

## **General Terms and Conditions of MuSe Content GmbH**

### **1. Subject of Agreement; Validity of General Terms and Conditions**

1.1 MuSe Content GmbH, Aalkrautweg 42, 22395 Hamburg (hereinafter referred to as „MuSe Content“) offers its customers products and services in the fields of Content Management, Multi-Sensory Marketing, In-store Multimedia, sound concepts, visual concepts, Project Management as well as Inhouse consulting. MuSe Content offers its products and services solely to business customers.

1.2 The business relationship between MuSe Content and the Customer is governed solely by these General Terms and Conditions (hereinafter „GTC“) and – if agreed – by a Framework Agreement, concluded in writing between the parties. MuSe Content does not accept any deviating terms of the Customer, unless MuSe Content explicitly accepted their validity in writing.

1.3 MuSe Content reserves the right to change these GTC. The Customer will be notified of any changes in these GTC by MuSe Content in writing by fax or per Mail. In case the Customer does not contradict these changes within two weeks upon receipt of the notification, these changes shall be deemed as agreed. The Customer shall be informed separately of the right to raise objection and of the legal consequences of maintaining silence.

### **2. Conclusion of Contracts**

2.1 A contract between MuSe Content and the Customer is concluded with the Customer's declaration of acceptance following the offer of MuSe Content. It is regularly required that the Customer's declaration of acceptance shall be done in writing.

2.2 MuSe Content is bound to an offer for 14 days unless expressly stated otherwise.

2.3 Any changes or additions to the contract concluded between MuSe Content and the Customer shall be done in writing, whereby transmission by fax is sufficient.

### **3. Prices; Terms of Payment; Offsetting**

3.1 The prices offered by MuSe Content are understood plus value added tax at the respective applicable legal rate, unless otherwise stated. If any delivery or shipment expenses arise, these shall be invoiced separately.

3.2 The invoices issued by MuSe Content shall be paid within 14 days after invoice date.

3.3 Beyond the above payment deadline, the Customer is in default of payment even without an explicit reminder. Beginning with the time the delay arises, a default interest at the respective applicable legal rate is due.

3.4 MuSe Content reserves the right to require appropriate advance payment and/or to charge installment payments.

3.5 The offsetting of the Customer with claims that are contested, not ready for decision or not established by final enforceable judgment, or withholding of payments in connection with such claims, is not permitted.

#### **4. Terms of Delivery; Delivery**

4.1 The terms and dates of delivery, stated by MuSe Content, are not binding, unless such fixed terms and dates are confirmed by MuSe Content explicitly in textual form.

4.2. In the event MuSe Content fails to deliver or delivers contrary to contractual agreements, the Customer shall set a period of grace of two weeks for delivery; otherwise the customer shall not be entitled to withdraw from the contract. The right of the Customer to withdraw from the contract without setting a deadline in case respective legal prerequisites apply remains unaffected thereby (§ 323 Paragraph 2 BGB /German Civil Code/).

4.3. MuSe Content shall not be liable for deliveries or services that are not possible or for delays to deliveries or services as a result of force majeure or other events that were not foreseeable at the time of the completion of contract (e.g. breakdowns in business operations of all kind, difficulties with the supply of materials or energy, delays to transportation, strikes, failures to deliver or the failure to deliver promptly by suppliers or incorrect deliveries by suppliers), for which MuSe Content is not responsible. Insofar as such events render it extremely difficult or impossible for MuSe Content to make deliveries or perform services and if any such obstruction is not merely for a foreseeable temporary period, MuSe Content shall be entitled to withdraw from the contract. MuSe Content shall inform the Customer thereof without delay and refund any payments already made by the Customer. In the case of obstructions of a temporary nature, delivery period and deadlines shall be extended or postponed by the amount of time by which the obstruction delays the making of deliveries and performance of services, plus an appropriate period of grace.

