

## GENERAL TERMS & CONDITIONS OF KINOTON Digital Solutions GmbH

### I. Scope, conflicting general terms and conditions, written form, offers

1. The General Terms & Conditions set out below apply to all deliveries and services of Kinoton Digital Solutions GmbH (hereinafter: KDS). They shall apply exclusively. General Terms & Conditions of the customer conflicting with, or diverging from, these General Terms & Conditions shall not be accepted, unless KDS has explicitly agreed thereto in writing in a particular case.

2. Orders, declarations of acceptance and order confirmations as well as all agreements made prior to or upon conclusion of the contract shall only be legally effective if made in writing. Post-contractual agreements shall also be set down in writing.

3. Unless otherwise specified or agreed, offers of KDS are not binding; in any such case a contract becomes effective only upon written confirmation of the order received by KDS, at the latest and notwithstanding Art. 1. 2. 1st sentence above, however, upon acceptance of delivery.

### II. Prices

Unless otherwise expressly agreed, the prices are understood to be packed, ex works plus transport charges plus VAT at the statutory rate, if applicable.

### III. Terms of payment, offsetting, retention, liability of customer to pay in advance, deterioration of financial situation

1. Unless otherwise agreed, invoices for goods delivered are payable strictly net by no later than 30 days from the invoice date. Invoices which also cover work performed are immediately payable immediately and strictly net.

2. Any right of setoff by the customer shall be excluded, except with claims which are uncontested, ready for decision or defined by enforceable final judgement. Customer may exercise a right of retention only if and to the extent it is based on claims from the same contractual relationship, which are uncontested, ready for decision or defined by enforceable final judgement.

3. KDS shall be entitled to effect deliveries only against prepayment and/or cash on delivery.

4. If it becomes foreseeable after the conclusion of the contract that KDS's claim for counter-performance is jeopardized due to lack in financial capacity of the customer, KDS may refuse to perform the obligations owed until the customer has made counter-performance or provided security for it. KDS may set a reasonable respite for the customer, at his option, to counter-perform or provide security concurrently with KDS's performance. Upon expiration of the aforesaid respite, KDS is entitled to withdraw from the contract and/or claim damages or reimbursement of expenses if the statutory requirements are given.

### IV. Delivery, delivery periods/deadlines, delay, force majeure, partial deliveries

1. The delivery periods and deadlines indicated in KDS's order confirmation are without any commitment, unless otherwise agreed. The order confirmations of KDS shall determine the scope of the deliveries.

2. The observance of delivery periods or deadlines agreed with or without commitment pre-supposes the timely receipt of all documents, permits and releases to be submitted by the customer as well as compliance with the agreed terms of payment and other obligations.

3. In the event that KDS has not received at all or in due time supplies of any goods ordered, KDS shall not be in default with delivery to the extent that KDS is not responsible for having received such supplies with delay or not at all. KDS is entitled to withdraw from the contract if it has been established that KDS shall not obtain supplies of the goods ordered due to circumstances beyond KDS's control.

4. Apart from delivery, the customer may claim compensation for any damage caused by a delay in delivery if KDS acted with intent or gross negligence. For damage caused through ordinary negligence, the liability of KDS shall be limited to damage foreseeable at the time of conclusion of the contract and typical for the contract. Nothing in this shall prejudice Art. VIII. 3

5. Delays in delivery caused by force majeure and other hindrances experienced by KDS and/or its suppliers, e.g. interruption of its own supplies, lawful strikes/lock-outs, operational breakdowns etc., which temporarily hinder KDS, without any fault of its own or attributable to KDS, to deliver by the deadline or within the period agreed upon with or without commitment, shall extend these deadlines and periods for the duration of the hindrance caused by these circumstances. If such hindrance prevents performance for more than four months, the customer is entitled to withdraw from the contract. KDS shall definitely be released from its obligation to perform if such hindrance renders delivery and performance permanently impossible or unacceptable. This shall not affect the statutory rights of withdrawal, if any.

6. Partial deliveries are admissible to an extent that is reasonably acceptable to the customer, and have to be invoiced separately.

