



MEDIAAPES

Valid per: August 10. 2022

General Conditions of Sale MediaApes GmbH

These general conditions of sale are applicable to all assignments granted to MediaApes GmbH.

A. General provisions

Article 1 - Definitions

- 1.1 In these general conditions is intended by:
Supplier: the legal entity with limited liability MediaApes GmbH, established Friedrichstr. 36 in (67433 RLP) Neustadt and listed in the trade register under number 63072, or their legal successor(s) in title;
Customer: the counterparty of Supplier in an Agreement;
Assignment, i.e. Agreement: the agreement for the delivery of goods and/or the provision of services.
General conditions: the underlying general conditions.

Article 2 - Applicability

- 2.1 These general conditions are applicable to all offers, activities, quotations, and Agreements of Supplier between the Supplier and Customer(s), or their successors in title respectively.
- 2.2 The applicability of general conditions of Customer is expressly rejected by Supplier.
- 2.3 The underlying conditions are also applicable to all Agreements with Supplier, for the implementation of which third parties must be engaged.
- 2.4 If one or more of the provisions in these general conditions are void or were to be annulled, the other provisions of these general conditions remain fully effective. In such case, Supplier and Customer will enter into consultations so as to establish new provisions to replace the void and/or annulled provisions, whereby if and to the extent possible the purpose and the purport of the original provision will be observed.
- 2.5 Deviating provisions of these conditions are only effective if and to the extent Supplier has confirmed such expressly and in writing to Customer. Unless expressly established otherwise in writing, such derogations from or additions to the general conditions only regard the relevant Agreement.
- 2.6 Supplier reserves himself the right to modify these general conditions intermediately. The modified general conditions will in such case apply as well to the existing agreement between Customer and Supplier. Modifications are announced in writing and enter into effect 14 days after such announcement or at a later time as indicated in the announcement.

Article 3 - Quotations

- 3.1 The quotations made by Supplier are non-committal; they are valid for 30 days after issue, unless indicated otherwise. Supplier is only bound by the offers or quotations if the acceptance thereof by the Customer is confirmed in writing within 30 days, unless indicated otherwise.
- 3.2 The prices in said offers and quotations are exclusive of VAT and other government levies and are listed in Euros as a standard, as well as costs to be incurred exclusively in the context of the Agreement, also including shipping- and administration costs, customs charges unless indicated otherwise.

- 3.3 Quotations do not automatically apply for future Assignments.
- 3.4 In case these general conditions and the Agreement contain contradictions, the conditions stipulated in the Agreement apply.
- 3.5 Quotations of the Supplier are based on the information that was provided by the Customer. The Customer guarantees that to the best of his knowledge he thereby has provided all information that is essential for the preparation and implementation of the Assignment.

Article 4 - Adoption of the Agreement

- 4.1 The Agreement is adopted at the moment that an Agreement or quotation signed by Supplier and Customer has been received back by Supplier. The Agreement is based on the information provided at the time by Customer to Supplier. The Agreement is deemed to correctly and completely represent the Assignment. Supplier is at liberty to prove that the Agreement was concluded in another manner.
- 4.2 If the Assignment was granted verbally, or in the event the Agreement has not (yet) been received back signed, the Assignment is deemed to have been adopted under application of these general conditions at the moment that Supplier upon request of Customer starts with the implementation of the Assignment.

Article 5 - Implementation of the Agreement

- 5.1 Customer is obliged to provide Supplier with all necessary information that may reasonably be important in connection with the implementation of the agreement. Supplier handles such information with confidentiality.
- 5.2 If and to the extent the proper implementation of the Agreement requires such, Supplier has the right to have certain activities conducted by third parties.
- 5.3 During the implementation of the Assignment, Customer and Supplier upon request of one of them will be able to communicate with each other by way of electronic mail. Supplier is not liable towards Customer for damage that flows from the use of electronic mail. Both Customer and Supplier will do anything that may reasonably be expected to prevent risks such as the spreading of viruses and distortion.
- 5.4 Both parties are obliged for one year after completion of an Assignment to keep secret all confidential information they have obtained or provided in the context of the Agreement.

