

## **1. SCOPE OF T&C**

These T&C are automatically applicable to all orders issued by the German companies of Mood Media (each company is referred to as "MOOD") whose identity is specified in the quotation and/or order from signed by MOOD (the "Order") for the provision of goods (the "Products") and/or services (the "Services"), as detailed in each Order.

The acceptance of Orders by the Supplier implies fully acceptance of the T&C by the Supplier, without reserve.

The Order signed by MOOD and the T&C constitute an agreement between the Parties (the "Agreement"). Specific conditions specified in the Orders prevail upon the T&C.

The Supplier's terms and conditions are not applicable to the Orders issued by MOOD. The fact that MOOD, at any given time, fails to rely on one of these T&C may not be considered as a modification of the Agreement nor as an express or implicit waiver of its rights to subsequently take advantage any of the aforesaid provisions of T&C at a later date.

## **2. ORDER**

**Order taking:** The Orders are materialized by the signature of a quotation or an order form by MOOD. If no Order is signed by MOOD, MOOD reserves the right to refuse any delivery and/or invoicing of Products and Services. The Supplier shall confirm the acceptance of Orders within 5 calendar days.

**Change of Order:** Should the economic conditions of the market/agreement concluded between MOOD and the Supplier be substantially altered that makes the execution of the Order without object and/or overly onerous for MOOD - MOOD having not accepted such a risk - the Parties will negotiate in good faith the modification and/or the cancellation of the whole or the part of the Order concerning the Products and Services which would not have been already delivered. Failing such an agreement, the Order will be cancelled for all the Products and Services which would have not been delivered, without any right for the Supplier to request the payment of indemnity to MOOD.

## **3. PRODUCTS AND SERVICES DELIVERY**

**Delivery terms:** Products and Services are delivered under INCOTERM CCI 2010 «DDP» to the address indicated in the Order, or failing that, to the premises of MOOD's logistic supplier (CEVA FREIGHT - Zac Paris Oise Avenue de Berlin 60126 Longueil-St-Marie - delivery from Monday to Friday, between 09.00am to 12.00pm and between 01.00pm to 03.00pm). When the Products are delivered, the Supplier must issue a delivery note with the date of delivery, the number of Order and any other reference requested by MOOD, the description and the quantity of delivered Products.

**Delivery delay:** Products and Services shall be delivered with the delays specified in the Order. The delivery delays constitute a material term in the absence of which MOOD would not have placed the Order.

**Late delivery:** The Supplier undertakes to inform MOOD without any delay of any event which could cause a late delivery and to take any appropriate measure for reducing the expected delay.

Notwithstanding, any late delivery will automatically, and without further formalities whatsoever, result in payment of penalty equal to 2% of the Order's amount for each calendar day of delay, the amount of penalties being deducted from the amount of the invoices due by MOOD. These penalties do not discharge the Supplier and will be applied without any damages which could be requested by MOOD and/or without MOOD's right to terminate the Order.

## **4. RECEPTION / ACCEPTANCE OF PRODUCTS AND SERVICES**

The delivery of Products and Services may give rise to a temporary acceptance in order MOOD be able to check their conformity in relation to the Order.

In case of apparent non-conformity, MOOD will notice it to the Supplier within 8 business days from the date of receipt and may, at MOOD's choice, either request the Supplier to replace, at Supplier's costs and within 8 business days, the defaulting Products and/or to remedy the identified failures of Services, or to cancel the Order for the sole fault of the Supplier. In this case, the Supplier shall take any appropriate measure to carry out, at its own costs and within 8 business days, the recovery of the defaulting Products and Services. Any payment made by MOOD under the cancelled Order shall be fully reimbursed to MOOD by the Supplier.

The absence of objection and/or reserve made by MOOD according to the above mentioned conditions cannot be considered as a final acceptance of Products and Services and does not constitute a waiver from MOOD to exercise all its rights and remedies based for a non-conformity/poor quality of the Products and Services.

**Transfer of risks and title:** the transfer of risks and title is made on the delivery/reception date of Products and Services by MOOD. So the Products are transported at Supplier's risk until the place of delivery.

## **5. FINANCIAL TERMS**

**Tariffs:** Price of Products and Services are specified in the Order. Prices shall be in Euros, deemed to be firm and not revisable, include all costs, in particular freight costs, package and protection costs, loading and unloading costs, custom clearance costs, insurances, taxes, but VAT excluded.

