

# General Terms and Conditions of Business and Supply of

## Edel Germany GmbH

### I. General

1. The business relationship between the buyer and Edel Germany GmbH (referred to hereinafter as “Edel”), Neumühlen 17, 22763 Hamburg is governed exclusively by the terms and conditions of supply and payment set out hereinafter (hereinafter referred to as “GTC”). The GTC apply to all supplies of goods by Edel including but not limited to the supply of image/sound carriers (such as, amongst others, DVD, CD, VHS, vinyls) as well as the supply of publishing products and print products (such as, amongst others, earBOOK, books, illustrated books, calendars, magazines, novels or the like) unless otherwise stipulated herein. Supplementary conditions of the buyer or conditions of the buyer that are contrary to the GTC of Edel do not apply in the relationship with Edel even if Edel does not explicitly reject them or – even though being well aware of the buyer’s conditions – executes buyer’s purchase order without reservation. The GTC shall also apply to all future contracts with the buyer.

2. Only the managing directors, holders of a “Prokura”<sup>1</sup> and other persons duly authorized by Edel are entitled to conclude, change or amend any agreements made for the sale and supply of sound carriers.

3. All offers for contract conclusion issued by Edel are non-binding. They are mere invitations to the buyer to submit an offer for contract conclusion on his part. The contract is concluded only when Edel accepts the binding offer for contract conclusion submitted by the buyer. In no case shall silence be deemed or construed to constitute acceptance of the offer.

4. The buyer is not entitled to assign rights or claims arising from this contract to third parties without the prior consent of Edel.

5. Edel shall inform the buyer of any changes to the GTC in writing or by fax or email. If the buyer fails to reject the changes within a period of four weeks from receipt (“Zugang”<sup>2</sup>) of the information, the changes shall be deemed accepted and acknowledged. If changes are made to the GTC, Edel shall specifically point out to the buyer his right to reject the changes and the consequences of his silence.

### II. Prices

1. Edel, in default of a specific agreement on certain prices in the contract, charges the list prices (wholesaler’s price to retailers) valid on the date of delivery, plus a flat-rate service fee and plus value-added tax at the statutory rate valid at the time. All prices are in €.

2. If the prices for a purchase order deviate from the applicable list prices for the benefit of the buyer, this purchase order shall be excluded from any other bonuses, benefits, rebates, discounts and from the right to return the goods which might otherwise be granted as a gesture of goodwill.

### III. a) Dispatch and passing of risk in the case of image/sound carriers

1. Deliveries up to a value of the goods of 99.99 € net are made “ex works” (EXW) optimal media GmbH, Glienholzweg 7, 17207 Röbel, Germany, according to INCOTERMS 2010. Deliveries with a value of the goods of 100.00 € net and more are made “carriage paid to” (CPT) buyer’s shipping address, according to INCOTERMS 2010.

2. Edel must be informed of non-receipt of the delivery in writing by no later than 14 days after receipt of the invoice.

### III. b) Dispatch and passing of risk in the case of publishing products and print products

1. All deliveries of publishing products, books and other print products are made carriage forward, at the expense and risk of the buyer, from the publishing house’s distribution centre or printing plant (located in Germany) to buyer’s shipping address.

2. Edel must be informed of non-receipt of the delivery in writing by no later than 14 days after receipt of the invoice.

### IV. Price control / Contractual penalty in the case of publishing products and print products

1. § 5 of the German “Gesetz zur Regelung der Preisbindung bei Verlagszeugnissen (Buchpreisbindungsgesetz)” (German Fixed Book Price Law) provides that publishers and importers of books are obliged to fix a price including VAT (final price) for the sale of books from a certain edition to the end customer. Pursuant to § 3 of said Fixed Book Price Law, anyone who sells books to end customers for commercial or business purposes must observe and adhere to the price fixed according to § 5 of said Law unless the sold books are used books.

