

GENERAL TERMS AND CONDITIONS of Steinberg Media Technologies GmbH

Section 1 - Scope of Application

- (1) Steinberg Media Technologies GmbH ("Steinberg") shall supply all deliveries and performances exclusively on the basis of these General Terms and Conditions.
- (2) We shall not recognize any General Terms and Conditions of the customer that may differ entirely or partially from these General Terms and Conditions unless we have consented to those General Terms and Conditions in writing. These General Terms and Conditions shall also apply if and when our deliveries and performances are supplied unconditionally in full knowledge of the contradictory nature of the customer's General Terms and Conditions.
- (3) These General Terms and Conditions shall also apply in the business relations between enterprises (companies and businessmen/merchants) to all future business of the parties.
- (4) Steinberg is entitled to modify or supplement these terms and conditions at any time subject to an appropriate term of notification. Should the customer not object to the modified conditions within two weeks after receipt of the modification notice, at the latest, however, by the date the modifications in the notification are to take effect, said modifications shall enter into full force and effect in accordance with the notification. Steinberg will point out it to the customer in the modification notice.

Section 2 - Conclusion/Contents/Termination of the Contract

- (1) All offers and prices are non-binding.
- (2) The contract shall be deemed as concluded upon written confirmation of the order by Steinberg or upon first fulfillment action regarding said order by Steinberg.
- (3) If the customer is an enterprise, basically only the product description from Steinberg shall be deemed as agreed upon as the quality of the goods. Public statements, sales pitches and advertisements do not represent a quality description of the purchased product.
- (4) To the extent that Steinberg makes the customer individual offers, these shall be made exclusively on the basis of the information provided by the customer with regard to the EDP system specified by the customer. For this reason the customer shall bear the risk as to whether or not the products offered on this basis correspond to his wishes and requirements. If the customer would like to agree upon binding standards deviating here from, he must put this in writing. Said request shall enter into effect once it has been countersigned by Steinberg.
- (5) To the extent that revocation of the contract is permitted by law or in accordance with the agreement concluded with Steinberg, said revocation must be submitted in writing.

Section 3 - Delivery and Performance Obligations

- (1) Steinberg shall supply the deliveries due in accordance with the contract within the contractually stipulated delivery times. Unless otherwise explicitly agreed upon, all delivery times are approximated. Delivery times are subject to timely and correct receipt of shipment receivables at Steinberg and shall be extended independently here from by the time period in which Steinberg is hindered by circumstances beyond its control (e.g. labor dispute, force majeure, or similar circumstances) from delivering the products on time. The same shall apply for the time period in which is waiting for the customer's performance of its duty to cooperate, which is required for the delivery of the products. Steinberg shall always inform the customer of any foreseeable delays and shall make every effort to deliver the products on time. In the event of an incorrect or partial delivery, Steinberg shall be obligated to proper delivery of the ordered goods.
- (2) Steinberg shall not be responsible for the complete or partial failure of its product to perform (malfunction) if said failure is caused by use or treatment different than specified in the description by

the customer or a third party, whose actions are attributable to the customer. The same applies if the customer uses its own hard or software or other material that is not explicitly described as suitable by Steinberg for Steinberg products, thus causing the malfunction. The same shall apply if the customer does not cooperate with Steinberg to the extent necessary in the analysis and/or elimination of the malfunction.

(3) In delivering the products, which according to the agreement presuppose the customer's use of the Internet, Steinberg shall be responsible for the regularity of data traffic within the Steinberg network and such connecting networks for which it has explicitly assumed responsibility. The customer accepts that Steinberg is not accountable for failure to deliver caused by impairment of data traffic on the Internet outside of the scope of influence of Steinberg as mentioned and defined above.

(4) Steinberg's performance does not include installation and other accompanying services, unless explicitly agreed upon between the parties in writing. Even if an installation is owed based on an express written agreement, this contains the installation of the performance object (product) to the given surroundings of the customer. This does not include any further performances, in particular . Steinberg shall not be obligated to adapt the customer's currently existing programs to the delivered software and/or a user introduction. This shall also apply if the customer's currently existing programs were purchased from Steinberg..

