

# **General Terms and Conditions of Sale and Delivery of MAKAYAMA MEDIA B.V.**

As of December 2011

## **§ 1 Scope of application**

1. All deliveries, services and offers of MAKAYAMA MEDIA B.V. (hereinafter referred to as "MAKAYAMA MEDIA B.V.") are made exclusively on the basis of these General Conditions of Sale and Delivery and the applicable End-User License Agreement (EULA) of MAKAYAMA MEDIA B.V., provided software and/or audio/video content and/or hardware (A/V Content) are delivered.

These conditions shall be considered accepted at the latest when a delivery or a partial delivery or service is accepted.

2. General Terms and Conditions of the other contracting party shall be valid only if they have been confirmed in writing by MAKAYAMA MEDIA B.V..

## **§ 2 Offer and conclusion of contract**

1. The offers made by MAKAYAMA MEDIA B.V. are without obligation, subject to confirmation and subject to the receipt of supplies by MAKAYAMA MEDIA B.V. from its own suppliers and manufacturers. The customer's placement of an order with MAKAYAMA MEDIA B.V. is an obligatory offer to complete a sales transaction. The sales contract is enacted by the acceptance of the offer by MAKAYAMA MEDIA B.V.. Offers shall be considered accepted and orders placed if MAKAYAMA MEDIA B.V. confirms this in writing or delivers the ordered goods.

2. In case of downloading software or A/V Content, a purchase agreement, based on these conditions and in compliance with the corresponding MAKAYAMA MEDIA B.V. license agreements for the requested Software and/or A/V Content, will be concluded with the beginning of the electronic transfer to the requesting party.

3. The employees of MAKAYAMA MEDIA B.V. are not authorized to enter into verbal subsidiary agreements or give verbal assurances which go beyond the content of the written contract.

## **§ 3 End user right of withdrawal involving distance sales contracts**

### **Right of return**

The customer may recall the contract in writing within 14 days of submission without providing any reasons (e.g. by post, fax, email), or (if the item was transferred to the customer before this period expires) by returning the item. The period begins upon receipt of this information in writing, but not before receipt of the item by the recipient (in case of recurring deliveries of identical items, not before receipt of the first delivery), and also not prior to fulfillment of our duty to inform. Timely sending of the cancellation or item is sufficient to ensure the right of return period. Returns are to be directed to: MAKAYAMA MEDIA B.V., Barentszplein 2M, 1013 NJ, Amsterdam, The Netherlands, or email to support@makayama.com.

### **Consequences of return**

In case of an effective withdrawal, the value of goods received by both sides shall be reimbursed and possible use shall be returned (e.g. interest). If the value of goods or usages (e.g. use advantages) ordered can not be returned or can only be returned in a worsened condition the value must be replaced. This means, provided that the performance existed in the service, you may still have to fulfil your contractual payment obligations for the period until the withdrawal. You only have to provide compensation for the worsening of the product and the benefits taken if you used the product for more than the examination of the product attributes and its functions "Examine the attributes and functions" means to test and try the product as it can be done in a regular warehouse/shop. Goods capable of being delivered as a parcel by post shall be returned at our risk.

The customer shall bear all regular costs for the return postage if the delivered goods correspond with the ordered software and if the price of the item to be returned does not exceed €40.00 and if at a higher price of the item at the time of cancellation the equivalent or the contractually agreed partial payment has not been fulfilled. Otherwise you can return the goods free of charge. Goods that cannot be sent by post as a parcel will be collected. The obligation to refund payments must be fulfilled within 30

days. The period begins for the customer upon sending of the right of recall or of the items in question; for us, this period begins when they are received.

#### **Please note**

With respect to a service, your right to revoke expires if the contract has been fully completed on both sides at your request before you have exercised your right to revoke.

If you are a business as defined by Sec. 14 of the German Civil Code, and are exercising your commercial or freelance duties on closing the contract, the right of revocation shall not apply. The right to cancel the order does not cover instances described in Section 312d IV of the German Civil Code, or specifically any delivery of services, audio, and video material or software, provided that the delivered data storage devices have been unsealed by the customer or contracts for software programs that are download version.

