

## General Terms and Conditions of Delivery and Payment of Pebble Entertainment GmbH

### 1. Area of Application

1.1 These general terms and conditions of delivery and payment apply to all current and future agreements concerning deliveries and other services between the purchaser and Pebble Entertainment GmbH, unless otherwise any modifications or exclusions have been expressly agreed in writing. The purchaser's terms and conditions of purchase shall only apply, if accepted by us in writing for the corresponding agreement. Our terms and conditions are deemed to have been accepted upon receipt of our deliveries and services. These terms and conditions also apply for all future business relationships, whether such terms and conditions are being expressly agreed again or not.

1.2 All agreements made between the purchaser and Pebble Entertainment with regards to the performance of purchase agreements, are included in writing in these terms and conditions and in the order confirmation submitted by Pebble Entertainment.

### 2. Offer and Conclusion of Agreements

2.1 Offers made by Pebble Entertainment are always without engagement and non-binding.

2.2 All information in printed matters (e.g. price lists, brochures), in quotations, electronic media or included on Internet pages by Pebble Entertainment as well as documentations pertaining to an offer, like illustrations, descriptions, drawings, dimensional and weight information, other technical specifications and referenced DIN, VDE or other operational and general standards and samples are only roughly decisive unless expressly specified as binding.

2.3 Orders submitted by a purchaser require a written confirmation by Pebble Entertainment to be binding.

2.4 If an order is to be qualified as an offer according to §145 BGB (German Civil Code), Pebble Entertainment is entitled, at its own option, to accept this order by submitting a written order confirmation or delivering the goods within 4 weeks.

### 3. Payment Conditions

3.1 All prices are indicated in Euro unless agreed otherwise. The prices are "ex works", including packaging, freight and postage. The prices are net of VAT at the applicable legal rate.

3.2 Unless agreed otherwise, prices are due net upon the purchaser's receipt of the invoice. Payments shall be deemed to be made only after Pebble Entertainment can dispose of the corresponding amount. Drafts and checks are accepted on account of performance and shall be deemed as payments after their encashment only. Discount and draft fees are charged to the purchaser and to be paid immediately by the latter. Pebble Entertainment is not responsible for the submission, objection, notification and return of the draft in due time in case of a rejected encashment.

3.3 Notwithstanding §284 Sec. 3 sentence 1 BGB (German Civil Code) it is hereby agreed that a purchaser shall be deemed in default if a purchase price falls due and the purchaser fails to pay subsequently to a reminder, a suit for performance or a court order. If a calendar period has been determined for the performance, the purchaser shall be deemed in default immediately and without further notice if he fails to pay in due time. If a payment due from the purchaser is delayed, Pebble Entertainment is entitled to charge an interest of 8% above the base rate of the European Central Bank (EZB) as from the due date. Pebble Entertainment is entitled to provide evidence of higher damages. In case of a delay, all other claims shall become payable immediately without any further formal notice from Pebble Entertainment to the purchaser.

3.4 The purchaser is only entitled to retain or set-off payments against counterclaims to the extent that such counterclaims are undisputed and legally valid or have been accepted by Pebble Entertainment. In addition, the purchaser is only entitled to perform his retention right, if his counterclaim is undisputed or legally valid and is based on the same contract relationship.

3.5 Pebble Entertainment is entitled to assign its trade receivables for financing purposes.

3.6 A delayed payment or threat to the claims of Pebble Entertainment due to a deterioration of the purchaser's credit standing entitle Pebble Entertainment to immediately render payable all claims from a business relationship for the benefit of a supplier or demand guarantees independently from the time to maturity of a draft. In this case, the supplier is entitled to perform deliveries against prepayments or guarantees only.

3.7 For deliveries and services provided to a purchaser in a foreign country it is deemed as expressly agreed that all legal and extrajudicial law costs incurred by Pebble Entertainment due to a delayed payment of the purchaser will be charged to the purchaser.

### 4. Delivery and Service Terms

4.1 Delivery terms and dates are only binding when expressly agreed in writing. The start of the delivery term indicated by Pebble Entertainment requires that all commercial and technical issues between the contract parties have been resolved and that the purchaser has met all of his obligations as e.g. the submission of the required authority certificates or permissions or prepayment obligations. Otherwise, the delivery term will be extended accordingly. This does not apply in case of delays due to a default by Pebble Entertainment.