2. The buyer / customer agrees to pay contractual penalty for every single case of intentional or negligent offering or granting of impermissible rebates or discounts. Contractual penalty shall be equal to the invoice amount of the intended or executed sales transaction. For breaches of average severity, contractual penalty shall amount to at least 1,500.00 € for the first breach and 2,500 € for any further breach and to 5,000.00 € for impermissible offering of rebates or discounts to more than one customer. The same shall apply in any case where the retail price is exceeded. Edel, when claiming contractual penalty, shall consider the circumstances of the individual case at issue and observe the principle of proportionality. Except where Edel, in exceptional cases, requests payment to itself, contractual penalty shall be paid to the *Sozialwerk des Deutschen Buchhandels* or another charitable social institution of German bookselling trade designated by Edel.

<sup>1</sup> The “Prokura” is a special authority granted under § 48 et seq. of the German Commercial Code (HGB) to act on behalf of the company in respect of all transactions in and out of court within the scope of mercantile trade.

<sup>2</sup> Note: An invoice or notice etc. is deemed “received” (“zugegangen”) in terms of German law when it has come into the recipient’s sphere of control such that the recipient can reasonably be expected to take note of it.

# General Terms and Conditions of Business and Supply of

## Edel Germany GmbH

### V. Payment

1. Payments must be made to Edel within 14 days from the invoice date, less 2% discount, or within 30 days from the invoice date at the latest, net cash, without deduction. The debtor shall be deemed in default ("Verzug") from the 31<sup>st</sup> day after the invoice date. Edel may – notwithstanding sentence 1 – accelerate maturity of the invoice such that it falls due immediately and is payable before delivery. Non-compliance with the conditions of payment by the buyer entails immediate maturity of all claims arising from the relationship between Edel and the buyer.

2. Cheques are accepted on account of payment ("zahlungshalber") only, not in lieu of payment ("an Erfüllungs Statt"), with all expenses incurred for cheque collection being charged to the buyer. Credit shall be made under usual reserve only. For bills of exchange, Edel charges bank-usual bill discount and collection expenses. Edel does not give a warranty for timeous collection or protest.

3. The buyer is only entitled to set-off or retention if the buyer's counterclaims are undisputed or have been acknowledged by Edel or have been established by a final non-appelable court decision (*res judicata*).

4. In the buyer is in default of payment, Edel, for the purpose of securing the outstanding claims, may request return of the goods sold under reservation of title (see sec. VI. of these GTC) and subsequently realize the goods and/or suspend services and deliveries until the buyer has paid the amount in arrear. Suspension by Edel of services and deliveries shall be without prejudice to the validity of the contract concluded between Edel and the buyer, in particular the buyer shall not be released from his payment obligation. The buyer, after paying the amount in arrear, is entitled to request return of the goods sold under the contract as well as termination of the suspension of services and deliveries.

### VI. Reservation of title

1. Edel reserves title to the delivered goods (goods delivered under reservation of title) until all – current and future – claims arising from the business relationship with the buyer have been satisfied. This shall also apply where all or individual claims of Edel were included in a current account and the balance has been determined and acknowledged.

2. The buyer is obliged to carefully store the goods delivered under reservation of title and take out sufficient insurance at his expense to insure them against damage by fire or water, theft and other risks. Edel is entitled at any time to demand submission of proof of the existing insurance and of payment of the insurance premiums. The buyer already now assigns his claims against the insurer under the insurance policy to Edel. Edel hereby accepts the assignment.

3. The buyer is entitled to resell the goods delivered under reservation of title in the ordinary course of business against immediate payment and subject to reservation of title; the buyer is however not entitled to pledge the goods delivered under reservation of title or transfer title to them

by way of security.

4. In case the buyer resells the goods delivered under reservation of title, the buyer already now assigns to Edel any claims arising from the resale of the goods (reselling price including value-added tax) – including any corresponding claims based on bills of exchange – along with all ancillary rights. Edel hereby accepts the assignment. The buyer is entitled to collect said claims until his authority to collect is revoked. Edel undertakes not to collect the claims as long as the buyer fulfils his payment obligations and is not in default of payment and in particular no petition in insolvency has been filed against him and the buyer has not stopped payments. The buyer, at Edel's request, is obliged to disclose to Edel the assigned claims and the corresponding debtors. Edel is entitled to inform the buyer's debtors of the existing assignment. In case the buyer resells the goods delivered under reservation of title together with other goods that do not belong to Edel against payment of an aggregate purchase price, the claims shall be deemed assigned only in the amount equal to the amount which Edel has charged to the buyer for the goods delivered under reservation of title, including value-added tax.

