

**General Terms & Conditions of Sale of mpsmobile GmbH, Brühlstr. 42,  
88416 Ochsenhausen**

**1. Scope of Application**

- 1.1. With respect to the purchase of products and other deliverables and performances from mpsmobile GmbH, Brühlstr. 42, 88416 Ochsenhausen (hereinafter referred to as „mpsmobile“), the following Terms & Conditions of Sale apply.
- 1.2. The entire offering of mpsmobile is exclusively directed to business customers. Business customers (hereinafter referred to as „Customers“) shall be all natural or legal persons or partnerships having legal capacity who, with regard to purchasing activities, act in their capacity as commercial or self-employed persons or entities.
- 1.3. The application of any other terms & conditions of the Customer whatsoever, either deviating or supplementing, shall not be binding for mpsmobile in any way.

**2. Offers and Conclusion of Contract**

- 2.1. The offers by mpsmobile are legally non-binding offers and shall merely be deemed to be a request for the placing of a binding offer (*invitatio ad offerendum*) unless, in certain exceptional cases, they are expressly marked “binding”. Product images may marginally deviate from delivered products, in particular with regard to replacements of the range of products by the manufacturer.
- 2.2. By clicking the order button in the online shop or by submitting an order in text form or over the phone the Customer places a legally binding offer for the conclusion of a purchase contract. The placing of such offer shall be at the Customer’s own risk.
- 2.3. With respect to orders placed in the online shop, a confirmation by mpsmobile for the receipt of such order shall not be deemed to be an acceptance, but simply statutory customer information. The Customer’s offer to purchase shall only be deemed to have been accepted by mpsmobile upon confirmation in writing or text form within 5 business days from its receipt, with such confirmation usually being made by dispatch note or unreserved delivery within 5 business days. Otherwise, mpsmobile rejects the Customer’s purchase offer within 5 business days from receipt of the order.
- 2.4. The Customer’s access data for our online shop shall be kept confidential by the Customer and may not be disclosed to third parties. In the case of misuse of access data the Customer shall be liable for any damages negligently caused by itself.

**3. Prices, Payment and Delivery; Default of Payment**

- 3.1. Indicated prices are net prices. Prices include shipping costs and other statutory charges, including but not limited to statutory VAT. Shipping cost details are mentioned on the mpsmobile website.
- 3.2. Reductions and cash discounts require a separate agreement with mpsmobile. Payment by cheque or note will not be accepted.
- 3.3. If Customer consented to the SEPA Direct Debit Mandate, the pre-notification will be sent to Customer at least 7 calendar days prior to the due date.
- 3.4. With respect to outstanding deliveries, mpsmobile reserves the right to make such deliveries or render such services only upon advance payment or provision of security, if

after the conclusion of a contract mpsmobile becomes aware of any circumstances which might significantly reduce the Customer's credit rating or due to which payment of outstanding accounts by the Customer would be at risk.

- 3.5. Transport ex store Ochsenhausen to the delivery address indicated by the Customer is affected by a logistics partner to be chosen by mpsmobile, without any further insurance and at the Customer's risk and expense. Upon the Customer's request and to the extent possible, shipment may be made by insured parcel. The modes of transport and packaging are at the discretion of mpsmobile.
- 3.6. The risk of accidental perishing or deterioration shall pass to the Customer upon handover of the purchased products to the shipping company, carrier or any other person or company assigned with the transport. In the event that Customer is in default of acceptance, this will be considered as acceptance. Storage costs, if any, incurred after the passing of risk shall be borne by the Customer. The costs of storage by mpsmobile shall amount to 1 % of the invoice amount for the products stored per expired week. Each party reserves the right to claim additional or reduced costs and the relating evidence.
- 3.7. mpsmobile reserves the right to make partial deliveries if this becomes necessary due to plausible reasons and under duly consideration of the Customer's reasonable interests.
- 3.8. Indicated delivery dates or terms of delivery are approximate only, unless a fixed date or term was expressly agreed. Terms of delivery deem to have been observed upon the products having been handed over to the shipping company, the carrier or any other third party assigned with the transport in due time.
- 3.9. If in the individual case fixed delivery dates or terms of delivery have been agreed between the parties, mpsmobile may, notwithstanding its rights arising from any defaults by customers, request a prolongation or postponement of such delivery dates or terms of delivery by the duration of the Customer's failure to fulfil its obligations.
- 3.10. If mpsmobile is in default with respect to a delivery or if it becomes impossible for mpsmobile to make a delivery or render a service, irrespective of the reasons for such default or impossibility, the liability of mpsmobile shall be limited to compensation for damages pursuant to Section 10.
- 3.11. Unless otherwise expressly agreed, payment is made at the customer's option by cash on delivery, by credit card or by advanced payment. If the total price for the ordered goods including VAT and including shipping costs amounts to no more than 1,000.00 €, the customer can also make a payment via PayPal. A payment by invoice and a payment by direct debit will require a separate agreement between mpsmobile and the customer.

