

## **General Business Terms of update displays gmbh**

### **§ 1 Scope**

1. All supplies, services and offers are made on the basis of the terms and conditions of business set out below (including additional terms and conditions for assembly, works and services). These are the basis for all offers and agreements and will be deemed accepted for the duration of the business relationship by issuance of an order or acceptance of delivery. Alternative terms and conditions not expressly recognised in writing will not be binding on us as the vendor even if we had not expressly rejected them.
2. Contracts that are brought about via our online shop are also governed by the regulations of the *ordering information*.
3. No verbal agreements outside this contract have been made. Sales representatives of our company are not authorised to enter into verbal secondary agreements or to give verbal warranties extending beyond the content of the written contract.

### **§ 2 Definition of terms**

1. A consumer within the meaning of the clauses below is understood to be any natural person as defined in § 13 BGB [German Civil Code] who concludes a legal transaction for a purpose that cannot be attributed to either his business or his self-employed activities.
2. An entrepreneur as defined in § 14 BGB is a natural or legal person or an unincorporated firm having legal capacity who acts in pursuit of his business or his self-employed activity in concluding a legal transaction.
3. Unless otherwise expressly determined, the regulations of the business terms apply to both consumers and entrepreneurs.

### **§ 3 Formation of contract**

1. Unless otherwise indicated in the confirmation of order, our offers are always non-binding. The confirmation of order will become a constituent part of the contract. The customer has a duty to inspect the confirmation of order for material accuracy immediately upon receipt.
2. Purchase orders to which the customer is bound for at least two weeks will be binding for us upon our written confirmation or delivery without reservation within two weeks of the purchase order.
3. The scope of supply will be governed by the confirmation of orders. Deviations in dimension, weight and/or quantities will be permitted within the usual tolerances. In the case of customisations, the volume supplied may deviate from the quantity ordered by up to 10 %.
4. We reserve title and copyright to specimens, drawings, cost proposals and other information. The customer may not make these available to third parties without our express consent.
5. Formation of the contract will be subject to our being able to obtain supplies in full and in time. This applies solely for the case that the non-delivery is not our fault, in particular in the event that a congruent covering transaction is concluded with our supplier. The customer will be informed immediately of the non-availability of the performance and any counterperformance will be refunded without delay.
6. Any descriptions and indications of weight and/or quantity, particularly in catalogues, price lists and advertising, are guidelines or approximate values only and do not represent binding indications of quality. Verbal indications of quality will only be binding if we have confirmed them in writing.
7. Modifications in design and form, deviations in colour and changes to the scope of supply by the supplier remain reserved if the modifications or deviations are reasonable for the customer, having due consideration for the justified interests of both parties to the contract. If we or the supplier make use of characters or numbers in order to designate the purchase order or purchase item, this alone does not establish any rights in respect of the specification of the purchase item or the scope of supply.

### **§ 4 Prices**

1. Unless otherwise indicated in the confirmation of order, prices quoted are ex stock / works Troisdorf exclusive of transport and packaging; these costs will be invoiced separately. Prices do not include value-added tax at the statutory rate; this will be shown separately in the invoice at the statutory rate applicable on the invoice date.
2. The prices of the price lists applicable on the delivery date will apply.
3. Prices or supplements for prepaid, FOB, C&F delivery etc. are not binding and will increase according to changes in the scale of charges.

4. Delivery "free truck unloading point" presupposes that the relevant point can be reached by an access road suitable for trucks.

## **§ 5 Payment terms**

1. Unless otherwise agreed, our invoices are payable within 30 days of receipt of the written notification of completion and delivery of the invoice. We will grant a 2 % discount for payment within 10 days of invoicing. Any further discount will require separate written agreement. We expressly reserve the right to carry out a creditworthiness check before the respective supply and in the individual case to supply only against the choice of another payment method (cash in advance/cash on delivery); the same will apply for the case that we become aware of circumstances casting doubt on the credit standing of the customer.

2. If the customer defaults in payment, if the financial position of the customer deteriorates substantially, if he disposes outside ordinary course of business of goods which we have supplied under reservation of title or if he dissolves his enterprise, we will be entitled to call in all debts. If the deadline for payment is missed, we will also be authorised to demand the furnishing of security or payment in advance. If the customer is an entrepreneur, outstanding debts will be subject to interest at 8 % above the base rate. If the customer is a consumer, the statutory rules will apply. We reserve the right to assert a greater loss. The customer is free to provide evidence of a lesser loss.

3. The customer may only set off against our claims if his counterclaim is undisputed or a legally enforceable instrument exists; he may only assert a right of retention if this is based on claims arising from the purchase contract. Set-off with debts of an affiliated company of the customer is precluded in every case.

4. In the case of contracts with an agreed term of more than 4 months, we reserve the right to raise prices in line with cost increases occurring on the basis of agreements with suppliers, collective agreements or increases in the cost of materials. If the rise is more than 5 % of the agreed purchase price, the customer will be entitled to withdraw from the contract in accordance with § 313 (3) BGB. In this case the customer will have no right to compensation.