### V. Place of performance, passing of risk

1. The place of performance for delivery and payment obligations under the contractual relationship shall be the seat of KDS, unless otherwise agreed.

2. Except as agreed otherwise, the goods shall be dispatched at the customer's risk ex registered place of business and/or ex distribution warehouse of KDS; the risk shall pass to the customer as soon as the goods are handed over to the person in charge of transport or have left the KDS warehouse for the purpose of dispatch. If the customer fails to accept the goods in due time, even though they were offered to him, the risk shall pass to the customer on advice that the ordered goods are ready for dispatch.

### VI. Reservation of ownership

1. The goods delivered remain property of KDS as goods subject to reservation of title until all claims resulting from the contractual relationship as well as other claims KDS may subsequently acquire against the customer in direct connection with the goods, on whichever legal grounds, have been fully settled. The same applies where payments on specially designated claims were effected.

2. In addition, the goods delivered remain property of KDS as goods subject to reservation of title until all other claims (including all unsettled balances from current account) which KDS acquires against the customer now or in future, on which legal ground whatsoever, have been settled. In case of continuous account, the goods subject to reservation of title are considered to be security for unsettled balances of KDS.

3. The customer is entitled to resell the goods that remain subject to reservation of title, in the regular course of business. In order to secure all outstanding claims, the customer herewith assigns to KDS the customer's claim against the purchaser of the resold goods. KDS herewith accepts the assignment. As long as KDS remains owner of the goods under reservation of title, KDS has the right to retract the entitlement to resell if there is a legitimate reason.

4. The customer is revocably authorized to collect the assigned claim. KDS may revoke this authorization if there is a legitimate reason. This does not affect the entitlement of KDS to itself collect the amounts due, but KDS undertakes not to collect the amounts due as long as the customer properly meets his financial obligations.

5. If the customer fails to properly meet his financial obligations with the consequence that KDS is entitled to collect the amounts due, the customer is obliged to inform KDS upon request of the assigned claims and the debtors, to furnish all data required for the collection, to submit all related documents and to inform the debtors of the assignment.

6. During the reservation of ownership, any pledging, mortgaging, leasing or other assignment or modification of the goods that remain subject to reservation of title, impairing KDS's right to security, are subject to KDS's prior written consent. The customer's right to resell the goods in the regular course of business in accordance with the aforementioned terms and conditions shall not be affected thereby.

7. In the event of an attachment by third parties, e.g. seizure of the goods subject to reservation of title, the customer shall immediately notify KDS in writing and shall also inform the third party without undue delay of KDS's reservation of ownership.

8. If the customer has not only temporarily suspended payments, if the customer files a petition for institution of insolvency proceedings against his assets or if insolvency proceedings are instituted against his assets, the customer is obliged, upon request of KDS, to return the goods under reservation of title that are still owned by KDS. Furthermore, if the customer acts in breach of the contract, in particular by default of payment, the customer is obliged, after demand for payment, to return the goods under reservation of title to KDS. In any such case the customer is also obliged to immediately send to KDS a list of the goods under reservation of title that are still available, even if they have already been processed, together with a list of the claims against third-party debtors.

9. KDS's acceptance of the return of any goods under reservation of title shall only be regarded as a rescission of the contract if this is explicitly stated in writing. KDS is entitled to grant the customer in writing a reasonable respite for the fulfilment of his obligations, announcing that, should the obligations not be fulfilled in a timely manner acceptance will be refused and the seized goods under reservation of title will be liquidated by setting off any payment received against the purchase price. If the obligations are not fulfilled, KDS is entitled to liquidate the goods by private sale. In this case the customer shall pay the costs incurred by the sale. Further statutory rights of KDS shall not be affected by this regulation.

10. The customer is obliged to adequately insure the goods subject to reservation of title and to maintain insurance protection. The customer herewith assigns to KDS the claims against his insurance company if damage occurs to the extent that such claims relate to goods of which KDS is the owner or joint owner. KDS accepts the assignment.

