

# Terms of delivery and payment and terms and conditions of Elements Entertainment GmbH

## 1. Basis of contract

These terms and conditions shall be applicable to any contract, delivery and service of Elements Entertainment GmbH with companies according to § 14 of the Civil Code provided that they will not be varied or excluded with the express consent of Elements Entertainment GmbH.

Terms and conditions of business of the customer shall also not become obligatory if Elements Entertainment GmbH does not once again oppose them expressively.

## 2. Offers, formation of contracts

The offers of Elements Entertainment GmbH shall always be subject to confirmation; any conclusion of contracts, other agreements and oral collateral agreements or warranties shall become binding only after their written confirmation. Any contract with Elements Entertainment GmbH shall come into existence once it has been confirmed by the customer's order in writing or respectively, at the latest, upon commencement of the service/delivery.

## 3. Time limits, default, passing of risk

a) Any dates or periods of delivery shall only be binding if they have been expressly guaranteed to be binding by Elements Entertainment GmbH. Partial deliveries shall only be admissible to a reasonable extent. Terms of delivery shall renew reasonably in case of events of force majeure and any unexpected hindrance occurring after the conclusion of the contract for which Elements Entertainment GmbH is not liable (e.g. riot, strike, operational breakdown, changes in the legal provisions, official measures or regulations). The same shall apply if these circumstances arise at its suppliers or sub-suppliers sites. Terms of delivery shall be renewed by the period that the customer is in default with regards to its contractual obligations within the current business relations also from other contracts. Elements Entertainment GmbH shall not be liable for any default of and failure in delivery as long as it is not its fault but that of one of its vicarious agents or pre-suppliers.

b) Route and means of dispatch shall be, unless otherwise provided for, left to the option of Elements Entertainment GmbH. The goods will be insured on the request and at the expense of the customer.

c) The risk will be passed to the customer upon delivery of the goods to the forwarder or carrier. If delivery is delayed on the request of or through the fault of the customer, the goods will be stored at the risk and expense of the customer. In such a case, notice of readiness for shipment shall be equivalent to dispatch. The risk shall be passed to the customer upon receipt of notice.

## 4. Prices and payment

a) Our prices are stated in Euro and are plus value-added tax at the applicable legal amount and plus any costs for dispatch and packaging, unless otherwise stated.

b) Our deliveries shall be performed against prepayment, unless otherwise provided for. Invoices shall become due immediately. The customer will be in default without any further statement of Elements Entertainment GmbH 14 days after maturity if no payment is effected.

c) The claims of Elements Entertainment GmbH resulting from any business transaction shall also become immediately due in case of possibly arranged credit periods if the payment terms are not kept by negligence, or if facts are ascertained making the customer's creditworthiness doubtful.

d) In case of any delay in payment, default interest at the legally applicable amount shall be paid, notwithstanding the assertion of any further damages due to any delay in performance, amounting currently to 8% above the respective basic interest rate according to § 288 of the Civil Code. Any offsetting or assertion of a right of retention on the part of the customer shall be excluded, unless Elements Entertainment GmbH ascertains the claim to offset or retain without controversy or with final and binding effect. Elements Entertainment GmbH shall be entitled to avoid the exercise of the right of retention by provision of security, also by surety.

## 5. Reservation of title

The delivered goods shall – unless otherwise agreed upon – remain property of Elements Entertainment GmbH until complete payment of all claims of Elements Entertainment GmbH to which it is or will be entitled resulting from the business relations with the customer. In case of any resale performed by the customer – irrespective of the condition – the customer of Elements Entertainment GmbH assigns as a precaution, upon conclusion of the contract until redemption of all claims of Elements Entertainment GmbH against the customer, any claim against its customers that arose or will still arise from the resale and it undertakes to inform Elements Entertainment GmbH, upon request, of the name of the third party debtor and the amount of the claim against this one. As long as the customer meets its financial obligations and if there is no detrimental change in its financial conditions, Elements Entertainment GmbH will not recover the assigned claims. If the reservation of title is not effective in the aforementioned form according to the applicable law of the country of destination, then the customer shall be obliged to participate in constituting a right of protection from risks for Elements Entertainment GmbH according to the provisions applicable to its country. The aforementioned provisions shall be applicable in case of using and burning pyrotechnic igniters of Elements Entertainment GmbH within the framework of fireworks displayed by the customer.

