

# General Terms and Conditions of Delivery of Entertainment Distribution Company GmbH

## 1.0 Scope

Sales, deliveries and other services by Entertainment Distribution Company GmbH (hereinafter: "EDC") shall be rendered exclusively in accordance with the following General Terms and Conditions of Sale and Delivery (hereinafter: "Terms of Delivery"), which the customer accepts by placing his order or accepting delivery. They shall also apply for any future transactions with the customer. The application of the customer's conflicting and supplementary terms and conditions is excluded even if they have not been expressly contradicted by EDC.

## 2.0 Conclusion of Contract and Performance

- 2.1. Offers by EDC are nonbinding. Contracts shall not be concluded until EDC has issued a written confirmation of order or until the order is performed and shall be governed exclusively by the contents of the confirmation of order (if provided) and these Terms of Delivery. Verbal agreement or commitments must be confirmed in writing by EDC to become effective. Orders, confirmations of order as well as invoices may also be transmitted in electronic form. The same applies for amendments and supplements to the contract and/or our General Terms and Conditions of Delivery.
- 2.2. EDC is entitled, at its own choice, to perform all or part of the order in Langenhagen or at other production facilities of EDC or other connected undertaking in terms of Art. 15 et seq. of the German Stock Corporation Act, which may also be located abroad.
- 2.3. EDC is entitled to adjust the ordered quantity upward or downward in reasonable limits and according to the production processes which are known to the customer without prior consultation with the customer. Deliveries of more or less items are reasonable within the following tolerances:

Size of order:

0 – 5,000 pieces	tolerance + - 5%
> 5,001 pieces	tolerance+ - 3%

The delivery amount will be invoiced.

- 2.4. Orders must be placed in writing in order to be legally binding. Orders which are communicated verbally or by telephone must subsequently be confirmed by us in writing in order to be legally valid. The same applies for verbally made supplementary agreements and amendments to the contract. Orders, delivery schedules as well as amendments and supplements to these may also be made in electronic form. The same applies with regard to confirmations of order, documents relating to incoming goods and invoices.

### **3.0 Periods and Deadlines**

- 3.1. Delivery dates and delivery periods are only binding if they have been confirmed by EDC in writing and the customer has disclosed or provided to EDC all of the information and documents necessary for delivery in a timely manner and has made any agreed advance payments as scheduled. Agreed periods shall commence on the date of the confirmation of order. In the event of additional or expanded orders placed at a later time, such periods shall be extended accordingly. If EDC is behind schedule with a delivery or service or if it will be impossible for EDC to deliver or perform services regardless of the reason, the liability on payment of damages by EDC is limited in accordance with the regulation in item 9 of our General Terms and Conditions of Delivery.
- 3.2. Unforeseeable, unavoidable, as well as events outside of the scope of EDC's influence for which EDC bears no responsibility such as acts of God, war, natural disasters, administrative ordinances or labor conflicts, shall release EDC from the obligation to make timely delivery or performance for the duration of such events. Agreed periods shall be extended accordingly by the length of the disturbance; the customer shall be informed in an appropriate manner that a disturbance has occurred. If the end of the disturbance is not foreseeable or if it lasts for more than three months, each party shall be entitled to rescind the contract.
- 3.3. In the event of late delivery by EDC, the customer shall be entitled to cancel the agreement only if EDC is responsible for the delay and a reasonable period, set by the customer for the delivery, has expired unsuccessfully.
- 3.4. EDC may make partial delivery or partial performance for justified reasons or if it was agreed.
- 3.5. All goods or performances ordered on call have to be accepted/collected within 3 months as from receipt of order.

#### **4.0 Shipment, Transfer of Risks, Storage, Insurances**

- 4.1. Unless the customer stipulates otherwise, shipment shall be made using a reasonable form of shipment in the customary packaging.
- 4.2. Risk shall pass to the customer upon delivery of the subject of delivery to the transport company or to the customer himself. If delivery or shipment is delayed for reasons for which the customer bears responsibility, risk shall pass to the customer on the day of the notice of the readiness of the subject of delivery for shipment.
- 4.3. EDC reserves the right to destroy production parts if the customer does not request return of the parts when placing the order.
- 4.4. Insurances will only be concluded by customer's request and will be at his expense.