**Invoicing:** the invoices shall (i) be issued by the Supplier on the delivery date of Products / on the date of acceptance of Services without any reserve; (ii) have all the required legal notices, the number of Order and any reference requested by MOOD; (iii) be communicated to MOOD by e-mail with any documentation relating to the proper delivery of the Products and/or the acceptance of the Services without any reserves. The non-compliance of this clause will automatically cause the refusal of the invoice and will suspend the payment obligation until the receipt of a new correct invoice.

**Payment terms:** non-disputed invoices will be paid by MOOD within 60 days from the date of invoice. Should an invoice be not paid in due date, the sums owed will bear interest a rate equal to 3 times the current applicable legal rate, plus the payment by MOOD of a lump-sum of 40€ for recovering costs.

## **6. SUPPLIER'S OBLIGATIONS / GUARANTEES / INSURANCE**

**6.1** The Supplier undertakes to carry on the Order in compliance with the applicable legislation, the rules and professional practices, the state of art.

The Supplier shall provide to MOOD its expertise and know-how, in particular the Supplier shall (i) report any event which could impact the proper execution of the Order; (ii) advice on any MOOD's choice or request which could impact the proper execution of the Order; (iii) alert MOOD, without delay, about any event which could impact the proper execution of the Order, including the event due to MOOD and propose any appropriate solution, in particular in terms of security.

**6.2** The Supplier undertakes to ensure that:

- the Products are wrapped and packaged in an appropriate manner, with all labels and markings required by the legislation applicable in the European Union (in particular the CE marking) and/or in any territory specified when MOOD ordered.
- the Products (including any components or sub-assemblies intended for incorporation into the Products) are compliant with to the European laws and regulations, in terms of health, safety and environment, and in particular in terms of Hazardous substances (RoHS Directive, SEARCH Regulation, asbestos), waste

(package, WEEE Directive ...), electric disturbance, electromagnetic disturbance (in particular EU Directive 2014/30), acoustic, ionizing, optic, etc... For this purpose, the Supplier shall provide, at its own costs, all technical documentations, tests results, and certificates of conformity relating to the Products required by the regulation applicable in the European territory or which could be requested by MOOD. The above listed documents shall be genuine, compliant with the legal requirements and at least in English language.

The Supplier warrants MOOD to conform to all of the above obligations. It constitutes a material term in the absence of which MOOD would not have purchased the Products.

**6.3 Warranties:** the Supplier warrants MOOD against (i) all Product's hidden defaults during 2 years from the discovery date of the hidden default (this warranty includes, at MOOD's sole discretion, the repair or the replacement of the defaulting Products by a new Products - including the spare part, the labour and the transport), (ii) any lack of conformity of the Services during 12 months from the date of the statement of definitive acceptance.

The Supplier warrants MOOD against any physical injury, material damage or consequential damage (including defence costs) caused to MOOD and/or its customers resulting from the non-compliance of the Products as required in clause 6.2 of the T&C or more generally resulting from the improper or the non-execution of the Supplier's contractual obligations.

**6.4 Insurance:** the Supplier warrants to hold an insurance contract with reputedly solvent insurance company, covering the pecuniary consequences of its professional liability, the Products liability and any physical injury, material damage or consequential damage caused to MOOD, its employees or to third parties arising out by the execution of the Order. The Supplier shall deliver to MOOD the relevant insurance certificates, at MOOD's request.

## **7. INTELLECTUAL PROPERTY RIGHTS**

The Supplier warrants it has full, clear and unencumbered title and rights to all Products and Services, required for executing the Order. Consequently, the Supplier will hold harmless MOOD against any claim, challenge and action from a third party carried out against MOOD and/or its customers, wherever it may be, based on an infringing unfair competition or similar claim relating to the use of Products and Services by MOOD and/or its customers. The Supplier will fully indemnify MOOD against any injury, damages or losses suffered by MOOD and/or its customers arising out directly or indirectly from such an action. In this case, the Supplier undertakes, at its own costs and at MOOD's sole discretion: (i) either to work with and to actively assist MOOD for resolving the claim, challenge and action; or (ii) to directly resolving the claim, challenge and action on Supplier's control. Should MOOD be required to cease the use of Products and Services in a whole or in part and without prejudice of any damages MOOD could be granted, the Supplier will immediately implement one of the following actions at its own costs: (i) either grant to MOOD the right to legally use the Products and Services without any additional cost; or (ii) replace or modify the Products and Services within a reasonable period of time in order MOOD would not be subject to any claim, challenge or action, provided that the replacements and changes be compliant with the initial Order.

Furthermore, on MOOD's request, the Supplier undertakes to take in charge the return of the Products which could no longer be used by MOOD and to fully reimburse MOOD. MOOD will be also entitled to immediately terminate any ongoing Order relating to the concerned Products and Services.

