General Terms of Delivery for Deliveries to Entrepreneurs

Status 15 March 2012

§ 1 Scope

(1) These Terms of Delivery shall apply to all contracts between the company **Motama GmbH** in Saarbrücken (hereinafter: the **Supplier**) and a **Customer** as end buyer or reseller concerning the delivery of goods for the purposes of the commercial or independent professional activity of the Customer including the delivery and/or licensing of standard software with or without data storage media. Offers for such deliveries are carried out exclusively based on these Terms of Delivery.
(2) These Terms of Delivery shall also apply – subject to another agreement – to all future business relations, even if they are not explicitly agreed once again.
(3) Deviating General Terms and Conditions of Contract or Terms of Purchase of the Customer shall not apply even without an explicit objection. This shall also apply if the Customer refers to its own business terms in its order or conformation and also if the Supplier carries out the order without reservation notwithstanding its knowledge of contradictory or deviating terms and conditions of the Customer.
(4) Otherwise the statutory regulations shall apply.

§ 2 Offer and conclusion of contract

(1) Offers are without obligation and non-binding and are subject to the reservation of the self-delivery and the warehouse stocks; the right to an interim sale is reserved.
(2) A contract shall be concluded if the Supplier confirms an order in a text form (letter, fax, e-mail) within two weeks from receipt or by sending the goods. If the object of contract exists exclusively in the delivery and/or licensing of standard software by remote data transmission without the handing over of data storage media and printed documentation then the contract shall be concluded if the Customer completes the order process provided by the Supplier and triggers off the transmission of the software (download) or the creation of the licence code which is to be acquired.
(3) Diagrams and drawings as well as technical data and dimension and weight details are only binding if these have been explicitly described as binding by the Supplier.

§ 3 Rights to software; documents, models, samples

(1) The software provided by the Supplier including documentation is protected under copyright law. The Supplier is exclusively entitled to all rights to the software in the relationship of the contractual partners.
(2) Documents made available by the Supplier, in particular cost estimates, drawings and calculations, technical presentation s and explanations may not be reproduced, distributed or forwarded to third parties without the prior written consent of the Supplier. Sentence 1 shall not apply to the associated documents which belong to the scope of delivery of individual goods such as in particular operating instructions and installation data media.

§ 4 Software licence

(1) The Supplier as licensor shall grant a non-exclusive, right, which is not limited in time and space, to software which is handed over, to use the software for own purposes in line with the product specifications and documentation. In case of software, which is delivered pre-installed together with hardware, the right of use is limited to the delivered device and such hardware, which was exchanged on the delivered device or against the delivered device within the framework of the warranty. In case of software, which was acquired independently of hardware, the software may be installed on a work station or a terminal, loaded into the main memory of this device and used on this device. The simultaneous use on several devices is only permitted owing to a special licence irrespective of whether it concerns physical hardware or virtual devices (emulated by software applications).
(2) The licence holder may create such backup copies as are necessary for a safe operation. These are to be marked as such and (insofar as technically possible) fitted with the copyright notice of the original data storage medium. The user manual may only be copied for own purposes.
(3) The copyright notices, trademarks, other reservations of rights, serial numbers as well as other features which serve the identification of the programme, contained in the software, may not be changed or made unrecognisable.
(4) The licence holder is the party who acquired the software – or, in the event of software sold pre-installed together with hardware, the party who acquired the device – for own purposes as customer from the Supplier or as buyer of the Customer or otherwise within the framework of an admissible resale (Sentence 2). The licence holder may only forward the software to a third party if such third party declares that it agrees with the continued validity of the contractual terms and conditions. If the licence holder forwards the software to a third party then it must finally discontinue the use of the software and may not retain any copies. It must hand over, to third party, the original of the data storage media and manuals, insofar as available.
(5) All other kinds of exploitation of the software, in particular the translation, processing, the arrangement, other conversions (except the exceptions according to §§ 69d, 69e UrhG [Copyright Act]) and the other distribution of the software (offline or online) as well as its rental and lending require the prior written consent of the Supplier.
(6) The Supplier can revoke the rights of use for an important reason. An important reason exists in particular if the Customer is in default of payment with a substantial part of the remuneration or does not comply with the conditions for use and does not refrain from doing this immediately either following the written warning by the Supplier with a threat of revocation. In case of revocation of the rights of use the Customer shall hand over the original software and available copies and delete stored programmes. Upon request of the Supplier it shall assure the hand over and deletion in writing.