4.4. MuSe Content shall be entitled to make deliveries in installments if delivery installments are acceptable to the Customer in accordance with the contractually foreseen purpose. Deliveries in installments can be invoiced by Muse Content separately.

4.5 Insofar MuSe Content performs services via Internet, MuSe Content endeavors to ensure the best possible availability of its services via Internet; however it cannot guarantee permanent perfect availability for technical reasons (Server Backup, maintenance etc.). Interruptions of operations are possible. Correspondingly, no liability can be assumed for damages resulting from temporary unavailability or limited availability. However, MuSe Content assumes that its services shall be available to at least 90% in the annual average. Excluded thereof are times at which the server is not accessible via Internet as a result of technical or other problems which are not within the control of MuSe Content (force majeure, third party etc.).

#### **5. Reservation of Title in Case of Purchase of Devices**

5.1 In case of purchase of devices MuSe Content retains the ownership over the goods supplied until all claims arising from the business relationship with the Customer have been settled.

5.2 The Customer is not authorized to transfer the goods subject to retention of title or to pledge them.

5.3 In the event of sale of the goods subject to retention of title in contrary to the above provision, as well as in the event of loss or damage of the goods subject to retention of title, the Customer shall assign all claims resulting thereof against third parties in advance to MuSe Content. MuSe Content hereby accepts this assignment. The Customer shall inform MuSe Content in writing without delay of each change of location of the goods subject to retention of title as well as each access of the third party to the goods subject to retention of title, especially of pledge. The Customer is obliged to send to MuSe Content a copy of the

record of pledge as well as to inform the third party, especially the authorized bailiff, that the goods are the property of MuSe Content. The expenses of the necessary enforcement of rights of MuSe Content shall be covered by the Customer.

## **6. Warranty in Case of Purchase of Devices**

6.1 If the goods delivered by MuSe Content are defective, MuSe Content shall at its option cure by repair or replacement delivery. If the subsequent performance fails, the Customer can withdraw from the contract or reduce the purchase price reasonably. The Customer is not entitled to withdraw from the contract in case of only minor defects.

6.2 In case the Customer attempts to remedy deficiencies himself (e.g. by means of opening the supplied device), this results into immediate expiration of the warranty claims.

6.3 The Customer can claim warranty only if he fulfils his obligations to examine and give notice of defects in accordance with § 377 HGB (German Commercial Code). The notification of defect must be done in writing.

6.4 Any defect of the delivered goods must be fully proven to MuSe Content. Defects of part of the delivered goods shall not entitle to reject the whole delivery unless the partial delivery is acceptable to the Customer in accordance with the contractual purpose.

6.5 The warranty period for defects is one year after delivery of goods for new goods and three months for second-hand goods. This shall not apply if MuSe Content maliciously concealed the defect.

## **7. Rent of Devices**

7.1 The Customer shall treat the rented devices with care and maintain them in the condition in which there were delivered, with the exception of wear and tear resulting from use to the intended purpose that does not exceed the usual extent.

7.2 The device must be insured by the Customer in favor of MuSe Content against damage and loss.

7.3 A reduction in rent in accordance with § 536 Paragraph 1 of BGB (German Civil Code) is excluded if MuSe Content is not responsible for the defect.

7.4 The duration of rent depends on the contract term stipulated in the framework agreement.

7.5 Upon the end of the relationship of rent the Customer shall send the device back to MuSe Content within two weeks at his own expense. MuSe Content has the right to charge the amount of rent until the actual return.

## **8. Content; Use**

8.1 MuSe Content provides music and/or music videos and/or other works (hereinafter: Content) as well as specially developed software to the Customer for use. The scope and the kind of the use are determined according to the framework agreement concluded between the parties.

8.2 Unless otherwise explicitly agreed in writing, the Customer has the simple right with restriction as to the venue and period of time, to play the content in the venues agreed between the parties in writing by means of devices provided by MuSe Content. Besides, the

Customer has the right to use the software supplied together with the player in accordance with the purpose of the contract.