(5) If the customer is an enterprise and the products are to be shipped by Steinberg, the risk of accidental loss or accidental deterioration shall transfer to the customer once the products have been handed over to the freight forwarder/shipping agent. For shipments carried out by Steinberg itself, the risk shall transfer upon delivery to the customer. The same shall apply for partial shipments and if freight prepaid shipment has been arranged.

(6) If it has been arranged for products, in particular software from Steinberg, to be called up via the Internet, Steinberg warrants (*gewährleistet*) the availability of its web server for 98% of the time on a yearly average. Further, from the availability times are excluded, when it cannot be accessed via the Internet due to difficulties that are outside the scope of influence of Steinberg (force majeure, third party fault, or similar circumstances).

(7) Steinberg may block access of unknown computers or services in its infrastructure temporarily if such a block is necessary in order to protect the infrastructure of the network operated by Steinberg or its customers against acute danger and Steinberg is not responsible for this dangerous situation.

Section 4 - Customer's Obligation to Cooperate

(1) The customer shall be obligated to fulfill the contractually agreed cooperation obligations (in particular information concerning the EDP system currently in use as well as the hardware expansion categorically planned) within the deadlines contractually agreed upon on a case to case basis.

(2) Should the customer not fulfill his cooperation obligations even after having received an appropriate grace period set by Steinberg, Steinberg shall at its discretion be entitled to temporarily stop shipment on all deliveries or a portion of deliveries or to cancel the contract and to demand as compensation all expenses incurred thus far plus the loss of earnings.

Section 5 - Prices and Terms of Payment

(1) The amount and due date of the purchase price are determined in the contract with the customer. (i) In relation to consumers the mentioned prices are total prices. (ii) In relation to enterprises, prices do not include VAT and are net prices. The prices of Steinberg shall be valid as of its registered place of business in Hamburg. They do not include (if shipment is necessary or agreed upon) packing, freight, postage, insurance and other shipping costs.

(2) Invoices are due and payable within 30 days of the invoice date without deductions by way of bank transfer to one of the accounts of Steinberg. Discounts shall only be granted subject to an explicit written agreement. Should facts come to light after the contact has been concluded that from

an objective point of view would damage the customer's credit rating, all receivables owing shall become immediately due and payable. In this case, Steinberg shall be entitled to ship on a cash in advance basis or only if collateral is provided.

(3) Belated changes to purchase orders at the customer's request including additional expenses incurred by said change shall be invoiced separately to the customer in accordance with the price list of Steinberg.

Section 6 - Third Party Rights, Copyrights and Licenses

(1) In relation to customers, which are enterprises, the following applies to defects of title: Should a third party assert the violation of rights vis-a-vis the customer that should prevent the contractual usage of the products delivered to the customer, the customer must inform Steinberg forthwith in writing of said claims. The customer will leave the defence alone and at the expense of Steinberg to Steinberg against these claims out of court and in court and also provide every reasonable support. In particular, the customer has to provide information as possible in writing, how he has used the product.

As far as rights of third parties are infringed, Steinberg can at its discretion provide supplementary performance that she

- a) obtains from the rights holder the sufficient rights in favour of the customer for the purposes of this contract, or
- b) modifies the corresponding product without effects on the function or only with acceptable effects for the customer, or what
- c) exchanges the corresponding product by another product without effects on the function or only with acceptable effects for the customer, whose contractual use does not violate any third party rights, or
- d) delivers a new product stand at whose contractual use no rights of third parties are violated.

If the elimination of the defect of title is not possible within two attempts of improvements, the customer is entitled to set Steinberg a last extension and to point out in writing that he decreases the price adequately or withdraws at renewed failure. A withdrawal is coming into consideration at a considerable defect of title only.

(2) The customer shall receive the non-exclusive, perpetual, non-transferable right to use the contractual products in accordance with the contract. The rights of use shall be transferred once payment has been made in full.

The copyright as well as the source code for created programs shall remain with Steinberg. Without prior consent from Steinberg, it is fundamentally forbidden for the customer to modify, translate, reverse-engineer, decompile, or disassemble the software or the pertinent material or to produce works derived from the software, unless this is permitted by law. The customer may not change labels, copyright notices and ownership information of Steinberg products.