§ 5 Prices; payment

(1) Offer prices are principally deemed exclusive of the respective applicable statutory rate of value added tax Ex Works (without shipment) and with packaging insofar as not explicitly otherwise agreed.
(2) In case of first orders the goods shall principally only be delivered against advance payment. If delivery is agreed against invoice then the invoices are payable without deductions within 14 days (net cash) after the invoice date insofar as no other term of payment has been explicitly agreed. For the timely nature of the payment it is decisive when the Supplier may dispose over the amount, in case of payment by cheque when the cheque is paid by the bank drawn upon. In case of default of payment of the Customer the Supplier shall be entitled to interest on default in the amount of eight percentage points above the respective base lending rate.
(3) In the event of a delivery outside of the Federal Republic of Germany all costs and charges initiated by crossing the border – in particular customs duties, taxes, examination fees and other costs – shall be for the account of the Customer. In case of payments from overseas the Customer shall also bear all secondary costs for the monetary transaction initiated by the payment, in particular the costs charged at the recipient of the payment for an overseas transfer and the encashment charges for foreign cheques.
(4) An offsetting against claims of the Supplier by the Customer is only permitted with undisputed claims or claims which have been declared final and binding. The Customer can only exercise a right of retention if it is due to a defect to the delivered goods.

§ 6 Delivery

(1) Partial deliveries are permitted at all times unless they are not reasonably acceptable for the Customer.
(2) The costs for the shipment shall be borne by the Customer. If deviating from this delivery free place of receipt is agreed then the Customer shall bear the costs for the unloading.
(3) Deliveries are also to be accepted in case of complaints insofar as the complaints do not relate to any essential defects. If an announced delivery is not carried out or if too many goods are delivered or if a delivery is late then this is to be reported to the Supplier immediately after discovery; § 377 HGB [Commercial Code] shall also apply accordingly if the Customer is no merchant within the meaning of HGB. The provisions concerning the warranty for defects according to § 11 shall apply to the delivery of false or a shortfall in goods.

§ 7 Delivery time

(1) Delivery dates are only binding if they have explicitly been agreed as binding. In case of delivery dates, which were not agreed in writing, it will be presumed that these are non-binding.
(2) If a delivery deadline has not been agreed the Supplier may provide the service at all times. If a delivery deadline or a delivery date has been agreed then this shall begin after receipt of all documents which are necessary for executing the order and receipt of an, if applicable, agreed down payment.

§ 8 Liability for delay in delivery

(1) The Supplier shall be liable for delay in delivery according to the statutory provisions if
a) a date has been agreed binding for the delivery to the extent that the business should stand and fall with the adherence to the delivery date (firm deal within the meaning of § 323 Par. 2 No. 2 BGB [Civil Code] or § 376 HGB);
b) the Customer is entitled to assert the immediate damages against the Supplier instead of the service owing to the lapse of the interest in satisfaction owing to a delay in delivery for which the Supplier is responsible;
c) a delay in delivery for which the Supplier is responsible owing to a culpable breach of an essential contractual obligation by the Supplier or its legal representatives or vicarious agents or a wilful or grossly negligent other breach of duty of the Supplier or its legal representatives or vicarious agents;
The liability for damages according to lit. a) to c) is limited to the foreseeable typically occurring damages with comparable events insofar as the delay in delivery is not due to a wilful breach of duty of the Supplier or its legal representatives or vicarious agents.
(2) Otherwise the liability of the Supplier is limited to 5 % of the delivery value for delay in delivery for which it is responsible.
(3) Each further liability of the Supplier for delay in delivery is excluded.