#### **5.0 Prices, Terms of Payment**

- 5.1. If the parties have not agreed to a particular price, the price shall be determined by the price list of EDC applicable on the date of the conclusion of contract. Should the customer, or a third party on his behalf, supply EDC with supplied materials to enable EDC to process the order (e.g. print components) which are outside the EDC specifications (e.g. width, size, thickness, process ability, etc.), EDC is entitled to invoice the customer for the incremental costs involved in converting the articles.
- 5.2. All EDC prices are ex works and exclusive of the applicable statutory value-added tax, any import duties and the costs of normal packaging and dispatch (freight, postage), which will be charged separately.
- 5.3. EDC issues invoices on the day of delivery (or readiness for delivery in case EDC is required to collect the goods). In case of partial deliveries or partial performances according to clause 3.4, EDC is entitled to invoice each partial delivery or partial performance.
- 5.4. Each invoice shall be due for payment without any deduction within 30 days of the date of invoice. Payments by the customer shall not be deemed to have been made until EDC has received such payment.
- 5.5. If the customer does not pay on time EDC shall be entitled to charge the customer interest at the applicable statutory rate from time to time. EDC reserves the right to claim any further damages.
- 5.6. Bills of exchange shall only be accepted upon special arrangement and on account of performance and without any costs or bank charges for EDC.

- 5.7. If, following the conclusion of contract, EDC becomes aware of a lack of the customer's capability of performance, EDC shall be entitled to only make outstanding deliveries upon the customer's prepayment or rendering of collateral; in the event that prepayment or collateral have not been provided even after the expiration of a reasonable period of grace, EDC may fully or partially cancel all relevant contracts in whole or in part without prejudice to any further rights it may have.
- 5.8. The customer is only entitled to a set-off if his counterclaim is uncontested or has been finally adjudicated.
- 5.9. The customer is only entitled to assert a right of retention if his counterclaim is based on the same contract and is uncontested or has been finally adjudicated.

## **6.0 Default of Acceptance**

- 6.1. If the customer refuses acceptance after expiration of a reasonable period of time set by EDC or announces seriously and definitely that he will refuse acceptance, EDC shall be entitled to cancel the contract or claim damages without prejudice to any further rights it may have.
- 6.2. If EDC claims damages according to clause 6.1 EDC shall be entitled to demand the contract value as compensation without providing evidence; the customer is entitled to prove that EDC has suffered no damage or that the amount of the damage is considerably lower. The right to assert any actual higher damages is reserved.
- 6.3. If the customer is in default of accepting performance or if he should be in breach of other duties to cooperate with EDC, EDC shall be entitled to reasonably store the goods at the customer's risk and expense.

## **7.0 Agreement about Characteristics. No Guarantee**

- 7.1. EDC warrants that the delivered goods, at the time at which the risk passes to the customer have the agreed characteristics; the latter are determined by the specific written agreements about qualities, features and performance characteristics of the delivered goods.
- 7.2. EDC does not provide any undertaking (guarantee) for the characteristics of the goods above and beyond agreement about the characteristics referred to in clause 7.1.
- 7.3. All information given in catalogs, price lists and other information literature provided by EDC to the customer is under no circumstances to be understood as such guarantee for specific characteristics of the delivered goods.

Information, consultancy concerning questions relating to application etc. is always given to the best of our knowledge, however, irrespective of the form in which it is provided, it is always non-binding.

- 7.4. If components are passed on to EDC by the customer or his delegate, EDC shall not take over any warranty or guarantee if deviations from the agreed or contractually stipulated quality and use relating to the object of delivery ensue from these components.  
If the customer or his delegate provide us with materials, substances etc., they are to confirm on delivery that all obligations in connection with the REACH Regulation (1907/2006 EC) have been fulfilled and the rules relating to pre-registration have also been complied with.

## **8.0 Claims of Customer in Relation to Defects, Customer's Duty to inspect Goods**

- 8.1. All rights of the customer relating to defects of the subject of delivery require that the subject of delivery has been inspected by the customer without undue delay upon delivery and that he has notified EDC of any defects without undue delay in writing, but no later than two weeks following delivery; hidden defects must be reported to EDC in writing without undue delay, however at the latest within 3 working days following their discovery.
- 8.2. Defects in only a part of the total amount of delivery shall not entitle the customer to cancel the contract, unless the partial delivery is of no interest to the customer. The same shall apply in respect of claim for damages.
- 8.3. In the event of a notice of defect EDC shall have the right to inspect and test the subject of delivery in question. To such end, the customer shall grant EDC the required time and opportunity. EDC may also demand from the customer that he sends the subject of delivery in question to EDC at EDC' expense. If the customer's notice of defect proves to be unjustified, he shall be obligated to EDC for the compensation of all expenses incurred in this context - e.g. travel expenses and costs of technicians or shipping costs.
- 8.4. Defects shall be remedied by EDC at its own choice by remedial work or the replacement delivery of a faultless part or of an entirely faultless item of delivery ("subsequent performance"), both at no cost for the customer.
- 8.5. The customer shall grant EDC the required time and opportunity for the subsequent performance. The customer shall only have the right, following consultation without undue delay with EDC, to remove the defect himself or have it removed by a third party and demand from EDC compensation for his necessary expenses caused by the subsequent performance if there is an

emergency causing a threat to plant safety or to avert unreasonably large damage or if EDC is in default of subsequent performance.

