



Standard Terms and Conditions of Epson Deutschland GmbH - Business Customers -

1. General provisions

- 1.1 Epson shall render all deliveries and services exclusively on the basis of these Standard (Framework) Terms and Conditions. Any standard terms and conditions of the Customer shall not apply, even if Epson has not expressly rejected them.
- 1.2 These Standard Terms and Conditions shall also apply if Epson renders delivery or performance to the Customer without reservation in the knowledge of Customer's conflicting or deviating terms and conditions. In such cases, acceptance of performance by the Customer shall be deemed acknowledgment of these Standard Terms and Conditions, with a simultaneous waiver - hereby accepted in advance - of any application of its own standard terms and conditions.

2. Offer and prices

- 2.1 Offers shall always be subject to confirmation. A contract shall be formed only upon a written order confirmation by Epson. If performance is rendered by Epson without the Customer first receiving an order confirmation, the contract shall be formed upon the commencement of performance of the service or upon delivery.
- 2.2 The deliveries and services shall be rendered at the prices and terms of the written order confirmation. The prices stated therein shall be binding.
- 2.3 In principle, the prices stated in the order confirmation shall apply. However, Epson reserves the right to increase its prices commensurately if cost increases occur following conclusion of the relevant agreement. Upon request, Epson shall furnish proof of this. Publicly announced price reductions shall be taken into account automatically by Epson in the order confirmation.
- 2.4 Unless agreed otherwise in a specific case, prices shall be quoted net "ex works" plus the respective applicable turnover tax and the costs for transport and dispatch.

3. Deliveries and services

- 3.1 Unless agreed otherwise in a specific case, the content/condition and scope of the deliveries and services to be provided by Epson shall be as stated in the respective order confirmation and the respective product specification. The product specification may be inspected at any time via Epson.
- 3.2 The risk of non-payment and non-performance shall pass to the Customer directly from the delivering plant or the distribution centre.
- 3.3 Transport packaging and other packaging in accordance with the German Packaging Regulation [*Verpackungsverordnung*] shall not be taken back. Costs for the disposal of packaging shall be borne by the Customer. In the Federal Republic of Germany, transport packaging may be disposed of free of charge by Vfw AG (Max-Planck-Str.42, 50858 Cologne) or sales packaging may be disposed of by Duales System Deutschland (DSD, Frankfurter Str. 720-726, 51145 Cologne). This shall not include Euro pallets, which must be exchanged upon delivery. Epson may charge the Customer EUR 6.00 per unit for Euro pallets not exchanged upon delivery.

4. Delivery dates and delivery periods

- 4.1 Delivery dates and delivery periods shall be binding only if they have been agreed as binding in writing in a specific case by Epson and the Customer. The delivery period shall commence upon the sending of the order confirmation, however not before receipt of the required supporting documents to be provided by the Customer for processing the order (see section 4.2 below). Any agreement of a fixed delivery date shall be subject to Epson, for its part, receiving the deliveries and services of its respective upstream suppliers in good time and as contractually stipulated.
- 4.2 Epson's deliveries and services to the Customer shall be secured by a credit reinsurer. The Customer is obliged to furnish any data, supporting documents and information requested by the credit reinsurer for covering the transaction in the individual case. If the Customer fails to furnish the supporting documents requested by the credit reinsurer, Epson may refuse the delivery and service, unless the Customer pays in advance or provides collateral in the form of a performance bond issued by a financial institution or credit insurer admitted in the European Union. The same shall apply where the credit reinsurer refuses to assume the Customer's risk.
- 4.3 Reasonable partial deliveries shall be permitted and may be invoiced separately.
- 4.4 If non-compliance with a delivery period is attributable to events for which Epson is not responsible (including strike or lockout), the delivery deadlines shall be postponed by the duration of the disturbance including an appropriate start-up phase.
- 4.5 If Epson defaults in rendering performance, in whole or in part, then the Customer's compensatory damages and reimbursement of expenses for default for each completed week shall be limited to 0.5% of the price for the part of performance that cannot be used due to the default. The total liability for default shall be limited to 5% of the total price of the respective order. This shall not apply if the default is based on gross negligence or wilful conduct on the part of Epson.
- 4.6 In the event of a delay in performance, the Customer shall have a right of rescission in accordance with the relevant statutory provisions only if Epson is responsible for the delay.
If the Customer legitimately claims compensatory damages or reimbursement of expenses instead of performance owing to delay, it may claim for each completed week of the delay 1% of the price for that part of performance that cannot be used due to the delay. Such claim may not, however, exceed a total equivalent to 10% of the total price of the respective order. Section 4.4 sentence 3 shall apply *mutatis mutandis*.