§ 9 Force majeure

(1) If the delivery is not just temporarily made substantially more difficult or becomes impossible for the Supplier as a result of force majeure then the delivery obligation of the Supplier is suspended for the duration of the impediment plus a reasonable start-up time. The same shall apply if the delivery is not just temporarily made substantially more difficult or becomes impossible for the Supplier owing to other events – these in particular include strike, lock-out, official order, shortage of materials, difficulties with the energy supply etc., even if they occur at components suppliers of the Supplier or their components suppliers – and the Supplier did not cause the impediment by wilful intent or gross negligence.
(2) Under the pre-requisites of Par. (1) the Supplier is entitled to cancel the contract in full or in part owing to the not-yet satisfied part. The right of cancellation is excluded if the Supplier caused the impediment by wilful intent or negligently. If the Customer is no longer interested in a partial service as a result of a partial cancellation of the Supplier (§ 323 Par. 5 BGB) it can cancel the whole contract.
(3) If the delivery time is extended according to Par. (1) or if the Supplier cancels the contract according to Par. (2) the Customer cannot derive any claims for damages from this.
(4) The Supplier can only refer to Par. (1), (2) and (3) if it informed the Customer of the occurrence of the circumstances which justify the impediment immediately after gaining knowledge – as a rule within 10 workdays insofar as no quicker information is possible and required according to the circumstances.
(5) If an impediment according to Par. (1) lasts longer than three months then the Customer can set a reasonable final deadline – at least however four weeks – and, in the event of the fruitless passing of the deadline, cancel the contract with regard to the not yet satisfied part. If the adherence to the deadlines according to Sentence 1 is not reasonably acceptable for the Customer then it can set a reasonable final deadline before the expiry of three months already and, in the event of the fruitless passing of the deadline, cancel the contract with regard to the not yet satisfied part. If the Customer no longer has any interest in the already received partial service either as a result of the partial cancellation (§ 323 Par. 5 BGB) then it can cancel the whole contract. The rights of the Customer according to § 324 BGB remain unaffected.

§ 10 Passing of risk

(1) The risk shall pass to the Customer as soon as the shipment has been handed over to the person carrying out the transport or has left the warehouse of the Supplier or its vicarious agent for the purpose of shipment. If the shipment is delayed at the Customer's request the risk shall pass to it with the report that the goods are ready for shipment. Sentence 2 shall not apply if the readiness for shipment only relates to a partial service and the acceptance of partial services is not reasonably acceptable for the Customer.
(2) If the object of contract exists exclusively in the delivery and/or licensing of standard software by remote data transmission (download) without the handing over of data storage media and printed documentation then the time at which all files which are necessary for the installation – including if applicable the licensed files – are fully available on the local data Storage medium of the Customer shall be deemed as time of the passing of the risk with a download, or, in the event of the licensing, the time at which the licence code has been notified to the Customer in a text form or is available as a file on the local data storage medium of the Customer.

§ 11 Warranty for defects

(1) Ordered goods are to be delivered free of manufacturing and material defects and other defects of quality and free of defects of title. Details of the Supplier concerning the technical specifications, in particular performance data, are only binding if they are recorded in writing in the offer, in the confirmation of order or in the documentation of the goods. Malfunctions, which occur with the operation outside of the specifications – in particular owing to an operation in another hardware or software environment than stated in the documentation – do not represent any defects. With software there is in particular no defect if the malfunction is due to the fact that the software was changed or was configured in any other way, which does not remain within the framework of the permissible possibilities for setting as described in the documentation. With software, which was delivered pre-installed together with hardware there is in particular in addition no defect if a malfunction is due to the fact that the hardware was changed or exchanged contrary to the technical specifications or the operating system or other system software or the software is operated on another hardware than that which was delivered. If a malfunction occurs after changes have been made within the meaning of Sentences 4 and 5 to the hardware, the delivered software, the software environment or to the software configuration then it will be refutably presumed that the malfunction is due to the change. No change to the hardware or software exists within the meaning of Sentences 4 to 6 if merely (i.) hardware was exchanged within the framework of the warranty or (ii.) updates to the original operating system, the system software or the delivered software were installed which were authorized by the respective software producer and their compatibility with the delivered product was confirmed by the Supplier.

(2) The delivered objects are to be inspected for defects immediately after receipt at the place of destination; § 377 HGB shall also apply if the customer is no merchant within the meaning of HGB. If a defect is seen then this is to be reported to the Supplier in writing immediately, by no later than within 10 days after receipt of the delivery; this shall also in particular apply with the delivery of a shortfall in or false goods. If a defect is determined later which was not recognisable even with a careful inspection within 10 days then this is to be reported to the Supplier in writing immediately after the defect is discovered. If a defect exists in a malfunction of installed software then the report of the defect has to include a reasonable description of the malfunction which corresponds with the circumstances (input or operating situation, in which the fault occurs, possibly fault report or other misconduct), which places the Supplier in the position to understand the fault. Sentences 1 and 2 shall also apply to damages to the packaging; damages to the packaging which are recognisable upon delivery must, in addition, be reported to the carrier who shall confirm them.

(3) The report of a defect shall have no effect upon the obligation to pay the remuneration according to the respective payment agreement; the obligation for subsequent satisfaction according to the following regulations remains unaffected.

