

## **I. General, Scope of Application**

(1) These general terms and conditions of delivery and payment exclusively form the basis for all offers, deliveries, and any other services provided by ELEMENT ONE MULTIMEDIA GmbH – this shall also apply to future business. Any conflicting confirmations by the customer in reference to their business and/or purchasing conditions are hereby expressly contradicted. Deviating business conditions of the customer can only become part of the contract if they are expressly accepted by us in writing.

(2) Our general terms and conditions of delivery and payment shall apply to only those persons who, when concluding the contract, act as part of their own commercial or professional activities (entrepreneur), and also to corporate bodies under public law or a special asset under public law.

## **II. Conclusion of Contract, Self-Supply Proviso, Re-Exportation**

(1) To become legally binding, orders require a written confirmation from us, solely the contents of which will govern the contractual relationship as well as the scope of supply and services. Subsidiary agreements, or verbal statements given by employees or representatives, or changes of confirmed orders (including changes of delivery items) require our written confirmation to become effective.

(2) Our delivery commitment shall at all times be subject to timely and orderly self-supply.

(3) All products delivered by us are intended to remain in the recipient country that was agreed upon with the customer. Re-exportation of our products is strictly governed by the Foreign Trade Ordinance of Germany (AWV) or of the country of origin and may be subject to authorization. The customer is responsible to inform himself/herself about the related regulations.

## **III. Prices**

(1) In the absence of specific agreements, prices are quoted ex works or ex warehouse, packing, transport and insurance excluded, and not including VAT at the statutory level.

(2) Prices are always valid only for the respective order and may not be applied to past or future orders.

(3) In cases where an agreement stipulates a delivery time of more than five (5) weeks, both contract parties may request a change of the agreed price to such extent as respectively unpreventable changes of pricing factors occurred after the conclusion of the contract, such as e.g. reductions or increases of costs due to wage agreements or changes in material prices. The change in the price shall be restricted to the extent that is required to cover the actually incurred cost reduction or cost increase. A contracting party shall also be entitled to this kind of price adjustments, if an actual delivery time of more than five

(5) weeks ensues due to delays for which the other party is responsible.

## **IV. Payment**

(1) Unless expressly agreed upon otherwise, payments shall be made in advance and without any deductions. A payment shall be deemed made not before the amount due is fully at our disposal (payment receipt).

(2) Bills of exchange and checks shall only be accepted after previous agreement and only on account of performance, and they shall only be deemed payment after unreserved crediting. On the basis of private bank rates and including respectively applicable VAT, bank fees, discount charges, fees for bills of exchange, and other fees shall be borne by the customer.

(3) If the customer is in default of payment, from the first day of delay ELEMENT ONE is entitled to charge the customer default interests to the amount of 8% above the base rate. The contracting parties retain the right to demonstrate that the actual damage is higher or significantly lower. Our rights according to clause V para. 4 and, in the case of bilateral commercial transactions, the right to charge due date interests of 3% p.a. above the base rate, or at least due date interests of 5% p.a., shall remain unaffected.

(4) Offsetting or exercising retention rights shall only be allowed for legal claims of the customer which are acknowledged by us, not disputed, ready for a decision, or recognized as legally binding.

## **V. Delivery Time, Acceptance, Default of Acceptance**

(1) An agreed delivery time shall begin with the date of our order confirmation, but not before the provision of the documents, approvals, and releases to be made available by the customer, and not before full clarification of technical questions to be answered by the customer, and of the details of the requested finishes to be specified by the customer.

(2) The delivery time shall be deemed complied with, if, prior to its expiry, the passing of the risk has happened in accordance with clause VI.

(3) The delivery time shall be extended – even in the case of late delivery – by a reasonable amount of time in cases of force majeure and unforeseeable events which occur after the conclusion of the contract and for which we are not responsible, if such hindrances demonstrably affect the provision of the owed services. This shall also apply if such circumstances occur at pre-suppliers. We will inform the customer as soon as possible about the beginning and the end of such hindrances. Should a hindrance exist for more than three (3) months, or should it be certain that it will exist for more than three months, both the customer and we are entitled to withdraw from the contract.

(4) Should the customer be in default with the acceptance of contract items or with the payment, we are entitled to withdraw from the contract and/or to demand compensation instead of service completion, after a reminder with the specification of an adequate grace period, to which we are legally obligated, expired unsuccessfully. On enforcement of claims for damages due to non-fulfilment, without providing evidence we can demand compensation amounting to

- 30% of the purchase price as a compensation for a loss of profit, if the contract item is a series product or a standard product, or
- 100% of the purchase price, if the contract item is produced project-specific and/or a custom-made product, built according to specific customer requests, and if we had expenditure to establish readiness for delivery.