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of Epson Deutschland GmbH
Otto-Hahn-Str. 4, D-40670 Meerbusch

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5. Acceptance and inspection of the delivery

5.1 The Customer shall inspect deliveries without undue delay for completeness, conformity with the shipping documents and patent defects and shall assert recognizable discrepancies and defects without undue delay.

The Customer must additionally record transport damage or shortfall quantities recognizable upon the delivery on the acknowledgement of receipt of the transport company. If no complaint is made within seven days of receipt by the Customer, the respective delivery shall be deemed in conformity with the relevant agreement, unless the discrepancy was not recognizable despite careful inspection.

5.2 This shall not affect the regulation of section 377 of the German Civil Code [*Handelsgesetzbuch* (HGB)].

6. Payments, set-off and retention

6.1 If a credit limit has been granted and no divergent payment agreements have been reached, payments shall be due and payable without any deduction within seven days of the invoice date.

6.2 Any time for payment granted to the Customer shall require a sufficiently available credit limit for each individual order. If the respective order exceeds the available credit limit, Epson may render the delivery of this and further orders only against prepayment or collateral in the form of a performance bond issued by a financial institution or credit insurer admitted in the European Union. The same applies if Epson becomes aware of circumstances after the order confirmation that justify doubts about the Customer's creditworthiness.

6.3 If the Customer fails to settle a receivable, in whole or in part, on the agreed net due date, Epson may revoke any cash discount agreements reached as well as agreements regarding times for payment for all receivables unpaid at such time and call them in immediately; in addition, Epson may avail itself of its rights under its retention of title. Furthermore, Epson may opt to make further deliveries only against prepayment or collateral in the form of a performance bond issued by a financial institution or credit insurer admitted in the European Union.

6.4 A payment shall be deemed made only if it is credited to one of the Epson bank accounts.

6.5 Epson may charge interest in the amount of 5% once the relevant receivable is due and payable. In the event of default, Epson may also claim interest in an amount 8 percentage points above the base interest rate. This shall not affect Epson's right to assert higher damage incurred.

6.6 The Customer may set off or exercise a right of retention only if its counterclaims are undisputed or recognized by a final and binding judgement.

7. Retention of title

7.1 The delivered goods shall remain the property of Epson until the complete payment of all receivables under the business relationship, including ancillary claims, claims for damages and cashing of cheques and bills of exchange. The retention of title shall continue to exist even if individual receivables of Epson have been taken up in a current account and the balance is drawn and acknowledged.

7.2 If goods subject to retention of title have been processed to form a new moveable item, the processing shall be carried out for Epson, without any obligation accruing to Epson. The new item shall become the property of Epson. In the event of processing, admixing or commingling with goods not belonging to Epson, Epson shall acquire co-ownership of the new item in the proportion of the invoice values of its goods subject to retention of title to the total value. The Customer is entitled to resell or install the goods subject to retention of title only if the receivables under section 7.3 actually pass to Epson. The Customer's powers to sell, process or install goods subject to retention of title during the ordinary course of business shall end upon revocation by Epson as a consequence of a sustained deterioration of the Customer's financial situation, however no later than upon its suspension of payments or the application for or commencement of insolvency proceedings over its assets.

7.3 The Customer hereby assigns to Epson the receivables with all ancillary claims from the resale of the goods subject to retention of title, including any (outstanding) balance claims. Epson hereby accepts such assignment.

If the goods are processed, admixed or commingled and Epson has acquired co-ownership thereof in the amount of the goods' invoice values, it shall be entitled to the purchase price proportionate to the value of its rights in the goods.

If the Customer has sold the receivable as part of nonrecourse factoring, Epson's receivable shall be due and payable immediately and the Customer shall assign to Epson the receivable replacing it against the factor and shall pass on to Epson its sales proceeds without undue delay. Epson hereby accepts such assignment.

7.4 The Customer is authorized to collect the receivables assigned as long as it complies with its payment obligations. The collection authorization shall expire upon revocation, however no later than in the event of default in payment by the Customer or in the event of a significant deterioration of the Customer's financial circumstances. In this case, the Customer hereby grants Epson power of attorney to inform the buyers of the assignment and collect the receivables itself.