## **8. TERM AND TERMINATION**

**Term:** If applicable, the Agreement is concluded for the term specified in the Order.

**Earlier termination:** MOOD may terminate in whole or in part the Order (i) in case of any breach of Supplier's obligations (under these T&C or specified in the Order), which is not remedied within 8 business calendar days with effect from date of the first delivery attempt of the formal demand letter (sent by registered letter with acknowledgement of receipt), without prejudice to any compensation which may be claimed from MOOD to the Supplier; (ii) if the Supplier does not confirm the Order within 5 calendar days from the date of the Order; (iii) if the delivery is delayed for more than 5 calendar days; (iv) if the Supplier loses the rights to distributes the Products on the market and/or if the Products is no longer compliant with the legal requirements.

## **9. PROTECTION OF PERSONAL DATA**

**9.1** In the event the Products and Services is intended to collect and/or to process personal data, the Products and Services shall be originally designed and then shall be able to be configured by MOOD and/or its customers in order to respect the principle of personal data protection, in particular the provisions of the European Regulation 2016/679 dated on April 27, 2016 relating to the protection of personal data (the "Regulation"). In the event the Supplier carries out services of collection and/or processing of personal data in the name and on behalf MOOD, the parties shall define together their respective rights and obligations as data controller and data processor, to be formalized by the signature of a specific agreement.

**9.2** Each Party acts as data controller for collecting personal data of the other Party's employees (first name, last name, position, phone number (fixed line and mobile), email, postal address of each Party's employees who participate directly or indirectly to the execution of the Agreement and any other information/data which could be spontaneously given by these employees - the "Personal Data"). Each Party will only process Personal Data for preparing, executing, managing and following-up the Agreement and the commercial relationship between the Parties. The Personal Data are only intended to the employees of the recipient Party (and to its subcontractors or technical providers) who participate to the cooperation between the Parties. The Personal Data are retained (i) during all the term necessary for the realization of the operation for which the Personal Data have been collected, and (ii) during a term until expiration date of prescription of contractual liability, or until any other term required by the Law. According to the applicable regulation and in particular the Regulation, each Party undertakes to respect the rights of data subject (opposition rights for legitimate grounds, access rights, right to correction, rights to erasure if the Personal Data are not necessary for executing the Agreement, limitation of processing and if applicable, portability rights to a third supplier. Data subject has also a right to make a complaint before a controlling authority. It is the liability of each Party to inform its own employees about the condition of Personal Data processing, so that the recipient Party does not bear the obligation of information set out in the paragraphs 1 to 4 of the Article 14 of the Regulation, the recipient Party may fully benefit from the provisions of Article 14.5 of the Regulation.

## **10. SOCIAL AND LABOR REGULATION**

**Social:** In case the Supplier carries out works in MOOD's premises, the Supplier shall respect the provisions relating the specific hygiene and safety rules applicable to the works executed in premises by an external services providers.

**Supplier's staff:** the Supplier's staff remains, in all circumstances, under the exclusive subordination of the Supplier which keeps the managerial power and the control over its employees. As legal employer, the Suppliers shall handle the administrative, accounting and social management of the employees who

participate to the execution of the Order. In case of outsourcing (as authorized according to clause 13), the Supplier shall make sure these obligations are respected by the subcontractor too.

**Legislation:** the Supplier warrants to be in compliance with all laws and regulations applicable against illegal working. The Supplier shall deliver to MOOD before any Order and every six months until the end of execution of the Order if the term exceeds 6 months: (i) a declaration of provision of social declarations by the Supplier issued by the German social protection (less than six months old), (ii) a statement that the Supplier has regularly filed all required tax statements to the German tax authority

(iii) an extract of commercial register, (iv) a statement that the Services are carry out by Supplier's employees who are legally employed, or similar regulations applicable in the country where are located the Supplier's staff, (v) the list with the full name of the foreign Supplier's employees with all information legally required.

## **11. INDEPENDENCE DES PARTIES**

Each party is an independent legal entity, acting on its own name and on its sole liability. None party may be deemed to be the representative of the other party and may act in the name and/or on behalf of the other party, except in the cases expressly provided in the Agreement. The parties agree that their cooperation under the Agreement shall not be considered, in any way, as a partnership, commercial company, joint-venture, subsidiary, mandate nor create any subordinate/representing relationship between them.