- 8.6. The customer shall not have any claims if defects are caused by the customer, e.g. by inappropriate or improper use, faulty start-up, faulty treatment by the customer or third parties commissioned by him, natural wear and tear, provided that EDC does not bear any responsibility for the defect.
- 8.7. The costs of materials, shipping and labor for the purpose of subsequent performance shall be assumed by EDC, unless the customer has to bear exceptionally such expenses in accordance with clause 8.3, last sentence.
- 8.8. If the removal of the fault or the replacement delivery fails or is unreasonable to the customer, or EDC has refused either in accordance with section 439 subsection 3 German Civil Code ("BGB") due to unreasonable costs, the customer, at his own option, shall be entitled pursuant to the statutory provisions to cancel the contract, to reduce the purchase price or demand damages instead of performance (or compensation for expenses respectively).
- 8.9. The limitation period regarding claims of the customer for subsequent performance, cancellation of the contract or reduction of the purchase price for the delivered item shall be 12 months from the time of delivery to the customer. As regards claims of the customer for damages and his claims on account of malicious concealment or intentionally caused defects, the statutory limitation periods shall remain applicable. If the delivered goods are sold indirectly or directly by the customer or by contractual partners of the customer to consumers, the claims for recourse against EDC will expire no earlier than two months after the customer has fulfilled claims of the consumer or other buyers.
- 8.10. The liability on payment of damages is limited in accordance with the regulation in item 9 of our General Terms and Conditions of Delivery.

## **9.0 Damages and Limitations of Liability**

- 9.1. EDC shall be liable for damages without limitation according to the statutory provisions, unless clause 9.2 provides otherwise.
- 9.2. For property damage and financial loss the liability of EDC is limited as follows:
  - (i) EDC shall be liable only to the extent of the typical foreseeable contractual damage for the slightly negligent breach of material contractual duties;
  - (ii) EDC shall not be liable for the slightly negligent breach of immaterial contractual duties.

This shall not apply, however, in the event of a mandatory statutory liability (in particular under the Product Liability Act) and for the assumption of a guarantee.

- 9.3. Clauses 9.1 - 9.2 are applicable to all claims for damages, irrespective of their legal ground, in particular also to those resulting from tort.
- 9.4. The customer shall be obliged to take adequate measures to avoid damages or to mitigate damages.
- 9.5. Liquidated damages are also excluded as the agreement of a contractual penalty.

## **10.0 Retention of Title**

- 10.1. The delivered products shall remain the property of EDC until full payment is made of all of EDC' receivables arising under its business relationship with the customer.
- 10.2. In the event of a current account the retention of title shall serve to secure the claim to the balance to which EDC is entitled. The customer shall only be entitled to sell the products subject to the retention of title within the scope of normal business transactions. The customer is not entitled to pledge, provide chattel mortgages on or otherwise dispose of the products subject to retention of title in a manner endangering EDC's ownership. The customer hereby assigns his claims for the proceeds under the resale of the products to EDC, which accepts such assignment. In the event that the customer disposes of the products subject to the retention of title after having processed, remodeled or merged them with other goods, the amount of such part only which corresponds to the price agreed to by EDC and the customer plus 10 % of such price as a security premium shall be assigned. Subject to revocation of this right, the customer is authorized to collect in trust and on behalf of EDC the receivables assigned to EDC in his own name. EDC may revoke this authorization and the entitlement to resell the products if the customer is in default of material obligations to EDC such as his payment obligations.
- 10.3. In the event that products subject to the retention of title are merged, processed or remodeled with other goods, EDC becomes co-owner of the new goods according to the quota to which the products subject to the retention of title contribute to the value of the new goods. In the event that by the merger, processing or remodeling the goods of the customer are to be regarded as the main goods, it shall be deemed to be agreed that the customer shall transfer joint ownership to EDC according to EDC' quota of the total value of the new goods. The subject of such joint ownership shall be

kept safe by the customer for EDC. The customer shall provide EDC at all times with the requested information concerning the products sold under retention of title or claims which have been assigned to EDC hereunder. Attachments of or claims against the products sold under retention of title by third parties must be reported immediately by the customer to EDC and the necessary documentation be made available. The customer shall simultaneously inform the third party of EDC's retention of title. The costs of averting such attachments and claims shall be borne by the customer. The customer is obligated to treat the products sold under the retention of title with care for the duration of such retention of title.

