

## **General Terms and Conditions of Supply and Delivery of Mettenmeier GmbH, Business Unit Mettenmeier Mobile Solutions, 12/2007**

### **1 Scope**

Sales, deliveries and other services of Mettenmeier GmbH (hereinafter referred to as "MM") shall be effected exclusively in accordance with the following General Terms and Conditions of Supply and Delivery (hereinafter referred to as "delivery terms"), to be accepted by the purchaser on placement of the order or acceptance of the delivery. They shall also be valid for all future transactions with the purchaser. The validity of deviating and supplementary business conditions of the purchaser shall be excluded, even if they have not been explicitly contradicted by MM.

### **2 Conclusion of contract**

The quotations of MM shall be without obligation. A Contract shall not be deemed as concluded until the order has been confirmed in writing by MM and shall be based exclusively on the content of the order confirmation and these delivery terms. Any oral agreements or assurances shall require written confirmation by MM for their validity.

MM reserves all the rights to drawings, models, templates, patterns, similar items and all other sales documentation. They shall not be made accessible to third parties and shall be returned to MM immediately upon request.

### **3 Time-limits, time-schedules, transfer of risk**

Delivery dates and delivery deadlines shall only be binding if they have been confirmed in writing by MM and the purchaser has duly notified MM of, or provided MM with all the information and documentation required for performing the delivery, and has rendered any agreed advance payments in accordance with the agreement. Any agreed time-limits shall commence on the date of the order confirmation. In the case of any additional, or extended orders placed at a later time, the time-limits shall be extended accordingly.

Unforeseeable events, such as force majeure, war, natural catastrophes and any other unavoidable events, as well as those beyond the sphere of influence of MM, and those for which MM shall not be responsible for, shall exempt MM from its obligation of timely delivery or performance, for their duration. Any agreed time-limits shall be extended by the duration of the disturbance; the purchaser shall be notified accordingly at the time of commencement of the disturbance. Should the duration of the disturbance not be foreseeable, or should it last longer than two months, each party shall be entitled to withdraw from the Contract.

Should MM be in default with a delivery or performance time-limit, the purchaser shall not be entitled to withdraw from the Contract until a legally reasonable final deadline set by the purchaser, has lapsed without any success.

Should the purchaser default in taking delivery, or violate any other obligations to co-operate, MM shall be entitled to store the goods in an appropriate manner at the risk and expense of the purchaser. MM shall be entitled to withdraw from the Contract, notwithstanding its other rights, if the purchaser fails to adhere to a legally reasonable final deadline set for acceptance of the goods.

MM may supply partial deliveries on justified grounds.

Deliveries shall be ex works. Insofar as no regulation has been made by the purchaser, the consignment shall be sent by a reasonable form of shipment in the normal packing.

The risk shall transfer to the purchaser upon handing over the delivery item to the forwarding agent or to the purchaser itself. Should the receipt or shipment be delayed for reasons the purchaser shall be responsible for, the risk shall pass to the purchaser on the day of notification of the readiness for dispatch of the delivery item.

### **4 Prices, terms of payment**

Should the contractual parties not have agreed to a specific price, the price shall then be determined according to the valid price list of MM at the time of concluding the Contract.

All prices shall be valid from MM ex works and shall exclude the respective, legal turnover tax, any customs duties and also the packing and shipment costs that shall be calculated separately. MM may send the goods carriage forward. Insurances shall only be taken out at the request and expense of the purchaser.

Each invoice shall be due for payment within 30 days of the invoice date without any deduction. Payments of the purchaser shall not be deemed as rendered until MM is able to draw on the amount.

Should the due date be exceeded, MM shall be entitled, subject to evidence of lesser damage by the purchaser, to request overdue payment interest amounting to 4% per annum above the base lending rate of the European Central Bank. The assertion of further damage caused by delay shall remain unaffected thereby.

Bills of exchange and cheques shall only be accepted for fulfilment if specially agreed and shall be without charge and expenses for MM. The purchaser shall only be entitled to offset if his counterclaim is undisputed or final and absolute.

The purchaser shall only be authorised to assert a right of retention if his counterclaim is based on the same Contract and is undisputed, or final and absolute.

If, after concluding the Contract, MM should become aware of a considerable deterioration in the pecuniary circumstances of the purchaser, (e.g. because the purchaser is in default of payment), MM shall be authorised to render any deliveries or services that are still outstanding by way of

advance payment or security only; should these also fail to be settled after expiry of a reasonable final deadline, MM may withdraw from the Contract, wholly or in part, irrespective of other rights.

For a net ordering value of less than € 50.00 MM reserves the right to charge a reduced-quantity surcharge of € 10.00, or dispatch the goods carriage forward.