## **12. ECONOMIC DEPENDENCE**

The Supplier declares and acknowledges that it is not in a position of economic dependence with MOOD. The Supplier undertakes to inform MOOD in the event MOOD's orders would represent a part of Supplier's revenues which could lead the Supplier to be economically dependent of MOOD. If needed, the parties will meet together for finding a solutions protecting the interest of both.

The Supplier undertakes, during all the term, to diversify its business in order not to be in position of economic dependence on MOOD. MOOD shall not be held liable in case of insufficiency of Supplier customers' diversification.

## **13. OUTSOURCING**

The Supplier is not entitled to subcontract the Agreement to a third party, in a whole or in a part, without the prior express agreement of MOOD. If the subcontracting is duly authorised by MOOD, (i) the subcontractor shall have the same experience and professional skills than the Supplier for carry out the subcontracted obligations in the same conditions than those agreed in the Agreement (in particular, the Products shall be compliant with the legal requirements as set out in clause 6.2 of T&C, and the subcontractor shall respect the social and labour legislation in accordance with the clause 10 of T&C and have an insurance guarantee in accordance with the clause 6.4 of T&C); (ii) the Services will be invoiced to MOOD by the Supplier only and the Supplier shall responsible to manage the relations with the subcontractor, the Supplier remaining liable to MOOD with the proper and full execution of the Order.

## **14. CONFIDENTIALITY**

The Parties acknowledge that, under the Agreement, they will have access to confidential information (defined as all information communicated for the Order by either party, including but not limited to any technical information, oral or written, any document, plan for technical installations and/or any informations to which the parties may have access for the Order. Consequently, the Parties undertake to keep confidential any of this information. If a non-disclosure agreement relating to the Order have already been agreed between the Parties, the parties will apply this non-disclosure agreement for all information communicated for the Order.

## **15. FORCE MAJEURE**

A Party shall not be held liable in the event of force majeure event (including for MOOD, the strike and the impossibility to be supplied) preventing it from performing its obligations (the "Force Majeure"). In case of Force Majeure event, under penalty of being unable to invoke the Force Majeure clause, the affected Party must promptly after occurrence of the event (i) notify it to the other Party by registered letter justifying Force Majeure event, (ii) state the foreseeable duration thereof, (iii) inform the other Party regarding the measures taken or which it intends to take to minimize the effects thereof. Performance of the obligations affected by the Force Majeure event shall be suspended throughout the duration of said force majeure event and performance thereof shall subsequently be resumed. In the event of suspension of a Party's obligations for a term exceeding 30 (thirty) calendar days following a Force Majeure event, the Parties shall meet for examining, by mutual agreement, the terms and conditions of the continuation of the Agreement. If the Parties fail to reach an agreement, each Party may decide to immediately terminate the Agreement and/or the relevant Services by registered letter sent for this purpose to the other Party, without the Parties' liability being incurred as a result nor any compensation whatsoever.

## **16. ETHIC**

The Supplier declares and warrants that, itself, its representatives and managers, (i) don't breach any anti-money laundering law and regulation and (ii) they have not been subject to civil and criminal penalties, in Germany or abroad, for breaching any anti-money laundering law and regulation, nor have been subject to any investigation or proceedings in this matter.

The Supplier declares and warrants that it respects (i) General Declaration of Human Rights of the United Nations dated on 1948, (ii) the United Nations Convention on the Rights of the Child (UNCRC), (iii) the 8 fundamental conventions of the International Labour Organization (OIL).

## **17. APPLICABLE LAW**

The T&C shall be governed by German law, excluding the application of the Vienna Convention on International Sale of Goods on April 11, 1980. If any provision of T&C is or become invalid, illegal or unenforceable pursuant to a legal regulation or to a final Court decision that has the force of res judicata, such provision shall be deemed unwritten and shall not affect the validity or performance of the other provision of T&C.

## **18. REGLEMENT DES LITIGES & ATTRIBUTION DE COMPETENCE JURIDICTIONNELLE**

If a dispute arises in the scope of interpretation or performance of the Agreement, the Parties shall endeavour to reach an amicable settlement before taking legal action. In the event that an amicable settlement is not reached, for all disputes and action relating directly or indirectly to the validity, interpretation, performance and termination of the Agreement and, more generally, for all disputes and action relating directly or indirectly to the business relations between the Parties, performance thereof, terms and conditions or consequences of the discontinuance or termination thereof, regardless of whether the grounds of said disputes or actions relate to contractual liability or liability in tort, ordinary law, competition, restrictive practice or other matters, Hamburg Court (Germany) shall have exclusive jurisdiction, including in the event of third party appeals, multiple respondents or emergency proceedings.