4.2 The delivery term is met when the object of delivery has left the site of Pebble Entertainment or the readiness for shipment has been notified before the expiry of such term. In case of a required acceptance – with the exclusion of a rejected acceptance for a just cause – the acceptance date is decisive. In case of industrial action and in particular strikes and lockouts as well as in case of unpredictable events occurring without a default of Pebble Entertainment, as e.g. Acts of God (Force Majeure), authority actions, delayed production of vendor parts due to a reason not to be charged to Pebble Entertainment, to the extent that such hindrances have an evidenced significant effect on the production of delivery of the object of delivery. Such circumstances cannot be charged to Pebble Entertainment even when they have occurred during an already existing delay. Pebble Entertainment will notify the beginning and end of such circumstances as soon as possible.

4.3 If Pebble Entertainment should culpably fail to meet an expressly agreed term or is in default due to other reasons, the purchaser has to grant Pebble Entertainment a reasonable period of grace beginning on the date of the Pebble Entertainment's receipt of the written formal notice or, in case of a determined calendar period, upon the expiry of the latter, with refusal to accept performance. Upon effectless expiry of such period of grace, the purchaser is entitled to withdraw from the contract.

4.4 Pebble Entertainment is liable according to legal prescriptions

to the extent that a purchase contract is a firm deal in terms of §361 BGB (German Civil Code) or §376 HGB (German Commercial Code).

4.5 Pebble Entertainment is liable towards the purchaser for a delayed delivery according to legal provisions, if the delayed delivery is caused by wilful contract violation or a violation due to gross negligence by Pebble Entertainment. Pebble is responsible for any defaults of its agents or servants. Pebble Entertainment's liability is limited to the predictable typically occurring damage.

4.6 If the delayed delivery is only due to a breach of a non-essential breach of contract, the purchaser is entitled to charge a lump-sum indemnification for delay for every full week at an amount of 3% of the delivery value. The total amount of such indemnification may in no case exceed 15% of the delivery value.

4.7 Pebble Entertainment is at any time entitled to perform partial deliveries or partial services, if reasonable to the customer.

4.8 In case of a delayed acceptance by the purchaser, Pebble Entertainment is entitled to claim an indemnification for the resulting damage. In case of a delayed acceptance the risk of accidental deterioration or accidental loss passes to the purchaser. If the purchaser fails to fulfill his obligation to accept the ordered goods, resulting in damages incurred by Pebble Entertainment, then Pebble Entertainment is entitled to claim 15% of the agreed purchase prices (net of VAT) as damages without further evidence. This amount is to be increased if Pebble Entertainment provides evidence of a higher damage. This amount is to be reduced or shall be omitted if Pebble Entertainment provides evidence that a significantly smaller damage or no damage at all has occurred.

### 5. Transfer of Risk – Shipment / Packaging

5.1 Packaging and shipping are made in good faith without any further liability of Pebble Entertainment. Pebble Entertainment will endeavour to observe the customers' wishes and interests concerning the type and routing of the shipment. Any additional costs resulting thereof will – even in case of an agreed free delivery – be charged to the customer.

5.2 Transport packagings and all other packagings prescribed by the packaging regulation other than pallets cannot be returned to Pebble Entertainment. The purchaser is responsible for the packaging disposal at his own cost.

5.3 If the shipment is delayed upon request or due to a default of the customer, Pebble Entertainment will store the goods at the expense and risk of the customer. In this case the notice of readiness for shipment shall be deemed as shipment.

5.4 Upon request of the customer and at the expense of the latter, the supplier can insure the consignment against all insurable risks.

### 6. Guarantee and Liability

6.1 The purchaser has to control the received new goods immediately upon arrival for completeness, transport damages, defects and characteristics. The purchaser has to notify Pebble Entertainment immediately in writing about any visible defects and transport damages. In addition the purchaser has to notify Pebble Entertainment about any latent defects immediately upon detection.