8.3 Any use of the supplied Content and software in the scope deviating from the scope agreed in these GTC and/or framework agreement is expressly prohibited. In particular, it is prohibited that the Customer shall play the Content at the venues other than contractually agreed, as well as change, reproduce, and/or transfer the Content and software, provided by MuSe Content to third parties, and/or allow any use by unauthorized third parties.

8.4 If the Content is provided to the Customer, the Customer alone is responsible for the legal harmless ness of this Content. In particular, the Customer must ensure that the Content provided is free from claims by third parties and does not infringe current law.

8.5 The Customer releases MuSe Content from all claims that might be made by third parties to MuSe Content as a result of actual or asserted violation of law because of a deed or omittance for which the Customer is responsible. The Customer covers in this respect the expenses of the necessary legal defense of MuSe Content including all costs of suit and attorneys fees. In case of a claim by a third party, the Customer shall be obliged to place at the disposal of MuSe Content immediately, truthfully, and completely all information that is necessary for the verification of the claims asserted and for corresponding legal defense.

8.6 In the event of storage media exchange (e.g. if the content is changed), the Customer shall have to return the corresponding storage medium, that must be exchanged, to MuSe Content without delay.

## **9. GEMA and GVL Fees**

9.1 In case any content is provided to the Customer that needs a purchase of license from the „Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte (GEMA)“ /Society for musical performing and mechanical reproduction rights/ and/or „Gesellschaft zur Verwertung von Leistungsschutzrechten mbH (GVL)“ /Collecting Society for Performing Artists, Producers and Promoters/, the Customer shall obtain the license and cover corresponding fees, unless otherwise explicitly agreed in the framework agreement.

9.2 The Customer releases MuSe Content from all claims of collecting societies that result from failure to perform above obligations.

## **10. Liability**

10.1 Unless otherwise expressly agreed in writing, any liability of MuSe Content, irrespective of legal basis on which it arises, is limited to the scope of the damage foreseen at the conclusion of the contract, that typically arise within the business of this kind. Any further claims for compensation are excluded, unless caused by the legal representatives, chief executives or other agents of MuSe Content deliberately or grossly negligently. This also excludes the liability for tangible and intangible (consequential) damages caused by the accidental or technically incorrect transmission of data.

10.2 The liability disclaimer provision above shall not apply if any exclusion or restriction of liability agreed for injury to life, physical injury or damage to health is due to intentional or negligent dereliction of duty on the part of MuSe Content or intentional or negligent dereliction of duty on the part of any legal representative or agent of MuSe Content; nor shall it apply for other damages due to intentional or negligent dereliction of duty on the part of MuSe Content or intentional or negligent dereliction of duty on the part of any legal representative or agent of MuSe Content. Furthermore, the above restrictions of liability shall not apply in case claims are made in accordance with the Product Liability Law („Produkthaftungsgesetz“, ProdHaftG).

## **11. Term of Contract**

11.1 Unless explicitly agreed otherwise, the contract that underlies these General Terms and Conditions is unlimited and can be terminated any time with a notice period of 6 months to the end of the calendar year.

11.2 Each of the parties has the right to terminate the contract without the period of notice for good reason. A good reason for MuSe Content is in particular the violation of the provisions of these GTC that was not remedied within the set deadline.

11.3 Termination shall be done in writing, whereby transmission by fax is sufficient.

## **12. Place of Fulfillment; Place of Jurisdiction**

The place of fulfillment and the place of jurisdiction is Hamburg.

## **13. Final Provisions**

13.1 Applicable law is the law of the Federal Republic of Germany excluding United Nations Convention on Contracts for the International Sale of Goods. The place of jurisdiction for all legal disputes is Hamburg.

13.2 Should any provisions of this agreement be completely or partly ineffective, the validity of the remaining provisions shall not be affected. In this case the parties shall by mutual agreement replace the ineffective provision with an effective provision that fulfils the economic purpose of the ineffective provision as close as possible. The same applies to a possible gap in this contract.