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## § 1 Validity

(1) All deliveries, services and offers of E-Stream GmbH & Co KGaA, Feldstraße 8, 47198 Duisburg (hereinafter referred to as "Seller") are made exclusively on the basis of these General Terms and Conditions of Delivery. These are part of all contracts that the seller concludes with his contractual partners (hereinafter also referred to as "customer") for the deliveries or services offered by him. They shall also apply to all future deliveries, services or offers to the Customer, even if they are not separately agreed again.

(2) If the Customer wishes to utilise a service offered by the Seller in addition to ordering goods, the Special Terms and Conditions of these respective services shall apply. These terms and conditions are listed with the respective services and apply in addition to the following terms and conditions in the event of utilisation. In the event of conflicts between these General Terms and Conditions and the Special Terms and Conditions of the individual services, the latter shall always take precedence.

(3) Terms and conditions of the Client or third parties shall not apply, even if the Seller does not separately object to their validity in individual cases. Even if the Seller refers to a letter that contains or refers to the terms and conditions of the Client or a third party, this shall not constitute agreement with the validity of those terms and conditions.

## § 2 Offer and conclusion of contract

(1) All offers of the Seller are subject to change and non-binding, unless they are expressly labelled as binding or contain a specific acceptance period. The Seller may accept orders or commissions within (14) days of receipt.

(2) The legal relationship between the Seller and the Customer shall be governed solely by the purchase contract concluded in writing, including these General Terms and Conditions of Delivery. This fully reflects all agreements between the contracting parties on the subject matter of the contract. Verbal promises made by the Seller prior to the conclusion of this contract shall not be legally binding and verbal agreements between the contracting parties shall be replaced by the written contract, unless it is expressly stated in each case that they shall continue to be binding.

(3) Additions and amendments to the agreements made, including these General Terms and Conditions of Delivery, must be made in writing to be effective. With the exception of managing directors or authorised signatories, the Seller's employees are not entitled to make verbal agreements that deviate from the written agreement. Telecommunication, in particular by fax or e-mail, is sufficient to fulfil the written form requirement, provided that a copy of the signed declaration is transmitted.

(4) Information provided by the Seller on the object of the delivery or service (e.g. weights, dimensions, utility values, load capacity, tolerances and technical data) as well as our representations of the same (e.g. drawings and illustrations) are only approximate, unless the usability for the contractually intended purpose requires exact conformity. They are not guaranteed characteristics, but descriptions or labelling of the delivery or service. Deviations that are customary in the trade and deviations that occur due to legal regulations or represent technical improvements, as well as the replacement of components with equivalent parts, are permissible insofar as they do not impair the usability for the contractually intended purpose.

(5) The Seller reserves the right of ownership or copyright to all offers and cost estimates submitted by him as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids made available to the Client. The Customer may not make these items accessible to third parties, disclose them, use them itself or through third parties or reproduce them without the express consent of the Seller. At the Seller's request, the Client must return these items to the Seller in full and destroy any copies made if they are no longer required by the Client in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. Excluded from this is the storage of electronically provided data for the purpose of normal data backup.

## § 3 Prices and payment

(1) The prices apply to the scope of services and deliveries listed in the order confirmations. Additional or special services shall be invoiced separately. The prices are quoted in EUR ex works plus packaging, statutory VAT, customs duties for export deliveries as well as fees and other public charges.

(2) If the agreed prices are based on the Seller's list prices and delivery is to take place more than four months after conclusion of the contract, the Seller's list prices valid at the time of delivery shall apply (in each case less an agreed percentage or fixed discount).

(3) Invoice amounts are to be paid within sixteen days without any deductions, unless otherwise agreed in writing. The date of receipt by the Seller shall be decisive for the date of payment. Payment by cheque is excluded unless agreed separately in individual cases. If the customer fails to pay by the due date, the outstanding amounts shall bear interest at 5% p.a. from the due date; the right to claim higher interest and further damages in the event of default shall remain unaffected.

(4) Offsetting against counterclaims of the client or the retention of payments due to such claims is only permissible if the counterclaims are undisputed or have been legally established or arise from the same order under which the delivery in question was made.

(5) The Seller shall be entitled to execute or render outstanding deliveries or services only against advance payment or provision of security if, after conclusion of the contract, it becomes aware of circumstances which are likely to significantly reduce the creditworthiness of the Client and which jeopardise the payment of the Seller's outstanding claims by the Client arising from the respective contractual relationship (including from other individual orders to which the same framework agreement applies).

