

Document

General Terms and Conditions

For: Contracting partners of Digital Media Distribution AG

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Content: This document stipulates the General Terms and Conditions of Business between Digital Media Distribution AG and its contracting partners.
It replaces all previous General Terms and Conditions of Business.

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Scope

These General Terms and Conditions of Business (hereinafter referred to as GTC) apply to all orders placed with Digital Media Distribution AG (hereinafter referred to as DMD2) by customers in Switzerland and abroad.

By placing an order, the customer is accepting these GTC and the current DMD2 price lists. Any GTC of the customer will not be binding and will not be applied. The right to make other written agreements is reserved. The conditions for the provision of streaming services are stipulated in the separate "Service Level Agreement (SLA) for DMD2 Streaming Services".

For questions concerning **personal data protection**, we refer to our privacy policy, which can be found at <https://DMD2.com/en/privacy>.

Customer's right of disposal

By placing an order, the customer is confirming that:

- It is entitled to place an order and holds all the necessary rights of use and processing (right to make changes, right of reproduction, etc);
- It enjoys the full right of disposal of the material supplied and that said material is free of material and legal defects or third-party rights;
- Execution of the order does not infringe contractual, statutory or official regulations.

Subject to other written agreements, DMD2 will assume that customers placing a joint order each hold the same rights and powers.

The customer will indemnify DMD2 against all claims by third parties which are asserted in connection with the placing of the order. Should DMD2 incur a direct or indirect loss (e.g. compensation, business interruption, court and/or attorney's costs), the customer must bear said loss.

Prices

The DMD2 price list valid on the date on which the order is placed will govern the calculation of prices, subject to individual written pricing agreements or quotations in the form of offers by DMD2. Price information provided by telephone will only be valid when confirmed in writing.

Should more than six months elapse between placing the order and delivery or performance of the service, DMD2 will be entitled to calculate prices on the basis of the price list valid at the time of delivery or performance, in the absence of any individual written price agreements.

In the absence of any written agreement to the contrary, prices are net (excluding VAT). The customer may be invoiced for services ordered and appointments booked which are subsequently unused, allowing for any cost savings.

Travel costs and expenses

In the absence of any agreement to the contrary, travel costs will be invoiced in accordance with the price list valid on the date on which the order was placed. Travel expenses, all additional costs and fees and charges of any nature will be charged separately, at cost.

Terms of payment, due date and preclusion of offsetting

In the absence of any other written agreement, all invoices will be due for payment (without deduction) within thirty days of date of invoice. After the payment period has expired, DMD2 will be entitled to demand 5% interest for late payment on the balance payable, without further notice.

Any complaints or shortcomings will not entitle the customer to reduce or withhold payments due to DMD2.

DMD2's total claims will be due prematurely and immediately in cases of breach of contract, a change in the customer's business structure or a major decline in the customer's financial situation, particularly in cases of: arrears of payment or delay in respect of other obligations, returned cheques or protested bills of exchange, insolvency and bankruptcy proceedings.

The client may only offset undisputed counter-claims or counter-claims which have the force of law.

Delivery, appointments, involvement of third parties

DMD2 will always endeavour to meet its stated and carefully calculated delivery dates even if unforeseen difficulties should occur, but DMD2 cannot guarantee this and will not accept any liability. This is also expressly applicable to force majeure and strikes.

Compliance with delivery dates and deadlines requires that the customer fulfils any obligations incumbent upon it. Subsequent amendments to orders or delayed deliveries by the customer will entail a corresponding extension of delivery periods and postponement of deadlines.

A failure to comply with delivery periods and deadlines will not entitle the customer to cancel the contract, refuse to accept delivery or demand compensation. DMD2 will be entitled to have the order executed by third parties, in whole or in part.

Customer's obligation to co-operate

The client expressly undertakes to:

- designate the necessary contacts;
- cooperate in specifying the working instructions;
- cooperate in supervising and inspecting the services;
- provide simple access to data and workstations, if necessary for the performance of services;
- carry out intermediate tests relevant to the process;
- make intermediate decisions;
- provide the necessary hardware and software, if necessary for the performance of services;
- make project staff available and cooperate in project management;
- insure the materials entrusted to it in full;
- inform the proprietors of other rights of these GTC;

- and to copy the corresponding (digital and analog, etc) media before transfer to DMD2 for processing purposes, at its own expense, and to keep the copy until the order has been completed.

The costs of delays and additional outlay attributable to shortcomings in fulfilment of cooperation obligations must be borne by the customer.

Complaints and guarantee

DMD2 guarantees the careful conduct of business with which it has been entrusted. Should the law of contract for work and labour be applied, rectification of shortcomings will be restricted to refinishing. Any shortcomings must be notified in writing immediately or no later than seven days after delivery of the material.

