

General Terms of Sale and Delivery for Foreign Business of Visplay GmbH with registered office in Weil am Rhein, Germany

(Last update: January 2019)

1. General, Scope of Application

- 1.1 Sales, deliveries and other services by Visplay International GmbH („Visplay“) to customers named in Paragraph 1.2 shall be made exclusively on the basis of these General Terms of Sale and Delivery for Foreign Business („Terms of Delivery“), which shall be accepted by the Customer by the placing of an order or the receipt of delivery. These Terms of Delivery shall also apply to all future transactions with the Customer. The Customer’s conflicting or supplementary general terms and conditions shall not apply, even if Visplay does not expressly object to such terms.
- 1.2 The Terms of Delivery shall only apply to customers domiciled outside of the Federal Republic of Germany which are trading in their professional or business capacity when they sign the contract, or to foreign legal entities under public law, or to a foreign special fund under public law.
- 1.3 Visplay’s „General Terms of Sale and Delivery for Domestic Business“ shall apply to all customers domiciled within the Federal Republic of Germany.

2. Conclusion, Content of the Contract

- 2.1 Particulars and information contained in product catalogues and price lists only become a binding part of the contract provided that they are expressly referred to therein.
- 2.2 A contract shall not become effective until it has been expressly confirmed by Visplay in a written confirmation of order and shall be governed exclusively by the contents of the confirmation of order and these Terms of Delivery. Oral agreements or promises as well as changes to confirmed orders are only valid if they have been confirmed by Visplay’s authorized representatives in writing.

3. Description of Goods, Offer Documents, Reservation of Right of Modification

- 3.1 Information provided in sales catalogues, price lists, brochures and any other informative literature provided by Visplay to the Customer as well as any other descriptions of the goods to be delivered („Goods“) shall under no circumstances constitute a guarantee for any specific quality of the Goods; such specific guarantees must explicitly be agreed in writing.
- 3.2 Visplay shall retain any ownership rights, copyrights, name rights and industrial property rights to all documents and other items including cost estimates, drawings, models, samples and software handed over to the Customer. These documents and items shall be kept confidential vis-à-vis third parties, even after the termination of the contract. The duty to keep confidential shall only expire if and insofar as the knowledge contained in the documents and items handed over becomes part of the public domain.
- 3.3 Visplay retains the right to assert all claims if the Customer discloses documents and other items provided to it by Visplay to a third party without having been authorized to do so.
- 3.4 Visplay retains the right to modify the design and material to the extent the agreed function and optical appearance is not changed hereby and the modifications are acceptable for the Customer. Any further modifications require the Customer’s consent.

4. Delivery and Performance Periods and Dates

- 4.1 Delivery and performance periods and dates are only binding if they have been expressly confirmed by Visplay in writing.
- 4.2 Any agreed delivery and performance periods shall commence upon conclusion of the contract, however, not until the Customer has produced all documents, permits and releases to be provided by it and has resolved any product-related questions to be answered by it and has stated any details that the Customer must submit in relation to the requested services, in particular the requested equipment of the Goods.
- 4.3 Delivery and performance periods are deemed complied with if all circumstances effecting the passing of risk (Section 5 Para. 5) have occurred before they expire. The same shall apply to the compliance with delivery and performance dates. If delivery is delayed due to reasons for which Visplay is responsible, Visplay shall only be liable to the extent specified under Section 9.
- 4.4 Any agreed delivery and performance periods shall commence in case of down payment and prepayment pursuant to Section 7.3 once Visplay is able to dispose of the amount (receipt of payment).
- 4.5 In case of unforeseeable, unavoidable events that are beyond Visplay’s control, and for which Visplay does not bear responsibility, such as events of force majeure or labor disputes, the delivery and performance periods and dates shall be extended or postponed, also during a delay, by the duration of such event. Visplay shall inform the Customer as soon as possible about the beginning and the end of the disturbance. If the disturbance continues for more than three months or if it has been established that it will continue for more than three months, both contracting parties may rescind the contract. With regard to any Goods that Visplay does not produce itself, the correct and timely self-supply shall be reserved.
- 4.6 If the Customer does not accept the delivered Goods in time, Visplay shall be entitled to charge to the Customer any costs, in particular storage costs, that have incurred because the delivered Goods were not accepted in time. If the Goods are stored at Visplay’s premises, storage costs in the amount of 2% of the market price of the Goods shall be charged per

month.