#### **§ 4 Prices and terms of payments**

The prices named are the final prices and include the legally imposed value added tax. The costs of shipping and handling are included in the final order price. The prices listed at the time of the order are valid.

#### **§ 5 Online vouchers**

1. Online vouchers can be sent per email to MAKAYAMA MEDIA B.V. customers as part of special rebate or sales events. These can be redeemed only in the MAKAYAMA MEDIA B.V. Online Shop at [www.MakayamaMediaB.V..com](http://www.MakayamaMediaB.V..com) by the customer identified by the customer number. Vouchers which are received as a result of product purchase cannot be redeemed in the course of the same process. The vouchers gain validity only after the conclusion of the purchasing process.

2. To redeem online vouchers in the course of an order process, the activation code of the voucher has to be entered into the corresponding field and confirmed by clicking on the "Redeem" button. A retroactive reduction of already billed orders is not possible. Multiple vouchers may be received and redeemed. Within one order, only one coupon may be redeemed. Using multiple vouchers for one order is not possible. Online vouchers can only be redeemed from the corresponding country, where MAKAYAMA MEDIA B.V. has issued the online voucher.

3. After receiving an online voucher in the course product purchase, the voucher is mailed to the address indicated during the order process on the day of the order placement. In the absence of other instructions, the voucher is valid 12 months after its issuance. MAKAYAMA MEDIA B.V. takes the voucher amounts into consideration as long as this is stated on the online voucher. Redemption after the expiry date stated on the online coupon is not possible. Redemption for products and services other than those listed on the online voucher is also forbidden. Online vouchers can be used for all products offered by MAKAYAMA MEDIA B.V.. Unless it is explicitly stated that the use of vouchers is allowed, all offers from other manufacturers (hardware or software) as well as offers lowered in price and encoders are excepted.

4. Vouchers cannot be paid out in cash. Resale is also prohibited. If the voucher value is higher than the total amount of your order, the remaining credit is forfeited with the completion of your order.

#### **§ 6 Retention of title**

MAKAYAMA MEDIA B.V. shall retain the title to the contractual objects until payment in full.

#### **§ 7 Deliveries and performance period**

1. MAKAYAMA MEDIA B.V. does not assume the procurement risk. MAKAYAMA MEDIA B.V. is entitled to withdraw from the contract provided that MAKAYAMA MEDIA B.V. does not receive the respective delivery item in spite of previous conclusion of a purchase agreement. The responsibility for intent or gross negligence remains unaffected. MAKAYAMA MEDIA B.V. shall inform the customer immediately about untimely availability of the goods and, in case of withdrawal, the right of withdrawal shall be exercised immediately. In case of a withdrawal, MAKAYAMA MEDIA B.V. will immediately refund to the customer the corresponding equivalent value.

2. Partial deliveries shall be permitted insofar as they are reasonable to the customer.

#### **§ 8 Warranty**

1. Unless there is no other arrangement, regulations stipulated by law shall be effective in the case of a defect.

2. If a notice of defects is not sent to MAKAYAMA MEDIA B.V. within two months after the receipt of goods, the goods will be considered properly and completely delivered unless there is a hidden defect. The defects should be described in as fine detail as is possible. This provision does not set a cut-off period for customer warranty.
3. Reprimand of apparent defects will be accepted only if the customer gives notification within 14 days after receiving the goods.

### **§ 9 Exclusion of Liability**

1. MAKAYAMA MEDIA B.V. shall not be liable for the damage caused by it or by ordinary persons employed by it in performing an obligation in cases of ordinary negligence – also in case of non-contractual liability – only if an obligation whose observance is particularly important for achieving the purpose of the contract (cardinal obligation) is not fulfilled as well as in cases of fatal injury, physical injury and health hazards.
2. For non-observance of a cardinal obligation, the liability is limited to the damage which must be typically expected within the scope of this agreement if there is no intention or gross negligence or if liability must be incurred because of fatal injury, physical injury or health hazards.
3. Statutory liability in case of personal damages and damages pursuant to the Product Liability Act remains unaffected.
4. MAKAYAMA MEDIA B.V. shall not be liable for damage which can be controlled by the other contracting party or which the other contracting party could have prevented by taking measures which can be reasonably expected of it. MAKAYAMA MEDIA B.V. is not liable for data loss.
5. A change in the burden of proof to the disadvantage of the customer is not related to the foregoing provision.