5. We will be entitled to claim payments for part performances already rendered after invoicing accordingly.

## **§ 6 Delivery**

1. Delivery periods and dates depend on the nature and scope of the purchase order and will begin upon formation of the contract. Delivery periods and dates which may be agreed as binding or non-binding must be indicated in writing.

2. Commencement of the agreed delivery period assumes that all technical questions have been clarified. Due and timely performance by the customer of his contractual obligations is a further prerequisite.

3. If we are prevented from delivering the purchase item on the agreed date or within the agreed period (delay in delivery) for reasons for which we or a vicarious agent are responsible, we will be liable in accordance with legislation. If the delay in delivery is not our fault or the fault of a vicarious agent, we will only be liable for the foreseeable loss typically occurring.

4. Force majeure and events which temporarily prevent us from delivering the purchase item on the agreed date or within the agreed period through no fault of our own (e.g. strike, lock-out, interruptions to business, weather influences or transport problems, delay in obtaining raw materials or machines, war or sovereign directions) will entitle us to postpone the delivery or service by the duration of the hindrance plus a reasonable start-up period. If such disruptions lead to performance being delayed for more than four months, the customer may withdraw from the contract. This does not affect other rights of rescission.

5. The customer will be bound to take delivery of the purchase item. The customer must take delivery of goods ordered at call within 3 months of the date of the confirmation of order or within 4 weeks of the individual call-off dates agreed in writing. If the customer does not take delivery within these call-off periods, the purchase price for the goods completed by then will fall due for payment upon expiry of the period. The customer will be in default of acceptance upon expiry of the above periods, and in the case of other purchase orders 30 days after completion of the goods. If the customer is in default of acceptance, we will be entitled to demand compensation for the loss we have suffered.

6. In the case of collection by the customer or the authorised haulier, agreed dates must be observed punctually. If the collection date for goods which have been notified as ready for shipping is not observed, we will be entitled to dispose of the material after one week has expired. The customer will bear all costs arising through delayed collection or the provision of means of carriage. If the customer does not observe delivery periods and dates agreed in contracts for the supply of several part quantities, we will be entitled, after a period of grace has elapsed without result, to supply the remaining goods, withdraw from the uncompleted part of the contract or demand compensation for non-performance.

7. We will be entitled to make part deliveries; these will be considered one single transaction.

8. If the purchase contract is a fixed transaction (§ 286 (2) 4 BGB; § 376 HGB [German Commercial Code]), we will be liable in accordance with legislation. This will apply analogously for the case that the customer is, as a result of a delay in delivery for which we are responsible, is entitled to assert that he no longer has an interest in further performance of the contract.

### **§ 7 Passage of risk, packaging**

1. If the customer is an entrepreneur, the risk in shipment will pass when the item is delivered to the person responsible for the transport or when the goods have left our store for the purposes of shipment. This will also apply for deliveries "free destination" and for part deliveries or if we have assumed the costs for transport and/or erection. In the case of collection by the customer, the risk will pass upon notification of readiness for dispatch.

2. We will take out transport insurance only if requested to do so in time and at the expense of the customer.

3. Unless otherwise agreed, we will not take back transport and other packaging with the exception of pallets. The customer is responsible for disposing of the packaging himself.

### **§ 8 Warranty**

1. If he is an entrepreneur, the customer's claims to the rectification of defects will be restricted in priority to a claim for renewed performance, i.e. improvement or substitute delivery. We will have the right to choose between improvement and substitute delivery. If the improvement or substitute delivery fails, the customer may demand a reduction in price or withdraw from the contract. Improvement will be deemed to have failed if and insofar as a period of grace set us for renewed performance has elapsed without result. The preconditions for exercise of the right of rescission are governed by § 323 BGB.

2. We cannot reasonably be expected to effect improvement or substitute delivery if we can demonstrate that the cost would exceed 25 % of the total volume of the order. In this case the customer will have the statutory rights to withdraw from the contract or demand a reduction in price.

3. In the case of improvement, we will be bound to bear all expenses required for rectification of the defect, in particular transport costs, tolls, labour and material costs provided that the costs do not rise because the purchase item was taken to a place other than the place of performance.

4. No claim to warranty will exist if the customer has not or has only partially fulfilled the contractual duties incumbent upon him or if modification or repair work was carried out on the item subject to complaint without our consent.

5. The customer's claims under liability for material defects presuppose that he has fulfilled duly and in time the duties of inspection and notification incumbent upon him under § 377 HGB. The customer must therefore inspect the supplied goods carefully immediately after receipt and notify us in writing of any defects as soon as they are identified.

6. For transactions with an entrepreneur, the limitation period for material defects in newly produced items is 1 year from delivery of the item. In this case the sale of used items is excluded from any liability for material defects. Statutory provisions apply in respect of consumers.