5. In case the buyer's claims from the resale are included in a current account, the buyer already now assigns to Edel the claims against the buyer's customer from the current account. The assignment is made in the amount equal to the reselling price for the goods delivered under reservation of title, including value-added tax. The buyer hereby assigns to Edel any claims to indemnification payment by the insurer as well as any claims for damages to which the buyer may be entitled for loss of, or damage to, the goods. Edel hereby accepts all assignments made under this para. 5.

6. If the buyer is in default of payment or otherwise in breach of a fundamental contractual duty ("wesentliche Vertragspflicht"), Edel may, in its discretion and after expiry of a reasonable grace period, demand return of the goods still unpaid and assignment of the right of possession, if any, to which the buyer may be entitled against third parties. In this case, the buyer is obliged to return the goods delivered under reservation of title to Edel. Moreover, Edel is entitled to revoke the buyer's right of resale, collect the buyer's claims which have arisen and may still arise from the resale, assert against third parties all current and future rights to which the buyer may be entitled from the resale, and use, realize or resell the goods delivered under reservation of title. Edel is entitled to set the proceeds from the realization of the goods delivered under reservation of title off against the outstanding claims. The buyer shall be liable for any loss incurred when the realization proceeds are less than the purchase price. The buyer is obliged, at Edel's request, to inform the debtors in writing, provide Edel with information and submit and send any documents to Edel and hand any bills of exchange over to Edel. The buyer is further obliged to grant Edel access during office hours, even without prior announcement, to the goods delivered under reservation of title which are still in the buyer's possession, and must

# General Terms and Conditions of Business and Supply of

## Edel Germany GmbH

send Edel a detailed list of the goods. Neither the exercise by Edel of its rights from the reservation of title nor the demand for return of the goods shall be deemed or construed to constitute withdrawal from the contract.

7. If the value of the security provided to Edel exceeds the amount of the claims due to Edel by more than 50%, Edel shall in its discretion release an appropriate amount of the security.

8. If goods which are the property of Edel or any claims acquired in substitution therefor are assigned or seized or attached by any of the buyer's creditors, the buyer shall inform Edel to that effect without undue delay ("unverzüglich"), at the same time providing Edel with all documents required for intervention. Moreover, the buyer shall bear all costs incurred for measures to lift the seizure or attachment including but not limited to the costs of intervention measures or litigation if and to the extent reimbursement of such costs cannot be claimed from the third party involved. All costs incurred in connection with the fulfilment of the aforesaid duty to assist and cooperate in the pursuit and enforcement of the rights from the reservation of title as well as all expenses incurred for the maintenance and storage of the goods shall be borne by the buyer.

### **VII. Delivery and notice of defects**

1. Partial deliveries are permissible and must be accepted by the buyer. Any details of delivery provided by Edel (such as delivery dates) are binding only if they are designated as binding and are explicitly confirmed by Edel. This shall apply subject to the condition of timeous and correct supply to Edel by its own sub-suppliers. If the buyer is in default of payment for any past delivery, Edel is entitled to withhold further deliveries without being liable for any damage that may be incurred by the buyer.

2. If delivery is delayed for force majeure or any other unforeseeable impediment beyond the control of Edel which significantly affects the production and/or delivery of the goods, the delivery time shall be extended by a reasonable period, even if Edel is already in default of delivery. This shall also apply if any of the aforesaid impediments occurs with the sub-suppliers of Edel. If, for any of the aforesaid reasons, contract performance becomes impossible for Edel in whole or in part or if, in any such case, the delivery time has been exceeded by four weeks, Edel may in its discretion withdraw from the contract in whole or in part. The buyer may only withdraw from the contract if, after exceedance of the delivery time, the buyer has granted to Edel in writing a reasonable grace period of at least four weeks. If Edel fails to perform within the grace period, buyer's withdrawal, if any, from the contract must be declared in writing. Edel is obliged to promptly inform the buyer of the occurrence of any of the afore-mentioned impediments or the impossibility of contract performance.

