



General Terms and Conditions for Contracts entered into between Seller and an entrepreneur, a public law entity or public separate estate

I. Application, Parties

1. Your contracting party is the mbmSystems GmbH represented by the managing directors, Thomas Gründemann and Alexander Haun, residing Lingnerallee 3, 01069 Dresden.

2. These General Terms and Conditions ("GTC") shall apply to all our business dealings with entrepreneurs (Sect. 14 German Civil Code), public legal entities or public separate estates.

3. All supplies, services and offers provided by us (Seller) to orderer (Buyer) shall be based exclusively on these Terms and Conditions that shall be considered irrevocably accepted upon the receipt of the goods and/or services delivered at the latest. The GTC shall also apply to any future business dealings even if the same have not been repeatedly expressly agreed upon.

4. Our GTC shall apply exclusively. Buyer's general terms and conditions shall apply only insofar as the same are in line with our GTC as regards content. Differing provisions of Buyer's general terms or conditions of purchase are hereby explicitly objected.

5. Any arrangement made with Buyer on an individual basis shall take priority over these GTC. As regards content of such arrangement shall be subject to a written contract and our written confirmation respectively.

6. Any reference to the application of legal regulations is solely made for avoidance of doubt. The legal regulations shall be applicable without even such clarification to the extent the same are not amended effectively or expressly excluded by these GTC.

II. Conclusion of contract, Prices, Shipping costs

1. Our offers are subject to confirmation and non-committal. The same shall also apply if we left to Buyer any brochure, product description or other documents including an electronic version of the same, in which we reserve proprietary rights or copyrights.

2. The ordering of goods by Buyer shall be considered a binding offer of a contract. We shall be entitled to accept the same within a period of 2 weeks after receipt. It may be done so in written form or by delivery of the goods to Buyer.

3. Unless otherwise agreed in the individual case, our prices valid upon conclusion of the contract shall apply, i.e. ex warehouse plus sales tax.

III. Delivery period and Default in delivery

1. The dates and delivery periods indicated by us are non-committal.

2. The grace period to be granted to us pursuant to legal regulations in the event of delay in delivery shall be 14 calendar days from Seller's receipt of written notification of such granting of a grace period.

3. Should we be unable to keep binding delivery periods for reasons not to be attributed to us, we will notify Buyer forthwith and inform about the expected new delivery period. If even then the goods/services are not available, we shall be entitled to wholly or partially withdraw from the contract. This shall apply in particular with regard to cases where deliveries by our supplier from a congruent covering transaction are delayed. Our legal rights and Buyer's rights of withdrawal and termination according to chapter V. shall not be affected by it.

4. Partial deliveries shall be permitted. Any additional cost incurred by it shall be borne by us.

5. Agreed dates shall be considered kept if the goods have been delivered on such agreed date to the person indicated as addressee.

IV. Delivery, Goods shipped to buyer, Passing of risk

1. The goods shall be delivered ex warehouse being the place of performance.

2. On Buyer's request and expense the goods are shipped. We shall be entitled to determine the type of shipment. Unless we invoice at our discretion in the case concerned the actual shipping costs ex warehouse a flat rate of € 50.00 plus insurance costs



and any duties, fees, taxes and other public charges that may arise shall be considered agreed. Sect. 447, para. 1 Civil Code shall apply to the risk of delay.

3. Packaging and pallets shall become Buyer's property.

4. If Buyer delays acceptance, fails to cooperate or delivery delays for other reasons to be attributed to Buyer, we shall be entitled to request compensation of damage arising there from including additional expenditure. For this we will charge a flat rate compensation of € 5.00 per calendar day commencing on the delivery deadline or – in absence of a delivery deadline – the notification of readiness for shipment. The proof of any higher damage and our statutory claims shall remain unaffected, but the flat rate shall be credited against any further claims for payment. Buyer may prove that no or a substantially lower damage has been caused.

V. Warranty for defects, Manufacturer's warranty and Limitation on liability/Exclusion of liability

1. Buyer shall inspect the goods without delay inasmuch this is feasible in the normal course of business and notify Seller of any defect forthwith. If there is no such or a delayed notification of Seller, the goods shall be deemed accepted by Buyer with respect to such defect, the entrepreneur recourse pursuant to Sect. 478 Civil Code shall then be excluded. It shall also apply if a defect that was not discernible in the inspection becomes apparent later, and Buyer fails to notify the discovery of such defect without delay.

2. Claims for damages by Buyer or for replacement of wasted expenditure shall be excluded.

3. In the event of damage arising out of the breach of a material contractual obligation (obligation the fulfilment of which facilitating the proper execution of the contract in general, and the compliance of which the contracting partner usually relies and may rely on) our liability shall be limited to the replacement of foreseeable, typically occurring damage.

4. The aforementioned limitation of liability shall not apply to:

4.1 claims for damage to life or health or physical injuries caused by negligent breach of duty by Seller

or wilful or negligent breach of duty by his legal representative or agent

4.2 claims for any other damage caused by a coarsely negligent breach of duty by Seller or wilful or coarsely negligent breach of duty by his legal representative or agent

4.3 any fraudulent concealment of a defect by us or if a certain condition of the goods has been guaranteed.

