

***THIS IS AN UNCERTIFIED TRANSLATION AND SHOULD ONLY BE SEEN AS A GUIDE. THE GERMAN GENERAL TERMS AND CONDITIONS ARE BINDING.***

## **General Terms and Conditions Stereoscopic Technologies GmbH – January 2010**

### **1. Scope**

- 1.1. The following General Terms and Conditions apply to all contracts between Stereoscopic Technologies GmbH, Talhofstrasse 30a, 82205 Gilching, (hereinafter referred to as “ST”) and the Customer apply also to all future contracts between ST and their Customers. The general terms and conditions of the Customer do not apply, unless, ST has explicitly agreed to them in writing.
- 1.2. The following General Terms and Conditions are exclusively valid for all contracts between ST and entrepreneurs and legal persons under public law, which within the scope of their business activities with ST, are entering legally binding relationships.

### **2. Offer and Conclusion of Agreement**

- 2.1. All quotations from ST are non-binding and non-obligatory, as long as they are not expressly seen as binding or contain specific terms of acceptance. Those documents belonging to a quotation (illustrations, drawings and the like), dimensions, time data and other specifications are only approximate and non binding, unless, they have been expressly defined in the offer as binding.
- 2.2. Customer orders are binding. These can be confirmed in writing within 4 weeks by ST or expedited. Only with a written order confirmation or immediate execution of an order does a legally binding contract come into effect.
- 2.3. Solely written concluded contracts are legally binding or a confirmation of order. Verbal agreements are not legally binding and are replaced by written contracts, as long as it is not explicitly agreed that the verbal agreement is legally binding.
- 2.4. Information from ST concerning items of contractual obligation (e.g. weights, measurements, serviceability, capacity, tolerance and technical data) as well as images thereof (e.g. images, drawings etc.) are only approximate, as long as they are used for the required purpose as stated in the contract. These characteristics are not guaranteed, but descriptions or characteristics of the obligation. Customary deviations and deviations stipulated by legal provisions or constituting technical improvements, as well as the replacement of components with adequate parts and modifications in design are permissible, insofar as they do not affect the application for the purpose stipulated in the contract.
- 2.5. All property and protected rights, in particular the right to apply for registrable rights to a contractual object and/or in connection with catalogues, drawings, illustrations or other documents handed over together with the quotation and its drawings, images, calculations, brochures, catalogues, models, tools and other documentation and aids (“materials”) are the property of ST. The rights to protected rights or rights eligible for protection shall be transferred for the type of use arising from the contract only and for the purpose stated by the Customer. In the event of unauthorised use of the materials supplied, the Customer shall be obliged to pay a conventional penalty amounting to 10 percent of the contract value, however no less than €750. Claims for compensation remain unaffected. ST is entitled to use or depict the services provided for advertising usage, in particular samples. Furthermore, ST reserves the right to use the company name on suitable areas.

### **3. Cooperation Obligations of the Customer**

- 3.1. In certain individual cases cooperation from the Customer is required. The Customer is obliged to cooperate fully and in time, especially on the due date, free of charge and make available relevant project related information.

- 3.2. If the Customer does not fulfill his cooperation obligations, ST has the right to set a reasonable grace period and after expiry of such, can withdraw from the contract or terminate the existing contract. In such a case ST has the right to claim the contractually agreed payment less the contractually agreed compensation. Possible claims for damages remain unaffected. Unaffected are claims from ST for compensation of additional expenditures resulting from absence of obligation to cooperate.
- 3.3. So far as the services of Customers are approved or legal or contractual obligation exists for authorization, the Customer is obliged to declare immediately the authorization, as long as the services are fulfilled in accordance with the contract. Acceptance shall be deemed, as long as it is not declared within 5 working days after delivery of service or explicitly rejected.