3. The goods are delivered in the condition, quality and design usual with Edel at the time of delivery provided this is reasonable for the buyer. Qualities of the goods shall only be deemed warranted if such was specifically agreed

between the parties. Edel accepts no liability in case the goods infringe copyrights of third parties abroad.

4. The buyer is obliged to inspect the delivered goods as to their conformity with the contract without undue delay ("unverzüglich") after receipt. The buyer is obliged to give written notice - addressed to Edel Germany GmbH, Neumühlen 17, 22763 Hamburg, Germany - of visible (including knowable) defects and complaints without undue delay ("unverzüglich") but no later than within 5 days from receipt of the goods, thereby submitting the delivery note or invoice as well as a detailed description of the defect. Defects which only become apparent later must be reported to Edel without undue delay ("unverzüglich") after detection. The maximum period allowed for giving notice of defect or complaint is one year from delivery. If the buyer fails to give notice of defect, all warranty claims and/or claims for damages based on such defect shall be deemed excluded. The buyer is obliged to return any allegedly defective goods to Edel at Edel's request. The cost of return shipment is borne by Edel. If the goods prove to be non-defective, the buyer shall reimburse Edel for the cost of shipment and the cost of inspection and testing of the goods.

### **VIII. a) Return of image/sound carriers (returns)**

1. Goods may only be returned to Edel after Edel has explicitly requested the buyer to do so or if goods other than those ordered were delivered to the buyer. Moreover, the buyer may return goods sent to him as specimen or inspection copies by no later than the date for return resp. the due date for payment stated in the invoice; the buyer may also return goods which the buyer is allowed to return for reasons of goodwill according to sec. VIII. a) para. 3 et seqq. In all cases, the buyer must return the goods without undue delay ("unverzüglich"), regardless of the reason for return.

2. Goods from deliveries from Edel must in all cases be returned to our distribution centre : optimal media GmbH, Glienholzweg 7, 17207 Röbel/Müritz, Germany.

3. Edel may accept, which option is valid until revoked, returned goods as a gesture of goodwill if:

- a) the goods were demonstrably delivered by Edel and
- b) the goods still are in resaleable condition.

4. Goodwill acceptance of returns is excluded:

- a) if the goods are no longer included in the respective current product range of Edel or is excluded from return according to a disqualifying list (disqualified products);
- b) if the goods are explicitly excluded from goodwill acceptance of returns;
- c) for vinyl sound carriers unless a return option was explicitly agreed for vinyl sound carriers;

5. The verification and, where applicable, confirmation of the conditions for return according to sec. VIII. a) 3. a), b), 4. a), b) and c) is the responsibility of Edel.

6. All returns which are allowed as a gesture of goodwill according to the preceding provision are allocated to a customer-specific returns quota which is however limited to a maximum of 5% of the sales accrued during the respective current year in which the returned goods are

# General Terms and Conditions of Business and Supply of

## Edel Germany GmbH

received.

7. The returns quota fixed in the preceding para. 6 does not apply for sound carriers advertised on TV nor for Maxi CDs. Such risk-free sound carriers may be returned up to 100% until the return option is revoked. Edel shall inform the dealers in due time until what time the sound carriers can be returned according to the preceding provision. However, Edel explicitly reserves the right at any time to set the returned sound carriers advertised on TV off against the returns quota under sec. VIII. a) para. 6 or completely exclude them from goodwill acceptance of returns.

8. Sec. VIII. a) para. 6 does not apply for sound carriers which were wrongly delivered by Edel or were defective at the time when the risk passed to the buyer.

9. The buyer shall be credited for the goods returned by the buyer and accepted by Edel. Crediting shall be made on the basis of the lowest purchase price for the relevant product. Credited amounts can only be paid out in cash after the business relationship has been terminated. The buyer is not entitled to set off any amounts for returns before the appropriate amount has actually been credited to the buyer. In the case of returned goods to which the buyer has applied stickers or adhesive labels, Edel reserves the right to deduct a flat-rate handling fee of € 1.00 per sound carrier. If a cash discount was granted, the discount deduction shall be taken into account for both invoicing and crediting. Edel may refuse to deduct the discount if the customer is in default of other payments due.

