

## **Standard Terms and Conditions of Sale of GZ Media, a.s.**

Status 1. January 2014

### **1 Formation of contract**

1.1 Any order sent to GZ Media, a.s. (hereinafter referred to as "Supplier") by the Customer shall be accepted entirely at the discretion of the Supplier, and will only be accepted upon these Standard Terms and Condition of Sale (hereinafter referred to as the "Conditions").

1.2 Each accepted order shall constitute an individual legally binding contract between the Supplier and the Customer and such contract is hereinafter referred to in these Conditions as an "Order". Based on the Order the Supplier shall supply products and services, including but not limited to, print and packaging, disc replication (optical discs in miscellaneous packaging, incl. printed parts), replication of the vinyl records (in miscellaneous packaging, incl. printed parts), mastering services, fulfillment and distribution (hereinafter referred to as the "Products").

1.3 These Conditions shall override any contrary different or additional terms or conditions (if any) contained on or referred to in an order form or other documents or correspondence from the Customer, and no addition alteration or substitution of these terms will bind the Supplier or form part of any Order unless expressly accepted in writing by a person authorised to sign on the Supplier's behalf. These Conditions shall also govern all future supplies and transactions between the Supplier and the Customer.

### **2 Delivery**

2.1 Supplier shall use all reasonable endeavours to deliver the products to the Customer in accordance with any delivery date agreed in writing with the Customer, but shall not be responsible for late delivery. Without prejudice to the generality of the foregoing, Supplier shall not be liable for late delivery or failure to deliver through any cause which is beyond the control of Supplier. Supplier shall not in any event be liable to the Customer in contract or tort or otherwise for any indirect or

consequential loss or damage whenever or howsoever arising, including without limitation, loss of profit, loss of revenue, economic loss, depletion of goodwill and pecuniary loss of any kind whatsoever in the fullest extent permitted by law. Any further rights and remedies of the Customer than those as per this Section 2 based on a delay, in particular Customer's right to claim damages, shall be excluded.

2.2 The delivery time shall start at the time when the Supplier receives the documents according to Condition 6.3, all the production specifications, the exact packaging instructions, and the data required for the production of the Products, e.g. artworks, CD masters, DVD-masters etc., (hereinafter referred to as "Source materials") according to Supplier's technical conditions, which are available via the following Supplier's website: [www.gzmedia.eu/gtac](http://www.gzmedia.eu/gtac) (hereinafter referred to as the "Technical conditions"). If the Supplier does not receive the above mentioned documents, specifications or materials, he shall be not obliged to perform the Order. If the required specifications or Source materials are supplied after 12.00 CET noon in a given day, the delivery date shall be increased by one calendar day. If the Customer supplies Source materials and specifications that require further clarification or correction from the Customer, the previously confirmed delivery date will not apply and Supplier will quote the Customer a new delivery date on a best efforts basis.

2.3 If the Supplier is unable to deliver on time due to force majeure the time for delivery shall be extended and the Supplier will quote the Customer a new delivery date on a best efforts basis. Alternatively the Supplier may terminate the Order and shall not in any event be liable to the Customer for any direct, indirect or consequential loss or damage. Force majeure events shall include but are not limited to mobilization, war, civil insurrection, terrorism, acts of government, non-granting of required export permissions, epidemics, riot, explosion, accidents, flood, fire, sabotage, shortages of means of transport fuel or energy shortages or delay or accident in shipping or transportation, strike, lock-out, raw material shortages, restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, lack of transportation, interruption of electricity and forces of nature.

2.4 The Supplier shall not be bound to proceed with or deliver any Order whilst the Customer is in delay in payment of a previous invoice to it from the Supplier. Any Products produced for the Customer but withheld shall be at the risk of the Customer. The Supplier may charge storage costs for each day delivery is withheld up to the amount of 2% of the price of the Order. Alternatively the Supplier may terminate the Order.

2.5 If the Customer fails to give shipping instructions or refuses to accept delivery, the Supplier shall be entitled at its absolute discretion either to arrange storage on behalf of the Customer (in such case the Supplier is entitled to charge all the storage costs of the relevant warehouse and all other incurred costs) or store the Products himself (in such case the Supplier is entitled to charge for each day thereafter up to the amount of 2 per cent of the price of the given Order and all other incurred costs). Upon placing goods into storage in either of the above ways risk in the goods shall pass to the Customer. All charges for storage, insurance or any resulting damage or additional expenses shall be paid by the Customer within 30 days of submission of an invoice.