6.2 The guarantee rights of an entrepreneur require that he has fulfilled his examination and approval obligations according to §377 HGB (Clause 6.1) (Commercial Code). If any complaints should occur despite greatest diligence, then, according to §377 HGB – visible defects must be claimed immediately but in no case later than 14 days from the receipt of the goods and latent defects must be claimed immediately upon their detection; otherwise any guarantee claim is excluded. In case of delivered goods with defects that already existed at the time of the transfer of risk, Pebble Entertainment will – subject to a notice of defects submitted in due time – repair or replace the goods at its sole discretion. Pebble Entertainment is always entitled to an appropriated period of grace to make good such defects. In case of a failed work, the entrepreneur is entitled to withdraw from the contract or to reduce the compensation. The entrepreneur is in no case entitled to demand an indemnification of operational expenses. The guarantee period for new goods is one year from the transfer of risk.

6.3 In addition any guarantee for the use of entertainment electronics products is excluded for defects resulting from bad receiving quality, adverse receiving conditions or defective antennas. Interferences of the reception and the operation due to external influences, subsequent changes of the reception conditions, damages through inappropriate or defective batteries inserted by the purchaser and defects like e.g. contaminated magnetic heads or damages through inappropriate handling of stylus needles are excluded from the guarantee.

6.4 The guarantee period is 1 year. The period of limitation begins upon the delivery of the goods at the contract partner and/or acceptance of the goods by the contract partner.

6.5 According to the legal provisions, Pebble Entertainment is obligated to accept returned goods and/or to reduce (abatement) the purchase price also without the otherwise required appointment of date, if the customer of the purchaser as the consumer of the sold new chattel (purchase of consumer packaged goods) was entitled to claim from the purchaser the redemption of the goods or the reduction of the purchase price (abatement) due to a defect or a right of recourse resulting thereof is held against the purchaser. In addition, Pebble Entertainment is obligated to reimburse the purchaser's expenses, particularly the transport, road, labour and material costs, which the purchaser has to bear in relation to the end consumer in the context of a rework due to a defect existing at the time of the transfer of risk to the purchaser. This right is excluded if the purchaser has failed to rebuke a defect in due time according to clause 6.1.

6.6 The obligation under clause 6.5 is excluded in case of a defect due to advertisement statements or other contractual agreements not made by Pebble Entertainment or if the purchaser has granted a special guarantee to the end consumer. The obligation under 6.5 is also excluded if the purchaser himself is due to legal provisions not obligated to grant any guarantee rights to the end consumer or has failed to file such reproval against a claim filed against him. This also applies if the purchaser has granted to the end consumer guarantees exceeding the legal requirements.

6.7 Without prejudice of paragraph 4 of these terms and the following limitation of liability, Pebble Entertainment assumes an unlimited liability for personal damages due to a negligent or wilful neglect of duty of Pebble Entertainment or its legal representatives or servants as well as for damages covered by the product liability law and damages resulting from a wilful or grossly negligent contract breach as well as bad faith. To the extent that Pebble Entertainment has provided a guarantee for the nature or durability of a contract subject or parts thereof, Pebble Entertainment will also be liable under such guarantee. Pebble Entertainment is only to be held liable for damages resulting from a lack of the guaranteed characteristics or durability but not

occurring directly at the contract subject, if the risk of such damage is covered by the guarantee of nature and durability.

6.8 Pebble Entertainment is also liable for damages resulting from a wilful or grossly negligent conduct of its legal representatives, executives or simple servants. In case of the contract partner being an entrepreneur, Pebble Entertainment will with regards to its simple servants only be liable for a wilful conduct unless otherwise provided for under 6.9 or 6.10.

6.9 Pebble Entertainment is also liable for damages resulting from simple negligence to the extent that such negligence concerns the breach of such contractual obligations whose fulfillment is of significant importance for achieving the contract purpose (cardinal obligations). Though, Pebble Entertainment is only to be held liable, if such damages are predictable and related to the contract. Pebble Entertainment is not liable for a slightly negligent breach of secondary obligations that are not essential for the contract. The limitations of liability included in the sentences 1 to 3 also apply as far as Pebble Entertainment's liability for its legal representatives, executives and other servants is concerned.

6.10 Any further liability of Pebble Entertainment is excluded without regard to the legal nature of the filed claim. As far as the liability of Pebble Entertainment is excluded or limited, such exclusion or limitation also applies to the personal liability of the clerks, employees, staff, agents and servants of Pebble Entertainment.

