

## Best Practices for Conducting Business

Terms and Conditions of Sale (formerly Trade Customs) reflects common business practices of the graphic communications industry. While they are not mandatory practices, many companies have adopted them in full, part, or modified form, driven by such factors as the nature of work performed, payment terms, customer expectations, indemnification, and warranties. They are a guide to help define the relationship between you (the provider) and your customer.

Below are recommendations to consider to strengthen the Terms and Conditions of Sales (hereafter referred to as "Terms and Conditions").

### General Recommendations

1. Do not use the age-old label "Trade Customs." You should use Terms and Conditions of Sale. Why? In a legal dispute between you and your customer, a court will likely not accept "Trade Customs" because it cannot be presumed that the customer has familiarity with the customs (practices) of the industry. Terms and Conditions, on the other hand, establishes a contract (agreement) of the conditions of sale between the provider and a specific customer.
2. Be sure each article is agreeable to you before you use it. Once you have your customer signs the Terms and Conditions, you are bound by them.
3. You can choose to fill in your company name where it says "provider." This will personalize the terms as your own.
4. If you print them in any form on the back of your Application for Credit, they become binding for all future work in an open credit arrangement unless you have agreed to rescind certain articles of the Terms. You must give notice of the Terms & Conditions of Sale on the front of the Application for Credit and have the customer sign their agreement to them.
5. If you give the Terms out to your customer as a separate sheet, it is important to include a place for your customer to sign their agreement. Make a copy and give them one, keeping the original in your files.

### Revised/Additional Articles

6. **Article 6. Hearing Venue.** This article has been revised to identify where any legal dispute would be heard in court. The advantage is that the laws governing the transaction would be those of your state, county and local area. Thus, any dispute between an out of the area customer would be heard locally, eliminating the need to travel to your customer's location and having to retain legal counsel in that jurisdiction. Conversely, if your customer tries to sue your company, they must do so in your location.
7. **Article 18. Credit Terms.** You may choose to eliminate it completely, or use language similar the following: "Terms of payment are those agreed upon by both parties."
8. **Article 23. Variable Data Security.** Protecting client data is paramount. This addition addresses a customer's expectation that sensitive or critical information is secured from unauthorized access and disclosure. Please fill in your company's data deletion policy, or you may choose to delete this section if it does not apply.
9. **Article 24. Postage.** Printers who offer mailing services should always collect postage in advance and are not responsible for additional postage charges beyond printer control. You may choose to delete this section if it does not apply.

As with all contracts, agreements, or terms of sale, legal counsel should be consulted prior to implementation.

