

General Terms and Conditions of Business

(Status: November 2020)

§ 1 Scope of validity

- (1) The following General Terms and Conditions (hereinafter referred to as: “**GTC**”) are valid for the business relationship between ADC Blackfire Entertainment GmbH (hereinafter referred to as: “**ADC Blackfire**”) and its customers (hereinafter referred to as: “**Purchasers**”).
- (2) The Purchaser agrees to the validity of the GTC.
- (3) The GTC shall apply exclusively. Deviating or conflicting terms and conditions of business will not be recognized by ADC Blackfire, even if ADC Blackfire delivers the goods (hereinafter also referred to as: “**delivery items**”) whilst being aware of the Purchaser’s deviating or conflicting terms. Anything else shall apply only if ADC Blackfire expressly agrees to the Purchaser’s terms and conditions.
- (4) The GTC shall also apply to all future business with the Purchaser even if they are not separately agreed upon again.
- (5) ADC Blackfire is exclusively active in B2B business with entrepreneurs (§ 14 BGB [German Civil Code]). The Purchaser must inform ADC Blackfire in writing if he/she does not order the goods as an entrepreneur.
- (6) Legally relevant declarations and notifications submitted to ADC Blackfire after conclusion of a contract (e.g. setting deadlines, notice of defects, rescission notice or reduction) must be made in writing within the meaning of § 127 BGB [the German Civil Code] in order to be effective.

§ 2 Conclusion of contract

- (1) Ordering of the goods by the Purchaser is considered a binding offer of contract. In as far as not stated otherwise in the order, ADC Blackfire shall be entitled to accept this contractual offer within two weeks of receipt.
- (2) If ADC Blackfire provides the Purchaser with product-related documents or other product descriptions – also electronically – this shall not constitute an offer within the meaning of § 145 BGB [the German Civil Code].
- (3) ADC Blackfire may accept the contractual offer in writing (e.g. via order confirmation) or by delivering the goods to the Buyer.

§ 3 Prices and payment

- (1) The prices for the goods are in EUROS plus the statutory VAT and transport of the goods to the Purchaser, the latter in as far as no obligation to collect them has been agreed.

- (2) In as far as the prices agreed on with the Purchaser are based on the ADC Blackfire list prices and delivery follows later than 4 months after conclusion of the contract due to circumstances not caused by ADC Blackfire, the ADC Blackfire list prices valid at the time of delivery shall apply.
- (3) The Purchaser must make payments at the latest 30 days after the invoice issue date in as far as nothing different has been agreed in writing. The receipt of payment by ADC Blackfire is decisive here.
- (4) In case of default of payment, interest to the order of 9 percent above the European Central Bank base interest rate will be charged. Moreover, in case of default in payment by the Purchaser, ADC Blackfire shall be entitled to receive a fixed amount of 40.00 EUR. The entitlement to claim further damages shall remain unaffected by this.
- (5) Invoices can be paid using the SEPA direct debit system. The Purchaser ensures that sufficient funds are available in the account to be debited. Costs arising via revocation of the direct debit authorization or insufficient funds in the account shall be borne by the Purchaser unless ADC Blackfire is responsible for the costs.
- (6) Offsetting against the Purchaser's counterclaims or withholding payments due to such claims is only permissible in as far as the counterclaims are undisputed or have been determined without further legal recourse.

§ 4 Delivery date and scope of delivery

- (1) Delivery periods communicated by ADC Blackfire are non-binding unless a fixed period or date has been expressly promised or agreed in writing.
- (2) In as far as shipment of the goods has been agreed, delivery periods and dates refer to the point in time of handover to the carrier, forwarding agent or any other person commissioned with the transport (including ADC Blackfire employees commissioned with the transport).
- (3) Also in cases of delivery or transport delays within the scope of the purchase of the goods, ADC Blackfire shall endeavor to adhere to expressly agreed, but also to delivery dates non-bindingly promised. However, ADC Blackfire is not bound to expend time and money exceeding the normal course of business in order to ensure adherence to the delivery dates despite delivery and transport delays.
- (4) ADC Blackfire is entitled to make partial deliveries in as far as they entail no significant extra work or costs for the Purchaser.
- (5) Neither transport packaging nor any other packaging may be to ADC Blackfire pursuant to the Packaging Ordinance. This becomes the Purchaser's property.
- (6) No deliveries are made to PO box addresses.