### **§ 10 Copyrights / Rights of use**

1. If software, software descriptions, music, or films in audio or computer format or other copyrighted items are a part of the scope of delivery and the item is supposed to be handed over to a contracting party for use, the contracting party shall be granted a single, non-exclusive right of use in accordance with the applicable MAKAYAMA MEDIA B.V. End-User License Agreements (MAKAYAMA MEDIA B.V. EULA, e-EULA, lease-EULA) for the respective item. The EULA's can either be retrieved from MAKAYAMA MEDIA B.V. Internet page ([www.Makayama Media B.V..com](http://www.Makayama Media B.V..com)) or are included with the product or are available on the data carrier.
2. The customer undertakes to observe the EULA, in particular the use-related restrictions in the EULA, while using the products. If this agreement is violated, the customer shall be liable for the complete amount of damage occurring as a result of this violation. For instance, the EULA lays down the following: the right to reproduce, multiple usage, program modifications, copyrights and industrial property rights.
3. MAKAYAMA MEDIA B.V. vouches that, in the territory covered by the contract, the contractual products of MAKAYAMA MEDIA B.V. are free from industrial property rights of third parties which could exclude or restrict the use by the other contracting party. This shall not apply if the other contracting party uses a product which has not been released by MAKAYAMA MEDIA B.V. or uses the product after it has been modified by a party other than MAKAYAMA MEDIA B.V., or if it uses the product under conditions which differ from the contractually agreed conditions of use.
4. If software products of manufacturers other than MAKAYAMA MEDIA B.V. are surrendered, the license provisions of the manufacturer with regard to the scope of use of the software allowed by copyright, in particular with regard to the restrictions on the use of the software, must be observed in addition to these General Terms and Conditions.

### **§ 11 Offset**

The other contracting party shall be entitled to offset counterclaims or exercise a right of retention only if the counterclaims are non-appealable or undisputed.

### **§ 12 Enclosures**

MAKAYAMA MEDIA B.V. shall be entitled to enclose advertising mail and other printed material such as comparison tests and newspaper reports, irrespective of whether they belong to MAKAYAMA MEDIA B.V. or to third parties, with the products.

### **§ 13 Privacy**

Personal data is collected, processed and used by MAKAYAMA MEDIA B.V. without further explicit customer agreement during the contractual period only for the purpose of contract fulfillment, including invoicing. Data collection, utilization, and processing are performed electronically.

### **§ 14. Final Provisions**

1. The General Terms and Conditions and all legal relationships between MAKAYAMA MEDIA B.V. and the other contracting party shall be governed by the law of the Federal Republic of Germany excluding the United Nations Convention on Contracts for the International Sale of Goods. As long as the contractual partner is a merchant, a corporate body under public law or under fund assets governed by public law, or holds his/her residence outside the Federal Republic of Germany, Berlin will be the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contract relationship. MAKAYAMA MEDIA B.V. also has the right to bring proceedings against the customer at its general court of jurisdiction.

2. If MAKAYAMA MEDIA B.V. software is sold or transferred in any other way, the regulations of the corresponding MAKAYAMA MEDIA B.V. End User License Conditions (EULA), which are an integral part of these General Terms and Conditions, shall apply additionally. If there are any doubts and / or conflicting regulations, the clauses in these General Terms and Conditions shall have priority over the regulations in the EULA. 3. Versions of these General Terms and Conditions in languages other than Dutch must only be regarded as translations. If there are interpretation problems and language-related discrepancies between the foreign language version and the Dutch version, the Dutch version of these General Terms and Conditions shall be authoritative.