(3) If the right to use Steinberg products granted to the customer should end due to a legal or contractual right of cancellation of the contract, the customer must return all data carriers with programs, any copies, written documentation and advertising aids to Steinberg. The customer must delete all saved programs from his computer system, unless and as long as he is obligated due to compulsory legal provisions to keep them for a longer period of time. The customer shall surrender to Steinberg all other objects and documents forthwith, at the latest, however, two weeks after cancellation of the contract. If the customer is an enterprise, the surrender shall be carried out at his own expense and his own risk.

(4) The customer undertakes to ensure through suitable precautionary measures (e.g. secrecy of passwords) that the unauthorized third-party use of the products delivered by Steinberg in the meaning mentioned above shall not occur. In the event that the customer violates this obligation, Steinberg shall be entitled to terminate the contract without notice.

Section 7 - Reservation of Ownership

(1) Steinberg shall retain ownership of its products until it has received full payment arising from the concluded contract.

(2) As far as the customer is an enterprise, the customer is permitted to resell the conditional commodity in the ordinary course of business to third parties (end customer) under reservation of ownership and under consideration of the due diligence of a responsible businessman; the customer, however, shall assign in advance to Steinberg all receivables due to him either now or later from the resale or from any other legal transaction with respect to the conditional commodity when they incur in the amount of the invoice value of the concluded contract between the customers and Steinberg. The customer shall remain entitled to collect these receivables as long as he duly fulfills his obligations vis-a-vis Steinberg. If the customer comes from this contract behind schedule with duties, Steinberg is entitled to the revocation of the resale authority and collection of the receivables. At the request of Steinberg, the customer then shall be obligated to inform the end customer of its advance assignment and to provide Steinberg with the information necessary for asserting its rights vis-a-vis the end customer and to surrender documentation. Should the conditional commodity of Steinberg be seized by a third party or affected in any other way, the customer shall be obligated to inform Steinberg immediately of said occurrence and to notify the third party of the security interests of Steinberg.

(3) Insofar as the customer alters or processes the delivered conditional commodity for resale on a commercial basis, said alteration or processing shall be carried out for Steinberg, without incurring any obligation on the part of Steinberg. In the event that the conditional commodity is processed, combined or mixed with other commodities not belonging to Steinberg, Steinberg shall be entitled to co-ownership of the new object at a ratio of the invoiced value of the conditional commodity to the value of the processed commodities at the time it was processed, combined or mixed. Insofar as the customer purchases the sole ownership of the new object, he shall transfer at this point in time the co-ownership of the new object to Steinberg at a ratio of the invoiced value of the conditional commodity to the value of the remaining processed commodity at the time of its processing, combining or mixing, and shall keep the new object in safe custody for Steinberg with the due diligence of a responsible businessman.

(4) Insofar as the customer resells the conditional commodity after it has been processed, combined or mixed or sells the new object achieved by processing, combining or mixing, subsection (2) shall apply with the proviso that the customer shall assign to Steinberg the receivables due to him from the resale to the end customer in the amount of the invoiced value of the processed, combined or mixed conditional commodities. This shall also apply if the conditional commodity, by way of processing, combining or mixing with other objects not belonging to Steinberg, has become an essential component of movable property.

Section 8 - Warranty

If the customer is an enterprise, the following regulations apply:

(1) The customer must verify conformity of the delivered products with the contract immediately upon receipt and must report any detected defects to us without delay. Should he neglect to promptly inspect the products and give notice of defects, the delivered products shall be deemed as accepted, unless the defect was not recognizable upon inspection. Defects detected at a later date should also be reported to Steinberg immediately; otherwise, the goods shall be deemed as accepted with regard to these defects. The notification of defects must be made in writing and the notified defect must be described in detail. Furthermore, Sections 377 et. seq. German Commercial Code (HGB) shall apply accordingly for all business entities.

(2) The Steinberg warrants defects of the product vis-à-vis enterprises at her discretion by subsequent improvement or product replacement. Provided that the product has to be given back to Steinberg for the product replacement, the customer shall bear the costs of transportation. Should the subsequent improvement and/or product replacement fail twice, the customer shall have the right to set a reasonable time limit for the removal of defects. Should the subsequent improvement and/or product replacement even fail within this time limit, the customer shall be entitled to demand a reduction of the remuneration or, at his discretion, a withdrawal from contract. In case of an insignificant defect the withdrawal shall be excluded.

(3) The claims regarding a defect are time-barred within one year (statute of limitation), beginning with the delivery of the product.