Article 6 - The engagement of third parties in the implementation of the Assignment

- 6.1 Supplier determines the manner in which and by what person the Agreement is carried out, though he thereby observes the wishes expressed by Customer as much as possible. If and to the extent the proper implementation of the Agreement requires such, Supplier has the right to have certain activities carried out by third parties.
- 6.2 If upon request of the Customer third parties are deployed, Supplier is never liable for the following of advice of these third parties, nor for the incorporation of the results of the third party in an advice of their own.

MediaApes GmbH

⌚ Friedrichstr. 36, 67433 Neustadt/Weinstr. ☎ +49 6321 9991823 📩 info@mediaapes.de 🌐 mediaapes.de

Bankverbindung • Sparkasse Rhein-Haardt • IBAN DE 3154 6512 4000 0523 9116 • BIC MALADE510KH

Amtsgericht-Registergericht-Ludwigshafen-HRB 63072 • USt-IDNr.: DE283394822 • Geschäftsführer: Sebastian Gsuck, Tobias Strauch

**Article 7 - Prices**

- 7.1 A price is owed by Customer as established in the agreement or an accepted quotation. In other situations, the rates apply that are effective at the moment of the provision of services/delivery of goods.
- 7.2 If Supplier advises Customer or conducts (further) activities on an hourly basis, the customary rates of Supplier for these (advisory) activities apply as effective at the moment the work is carried out.
- 7.3 In case of Agreements that last for more than one month, the prices may be indexed once every twelve months.
- 7.4 Prices are fixed and exclusive of VAT, unless stated otherwise.

Article 8 - Payment conditions

- 8.1 For the activities that were conducted, the Customer receives an invoice at the address submitted by the Customer.
- 8.2 A payment term of 14 days is applied.
- 8.3 Supplier may demand the payment of an advance invoice.
- 8.4 Objections against the amount of cost statements or complaints do not suspend the payment obligation.
- 8.5 If Customer remains in default with payment within the term, then the Customer falls into default legally, without any further default notice. In such case, Customer owes the contractual interest of 12 % per year (the statutory commercial interest rate if higher). The interest on the payable amount will be calculated from the day that Customer is in default until on the day of full settlement.
- 8.6 If after expiry of the first payment term, as stated in section 1, [Customer] has not or has not fully complied with his payment obligation, Supplier sends Customer a written warning for the payment of the outstanding amount within a second 7-day term. If Customer has not or has not fully complied with the payment obligation within the second term, Customer owes both the judicial and the extrajudicial (collection) costs.
- 8.7 If payment fails to occur, Supplier has the right to suspend his obligations.
- 8.8 If the Assignment was granted by more than one Customer, then all Customers are severally and jointly liable for compliance with the obligations as indicated in this article (regardless of in whose name the bills are prepared).
- 8.9 It is not permitted to Customer to set off amounts owed by him to Supplier unilaterally against amounts he believes are owed to him, on any account whatsoever, by Supplier.
- 8.10 In case of liquidation, bankruptcy, attachment, or suspension of payment of Customer, the claims of Supplier on the Customer become immediately exigible.

Article 9 - Obligations Customer

- 9.1 The Customer must take care of the supply of the correct data and information that are required to be able to carry out the Assignment. Supplier is not liable for errors in drawings, calculations, reports, advice, systems, etc. that are based on the information that was provided by the Customer.
- 9.2 The Customer must himself observe due diligence so as to prevent damage to his property. Supplier is not liable for damage or missing property.
- 9.3 Customer is obliged to store received goods with care if they cannot be installed immediately.

Article 10 - Delivery and installation

- 10.1 Delivery of the goods ordered by Customer takes place in conformity with the Incoterms 2020, to the extent they are

not derogated from in the Agreement or the underlying general conditions.