## TERMS AND CONDITIONS OF SALE

1. **Quotations/Estimates.** A quotation not accepted within 30 days may be changed.
2. **Orders.** Acceptance of orders is subject to credit approval and contingencies such as fire, water, strikes, theft, vandalism, act of God, and other causes beyond the provider's control. Canceled orders require compensation for incurred costs and related obligations.
3. **Preliminary Work.** Preliminary or experimental work performed at the customer's request will be charged to the customer at the provider's current rates. This work may not be used without the provider's written consent.
4. **Creative Work.** Sketches, copy, dummies, and all other creative work developed or furnished by the provider are the provider's exclusive property. The provider must give written approval for all use of this work and for any derivation of ideas from it.
5. **Accuracy of Specifications.** Quotations are based on the accuracy of the specifications provided. The provider can requote a job at the time of submission if copy, or other input materials do not conform to the information on which the original quotation was based.
6. **Venue.** In the event of suit regarding this contract, then venue and jurisdiction shall be in either the Superior or Municipal Court, as appropriate, of the County of (insert your county name), in California (or insert or other state). The parties agree and stipulate that the essential terms of this contract are to be performed in said County.
7. **Electronic Manuscripts/Images.** It is the customer's responsibility to maintain a copy of the original file. The provider is not responsible for accidental damage to media supplied by the customer or for the accuracy of furnished input or final input. Until digital input can be evaluated by the provider, no claims or promises are made about the provider's ability to work with jobs submitted in digital format, and no liability is assumed for problems that may arise. Any additional translating, editing, or programming needed to utilize customer-supplied files will be charged at prevailing rates.
8. **Alterations/Corrections.** Customer alterations include all work performed in addition to the original specifications. All such work will be charged at the provider's current rates.
9. **Prepress Proofs.** The provider will submit prepress proofs for the customer's review and approval. Corrections will be returned to the provider on a "master set" marked "O.K.," "O.K. With Corrections" or "Revised Proof Required" and signed by the customer. Until the master set is received, no additional work will be performed. The provider will not be responsible for undetected production errors if:
  - Proofs are not required by the customer
  - The work is printed per the customer's OK
  - Requests for changes are communicated verbally
10. **Press Proofs.** Press proofs will not be furnished unless they have been required in writing in the provider's quotation. A press sheet can be submitted for the customer's approval as long as the customer is present at the press during makeready. Any press time lost or alterations/corrections made because of the customer's delay or change of mind will be charged at the provider's current rates.
11. **Color Proofing.** Because of differences in equipment, paper, inks, and other conditions between color proofing and production pressroom operations, a reasonable variation in color between color proofs and the completed job is to be expected. When a variation of this kind occurs, it will be considered acceptable performance.
12. **Overruns/Underruns.** Because printing is a custom manufacturing process, there may be overruns or underruns which will not exceed 10 percent of the quantity ordered. The provider will bill for the actual quantity delivered within this tolerance. If the customer requires a guaranteed quantity, the percentage of tolerance must be stated at the time of quotation.
13. **Customer's Property.** The provider will only maintain fire and extended coverage on property belonging to the customer while the property is in the provider's possession. The provider's liability for such property will not exceed the amount recoverable from the insurance. Additional insurance coverage may be obtained if it is requested in writing and if the premium is paid to the provider.
14. **Delivery.** Unless otherwise specified, the price quoted is for a single shipment, without storage, Freight On Board (F.O.B.) originating from the provider's facility. Proposals are based on continuous and uninterrupted delivery of the complete order. If the specifications state otherwise, the provider will charge accordingly at current rates. Charges for delivery of materials and supplies from the customer to the provider or from the customer's supplier to the provider are not included in quotations unless specified. Title for finished work passes to the customer upon delivery to the carrier at the shipping point or upon mailing of invoices for the finished work or a portion thereof, whichever occurs first.
15. **Production Schedules.** Production schedules will be established and followed by both the customer and the provider. There will be no liability or penalty for delays due to a state of war, riot, civil disorder, fire, strikes, accidents, action of government or civil authority, acts of God, or other cases beyond the control of the provider. In such cases, schedules will be extended by an amount of time equal to the delay incurred.
16. **Customer-Furnished Materials.** Materials furnished by customers or their suppliers are verified by delivery tickets. The provider bears no responsibility for discrepancies between delivery tickets and actual counts. Customer supplied paper must be delivered according to specifications furnished by the provider. These specifications will include correct weight, thickness, pick resistance, and other technical requirements. Artwork, special dies, or other materials furnished by the customer must be usable by the provider without alteration or repair. Items not meeting this requirement will be repaired by the customer or by the provider at the provider's current rates.