#### **4. Inspection Duty of Customer**

- 4.1. Damages incurred in transport shall be claimed by the Customer against the logistics company immediately upon receipt of the products and shall be reported to mpsmobile. Already opened or damaged parcels may be refused by the Customer.
- 4.2. Upon taking over the goods the Customer shall, prior to signing, check whether the number of parcels and the data on the shipping note is correct. Any missing deliveries shall be noted by the Customer on the shipping note.
- 4.3. Any apparent product defects or other defects noticed by the Customer shall immediately upon receipt of the goods be reported to mpsmobile, either in writing or in text form. All

other defects shall immediately upon discovery be reported in writing or in text form.

- 4.4. Any subsequent complaints are excluded if the Customer did not act in accordance with the foregoing.

## **5. Force Majeure, Rights of Withdrawal and Claims for Damages**

- 5.1. mpsmobile shall not be liable for initial impossibility with regard to the delivery or delays in delivery, if this is due to an event of force majeure or other circumstances which could not be foreseen at the time of conclusion of the contract and which are not due to the fault of mpsmobile (such as business interruptions of any kind, difficulties in the procurement of material or energy, transport delays, strike, proper lock-outs, shortfall of manpower, energy or raw material, difficulties in obtaining required permits from authorities, official measures, or failures of suppliers to make deliveries at all or incorrect deliveries or unpunctual deliveries by suppliers). If due to any such event mpsmobile is substantially prevented from making the delivery or render the service or if this is impossible at all, and if such impairment is permanent, mpsmobile shall be entitled to withdraw from the contract. If the duration of any of the above mentioned impairments is temporary, the terms of delivery or performance shall be extended by the period of the impairment, plus a reasonable start-up period.
- 5.2. mpsmobile shall forthwith inform the Customer if an impairment has occurred and state the approximate delay.
- 5.3. If due to the delay, acceptance of the delivery or service is not reasonable for the Customer, the Customer may be entitled to withdraw from the contract by immediate declaration in writing vis-à-vis mpsmobile.

## **6. Reservation of Title**

- 6.1. All products delivered by mpsmobile remain property of mpsmobile until any and all outstanding amounts, including extra costs (e. g. collection expenses and shipping costs) as well as balance demands from current accounts mpsmobile is entitled to receive from the Customer under the business relationship, are fully paid.
- 6.2. The Customer may, however, join, mix or process any of the reserved products (hereinafter referred to as „Processing“). Any such processing is made on behalf of and for the account of mpsmobile as manufacturer. mpsmobile will have direct ownership of the resulting products. If, in addition, any third party material is processed, mpsmobile gains the co-ownership of the new product in an amount equal to the value of the reserved product.
- 6.3. The Customer may within the ordinary course of business sell any of the reserved products which have been delivered or processed (whereas pledge or transfer by security shall be excluded). As security for all obligations pursuant to Section 6.1 above, the Customer hereby assigns to mpsmobile the resulting claims against the buyer – which, in the case of co-ownership, accrue on a pro-rata basis in accordance with the respective co-ownership share. The same shall apply to any other liabilities which replace the products or otherwise accrue, such as insurance claims or claims based on unlawful acts in connection with loss or destruction. The Customer is hereby revocably authorised by mpsmobile to collect for its own account all liabilities assigned to mpsmobile. This collection authorisation may only be revoked by mpsmobile in the event of exploitation.
- 6.4. In the case of any violation of contract by the Customer (in particular default of payment

