

Translation

GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF GRAPHIC PRODUCTS 2010 (ALG 10)

Standard terms and conditions prepared by the Swedish Graphic Companies' Federation (*Grafiska Företagens Förbund*), in co-operation with the Swedish Publishers' Association (*Svenska Förläggareföreningen*), the Association of Swedish Advertisers (*Sveriges Annonserer*), the Swedish Association of Communication Agencies (*Sveriges Kommunikationsbyråer*), the Swedish Magazine Publishers' Association (*Sveriges Tidskrifter*) and the Swedish Newspaper Publishers' Association (*Tidningsutgivarna*).

ALG 10 contains proven and balanced standard terms and conditions specifically adapted for graphic product agreements. For the sake of legal clarity, it is recommended that the parties expressly refer to ALG 10 in their agreements.

1. Applicability

1.1 ALG 02 applies to agreements concerning pre-press, printing, binding, and other graphic products.

1.2 The terms and conditions contained in ALG are not mandatory, i.e. the terms and conditions contained therein apply to the extent the purchaser and the supplier have not expressly agreed otherwise. ALG does not exhaustively govern the mutual rights and obligations of the parties; it is assumed that the parties themselves will determine details with respect to supply of the product and supplement ALG with other terms and conditions as required.

2. Professionalism

The provision of graphic products – including *inter alia* components and supplementary products – shall be performed in a professional manner. The requirement of professionalism applies to both the supplier and a purchaser possessing graphics expertise. "Professionalism" means that the supplier and the purchaser shall perform their obligations pursuant to the agreement with the care required to achieve a satisfactory product.

3. Offer and acceptance

3.1 Unless another period is specified, and in the absence of an intervening agreement, the supplier's offer shall apply during a period of 30 days calculated from the offer date. The supplier must have received the purchaser's acceptance within the aforesaid period. However, the supplier shall be entitled to rescind the agreement where a customary credit assessment in conjunction with the entry into the agreement demonstrates that the purchaser's financial circumstances are such that there are compelling grounds to assume that payment will not be made in due time.

3.2 In the offer, the supplier shall describe the contents of the product offered and the parties' obligations as fully as possible, and should clearly refer therein to ALG terms and conditions and specify any supplements or amendments thereto.

3.3 Where the purchaser is to provide pre-press or other material, the supplier must specify in the agreement the quality and other requirements to be fulfilled by such material.

4. Provision of material

If the purchaser is to supply digital material or other production material, the supplier shall, through reference to its website or in a separate document, clearly specify in the agreement the requirements that the material has to fulfil. It is the duty of the supplier to indicate the requirements that are specified on the supplier's website at the time the agreement is entered into. If the supplier does not indicate any specific requirements, the purchaser may supply the material in the form deemed to be standard with regard to the graphic product.

5. Supplementary products

Products which are not specified in the parties' agreement and which the supplier does not normally provide in order to satisfy the requirement of professionalism (*supplementary products*), must be agreed separately. This shall apply to, *inter alia*:

- a) amendments and other extra work ordered by the purchaser;
- b) unforeseen intensification of time schedule caused by late delivery of materials or other delay by the purchaser;
- c) modifications and other measures which the supplier is forced to undertake due to the fact that the material provided by the purchaser does not allow the supplier to perform the product in a professional manner.

6. Prices

6.1 The offered or agreed prices shall not include compensation for supplementary products pursuant to section 5. The purchaser must be informed thereof as soon as possible if the supplier intends to charge the customer therefor.

6.2 The price is exclusive of VAT and other public charges. The purchaser shall be liable therefor notwithstanding that such are determined subsequently.

6.3 Unless otherwise agreed, with the exception of return pallets, requisite transport packaging and protective packaging shall be included in the price.

7. Delivery and packaging

7.1 Unless otherwise agreed, deliveries shall take place free the supplier's place of manufacture or storage.

7.2 In conjunction with delivery, the product shall be covered in packaging which protects against foreseeable damage during transportation to, and appropriate storage at, the purchaser.

8. Passing of risk and apportionment of costs

8.1 The supplier shall bear the risk of the product or any entrusted production material being destroyed or damaged prior to the delivery date or, if a delivery date has not been determined, the delivery date of which the purchaser is duly advised. Thereafter, risk shall pass to the purchaser.