### **§ 9 Liability**

1. We will be liable in accordance with the law if the customer asserts claims for compensation that rest on malice, intent or gross negligence, including malice, intent or gross negligence on the part of our representatives or vicarious agents, for losses arising from physical injury, loss of life, damage to health if we had assumed a guarantee and in all other cases where liability is mandatory under law.

2. If we breach cardinal duties, we will be liable to compensate the customer for his expenses and loss. Cardinal duties in this sense are all duties whose breach would jeopardise achievement of the purpose of the contract and all duties whose fulfilment makes due performance of the contract possible in the first place and on whose fulfilment the customer must normally be able to rely. If, however, the breach of a cardinal duty was the result only of slight negligence and did not lead to physical injury, loss of life or damage to health, the customer's claims to compensation will be restricted in amount to the foreseeable loss typically occurring.

3. Any liability for compensation beyond the liability set out in Numbers 1 and 2 is precluded irrespective of the legal nature of the claim being asserted. This will apply in particular for claims to compensation on account of material defects, deficiency in title and/or breach of other duties under the contractual obligation, culpability in contrahendo, other breaches of duty or claims in tort to compensation for damage to property according to § 823 BGB and for damage not occurring to the delivery item itself. The above regulations also apply for damage that could occur in the rectification of faults or the exchange of products within the scope of liability for defects. The exclu-

sion of liability for material defects or deficiencies in title in Sentence 1 will not apply for purchases of moveable items by consumers.

4. If our liability for compensation is precluded or restricted, this will also apply for the personal liability for compensation of our employees, workers, staff, representatives and vicarious agents.

#### **§ 10 Reservation of title**

1. The supplied goods will remain our property until such time as our claims under the purchase contract have been settled. If the customer is a merchant within the meaning of the German Commercial Code, we reserve title to all merchandise until all payments under the business relationship have been received.

2. The customer is entitled to sell the merchandise on in the ordinary course of business; however, he hereby assigns to us all claims, to the sum of the final invoice amount of the purchase price claim (including turnover tax) owed by him, that accrue to him against his buyer or a third party from the resale, regardless of whether or not the merchandise was sold on without or after processing. The customer will remain authorised to collect these debts even after the assignment. This does not affect our authority to collect the debts ourselves. We undertake not to collect the debts ourselves for as long as the customer meets his contractual payment obligations and no application for the opening of insolvency proceedings has been filed. If one of the latter events has arisen, the customer must provide us on request with all information required for collection of the assigned debt, deliver the relevant documents and notify the debtor (third party) concerned.

3. The processing or transformation of the merchandise will always be for us. If the merchandise is processed with other items not belonging to us, we will acquire joint title to the new item in the proportion of the value of the merchandise to the other items processed at the time of processing. Otherwise the item created by the processing will be considered analogous to the item supplied under reservation of title. If the merchandise is indivisibly mixed with other items not belonging to us, we will acquire joint title to the new item in the proportion of the value of the merchandise to the other mixed items. If mixing is performed in such a way that the customer's item is to be regarded as the main item, it is deemed agreed that the customer transfers joint title to us. The customer will preserve for us the sole title or joint title thereby created.

4. For the case that the value of the securities exceeds the claims to be secured by more than 20 %, we will be bound to release securities due to the customer to that extent at his request. We will be free to choose the securities to be released.

#### **§ 11 EU import sales tax**

1. If the customer is resident outside the Federal Republic of Germany, he is bound to comply with the European Union regulations governing import sales tax. He must notify us of his turnover tax identification number and any change thereto unsolicited. He will, on enquiry, be bound to disclose information concerning his capacity as entrepreneur, the usage and transport of the supplied goods and in respect of statistical reporting requirements.

2. The customer is further bound to recompense us for the expense and costs we incur as a result of missing or deficient information regarding the import sales tax.

3. We will not be liable for the consequences of deficient or missing information from the customer regarding the import sales tax unless we are imputed to have acted with intent or gross negligence.

#### **§ 12 Data protection**

We will be entitled to save and process electronically for the purposes of performance of the contract all data about the customer that are related to the business relationship. We will comply with the provisions of the German Data Protection Act.

#### **§ 13 Jurisdiction, place of performance, choice of law**

1. The customer is not entitled to assign his claims under the contract.

2. The place of performance for all deliveries is the registered office of our company.

3. If the customer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a federal asset, the place of jurisdiction will be Siegburg. In this case we will also be entitled to pursue the customer at the court of his domicile. This will apply analogously for the case that the customer does not have any general place of jurisdiction in Germany, if he relocates his domicile or usual place of residence out of Germany after formation of the contract or if his usual place of residence is unknown at the time the action is brought.

4. The contract is subject solely to the laws of the Federal Republic of Germany to the exclusion of the UN Sales Convention.

#### **§ 14 Severability**

Should individual provisions of the contract with the customer, including these General Supply Terms, be or become wholly or partially ineffective, this will not affect the validity of the remaining provisions. The wholly or partially ineffective regulation is to be replaced by a regulation coming closest to the economic result of the ineffective regulation. This will not apply if adherence to the contract would represent an unconscionable hardship for a party.