(4) If a defect exists at the time of the passing of risk, the Supplier shall be obliged to subsequent satisfaction. The Supplier can satisfy this obligation, at its own choice, by rectification of defects or substitute deliveries. If one of the types of subsequent satisfaction is not reasonably acceptable for the Customer then the subsequent satisfaction has to be carried out in the other type; the right of the Supplier to refuse this type of subsequent satisfaction under the pre-requisites of § 439 Par. 3 BGB remains unaffected. In the event of a substitute delivery the defective objects shall become the property of the Supplier and shall be sent back at the Supplier's request and its costs. In the event of the rectification of defects (repair) the Customer has to send the goods at the Supplier's request at its costs to the Supplier or to any third party designated by the Supplier; the Supplier does – subject to separate agreement – not owe on-site service. The shipment has to be carried out in proper packaging, as far as possible in the original packaging. The Customer remains responsible for the backup of his own data; the Supplier shall neither be liable for any loss of data caused in the course of remedying defects or substitution of hardware, nor be obliged to backup such data.

(5) If a defect consists of a malfunction of software then the subsequent improvement may in particular be carried out by making available a new programme version (software update); such programme version may be made available as download via the internet. The Customer may only refuse a new programme version if the installation of such new version would lead to an unacceptable amount of adjustment work.

(6) The Customer may cancel the contract or request a price reduction subject to the statutory provisions and only if and after subsequent satisfaction has failed or if the Customer has set the Supplier a reasonable deadline – as a rule at least four weeks – for subsequent satisfaction and the Supplier has not satisfied its subsequent satisfaction obligation within this deadline.

(7) The warranty claims according to the preceding provisions in Par. (1) to (6) are excluded if the Customer has not satisfied its responsibilities for inspection and reporting of a complaint according to Par. (2) and according to § 377 HGB in time, unless the Supplier maliciously failed to disclose the defect.

(8) Warranty claims shall become time-barred

a) in 24 months from the passing of the risk regarding all defects to delivered hardware

and

b) in 12 months from the passing of the risk regarding all defects to delivered software, irrespective of whether the software has been pre-installed on delivered hardware when the risk was passed or had been handed over by data storage medium or remote data transmission or in any other manner.

The warranty claims regarding defects, which were maliciously not disclosed by the Supplier shall become statute-barred in the legal regular statute-of-limitations.

(9) To the extend not stipulated otherwise in § 12, § 13 or § 14 all further liability claims of the Customer, no matter for what legal ground, are excluded, the Supplier shall therefore in particular not be liable for wear and tear due to use, for damages, which have not been suffered to the object of delivery itself, for missed profit or for other financial losses.

(10) Only the direct customer shall be entitled to claims against the Supplier owing to defects and may not be assigned without the consent of the Supplier.

§ 12 Enhanced Hardware Warranty (Bring-In-Warranty)

(1) In Addition to the warranty that the delivered hardware is free of defects at the time of passing of risk under § 11, the Supplier shall, subject to the following provisions, repair or substitute defective hardware even if the malfunction occurs after the passing of risk, but within the warranty period (Enhanced Hardware Warranty).

(2) The warranty period shall begin upon the passing of risk and last for 24 months; in case the Customer has, upon the initial purchase, ordered a billable extended warranty option (36, 48 or 60 months) the longer warranty period shall apply.

(3) The warranty claim must be asserted within the warranty period. The assertion of the warranty claim is effected by sending in, or handing over the defective hardware to the Supplier (Bring-in-Warranty); in order to allow swift and reliable processing, the Customer should enclose a description of the malfunction which should be as precise as possible. Delivery of the hardware to the Supplier should, as far as possible, take place in the original packaging; at any rate, the Customer is responsible for proper packaging and secure transportation. In case a malfunction occurs within the last 10 work days of the warranty period, assertion of the warranty claim will be deemed timely, if the claim is declared within the warranty period in writing, by fax, or by email, specifying the malfunction, provided that the hardware reaches the Suppliers not later than 5 work days after the end of the warranty period. Warranty claims which are not asserted in due time shall be forfeit. It rests with the Customer to prove of entitlement to any warranty claims and of their due and timely assertion.

(4) Within the bounds of the Enhanced Hardware Warranty, the Supplier will, at its own choice, repair or substitute defective hardware. Software that was part of the original scope of delivery will be reinstalled if necessary; however, the Supplier may, at its own choice, install newer stable versions of the software. With regard to any data of the Customer stored in hardware that was sent in, § 11 Par. 4 S. 7 shall apply.