6.11 Claims for indemnification of the purchaser due to a defect prescribe 1 year after the date of delivery of the purchase object. This provision does not apply in case of a wilful or grossly negligent conduct of Pebble Entertainment or in case of personal damages and injuries caused by Pebble Entertainment.

### 7. Retention of Title

7.1 Pebble Entertainment reserves the retention of title right for goods and delivery objects provided by it up to the full payment – in case of a payment by check or draft up to the encashment – of all of its claims towards the purchaser resulting from a business relationship (reserved goods); with all deliveries in this case being considered as a coherent delivery transaction. In case of current invoices, the retention of title serves to secure its balance claims.

7.2 The purchaser is not entitled to mortgage or assign the reserved good as for hedging. In case of garnishments as well as attachments or other orders imposed on the reserved goods by third parties, the purchaser has to inform Pebble Entertainment immediately. The purchaser may only resell or use in any other way the reserved goods in his normal course of business as long as his payments are not delayed. The purchaser hereby assigns all claims (including all balance claims from current accounts with regards to the reserved goods arising out of the resale or any other cause in law (insurance, illegal actions)) to Pebble Entertainment. Pebble Entertainment revocably authorizes the purchaser to collect any debts assigned to Pebble Entertainment for his invoices on his own behalf. This collection authorisation can be revoked at any time if the purchaser fails to fulfill his payment obligations in due time. The purchaser is not entitled to assign this claim – also not for the purpose of a debt collecting through factoring, unless the obligation of the factor to directly bring about the consideration similar to the amount of the claims to Pebble Entertainment to the extent of Pebble Entertainment has any claims towards the purchaser, is founded.

7.3 Any processing or modification of the reserved goods by the purchaser is made on behalf of Pebble Entertainment. If the reserved goods are processed with other products not owned by Pebble Entertainment, the latter always obtains the co-ownership to the new goods in proportion of the value of the reserved goods (final invoice amount including VAT) as compared to the processed goods at the time of processing. The goods resulting from the processing are subject to the same conditions as the reserved goods. If the reserved goods are mixed inseparably with other products not owned by Pebble Entertainment, the latter always obtains the co-ownership to the new goods in proportion of the value of the reserved goods (final invoice amount including VAT) as compared to the mixed goods at the time of mixing. If the mix is performed in a way that enables the goods of the purchaser as the main goods, it is agreed that the purchaser assigns to Pebble Entertainment a proportional co-ownership. The purchaser stores the resulting sole property or co-property for Pebble Entertainment.

7.4 In case of a third party access to the reserved goods and in particular garnishments, the purchaser agrees to inform the third party about the property rights of Pebble Entertainment and to inform the latter immediately in order to allow Pebble Entertainment to enforce its property rights. If and insofar as the third party is unable to indemnify Pebble Entertainment for its resulting legal and extrajudicial costs, the purchaser is liable for such expenses.

7.5 If the purchaser or a third party files for an insolvency proceeding on the purchaser's assets or the opening of such proceeding is rejected due to a lack of value, Pebble Entertainment is entitled to prohibit the handling, processing and sale of the reserved goods and to withdraw from the contract, demanding the immediate return of the reserved goods.

7.6 Pebble Entertainment agrees to release the securities to which it is entitled upon request if the purchaser or a creditor of the purchaser to the extent, to which the realizable value of its securities exceed the claims to be secured by more than 10%. Pebble Entertainment may select the securities to be released at its sole discretion.

### 8. Place of Performance, Jurisdiction and applicable Law

8.1 The registered office of Pebble Entertainment is the place of performance and jurisdiction for deliveries and payments (including check and draft claims) as well as for any legal disputes between the parties arising out of any purchase contracts closed between the parties. Pebble Entertainment is also entitled to sue the purchaser at his registered residence or office.

8.2 The relationships between the contract parties are exclusively subject to laws of the Federal Republic of Germany. The standard laws on international sales as well as on international purchase contracts are not applicable.

### 9. Final Provisions

9.1 The purchaser is not entitled to assign his claims arising out of the purchase contract without the permission of Pebble Entertainment.

9.2 If any provision of these general terms and conditions of delivery and payment should be or become invalid or unenforceable, the remaining provisions of these general terms and conditions of delivery and payment remain valid. In this case, the parties agree to replace such invalid or unenforceable provision through a valid and enforceable provision that corresponds to the economic and ideal to the extent permitted by law.