#### § 4 Delivery and delivery time

(1) Deliveries shall be made at the prices and associated shipping conditions for the delivery and shipping methods requested by the customer. These may be subject to change. In the case of bulky items, which are shown in detail accordingly, the Seller shall additionally charge a bulky goods surcharge shown on the product.

(2) Deadlines and dates for deliveries and services promised by the Seller are always only approximate, unless a fixed deadline or a fixed date has been expressly promised or agreed. If despatch has been agreed, delivery periods and delivery dates refer to the time of handover to the forwarding agent, carrier or other third party commissioned with the transport.

(3) The Seller may - without prejudice to its rights arising from default on the part of the Client - demand from the Client an extension of delivery and performance deadlines or a postponement of delivery and performance dates by the period in which the Client fails to fulfil its contractual obligations towards the Seller.

(4) The Seller shall not be liable for impossibility of delivery or for delays in delivery insofar as these are caused by force majeure or other events unforeseeable at the time of conclusion of the contract (e.g. disruptions of operations of any kind, difficulties in procuring materials or energy, transport delays, strikes, lawful lockouts, shortages of labour, energy or raw materials, difficulties in obtaining necessary official permits, official measures or the failure of suppliers to deliver or to deliver correctly or on time) for which the Seller is not responsible. If such events make delivery or performance significantly more difficult or impossible for the Seller and the hindrance is not only of a temporary nature, the Seller shall be entitled to withdraw from the contract. In the event of hindrances of a temporary nature, the delivery or performance periods shall be extended or the delivery or performance dates postponed by the period of the hindrance plus a reasonable start-up period. If the customer cannot reasonably be expected to accept the delivery or service as a result of the delay, he may withdraw from the contract by immediate written declaration to the seller.

(5) The Seller shall only be entitled to make partial deliveries if

- the partial delivery can be used by the customer within the scope of the contractual purpose,
- the delivery of the remaining ordered goods is ensured and
- the client does not incur any significant additional work or costs as a result (unless the seller agrees to bear these costs).

(6) If the Seller is in default with a delivery or service or if a delivery or service becomes impossible for whatever reason, the Seller's liability for damages shall be limited in accordance with § 8 of these General Terms and Conditions of Delivery.

#### § 5 Place of fulfilment, dispatch, packaging, transfer of risk, acceptance

(1) The place of fulfilment for all obligations arising from the contractual relationship shall be the registered office of the Seller or the place of dispatch of the first consignor acting on behalf of the Seller, unless otherwise agreed. If the Seller is also responsible for installation, the place of fulfilment shall be the place where the installation is to take place.

(2) The mode of dispatch and packaging shall be at the dutiful discretion of the Seller.

(3) The risk shall pass to the Customer at the latest when the delivery item is handed over (whereby the start of the loading process is decisive) to the forwarding agent, carrier or other third party designated to carry out the shipment. This shall also apply if partial deliveries are made or if the seller has assumed other services (e.g. dispatch or installation). If dispatch or handover is delayed due to a circumstance for which the Client is responsible, the risk shall pass to the Client from the day on which the delivery item is ready for dispatch and the Seller has notified the Client of this.

(4) Storage costs after the transfer of risk shall be borne by the Customer. In the case of storage by the Seller, the storage costs shall amount to (0.25) % of the invoice amount of the delivery items to be stored per week elapsed. We reserve the right to claim and prove further or lower storage costs.

(5) The Seller shall only insure the consignment against theft, breakage, transport, fire and water damage or other insurable risks at the express request and expense of the Customer.

(6) Insofar as acceptance is to take place, the purchased item shall be deemed accepted if

- the delivery and, if the seller also owes the installation, the installation has been completed,

- the Seller has informed the Client of this with reference to the fiction of acceptance in accordance with this § 5 (6) and has requested acceptance,
- since delivery or installation (twelve] working days have elapsed or the client has started using the purchased item (e.g. has put the delivered system into operation) and in this case (six) working days have elapsed since delivery or installation and
- the customer has failed to accept the goods within this period for a reason other than a defect notified to the seller which makes the use of the purchased goods impossible or significantly impairs them.