(5) The warranty claim under this § 12 shall cease

a) upon any modification of the hardware, including the mounting, or demounting, or the substitution of any component, unless such modification has taken place within the limits of the general warranty (§ 11) or the Enhanced Hardware Warranty;
b) upon any alteration of the preinstalled software, unless such alteration consist of an update or patch which the Supplier itself has installed, or delivered, or authorized for the respective hardware system;
c) in case of malfunctions which are not defects within the meaning of § 11 Par. 1 Sentence 3 et seq.;
d) in case of malfunctions which are based on inappropriate handling or excessive wear, in particular in case of transport damage, mechanical force, impact of heat, or outdoor operation.

(6) The Customer bears all costs and expenses for shipment and reshipment, unless the hardware defect already existed at the time of passing of the risk; in case hardware is sent in without prepayment (carriage forward), the Supplier may separately charge all costs induced by such shipment. In case no defect may be diagnosed in the sent-in hardware, time and effort spent for the examination must be remunerated subject to § 15 Par. (2). Otherwise, warranty performances shall be without cost for the Customer.

(7) Warranty claims of the Customer under § 11 shall remain unaffected by this § 12.

§ 13 Recourse to supplier

(1) The Supplier is obliged to take the new goods back or to reduce the purchase price in compliance with the statutory regulations also without the setting a deadline which would otherwise be necessary if the buyer of the Customer as consumer (§ 13 BGB) of the sold new movable object (consumer goods purchase) could request towards the Customer that the goods be taken back or the reduction of the purchase price owing to the defect to these goods or a thus resulting claim for recourse is held against the Customer. The Supplier is further obliged to reimburse expenses of the Customer, in particular transport, route, labour and material costs which it had to bear in the relationship to the end consumer within the framework of the subsequent satisfaction owing to a defect to the goods which existed when the risk was passed from the Supplier to the Customer.

(2) The claims of the Customer according to Par. (1) are excluded if the Customer has not properly satisfied its obligations for inspection and report of a defect owed according to § 377 HGB.

(3) The claims of the Customer according to Par. (1) are further excluded insofar as the defect asserted by the consumer concerns a deviation from advertising statements or other contractual agreements which do not stem from the Supplier or if the Customer submitted a special guarantee towards the consumer. They are also excluded if the Customer itself was not obliged to exercise the warranty rights against the consumer owing to the statutory regulations or if it assumed warranties towards the consumer which go beyond the statutory measurement.

§ 14 Liability

(1) With the liability of essential contractual duties the Supplier shall be liable for all negligence, however only up to the amount of the foreseeable, typically occurring damages. Claims owing to indirect damages of consequential damages, in particular for missed profit, saved expenses and from claims for damages of third parties are excluded unless a feature of condition assured by the Supplier particularly aimed at protecting the Customer against such damages.

(2) For damages, which are caused by computer viruses, the Supplier shall only be liable insofar as they were caused by wilful intent or gross negligence of the Supplier, its legal representatives or its vicarious agents; for damages, which were caused as a result of gross negligence by computer viruses the Supplier shall only be liable for the foreseeable typically occurring damages with the use of the infected and affected software as per contract.

(3) Otherwise, all claims for damages are excluded irrespective of the type of the breach of duty including illicit acts insofar as the damages are not due to wilful or grossly negligent actions of the Supplier, its legal representatives or vicarious agents.

(4) The liability restrictions and liability exclusions of Paragraphs (1) to (3) shall not apply insofar as the liability owing to injury to life, the body or the health, the liability owing to malicious conduct of the Supplier or owing to guaranteed features of condition or the liability according to the Product Liability Act are affected; instead the following applies:

a) In the scope in which the Supplier has submitted a guarantee of condition and/ or durability with regard to the goods or parts thereof it shall also be liable within the framework of this guarantee. For damages which are due to the absence of the guaranteed condition or durability, but do not occur directly to the goods, the Supplier shall however only be liable if the risk of such a damage was foreseeable upon conclusion of the contract and therefore is clearly covered by the guarantee of condition and durability.

b) Otherwise the liability is limited to the foreseeable damages typically occurring with comparable events insofar as the damages are not due to a wilful breach of duty of the Supplier or its legal representatives or vicarious agents.