## **5 Warranty, obligation to examine**

MM shall guarantee that the delivered goods are without any defects and have the promised properties, if applicable. Any data in catalogues, price lists and other information left to the purchaser by MM, and any data describing the product shall in no way be understood as guaranteed properties.

Warranty rights of the purchaser shall require that the purchaser shall examine the delivery item after receipt and inform MM immediately in writing of any defects, at the latest however within two weeks of receipt; MM shall be informed in writing of any hidden defects immediately after their discovery.

In the case of giving notice of defects, MM shall have the right to inspect and examine the rejected delivery item. The purchaser shall grant MM the time and opportunity necessary for doing this. MM may also request the purchaser to return the rejected delivery item to MM at the expense of MM. Should a notice of defects given by the purchaser prove unjustified, he shall then be obligated to reimburse MM all the expenses incurred in this connection - e.g. travel and assembly expenses or shipping costs.

MM shall remedy any defects under guarantee at its own discretion, i.e. by way of improvement or replacement, without charge for the purchaser. The purchaser shall allow MM the time and opportunity necessary for the improvement or replacement. Only in urgent cases where operational safety is endangered, or for warding off excessive damage, or if MM should be in default for remedying the defect, the purchaser shall have the right to remedy the fault itself or have it remedied by a third party after having informed MM immediately thereof, and to request MM for reimbursement of the necessary costs.

The purchaser undertakes to use the devices only for the purpose intended by MM and to observe the ambient conditions and requirements specific to the devices in conformity with the guidelines in the documentation on the devices. Any improper handling of the devices by the purchaser shall result in exclusion of the warranty. This shall be valid similarly for any replacement devices supplied. Any change of battery necessary for technical reasons, cannot be carried out without charge.

There shall be no free replacement of construction parts showing signs of use due to normal wear.

The purchaser shall be personally responsible for replacing or restoring any data and programs that have been lost or changed, and also for protecting its confidential data. Upon request, MM shall assume the data protection at a special charge for the service.

Prior to shipping the device(s), the purchaser undertakes to change any passwords that have possibly been installed and are necessary for unrestricted access, into temporary passwords and include these in the consignment.

The purchaser shall pack the device(s) in due manner, attach a short description of the fault and send it(them) to MM carriage paid. The cost for the return consignment shall then be borne by MM.

Arbitrary repairs, extensions and alterations as well as the removal and installation of components, improper handling, or changes made to the device by unauthorised personnel who have not been trained by MM, shall result in loss of the claim to warranty.

The title to the parts replaced by MM shall pass to the ownership of MM.

The devices shall be examined, repaired and serviced exclusively at the location in Paderborn.

MM shall not assume any responsibility for damages arising due to unsuitable or improper use, incorrect assembly, incorrect commissioning, incorrect changes or maintenance work conducted by the purchaser or third persons, natural wear, incorrect handling, faulty installation, unsuitable equipment, alternative materials implemented by the purchaser or third persons, or deficient electromechanical or electrical influences, insofar as the damage has not been caused by MM. Neither shall the warranty obligation cover any defects caused by improper handling, storage or the like, at the purchaser's location.

The costs for material, insurance and labour incurred for the purpose of improvement or replacement shall be borne by MM insofar as the defect objected to by the purchaser is acknowledged.

Should a defect covered by the warranty fail to be remedied by improvement or replacement, the purchaser may, at his own discretion, either cancel the contract relating to the deficient delivery item, or request a reasonable reduction in the price. The period of limitation for the warranty claim for the delivery item shall be for:

- devices or parts thereof for the colibri pen computers, 24 months,
- batteries, 6 months,
- for software as per a separate software license contract,
- repairs carried out for the respective repair coverage, 6 months.

The date of the transfer of risk shall also be authoritative for warranty claims for improvements not effected until after the delivery.

All other claims asserted by the purchaser shall be excluded.

## **6 Compensation for damage and limitation of liability**

MM shall be liable for compensation for damages

- (1) for damages caused by MM or persons employed by MM in performing an obligation, due to wrongful intent or gross negligence;
- (2) in the case of violation of essential contractual obligations due to ordinary negligence, but limited to the foreseeable damages typical for contracts;
- (3) in accordance with the provisions of the Product Liability Law, and any other compulsory, legal instructions;
- (4) in the case of damage due to defects caused by the lack of guaranteed properties, and for consequential damage due to those defects for which guarantees are particularly intended for protecting the purchaser against.

Should none of the case groups in Section 6.1 be fulfilled, MM shall not be liable to compensation.

Sections 6.1 and 6.2 shall be valid for all claims for compensation whatever the legal basis shall be, and particularly also for liability due to tortious acts, breach of contract and culpable conduct during contract negotiations.

The purchaser shall be obligated to take suitable measures for warding off and reducing damages.

