

General Terms and Conditions (AGB)

Media-NEL GmbH

1. general

The business relations between Supplier and Customer are based on the following General Terms and Conditions (GTC of Media-NEL). The supplier does not recognize any other terms and conditions - as far as they are not stipulated in the order - and expressly contradicts them. The scope of the order, additional agreements and assurances, as well as regulations deviating from these terms and conditions, must be made in writing in order to be effective. This requirement of the written form can only be deviated from by written cancellation of this requirement. The General Terms and Conditions of the Supplier shall also apply to all future orders of the Purchaser, even if no reference is made to them in each individual case. The following terms and conditions of sale, delivery and payment shall govern the processing of an order and any extensions thereto. Any special conditions agreed in writing shall not invalidate the other points of these conditions. These general terms and conditions do not apply to consumers in the sense of § 13 BGB.

2. offer and retention of title

(1) All offers of the Supplier, including delivery time specifications, are subject to change without notice, are valid for a maximum of three months and may be corrected accordingly in the event of price changes of materials, services, wage increases, tax increases, etc. in the price. All technical specifications shall be deemed approximate and non-binding.

(2) Unless otherwise stated, all prices are net prices plus the statutory value added tax applicable at the time of performance. Unless otherwise agreed, the prices quoted in the offers shall always be ex works excluding transport and packaging. As soon as a delivery leaves the factory, whether by collection by the customer or by dispatch, the transport risk shall pass to the customer, even in the case of carriage paid dispatch. The supplier shall not be liable for breakage, damage, loss, etc. Insurance against transport damage shall be taken out at the request of the Purchaser and shall be invoiced separately; the same shall apply to packaging material and packaging services.

(3) The prices presuppose the order of the entire media system or work or product offered, assembly in one go and subsequent commissioning. In the case of media systems or other works, which are delivered including assembly and installation, the price does not include: Training and instructions, on-site low-voltage supply line, ground protection line, possibly required scaffolding, other required external trades such as masonry, caulking, plastering, painting, blacksmith and roofing work as well as stability certificates and fees, means of transport and lifting equipment as well as disposal costs and the like. The Supplier shall be entitled, but not obliged, to provide or arrange for the provision of erection scaffolding at customary local prices; however, the Supplier shall not be liable for any delays in delivery resulting therefrom.

(4) The Supplier shall retain title and copyright to all offers, documentation, drawings, circuit diagrams, drafts, samples, cost estimates, etc. expressly requested by the Purchaser. These may not be made available to third parties, in particular competitors, and may not be used for price inquiries or tenders. Technical changes that prove necessary during the installation of the media system are possible and are deemed to have been conceded. All documents and samples must be returned immediately in the event of non-acceptance of an offer, and the costs incurred for this are to be reimbursed according to the usual remuneration in the amount of the expenditure for production, offer, design work and design proposals. Ownership shall pass to the Purchaser after payment of the remuneration.

3 Order and Order Confirmation

(1) The Supplier shall only be obliged to deliver if it confirms the order or the order of the Purchaser in writing with a binding order confirmation. The Purchaser shall immediately notify the Supplier in writing of any complaints. Ancillary agreements must be made in writing to be effective.

(2) The delivery period shall commence on the date on which the order has been clarified in all technical and design respects, which shall also include the payment of the agreed down payment, and after approval has been granted by the authorities or third parties. The delivery date stated in the order confirmation shall be deemed to be approximate only and shall be complied with by the Supplier as far as possible without the Purchaser being entitled to withdraw from the contract in the event of a delay in delivery.

(3) Unforeseeable, unavoidable events of force majeure shall entitle the Supplier, even within a delay, to postpone the delivery for the duration of the impediment or - unless there is only a temporary impediment to performance, namely strike and lockout - to withdraw from the contract in whole or in part due to the part not yet fulfilled. Claims against the User which are justified until the occurrence of the event shall remain unaffected. The Supplier shall inform the Purchaser without delay of the occurrence of a case of force majeure. Force majeure shall be deemed to include all unforeseeable, unavoidable circumstances which make it substantially more difficult or impossible for the Supplier to deliver, such as, for example, currency and trade policy measures, disasters, operational disruptions (e.g. fire, shortage of raw materials or energy) and obstructions to transport routes, irrespective of whether these circumstances occur at the Supplier, its upstream suppliers or a sub-supplier. The Supplier shall select its upstream or downstream suppliers with the care of a prudent businessman.