(5) The contracting parties are at liberty to provide evidence that the actual damage is higher or substantially lower. Also unaffected remain the regulations that are stipulated by the law for determining the damage compensation, if the contract has

already been completely fulfilled by us. Aside from that, if the customer is in default of acceptance, we are entitled to invoice the customer for additional expenditures, in particular for storage costs.

## **VI. Delivery, Shipping and Passing of Risk**

- (1) All shipments shall be made at the customer's own expense and risk.
- (2) Unless special agreements were made about the dispatch mode, ELEMENT ONE may determine the appropriate shipping method at our own discretion (selection of safest, fastest, and most economically priced transportation cannot be guaranteed).
- (3) Partial deliveries and services are permissible to a reasonable extent.
- (4) If the contract item is exported to another member state of the European Union (EU), prior to our dispatch the customer is obliged to provide us with information about their branch of trade and their VAT identification number under which the delivery is to be carried out. This shall apply accordingly when further states are included in the regulations that are authoritative for this provision.
- (5) For deliveries, the risk is transferred to the customer at the point of time when the delivery leaves our works or warehouse. This shall also apply if partial deliveries are made. In cases where a dispatch is delayed due to reasons for which we are not responsible, the point of time when the risk is transferred to the customer shall be the date when readiness for dispatch is announced.
- (6) Upon the customer's request and at the customer's expense all shipments can be insured from the date of the passing of the risk. In the event of damage or loss, insurance claims are assigned by us to the customer simultaneously with their completion of contractual obligations (which include reimbursement of the insurance rate).

## **VII. Warranty**

- (1) The warranty period for ELEMENT ONE products is 60 months for mechanical parts and 24 months for electrical and electronic parts. In the case of bilateral commercial transactions, the customer is obliged to give written notice of any kind of defects to ELEMENT ONE within eight (8) working days following the delivery of an item. Should the eight working days deadline not be met, the delivered goods are considered fully operational and approved by the customer, notwithstanding defects. Hidden defects are exempt from this deadline and must be notified in writing within eight (8) working days following their discovery. (Saturday is not considered a working day.)
- (2) The limitation period for material defect claims is one (1) year. In the case of claims for damages related to health effects, human injury or loss of life for which ELEMENT ONE is to be held responsible, or in the case of intent or gross negligence on the part of ELEMENT ONE, the limitation period for material defect claims is two (2) years.
- (3) Should the delivered goods possess a relevant defect, at ELEMENT ONE's discretion the customer is entitled to either a removal of the defect (rectification) or the delivery of material free of defects (replacement). At the customer's discretion, and if the customer regards other means of compensation unsatisfactory, he or she is entitled to either the rescission of the contract or a reduction of the purchase price in the case that ELEMENT ONE is not willing or not able to provide a rectification or a replacement, particularly in the case that, for reasons that ELEMENT ONE is to be held responsible for, a rectification or a replacement is delayed beyond a reasonable amount of time, or if rectification or replacement efforts are otherwise unsuccessful.
- (4) There shall be no warranty obligation for normal wear and tear, in particular not for wearing parts. Furthermore, a warranty obligation shall not apply, if damages to the devices or dysfunctions thereof occur that are caused by improper treatment or improper use, or use of a device under inappropriate operating conditions.
- (5) As stipulated in Clause VIII of ELEMENT ONE's general terms and conditions, ELEMENT ONE assumes only limited liability for potential defectiveness of a delivery item.
- (6) In cases where a faulty delivery item is not ELEMENT ONE's own make (third party product), ELEMENT ONE shall be entitled to assign the customer their material defect claims against the pre-supplier, and, regarding recourse, to refer the customer to legal process against the third party. ELEMENT ONE is liable for claims made as per the stipulations in para. 3 and para. 5 of these Warranty Conditions only in those cases where a customer's claims against the pre-supplier are unenforceable, despite timely and proper legal action, or if, in individual cases, such kind of legal process is unreasonable.

## **VIII. Liability**

- (1) ELEMENT ONE shall assume liability in accordance with the German Product Liability Act and in cases where we are responsible for inability or impossibility. Moreover, as per legal provisions we are liable for damages in cases of intention, of gross negligence, when specifications had been guaranteed, or for damages which relate to health effects, human injury or loss of life. Apart from that, should ELEMENT ONE violate a material or an essential contractual obligation with simple negligence, our liability to indemnify shall be limited to damage that is foreseeable and typical for the contract. In all other liability cases, damage claims on grounds of tort or of breach of an obligation under the contract shall be excluded in such way that we are not liable for loss of profit or other financial damages on the customer's end.
- (2) Personal liability of our clerks, employees, staff, representatives and/or vicarious agents shall also be excluded, if and to the extent the preceding stipulations exclude or limit ELEMENT ONE's liability.
- (3) The limitation period of the customer's claims shall be as defined in clause VII, unless claims are related to tort or pursuant to the German Product Liability Act.