§ 5 Transfer of risk, storage and transport

- (1) In the absence of deviating provisions, the parties agree on an obligation to send with regard to the delivery items.
- (2) With the handing over of the goods ordered by the Purchaser to a carrier, forwarding agent or any other person commissioned with the transport (including ADC Blackfire employees commissioned with the transport) by ADC Blackfire, the price and performance risk is transferred to the Purchaser, irrespective of which party bears the freight costs. The beginning of the loading process is decisive for the point in time of the transition of the price and performance risk. If shipment or handover is delayed as a consequence of a circumstance caused by the Purchaser, the risk passes to the Purchaser from the day on which ADC is ready for shipment and has notified the Purchaser.
- (3) After transfer of risk, the Purchaser bears the storage costs. If stored by ADC Blackfire, the storage costs shall be 0.15% of the invoice amount for the delivery items to be stored per week lapsing. If corresponding proof is furnished, the Purchaser can claim lower storage costs.
- (4) ADC Blackfire is entitled to determine the type of delivery (in particular the forwarding agent and packaging) at its own discretion.

§ 6 Warranty for material defects

- (1) The Purchaser must examine all the goods carefully without delay after delivery. The goods shall be deemed as approved if ADC Blackfire does not receive written notice of defects relating to evident defects or further defects which could be recognized after careful examination without delay within 7 days of receipt of the goods by the Purchaser. If a defect which could not be recognized during the initial examination becomes apparent later, the Purchaser must inform ADC Blackfire of this without delay.
- (2) The Purchaser must explain ADC Blackfire the defect in detail and, if possible, notify ADC Blackfire of the cause of the defect.
- (3) If requested by ADC Blackfire, the rejected goods must be returned freight prepaid in the original packaging or - should it no longer be available - in equally secure packaging. In case of a justified complaint, ADC Blackfire will reimburse the costs for the cheapest shipment means for returning the goods from the place of delivery agreed in the purchase contract.
- (4) If the delivered goods are defective, ADC Blackfire shall be entitled to deliver a replacement within a reasonable period of time. This period begins with receipt of the defective goods by ADC Blackfire in accordance with § 6 para. 3.
- (5) ADC Blackfire shall be entitled to make the replacement delivery dependent on payment of the due purchase price by the Purchaser. However, the Purchaser shall be entitled to retain a reasonable portion of the purchase price in proportion to the defect.

- (6) In case of failure of the replacement delivery, i.e. impossibility, unreasonableness, refusal or disproportionate delay, the Purchaser may – in case of a significant material defect – reduce the purchase price appropriately or withdraw from the contract.
- (7) If the defect is due to the fault of ADC Blackfire, the Purchaser may claim damages under the prerequisites stated in § 7.
- (8) In case of entrepreneurial recourse (§ 445a BGB [German Civil Code]), it is assumed that at the point in time of the transfer of risk to the Purchaser no defects existed if the Purchaser has not reported any defects despite § 6 para. 1. If the Purchaser exercises his right of recourse, he must let himself be treated by ADC Blackfire as if he has used all the legally permissible options vis-à-vis ADC Blackfire (e.g. refusal of subsequent performance due to disproportionality or limitation of expenses to a reasonable amount). ADC Blackfire shall only be held responsible for compensation of consequential damages in case of culpable conduct.
- (9) In cases in which – also for our Purchaser – no purchase of consumer goods is made within the supply chain, the provisions of §§ 474-479 BGB [German Civil Code] shall not apply.

§ 7 Liability

- (1) The liability of ADC Blackfire for damages, if dependent on fault, is excluded or limited in accordance with § 7:
- (2) ADC Blackfire shall not be liable
 - a) in case of own simple negligence or simple negligence of its legal representatives or vicarious agents;
 - b) in case of gross negligence of its vicarious agents in as far as it does not involve a breach of essential contractual obligations. Essential contractual obligations are duties of fault-free delivery as well as protection and care obligations which are intended for enabling the purchasers in the supply chain to use the delivered goods in accordance with the contract or serve the purpose of protecting limb and life of the Purchaser's or third parties' staff or their property against substantial damage.
- (3) In as far as ADC Blackfire is liable for damages on the merits pursuant to § 7 para. 2, the liability is limited to damages predicted by ADC Blackfire upon conclusion of the contract as a possible consequence of breach of the contract or taking the known circumstances into account or which should have been known when exercising due care. Direct damages and consequential damages arising from defects of the delivered goods only need be compensated in as far as such damages must be typically expected when using the delivered goods for their intended purpose.
- (4) Should a claim for compensation of transport damages or loss based on the merits exist against ADC Blackfire, the Purchaser can only assert this claim if he fulfils his legal or contractual obligations. These include, in particular, that the transport damages

or loss are reported within a preclusion period of 7 days after gaining knowledge of the damage event, that the transport damages or loss are entered in the existing shipping documents and that the goods including their packaging (§ 6 para. 3) are kept available at their destination for inspection by ADC Blackfire.

- (5) The exclusions and limitations of liability in § 7 para. 2, 3 and 4 are not applicable for ADC Blackfire's liability due to intentional conduct, for guaranteed characteristics of state and for injury to life, body or health or under the Product Liability Act.