2.6 If the Products are stored by the Supplier for more than 1 month, the Supplier is entitled at its absolute discretion to destroy the Products.

2.7 The Supplier shall be entitled to provide partial supplies.

2.8 The Customer shall be deemed to have accepted all goods upon their delivery by the Supplier to the address specified in the Order. The Customer shall be entitled to refuse acceptance of delivery only if the Products are visibly and substantially defective, and the Customer provides the Supplier specific written notice thereof within 3 days of delivery of such Products. Upon taking delivery or receipt of shipping documents, the Customer shall check the Supplies and shall notify the carrier with a copy to the Supplier of any damage caused to the Products.

2.9 Unless agreed between the parties or in these Conditions provided otherwise and

a) if the Order does not involve the transport of the Product, the rule EXW, Loděnice, Czech Republic (Incoterms 2010) shall apply to the delivery of the Products,

b) if the Order involves the transport of the Product, the rule DAP, (place of delivery), (Incoterms 2010) shall apply to the delivery of the Products.

### **3 Quantity tolerances**

The difference between the quantity of Products determined in the Order and the actual delivered quantity of the Product may not exceed 10 per cent for orders up to 500 units, 5 per cent for orders in the range 501 to 1000 units, 2 per cent for orders in the range 1001 to 5000 units and 1 per cent for orders greater than 5001 units. (For the avoidance of any doubt, if the Customer orders e.g. 2000 units the Supplier shall be entitled to supply any number of units between 1960 and 2040). The Supplier shall in any event charge the Customer on a per unit basis based on the actual number of units supplied.

### **4 Prices and payment**

4.1 Prices shall be EXW, Loděnice, Czech Republic (Incoterms 2010) excluding packing and any and all taxes, duties or imposts payable under applicable law. Customer agrees to pay or reimburse the Supplier for any such taxes, duties or imposts which the Supplier is required to pay. Unless provided otherwise in writing between parties, price shall be without the costs for cutting tools and transport, which shall be charged to Customer separately in accordance with the Supplier's quotation or valid price list of the Supplier or the documented costs.

4.2 If the Customer (i) requests changes to specifications or processing of the Products or (ii) fails to provide artwork in accordance with suppliers Technical Conditions the Supplier may make all necessary corrections to the specification and produce the Product accordingly but is entitled to charge the Customer the reasonable cost of the extra work.

4.3 All invoices must be paid within 30 days of the date of the invoice and time of payment is of the essence. Payment is to be made to the bank account or payment office notified by the Supplier. Payment will be deemed made when the relevant amount is credited to the Suppliers account. Unless the Customer specifies the invoice being paid the Supplier shall be entitled to allocate the payment to the oldest outstanding invoice of the Customer.

4.4 All invoices shall be paid without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise except for agreed over-payments and credits which have been given.

4.5 If for any reason an invoice is unpaid at the expiry of the credit period of 30 days, the Supplier reserves the following rights:

a) To despatch immediately invoices for any work done and/or goods to be supplied under orders placed but not yet fulfilled.

b) To claim immediate payment of all invoices despatched including those within the credit period even if delivery has not taken place and the property in any goods has not passed to the Customer.

c) To suspend delivery of goods and/or supply of services.

d) To be paid on indemnity basis any costs the Supplier incurs in recovering any money due under the Order (and the costs of recovering such costs) including administrative costs and any costs incurred with lawyers or debt collection agencies. In calculating administrative costs credit will be given for any compensation due under the Late Payment of Commercial Debts (Interest) Act 1998.

4.6 If agreed advance payment or the contractually agreed securities are not provided, the Supplier shall be entitled to adhere to or to terminate the Order and shall in both cases be entitled to claim damages.

4.7 The Supplier shall be legally and beneficially entitled to the ownership of any goods until payment of all debts owed by the Customer to the Supplier and all invoices drawn by the Supplier against the Customer,

whether then due for payment or not. Until such payment, and subject to the following provisions, the Customer holds the goods as the bailee of the Supplier and owes to the Supplier the normal fiduciary obligations of a bailee by way of custody in respect of the goods.

a) The Supplier may for the purpose of recovery of the goods enter upon any premises where they are stored and may repossess the goods.

b) Until such time as the Customer becomes the owner of the goods the Customer will store them on his premises separately from his own goods and those of any other person and in a manner which makes them readily identifiable as the goods of the Supplier.

c) The Supplier may without prior notice or liability and without prejudice to any other legal remedy repossess the goods.

d) Insofar as the Customer shall, or shall purport to, offer for sale and sell the goods, the Customer shall do so only at the best obtainable price in the ordinary course of business as principal and not as the agent of the Supplier.