## **IX. Retention of Title and other Securities**

- (1) Ownership of delivered goods shall be reserved by ELEMENT ONE until complete fulfilment of all obligations (including future obligations and collateral charges, e.g. bill of exchange fees, interests) which result from the business relationship with the customer. If an open account agreement was entered into with the customer, ownership of goods shall be reserved until full settlement of the accepted balance. Upon receipt of a check or a bill of exchange, fulfilment shall be established not before the check or bill of exchange is cashed and the credited amount is fully cleared without any recourse risks. If payment through check procedure is agreed between the customer and us, our retention of the title shall include cashing our bill of exchange through the customer, and shall not expire when the check we received is credited to our account.

- (2) The customer shall be allowed to process and to sell the goods in their orderly and usual course of business, but shall not be entitled to a transfer of our title for the purpose of securing a debt.
- (3) The customer shall be obliged to treat reserved goods with care and to insure these goods adequately against theft, destruction and damage at their own expense. In cases of attachment, confiscation, damage, or loss of goods the customer must inform us immediately. All expenses that may have to be made, in particular for rescission of a third party's attachment proceedings and, as the case may be, the recovery of contract items, shall be borne by the customer, unless these costs can be recovered from a third party.
- (4) If the customer is in default of payment, ELEMENT ONE shall be entitled to a temporary retraction of reserved goods. Exercising the retraction right does not constitute a cancellation of the contract.
- (5) With immediate effect, in the amount of the reserved goods' invoice value the customer assigns us purchase price claims, wage claims, and/or any other claims (including the accepted balance from an open account agreement or the then existing "causal balance" in case of insolvency of the customer's business partner) that result from the resale, further processing and/or from any other legal basis thereof (insurances, tort); we accept this assignment. We hereby grant the customer revocable authorization to collect claims assigned to us in their own name on our behalf. This authorization shall only be revoked, if the customer does not orderly fulfill their payment obligations. In such case, at our demand the customer shall provide all information and related documents about the assigned claims that are required for claim collection through us, and the customer shall also notify the debtor about their assignment.
- (6) Any processing, alteration, and/or transformation of contract items through the customer shall always be deemed carried out on ELEMENT ONE's behalf. If a contract item is processed further in combination with other items not owned by us, we shall gain co-ownership of the new article, proportionately to the value that, at the time of further processing, the contract item had in relation to the value of the other items. The same stipulations that apply to reserved goods shall also apply to products resulting from processing, alteration, and/or transformation of contract items. In cases where a contract item is united with other items not owned by us to form an integral part of a unified object, and where thus our ownership expires, a transfer of the customer's ownership of the unified object to ELEMENT ONE shall be agreed to an extent proportionately to the value that the contract item had in relation to the value of the other united items at the time of the unification. The customer shall keep our joint ownership safe free of any charges. Apart from that, the same stipulations that apply to the contract items shall also apply to the unified object.
- (7) If the realizable value of security rights which we were granted as per the above regulations exceeds our claims against the customer not only temporarily by more than 10%, upon the customer's request ELEMENT ONE shall release collaterals selected at our own option to the corresponding extent. When liquidating collaterals, if we are charged value added tax (VAT) for a supply of the customer that is subject to sales tax, we shall increase the above indemnity limit of 110% by this VAT amount.

#### **X. Final Provisions**

- (1) The customer entitles ELEMENT ONE to process personal data within the limits of the German Data Protection Act ("Bundesdatenschutzgesetz (BDSG)") and without notice of disclosure, to the extent to which this data processing is required to execute the contractual relationship.
- (2) Unless expressly agreed upon otherwise, the place of performance shall be Ettlingen, Germany.
- (3) If the customer is a merchant as defined in the German Commercial Code ("Handelsgesetzbuch (HGB)"), a legal entity under public law, or a special fund under public law, the place of jurisdiction for all rights and responsibilities from any kind of business between the contractual parties, including disputes about bills of exchange and checks, shall be Karlsruhe, Germany. This shall also apply, if the customer does not have an inland place of general jurisdiction, and/or if the customer move their domicile or their place of residence abroad after the conclusion of the contract, and/or if the customer's domicile or place of residence is unknown at the time a law suit is filed. ELEMENT ONE shall however also be entitled to take the customer to court at the customer's place of general jurisdiction.
- (4) These General Delivery & Payment Terms and Conditions and the entire legal relationship between the customer and ELEMENT ONE shall be governed by and construed in accordance with the law of the Federal Republic of Germany, excluding the United Nations' Convention on Contracts for the International Sale of Goods (CISG).