regarding the purchase price), mpsmobile shall be entitled to redeem the products being subject to the right of reservation. Such redemption constitutes a withdrawal from the contract (event of exploitation). The transport costs incurred in connection with the redemption of goods shall be borne by the Customer.

- 6.5. The Customer shall treat with care all products being subject to reservation. Furthermore, the Customer shall at its own expense insure the goods at replacement value against fire, water and theft. If maintenance or inspection should be required, the Customer shall carry out any such works in due time at its own expense.
- 6.6. If any of the products being subject to reservation are pledged by third parties or in the case of any other intervention by third parties the Customer shall refer to the ownership of mpsmobile and forthwith inform mpsmobile in writing, so that mpsmobile may claim its property rights.

## **7. Foreign Trade**

- 7.1. The Customer shall observe all national and international foreign trade provisions applicable to the products or, if applicable, the resale of the goods by the Customer. The foregoing shall in particular apply to the import- and export control regulations valid in Germany, the European Union and the USA.
- 7.2. Prior to any resale of the products the Customer shall inform itself about the resulting foreign trade consequences for mpsmobile. If such foreign trade consequences for mpsmobile may not be excluded, the Customer shall immediately inform mpsmobile about the contemplated resale and the possible relating consequences.

## **8. Customer's Warranty Claims for Material Defects**

- 8.1. The Customer shall have no warranty claims for used products or the usual wear and tear or defective or damaged products caused by improper use or by any attempt by the Customer itself or third parties, which have not been authorised by mpsmobile, to remove such defects, if due to any such attempt the removal of defects became impossible or was unacceptably complicated or for spare parts, if the installation or fitting thereof was carried out by a non-authorised service firm. In any case the Customer shall bear the additional costs incurred by an attempt to remove defects.
- 8.2. In the case of defects due to mpsmobile, mpsmobile shall, subject to any other provisions in Section 8.3, at its own discretion repair or replace the respective product. In the case of failure of such repair or replacement, i.e. in the case of impossibility, unacceptability, refusal or improper delay of the repair measures or replacement, the Customer may withdraw from the contract or reduce the purchase price by a reasonable amount.
- 8.3. In the case of defective components from third party manufacturers, which may, due to licensing provisions or actual reasons not be removed by mpsmobile, mpsmobile shall at its own discretion either assert its warranty claims against the manufacturers and suppliers in favour of the Customer or assign its claims to the Customer. Warranty claims against mpsmobile for any such defects shall under the applicable statutory provisions and in accordance with these General Terms & Conditions only exist, if serious out-of-court

settlement of the claims against the manufacturer or supplier was unsuccessful or is hopeless, for example, due to insolvency. During the legal dispute with the manufacturer or supplier the statute of limitation with respect to the Customer's warranty claims against mpsmobile is inhibited.

- 8.4. The return of products which is not due to defects shall be at the Customer's risk. In this case mpsmobile reserves the right to invoice the handling charges to the Customer.
- 8.5. Subject to any other provisions in Section 8.6, the limitation period for warranty claims shall be one year from the passing of risk. However, limitation will not start again if based on the warranty for defects a replacement delivery is made. The Customer's rights pursuant to Sections 478, 479 German Civil Code remain unaffected.
- 8.6. With regard to claims for damages by the Customer due to defects the provisions of Section 10 exclusively apply.
- 8.7. If the purchased item is a display, the customer is obliged to test it before it is connected to the terminal. Warranty claims of the customer are excluded as soon as the display has been connected to the terminal.
- 8.8. Warranty claims expire one year after the delivery of the purchased item. Deviating from this, warranty claims after the delivery of display, batteries of flex cables become statute-barred six months after the delivery of the purchased item. Displays of the brand Samsung and Sony are an exception. The warranty length of the displays of these two brands is for a period of three months from the date of purchase.
- 8.9. Incorrectly ordered items must be returned to mpsmobile within seven days from the date of the purchase.
- 8.10. mpsmobile is entitled to reject undeclared complaints and to return them at the expense of the customer.