(5) Insofar as the liability of the Supplier is excluded or limited this shall also apply to bodies and representatives in legal transactions, employees, workers and other vicarious agents of the Supplier.

(6) Further rights of the Customer are excluded.

§ 15 Additional services

(1) Without a separate agreement the Supplier does not owe any additional services, in particular no maintenance of the software, no support, no initial instructions of employees and no execution of training. Support contracts may be concluded with the Supplier at the respective valid rates.
(2) If the Supplier provides services at the request of the Customer, which are not owed according to Par. (1), then a remuneration claim shall be established even without a separate remuneration agreement. The Supplier will charge for this work separately at its respectively valid rates. The work, which is subject to remuneration according to Sentence 1, in particular includes work of the Supplier, which was carried out at the initiation of the Customer to remedy a defect, although the reported defect did not actually exist; the burden of proof for the existence of a defect shall be borne by the Customer.

§ 16 Delivery and provision of updates

(1) The Supplier shall make new programme statuses of the provided software available to the Customer during the warranty period according to § 11 Par. (8)b) for the purpose of troubleshooting and for the adjustment to changes e.g. to the system environment, the operating system and new standards (new programme statuses hereinafter: Updates) without an additional calculation. The new programme statuses can also contain slight functional improvements or extensions to functions. New service components and programme modules with new functionalities are no updates and must be acquired separately (upgrade).
(2) The scope of delivery and the granting of the licence of the updates are oriented to the scope of delivery of the software concerned. Software update may be made available as downloads via the Internet.
(3) After installation of an update the use authorizations for the previous programme status shall cease to apply. The Customer may however store the directly preceding programme status of the software for documentation and for emergencies after the end of the productive use and remains entitled to the use in this scope.
(4) Supplements to the documentation will only be delivered insofar as they are necessary for the use of the updates as per contract.

§ 17 Warranty and liability in case of updates

(1) The receipt of updates shall have no effect on the warranty and liability for the originally delivered product, including the warranty period. If a defect is produced through an update or if damages are caused through an update in any other way warranty and liability for the defect or damages shall be oriented to the provisions in § 11 and § 14.
(2) Notwithstanding Par. (1) and § 11 Par. (8)b) claims of the Customer owing to defects of quality and title, which are caused by an update, shall become statute-barred within 12 months from the passing of risk with regard to the update; if however the warranty ends for the previous programme status of the licensed product concerned according to § 11 Par. (8)b) – if applicable by taking a separately agreed extension to warranty into consideration – at a later time then this time is also decisive for the statute of limitations of the claims for defects of quality and title owing to the update.

§ 18 Update receipt within the framework of software service agreements

(1) If the Customer acquires a software service agreement, which is offered for the object of delivery at the conditions respectively offered by the Supplier, then the warranty period shall be extended with regard to the originally delivered software for the duration of the software service agreement; the Customer shall remain entitled to receive new programme statuses according to § 16 during this period of time.
(2) The service agreement according to Par. (1) shall be concluded through the order of the Customer and acceptance by the Supplier and has a minimum term of one year; there is no entitlement to acceptance of the order. The service agreement shall respectively be extended by one year if it is not terminated by one of the parties in writing by observing a period of notice of one month.
(3) The Supplier can increase the price for the service agreement up to 5 % annually according to Par. (1). If the Supplier exercises this possibility then the Customer shall be entitled to a right to special termination with regard to the service agreement; the termination is to be declared in writing and must be received by the licensor within a period of one month after receipt of the declaration of increase.

