (1) In the event of uncontrolled approval, transfer, processing or publication of the work by the customer, we shall not be liable for defects and deficiencies, unless the defects were undetectable even during a proper inspection by the customer.
- (2) Bulk deliveries (from 100 pieces upward of identical samples or packaging in small series with a unit price of up to € 10) may have quantity variance of +/- 5% of the total number of pieces.

- (3) We are entitled to keep three copies. We are entitled to use these copies as reserve samples and for the purpose of self-promotion in all media.
- (4) In the case of all production orders for small series, we reserve the right to make deliveries of +/- 15% of the quantity ordered, whereby excess or short deliveries will lead to an adjustment of the remuneration taking into account the agreed total price.
- (5) For bulk deliveries a rejection rate of no more than 5% may be included.
- (6) For reasons of production technology (shrinkage, loss, tool temperature, etc.) slight deviations from a sample, a proof or an original are possible. A sample made by us defines the average quality. Even above-average quality does not entitle the customer to complain about defects.
- (7) Excluded from the warranty are defects which would have been avoided if the sample had been carefully examined beforehand and which the customer has approved as a faulty sample.
- (8) The warranty period for all deliveries is generally 1 year from delivery of the goods to the customer or from the occurrence of default in acceptance.