The Customer is obliged to hand over to Epson upon request a precise list of the receivables to which the Customer is entitled with the name and address of the buyers, amount of the individual receivables, invoice date etc., and to furnish Epson with all information necessary for the assertion of the receivables assigned and permit the review of this information.

7.5 If the value of the collateral existing for Epson exceeds all of its receivables by more than 20%, then Epson shall, at the request of the Customer or a third party adversely affected by the excessive collateral in place for Epson, release collateral at its choice.

7.6 Pledging or transfer by way of security of the goods subject to retention of title or of the receivables assigned shall not be permitted. Epson must be notified immediately of any attachments, stating the name of the pledgee.

7.7 If Epson repossesses the delivery item based on the retention of title, this shall constitute rescission of the Agreement only if expressly stated by Epson. Epson may use the repossessed goods subject to retention of title to satisfy its claims by way of private sale.



- 7.8 The Customer shall keep the goods subject to retention of title for the seller free of charge. It must insure them within the usual scope against standard risks such as fire, theft and water. The Customer hereby assigns to Epson its compensation claims, to which it is entitled as a result of damage of the aforementioned type, against insurance companies or other obligated parties in the amount of the invoice value of the goods. Epson accepts this assignment.
- 7.9 All receivables and rights based on retention of title in all the special forms provided for in these Terms and Conditions shall remain in existence until complete discharge from any contingent liabilities that Epson has assumed in the interest of the Customer.
8. Quality defects
- 8.1 Epson warrants that the deliveries and services will comply with the agreements in section 3.1 if used in conformity with the relevant agreement.
- 8.2 No claims for quality defects shall lie for a merely insignificant deviation from the quality as provided in the relevant agreement. Claims for quality defects shall be excluded if the deviation from the quality as provided in the relevant agreement is based on excessive or improper use or natural wear and tear. The same shall apply to deviations that arise as a result of external influences that are not provided for in the relevant agreement. Furthermore, claims for quality defects shall be excluded in the event of the sale of used goods.
- 8.3 The Customer must report any defects in writing in a comprehensible and detailed form, stating the information required for the detection and analysis of the defects.
- 8.4 If the Customer may claim for defects, it shall initially only have the right to subsequent performance within a reasonable period. The subsequent performance shall comprise, at Epson's option, either rectification of the defects or a substitute delivery. The interests of the Customer shall be reasonably taken into account when selecting the option. Subsequent performance may only affect the limitation period for the defect triggering the subsequent performance. If subsequent performance takes place, title in the items exchanged as part of the subsequent performance shall pass to Epson at the time of the exchange.
- 8.5 If rectification of the defect is unsuccessful or cannot be effected for other reasons, the Customer may, in accordance with the relevant statutory conditions, reduce the compensation, rescind the Agreement and/or claim compensatory damages or reimbursement of expenses in accordance with sections 9.1 – 9.3. The Customer shall exercise an option to which it is entitled within a reasonable period. As a rule, this shall be two weeks.
- 8.6 If the Customer rescinds the Agreement, Epson shall repossess the goods and reimburse the compensation paid by the Customer less the value of the potential uses granted to the Customer. Generally speaking, the potential uses shall be calculated over a three year period of use based on declining balance depreciation. The contracting parties reserve the right to furnish documentary proof that a longer or shorter period of use must be taken as a basis.
- 8.7 Claims for a quality defect shall become time-barred within one year of delivery. The statutory periods shall remain unaffected if the law in section 438 (1) no.2 (buildings and items used for buildings) of the German Civil Code [*Bürgerliches Gesetzbuch (BGB)*] provides for longer periods or in the event of wilful or negligent breach of duty by Epson, in particular, by its statutory representatives or vicarious agents, in the event of malicious concealment of a defect, or in cases of injury to life, limb or health.
- 8.8 This shall not affect the provisions for the right of recourse of sections 478, 479 BGB.
9. Liability
- 9.1 Epson shall be liable for compensatory damages
- for damage or losses caused as a result of wilful or grossly negligent conduct on the part of its statutory representatives or vicarious agents,
 - under the German Product Liability Act [*Produkthaftungsgesetz*] and
 - for damage resulting from injury to life, limb or health for which Epson, its statutory representatives or vicarious agents are responsible.
- 9.2 Epson shall be liable in the event of ordinary negligence if it or its statutory representatives or vicarious agents have breached a material contractual obligation (so-called cardinal duty), fulfilment of which is essential for due and proper performance of the relevant agreement and compliance with which may reasonably be relied upon by the Customer (for example in the case of the obligation to deliver defect-free goods). In other respects, liability in the event of ordinary negligence shall be excluded. If Epson is liable for ordinary negligence, liability in the event of material damage or pecuniary loss shall be limited to the foreseeable damage or loss typical under the contract. Liability for other, remote consequential damage shall be excluded. For each case of damage or loss, liability shall be limited to EUR 50,000.
- 9.3 For the limitations period, section 8.7 shall apply *mutatis mutandis*.
- 9.4 For claims for reimbursement of expenses and other liability claims of the Customer against Epson, sections 9.1 - 9.3 shall apply *mutatis mutandis*. This shall not apply to the Customer's claim for reimbursement of expenses based on section 478 (2) BGB.
- 9.5 Epson shall be liable for compensatory damages under a guarantee only if this was expressly assumed in the guarantee. In the event of ordinary negligence, such liability shall be subject to the restrictions of sections 9.2.
10. Export
- 10.1 All deliveries and services shall be provided by Epson in compliance with the Waste Management Act [*Abfallwirtschaftsgesetz (AWG)*] waste management associations [*Abfallwirtschaftsverbände (AWV)*] EC Dual Use Regulations, as amended, as well as the US export provisions and are intended to be used and located in the destination country agreed with the Customer.
- 10.2 In the event of a cross-border delivery or service, the Customer shall bear the customs duties, fees and other levies incurred, unless the individual agreements provide otherwise.