## **9. Defects of Title, Infringement of Industrial Property Rights**

- 9.1. Pursuant to the provisions of this Section 9 mpsmobile warrants that the products are unencumbered by industrial property rights or copyrights of third parties which might impair the contractual use of the products. Each Party shall forthwith inform the other party in text form about any claims made against it for the infringement of third party rights.
- 9.2. If any of the products violates the industrial property rights or copyrights of a third party, mpsmobile shall at its own discretion and at its own expense alter or exchange the product in a way that the third party's rights are no longer violated and the product, however, fulfils its contractual functions, or shall grant the Customer the user rights in the product under a license agreement. The removal of software defects will be effected by providing the Customer with an update or patch of the software or by informing the Customer of how the defect can be avoided. If mpsmobile fails to do so within a reasonable period of time, the Customer may withdraw from the contract or reduce the purchase price by a reasonable amount.
- 9.3. With respect to claims for damages by the Customer the provisions of Section 10 shall apply exclusively.
- 9.4. With respect to violations caused by components from other manufacturers and delivered by mpsmobile the provisions of Section 8.3 shall apply accordingly.
- 9.5. In addition, the provisions of Sections 8.4 and 8.5 shall apply accordingly.

## **10. Liability**

- 10.1. Subject to any other provisions hereunder, mpsmobile shall not be liable for damages arising directly or indirectly in connection with its products, for whatever reason. This shall in particular apply to loss of profits, loss of data or other damages based on defective products, as well as claims for damages caused by events of force majeure. If and to the extent that the liability of mpsmobile is excluded or restricted in the following Sections, this shall also apply to the personal liability of employees, representatives and vicarious agents.
- 10.2. mpsmobile shall not be liable for simple negligence of any of its bodies, legal representatives, employees or other vicarious agents, unless in the case of violations against material contractual obligations (so-called "*Kardinalpflichten*"). Material contractual obligations are obligations whose fulfilment is essential for the correct implementation of an agreement and on whose fulfilment the Customer may rely; therefore material contractual obligations are rights and obligations which, in consideration of the agreement's content and purpose, must be contained in it.
- 10.3. If and to the extent that mpsmobile is generally liable for damages pursuant to Section 10.2, such liability is restricted to compensation for damages which are typical for the kind of contract and foreseeable, unless otherwise agreed in the following. Indirect and consequential damages due to defective items are only eligible for compensation to the extent such damages can be expected in the course of the intended use of the items.
- 10.4. The above restrictions shall not apply to the Customer's liability for intentional behaviour, guaranteed characteristics, violation of life, body or health or pursuant to the Product Liability Act.

## **11. Set-off, Right to Refuse Performance and Right of Retention**

The set-off, retention of the purchase price or defence of non-fulfilment by the Customer is only possible if and to the extent that the Customer's counter claims, i.e. the reason for the retention, are undisputed and lawful.

## **12. Severability**

If any of the provisions of this Agreement are invalid or unenforceable or become invalid or unenforceable after the conclusion of the agreement, this shall not affect the validity of the other provisions hereunder. The invalid or unenforceable provision shall be replaced by a statutory provision which comes as close as possible to the economic purpose intended by the parties by the invalid or unenforceable provision. The same applies to omissions, if any.

## **13. Place of Performance and Place of Jurisdiction**

- 13.1. Place of performance and exclusive jurisdiction for all disputes arising from this Agreement shall be the registered office of mpsmobile.
- 13.2. This Agreement shall be governed by German law under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

**14.** In any case of dispute the German version of these Terms&Conditions shall prevail.

**July 2019**