8.2 The allocation of liability pursuant to section 8.1 above shall also apply to transportation and costs for, e.g. care, storage, and insurance of the product and entrusted production material.

9. Liability for reproduction rights

9.1 The purchaser and the supplier mutually warrant that they are entitled to use the software required for the graphic products supplied, including for further processing.

9.2 The purchaser warrants to the supplier that there are no legal impediments to the production of reproduction and print media, from originals provided by the purchaser, or against reproducing or duplicating material provided by the purchaser.

9.3 The liability pursuant to sections 9.1 and 9.2 entails that the purchaser and the supplier are obliged to take the legal and other measures on behalf of the other party which are necessary following a claim of infringement by any third party and shall be liable for any damages which may be payable to such third party.

10. Subcontractors

10.1 Unless the purchaser has expressly requested that the supplier supply the products, or such is otherwise evident from the circumstances, the supplier shall be entitled to delegate production of the product, either wholly or in part, to a sub-contractor.

10.2 Where the purchaser or the supplier retains a subcontractor, the retaining party shall be primarily liable to the other party for the performance by subcontractor, as well as the retaining party's other obligations.

11. Confidentiality

11.1 The supplier shall be obliged to observe confidentiality in accordance with the requirements imposed by generally accepted business standards with respect to its business relations with the purchaser and the factual contents of the agreed product. The supplier shall satisfy itself, through appropriate measures, that its own personnel, subcontractors, and the personnel thereof, and third parties which obtain information regarding the operations, comply with the duty of confidentiality.

11.2 Upon request by the purchaser, the supplier shall take the measures to prevent unauthorised third parties from observing the production of the product. In such context, the supplier shall be entitled to compensation for additional costs incurred as a result of such measures, e.g. special procedures or protective devices.

12. Offer material

The supplier shall be entitled to material in digital or other form which the supplier, on its own initiative, has produced and used for the purpose of offers. Unless otherwise agreed, the offeree shall not be entitled, without authorisation, to utilise or cause a third party to obtain such material and shall be obliged, upon request, to return the material to the supplier.

13. Return and taking back of production material

13.1 Following delivery of the product, the supplier shall:

- a) return to the purchaser digital or other production material which the purchaser has placed at the supplier's disposal;
- b) deliver to the purchaser digital or other production material which the supplier has produced or caused to be produced, provided that the parties have agreed in advance as to the form for delivery, and the terms and conditions thereof.

13.2 Following the delivery date, the supplier shall continue to stock production material as referred to in section 13.1 on behalf of the purchaser for a period of three months, unless otherwise agreed.

14. Waste copies

Any party which further processes a graphic work shall be provided with a sufficient number of extra copies in order to cover normal wastage in conjunction with the processing. Unless otherwise agreed, the party undertaking further processing shall be supplied with extra copies in accordance with the basis for calculation of authorised additional copies set forth in section 24.1, save that a further 100 copies shall be supplied in addition to such calculation norms where editions of less than 3,000 copies are ordered.

15. Compulsory and archival copies

Printers have a statutory obligation under Swedish Law to retain compulsory and archival copies at the expense of the purchaser. If the product supplied by the printer does not constitute the final product, the purchaser is obliged, without having been requested to do so and without delay, to furnish the printer, free of charge, with the copies in the number and form described in the relevant legislation.

16. Payment

16.1 Payment must be made within 30 days from the invoice date.

16.2 Penalty interest on arrears shall be payable in the event of late payment. Unless otherwise agreed, such penalty interest shall be the Bank of Sweden's reference rate as applicable from time to time plus 10 percentage points.

17. Provision of security

17.1 If it is evident that the purchaser's financial circumstances are such that there are compelling grounds to assume that payment will not be made in due time, the supplier shall be entitled to suspend production or to withhold the product on the delivery date pending the provision of satisfactory security by the purchaser. In the event the purchaser fails to provide such security, the supplier shall be entitled to annul the agreement with immediate effect.

17.2 The purchaser shall possess a corresponding right to withhold payment, demand satisfactory security, and annul the agreement where there are compelling grounds to assume that the supplier will be unable to supply the product in due time.

18. Lien

The supplier, as security for performance of the purchaser's obligations, shall have a lien in the product and in all property belonging to the purchaser which the supplier has in its possession. If the purchaser fails to perform its obligations in accordance with this agreement, the supplier shall be entitled to sell the purchaser's property in an appropriate manner, subject to any impediments arising pursuant to law or pursuant to the ALG terms and conditions, and to recover its claim from the sum obtained from the sale.

