

Document **General Terms and Conditions**

For: Contracting partners of Digital Media Distribution AG

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Content: This document stipulates the General Terms and Conditions of Business between Digital Media Distribution AG and its contracting partners.

It replaces all previous General Terms and Conditions of Business.

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## 1 Scope

These General Terms and Conditions of Business (hereinafter referred to as GTC) apply to all orders placed with Digital Media Distribution AG (hereinafter referred to as DMD<sup>2</sup>) by customers in Switzerland and abroad.

By placing an order, the customer is accepting these GTC and the current DMD<sup>2</sup> price lists. Any GTC of the customer will not be binding and will not be applied. The right to make other written agreements is reserved. The conditions for the provision of streaming services are stipulated in the separate "Service Level Agreement (SLA) for DMD<sup>2</sup> Streaming Services".

## 2 Customer's right of disposal

By placing an order, the customer is confirming that:

- It is entitled to place an order and holds all the necessary rights of use and processing (right to make changes, right of reproduction, etc);
- It enjoys the full right of disposal of the material supplied and that said material is free of material and legal defects or third-party rights;
- Execution of the order does not infringe contractual, statutory or official regulations.

Subject to other written agreements, DMD<sup>2</sup> will assume that customers placing a joint order each hold the same rights and powers.

The customer will indemnify DMD<sup>2</sup> against all claims by third parties which are asserted in connection with the placing of the order. Should DMD<sup>2</sup> incur a direct or indirect loss (e.g. compensation, business interruption, court and/or attorney's costs), the customer must bear said loss.

## 3 Prices

The DMD<sup>2</sup> price list valid on the date on which the order is placed will govern the calculation of prices, subject to individual written pricing agreements or quotations in the form of offers by DMD<sup>2</sup>. Price information provided by telephone will only be valid when confirmed in writing.

Should more than six months elapse between placing the order and delivery or performance of the service, DMD<sup>2</sup> will be entitled to calculate prices on the basis of the price list valid at the time of delivery or performance, in the absence of any individual written price agreements.

In the absence of any written agreement to the contrary, prices are net (excluding VAT). The customer may be invoiced for services ordered and appointments booked which are subsequently unused, allowing for any cost savings.

## 4 Travel costs and expenses

In the absence of any agreement to the contrary, travel costs will be invoiced in accordance with the price list valid on the date on which the order was placed. Travel expenses, all additional costs and fees and charges of any nature will be charged separately, at cost.

## 5 Terms of payment, due date and preclusion of offsetting

In the absence of any other written agreement, all invoices will be due for payment (without deduction) within thirty days of date of invoice. After the payment period has expired, DMD<sup>2</sup> will be entitled to demand 5% interest for late payment on the balance payable, without further notice.

Any complaints or shortcomings will not entitle the customer to reduce or withhold payments due to DMD<sup>2</sup>.

DMD<sup>2</sup>'s total claims will be due prematurely and immediately in cases of breach of contract, a change in the customer's business structure or a major decline in the customer's financial situation, particularly in cases of: arrears of payment or delay in respect of other obligations, returned cheques or protested bills of exchange, insolvency and bankruptcy proceedings.

The client may only offset undisputed counter-claims or counter-claims which have the force of law.

## 6 Delivery, appointments, involvement of third parties

DMD<sup>2</sup> will always endeavour to meet its stated and carefully calculated delivery dates even if unforeseen difficulties should occur, but DMD<sup>2</sup> cannot guarantee this and will not accept any liability. This is also expressly applicable to force majeure and strikes.

Compliance with delivery dates and deadlines requires that the customer fulfils any obligations incumbent upon it. Subsequent amendments to orders or delayed deliveries by the customer will entail a corresponding extension of delivery periods and postponement of deadlines.

A failure to comply with delivery periods and deadlines will not entitle the customer to cancel the contract, refuse to accept delivery or demand compensation. DMD<sup>2</sup> will be entitled to have the order executed by third parties, in whole or in part.

## 7 Customer's obligation to co-operate

The client expressly undertakes to:

- designate the necessary contacts;
- cooperate in specifying the working instructions;
- cooperate in supervising and inspecting the services;
- provide simple access to data and workstations, if necessary for the performance of services;
- carry out intermediate tests relevant to the process;
- make intermediate decisions;
- provide the necessary hardware and software, if necessary for the performance of services;
- make project staff available and cooperate in project management;
- insure the materials entrusted to it in full;
- inform the proprietors of other rights of these GTC;
- and to copy the corresponding (digital and analog, etc) media before transfer to DMD<sup>2</sup> for processing purposes, at its own expense, and to keep the copy until the order has been completed.

The costs of delays and additional outlay attributable to shortcomings in fulfilment of cooperation obligations must be borne by the customer.

## 8 Complaints and guarantee

DMD<sup>2</sup> guarantees the careful conduct of business with which it has been entrusted. Should the law of contract for work and labour be applied, rectification of shortcomings will be restricted to refinishing. Any shortcomings must be notified in writing immediately or no later than seven days after delivery of the material.

The customer is not entitled to assert claims which exceed the right to refinishing. In particular, DMD<sup>2</sup> cannot accept liability for losses incurred by the customer or third parties (as a result of delay, loss of production, claims by third parties, etc).