5. Any guarantee or warranty by manufacturers will be passed on to Buyer to the full extent but without taking own responsibility for that. Before claims are raised towards us Buyer shall try an out-of-court enforcement of the manufacturer's warranty. Warranty claims shall remain unaffected by it.

6. The grace period to be granted to us for a defect shall be 30 calendar days. We may choose at our own discretion between rework and new delivery. Irrespective of the foregoing we may reject the chosen kind of cure if the statutory prerequisites permit so. If rework fails twice Buyer may request at its discretion a purchase price reduction or cancel the contract. If the defects are insignificant, a cancellation shall be excluded. Any cure may be made dependent on Buyer paying the purchase price due. Buyer shall be entitled, however, to retain a reasonable part of the purchase price in proportion to the defect.

7. In the case of subsequent delivery and justified cancellation Buyer will be charged for all components of the delivery not returned at the rates applicable at the time of subsequent delivery or cancellation and set off against any credit. Because of the use benefits the compensation for lost value of Buyer is agreed based on the regulations applicable to the cancellation.

8. We may request the return of the rejected goods against reimbursement of costs. In such case please send back the item(s) sufficiently stamped, complete and, if possible, in the original packing and sufficiently cushioned, and attach a copy of the invoice and a description of the defect. The acceptance of any return shipment for the purpose of claiming warranty shall be subject to prior agreement. Replaced goods shall pass into our ownership.



9. If the examination of a notice of defect reveals no warranty case being present, we shall be entitled to charge Buyer with the expenses incurred.

10. For reason of breach of duty other than a defect Buyer may only withdraw or terminate the contract if we are responsible for such breach. Any free right of termination, as defined by Sect. 651, 649 Civil Code in particular, shall be excluded. In other respects the statutory prerequisites and legal consequences shall apply.

11. In other respects the legal regulations with special regard to entrepreneur recourse pursuant to Sect. 478, 479 Civil Code shall apply.

12. If the use of the goods delivered infringes industrial property rights or copyrights domestically, we will enable Buyer to further use such goods at our expense or reasonably modify the goods so that an infringement no longer exists. If such remedy is impossible to implement at commercially reasonable conditions or within a reasonable period of time, both we and the Buyer shall be entitled to withdraw from the contract. We will indemnify Buyer from any uncontested or legally established claims by proprietors. Subject to chapters V.3 and V.4. our obligations with regard to any infringement of industrial property rights or copyrights are regulated in a final manner. Such obligations exist only if Buyer notifies and claims an infringement forthwith, cooperates with us in a reasonable manner in defending such claims and allows us to make modifications respectively, all defence measures including out-of-court settlement remain reserved to us, the defect of title is not due to an instruction by Buyer and the infringement was not caused by any unauthorized change of the goods or non-conforming use of the same.

VI. Statute of limitation

1. The period for raising claims from defects of quality and title shall be 12 months as from delivery. Used goods shall be excluded from warranty.

2. The same shall apply to any contractual and non-contractual claims for damage based on a defect to the extent the same have not yet been effectively excluded.

3. The limitation periods pursuant to the product liability law shall remain unaffected. As regards claims for damages in accordance with V.3. and V.4. the statutory limitation periods shall apply.

VII. Reservation of title

1. Up until settlement in full of all claims including all current account balance claims we are entitled to against Buyer now or in future whatever the legal reason the following securities shall be provided to us. We will release the same on request at our choice to the extent to which their value exceeds the claims sustainably by more than 10%.

2. We shall be entitled to insure the goods on buyer's expense against theft, breakage, fire, water or other damage unless the orderer proves to have taken out such insurance.

3. The goods delivered shall remain our property. Buyer shall be entitled revocably to process or dispose any retained goods in the ordinary course of business as long as Buyer is not in default. Buyer shall inform us at any time on the whereabouts of the goods. Any processing, mixing, alteration or combination of the goods delivered always takes place for us as manufacturer but without creating any obligation for us. Should our (co-)ownership end due to combination it shall be agreed with immediate effect that Buyer's (co-)ownership in the unified object shall pass on to us in proportion of the invoice value of the goods delivered. Buyer shall retain our (co-)ownership free of charge. In other respects the provisions of the reservation of title shall equally apply to the created new product. Any pledging or transfer by way of security shall be excluded. All claims arising out of permitted and illicit re-sale or any other legal reason (e.g. insurance, tort) with respect to retained goods including all current account balance claims shall be assigned hereby by Buyer to us by way of security. Collection of assigned claims for our account may be effected both by us and by Buyer in his own name. Such authorization to collect may be revoked if Buyer fails to meet his payment obligations towards us. If any third party has access to the retained goods, attachments in particular, Buyer shall expressly make reference to our property under reservation and notify us forthwith to enable us to enforce our



rights. To the extent we are unable to recover any legal or extrajudicial costs incurred in this connection cannot be recovered otherwise, Buyer shall be liable for the same. In the event Buyer acts in breach of contract – delay in payment despite the necessary setting of a time limit in particular – we shall be entitled to withdraw from contract and demand the return of the retained goods. The same shall also apply to the filing of a petition to open insolvency proceedings. To enforce the reservation of title, we shall be entitled to enter Buyer's premises and take the retained goods. Such enforcement of the reservation of title shall not be deemed a withdrawal.