Section 9 - Limitation of Liability

Irrespective of the legal grounds Steinberg shall only be liable to compensate or replace futile expenses in accordance with the following stipulations.

(1) Steinberg shall be liable for damages caused by the intentional or grossly negligent conduct of Steinberg, its legal representatives, managerial employees or any other vicarious agents and damages arising from death, bodily damage and damage to health from the assumption of a guarantee or from a procurement risk as well as Steinberg's liability for damages pursuant to the Product Liability Act (Produkthaftungsgesetz). In the case of damage caused by the grossly negligent conduct of any other vicarious agents, the liability shall be limited to those damages which are typically to be expected within the scope of an agreement such as the present one. Any further liability under this Agreement shall be excluded.

(2) In the case of damage caused neither by intentional nor by the grossly negligent conduct of Steinberg, Steinberg shall only be liable where an obligation is violated, the fulfillment of which is of particular significance to the achievement of the contractual purpose (cardinal obligation). In this case, the restrictions of liability pursuant to the foregoing subsection 9.1 sentences 2 and 3 shall apply. In case of Trial Version Software, the liability for damages according to this subsection shall be excluded.

(3) This limitation of liability for Steinberg shall also apply for the benefit of Steinberg's employees in the event that any claims are filed directly against them.

Section 10 - Resale by the Customer

(1) Insofar as the customer himself resells the products delivered by Steinberg to a third party (end customer), he shall be obligated to refrain from any statements to the end customer at the time of resale with regard to characteristics of Steinberg or its products, which Steinberg has not expressly consented to in writing. The customer must refrain from everything that could adversely affect the good name and reputation of the products of Steinberg.

(2) The customer authorized to resell the products shall not have the right to represent Steinberg on a contractual basis. The customer is obligated to avoid any semblance of entitlement to be in the capacity of establishing direct contractual relationships between Steinberg and the end customer, and must conclude contractual relations with the end customer without the inclusion of Steinberg. Steinberg shall be entitled to reject inquiries from the end customer as well as direct contact with the end customer.

(3) In the event that the products are resold within the meaning of the previous paragraphs, the customer shall be obligated to oblige his end customer to comply with the General Terms and Conditions in order to protect the rights to which Steinberg is entitled and the integrity of its products as well as the corresponding provisions as set forth in individual contracts. The customer shall release Steinberg from third party claims that result from an infringement by the end customer upon the provisions concerned.

Section 11 - Assignment/Set-Off/Right of Retention

- (1) The customer may assign claims based on this contract directed against Steinberg to third parties only with the written consent of Steinberg.
- (2) Steinberg has the right to transfer its legal position arising from the contracts concluded with the customers to affiliated companies according to Sections 15 et. seq. German Stock Companies Act (*Aktiengesetz* - AktG) of the Steinberg group.
- (3) The customer may only effect a set-off against claims of Steinberg with undisputed and finally judged debts due and owing. The customer may only assert his right of retention insofar as it is based on the same contractual relationship.
- (4) Insofar as the customer falls in arrears with payment arising from an individual contract concluded with Steinberg, Steinberg may refuse to ship deliveries due within the framework of other business relationships with the customer until such time when the customer is no longer in arrears.

Section 12 - Final Provisions

- (1) Every modification, supplement, side agreement or the partial or entire cancellation of the contract must be made in writing, as must the amendment or cancellation of the written form requirement. The written form requirement pursuant to these General Terms and Conditions shall also be complied with by way of declaration via telefax.
- (2) The laws of the Federal Republic of Germany shall apply exclusively for contracts concluded by Steinberg on the basis of these General Terms and Conditions and for all claims arising therefrom regardless of type excluding the application of the UN Convention on Contracts for the International Sale of Goods (CISG).
- (3) Exclusive jurisdiction and legal venue for all disputes arising from this contract shall be Hamburg, if the customer is a commercial businessman, legal entity of public law, public special estate or is without jurisdiction domestically.
- (4) Should provisions of these General Terms and Conditions and/or the contract be or become invalid, the validity of the remaining provisions shall remain unaffected. The invalid provision shall be deemed to be replaced with a valid one that corresponds to the purpose of the agreement or at least comes closest to achieving the same commercial result originally intended by the contractual parties, had they been aware of the invalidity of the provision. The same shall apply for any incompleteness in the contract.

Hamburg, August 2008