10. If the return of goods leads to exceedance of the returns quota fixed in sec. VIII. a) para. 6, such returns shall be handled as follows: In the case of licensed products of the Edel group, 50% of the respective wholesaler's price to retailers (without the flat-rate service fee) are credited to the buyer; in the case of distribution products, no credit is granted.

11. Any other impermissible returns (such as disqualified products or goods originating from third parties or goods that were damaged by the buyer) are neither returned nor credited to the buyer but are destroyed at the buyer's expense, without substitution.

### **VIII. b) Return of publishing products and print products (returns)**

1. There is no general right to return publishing products or print products, unless otherwise agreed in writing.

2. Returned goods – which are accepted sec. VIII. b) 1. notwithstanding – may only be accepted within a period of 12 months from the invoice date. This is subject to the condition that the return of such goods has been authorized by the responsible employee of Edel in writing beforehand. The returned goods must be accompanied by the written authorization (return authorization notice) and a copy of the invoice. The authorization of return is subject to the conditions set out in sec. VIII. a) para. 3 and para. 4.

3. The buyer must send the goods return of which has been authorized by Edel to the address designated by

Edel in the return authorization notice, at the buyer's expense and risk.

4. Unauthorized returns will be sent back to the sender at the sender's expense. Neither Edel nor the distribution centre of Edel accepts liability for any kind of damage to, or perishing of, the returned goods.

5. Edel reserves the right in exceptional cases to subsequently accept unauthorized returns after the return.

6. If any of the following cases should occur, the amount credited to the buyer from the net value of the goods shall be reduced as follows:

- by 10% in the case of unauthorized or wrongly addressed returns.
- by 20 % for returns which are unauthorized and wrongly addressed;
- by 30 % for goods which are no longer brand-new or saleable.

### **IX. Warranty**

1. If the delivered goods are defective, the buyer may, in accordance with the statutory provisions, request subsequent performance ("Nacherfüllung") by way of defect remedy or delivery of non-defective goods. Edel may in its discretion choose either of the aforesaid as subsequent performance. If subsequent performance fails, the buyer is entitled to either reduce the purchase price or, if the applicable statutory conditions are fulfilled, withdraw from the contract. All warranty claims are subject to the condition of compliance by the buyer with the obligation to inspect the delivered goods and give notice of any defects according to § 377 HGB (German Commercial Code).

2. Any further claims, regardless of the legal basis, are excluded unless stipulated otherwise in sec. X.

3. Public statements by Edel, the manufacturer of the delivered goods or its vicarious agents or adjuncts, including but not limited to advertising statements and labelling statements, shall not be deemed or construed to constitute descriptions of the quality of the goods or a warranty of the same.

4. Claims for defects of the goods become time-barred after one year.

5. Buyer's recourse claims under §§ 478, 479 BGB (German Civil Code) remain unaffected.

### **X. Liability**

1. Edel shall only be liable for damages and for damage incurred:

a) if such liability is mandatory under the applicable law such as liability under the ProduktHaftG (German Product Liability Act) or in the case of an injury of the life or limb or health; or

b) in the case of breach of a warranty; or

c) in cases where the damage was caused by grossly negligent or intentional conduct; or

d) in the case of culpable (intentional or negligent) breach of a fundamental contractual duty ("wesentliche Vertragspflicht", so-called "Kardinalpflicht") which is a duty compliance with which is indispensable for proper contract performance and on the fulfilment of which the other party

# General Terms and Conditions of Business and Supply of

## Edel Germany GmbH

is reasonably allowed to rely.

2. In all other cases, the liability of Edel for damage is excluded, regardless of the legal basis. In particular, Edel accepts no liability for indirect damage, lost profit or other pecuniary damage incurred by the buyer.

3. In any case, the liability of Edel is limited to the damage which Edel could reasonably foresee or could reasonably be expected to foresee upon contract conclusion by the facts and circumstances known or available to Edel at that time. This restriction does not apply in the cases set out in para. 1 a), b) and c) of this section X. Edel accepts no liability in cases where the goods are used contrary to the contractual provisions.

4. The exclusion and limitations of liability according to the preceding paragraphs apply also with respect to the personal liability of the employees, staff, personnel, representatives, vicarious agents and other persons engaged by Edel in the fulfilment of its obligations ("Erfüllungsgehilfen") of Edel.

