

General Terms of Purchase

NSM-Löwen Entertainment GmbH, Saarlandstraße 240, 55411 Bingen

1.0 Contract conclusion

1.1 We place orders based on our General Terms of Purchase. Our Terms of Delivery and Document Terms apply in addition. Other terms and conditions are not to be considered as included in the contract even if not expressly objected by us. Our acceptance of deliveries/services without expressive objections does in no case imply the acceptance of your terms of delivery. Our General Terms of Purchase apply to companies as defined by § 14, section 1 of the German Civil Code only. The present General Terms of Purchase also apply to any future business transactions with you in case of an ongoing business relationship.

1.2 If you fail to accept our order in writing within 10 calendar days, we are entitled to withdraw the order. Delivery calls become binding if not objected by you within 3 calendar days from the date of receipt.

If you accept our order with variations, you are obligated to clearly inform us about these variations. A contract shall only be deemed as concluded if we have agreed to such variations in writing.

1.3 Orders placed in orally or by phone shall only be valid if subsequently confirmed in writing. The same applies to oral side agreements or contract amendments.

Orders, order confirmations, delivery calls, goods receipt documents and invoices can also be submitted in an electronic format.

1.4 No considerations are granted for visits or the preparation of offers, projects, etc.

1.5 You agree to treat our inquiries and any offers resulting thereof as well as the contract conclusion confidentially and are not entitled to refer to business relationships with us in any publications, like e.g. promotion material and reference lists, unless agreed by us in writing in advance.

1.6 You agree to treat all non-public commercial and technical information you receive during the performance of an order or in the course of our business relationship as business secrets and to refrain from disclosing such information to third parties. Sub-suppliers are to be bound to this obligation accordingly. Employees entrusted by you with the performance of our orders must be bound to a corresponding confidentiality obligation and informed with regards to §§ 17 and 18 UWG (Act against unfair Practices). You will inform us immediately about any detected acquisition of confidential information by third parties or a loss of confidential documents.

The confidentiality obligation shall survive the completion of the present contract. It will expire only after the production information included in the documents and/or the received know-how has become public domain.

1.7 We are entitled to request changes of the delivery subject even after the conclusion of a contract, to the extent that such requests are acceptable for you. In case of such changes, the impact – in particular with regards to cost increases or reductions as well as delivery dates – must be mutually negotiated between the parties hereto.

1.8 You agree to immediately provide to us all certificates of origin duly signed and completed with all requested information. The same applies accordingly to any VAT-related evidence in case of foreign and EU-internal deliveries. These documents must be submitted to us 10 calendar days prior to the delivery by the latest. By accepting this order you agree to enable the verification of certificates of origin by customs authorities and to provide any requested information in this regard, as well as to submit all official certifications (information sheets). You further agree to indemnify us for any damages incurred by us due to relevant authorities not accepting the indicated origin. You agree to inform us immediately if deliveries or any part thereof are subject to export limitations according to German or any other law.

1.9 You are obligated to inform us about the required official approvals and declaration obligations concerning the import and the operation of the delivery subjects.

2.0 Prices, shipment, packaging

2.1 The agreed prices are fixed prices and exclude any subsequent claims. These prices include the packaging and transport costs to the delivery address and/or place of use as well as expenses for customs information and customs duties. In case of deliveries ex works you are obligated to choose the shipment type bearing the lowest costs. If no prices are indicated in the order, your current list prices apply with the usual deductions. The type of pricing does not affect the agreed place of performance.

2.2 The delivery includes all contractually agreed utilities and supplies as well as all documents, like drawings, quality and control certificates, servicing manuals, spare part lists and other manuals. In case of technical devices, the delivery scope also includes comprehensive system descriptions as well as usable assembly and operating instructions. The delivery scope of software products includes complete system and user documentations. In case of software developed exclusively for us, the delivery shall be considered as performed only after the submission of the source code.

2.3 You agree to provide to us a shipment notification including detailed type, quantity and weight information immediately upon the performance of every delivery. Our order number must be indicated on shipment notifications, bills of lading, invoices and any correspondence with us. You are responsible for any consequences resulting from a failure to meet these obligations.

2.4 We only accept over- and underdeliveries of common goods up to an extent of 5% of the ordered quantities.

Underdeliveries of special goods are inadmissible. Unless expressly agreed otherwise, overdeliveries must not exceed 2%.