19. Agreements until further notice

Agreements until further notice concerning regular or periodically recurring delivery of products which tie-up production and other resources of the supplier, shall be subject to a 3 month period of notice of termination in conjunction with monthly and quarterly work, and subject to a 6 month period of notice of termination in conjunction with weekly and

14 day work, calculated from the end of the calendar month in which notice of termination was given.

20. Delay and sanctions

20.1 In the event the product is not supplied in due time and the delay is not attributable to the purchaser, the purchaser shall be entitled to compensation for direct costs incurred as a result of the delay. In addition, the purchaser shall be entitled to annul the agreement with immediate effect, provided:

- a) the purchaser made it clear to the supplier at the time of entering into the agreement that delivery must be made punctually on the agreed date; or
- b) it is clear from the agreement, or other circumstances of which the supplier is aware that the product is of no use to the purchaser after a certain date and that delivery has not been made prior thereto.

20.2 In the event the purchaser fails to provide materials, or fails to perform any other measures agreed upon in due time, the supplier shall be entitled to compensation for direct costs incurred as a result of the delay. In the event the delay results in significant inconvenience for the supplier, the supplier shall also be entitled to annul the agreement.

20.3 The purchaser shall be notified immediately in the event the supplier considers that it is probable that the time for delivery cannot be met. The notice shall state the reason for the anticipated delay and the date upon which delivery can take place. In the event the delay results in the product being of no use to the purchaser, the purchaser shall be entitled to annul the agreement in accordance with section 20.1.

20.4 The aforesaid notice obligation shall apply to the purchaser with respect to anticipated delays in the supply of materials or performance of other measures. In the event the delay results in significant inconvenience for the supplier, the supplier shall be entitled to annul the agreement in accordance with section 20.2.

21. Quality defects

21.1 *Quality defects* means deviations and variations relating to the nature of the product and the qualities thereof which, according to a professional assessment, do not merely constitute minor deviations or minor variations from samples, originals, or suchlike, or from the agreement between the parties, including the ALG terms and conditions, or which may otherwise be deemed to have been agreed, taking into consideration the type and nature of the product.

21.2 The following shall not be deemed to constitute quality defects:

- a) deviations which are due to the purchaser's failure to perform its obligations pursuant to the agreement, e.g. the supply of erroneous material or failure to order modifications or rectifications;
- b) that the final product contains defective copies exceeding 0.5 per cent of the number ordered as regards printing, and 0.5 per cent as regards further processing.

22. Remedies in the event of quality defects

22.1 The supplier shall rectify defects in the product through repair or re-delivery. Rectification shall take place with the urgency demanded by the circumstances. In addition, the purchaser shall be entitled to compensation for direct costs.

22.2 In the event the product can be used for its purpose notwithstanding the defect (*minor defect*), the supplier shall be entitled, instead of rectification, to make a price reduction which corresponds to the significance of the defect, provided the costs of rectification clearly exceed the significance of the defect.

22.3 In the event the product cannot be used for its purpose due to the defect (*serious defect*) and rectification of the defect would result in a delay which would render the product of no use to the purchaser, the purchaser shall be entitled to annul the agreement with immediate effect instead of demanding rectification and shall thereupon be entitled to compensation pursuant to section 20.1.

22.4 When assessing whether a defect is of a minor or serious nature, the graphic nature and character of the product including, *inter alia*, the quality level, design and execution, and the intended use and value will be specifically taken into account.

23. Further processing defects

In the event a defect occurs during the further processing of a product at a supplier, the party that ordered the further processing shall be entitled, vis-à-vis said supplier, to claim for the consequences of such defects pursuant to sections 22.1-3 as regards the entire product, provided, however, that said consequences shall be modified to the extent the purchaser or any third party for which the purchaser is liable is jointly liable for the defect.

24. Quantity deviations

24.1 Unless otherwise agreed, shortage in the quantity supplied to the final purchaser shall be deemed to constitute a defect. Unless otherwise agreed, overs of 8 per cent for quantities less than 20,000, of 4 per cent for 20,000-50,000, and of 2 per cent for quantities exceeding 50,000, shall be accepted.

24.2 The price offered by the supplier for run on 1,000 copies shall apply to authorised overs. No payment shall be made for unauthorised overs exceeding the amount agreed upon.