(4) The Supplier reserves the right to make technical or necessary changes to the design of media systems or works and such changes as are reasonable for the Purchaser for the intended use, taking into account the interests of the Supplier.

(5) The validity of the contract is not dependent on the granting of approval by authorities, landlords, third parties, etc.; obtaining such approval is in any case the responsibility of the Ordering Party. Necessary changes also due to the official regulations or the demands of third parties (owners or similar) do not release from the obligation of acceptance and payment. They shall be deemed to be an extension of the order. Any resulting costs or cost increases shall be borne by the customer. This applies including all expenses for the procurement of the necessary approvals and the services of the supplier required for this, in particular, if planning, graphic or other technical changes and expenses are involved, these costs of the expenses are to be reimbursed. Fees, test statics, stability certificates or product expert opinions and testing costs shall in any case be borne by the Customer.

(6) If orders are exceptionally cancelled due to the refusal of approvals, the Purchaser shall grant a loss of profit amounting to 10 % of the order sum as well as reimbursement of all costs incurred up to that point, e.g. for offers, samples, drafts, drawings, applications for approvals. If the Supplier is required to dismantle or dispose of parts due to statutory provisions, official instructions or demands of third parties (e.g. house owners), the Purchaser shall bear the additional costs incurred for dismantling, transport and disposal even if statutory or other provisions do not provide otherwise.

(7) The Purchaser shall be entitled to prove a lower profit within the meaning of paragraph 6. In this case, the Purchaser shall owe loss of profit in the amount proven.

4 Assembly

In the case of assembly and installation work undertaken, it is assumed that there is sufficient freedom for assembly and load-bearing capacity of structures, floors, ceilings or walls and that the work can be carried out without obstructions or delays. The assembly and installation prices - even if they are agreed as fixed prices - do not include those costs which arise due to the fact that delays or obstructions occur due to circumstances for which the Purchaser is responsible or that additional work is required. The resulting costs for work, time, material or similar shall be borne by the Purchaser. Any external services which may be required (see 2. para. 3 above) may be commissioned by the Supplier for the account of the Purchaser.

5 Delivery and Acceptance

(1) In the case of delivery of the media system or other works or products without assembly, shipment, packaging and/or transport are at the expense and risk of the Ordering Party. The costs of any transport insurance shall be borne by the Ordering Party. Any transport damage must be ascertained immediately by a statement of facts to the carrier.

(2) If media systems or other works or products are assembled or installed by the Supplier or by a third party commissioned by the Supplier, the Ordering Party is obliged to accept them immediately after completion of the assembly. If the Customer is prevented from doing so, the Customer must carry out the acceptance within 12 working days. If this is not done, acceptance shall be deemed to have taken place at the end of the period if the Supplier has specifically informed the Purchaser of the intended significance of its conduct at the beginning of the period.

(3) Products, goods or other works reported ready for dispatch or assembly which are not called off by the Purchaser within 5 working days shall be stored at the Purchaser's expense and risk. Invoices will be issued at the same time.

6. right of revocation of the orderer

(1) The Purchaser shall only have a right of revocation if and insofar as this is expressly agreed in the performance certificate. In the case of the delivery of goods which have been manufactured according to the specifications of the customer or which have been clearly tailored to his personal requirements or which are not suitable for return due to their nature, a revocation is generally excluded.

(2) If a right of revocation has been agreed, the customer may revoke his order within 14 days in text form (e.g. letter, fax, e-mail) without stating reasons. The revocation period begins with the delivery of the media system or the other works or products or with the receipt of the supplier's notification of readiness for shipment or assembly by the orderer. The timely receipt of the Customer's revocation by the Supplier is decisive for the observance of the revocation period.