11. Upon the customer's request, KDS shall, at its option, either renounce the reservation of ownership and/or release security resulting from mortgaging and assignment of future claims if the customer has fulfilled all obligations relating

to the object of purchase or if the realizable value of all security provided for the benefit of KDS due to reservation of ownership, mortgaging and assignment of future claims exceeds the total amount of the claims against the customer by more than 10%.

### **VII. Warranty, technical changes, period for inspection and notice of defects, warranty period**

The warranty shall be governed by the law as amended by the terms and conditions set out below:

1. Technical data in advertising material, documentation and offers are subject to technological changes. Unless otherwise agreed, such data are no guarantees as to quality. KDS reserves the right to carry out technical changes as well as to alter dimensions and colour, provided that these alterations are acceptable to the customer in consideration of his interests. Claims based on the absence of a quality guaranteed prior to or upon conclusion of the contract may only be asserted if and to the extent that such specific quality was explicitly guaranteed in writing.
2. The customer has to inspect the goods delivered immediately on receipt. Obvious defects shall be notified in writing without undue delay, but not later than 14 days from receipt of the goods. Notice of hidden defects has to be given in writing without delay, however, at the latest 14 days after discovery of the defect.
3. In the case of modifications or alterations of the delivered goods by the customer or third parties, use of unauthorized accessories and unauthorized spare parts as well as improper storage, use or maintenance of the goods delivered, warranty claims shall be excluded except where the customer is able to prove that any defect was not caused by any such measures.
4. Warranty is excluded if and to the extent that used goods were delivered in accordance with the contract. Nothing in this shall affect the claims for damages according to Art. VIII. 1 and Art. VIII. 3. Any liability for natural wear and tear is excluded.
5. If the customer notifies a defect in due time pursuant to Art. VII. 2., the customer is entitled to, at KDS's option, free-of-charge rectification of the defect or delivery of a product free from defects (remedial action). KDS may refuse remedial action as a whole if both the rectification of the defect and the delivery of a defect-free product would incur unreasonable costs.
6. Defective products shall be returned to KDS for remedial action at the customer's risk. The costs incurred for the return of defective products (transportation costs, customs duties, etc.) shall be borne by the customer. In the event that KDS delivers a replacement as remedial action the customer shall return the originally delivered products at the request of KDS. Replaced parts shall become property of KDS.
7. If remedial action according to Art. VII. 5. fails, the customer may, at his option, withdraw from the contract or reduce the remuneration. This shall apply also where remedial action is unreasonably delayed, unjustifiably refused or becomes impossible and/or cannot be reasonably expected from the customer.
8. Warranty claims shall be excluded in case of defects caused after the passing of risk by improper or careless handling (e.g. incorrect installation and/or putting into service by the customer, excessive use, defective construction work and special external influences that are not specified in the contract).
9. Subject to Art. VIII. 1. and Art. VIII. 3. the warranty period shall be 12 months from the day of delivery for purchase contracts and 12 months from the day of acceptance for contracts for work and services.
10. As regards goods from other manufacturers delivered by KDS, the terms of guarantee of these manufacturers shall apply in addition to these General Terms & Conditions.
11. The customer is entitled to claim damages based on defects only insofar as the liability of KDS is not excluded or limited in accordance with Art. VIII. of these General Terms & Conditions. Further claims or claims other than those stipulated by this Art. VII based on a defect are excluded.

### **VIII. Liability, time bar**

1. KDS shall be fully liable for intent and gross negligence.
2. In the case of a violation by ordinary negligence of a major obligation or of an accessory obligation whose breach will put the achievement of the contractual purpose at risk, or whose fulfilment is essential to the due and proper implementation of the contract, and whose fulfilment the customer could reasonably rely on ("essential accessory obligation"), liability is limited to damage foreseeable at the time of conclusion of the contract and typical of the contract, and in terms of amount to EUR 500,000.00 for damage to property and to EUR 250,000.00 for financial loss. KDS accepts no liability for breaches by ordinary negligence of accessory obligations that are not essential accessory obligations.
3. Art. VIII. 2. above shall not affect the liability in the event of fraudulent concealment of defects or a warranty as to quality and the liability for claims under the Product Liability Act and for claims based on injury to life, limb or health. This shall not entail a change of the burden of proof to the customer's disadvantage.
4. The claims for damages for which liability is excluded or limited in accordance with this Art. VIII., except for claims based on tortious act, become statute-barred after two years counting from the customer's receipt of the goods.