- 10.4. Should the realizable value of the collateral exceed the total amount of EDC's receivables to be secured by more than 10 %, the customer shall be entitled to demand a release of collateral to such extent.
- 10.5. Should the customer be in default of a material obligation such as payment to EDC, EDC may take back any products sold under the retention of title without prejudice to any other rights it may have. In this case the customer shall provide EDC or its representatives immediate access to the products sold under retention of title and surrender the same. Should EDC demand a surrender of goods under the provisions of this clause, this shall be deemed to be a cancellation of the contract. Only after cancellation of the contract, EDC will be entitled to realize the product sold under retention of title.
- 10.6. In the event of deliveries to other jurisdictions in which the foregoing arrangements governing the retention of title do not have the same effect of securing rights as in Germany, the customer shall do everything to create corresponding rights of security for the benefit of EDC. The customer shall co-operate, for example, in the registrations, public notices and the like required for and expedient to effectuating and enforcing such rights of security.
- 10.7. On EDC's demand the customer is obligated to reasonably insure the products sold under retention of title, provide EDC with equivalent insurance certificates and assign the claims under the insurance contract to EDC.

## **11.0 Product Liability**

- 11.1. Should the customer sell the subject of delivery unaltered or following processing, merging, mixing or confusion with other goods, he shall indemnify EDC within his internal relationship with EDC against product liability claims of third parties to the extent he is responsible for the fault causing such liability.

## 12.0 Raw Materials

- 12.1. Raw materials to be provided by the customer, in particular master tapes and litho films, have to be delivered free of charge and in faultless condition to EDC.
- 12.2. In case of fire or burglary and resulting damage or loss the customer will only receive a pro rata amount of EDC's insurance amount. Such pro rata amount will be determined by the relationship between the value of materials belonging to the customer and the total damage suffered by EDC.
- 12.3. EDC reserves the right to destroy production parts after a period of 6 months if the customer does not request return of the parts when placing the order. All raw materials stored on the premises of EDC which have not been used for a period of at least twelve months shall be either returned to the customer or destroyed, following prior agreement with the customer. Any costs which arise in this context are to be borne by the customer.
- 12.4. EDC shall not be responsible for ordered products. EDC is not obliged to use raw materials (master tapes, CD-R, litho films, electronic data, etc.) in particular raw materials of racial, violent, pornographic or otherwise illegal contents. In such cases EDC is entitled to cancel the contract in whole; the customer shall bear all arising costs. In case EDC is liable for damages to third parties concerning any aforementioned contents, EDC is entitled to demand indemnification and compensation from the customer.

## 13.0 Industrial Property Rights, Third Party Rights

- 13.1. You are not entitled to make use of our trade names, logos or brands for your own purpose or that of a third party. You are not permitted to use them either individually or in connection with your own trade names, logos or brands without our prior written agreement.  
If we grant you our permission, you must then adhere strictly to the guidelines concerning size, positioning and layout of the trade names, logos or brands.  
If any of our industrial property rights are unlawfully violated by you, you shall bear the full extent of the costs and/or reimburse us for all indirect and direct damages which arise for us in this connection. This also includes costs for any necessary prosecution.  
All property rights and copyrights relating to diagrams, drawings, calculations and other documents are reserved for us. Our express written permission is required prior to passing such paperwork on to third parties.
- 13.2. The customer warrants that he is the owner of all necessary proprietary rights for the purposes of duplicating and using the raw materials (master tapes, CD-R, litho films, electronic data, etc.) he has to provide in order to perform the contract. This applies especially to the rights administered by the GEMA. The customer will provide to EDC the necessary data for the so

called "GEMA-Notification" and give EDC notice of any use of released or unreleased own or licensed proprietary rights and notification of proprietary rights concerning the provided raw material. In case third parties (including the GEMA) make a claim against EDC for alleged infringement of third party rights, the customer will indemnify EDC upon first demand in full and reimburse EDC the arising costs of the legal actions in full.

- 13.3. Should the customer not be in a position to supply the agreed evidence in adequate form, as stated in 13.1 above, regarding his proprietary rights for the purposes of duplicating, EDC is authorized to retain all the products and paperwork received from the customer, including potentially produced goods and to inform third party organizations (for example BSA or IFPI) and if requested, to surrender for inspection the products and paperwork belonging to the customer.

#### **14.0 General Terms and Conditions**

- 14.1. Delivery contracts (orders and acceptances) and delivery schedules as well as any amendments and supplements to them shall require written form. It is also acceptable for this to take place in electronic form.  
In the case of delivery schedules our written confirmation is always required.
- 14.2. If a term of the contract and/or these Terms and Conditions of Delivery are fully or partially invalid, the other provisions shall remain unaffected.
- 14.3. If the customer is a merchant, legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising under the parties' contractual relationship shall be Hanover. This shall also apply if the customer does not have any general place of jurisdiction in the Federal Republic of Germany or has moved his habitual residence to a foreign country following the conclusion of contract. EDC is entitled, however, to enter actions against the customer at any other statutory court of jurisdiction.
- 14.4. The law of the Federal Republic of Germany shall apply with the exception of the UN Convention on the International Sale of Goods (CISG).