

General Terms of Business (GTB)

for all Deliveries and Services of the DResearch Digital Media Systems GmbH, Otto-Schmirgal-Str. 3, 10319 Berlin,

hereinafter referred to as DResearch

To be used in transactions with entrepreneurs

§ 1 General - Scope of Application

- (1) DResearch shall render its deliveries and services exclusively on the basis of the following General Terms of Business. In the case of ongoing business relations, all future transactions shall be governed by these General Terms of Business as last amended, even if these are not specifically pointed out or referred to.
- (2) Deviating, conflicting or supplementary General Terms of Business of the contracting partner shall not be recognised by DResearch, unless DResearch has given its express written consent to the applicability thereof. The General Terms of Business of DResearch shall apply even if DResearch unconditionally makes a deliver to the contracting partner whilst knowing of conflicting or deviating terms and conditions of the contracting partner.
- (3) These General Terms and Conditions are not intended for use in relation to consumers, but only in relation to entrepreneurs. An entrepreneur within the meaning of these Terms of Business is a natural or a legal person or an unincorporated firm having legal capacity with whom DResearch enters into business relations and who is acting in pursuance of commercial or freelance professional activities.

§ 2 Conclusion of Contract

- (1) Quotations given by DResearch shall always be subject to change without notice and be non-binding.
- (2) A contract shall first materialise once DResearch has acknowledged an order in writing.
- (3) Verbal agreements, as well as amendments and supplements to contracts concluded with DResearch, shall only be valid if DResearch has acknowledged these in writing. The written form requirement may only be cancelled in writing.

§ 3 Delivery

- (1) A prerequisite for adherence to agreed delivery periods shall be that the customer has performed its contractual duties. Unless otherwise agreed, the delivery period shall begin when the contract is signed, but not before DResearch has received the documents agreed upon in the contract and to be submitted by the customer, such as approvals, clearances etc., as well as down payments and advance payments.
- (2) The conclusion of the contract shall be subject to the condition that DResearch is properly supplied in due time by its supplier. This applies only where DResearch is not responsible for non-delivery, particularly in the event that a congruent covering transaction is entered into with the supplier. The customer shall be informed without delay if the service is not available. The service in return shall be refunded without delay.
- (3) DResearch shall not be responsible for delays in delivery and performance due to force majeure and events that make it considerably more difficult or impossible for DResearch to perform, such as for example strike, lockout, official orders etc., even if these occur at suppliers of DResearch or at their subcontractors. Such occurrences shall entitle DResearch to defer set dates and periods for delivery or performance by the duration of the impediment or, if the performance of the contract is seriously jeopardised or is impossible, to cancel the contract in whole or in part without the customer being entitled to damage claims.
- (4) DResearch reserves the right to make technical alterations and alterations in form, colour and/or weight within reasonable limits.
- (5) Carriage shall be performed for the account of and at the risk of the customer, unless otherwise agreed in the contract.
- (6) The risk of accidental loss and accidental deterioration of the item shall pass to the customer at the time of hand-over or, in the case of a sale by dispatch, at the time the item is delivered to the forwarder, the carrier or any other person or institution designated to dispatch the item. If the customer defaults on taking delivery of the item, this shall be deemed equivalent to hand-over. Insurance against losses and damages of any kind shall be effected only at the instruction and expense of the customer.
- (7) Berlin is the place of performance for all claims arising from the business relationship.

§ 4 Terms of Payment

- (1) Invoices of DResearch shall be due and payable within 10 calendar days after the invoice date without any deduction, unless otherwise agreed. Deviating payment terms shall be shown on the invoice. The customer shall be in default of payment after this period expires.
- (2) Bills of exchange and cheques shall be accepted only with the written consent of DResearch and only in payment. Discount charges and other incidental expenses shall be chargeable to the customer. DResearch does not warrant timely collection or a timely protest.
- (3) Payments shall be deemed made on the date when DResearch can unconditionally dispose of the amount received.
- (4) If the customer is in default, interest at the rate of 8% above the base interest rate shall be charged until payment is received. DResearch reserves the right to prove and assert a higher claim for damages due to default. Additionally DResearch shall be entitled to immediately cease to make further deliveries.
- (5) In relation to DResearch, offsetting shall only be permitted against claims that have been acknowledged by DResearch or have been established by a final court judgement. The customer may only exercise a right to withhold payments if its counterclaim is based on the same contractual relationship. Even in the case of ongoing business relations, each individual order shall be considered a separate contractual relationship. If the customer has a right to withhold payments, he may withhold payments, up until its counterclaims have been satisfied, only to an extent that is reasonably proportionate to its counterclaims.