The customer is not entitled to assert claims which exceed the right to refinishing. In particular, DMD2 cannot accept liability for losses incurred by the customer or third parties (as a result of delay, loss of production, claims by third parties, etc).

The customer bears the burden of proof of the freedom of the materials delivered from defects. Should refinishing by DMD2 not succeed within a reasonable period, the customer will be entitled to a reasonable reduction in payment or may cancel the contract. DMD2's liability for defects will lapse if the customer modifies the materials, or commissions third parties to do so, without the consent of DMD2 .

Any claims by the customer under guarantee will be time-barred when six months have elapsed since delivery of the material or performance of the service performed. Should the material be processed by a third party prior to acceptance by the customer, said third party must examine the material before commencing work and notify DMD2 immediately in writing of any complaints, otherwise any guarantee by DMD2 will lapse.

Liability

DMD2 will be liable for proper skilled work by DMD2 employees and contractors. The customer will bear the risk arising from any circumstances for which DMD2 is not responsible. If services by third parties (support staff and agents) are used, DMD2 will be liable to the customer to the extent to which said third parties bear liability to DMD2 .

Any further liability on the part of DMD2 is expressly precluded. The cost of any damage to items provided by the customer will be borne by the latter, unless DMD2 has caused it by gross negligence or deliberate intent. DMD2 will not be liable for defects in materials provided by the customer.

DMD2 will be liable for any culpable losses of, damage to and deletions of materials transferred to it for processing, initially restricted to restoration or replacement of the original material, if this is possible on the basis of negatives, copies or other original material of the customer. This does not apply to damage suffered during carriage and storage. Should restoration or replacement not be possible, DMD2 will only be liable for the replacement value of the raw material. Any further liability is precluded.

Copyright and rights of use, transfer of rights

Should, within the scope of the order, work be created or jointly created by DMD2 which is protected by copyright, the customer will be granted the necessary rights of use in the form of a single licence, within the scope of the intended purpose of the order. Any copyright created by DMD2 will only be transferred to the customer after the settlement of all claims.

DMD2 is entitled to sign its work on the customer's websites.

The following applies to the use of copyright music content procured by DMD2 streaming services:

- The streamed music channel may only be used for performance purposes and may not be made available to private users of the Internet (no use as web radio for individuals);
- The streaming services are intended solely for customers of DMD2 and must not be made available to third parties.

Right of lien

The following rights granted and transferred to DMD2 are for the purpose of securing all the receivables existing or arising from the business relationship between the customer and DMD2 until they have been discharged in full. DMD2 is entitled to exercise such rights of lien by sale by private contract and without cancelling the contract. Should bills of exchange and other bills be accepted from customers, they will only be deemed discharged when finally redeemed in full for cash. The customer may not use items underlying rights of lien (including receivables and rights) for the purpose of finance, assignments of collateral or security or pledges outside the ordinary scope of business. The customer must notify DMD2 immediately of distraint and other circumstances which endanger rights of lien.

DMD2 may inform third parties of its rights of lien. On request, the customer must send DMD2 documents which affect the former's rights of lien and grant it appropriate access to records.

1.1 Reservation of title

DMD2 reserves the right to retain title until full settlement of its claims for all the materials and results which it has delivered. The customer authorizes DMD2 to make a corresponding entry in the appropriate title retention register.

1.2 Retention of title

DMD2 reserves the right to exercise the commercial right of retention of material placed at its disposal by the customer to secure its receivables.

Amendments to the contract

Subsidiary agreements, additions and amendments to an order must be in writing. The same applies to a waiver of the requirement for the written form. Declarations by DMD2 (quotations, deadline confirmations etc.) must always be in writing to be effective.

Place of fulfilment

In the absence of any agreement to the contrary, only the head office of DMD2 in Kehrsatz, Canton Berne, will be deemed the place of fulfilment of any obligations arising from the business relationship with DMD2.

Severability clause

Should any provision of these GTC or any provision in other agreements between DMD2 be or become ineffective, the effectiveness of all the other provisions or agreements will remain unaffected.

The parties are obliged to replace an ineffective or impractical provision by one which implements the financial or artistic intent of the ineffective or impractical provision as closely as possible.

Court of jurisdiction, applicable law

The legal relationship between DMD2 and the customer is subject only to Swiss law, to the exclusion of its rules on the choice of law and any international treaties (e.g. the United Nations Convention on Contracts for the International Sale of Goods).

Validity

These General Terms and Conditions of Business will come into effect on 21 June 2023 and replace all previous GTC of Digital Media Distribution AG.