5. Scope of Delivery, Shipment, Passing of Risk, Transport Insurance

- 5.1 Measurement and weights stated in the offer documents of Visplay as well as any other technical data of the Goods constitute approximate values to the extent this is due to technical reasons or customary in the respective sector.
- 5.2 Visplay may make partial deliveries and/or may render partial services for good reasons provided this is reasonable for the Customer.
- 5.3 The place of delivery shall be subject to the delivery terms agreed between Visplay and the Customer, which are to be interpreted according to the Incoterms, as amended from time to time. Unless specific delivery terms have been agreed upon, delivery shall always be made EXW at Visplay’s registered office according to the Incoterms, as amended from time to time. If the Goods are delivered to the Customer, risk shall pass to the Customer. Visplay may choose at its own discretion the type and route of shipping.
- 5.4 Unless otherwise agreed, risk shall pass to the Customer at the time that the Goods are made available to it. If the Goods are transported to the Customer, the risk shall pass to the Customer at the latest at the time when the Goods are handed over to the first carrier for transmission to the Customer. If the carriage of the Goods should be delayed as a result of circumstances beyond Visplay’s control, then risk shall pass to the Customer at the time when Visplay’s readiness for dispatch is communicated to it.
- 5.5 A transport insurance shall be taken out only upon request and at the expense of the Customer. In case of a claim Visplay will assign to the Customer claims against the insurance policy, simultaneously with and in exchange for the contractual performance by the Customer (including repayment of the insurance premiums).

6. Prices

Unless agreed otherwise, all prices are ex works (EXW) and are exclusive of packaging, shipping, insurance as well as tax and other duties related to the delivery. Payment must be made in the currency specified in Visplay’s offer or confirmation of offer.

7. Payment Terms, Credit Standing of Customer

- 7.1 Unless agreed otherwise, invoices by Visplay shall be due for payment by the Customer without any deductions within 30 days from the date of invoice. Payment shall only be deemed to have been effected once Visplay is able to dispose of the full amount (receipt of payment).
- 7.2 Visplay shall be entitled to issue separate invoices for partial deliveries and/or partial services as defined in Section 5.3.
- 7.3 Visplay shall be entitled to request down payment up to 80 per cent of the order value prior to delivery. Visplay shall be entitled to request prepayment if no credit insurance can be obtained for the Customer or Visplay receives a negative credit report for the Customer.
- 7.4 Bills of exchange and checks shall only be accepted by Visplay as means of payment upon specific agreement between the contracting parties. In such cases payment shall only be deemed to have been effected once the amount has been credited to the specified account of Visplay without reservation. All costs including statutory VAT that have incurred due to payment being effected by bill of exchange or check shall be at the expense of the Customer and shall become due immediately.
- 7.5 The Customer is only entitled to a set-off and is only entitled to assert a right of retention if its counterclaim is uncontested, acknowledged, or has been finally adjudicated.
- 7.6 If the Customer is in default of payment, Visplay shall be entitled, irrespective of any other remedies it may have, to demand default interest in the amount of 8% p.a. The assertion of a claim for further damages due to default shall remain unaffected.
- 7.7 If, after conclusion for the contract, Visplay learns of circumstances that justify reasonable doubt as regards the Customer’s solvency or credit standing and due to which Visplay’s payment claim under the contract may be jeopardized, Visplay shall be entitled to perform outstanding deliveries and/or render services only if the Customer makes prepayment or furnishes a security and the Customer has paid any other amounts due under the business relationship that are economically related to the contract. Furthermore, Visplay shall be entitled to rescind the contract in full or in part and to request damages unless the Customer has fulfilled its obligations mentioned in sentence 1 above within a reasonable time period.
- 7.8 Unless agreed otherwise, any payments by the Customer received by Visplay shall redeem the Customer’s debts in the order of their due date according to Section 7.1.

8. Duty to Inspect the Goods, Defectiveness, Notice of Defect, Customer’s Rights in case of Defects

- 8.1 The Customer must inspect the Goods without undue delay upon delivery and must notify Visplay of any defects that are obvious upon delivery of the Goods in writing and without undue delay, but not later than one week following delivery, whereby the type of the defect must be specified in

detail. The Customer must notify Visplay in writing of any hidden defects within a period of one week after having detected or having been able to detect the respective defect. Otherwise, the Customer shall lose its warranty claims with regard to these defects, notwithstanding the reasons the Customer may have for not adhering to these requirements. The aforementioned one-week period is deemed complied with if the Customer has sent the written notice of defect in due time, provided that Visplay has actually received the notice of defect sent in due time.

- 8.2 Unless agreed otherwise in the contract, a defect does not already exist due to that fact that the Goods do not fulfill technical and other standards applicable in the country of destination or that the Goods are not suitable for purposes for which comparable goods are usually used. Variations of surface, structure and color of individual Goods do not constitute a defect as far as they relate to production technique and are acceptable.
- 8.3 Complaints of the Customer are in any case excluded if they are attributable to the Customer's violation of Visplay's recommendations for application.
- 8.4 If, after the Customer has given a notice of defect, a defect of the Goods cannot be found, the Customer must reimburse to Visplay all costs having incurred in relation to the inspection of the Goods.
- 8.5 If the Goods are defective, Visplay shall be entitled to remedy the defect by subsequent performance or delivery of a replacement.
- 8.6 If the defect of the Goods is not remedied by subsequent performance or delivery of a replacement within a reasonable time period, the Customer may request a reduction of the purchase price.
- 8.7 If the Goods are defective, the Customer shall not be entitled to rescind the contract instead of claiming a reduction of the purchase price according to Section 8.6, unless the defect constitutes a material breach of duty. No material breach of contract shall exist if Visplay remedies the lack of conformity within a reasonable period to be fixed by the Customer but which shall not be less than six (6) weeks.
- 8.8 The Customer's rights in case of defects of the Goods shall become statute-barred within twelve months after delivery of the Goods to the Customer.