#### **4. Delivery and Service Time**

- 4.1. All services are ex works 82205 Gilching, Germany.
- 4.2. Stated delivery and realization dates are only approximate and not binding unless fixed dates have been agreed or confirmed upon. Contractual delivery times begin with the sending of the confirmation order, but not before the Customer has provided the documents, samples, images, authorizations or other preliminary work, especially advance payments etc.
- 4.3. Delivery and service delays due to force majeure and events which make delivery difficult or impossible, in particular, strikes, lock outs, administrative directives etc.. even if they occur at the suppliers shall extend the delivery period for the duration of such a disruption, as long as the hindrance can be proved to be influenced by the final completion or by the delivery of the delivered product. ST shall also then not be responsible for the aforementioned circumstances if they occurred during an already existing delay. As far as such events significantly hamper the service or are impossible and the hindrance is not of temporary duration, the Customer has the right to withdraw from the contract. Insofar as due to the delay of delivery or services the customer cannot be expected to accept the order, he may immediately with a written notice withdraw from the contract.
- 4.4. ST shall in all cases be entitled to premature performance and also, to a reasonable extent, to partial performance.
- 4.5. Is ST delayed regarding services and if a service is for whatever reason impossible, compensation for the Customer is limited to these General Terms and Conditions herewith.

#### **5. Prices and Conditions of Payment**

- 5.1. Quoted prices are for the service and delivery listed in the contract. Increased or special services are calculated separately.
- 5.2. All prices are ex works 82205 Gilching, Germany excluding packaging, VAT, postage and freight costs.
- 5.3. If the agreed prices are derived from the list price of ST, and shall the delivery occur more than 4 months after contract conclusion, the current list price applies.
- 5.4. As long as nothing else has been agreed upon, invoice payments are due within 10 days of receipt. After the 10 days the Customer is in default without requiring a reminder. In case of default in payment by the Customer, ST will be entitled to charge an annual rate of interest at 8% above the base interest rate in any case at least 10%. The enforcement of a higher interest rate and further damages in connection with default remain unaffected.
- 5.5. ST has the right despite otherwise stated by the Customer to directly calculate payments including older debts. The Customer shall be informed of the type of direct calculation.
- 5.6. Counter claims or retention of payments are only valid, if the claims of the Customers are not denied or if they are fixed legally.
- 5.7. Shall ST become aware after contract closure about conditions that would apply to substantially compromise the credit worthiness of the Customer and through which remittance for an open contractual agreement are jeopardised, ST is entitled to execute outstanding services only against advance payments or security services.

## **6. Contracts of Sale, Reservation of Property Rights, Safety Rights**

- 6.1. ST is entitled to the following reservation of property rights in order to protect all current and future claims from the current supplier relationship between the parties, all supplied services from ST shall remain the property of ST until full payment of all claims have been made. In the case of supply to a third party or further disposal of goods the Customer shall transfer all claims against the purchasing party to ST at this point. The same applies for other claims, apart from goods or regarding goods, e.g. insurance claims or claims resulting from unlawful acts by loss or destruction. ST hereby irrevocably authorises the Customer to collect in his own name the accounts receivable assigned to ST. ST shall be allowed to revoke direct debit mandates only in the event of exploitation. If a third party accesses the goods by way of enforcement, the Customer is obliged to immediately indicate the property of ST and to inform ST in order for ST to be able to enforce their property rights.
- 6.2. All safety rights shall be released pro rata, as long as their value is higher than 25 percent of the insured claim.
- 6.3. In the event of the Customer infringing the contract, by falling into arrears, ST is entitled to withdraw from the contract and to demand return of the goods under reservation.