- 10.3 If the Customer intends to re-export the deliveries and services, it is obliged to obtain the required licences for this, in particular from the respective foreign trade authority, before it exports the products. It shall inform itself independently of the applicable provisions and regulations and handle the re-export on its own responsibility. To this extent, Epson shall have no obligation whatsoever to furnish information, give advice or provide assistance.
- 10.4 If, in the event of the re-export or import into another country, the Customer breaches the statutory provisions applicable to such country, and if a claim is made against Epson for this reason by the exporting or importing country or a transit state based on the local statutory provisions, the Customer undertakes to indemnify Epson against any and all financial obligations arising in this regard and in addition shall be obliged to compensate Epson for any damage incurred due to the improper re-export or import.
11. Miscellaneous
- 11.1 Any amendments to any and all agreements concluded between the parties must be agreed in writing. Verbal agreements shall apply only if they are confirmed in writing by Epson within five days; an e-mail shall satisfy this written form requirement.
- 11.2 Epson and the Customer shall keep confidential any business and trade secrets as well as other information marked confidential and disclosed in connection with their contractual relationship or the sales and distribution relationship and the resulting contractual relationship. Such information may be passed on to persons who are not party to the conclusion, execution or implementation of their contractual relationship or the sales and distribution relationship and the respective individual agreements only with the prior written consent of the other contracting party. Unless agreed otherwise, this obligation shall end following the expiry of five years after disclosure of the respective information, however not before the ending of any sales and distribution relationship existing between Epson and the Customer.
The contracting parties shall also impose these obligations on their employees and any third parties engaged.
- 11.3 Epson and the Customer are aware that electronic and unencrypted communication (e.g. via e-mail) is a security risk. In this kind of communication, neither Epson nor the Customer shall therefore assert claims that are based on the absence of encryption, unless encryption has been agreed beforehand.
- 11.4 All contractual relations of the parties shall be governed exclusively by the law of the Federal Republic of Germany. The United Nations Convention on the International Sale of Goods of 11 April 1980 (CISG) shall be excluded.
12. Place of Performance and forum
- 12.1 Place of performance for all obligations under the contractual relations of the parties, in particular based on a sales and distribution relationship and the resulting contractual relations, shall be Meerbusch.
- 12.2 With respect to merchants, a legal entity under public law or a special fund under public law, forum for any and all legal disputes arising from the contractual relations of the parties, in particular, based on a sales and distribution relationship and the resulting contractual relations as well as for disputes in relation to the formation and validity of these contractual relations, shall be Düsseldorf. Epson may, however, bring an action against the Customer at its registered office.