§ 8 Withdrawal

- (1) If it becomes apparent after conclusion of the contract that ADC Blackfire's pecuniary claim is endangered due to the Purchaser's inability to pay, ADC Blackfire shall be entitled to refuse delivery until the Purchaser furnishes counter-performance or security for the goods is provided. If ADC Blackfire unsuccessfully sets a deadline for this, ADC Blackfire is entitled to withdraw from the contract.
- (2) In case the goods are not available due to unforeseeable circumstances such as force majeure, delivery or transport delays or industrial disputes, ADC Blackfire is released from the obligation of their punctual delivery for their duration in as far as ADC Blackfire is not responsible for the event. Delivery periods shall be extended by the length of the disruption. ADC shall inform the Purchaser of such a disruption without delay. If the disruption lasts for longer than six months, both parties may withdraw from the contract.
- (3) In case of unjustified withdrawal or different termination of the contract by the Purchaser, ADC Blackfire shall be entitled to demand 25% of the gross order value as lump-sum compensation (damages instead of performance). The Purchaser retains the right to prove that no or lower damages have been incurred.

§ 9 Retention of title

- (1) The goods supplied remain the property of ADC Blackfire (hereinafter: **"goods subject to retention of title"**) until final payment is made for all currently existing and future claims against the Purchaser (hereinafter: **"secured claims"**) from the supply relationship existing between the two parties (including balance claims from a current account relationship limited to this supply relationship).
- (2) The Purchaser is entitled to resell the reserved goods in the normal course of business until enforcement takes place (§ 9 para. 8), but not to pledge, transfer them by way of security or to exercise other extraordinary disposal.
- (3) The Purchaser assigns his claim from the resale of the reserved goods to ADC Blackfire as a security, who accepts the assignment. The same shall apply to further claims which arise in place of reserved goods or by other means pertaining to the reserved goods such as insurance claims or claims from tortious acts in case of loss or destruction. ADC Blackfire revocably authorizes the Purchaser to continue to collect the assigned claims. ADC Blackfire may only withdraw the authorization for collection if utilized (§ 9 para. 8).

- (4) If ADC Blackfire collects the assigned claims, the Purchaser shall provide comprehensive support. For this purpose, the Purchaser must provide ADC Blackfire with all the information needed and hand over all the documents required for the enforcement of the assigned claim.
- (5) The Purchaser must insure the reserved goods adequately against all common risks, store them separately, treat them carefully and label them if requested by ADC Blackfire.
- (6) In the event of seizure of the reserved goods or other third party access, the Purchaser must draw attention to ADC Blackfire's collateral ownership of the reserved goods. The Purchaser must notify ADC Blackfire of the third party's access in writing without delay, providing his name and address.
- (7) If the realizable value of the reserved goods and the claims replacing them exceeds the value of the secured claims by more than 20%, ADC Blackfire will release selected securities at the Purchaser's request.
- (8) The enforcement case takes effect if the Purchaser behaves in breach of contract, e.g. is in arrears with payments and ADC Blackfire notifies him of the utilization case.

§ 10 Statute of limitation

- (1) Notwithstanding § 438 para. 1 no. 3 BGB [German Civil Code], the normal period of limitation for claims from material defects is one year from delivery of the goods to the Purchaser or his designee.
- (2) The above period of limitation is also valid for contractual and non-contractual claims for damages by the Purchaser based on a defect of the goods unless application of the regular statutory limitation period (§§ 195, 199 BGB [German Civil Code]) leads to a shorter limitation period in isolated cases.
- (3) Claims for defects by consumers and claims for damages due to injury to life, limb or health and/or claims for damages due to grossly negligent or intentionally caused damages by ADC Blackfire, its legal representatives or vicarious agents are excluded from this. In this respect, statutory limitation periods shall apply.
- (4) The limitation periods of the Product Liability Act shall remain unaffected in any case.

§ 11 Miscellaneous

- (1) ADC Blackfire processes personal data. Information regarding the processing of personal data is provided on the website "<https://www.blackfire.eu/info.php?txt=privacy>".
- (2) The Purchaser's rights from the contract are non-transferrable.

- (3) The contract language is German. In as far as the German language version, in particular of the General Terms and Conditions, varies from the English language version, the German language version shall take precedence.
- (4) The laws of the Federal Republic of Germany shall apply, excluding the UN Convention on the International Sale of Goods.
- (5) The exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is the ADC Blackfire registered office in Ratingen, Germany. However, ADC Blackfire shall also be entitled to file suit at the Purchaser's place of general jurisdiction.
- (6) The EU Commission offers the option of resolving disputes online on an online platform which it operates. This platform can be accessed under <https://webgate.ec.europa.eu/odr/>. ADC Blackfire is neither obliged nor prepared to participate in dispute settlement proceedings with an arbitration body.
- (7) Should individual provisions of these General Terms and Conditions be or become invalid, the validity of the remaining provisions shall not be affected. Provisions which are removed shall be replaced by others which are legally effective and come closest to the economic objective of the invalid clause.