§ 5 Reservation of Title

- (1) DResearch shall reserve title to all delivered goods up until all accounts receivable arising from the ongoing business relationship with the customer have been settled.
- (2) The customer shall be obliged to treat and handle the goods with care and to inform DResearch without delay in the event that a third party seizes the goods, for example by a levy of execution, and in the event that the goods are damaged or destroyed. The customer shall, without delay, give notification of any change of possession of the goods and any change of its own place of business.
- (3) In the event that the customer acts in breach of the contract, particularly if he defaults on payment or breaches a duty under subsection 2 of this provision, DResearch shall be entitled to cancel the contract and claim possession of the goods.
- (4) The customer shall be entitled to resell the goods in the ordinary course of business, passing on the reservation of title, although the customer shall not be permitted to pledge the goods, transfer ownership of the goods by way of security, give away the goods or transfer possession thereof on a barter basis. The customer already now assigns to DResearch all accounts receivable, in the sum of the invoiced amount, that accrue against a third party as a result of reselling. DResearch accepts this assignment of accounts receivable. Once accounts receivable have been assigned, the customer shall be authorised to collect the accounts receivable. DResearch reserves the right to collect accounts receivable itself as soon as the customer fails to duly meet its obligations to pay and is in default of payment. Equally the customer shall, on request, be obliged to notify its customers of the assignment of accounts receivable and to make available to DResearch all information and documents necessary for collecting accounts receivable.
- (5) In the event that the customer ceases to make payments, or if insolvency proceedings or out-of-court composition proceedings are applied for or initiated, the customer shall no longer have the right to resell, use or install goods under reservation of title and shall no longer be authorised to collect assigned accounts receivable. In the event that a cheque or a bill of exchange is protested, the customer's authority to collect accounts receivable shall likewise lapse. In these instances DResearch shall be entitled to collect our goods under reservation of title. If the customer has combined and/or mixed goods under reservation of title with third-party goods, DResearch shall be entitled to separate its goods under reservation of title from the third-party goods in agreement with the customer based on invoice documents. If the customer does not co-operate with this separation process, DResearch shall be entitled to do this alone with the aid of an expert.
- (6) If goods under reservation of title are processed together with items not belonging to DResearch, DResearch shall acquire co-ownership of the new item in the ratio of the value of the goods delivered by it to the value of the other processed items. The same shall apply if the goods are mixed with other items not belonging to DResearch.

§ 6 Warranty, Liability

- (1) Unless otherwise laid down in writing, the warranty period in relation to entrepreneurs shall be one year and shall begin at the time of delivery. The customer's rights under the warranty shall be subject to the condition that the customer has duly met its obligations to examine the goods delivered and give notice of defects. Customers must give DResearch written notification of obvious defects without delay, but not later than within an 8-day period as from receipt of the consignment, precisely describing the type and extent of the defects. Otherwise the customer may not assert a warranty claim. To adhere to the time limit, it shall suffice to send off a notice of defects within the stipulated period. Non-obvious defects shall be reported without delay after discovery within the warranty period.
- (2) The customer shall bear the full burden of proving that all prerequisites for a claim have been satisfied, particularly in respect of a defect itself, the time of discovery of a defect and the timely notification of a defect.
- (3) Where DResearch is responsible for a defect, DResearch shall be entitled, at its option, to remedy the defect or deliver a replacement within a reasonable period. If DResearch fails to remedy the defect, the customer shall have the right to cancel the contract. In the case of a mere minor violation of the contract, particularly in the event of minor defects, the customer shall not be entitled to cancel the contract. The customer shall not have the right to reduce the contract price.
- (4) If the customer opts to cancel the contract on account of a defect of quality or a defect in title following a failure to render supplementary performance, the customer shall not be additionally entitled to a damage claim on account of the defect.
- (5) If the customer opts for compensation following a failure to render supplementary performance, the goods shall remain with the customer, provided that this is reasonable for the customer. Compensation shall be limited to the differential amount between the purchase price and the value of the defective item. This shall not apply if DResearch has maliciously caused the breach of contract.
- (6) The customer may only assert a damage claim for non-performance or cancel the contract if, despite having been set a time limit, DResearch has neither remedied the defect nor delivered a replacement or if the delivery of a replacement or the remedying of a defect would be unreasonable for the customer.
- (7) Product specifications provided by DResearch shall only be regarded as descriptions of quality. Public statements and recommendations shall not constitute a contractual description of quality.
- (8) Claims in respect of defects shall not exist in the event of a mere minor deviation from the agreed quality or in the event that the usability of the item is only immaterially impaired.
- (9) Warranty claims may not be assigned to third parties.
- (10) DResearch shall be liable in accordance with legal regulations in cases of intent or gross negligence on the part of DResearch, an agent thereof or a person employed by DResearch in the performance of an obligation. In all other respects DResearch shall only be liable in accordance with the Product Liability Act [Produkthaftungsgesetz] on account of loss of life, physical injury or injury to health or on account of a breach of material contractual duties. However compensation for a breach of material contractual duties shall be limited to foreseeable damage or loss typical of the contract. The liability of DResearch shall also be limited to foreseeable damage or loss typical of the contract in cases of gross negligence, except where any of the exceptions set out in sentence 2 of this subsection applies.
- (11) However liability for damages caused by the delivery item to the contracting partner's objects of legal protection, for example damage to other property, is wholly excluded. This shall not apply in cases of intent or gross negligence or in cases of liability due to loss of life, physical injury or injury to health.
- (12) The provisions in the above subsections 10 and 11 extend to compensation in addition to performance and in lieu of performance on any legal basis whatsoever, particularly on account of defects, a breach of duties arising from the contractual obligation or on account of tort.