## **7 Retention of title**

The delivered products shall remain the ownership of MM ("reserved products") until all claims asserted by MM arising from the business relationship with the purchaser have been settled.

In respect of open accounts, the retained title shall serve as security for the balance claim to which MM shall be entitled.

The purchaser shall only be permitted to sell reserved products in the ordinary course of business. The purchaser shall not be authorised to pledge the reserved products, nor transfer their ownership as security, nor effect any other disposals endangering the title of MM. The purchaser now already assigns MM the debt claim arising from the resale; MM now already accepts this assignment. Should the purchaser sell the reserved products after processing, or after joining, mixing or combining them with other goods, or together with other goods, the assignment of claim shall only be agreed to the amount of the part equivalent to the price agreed between MM and the purchaser, plus a safety margin of 10% of this price. The purchaser shall be revocably authorised to collect the debt claim assigned to MM on trust for MM in its own name. MM may revoke this authorisation and the entitlement to resale should the purchaser be in default with essential obligations, such as for example, its payment to MM.

A processing or transformation of the reserved products by the purchaser shall always be effected for MM. Should the reserved products be processed with other items, MM shall then acquire the joint ownership of the new item in the ratio of the value of the reserved products to the other processed items at the time of processing. The same shall be valid for the new item resulting from the processing as is valid for the products delivered under reserve.

Should the reserved products be joined together, combined or mixed with other items, MM shall then acquire the joint ownership of the new item in the ratio of the value of the reserved products to the other items at the time of joining, combining or mixing. Should the joining, combining or mixing take place in such a way that the item of the purchaser shall be viewed as the main item, it shall be deemed as agreed, that the purchaser shall transfer MM the pro rata joint ownership. The common property thereby resulting shall be held in safekeeping by the purchaser on behalf of MM. The purchaser shall provide MM all the requested information at any time on the reserved products or on claims that have been transferred accordingly to MM. The purchaser shall notify MM immediately of any access or claims of third parties to the reserved products, handing over the necessary documentation. The purchaser shall at the same time point out the retention of title of MM to third persons. The costs for warding off access and claims of this kind shall be borne by the purchaser.

The purchaser shall be obligated to handle the reserved products carefully for the duration of the retention of title.

Should the realisable value of the securities exceed the total claims of MM to be secured by more than 10%, the purchaser shall be authorised to request release.

Should the purchaser default with essential obligations such as payment to MM, MM may then take back the reserved products without prejudice to other provisions, and otherwise utilise them for satisfying other claims against the purchaser. In this case, the purchaser shall grant MM or the representative of MM immediate access to the reserved products and hand them over. Should MM request them to be handed over on the basis of this provision, this shall not be deemed as a withdrawal from the Contract, unless the consumer credit law should become applicable.

For deliveries to other legal systems in which the above regulation on the retention of title shall not have the same effect of providing security as in Germany, the purchaser shall do everything to provide MM the respective security rights immediately. The purchaser shall co-operate in all the measures, such as for example, registration, publication, etc., that shall be necessary and beneficial for the effectiveness and enforceability of such security rights.

At the request of MM, the purchaser shall be obligated to take out adequate insurance for the reserved products, to provide MM the respective evidence of the insurance and to assign MM the claims arising from the insurance contract.

## **8 Product liability**

Should the purchaser sell the delivery items unchanged or subsequent to processing, joining, mixing or combining them with other goods, the purchaser shall exempt MM in relation inter se from the product liability claims of third persons insofar as the purchaser shall be responsible for the fault giving rise to the liability.

## **9 Industrial property rights**

Should the purchaser stipulate in specific instructions, information, documentation, drafts or drawings as to how MM shall manufacture the products to be delivered, the purchaser shall guarantee that the rights of third parties, such as patents, utility patents and other protective rights and copyrights shall not be violated by MM. The purchaser shall exempt MM from all claims of third parties asserted against MM due to such violation.

## **10 General provisions**

Any amendments and supplementations to this Contract and/or these delivery conditions and side agreements shall require the written form. This shall also be applicable for changing this requirement for the written form.

Should any provision in this Contract and/or these sales conditions become ineffective, either wholly or in part, the validity of the remaining provisions shall remain unaffected thereby. The parties agree in this case, to replace the ineffective provision by an effective provision that shall come closest to the economic purpose of the ineffective provision.

Should the purchaser be a merchant who as such has been entered in the commercial register, a juristic person in public law, or a public separate estate, the exclusive place of jurisdiction for all disputes arising from this contractual relationship shall be Paderborn. This shall similarly be applicable should the purchaser not have its general place of jurisdiction in the Federal Republic of Germany, or if it should move its usual domicile abroad after concluding the Contract. MM shall however be authorised to institute proceedings against the purchaser at any other place of jurisdiction.

The law of the Federal Republic of Germany shall be valid excluding the UN law on sales (CISG).

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