(3) In the event of an effective revocation, the Customer shall immediately return the media system and other products received by him. If he is not able to return the received products or if he is only able to return them partially or in a deteriorated condition, the customer is obliged to compensate the supplier insofar as the deterioration is due to improper use or use of the goods beyond the intended use.

7 Software Use

(1) If agreed upon in the performance certificate, the Customer shall receive the technical possibility and the non-exclusive right to access the software application "Media-NEL one" by means of a telecommunication connection (e.g. Internet) and to use the associated functionalities by means of a browser within the scope of this contract for the term of the respective contract. The orderer does not receive any further rights to the software application. He is not entitled to use the software application "Media-NEL one" beyond the use permitted

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under this contract, to reproduce it in whole or in part, to have it used by third parties or to make it accessible to third parties. For each case in which the orderer culpably enables the use of the software application by third parties, the orderer must pay damages in the amount of the remuneration that would have been incurred if a contract had been concluded with the third party during a minimum contract period of one year at the highest remuneration level. The Purchaser reserves the right to prove that no damage or substantially less damage has been incurred. The Supplier shall remain entitled to claim further damages. In the event of an unauthorized transfer of use, the Purchaser shall, upon request, immediately provide the Supplier with all information necessary to assert claims against the user, in particular the name and address of the user.

(2) If the contractual use of the software application "Media-NEL one" by the Customer is impaired due to third party property rights through no fault of the Supplier, the Supplier is entitled to refuse the services affected thereby. The supplier will inform the orderer of this immediately and allow him access to his data in a suitable manner. In this case, the Purchaser shall not be obliged to make any payment.

(3) Both parties shall be obligated to comply with the applicable data protection provisions, in particular those applicable in Germany, and to obligate their employees deployed in connection with the contract accordingly. If the Customer collects, processes or uses personal data itself or through third parties, it shall warrant that it is entitled to do so in accordance with the applicable provisions, in particular the provisions of data protection law. In the event of a violation, he shall indemnify the Supplier against all claims of third parties.

(4) The Customer is generally not entitled to demand access to the premises in which servers, operating software or other system components of the software application "Media-NEL one" are operated. This also applies as far as servers, operating software or other system components of the software application are operated by third parties.

(5) The Customer shall protect the usage and access authorization assigned to him as well as identification and authentication safeguards against access by third parties, shall not pass them on to unauthorized users and shall ensure that (e.g. when taking over texts and data of third parties) all industrial property rights and copyrights are observed. He undertakes not to misuse the software application "Media-NEL one" or to allow it to be misused, in particular not to transmit any information offers with illegal or immoral contents or to refer to information which serves to incite the people, to instigate criminal acts or to glorify or trivialize violence, which is sexually offensive or pornographic, which is capable of seriously endangering children or young people morally or impairing their well-being or which can damage the reputation of the supplier.

(6) The Customer shall indemnify the Supplier against all claims of third parties which are based on an illegal use of the software application "Media-NEL one" by him or which are made with his approval or which result in particular from data protection law, copyright law or other legal disputes which are connected with the use of the software application. If the Purchaser recognizes or must recognize that such an infringement is imminent, it shall be obliged to inform the Supplier immediately.

(7) In the event of an unlawful violation by the Customer of one of the essential obligations stipulated in this contract, the Supplier is entitled to block the Customer's access to the software application "Media-NEL one" and to restore it only after the violation of the essential obligation concerned has been permanently eliminated. In this case the orderer remains obliged to pay the monthly prices. The Supplier reserves the right to assert further claims for damages.

8 Hardware Maintenance

(1) Insofar as noted in the performance certificate, the Supplier shall undertake the maintenance required for the hardware supplied by it and specified in more detail in the performance certificate, including the associated system software, at the times specified in the performance certificate and at the location specified therein. Maintenance work outside the agreed times or at other locations shall require a separate agreement.