## **7. Rental and Leasing Contracts**

- 7.1. The agreed period of usage of the contracted object is calculated from delivery, shipment or collection up until ST redelivers, but at least until the expiry of the agreed contract duration. Transport is seen as rental time. As long the contractual object is shipped before 12 pm or returned after 12 pm a full day shall be calculated.
- 7.2. The Customer is obliged to check the completeness and condition of the contractual object immediately after delivery and to confirm in writing any damages or impairments.
- 7.3. The Customer is obliged to handle the contractual objects with the care usual for commercial transactions and to insure at their own expense. Transfer to third parties without the permission of ST is prohibited.
- 7.4. After conclusion of the rental duration the Customer is obliged to return the objects or services provided to ST immediately at their own expense. All transport risks are borne by the Customer, even if ST carries out the transport on behalf of the Customer.
- 7.5. If the Customer cancels an order within 24 hours before the start of the rental duration, the Customer is obliged to pay ST a cancellation fee of 50% of the agreed compensation; the right of the Customer to prove less prejudice remain unaffected.
- 7.6. Is the delivered contractual product from ST not usable for a duration of more than 4 hours due to a defect which either the Customer or the agents are responsible for, ST is not entitled to any compensation for the duration of the disruption over and above 4 hours. In such a case the Customer is only entitled to withdraw from the contract if the reason for the business interruption cannot be resolved within a reasonable timeframe and which influence the interests of the Customer negatively.
- 7.7. Apart from the regulation in paragraph 12, ST is only liable in the case of limited delivery of products, if the Customer rebukes a defect and if ST does not resolve the defect within a reasonable time period. Liability for the duration up until the defect has been resolved is excluded as long as permitted by law and as long as there is no mandatory liability stated in paragraph 12.

## **8. Software Production**

- 8.1. With regard to software production contracts, the Customer is obliged to deliver to ST all relevant information, especially area of application, time, and location of the planned use of the software. ST will produce the programme based on the information received. The Customer is solely responsible for correctness of the information; ST is not obliged to verify such correctness. ST undertakes the guarantee that the software has no material defects which lessen or rescind the contractual usage of the software. The Customer is aware that it

is not possible using the state-of-the-art technologies to produce software that is fully free of defects.

- 8.2. ST will resolve within a reasonable period of time all those reproducible defects in software which the Customer has reported for which ST has responsibility for. The Customer is obliged to rebuke defects immediately in writing and in as much detail as possible. ST shall of their choice, render reworkings through fault recovery, by a new software version or ST has the possibility to avoid repercussions of the defect. A new software version is to be taken over from the Customer unless this leads to inadequate adaption and adjustment problems.
- 8.3. If a defect is attributable to incorrect information from the Customer, additional expenditure to resolve the defect shall be compensated separately.

## **9. Consultancy Services**

- 9.1. Services from ST that are of a consultancy nature are always seen as service contracts. A guaranteed success shall in this case not be warranted.
- 9.2. Unless agreed otherwise, ST grants the Customer with regard to deliverables a simple, non exclusive but unlimited right of use. All rights especially regulating moral, usage rights and copyrights remain with ST.
- 9.3. In so far as ST recommends the service of a third party, ST is not liable for any defects of this third party.

## **10. Warranty and Liability**

- 10.1. The warranty period is 1 year from delivery or so long as an approval is required, from approval.
- 10.2. The Customer is obliged after delivery to check immediately the contract conformity of the service. The service is seen as approved, if the customer after immediate and careful examination informs in writing obvious defects and other defects within 7 working days after the discovery of the defect or at the time when the defect by normal usage or close examination was discovered. On the request of ST the rejected goods shall be returned carriage paid. By legitimate defect claims ST shall compensate the cost of the most favourable method of shipment; this is not valid if the cost increases because the delivered product is situated at another location than the location for the use of the product.
- 10.3. By material defects of the product ST is obliged and has the right within a reasonable period of time to rework or replace the product. If the rework or replacement fails (impossible, unreasonableness, non acceptance or unreasonable delay) the Customer can withdraw from the contract or reduce the purchase price.
- 10.4. If a defect is attributable to default from ST, the Customer can request compensation under the conditions in paragraph 12.
- 10.5. Any warranty claims shall be cancelled if the Customer, without the approval of ST, changes or has changed by a third party the delivered product and through this the correction of the defect is impossible or unreasonable. In any case the Customer is liable for additional costs due to the changes in the correction of defects.
- 10.6. If there is an agreement to deliver used goods, this shall subsequently be without any warranty.
- 10.7. ST is not liable for the achievement of certain economic successes of the Customer and also does not take on any guarantee or warranty, as long as nothing has been contractually agreed.