25. Remedies in the event of shortage

In the event of shortage not agreed to, the provisions of section 22.1 concerning the supplier's rectification obligation shall apply. In the event of minor shortage, the provisions of section 22.2 concerning price reduction shall apply, whereupon the reduction shall be made on the basis of the price offered by the supplier for run on 1,000 copies. In the event of serious shortage, the provisions concerning annulment in section 22.3 and compensation in section 20.1 shall apply.

26. The supplier's right of rectification

In conjunction with quality defects and quantity deviations, the supplier shall be entitled, at its own expense, to remedy the defect or deficiency, provided such can occur without serious inconvenience for the purchaser. The party undertaking further processing shall possess a corresponding right of rectification.

27. Liability for defects in production material

27.1 The purchaser shall be liable for quality defects and quantity deviations which are caused by defects in digital or other production material supplied by the purchaser or which arise during the transfer of such material.

27.2 Where the supplier, in the course of a professional check of production material supplied by the purchaser prior to or during production, discovers that said production material is defective or cannot be used for its intended purpose, the supplier shall inform the purchaser thereof without delay and request the purchaser's instructions. The purchaser is obliged to remain available throughout the production period, which will be agreed between the supplier and the purchaser. If the supplier has failed to discharge its obligation to provide information, the purchaser shall be entitled to compensation pursuant to section 20.1 in the event of a delay and section 22.1 in the event of defects in the product.

27.3 In the event the supplier discovers that the product is defective or cannot be used for its intended purpose as referred to in section 27.2, the supplier shall be entitled to suspend production immediately and to compensation for direct costs resulting from the suspension.

27.4 The supplier shall be liable for damage caused to the purchaser's material during the production. The purchaser shall be liable in a corresponding manner for damage to the supplier's materials.

28. Complaints

28.1 Complaints regarding invoices shall be made without delay following receipt.

28.2 Complaints regarding delay shall be made without delay upon the purchaser becoming aware of the delay.

28.3 Complaints regarding defects in the product shall be made without unreasonable delay following receipt. What constitutes unreasonable delay shall be determined taking into account the nature and scope of the product.

28.4 Complaints pursuant to section 28.1-3 must contain information concerning the subjects of the complaint. The complainant must submit its detailed claims within a reasonable time thereafter.

29. Force majeure

Where performance cannot be carried out in accordance with the agreement as a consequence of circumstance outside the supplier's control, which the supplier could not reasonably have foreseen at the time of entering into the agreement, the supplier will be discharged from liability for compensation and other remedies. The same applies, *mutatis mutandis*, to the purchaser. If performance is prevented for more than two months, the supplier and the purchaser respectively shall be entitled to terminate the agreement by written notice.

30. Limitation of liability and damages

30.1 The supplier's obligation to compensate the purchaser shall only apply to direct losses, unless the supplier has been grossly negligent. With the exception of the provisions of section 23, the compensation amount shall be limited to the price of the product.

30.2 Direct loss for the purchaser includes, *inter alia*, costs for examination of the product, extra storage and transportation costs, additional telecommunications and travelling expenses, repairs costs and other rectification measures, price differences upon the purchase of replacement goods from other suppliers, costs for overtime work, and costs for services provided by independent companies.

30.3 The purchaser's obligation to compensate the supplier shall be subject to the same limitations as for the supplier's corresponding obligation pursuant to section 30.1.

30.4 Direct loss for the supplier includes, *inter alia*, costs for examining defects in materials supplied by the purchaser, additional telecommunications and travelling expenses, costs for overtime work, costs for additional manpower, and costs for services procured from other companies.

31. Limitation of actions

In the event the purchaser wishes to commence proceedings against the supplier in respect of defects in, or delay in respect of, the product, such proceedings must be commenced within a period of one year after receipt thereof.

Interpretation and resolution of disputes

The Swedish Graphic Arts Council (*Grafiska Kammaren*) will, upon request, issue statements as to whether graphic products have been performed in a professional manner and, otherwise with respect to how these General Terms and Conditions should be construed.

These General Terms and Conditions shall be governed and construed in accordance with general principles and statutory provisions of Swedish Law, including The Contracts Act (SFS 1915:218) and The Sale of Goods Act (SFS 1990:931).

(Translation of clauses 1 to 31 from the original Swedish text).

© Grafiska Företagens Förbund 2010.