2.5 Shipments are performed at your own risk. You bear any risk of deterioration including inadvertent loss up to the delivery at the agreed delivery address and/or place of use. We are not obligated to handle truck loads prior to the receipt of the shipping documents.

2.6 The goods to be delivered must be packed properly. Unless a price including packaging has been agreed, packaging may only be invoiced at its net costs. Reusable packagings, like crates, containers, etc. are returned by us freight-prepaid und must be deducted at their full invoice value.

2.7 We will insure goods shipped at our risk.

3.0 Invoicing and payment

3.1 Invoices must be submitted in double copies, including all documents and data upon completion of the delivery separately in an appropriate format. Submitted improper invoices shall be deemed as received only after the date of correction.

3.2 Payments are performed through payment means at our discretion after 14 calendar days with a discount of 3%, after 30 days with a discount of 2% or net after 90 days from the invoice date. Services provided are paid net subject to review and acceptance after 14 calendar days.

3.3 To the extent that material test certifications have been agreed, such certifications shall be deemed as an essential element of the delivery and must be submitted to us upon the delivery but in any case no later than 10 calendar days after the invoice receipt. The payment term shall begin on the date of the receipt of the agreed certifications.

3.4 In case of incorrect or incomplete deliveries, we reserve the right to withhold a proportional part of the payment until the proper performance without prejudice to rebates, discounts or other payment allowances. If payments for incorrect deliveries have already been performed, we are entitled to withhold other due payments up to the amount of the performed payments in this context.

4.0 Delivery dates, late deliveries, Force Majeure

4.1 The agreed delivery dates are binding and must be strictly observed. The proper receipt of the goods and/or the proper service delivery as well as the submission of the documents at the place of receipt and/or use indicated by us or the timeliness of the successful acceptance shall be decisive for the observance of a delivery date.

An acceptance of a late delivery without reserves is not to be interpreted as a waiver of damage claims.

4.2 If you realise that an agreed delivery date cannot be observed for any reason, you agree to notify us immediately, indicating the reasons and the expected duration of the delay in writing.

In this case you agree to take any requested action to observe the agreed delivery date or minimise the delay and inform us in writing about the actions you have taken or will take in each individual case. A notification of an expected late delivery does not change the agreed delivery date. You accept and acknowledge that we are entitled to intervene at your suppliers, if required.

You agree to bear any and all costs incurred by us due to a failed or late notification of a late delivery for which you are accountable. In addition, you agree to bear any additional expenses incurred in relation to a required accelerated transport in order to meet the delivery date.

4.3 We are entitled to legal remedies in case of late deliveries by you. If you fail to remedy any late deliveries within a reasonable grace period determined by us, we are entitled upon the expiry of such period of grace to claim damages instead of performance and/or procure replacement performance from third parties or withdraw from the contract. The claim for delivery/performance expires, if we claim damages instead of performance or withdraw from the contract in writing.

4.4 If the delivery term notified by you is indicated as "expected", "approximate", "subject to reserve" or the like, the actual delivery may only deviate up to 8 calendar days from the indicated delivery date.

4.5 You can only assert our failure to submit required documents after having requested such documents in writing and our failure to submit these documents within a reasonable period.

4.6 In case of an event of Force Majeure or labour disputes, the contract parties are exempted from their performance obligations for the duration and to the extent of the impact of the disturbance. The contract parties agree to use their best efforts to immediately provide any required information and adapt their obligations to the altered circumstances in good faith.

We are completely or partially exempted from the obligation to accept an ordered delivery or service and entitled to withdraw from the contract to the extent that we cannot use such delivery/service due to a delayed delivery/service on account of an event of Force Majeure or labour disputes from an economical perspective.

4.7 In case of a delivery prior to the agreed delivery date we reserve the right to return the goods at your cost. If the goods are not returned in case of an early delivery, such goods will be stored at our site at your cost and risk until the delivery date. We reserve the right to perform payments on the agreed due date in case of early deliveries.

4.8 Partial deliveries are only accepted if expressly agreed. Partial deliveries must be indicated as such in the related shipping

documents and/or invoices. The remaining quantities must equally be indicated in the aforementioned documents. An acceptance of partial deliveries by us does not affect the validity of the agreed delivery dates for the complete delivery/performance. Therefore the delivery/service shall be deemed as supplied only after the complete contract performance.