§ 7 Software and Terms and Conditions of Licence, Proprietary Rights

- (1) DResearch owns the exclusive copyrights on the software produced by it. It reserves further rights. All present and future copyrights and commercial proprietary rights on programmes handed over and on documents prepared shall remain with DResearch.
- (2) Except where additional rights have been confirmed to the customer in writing, the customer shall acquire a non-exclusive right of use of the software delivered, including documentation handed over, and shall not acquire any ownership rights therein.
- (3) If software products are delivered by other companies, this corresponding part of the delivery shall be governed by the terms of business and/or other provisions of these companies.
- (4) The terms and conditions of software shall be deemed acknowledged when the contract is concluded. The licence shall be deemed granted at the time the software is delivered. The agreed royalty shall be due immediately.
- (5) Software delivered by DResearch may not be copied or further exploited, except where this has been expressly agreed upon in writing in the contract. For the protection of data, however, the customer shall be entitled to make a back-up copy of all software. The customer shall likewise copy all identification marks, trademarks and copyright notices without alteration and shall carefully protect the produced copy against third-party access. The customer may not make further copies, particularly copies of the manual, documentation or operating instructions. Equally the customer shall be prohibited from developing source codes on the software.
- (6) Upon the acquisition of a licence for DResearch software, the customer shall in no way further acquire in this connection the right to combine the software with other products, if this would infringe a patent application or a patent of DResearch.
- (7) Services in connection with software familiarisation and introduction support as well as maintenance are not included in the price of the software and must, where required, be agreed upon separately in writing and be correspondingly remunerated.
- (8) The software may only be used for the contractually agreed use.
- (9) DResearch shall not assume any warranty and/or liability for software that the customer has altered or has not properly used, particularly if the customer has violated his duties to take care as described in user manuals or other accompanying material. In particular DResearch shall not be liable in the event that software delivered by DResearch does not function together with hardware or software delivered by a third party and in the event that the customer installs the customer itself.
- (10) The software shall be stored on data carriers. DResearch expressly limits the warranty to technically defective or deficient data storage. Prior to opening the seal on the data carrier, the customer shall check that the serial number on the data carrier is identical to the serial number on the invoice.

§ 8 Export Control

- (1) The intended final destination of the delivery items shall be the country where the items are to be delivered as agreed upon with the customer. The delivery items may possibly not be exported out of this country without a permit.
- (2) The customer undertakes to obtain, under its own responsibility, all necessary export permits or other documents prior to the exportation of products or technical information that it has received from DResearch.

§ 9 Final Provisions

- (1) The legal relations between the parties to the contract shall be governed exclusively by the laws of the Federal Republic of Germany. The provisions of the UN Convention on Contracts for the International Sale of Goods are inapplicable.
- (2) Berlin is the place of performance for all services.
- (3) Berlin is the exclusive place of jurisdiction for all disputes arising from this contract. This agreement on the place of jurisdiction is applicable where the contracting partners are merchants, legal entities under public law or separate funds under public law. The same applies where the contracting partner does not have a general place of jurisdiction in Germany or where its place of residence or usual abode is unknown at the time an action is brought. In individual cases DResearch shall nevertheless be entitled to also bring an action at the place of business of the contracting partner or before other courts having jurisdiction under domestic or foreign law.
- (4) If a provision in these General Terms of Business should be or becomes ineffective or unenforceable in whole or in part, this shall not affect the validity of the other provisions.