## 6. Warranty

a) Any warranty claims of the customer shall become statute-barred after 12 months from passing the risks. The customer shall be obliged to check the goods for the contractually agreed condition immediately after receipt. Elements Entertainment GmbH must be notified of any possible defects in writing within one week. If the customer fails to notify, the goods shall be considered to be accepted, unless the defect could not be detected during the inspection. In other respects, §§ 377 ff of the Commercial Code shall be applicable.

b) The claims shall be, at the option of Elements Entertainment GmbH, restricted to the elimination of the defect, or to the delivery of an item free of defects (subsequent performance).

c) In case of failure or refusal of subsequent performance the customer shall be entitled, at its option, to lower the price, or to withdraw from the contract.

d) Any claim based on defects shall be excluded for defects resulting from faulty or non-intended treatment after passing the risks, e.g. by improper storage/handling. Any claim based on defects shall be excluded for any modification or maintenance or service measures improperly performed by the customer.

d) Any further claim of the customer, in particular because of consequential damages, shall be basically excluded. This shall not apply if done intentionally, in case of gross negligence or any violation of essential contractual obligations of Elements Entertainment GmbH, as well as in case of injury to life, body or health. The customer's right to withdraw from the contract shall remain unaffected.

## 7. Limitation on liability

a) Elements Entertainment GmbH shall be fully liable for any damages caused by grossly negligent or intentional conduct of Elements Entertainment GmbH, for cases of injury to life, body or health and for damages according to the Product Liability Act. The same shall apply to breaches of duty made by a vicarious agent of Elements Entertainment GmbH.

b) Elements Entertainment GmbH shall only be liable for damages due to slight negligence if those ones have been caused by violating cardinal obligations. Cardinal obligations are such obligations the fulfilment of which really enables the proper execution of the contract and the observation of which the customer may regularly trust on. In such a case, liability is limited to the damage that is typically predictable upon conclusion of the contract.

c) In case of slightly negligent damages caused by default Elements Entertainment GmbH shall also only be liable for a typical, predictable damage, however, to a maximum of 5% of the contractually agreed price. The same shall apply to the limitation of the claim of the customer for compensation of useless expenditures according to § 284 of the Civil Code.

d) The aforementioned limitations on liability (7a-c) shall be applicable to legal representatives and vicarious agents of Elements Entertainment GmbH accordingly.

## 8. Fireworks and special effects

a) Elements Entertainment GmbH shall obtain, on behalf of the customer, any necessary permit for erection and displaying from the competent authorities. Any costs and fees accruing in this respect, as well as the costs for meeting the official obligations and the necessary safety measures shall be borne by the customer. Any charge for copyrights and service rights (e.g. GEMA fees) accruing in connection with any media use shall be borne by the customer.

b) The customer shall be obliged to submit any required documents, as well as the necessary consent of the affected residents 18 days before the planned event at the latest.

c) Elements Entertainment GmbH shall reserve the right to perform any necessary modification due to technical or legally required reasons.

d) If any official permit for the display of fireworks should not be granted due to any reason beyond the control of Elements Entertainment GmbH, then its obligation to fulfil the contract will not apply any longer.

e) If the customer is responsible for the refusal of the permit (e.g. documentations or approvals were not submitted, only incomplete or too late), then Elements Entertainment GmbH shall be entitled to demand 50% of the order total as lump-sum compensation. Any assertion of higher damages shall be reserved.

f) If any fireworks display is not performed due to reasons for which the customer is responsible, then it will be obliged to pay Elements Entertainment GmbH the agreed price minus its saved expenditures. The same shall apply if the display of the fireworks is not possible due to unfavourable weather conditions. The decision whether the weather conditions (e.g. rain, storm, etc.) or other any circumstances (e.g. people being inside the safety zones) allow displaying the fireworks shall be left to the discretion of the pyrotechnician. If fireworks are displayed in the rain, a trouble-free process will not be guaranteed.

g) The customer shall be entitled to grant the responsible pyrotechnician/our team access to the site for displaying the fireworks at the date fixed. The decision who is allowed to stay within the safety zone shall be taken by Elements Entertainment GmbH or its vicarious agents.

h) There will be strict smoking ban on the site for displaying the fireworks, the site(s) for any preparatory work to be performed, in indoor facilities on the stage floor from the very beginning of installing the equipment. It shall be the customer's task to observe or having observed this ban.

i) The site for displaying the fireworks and the included items (e.g. decorative elements) may only be changed or included with the consent of the pyrotechnician of Elements Entertainment GmbH. It shall be the customer's task to clean the site where the fireworks were displayed and the respective surrounding.

## 9. Data protection

Customer-related data will be collected and stored by Elements Entertainment GmbH within the framework of executing the contract in considering the legal provisions.

## 10. Final provisions

a) Bielefeld shall be the place of performance and exclusive place of jurisdiction and payments (including any actions on cheques and bills), as well as any disputes arising between the parties.

b) The contract shall remain binding in its entirety also if individual clauses become legally invalid.

c) The law of the Federal Republic of Germany shall be applicable with the exception of the UN Sales Convention as regards the contractual relation.