The customer bears the burden of proof of the freedom of the materials delivered from defects. Should refinishing by DMD<sup>2</sup> not succeed within a reasonable period, the customer will be entitled to a reasonable reduction in payment or may cancel the contract. DMD<sup>2</sup>'s liability for defects will lapse if the customer modifies the materials, or commissions third parties to do so, without the consent of DMD<sup>2</sup>.

Any claims by the customer under guarantee will be time-barred when six months have elapsed since delivery of the material or performance of the service performed. Should the material be processed by a third party prior to acceptance by the customer, said third party must examine the material before commencing work and notify DMD<sup>2</sup> immediately in writing of any complaints, otherwise any guarantee by DMD<sup>2</sup> will lapse.

## 9 Liability

DMD<sup>2</sup> will be liable for proper skilled work by DMD<sup>2</sup> employees and contractors. The customer will bear the risk arising from any circumstances for which DMD<sup>2</sup> is not responsible. If services by third parties (support staff and agents) are used, DMD<sup>2</sup> will be liable to the customer to the extent to which said third parties bear liability to DMD<sup>2</sup>.

Any further liability on the part of DMD<sup>2</sup> is expressly precluded. The cost of any damage to items provided by the customer will be borne by the latter, unless DMD<sup>2</sup> has caused it by gross negligence or deliberate intent. DMD<sup>2</sup> will not be liable for defects in materials provided by the customer.

DMD<sup>2</sup> will be liable for any culpable losses of, damage to and deletions of materials transferred to it for processing, initially restricted to restoration or replacement of the original material, if this is possible on the basis of negatives, copies or other original material of the customer. This does not apply to damage suffered during carriage and storage. Should restoration or replacement not be possible, DMD<sup>2</sup> will only be liable for the replacement value of the raw material. Any further liability is precluded.

## 10 Copyright and rights of use, transfer of rights

Should, within the scope of the order, work be created or jointly created by DMD<sup>2</sup> which is protected by copyright, the customer will be granted the necessary rights of use in the form of a single licence, within the scope of the intended purpose of the order. Any copyright created by DMD<sup>2</sup> will only be transferred to the customer after the settlement of all claims.

DMD<sup>2</sup> is entitled to sign its work on the customer's websites.

The following applies to the use of copyright music content procured by DMD<sup>2</sup> streaming services:

- The streamed music channel may only be used for performance purposes and may not be made available to private users of the Internet (no use as web radio for individuals);
- The streaming services are intended solely for customers of DMD<sup>2</sup> and must not be made available to third parties.

## 11 Right of lien

The following rights granted and transferred to DMD<sup>2</sup> are for the purpose of securing all the receivables existing or arising from the business relationship between the customer and DMD<sup>2</sup> until they have been discharged in full. DMD<sup>2</sup> is entitled to exercise such rights of lien by sale by private contract and without cancelling the contract. Should bills of exchange and other bills be accepted from customers, they will only be deemed discharged when finally redeemed in full for cash. The customer may not use items underlying rights of lien (including receivables and rights) for the purpose

of finance, assignments of collateral or security or pledges outside the ordinary scope of business. The customer must notify DMD<sup>2</sup> immediately of distraint and other circumstances which endanger rights of lien.

DMD<sup>2</sup> may inform third parties of its rights of lien. On request, the customer must send DMD<sup>2</sup> documents which affect the former's rights of lien and grant it appropriate access to records.

### **11.1 Reservation of title**

DMD<sup>2</sup> reserves the right to retain title until full settlement of its claims for all the materials and results which it has delivered. The customer authorizes DMD<sup>2</sup> to make a corresponding entry in the appropriate title retention register.

### **11.2 Retention of title**

DMD<sup>2</sup> reserves the right to exercise the commercial right of retention of material placed at its disposal by the customer to secure its receivables.

## **12 Amendments to the contract**

Subsidiary agreements, additions and amendments to an order must be in writing. The same applies to a waiver of the requirement for the written form. Declarations by DMD<sup>2</sup> (quotations, deadline confirmations etc.) must always be in writing to be effective.

## **13 Place of fulfilment**

In the absence of any agreement to the contrary, only the head office of DMD<sup>2</sup> in Kehrsatz, Canton Berne, will be deemed the place of fulfilment of any obligations arising from the business relationship with DMD<sup>2</sup>.

## **14 Severability clause**

Should any provision of these GTC or any provision in other agreements between DMD<sup>2</sup> be or become ineffective, the effectiveness of all the other provisions or agreements will remain unaffected.

The parties are obliged to replace an ineffective or impractical provision by one which implements the financial or artistic intent of the ineffective or impractical provision as closely as possible.

## **15 Court of jurisdiction, applicable law**

The legal relationship between DMD<sup>2</sup> and the customer is subject only to Swiss law, to the exclusion of its rules on the choice of law and any international treaties (e.g. the United Nations Convention on Contracts for the International Sale of Goods).

## **16 Validity**

These General Terms and Conditions of Business will come into effect on 1 October 2008 and replace all previous GTC of Digital Media Distribution AG.