VIII. Due date, Payment, Purchase on account, Set-off, Retention

1. The purchase price shall be paid in Euro (€) without deduction of any discount, namely:
 - 1.1 ½ upon notification of Buyer of the provision of goods or their readiness for shipment.
 - 1.2 the residual amount including all agreed costs and expenses upon delivery of the goods.
2. We shall be entitled to assign the claims from our business relation.
3. Any payment with the effect of discharging the debts can only be rendered to Dresdner Factoring AG, 01099 Dresden, Glacisstrasse 2 as service partner of the issuer of the invoice if we have sold and assigned our claims to Dresdner Factoring AG for the purposes of factoring.
4. We reserve the right to reject certain types of payment on a case-to-case basis or demand further advance payment up to the amount of the contract value. Such procedure shall specifically apply to customers we have had no business relationship with before.
5. We shall be entitled to offset payments to older debts of Buyer in the first instance. If costs and interest have incurred already, such payment will be offset against the costs first, then the interest and finally the main service. Buyer will be informed on the kind of offsetting.
6. Buyer may only set off or retain if his claim has been determined without further legal recourse or is undisputed.

7. Buyer shall be in default 10 days after delivery. Should Buyer be in default with payment, we reserve the right to charge a flat rate arrears fee of € 10.0 in addition to the legal default interest and interest payable from the due date, which shall apply to the first reminder relating to the delay already. The claiming of any further damage shall not be excluded hereby.

8. If Buyer is in arrears with more than one account payable, all accounts payable by Buyer shall become due with immediate effect.

9. If after conclusion of the contract it becomes clear that our entitlement to the purchase price is jeopardized due to a lack of performance by Buyer (e.g. filing of a petition for insolvency proceedings), we shall be entitled in accordance with law to refuse performance and – after having set a deadline if any – withdraw from contract. In case of customized items we can declare our withdrawal with immediate effect.

IX. Other duties of Buyer

1. If Seller has made available to Buye sales displays, it shall be made exclusively on a loan basis pursuant to §§ 598 ff Civil Code. The sales displays of the authentic COLLECTION shall be exclusively stocked with Seller's products from the authentic COLLECTION (e.g. authentic CARDS, authentic RULERS, authentic MARKERS, authentic MAPS, authentic MATS, authentic PADS, authentic SCHOOL, authentic MAGNETS etc.). Buyer undertakes to inform Seller within 5 weekdays after receipt of the sales displays on the location of the same indicating Seller's inventory number. After the relationship as distribution partner has ended, Buyer shall at his own expense and without delay return the sales displays to Seller in a condition that is in line with proper use.

2. Buyer undertakes to keep confidential Seller's business and trade secrets disclosed to Buyer or which have otherwise become known to Buyer, even after termination of the business relationship. He also agrees for the term of the business relationship and beyond to neither himself make use of any proprietary rights and know-how of Seller nor allow any third party to make use of it nor support any third party in utilizing the same in any form.



3. All documents relating to Seller's business transactions that were entrusted to Buyer or otherwise obtained by him shall be returned to Seller upon termination of the business relationship.

4. If the goods are sold to a dealer, Buyer shall hereby secure the effective transfer of all these obligations to said dealer.

5. For each case of breach of above obligations by Buyer a penalty shall be incurred. Such penalty shall become due immediately upon discovery of the breach by Seller. The amount of it shall be determined by Seller using equitable discretion but shall not exceed € 5,000.00 in a given case and is judicially verifiable in the case of dispute. The objection of a continued offence by the individual breaches shall be excluded

X. Written form, Choice of law, Severability

1. Legally relevant declarations and notifications to be made towards us after the conclusion of the contract (e.g. setting of time limits, notices of defect, cancellation, reduction) shall be made in writing in order to be valid.

2. All arrangements in addition to these ones must be made in writing in order to be valid. There are no verbal collateral agreements.

3. The invalidity of one or more of these provisions shall not affect the validity of the other provisions of these GTC. The invalid provision shall be interpreted or amended so that the intended commercial purpose is achieved as far as possible to the extent permitted by law. The same shall apply to any gap of the GTC in need of regulations.

4. The law of the Federal Republic of Germany shall apply to these terms and conditions and all legal relations between Seller and Buyer excluding all international and supranational (contract) laws.

5. Place of jurisdiction for any dispute arising out of the contract and place of performance shall be the Seller's place of business. We shall be entitled, however, to file an action with the Buyer's place of general jurisdiction.