5.0 Order scope, changes of drawings

In addition to the present Terms of Purchase, individual orders also comprise the information related to the order placed by us, including the relevant drawings. Any drawings, technical delivery conditions, construction, material and testing regulations, etc., on which our orders are based, are binding. Deviations from these documents are only admissible if approved by us in writing.

To the extent that products are not manufactured according to our drawings, technical delivery conditions or other regulations, such changes with regards to the documents on which the placed order is based, must be notified to us and indicated by providing samples, as the case may be. Such changes are subject to our written approval. If such changes affect the suitability of the delivery subject, we reserve the right to reject intended changes and either demand a delivery according to the specifications underlying to our order or withdraw from the order with indemnification.

6.0 Guarantee, complaint periods, remedy, new delivery, withdrawal, reduction, indemnification, epidemic failure, right to self-remedy, guarantee period, constraint, restart, product liability

6.1 All deliveries/services must be provided to us free of material defects and defects of title. The deliveries/services must conform to the agreed specifications and the state of the art as well as the relevant European and German legal regulations and the regulations and guidelines of authorities, professional associations and industrial unions. The deliveries/services must equally be suited for the intended use specified in the contract or, in default of the latter, the usual intended purpose.

All goods must meet the requirements of the current safety regulations and be accepted and approved for the intended purpose by the competent inspection body at the time of delivery. The deliveries/services must in particular meet the requirements of the work safety regulations, the device and product safety law, the accident protection law, the fire protection regulations and the environmental regulations.

Any required deviations from these regulations are subject to our prior written agreement. Such agreement does not affect your liability for defects.

If you have any concerns regarding the type of performance requested by us, you agree to immediately inform us about these concerns in writing.

If you culpably provide deliveries/services that are not free of third-party rights in Germany or – as far as you are informed about – in the country of destination, you agree to bear any financial losses incurred by us as a result thereof.

6.2 You agree with regards to your deliveries/services to also promote the use of sustainable products and processes for sub-supplies and services provided by third parties as far as economically and technically feasible. You are responsible for the sustainability of the delivered products and packaging materials as well as for all consequential damages caused by a breach of your legal disposal obligations. You agree to issue a procurement certificate for the delivered goods if requested by us.

6.3 We will inform you immediately in writing about visible delivery defects as soon as such defects are detected in the course of the usual business processes, but however no later than 5 working days from the receipt of the delivery. In case of hidden defects the complaint period is 3 calendar days from the date of detection.

Software products are subject to individual contractual agreements.

6.4 You agree to remove any defects of the delivery/service notified during the guarantee period, including the non-fulfilment of guaranteed dates and the lack of guaranteed specifications, immediately and free of costs (including all additional costs) immediately upon request through remedial action or replacement of the defective parts and/or redelivery, remanufacturing at our discretion.

If an immediate supplementary performance is not possible, you are obligated to produce remedy in coordination with us as soon as possible.

You agree to bear in particular any and all expenses related to the detection and removal of a defect, including expenses incurred at our site and in particular investigation costs, assembly, disassembly and reassembly costs, labour and material costs as well as transport and other costs related to the replacement of defective parts. This also applies in case of increased expenses due to the delivery subject having been transported to a different place than the place of performance, unless such costs are unreasonably high.

You are obligated to perform remedial actions, redeliveries/remanufacturing in multiple shift, overtime or holiday work operations to a reasonable extent, if required due to urgent operational reasons.

A remedial action is deemed as failed after the second failed attempt. In this case we are entitled to withdraw from the contract and claim reduction. The same applies if a reasonable grace period determined by us expires unsuccessfully. An agreed period of grace has the same legal effect as a period determined by us.

To the extent that we are entitled to withdrawal, such withdrawal can – as far as the non-performance or default is limited to a part of the performance – be limited to such part of the performance without affecting the validity of the remaining contract.

We reserve the right to claim damages in any case.

The type of remedial action requested by us can only be rejected based on unreasonable costs if such costs of the requested remedial action do not exceed the double amount of the initial purchase price of the defective goods.

6.5 If you culpably fail to fulfil your obligations arising from your liability for defects within a reasonable period determined by us, we are entitled to perform the required actions at your cost and risk or have performed the latter by third parties. Own efforts are invoiced at usual third-party market prices. In urgent cases and in agreement with you we are entitled to perform remedial actions ourselves or have performed such actions by third parties. Small defects can be removed by us in line with our obligation to limit damages and/or in the context of pertinent agreements without our prior agreement and without limiting your defects liability obligations. We are entitled to charge the incurred costs related to such actions back to you. The same applies in case of a risk of unusually high damages or other special circumstances that justify an immediate remedy by us under consideration of the mutual interests. For the remaining service contract, the regulation stipulated in § 637 of the German Civil Code applies.

