

## General Terms of Delivery and Payment

Creative Wave GmbH  
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### 1. General provisions

- 1.1. The following general terms of delivery and payment apply to all sales and delivery transactions conducted by Creative Wave GmbH. Application of the purchasing or any other business terms of our contract partner – hereinafter referred to as the purchaser – is herewith expressly denied.
- 1.2. Insofar as they are transactions of a related nature, these terms of delivery and payment shall also apply to all future transactions with the purchaser.
- 1.3. Insofar as to do so does not impair service or quality, Creative Wave GmbH reserves the right to modify the delivery or provision of services promised in line with technical advances.

### 2. Quotation and order

- 2.1. Written quotations issued by us to the purchaser shall be binding on us for 2 weeks from the date of the quotation, save only if within this period we have issued the purchaser with a revised quotation in relation to the contract project. In the latter case time-limited binding validity shall exist only for the revised quotation; the previous quotation shall lose its validity. The contract shall come into being if and when the purchaser confirms acceptance of our written quotation in writing within this deadline.
- 2.2. Retrospective ordering of individual extra items or services relating to the main written agreement shall be routinely accepted subject to Creative Wave GmbH providing the service. Any alternative verbal subsidiary arrangement or other agreement shall be valid if Creative Wave GmbH confirms it in writing and/or makes it an integral part of the contract. Besides this specific written confirmation from the purchaser shall not be necessary.
- 2.3. In the absence of any arrangements providing otherwise, the statutory provisions shall apply here in all other respects.

### 3. Transfer of risk

If the consignment is being shipped to the purchaser at the latter's request, then the risk of its accidental destruction or deterioration shall pass to the purchaser not later than when it leaves the factory / warehouse. This shall apply regardless of whether shipping of the goods is from the place of fulfilment or who is bearing the shipping costs.

### 4. Delivery

- 4.1. Creative Wave GmbH shall at all times be entitled to make partial deliveries and to render partial services.
- 4.2. In the company's own name and on its own account Creative Wave GmbH shall furthermore be entitled to issue sub-orders for the deliveries and services to third parties.
- 4.3. All delivery deadlines and dates shall be deemed binding only when confirmed as binding by us in writing.
- 4.4. Where the purchaser causes or is responsible for any interruption or delay to the deliveries or services that we are obliged to provide, the purchaser shall bear the additional costs of said interruption or delay. Included in the purchaser's area of responsibility are, for example and as applicable, access to the development studio and provision of the basic technical connections / distribution networks, plus any necessary planning documents.
- 4.5. Creative Wave GmbH shall not be held responsible, including where binding dates have been agreed, for any delays to deliveries or services due to any act of God, mobilisation, war, revolt, strike, lock-out, business disruption, fire, natural disaster, transport restriction, change to statutory provisions, official action or decree or to the occurrence of

any other unforeseeable event outside of the company's area of influence. In such event, deadlines for deliveries and services shall be extended commensurately.

- 4.6. The purchaser shall be able to demand a contractual penalty only if this has been separately agreed. Claims for losses that the purchaser suffers as a result of delayed delivery, especially for losses arising from a culpable breach of contract or any negligently committed illegal act, or for consequential losses shall fundamentally not be entertained. Insofar as in cases of wilful intent or gross negligence and in the case of warranties or breach of material contractual duties through minor negligence there is mandatory legal liability for losses typically foreseeable in relation to contracts of this sort, this shall not apply.
- 4.7. In all other respects the purchaser's right to cancel after a reasonable further deadline has been given to the supplier and has passed without result shall remain unaffected.