#### § 6 Warranty, material defects

- (1) The warranty period shall be one year from delivery or, if acceptance is required, from acceptance. This period shall not apply to claims for damages by the Customer arising from injury to life, limb or health or from wilful or grossly negligent breaches of duty by the Seller or its vicarious agents, which shall become time-barred in accordance with the statutory provisions.
- (2) The delivered items must be carefully inspected immediately after delivery to the customer or to the third party designated by the customer. With regard to obvious defects or other defects that would have been recognisable during an immediate, careful inspection, they shall be deemed to have been approved by the Buyer if the Seller does not receive a written notice of defects within (seven) working days of delivery. With regard to other defects, the delivery items shall be deemed to have been approved by the Buyer if the notice of defects is not received by the Seller within (seven) working days of the time at which the defect became apparent; however, if the defect was already apparent at an earlier time under normal use, this earlier time shall be decisive for the start of the period for giving notice of defects. The Customer shall document the receipt of goods, the performance of the incoming goods inspection and the exact times of such inspections. The documentation is to be handed over to the seller on request in order to enable him to prove compliance with his own obligations to give notice of defects to his third-party supplier. At the Seller's request, a rejected delivery item shall be returned to the Seller carriage paid. In the event of a justified notice of defects, the Seller shall reimburse the costs of the most favourable shipping route; this shall not apply if the costs increase because the delivery item is located at a place other than the place of intended use.
- (3) In the event of material defects in the delivered items, the Seller shall initially be obliged and entitled to rectify the defect or make a replacement delivery at its discretion within a reasonable period of time. In the event of failure, i.e. impossibility, unreasonableness, refusal or unreasonable delay of the repair or replacement delivery, the customer may withdraw from the contract or reduce the purchase price appropriately.
- (4) If a defect is due to the fault of the seller, the client can demand compensation under the conditions specified in § 8.
- (5) In the event of defects in components from other manufacturers which the Seller cannot remedy for reasons of licence law or for factual reasons, the Seller shall, at its discretion, assert its warranty claims against the manufacturers and suppliers for the account of the Client or assign them to the Client. Warranty claims against the Seller for such defects shall only exist under the other conditions and in accordance with these General Terms and Conditions of Delivery if the legal enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or is futile, e.g. due to insolvency. For the duration of the legal dispute, the limitation period for the Client's relevant warranty claims against the Seller shall be suspended.
- (6) The warranty shall not apply if the Client modifies the delivery item or has it modified by a third party without the Seller's consent and this makes it impossible or unreasonably difficult to remedy the defect. In any case, the customer shall bear the additional costs of remedying the defect resulting from the modification.
- (7) Any delivery of used items agreed with the client in individual cases shall be made to the exclusion of any warranty for material defects.
- (8) Insofar as the Seller delivers goods with a manufacturer's warranty to the Customer, a claim against the Seller requires a prior unsuccessful written assertion of the warranty claims against the respective manufacturer. This shall not apply if the scope of the manufacturer's warranty declaration falls short of the rights pursuant to § 6 (1) to (7) of these GTC or if the Seller has issued a more extensive warranty than the manufacturer. The Seller shall provide the Client with the manufacturer's details available for the assertion of possible warranty claims. If the Customer has utilised the 48-month long-term guarantee, § 443 BGB with extended customer rights shall apply.

#### § 7 Property rights

- (1) The Seller warrants in accordance with this § 7 that the delivery item is free from industrial property rights or copyrights of third parties. Each contracting party shall immediately notify the other contracting party in writing if claims are asserted against it due to the infringement of such rights.
- (2) In the event that the delivery item infringes an industrial property right or copyright of a third party, the Seller shall, at its discretion and at its own expense, modify or replace the delivery item in such a way that the rights of third parties are no longer infringed, but the delivery item continues to fulfil the contractually agreed functions, or procure the right of use for the Customer by concluding a licence agreement with the third party. If the seller does

not succeed in doing so within a reasonable period of time, the client is entitled to withdraw from the contract or to reduce the purchase price appropriately. Any claims for damages on the part of the Client are subject to the limitations of § 8 of these General Terms and Conditions of Delivery.

(3) In the event of infringements of rights by products of other manufacturers supplied by the Seller, the Seller shall, at its discretion, assert its claims against the manufacturers and upstream suppliers for the account of the Client or assign them to the Client. In such cases, claims against the Seller shall only exist in accordance with this § 7 if the judicial enforcement of the aforementioned claims against the manufacturers and upstream suppliers was unsuccessful or has no prospect of success, e.g. due to insolvency.

#### § 8 Liability for damages due to fault

(1) The Seller's liability for damages, irrespective of the legal grounds, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations during contract negotiations and unauthorised action, shall be limited in accordance with this § 8, insofar as fault is involved in each case.