6.6 The guarantee period for material defects and defects of title is 2 years, unless expressly agreed otherwise. This also applies to multiple shift operations. The guarantee period begins on the delivery date of the delivery subject to us or any third party indicated by us at the agreed place of receipt and/or use. In case of equipment, machines, plants or services the guarantee period begins on the acceptance date indicated in our written acceptance declaration. If the acceptance is delayed due to a reason for which you are not accountable, the guarantee period of two years begins on the date, on which the delivery subject is made available for acceptance. The guarantee period for buildings and building materials is subject to legal regulations unless agreed otherwise. The guarantee period for spare parts is two years from the date of installation/commissioning and expires four years from the delivery date at the latest.

6.7 As long as the justification of our complaint is negotiated, the guarantee period of the concerned plant/plant parts is suspended from the notification of a malfunction to the completion of the negotiations and/or end of the repair works and the acceptance, if applicable.

In case of a replacement in the context of a remedial action, the limitation period for the replaced part restarts on the date of installation/acceptance of the latter. In case of a remedied part, the limitation period restarts on the date of the completion of the remedial action and/or acceptance of the latter and/or the installation/reconstruction of the remedied part. This provision does not apply if a negligible defect of a delivered part can be removed without any material time and cost effort by simple replacement delivery. Likewise, the aforementioned provision does not apply in case of a replacement delivery or remedial action resulting undisputedly from amiability or amicable resolution of a dispute or performed to promote the persistence of the supply relationship. The acceptance must be applied for in writing, if applicable. The period in no case however ends before the expiry of the limitation period for defect claims agreed for the initial delivery or service.

6.8 If a claim is filed against us for a breach of administrative safety regulations or national/foreign product liability regulations or a defect of our product resulting from your goods, we are entitled to an indemnification claim against you to the extent that such damage has been caused by the products delivered by us. This damage also includes the costs of a product recall by way of precaution.

You will mark the delivery subjects in a way that enables a permanent identification of the latter as your products.

You are obligated to perform a quality assurance that is appropriate for the type and extent of the delivery and corresponds to the latest state of the art and furthermore agree to evidence such quality assurance upon our request. You will close a corresponding quality assurance agreement with us, if deemed necessary by us.

You also agree to take out an insurance with a sufficient coverage covering all product liability risks, including the recall risk and submit the insurance policy to us for review upon request.

7.0 Documents, samples, etc., contract damages

Any documents provided by us or created by you, like e.g. samples, drawings, models, tools and technical instructions, etc. are our property and may only be used for the deliveries made to us. These documents must be kept confidential.

8.0 Industrial property rights, rights of use

8.1 You are not entitled to use our trade names, logos, trademarks or industrial property rights for your own benefit or the benefit of third-parties. You are not entitled to use the aforementioned trade names, trademarks, logos or industrial property rights individually or in combination with your own trade names, trademarks or logos without our prior written agreement. If we consent such use, you agree to strictly observe the guidelines with regards to the size, position and layout of the trade names, trademarks or logos.

8.2 Products that are not part of your standard offer and which you have manufactured according to our instructions, drawings and/or technical specifications must not be offered, sold or delivered to third parties without our prior written agreement.

8.3 Products from your standard programme must not be offered, sold or delivered to third parties or marketed in any other way if our trade name, trademark or logo is visible on the product. The same applies when third parties could assume that the concerned product is marketed by us.

8.4 You warrant and represent that any and all deliveries are free of third-party property rights and in particular that the delivery and use of the delivery subjects does not infringe any patents, licences or other third-party property rights.

8.5 The parties hereto mutually agree to immediately notify each other in case of any claims filed against one party for the infringement of contract-relevant property rights.

8.6 In case of a culpable breach of these obligations you agree to exempt us and our customers from any and all third-party claims for eventual property right infringements and to bear all costs incurred by us in relation to such claims; including the costs of legal prosecution and recall actions. Your exemption obligation refers to all necessary expenses incurred by us in relation to a third-party claim.