(2) Unless otherwise agreed, the maintenance work shall include the regular checking of all functions and components essential to the equipment, the performance of any necessary repairs, the checking and possible correction of adjustments, the checking of the overall function of individual system components, the replacement of equipment parts which no longer comply with the equipment specifications as a result of normal wear and tear. Maintenance work does not include the delivery, installation and replacement of additional equipment and accessories, changeover and relocation, as well as the necessary establishment of technical readiness for operation, elimination of damage, the causes of which are not the responsibility of the Provider or which, according to the AVB Schwachstrom (General Terms and Conditions for Weak Current), are subject to weak current insurance, elimination of dirt not caused by use, and telephone consultation. These services require a separate agreement and will be charged according to the prices described in the service certificate.

(3) In the event of blocking errors which make it impossible to work with the supplied hardware, a reaction time of 10 working days after receipt by the Supplier of a justified written notice of defect from the Purchaser shall apply to the restoration of performance. Less serious restrictions of use will be remedied with the next maintenance interval.

9. terms of payment

(1) All payments shall be made in cash without deduction and, unless otherwise agreed, for deliveries of goods and installation services 1/3 of the order amount shall be paid upon placement of the order, a further third upon readiness for shipment or delivery and the remainder upon acceptance. If a right of revocation on the part of the Purchaser pursuant to Clause 6. has been agreed, the entire order sum shall be paid upon expiry of the revocation period.

(2) Software usage and hardware maintenance fees shall be paid in advance for the respective agreed contract term or the performance periods specified in the performance certificate. If a price is to be charged for parts of a calendar month, it shall be calculated at 1/30 of the monthly price for each day.

(3) Other prices shall be payable after performance of the service.

(4) If the Customer does not object in writing to the content of an invoice sent to him within ten days of its receipt, this invoice shall be deemed to have been approved in all parts.

(5) In the event of default in payment, interest on arrears shall be charged at a rate of 8 percent above the respective prime rate of the European Central Bank for each month or part thereof; furthermore, all reminder and collection costs shall be reimbursed.

(6) Offsetting and assertion of rights of retention are excluded unless the counterclaim is undisputed or has been legally established.

(4) Travelers, representatives, fitters and drivers of the Supplier shall only be entitled to accept payments if they present a corresponding power of attorney.

(7) Non-compliance with the terms of payment or circumstances which become known to the Supplier after the respective conclusion of the contract and which give rise to justified doubts as to the solvency of the Purchaser shall result in the immediate maturity of all claims of the Supplier including current obligations under bills of exchange. In this case, the Supplier shall be entitled to withdraw from the contract and to demand compensation for the damage incurred by it as a result, unless the Purchaser makes advance payment or provides sufficient security.

10 Retention of Title

(1) The Supplier shall retain title to all goods until all claims against the Purchaser have been satisfied in full, in particular until payment of all claims against the Purchaser arising from the business relationship, including claims arising in the future, also from contracts concluded at the same time or later. This shall also apply if payments are made on specially designated claims. In particular, the Supplier shall be entitled, in the event of default in payment, difficulties in payment or cessation of payments by the Purchaser, to demand the immediate surrender of the goods, to sell them at the best possible price and to claim the difference between the proceeds and the original purchase price as compensation for damages.

(2) In the case of a current account, the reserved property shall be deemed to be security for the Supplier's balance claim.

(3) The Purchaser shall be entitled to resell the Supplies in the ordinary course of business. He shall not be permitted to dispose of them in any other way, in particular by pledging them or assigning them as security. The Purchaser shall be obliged to resell the Retained Goods only subject to retention of title, with the proviso that the purchase price claim from the resale shall pass to the Supplier as follows: The Purchaser hereby assigns to the Supplier its claims from the resale of the Retained Goods together with all ancillary rights, irrespective of whether the Retained Goods are resold without or after processing. The Purchaser is prohibited from entering into any agreements with its customer which exclude or impair the rights of the Supplier in any way. In particular, the Purchaser may not enter into any agreement which nullifies or impairs the advance assignment of the claims to the Supplier. The Purchaser shall remain authorized to collect the claims assigned to the Supplier even after assignment; however, the Supplier expressly reserves the right to independently include the claims, in particular in the event of default of payment by the Purchaser. At the Supplier's request, the Purchaser must disclose the assigned claims and their debtors, provide all information required for collection, hand over the relevant documents and notify the debtor of the assignment.