e) The Supplier shall, by reason of the said relationship of bailment between the Customer (as bailee) and the Supplier (as bailor) be and remain legally and beneficially entitled to the proceeds of sale and the Customer shall pay such proceeds of sale into a separate account or, otherwise, shall ensure that all the proceeds of sale are kept by or on behalf of the Customer in a separate and identifiable form.

f) The proceeds shall not be paid into an overdrawn bank account.

g) Upon receipt of the proceeds of sale, the Customer shall discharge the debt due to the Supplier and shall not use or deal with the proceeds of sale in any way whatsoever until such debt has been discharged.

4.8. The Supplier is the owner of any tools necessary for the production of the Products (e.g. cutting tools, printing blocks, printing dies, printing plates, pressing tools etc.), even if

such manufactured tools were paid by the Customer.

## 5 Defects Liability

5.1 The Customer shall inspect the Products immediately upon delivery. In respect of damage which could have been caused during transportation and which such a reasonable inspection would reveal the Customer must deliver to the supplier a shipping document executed by both the Customer and a representative of the shipping agent stating the nature and scope of the damage.

5.2 In respect of volume deficiencies the Customer must notify the supplier within 48 hours providing reasonable documentation to back up such claims.

5.3 In respect of hidden defects the Customer must notify the supplier upon them becoming apparent or at latest within two calendar months of the date of delivery.

5.4 Unless the Customer complies with the above any liability of the supplier for defects or volume deficiencies will be excluded.

5.5 Providing notification is given in accordance with the above clauses the supplier will free of charge and within a reasonable time repair or, at its absolute discretion replace, defective products and make good any volume deficiencies PROVIDED THAT

a) such defects shall be found to have arisen solely from the Supplier's faulty design, workmanship or materials, and

b) the defective Products shall be returned to the Supplier's factory for the Supplier's own inspection at the Supplier's expense and in the way determined by the Supplier, if so requested by the Supplier (particularly if the samples of the Products, which were kept by the Supplier, are not defective), and

c) the claimed defect was not within the Source materials sample, artwork, data, material or documentation approved by the Customer or provided by the Customer, and

d) the percentage of Products under complaint claimed is greater than 1% of the total number of units delivered.

5.6 Alternatively to Condition 5.5, the Supplier shall be entitled at its absolute discretion to refund the reasonable part of price of the defective goods in the event that such price shall already have been paid by the Customer to the Supplier, or, if such price has not been so paid, to relieve the Customer of the obligation to pay the same by the issue of a credit note in favour of the Customer in the amount of such part of price.

5.7 The Supplier shall not be liable for:

- (i) defects which only insignificantly impair the use of the Products;
- (ii) insubstantial deviations of the Products from specification;
- (iii) natural wear and tear;
- (iv) damage, arising after the transfer of risk; or
- (v) from faulty or negligent handling, excessive strain, use of unsuitable appurtenances, or particular external influences not explicitly assumed to impact on the Products.

5.8 The Supplier's liability under this Condition shall be to the exclusion of all other liability to the Customer whether contractual, tortious or otherwise for defects in the goods or for any loss or damage to or caused by the goods. All other conditions, warranties, stipulations or other statements whatsoever concerning the goods, whether express or implied, by statute, at common law or otherwise howsoever, are hereby excluded to the fullest extent allowed by law; in particular (but without limitation of the foregoing) the Supplier grants no warranties regarding the fitness for purpose, performance, use, nature or quality of the goods, whether express or implied, by statute, at common law or otherwise howsoever. The Supplier shall not be liable if the Customer or a third party carries out modifications or repairs of the Products.

5.9 The Supplier is entitled to be reimbursed for expenses or damage incurred during the examination of a Customer's claim (for example travel or shipping expenses) if the claim proves unjustified.

## 6 Intellectual property

6.1 The Customer warrants that:

a) the ordered Products do not infringe upon any copyright or any other intellectual property right of any third party, and

b) the Customer possesses all relevant rights (e.g. mechanical duplication rights) or licenses, and that all fees and royalties due to beneficiaries of relevant copyrights have been paid or will be paid when due.

c) there are no claims, disputes, suits, arbitral or other proceedings pending or anticipated which may affect the warranties and representations made above by the Customer.

6.2 The Customer shall defend, indemnify and hold harmless the Supplier or its Subsidiaries from and against any claim, dispute, proceeding, action, fine, penalty, suit, loss, expense, damages including punitive damages, and cost (including all attorney fees) arising out of or relating to any infringement or alleged infringement of any copyright or any other proprietary right of any third party by the Products.