§ 19 Reservation of title; collateral ownership; right of lien

(1) The delivered goods shall the property of the Supplier until the full payment of the purchase price (reservation of title). If further claims of the Supplier exist from the business relationship with the Customer still with the payment of the purchase price – including balance claims from current account – then the Supplier shall retain the ownership to the delivered goods until the full payment of all such claims of the Supplier against the Customer (collateral ownership).
(2) The Customer is entitled to process and to sell the goods remaining the property of the Supplier (reserved goods) within the framework of the proper business transactions as long as he is not in default. Pledges and assignments as collateral are not permitted. If the reservation of title or the collateral ownership lapses by resale, connection, mixing or processing then the Supplier shall acquire the thus produced claim or the ownership to the new object in order to protect its claims. Other claims – in particular claims from insurance contracts and owing to illicit act –, which the Customer acquires no matter from what legal grounds with regard to the reserved goods, are hereby now already assigned to the Supplier in full as a precautionary measure. The Supplier authorizes the Customer to collect the claims assigned to the Supplier according to Sentences 2 and 3 for its own account and in its own name. The Supplier can only revoke this authorization if the Customer is in default with its payments.
(3) If a third party – in particular by attachment – has access to reserved goods the Customer has to refer to the ownership of the Supplier and inform the Supplier immediately in order to enable it to assert its ownership rights. Costs, which have to be spent in order to revoke the access or to obtain the reserved goods again shall be borne by the Customer insofar as they cannot be collected from the third party.
(4) The Supplier is entitled to a right of lien to all forms and tools produced for orders of the Customer owing to all – also future – claims for deliveries to the Customer. If the Customer is in default with payments then the right of lien shall be converted for the time of the default into a use right of lien (§ 1213 BGB). The creditor duties according to § 1214 Par. 1 BGB (use obligation and obligation to render an account) and § 1214 Par. 2 BGB (obligation for offsetting) are excluded.
(5) In the event of the excess security the Supplier shall, upon request and at its choice, release the provided collateral items, insofar as their realisable value exceeds the value of the claims in the long term by more than 20 %.

§ 20 Default of payment

(1) If the Customer is in default with payments the Supplier can deem all outstanding claims against the Customer due and payable immediately by revoking all if applicable granted terms of payment. It may in addition request advance payments or provision of collateral.
(2) The Supplier shall also be entitled to rights from Par. (1) if it becomes aware of circumstances which substantiate serious doubts about the creditworthiness of the Customer, in particular, because it does not pay a cheque or suspends its payments.

§ 21 Obligation to take goods back according to § 10 Par. 2 ElektroG

(1) The Customer undertakes to dispose of the delivered goods insofar as they fall under the field of application of the law concerning the bringing into circulation, the taking back and the environmentally-friendly disposal of electrical and electronic devices (ElektroG), after the end of the use at its own costs according to the statutory regulations. It undertakes to indemnify Motama with regard to the delivered goods from the obligation to take goods back according to § 10 Par. 2 ElektroG as well as from all thus associated claims of third parties. The obligation of the Customer according to Sentence 1 and Sentence 2 shall also apply if the producer of the delivered goods within the meaning of the ElektroG is not Motama, but another company; in this case the Customer may only return the goods to the producer if it indemnifies Motama from all possible claims of the producer in connection with the taking back and disposal of the goods.
(2) If the Customer forwards the goods to other users as private households then it undertakes to ensure by contractual regulations that Motama with the end of the use by the recipient or – in the event of the renewed forwarding – by any other user, which is not a private household, is not encumbered with the taking back or the disposal of the goods or the thus associated costs; the Customer has to indemnify Motama from claims, which are nevertheless asserted against Motama in this respect.
(3) The statute-of-limitations of the claims for indemnification shall begin no earlier than if the obligation to take goods back or other liability towards a third party, to which the indemnification obligation refers, becomes due in the relationship to Motama and Motama gains knowledge hereof.

§ 22 Export business

The export of the goods delivered by Motama from the Federal Republic of Germany or the import into another state territory can be subject to export or import restrictions or embargo provisions of the Federal Republic of Germany or another nation or European or international trade restrictions so that export or import is only permitted with a permit – if applicable several – of responsible authorities. The Customer itself is responsible for ensuring that the respective applicable provisions are complied with and in particular assumes the responsibility to examine the admissibility or export and import itself and to obtain possible necessary permits, in particular export and import permits.

§ 23 Final provisions

(1) The place of performance for the delivery obligation is the registered seat of the Supplier in Saarbrücken.
(2) The law of the Federal Republic of Germany shall apply to these terms of delivery and the entire legal relations between the Supplier and Customer. The provisions of the UN Convention on the International Sale of Goods shall not apply.
(3) With regard to the contents of the contract and possible collateral agreements a refutable presumption applies that written offers, orders, confirmations of orders and other contractual documents including these Terms of Delivery as well as written records of possible collateral agreements reflect the agreements between the parties in full and finally and oral agreements, which deviate from these, have not been reached.
(4) Insofar as the Customer is a merchant, legal entity under public law or special assets under public law, Saarbrücken is the exclusive place of jurisdiction for all disputes directly or indirectly ensuing from the contractual relationship.
(5) Should one provision in these Terms of Delivery or a provision within the framework of other agreements be or become invalid this shall have no effect on the validity of the other provisions and agreements.