9. Liability, Damages

- 9.1 Visplay shall be liable for damages vis-à-vis the Customer, in particular for consequential economic loss due to delayed delivery and/or performance or defectiveness of the Goods, only in the event of gross negligence or intent.
- 9.2 Subject to the provision in Section 9.3 and in Section 13.2, Visplay shall be liable according to the statutory and contractually unchangeable provisions in case of product liability, data breaches and physical injury.
- 9.3 If a third party, which has purchased the Goods from the Customer or from another or several intermediate dealers of the retail chain, asserts claims vis-à-vis Visplay under the provisions of a foreign law due to an alleged product defect of the Goods, the Customer undertakes to indemnify Visplay within their interior relationship from any claims of the third party asserted in or out of court, provided that the Goods were in compliance with the technical and other standards with regard to product safety applicable in the Federal Republic of Germany and thus, the Goods were not defective within the relationship with the Customer.

10. Retention of Title

- 10.1 Visplay shall retain title to the Goods unless the Customer has paid the purchase price in full as defined in Section 7.1.
- 10.2 The Customer is obliged to take all measures necessary for compliance with the retention of title according to Section 10.1 or for serving the purpose of a functionally equivalent security right accepted in the country of destination (domicile of the Customer). The breach of this obligation by the Customer constitutes a material breach of contract.

11. Customer's obligations for the installation of the delivery items and/or the lightning

- 11.1 In the case of installation of the delivery items by Visplay, the Customer shall ensure general order on the construction site, manage the collaboration of the various entrepreneurs, and fulfil all agreed duties to provide and advance performances. In this connection, the Customer shall guarantee that Visplay is able to carry out the installation without any legal or actual obstacles and without delays. This includes the duty to notify Visplay upon ordering of any installation that is not on the ground level, and to ensure that the installation site is accessible, clean and free from obstacles and obstructions. In particular, the Customer shall carry out all agreed and necessary preparatory work and advance performances at

their own expense and shall guarantee that the static requirements defined by Visplay are met at the start of installation.

- 11.2 The Customer shall be liable for any breach of duty under section 11.1 in accordance with statutory provisions.

12. Replacement, Taking Back Goods

- 12.1 Without prejudice to Section 8, the Customer shall not be entitled to claim that the Goods are replaced or taken back against issuing a credit note.
- 12.2 If the Goods are serial products (standard goods), Visplay is willing to replace the Goods for reasons of goodwill or to take them back against issuing a credit note in the individual case. The precondition for replacing Goods or taking back Goods against issuing a credit note is that Visplay has given its prior written consent that the Goods are replaced or taken back against issuing a credit note. The consent may in particular be withheld if the Customer has not given its prior written consent to the conditions specified by Visplay in relation to replacing or taking back the Goods in the individual case.
- 12.3 Custom-made Goods will not be replaced or taken back against issuing a credit note. Custom-made Goods are technical modifications of existing types of standard goods and technical developments according to customer requests.

13. Privacy Policy

- 13.1 Visplay shall collect, process or use personal data only within the scope of data protection regulations. For details, please refer to the Privacy Policy of Visplay, which you can access under <https://www.visplay.com> or request from Visplay at any time.
- 13.2 2 Unless otherwise provided in these Terms of Delivery, Visplay shall be liable for infringement of data protection in accordance with legal provisions. For damages Visplay is only liable in the event of intent or gross negligence.

14. Legal Venue, Applicable Law

- 14.1 The courts in Freiburg im Breisgau, Germany, shall have exclusive jurisdiction over all disputes arising out of this contract if the registered place of business of the Purchaser is within the European Union. All disputes arising out of or in connection with the contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one arbitrator appointed in accordance with the said Rules if the registered place of business of the Purchaser is outside the European Union. The place of arbitration shall be Freiburg im Breisgau, Germany. The arbitration proceedings shall be conducted in German.
- 14.2 The laws of Switzerland including the UN Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980 shall apply to these Terms of Delivery and the contractual relationship of the contracting parties.

15. Final Provisions

- 15.1 If one or several provisions of the contract and/or these Terms of Delivery shall be or become invalid or unenforceable, the validity of the remaining provisions of the contract and/or the Terms of Delivery shall not be affected hereby. In such case, the contracting parties undertake to replace the invalid or unenforceable provision by such valid and enforceable provision that comes closest to the intended economic purpose. The same shall apply if the contract is incomplete.
- 15.2 The contracting parties mutually undertake to take all reasonable measures necessary for achieving the purpose of the contract and to refrain from any act that may affect the fulfillment and performance of the contract.