(2) The Seller shall not be liable in the event of simple negligence on the part of its executive bodies, legal representatives, employees or other vicarious agents, insofar as this does not involve a breach of material contractual obligations. Material contractual obligations are the obligation to deliver and install the delivery item on time, its freedom from defects of title and such material defects that impair its functionality or usability more than insignificantly, as well as obligations to provide advice, protection and care that are intended to enable the customer to use the delivery item in accordance with the contract or to protect the life and limb of the customer's personnel or to protect the customer's property from significant damage.

(3) Insofar as the seller is liable for damages in accordance with § 8 (2), this liability is limited to damages which the seller foresaw as a possible consequence of a breach of contract at the time of conclusion of the contract or which he should have foreseen if he had exercised due care. Indirect damage and consequential damage resulting from defects in the delivery item are also only eligible for compensation if such damage is typically to be expected when the delivery item is used as intended.

(4) In the event of data loss, the seller shall only be liable if the client has demonstrably backed up the data regularly - at least once a day. Liability for loss of data shall be limited to the cost of restoring the data if a backup copy exists, unless the loss of data was caused by wilful intent or gross negligence on the part of the Seller. Liability is otherwise excluded.

(5) In the event of liability for simple negligence, the Seller's obligation to pay compensation for property damage and any further financial losses resulting therefrom shall be limited to an amount of EUR 10,000 per claim, even if this involves a breach of material contractual obligations.

(6) The above exclusions and limitations of liability shall apply to the same extent in favour of the executive bodies, legal representatives, employees and other vicarious agents of the Seller.

(7) Insofar as the Seller provides technical information or acts in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by the Seller, this is done free of charge and to the exclusion of any liability.

(8) The limitations of this § 8 shall not apply to the Seller's liability for intentional behaviour, for guaranteed characteristics, for injury to life, body or health or under the Product Liability Act

#### § 9 Retention of title

(1) Until full payment of all present and future claims arising from the purchase contract and an ongoing business relationship (secured claims), the Seller reserves title to the goods sold.

(2) The goods subject to retention of title may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The Customer must inform the Seller immediately in writing if an application for the opening of insolvency proceedings is filed or if third parties have access to the goods belonging to the Seller (e.g. seizures).

(3) In the event of breach of contract by the Customer, in particular non-payment of the purchase price due, the Seller shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of the retention of title. The demand for the return of the goods does not at the same time include a declaration of cancellation; rather, the seller is entitled to demand only the return of the goods and to reserve the right to cancel the contract. If the customer does not pay the purchase price due, the seller may only assert these rights if he has previously set the customer a reasonable deadline for payment without success or if setting such a deadline is dispensable according to the statutory provisions.

(4) Until revoked in accordance with (b) below, the client is authorised to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition.

(a) The Customer hereby assigns to the Seller by way of security all claims against third parties arising from the resale of the goods. The seller accepts the assignment. The obligations of the customer stated in para. 2 shall also apply with regard to the assigned claims.

(b) The customer remains authorised to collect the claim alongside the seller. The seller undertakes not to collect the claim as long as the customer fulfils his payment obligations towards him, there is no deficiency in his ability to pay and he does not assert the retention of title by exercising a right in accordance with paragraph 3. If this is the case, however, the seller may demand that the customer informs him of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. In this case, the Seller shall also be entitled to revoke the Client's authorisation to resell and process the goods subject to retention of title.

(c) If the realisable value of the securities exceeds the Seller's claims by more than 10%, the Seller shall release securities of its choice at the Client's request.

#### § 10 Final provisions

(1) Should individual parts of these terms and conditions be or become invalid, this shall not affect the validity of the remaining provisions. The ineffective provisions shall be replaced by provisions that come as close as possible to the economic intentions of the parties.

(2) The exclusive place of jurisdiction for disputes arising from or in connection with the contractual relationship existing between E-Stream GmbH & Co. KGaA and the buyer/client is Duisburg/Germany, provided that the contractual partner is a merchant, a legal entity under public law or a special fund under public law. However, each party is also entitled to sue the other party at its general place of jurisdiction.

(3) These General Terms and Conditions and the entire legal relationship between E Stream GmbH & Co. KGaA and the buyer shall be governed by the law of the Federal Republic of Germany, excluding the applicability of the provisions of the Vienna UN Convention on Contracts for the International Sale of Goods (CISG).

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