17. **Outside Purchases.** Unless otherwise agreed in writing, all outside purchases as requested or authorized by the customer, are chargeable.
18. **Terms/Claims/Liens.** Payment is cash in advance or whatever has been agreed to between customer and provider. Claims for defects, damages, or shortages must be made by the customer in writing no later than 10 calendar days after delivery. If no such claim is made, the provider and the customer will understand that the job has been accepted. By accepting the job, the customer acknowledges that the provider's performance has fully satisfied all terms, conditions, and specifications. The Provider's Liability will be limited to the quoted selling price of defective goods without additional charge for special or consequential damages. As security for payment of any sum due under the terms of an agreement, the provider has the right to hold and place a lien on all customer property in the provider's possession. This right applies even if credit has been extended, notes have been accepted, trade acceptances have been made, or payment has been guaranteed. If payment is not made, the customer is liable for all collection costs incurred.
19. **Liability.** (1) *Disclaimer of Express Warranties.* The provider warrants that the work is as described in the purchase order. The customer understands that all sketches, copy, dummies, and preparatory work shown to the customer are intended only to illustrate the general type and quality of the work. They are not intended to represent the actual work performed.  
(2) *Disclaimer of Implied Warranties.* The Provider warrants only that the work will conform to the description contained in the purchase order. The provider's maximum liability, whether by negligence, contract, or otherwise, will not exceed the return of the amount invoiced for the work in the dispute. Under no circumstances will the provider be liable for specific, individual, or consequential damages.
20. **Indemnification.** The customer agrees to protect the provider from economic loss and any other harmful consequences that might arise in connection with the work. This means the customer will hold the provider harmless and save, indemnify, and otherwise defend the provider against claims, demands, actions, and proceedings on any and all grounds. This will apply regardless of responsibility for negligence.  
(1) *Copyrights.* The customer warrants that the subject matter to be printed is not copyrighted by a third party. The customer also recognizes that because subject matter does not have to bear a copyright notice to be protected by copyright law, absence of such notice does not necessarily assure a right to reproduce. The customer further warrants that no copyright notice has been removed from any material used in preparing the subject matter for reproduction. To support these warranties, the customer agrees to indemnify and hold the provider harmless for all liability, damages, and attorney fees that may be incurred in any legal action connected with copyright infringement involving the work produced or provided. (2) *Personal or Economic Rights.* The customer also warrants that the work does not contain anything that is libelous or scandalous or anything that threatens anyone's right to privacy or other personal or economic rights. The customer will, at the customer's sole expense, promptly and thoroughly defend the provider in all legal actions on these grounds as long as the provider:
  - Promptly notifies the customer of legal action.
  - Gives the customer reasonable time to undertake and conduct a defense.The provider reserves the right to use its sole discretion in refusing to print anything the provider deems libelous, scandalous, improper, or infringing on copyright law.
21. **Storage.** The provider will retain intermediate materials used until the related end product has been accepted by the customer. If requested by the customer, intermediate materials will be stored for an additional period at an additional charge. The provider is not liable for any loss or damage to stored material beyond what is recoverable by the provider's fire and extended insurance coverage.
22. **Taxes.** All taxes and assessments levied by any governmental authority are the responsibility of the customer. All amounts due for taxes and assessments will be added to the customer's invoice. No tax exemption will be granted unless the customer's "Exemption Certificate" (or other official proof of exemption) accompanies the purchase order.
23. **Data Security and Privacy.** Provider follows industry best practices with supplied customer data files. Data files are stored in password protected project specific folders. Data files from multiple customers are never co-mingled. All data is password secured to authorized employees. Provider retains customer supplied data for the duration of the project and deletes data upon project completion OR within XX days of completion. Provider does not backup supplied data or provide any additional data disposal process other than deletion. If requested, provider will supply Certificate of Destruction for deleted data. Provider will not be responsible for the deletion, corruption, destruction, damage, loss or failure to store any customer supplied data.
24. **Postage.** Estimates do not include postage. The provider will notify the customer of the required postage as soon as this amount is known, and will notify the customer of the date when the postage is needed in order to complete the mailing prior to the agreed upon mailing date. While the supplier will make every effort to provide the customer with an accurate estimate of required postage, the supplier is not responsible for additional postage charges if the rate of postage changes for reasons beyond supplier control. Payment of postage in advance is required on all orders and is the responsibility of the customer. The supplier reserves the right to hold mailings for which sufficient postage has not been paid or until postage payment has been verified. The customer will provide the postage payment in adequate time for the supplier to complete the mailing prior to the previously agreed upon mail date.