## 5. Prices and payment terms

- 5.1. All prices are in euros and are subject to statutory sales tax. Sales tax at the prevailing rate is shown separately on all invoices in accordance with the then applicable tax law regulations.
- 5.2. Unless any other agreements have been made, the agreed prices apply in each instance only to the individual order in question. Insofar as no fixed price agreements have been made, Creative Wave GmbH reserves the right to make appropriate price adjustments due to any changes in personnel, materials or sales costs for deliveries and services that arise 3 months or more after contract signature.
- 5.3. Creative Wave GmbH shall be entitled, even prior to providing the deliveries or services, to demand from the purchaser commensurate advance payments totalling up to 50% of the order value agreed in any given case.
- 5.4. The payment terms agreed in each instance shall apply for all payments. Unless specified otherwise, all payments become due immediately upon issue of the invoice and are to be made to Creative Wave GmbH's payments office without any deduction or charges. Deduction of a discount is permitted only in the case of a special written agreement. The same shall apply to any advance payments billed pursuant to the provision at clause 5.2. Payment terms shall be deemed met if we have access to the funds by the due date. Payments always get allocated to the oldest still outstanding invoice.
- 5.5. If a period of credit is agreed, our invoices shall become immediately payable regardless of this agreement if the purchaser falls into arrears with the settlement of any other debt, bills of exchange or cheques are protested, the purchaser stops making payment, is heavily indebted or an application has been made to open insolvency proceedings over its assets or such proceedings have been opened. In such situations we shall be entitled to demand back all goods to which we have retained title and to cancel the contract.
- 5.6. If after order confirmation the purchaser pulls out of the contract for reasons for which we are not responsible, the purchaser must bear in full any and all costs incurred up to that point.
- 5.7. The purchaser shall be entitled to offset counter claims against our invoices only if said claims are undisputed or have been legally determined. Unless based on the same contractual relationship the purchaser shall have no right of retention.
- 5.8. If the delivery or provision of service is delayed through no fault of Creative Wave GmbH, the payments are to be made as if such delay had not occurred.
- 5.9. For the duration of any period of time that the purchaser is in payment arrears the supplier shall be entitled to desist from making any further deliveries or providing services.

## 6. Retention of title

- 6.1. We shall retain title to the items delivered until full payment of all invoices arising from the supply contract. This shall also apply to all future deliveries, even if we do not always explicitly refer to this.
- 6.2. The purchaser shall be entitled to modify, process and subsequently sell the goods in the normal course of business. The modification or processing of goods to which we have retained title shall be done on our behalf.

- 6.3. In the event that the goods are sold on, the purchaser assigns to us even now all receivables and other claims against its customers, including ancillary rights. We shall be entitled and upon our request the purchaser shall be obliged to inform the customer of the assignment in writing. If we so demand, the purchaser shall be obliged by way of the delegated retention of title to withhold title to the items from its customers on our behalf.
- 6.4. Unless and until we revoke such right, the purchaser shall be entitled to collect the assigned receivables.
- 6.5. Should any third party initiate compulsory enforcement measures (e.g. any form of attachment) in respect of the retained title goods or assigned debt, the purchaser must immediately furnish us with comprehensive details of this, make the third party aware of our rights and provide us with the necessary documents for us to intervene. Any and all costs arising through our intervention shall be borne by the purchaser.

## **7. Warranties pursuant to contract for services legislation**

- 7.1. According to contract for services legislation, the period of limitation for claims arising from defects is 1 year from the statutory start of the limitation period. The period of limitation for such claims in the case of a building or of a service that consists of performing planning or monitoring work for said building (Art. 634a, para. 1, no. 2, German Civil Code) shall remain unaffected by this; as per statutory regulations the period in this case is five years.
- 7.2. The purchaser must inform us in writing of any defects without delay. In all other respects for reporting defects and reserving rights to associated claims the statutory regulations shall apply.
- 7.3. If in spite of all care taken, the goods supplied show any defect that was already present at the time of transfer of risk, we shall, subject to the purchaser's complaint about the defect having been raised in time, either remedy the defect or, if we so choose, supply a replacement. We must always be given the opportunity to make good any defect within a reasonable deadline. Any rights of recourse remain unaffected by this provision.
- 7.4. Any claims from the purchaser pursuant to expenditure necessary for the purpose of making good a defect, especially transportation, travel, labour and material costs, will not be accepted if such expenditure goes up because the goods supplied by us have been subsequently moved to a place other than the purchaser's site unless such movement is in line with the goods' normal use.
- 7.5. Any rights of the purchaser to claim recourse against us shall exist only insofar as the purchaser has not made any agreements with its end-consumer that go beyond the mandatory statutory rights to claim for defects. Further clause 7.3 shall apply correspondingly to the scope of the purchaser's right to claim recourse against us.
- 7.6. In the event that the make good work fails, the purchaser shall have the right to pay a lower price or, if it so chooses, to cancel the contract. We shall accept no further liability. For any compensation claims in relation to defects or consequential losses arising from defects the provisions at clause 9 shall apply accordingly.
- 7.7. In the event of any and each unfounded complaint we shall charge a flat fee of €25 for the expenditure involved in looking into it. We expressly grant the purchaser the right to prove that no expenditure at all was incurred in looking into the complaint or that it was appreciably lower than the flat fee.