6.3 The Customer shall fill in the Copyright declaration (available on the Supplier's web site) to every Order and supply it to the Supplier. The Supplier is also entitled at its absolute discretion to require further reasonable evidence, the reasonableness of which shall be determined exclusively by the Supplier, that the Customer possesses all the relevant rights and licenses regarding any copyright or any other intellectual property right of any third party.

6.4 The Customer agrees that the Supplier is authorized to inform the relevant authorities (for example BIEM or IFPI) about the Customer's Order.

6.5 For cost estimates, quotations and all other documents prepared or provided by the Supplier, the Supplier reserves all rights, title and interest in all intellectual property rights including but not limited to patents or copyright. The Customer shall keep such documents confidential and shall not without the prior consent in writing of the Supplier disclose to

any third party any technical or commercial information which it has acquired from the Supplier as a result of discussions, negotiations and other communications between them relating to the Products and the Order.

## 7 Limitation of liability

7.1 No matter what the cause thereof the supplier shall not be liable in any circumstances (i) for any loss of profit, business, production, contracts, revenues, use of equipment, power system, information and data, or anticipated savings, or cost of purchased or replacement power, or payment of interest and financing expenses, or depletion of goodwill, or (ii) for any special, punitive, indirect or consequential damage of any nature whatsoever.

7.2 Notwithstanding anything contained in these Conditions or the Order the Suppliers liability shall be limited to 100% of the price of the Product specified in the Order.

## 8 Termination and suspension

8.1 In the event any of the following occurs the Supplier may at its absolute discretion either suspend the provision of its obligations under this or any other Order, or terminate this or any other Order:

a) the Customer fails to make payment of any amount on basis of this or any other Order within 30 days after it has become due and payable, or

b) the Customer fails to perform its obligations necessary for the Supplier to deliver or complete the Supplies, or

c) the Customer is insolvent or any proceeding is instituted against the Customer seeking to adjudicate the Customer as bankrupt or insolvent, or if the Customer makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the insolvency of the Customer, and, in the case of any such proceeding instituted against the Customer, if such proceeding is not dismissed within forty-five (45) days of such filing, or if the Customer is insolvent or itself files a petition

seeking to take advantage of any law relating to bankruptcy, insolvency, winding up or composition or readjustment of debts, or

d) the Supplier determines, at its sole and absolute discretion, that the content to be duplicated, is of an offensive or extremist nature, or

e) the Supplier does not receive Copyright declaration or the evidence according to Condition 6.3, or

f) the Supplier does not receive Source materials according to Supplier's technical conditions.

8.2 In the event that the Supplier suspends the provision of its obligations the Customer shall pay the Supplier all additional cost incurred due to such suspension.

8.3 Suspension or termination under 8.1 above may be in respect of the whole or part of the Order. The Supplier will give the Customer immediate written notice of termination or suspension.

## 9 Storage of the Source materials

9.1 "Source materials" means the data required for the production of the medium and/or printed materials and which are stored in the FTP server of the Supplier or are supplied by the Customer on a data carrier (CD-R, DVD-R and other carriers specified by the Supplier's technical conditions). The Supplier allows only one version of source materials to be assigned to each catalogue number of the Customer. In the event of re-order by the Customer requiring the change of Source materials, the Supplier will liquidate the earlier Source material (both as to physical form and in electronic form) without notice to the Customer.

9.2 The Supplier shall store the Customer's Source materials free of charge for a period of 24 months. The Supplier shall be entitled to destroy the Source materials without further notification to the Customer.

9.3 The Supplier shall not in any event be liable to the Customer for any direct, indirect or

consequential damage or loss of stored Source materials.

## 10 Severance and waiver clause

10.1 If any provision of these Conditions or the Order is held by a court or other competent authority to be unlawful, void or unenforceable, it shall be deemed to be deleted from the Order and shall be of no force and effect and the Order shall remain in full force and effect as if such provision had not originally been contained in the Order. In the event of any such deletion the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the provision so deleted.

10.2 The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of these Conditions shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of these Conditions.

## 11 Applicable law and jurisdiction

11.1 The Contract shall be governed by the law of England and subject to the exclusive jurisdiction of the courts of England unless the Customer has its registered office or main place of business in Germany, France, The Netherlands, Sweden, The Czech Republic or a non-EU member state in which case the Contract will be governed by the law of and subject to the exclusive jurisdiction of the courts of the relevant country.