8.7 If the contractual use of the delivery/service subject is impaired by third party property rights, you agree – without prejudice to your other contractual obligations – to acquire a licence for our unlimited contractual use of the delivery/service subject from the property right owner at your own cost and without additional costs for us.

You are equally entitled to modify the parts of your delivery/service that are subject to the property right in a way that makes the property right no longer applicable while still corresponding to the contractual specifications existing between you and us.

8.8 If your efforts according to clause 8.7 are to no avail, we are entitled in coordination with you and for a transition period of up to 12 months to procure the approval for the use of the concerned delivery subjects and services from the property right owner at your cost.

If the efforts according to clause 8.7 and 8.8 fail, you agree to remove the plant at your cost and to reimburse the consideration paid by us plus interest at the rate customary in banking. Other legal claims remain unaffected thereof.

8.9 You agree to grant to us a simple unlimited right of use for all usage types with regards to any works subject to intellectual property rights delivered by you.

9.0 Software developed for us / standard software

9.1 If you develop proprietary software based on a corresponding order exclusively for us, you agree to grant to us the required rights of use according to the contractually agreed intended purpose.

You assign to us in particular a temporally and geographically unlimited, assignable, exclusive right of use and exploitation right for the software.

We are entitled to edit, modify and extend the computer programme, the programme description and the accompanying material and to transfer the latter to other storage media, physically and immaterially distribute (including via the Internet), publish, reproduce, store or otherwise modify, use and exploit the latter.

This right of use includes any future new usage forms.

9.2 The assignment of the rights of use is included in the agreed consideration and settled with the payment of this consideration.

9.3 You waive the right of being named as the author within the software and in the accompanying documentation.

9.4 Your delivery obligation is deemed to have been fulfilled upon the delivery of the source code.

9.5 If the delivery scope also includes standard software with a corresponding licence, we are granted the right to use such licence when using the delivery subject. We are entitled in particular to copy, edit and extend the software for the specified purpose.

10.0 Environment protection, safety data sheet, REACH regulation

10.1 You are obligated to strictly observe the legal and regulatory environment protection regulations for your contractual performance.

10.2 No ozone-reducing substances, like e.g. CFC, carbon tetrachloride, trichloroethane must be used for producing the goods and packagings delivered to us.

10.3 You include in your offer a fully completed safety data sheet according to § 14 of the Hazardous Materials Regulation and submit a relevant accident information sheet (transport) for any materials (substances, preparations) and objects (e.g. goods, parts, technical devices, uncleaned storage goods), which bear health and environmental risks due to their nature, properties or condition and therefore require a special treatment with regards to packaging, transport, storage, handling and waste disposal due to applicable regulations.

In case of changes of the materials or the legal situation you will immediately submit updated data and information sheets to us.

10.4 You will meet the requirements of the REACH (Registration, Evaluation and Authorisation of Chemical Substances) regulation as amended from time to time in order to ensure a proper and consistent quality of the contractual products.

11.0 Disclaimer

We are liable for a wilful and/or gross-negligent behaviour of our management bodies, executive officers and servants only, except in case of personal damages according to § 309 no. 7a of the German Civil Code.

12.0 Protection provisions

12.1 If any provision of the present General Terms of Purchase should be invalid, all remaining provisions herein shall remain in full force and effect.

12.2 You are not entitled to assign the order or material parts of the order to third parties without our prior written agreement. If we agree to an assignment, you remain jointly and severally liable.

12.3 Both contract partners agree to utmost care with regards to data exchange and data processing in the context of their cooperation and to apply the best possible protective measures to ensure a comprehensive data security.

We are entitled to collect, process and use any data received in connection with the contract performance according to the Federal Data Protection Act.

12.4 Unless agreed otherwise, the place of performance for the delivery obligations is the delivery address and/or place of use requested by us. The place of performance for all other obligations of the parties hereto shall be Bingen am Rhein.

12.5 If you cease to perform payments, a preliminary liquidator is appointed, your business assets are subjected to insolvency proceedings or credit note or cheque complaints are filed against you, we are entitled to withdraw from the contract or any part thereof without giving rise to any claims against us.

12.6 The contract language is German. If the contract parties use any other languages, the German wording shall apply.

12.7 If you are a professional merchant, the place of jurisdiction is Bingen am Rhein. We do however reserve the right to file our claims at any other admissible place of jurisdiction.

12.8 In addition, the present contract is solely subject to German law with the Uniform Law on the International Sale of Goods as of April 11th 1980 being excluded.