## **8. Warranties on sales**

- 8.1. In the case of sales to purchasers who are not consumers as per the definition at Article 13 of the German Civil Code (BGB) the period of limitation for defect claims shall be 1 year from the statutory start of the limitation period. Art. 479, para. 2 of the BGB remains unaffected.
- 8.2. The period of limitation for operators of businesses to claim recourse or compensation for expenditure pursuant to Art. 478 of the BGB shall likewise be 1 year from the statutory start of the limitation period. Art. 479, para. 2 of the BGB remains unaffected.
- 8.3. The purchaser must inspect the goods immediately after delivery. Complaints about obvious defects to the goods can only be considered if they are lodged directly with us in writing within 3 days of the delivery. The same applies to complaints about any defects to the goods that can be detected with reasonable effort. Complaints about any other, especially concealed, defects must be lodged directly with us in writing within 3 days of the defect being detected; otherwise they will not be considered.

- 8.4. If in spite of all care taken, the goods supplied show any defect that was already present at the time of transfer of risk, we shall, subject to the purchaser's complaint about the defect having been raised in time, either remedy the defect or, if we so choose, supply a replacement. We must always be given the opportunity to make good any defect within a reasonable deadline. Any rights of recourse shall remain unaffected by the provision above.
- 8.5. Any claims from the purchaser pursuant to expenditure necessary for the purpose of making good a defect, especially transportation, travel, labour and material costs, will not be accepted if such expenditure goes up because the goods supplied by us have been subsequently moved to a place other than the purchaser's site, unless such movement is in line with the goods' normal use.
- 8.6. Any rights of the purchaser to claim recourse against us shall exist only insofar as the purchaser has not made any agreements with its end-consumer that go beyond the mandatory statutory rights to claim for defects. Further clause 8.4 shall apply correspondingly to the scope of the purchaser's right to claim recourse against us.
- 8.7. If efforts to make good the defect fail, the purchaser shall have the right to pay a lower price or to cancel the contract. We shall accept no further liability. For any compensation claims in relation to defects or consequential losses arising from defects the provisions at clause 9 shall apply accordingly.
- 8.8. In the event of any and each unfounded complaint we shall charge a flat fee of €25 for the expenditure involved in looking into it. We expressly grant the purchaser the right to prove that no expenditure at all was incurred in looking into the complaint or that it was appreciably lower than the flat fee.

## **9. Liability**

- 9.1. Creative Wave GmbH and its legal representatives and agents shall be liable in cases of wilful intent or gross negligence, in the event of any breach of material contractual duties, in accordance with German product liability legislation for damage to privately used items and for the absence of any attributes warranted in writing.
- 9.2. Creative Wave GmbH shall further be liable for damages arising from injury to life, body or health caused by a negligent breach of duty by the company or by a wilful or negligent breach of duty by any of the company's legal representatives or agents.
- 9.3. Unless otherwise specified above, no claims (for compensation) made by the purchaser against us or our agents will be entertained. Neither our agents nor we shall in particular be liable for any damage or losses arising post delivery as a result of incorrect handling.
- 9.4. Insofar as any liability for losses not based on injury to life, body or health does exist for minor negligence, the limitation period for such a claim shall end one year after the right to claim has arisen.

## **10. Place of execution and jurisdiction**

If the purchaser is a sole trader, corporate entity or special public body and nothing to the contrary has been stipulated in these terms and conditions or on any separate written agreement, then for both parties the place of execution shall be Ingolstadt and jurisdiction for all disputes that may arise shall likewise lie with the Ingolstadt courts.

## **11. Other provisions**

- 11.1. The contract is governed by the law of the Federal Republic of Germany. Neither German international private law nor the UN Sale of Goods Act shall apply.
- 11.2. Should any individual provisions of these general terms of delivery and payment be or become legally unenforceable, this shall not affect the validity of the remaining provisions nor of the contract itself.