## **11. Rights of Third Parties**

- 11.1. ST stands by in accordance with the requirements of paragraph 11, that the delivered product as long as it is used as stated in the contract and in any operating instructions, is free of third party rights.

- 11.2. If the product infringes protective rights of third parties ST will of its own choice and at its own expense a) replace the infringed product with a product which exhibits the required functionality and does not infringe the protective rights of third parties and/or b) purchase the required rights of the third party in order to repair the infringement, and/or c) to withdraw from the contract and to reimburse all payments from this contract.
- 11.3. By legal violations of products delivered by ST from other suppliers, ST of its own choice will assign claims against the manufacturer and suppliers for the account of the Customer or assigns these claims from the Customer. In such cases claims from the Customer can only be made if the legal implementation of the existing named claims against the manufacturer or supplier was unsuccessful or impossible (e.g. insolvency).

## **12. Compensation due to Default**

- 12.1. Liability of ST for compensation, irrespective of legal foundation especially in the cases of impossibility, delay, defect or incorrect delivery, contract infringement, infringement of obligations in connection with contract negotiations or due to illegal action is limited to the regulations in paragraph 12 as long as it is related to default.
- 12.2. ST is not liable a) in the case of simple negligence of its executive organs, legal representatives, employees or other assignees as long as it does not concern a violation of contractual duties. Contractual obligations are timely, defect free delivery and installation as well as consultation, protection and diligence and care obligations, which enable the Customer to use the delivered product stated in the contract or protect life and limb of the clients' employees or third parties or the property of the customer against considerable losses.
- 12.3. Shall ST be liable for compensation in accordance with Para 12.2 the liability is limited to damages which the Customer at the time of the contract conclusion could have foreseen as a possible result of breach of contract or under consideration of the circumstances which were known or could have been known , if due diligence and care were exercised. Indirect damages and consequential damages which result from defects in the delivered product, are then only replaceable if such damages incur by proper use of the product.
- 12.4. In the case of liability for ordinary negligence, the replacement obligation for ST regarding damages to persons or property is limited to Euro ... per damage (in accordance with the amount covered by our product liability insurance or other liability insurance), also when it concerns violation of contractual obligations.
- 12.5. The above mentioned limitations and exclusions of liability extend to the benefit of institutions, legal representatives, employees and other agents of ST.
- 12.6. If ST gives technical information or acts in a consulting capacity and such information or consultation is not included in the agreed upon scope of delivery, this then is carried out without charge and under the exclusion of all liability.
- 12.7. The limitations of Paragraph 12 are not valid for liability from ST for types of deliberate behaviour, guarantee for certain quality features, due to damage to life, body or health or according to product liability law.

## **13. Final Provisions**

- 13.1. Changes and additions to these General Terms and Conditions and individual contracts are only legally binding, if they have been concluded in written form. The same is true for a waiver of the requirement of the written form.
- 13.2. Jurisdiction for all disputes arising from and concerning contracts between the parties is Munich, Germany.
- 13.3. All legal relations between the parties are governed exclusively by the laws of the Federal Republic of Germany. The regulation of the UN selling rights (Convention on the International Sale of Goods - CISG) is excluded.
- 13.4. Should any provisions of these General Terms and Conditions or individual contracts become invalid and/or infeasible, no matter for what reason, it shall not affect the validity

of the remaining provisions hereof. Invalid / infeasible provisions can be amended in such which come closest to the provisions of legal and economic effects.