### **IX. Software use**

1. KDS agrees to grant the customer, upon payment of the agreed fee, a non-exclusive, perpetual right to use the contractual software for the agreed purposes

of the contract. Subject to any other agreements between the parties, this right of use shall be limited to the installation, loading and running of the software and the production of backup copies as necessary. Any sublicensing is not permitted. The software may be transferred to third parties by the customer only as a whole and without retaining any copies. Further, the prior consent of KDS must be obtained.

2. The customer's right to use the software shall expire without notice required if the customer acts in breach of any of the provisions of Art. IX. 1 hereof.

3. Except as expressly permitted by law (Sec. 69d, 69e UrhG), the customer shall not be permitted to edit, decompile or reverse engineer the software.

### **X. Costs of log file readout and software updates**

1. If the customer does not provide for online access to the installed Digital Cinema System via the Kinoton Remote Service, the costs incurred by reading out the log files locally, such as labour costs, travel and ancillary expenses, shall be billed on a time and material basis from the day the system is put to operation.
2. For any necessary software updates which cannot be performed in connection with the recommended annual servicing on site or online via the Kinoton Remote Service, the costs incurred by the installation or activation of the update on site, such as labour costs, travel and ancillary expenses, shall be billed by KDS on a time and material basis from the day of activation.

### **XI. Confidentiality**

1. The parties undertake to treat confidential information confidential and use it only for contractually agreed purposes.
2. Confidential information within the meaning of Art. XI. 1 shall mean all offers and order confirmations by KDS as well as all information, documents and data that are designated confidential or, by their nature, must be considered confidential.

"Confidential information" for these purposes shall not include information which (1) at the time of its disclosure, is in the public domain, i.e., easily accessible to any third party, or becomes public domain thereafter, (2) was or is lawfully disclosed to either party by a third party not subject to any confidentiality undertaking towards the other party, or (3) was lawfully in the receiving party's possession without any confidentiality obligation prior to its disclosure by the disclosing party. The existence of any of the above exemptions must be proven by the party relying on it.

### **XII. Disposal of the delivered goods**

1. The customer is obliged to duly dispose of the delivered goods after the termination of their use in accordance with the statutory requirements at the customer's expense. The customer will in this respect release KDS from the obligations under Sec. 10 (2) ElektroG (Act Governing the Sale, Return and Sound Disposal of Electrical and Electronic Equipment) (manufacturers' duty to take back waste electrical and electronic equipment) and indemnify KDS against any related claims of third parties.
2. If the goods delivered by KDS are resold in the course of commercial business the customer shall impose suitable contractual requirements to ensure that either the customer's customer sees to their due and proper disposal in accordance with the statutory provisions after the termination of the use, or that the customer will arrange for the due and proper disposal in the relation to its customer.
3. If after the termination of the use a third party asserts a claim for the disposal of the delivered goods against KDS, the customer shall duly dispose of the goods and indemnify KDS from and against all claims of third parties in relation to the obligations under Sec. 10 (2) ElektroG.
4. KDS's claim against the customer to fulfil the duty of disposal and/or to release KDS from the obligations under Sec. 10 (2) ElektroG will become statute-barred at the earliest one year after the definite termination of the use and awareness of KDS thereof.

### **XIII. Applicable law, place of jurisdiction, severability**

1. The contractual relations between KDS and the customer are exclusively governed by German law. The application of the provisions of the UN Sales Convention is explicitly excluded.
2. If the customer is a merchant or a legal person under public law or a public law fund or is not domiciled in Germany, the head office of KDS shall be the exclusive place of jurisdiction for all legal disputes arising from or in connection with this contract. KDS shall, however, have the right to also file a suit at the customer's place of general jurisdiction.
3. If a provision of the present General Terms & Conditions is invalid, this shall not affect the validity of the remaining provisions.

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