### XI. Export transactions

The following additional provisions apply for deliveries to export customers abroad:

1. In the case of contracts where the purchase price is fixed in a currency other than €, Edel may request, until the time when payment is actually effected, payment to be made in the foreign currency.

2. Edel is entitled to charge to the buyer on top of the purchase price the full amount of any new charges, taxes and duties (including customs duties) imposed and levied by virtue of federal or state law as well as any increase of existing charges, taxes or duties which directly or indirectly affect, or increase the cost of, the production or delivery of the goods. This shall not apply for cost increases occurring within the first 4 weeks after contract conclusion. Edel shall submit to the buyer at the buyer's request proof of the new or increased charges, taxes or duties.

### XII. Miscellaneous

1. The goods delivered by Edel are exclusively intended for sale to resellers and sale to end consumers for the purpose of private representation. Any other use beyond that including but not limited to copying, reproduction and rental is forbidden and subject to civil and criminal prosecution.

2. If the recorded audio-visual media delivered to the buyer (DVD, blu-ray disc, CD-ROM, video cassettes/tapes, video discs and similar audio-visual media) bear age ratings for reasons of youth protection, the buyer is obliged to strictly observe and comply with the age ratings applied to the audio-visual media to be sold. These products may only be sold to persons who have reached the age indicated on the audio-visual medium. In case of doubt, the potential purchaser must prove his/her age by submission of his/her identity card. Moreover, the buyer is obliged to comply with the statutory youth protection provisions.

3. In all other respects, the supply of publishing products and print products within the meaning of these GTC is

governed by the *Verkehrsordnung für den Deutschen Buchhandel* (General Terms and Conditions for the German Bookselling Trade) in the respective version valid at the time.

### XIII. Final provisions

1. Any alteration of the goods is forbidden. It is explicitly pointed out that the exportation of our goods might possibly be contrary to, and prevented by, copyrights or similar proprietary rights held by third parties in other countries. Edel accepts no liability for any claims asserted against the buyer on such grounds.

2. If a petition in insolvency is filed against the buyer during the term of the business relationship, Edel is entitled to withdraw with immediate effect from any agreements made with buyer on annual terms and conditions governing their business relationship.

3. The contractual relationship is exclusively governed by the law of the Federal Republic of Germany. The uniform UN Sales Law (United Nations Convention on Contracts for the International Sale of Goods) does not apply.

4. In all cases where the buyer is a merchant ("Kaufmann") in terms of the HGB (German Commercial Code) or has no place of general jurisdiction ("allgemeiner Gerichtsstand") in Germany, the place of performance ("Erfüllungsort") and the place of jurisdiction for all disputes arising out of the contractual relationship – including for special proceedings deciding on claims concerning payment of a cheque or claims arising out of a bill of exchange ("Scheckprozess" / "Wechselprozess") and summary proceedings where plaintiff relies entirely on documentary evidence ("Urkundenprozess") – is the domicile of Edel.

5. If any provision(s) of these GTC should be or become invalid, this shall be without prejudice to the validity of the remaining provisions hereof.

As amended on 15 March 2019 (SE)

# General Terms and Conditions of Business and Supply of

## Edel Germany GmbH

### **Data protection/ Privacy**

1. Edel undertakes to use all personal data communicated or disclosed by the buyer or the buyer's employees or agents (titles, names, addresses, dates of birth, email addresses, telephone numbers, fax numbers, bank details, credit card numbers) in strict compliance with the provisions of German data protection law.

2. The personal data – to the extent they are required for the conclusion, execution and termination of the contractual relationship – are used for no purposes other than the execution of the sales contracts concluded between the buyer and Edel, such as for delivery of goods to the address indicated by the buyer. The legal basis for the data processing is Art. 6 (1) b) and/or Art. 6 (1) f) GDPR.

3. If the buyer or his employees or agents desire additional information or if they want to retrieve or revoke their explicit consent to the use of your master data or if they want to object to the use of the usage data pertaining to them, they may also contact our support by phone under +4940890850 or by sending an email to [datenschutz@edel.com](mailto:datenschutz@edel.com).