- 10.2 Delivery dates are only an indication and never are strict time limits. No rights can be derived from delivery dates that were submitted.
- 10.3 The costs of transport and delivery are borne by Customer, whereby are also intended import duties, taxes, insurance, and other customary charges. Supplier takes care of sound packaging and protection of the goods to be delivered.
- 10.4 Customer is obligated to receive the goods on the established date. If it is not possible for Supplier to hand over the goods on this date, then Supplier has the right to bill the costs of storage and transportation to Customer.
- 10.5 The Customer must (let) investigate the delivered products upon delivery. Customer must thereby verify whether the delivered matters correspond with the agreement, that is:
 - a. whether the correct matters were delivered.
 - b. whether the delivered matters, as to quantity and numbers, correspond with the Assignment.
 - c. whether the delivered matters meet the requirements that may be set for normal, sound use and/or (commercial) purposes.
- 10.6 Visible defects or deficiencies that are identified or could have and/or must have been identified upon delivery must be immediately communicated to Supplier, or otherwise within 7 days after the delivery date. Goods can only be returned with the consent of Supplier.
- 10.7 Damage to the packaging must be reported to the transporter immediately upon receipt. Supplier is not liable for this and damage must be immediately claimed from the transport company. Customer safeguards Supplier against such damage.
- 10.8 Supplier is not liable for damage that has occurred upon the installation by a third party or staff of Customer.

Article 11 - Retention of title

- 11.1 All delivered goods remain the property of Supplier until they have been paid in full by the Customer.
- 11.2 It is prohibited to Customer until such time to give the goods as a collateral or security in any form whatsoever, or to redeliver them, respectively, to third parties without the express consent of Supplier.
- 11.3 Supplier has the right to take repossession of the delivered goods if the Customer were to fail to comply with his payment obligations.
- 11.4 If third parties (threaten to) levy an attachment on the matters delivered under retention of title or they wish to establish or enforce rights thereto, the Customer is obliged to immediately inform Supplier accordingly and to grant the latter access to the area where his property is located, so that they are able to recover it.

Article 12 - Modification of the Assignment, i.e., additional work

- 12.1 If the intermediate modification to the Assignment or the implementation of the assignment arises through the actions of the Customer, the Supplier will apply the necessary changes if the quality of the provision of services requires such. If such a modification leads to additional work, this additional work will be invoiced additionally in accordance with the customary rates.
- 12.2 Supplier strives to timely inform Customer regarding additional work and any possible price-increasing costs. If additional work is not necessary, Supplier will only carry this out following written assignment from Customer.



Article 13 - Duration of the Assignment and implementation term

- 13.1 The Agreement is adopted for an indefinite time, unless it flows otherwise from the content, nature, or purport of the Agreement or parties expressly establish otherwise.
- 13.2 If a term has been established for the completion of certain activities within the duration of the Agreement, then this never regards a strict time limit. Upon the overrunning of the implementation term, the Customer must therefore declare the default of Supplier in writing and demand compliance.

Article 14 - Warranty

- 14.1 The warranty term is 12 months from the date of receipt of hardware.
- 14.2 The warranty term is 3 months from the date of receipt/installation for software.
- 14.3 Loose components are subject to a warranty of 3 months. In case of the replacement of a defective part, a new warranty period of 3 months enters into effect for that part.
- 14.4 Supplier does not provide a warranty in the following cases: inexpert or incompetent use, installation errors by Customer (or his staff or a deployed third party), maintenance by a different party than Supplier, destruction, theft, damage from the outside, such as water damage or fire damage, products cannot be identified (anymore) as deriving from Supplier, defects that are (also) the result of normal wear, incorrect handling or assembly, usage or storage, maintenance, in case Supplier is not immediately given the opportunity by the Customer to investigate the complaints and to comply with his obligations, or if the customer has not timely or has not properly complied with any obligation he is subject to.
- 14.5 In case of products that Supplier is the reseller of, no additional warranty is provided and the manufacturer's warranty applies.
- 14.6 Complaints must be reported as soon as possible, though within 30 days after discovery, in writing to Supplier.
- 14.7 Supplier determines by warranty whether replacement, restoral or (partial) crediting of the price is opted for. Supplier is not obliged to deliver a new product/part, certainly not in case such cannot reasonably be demanded of Supplier.

Article 15 - Intermediate termination of the Assignment

- 15.1 The agreement for the delivery of products can be terminated intermediately for as long as the product has not been ordered yet and it does not regard a customized product. An agreement for the provision of services can be terminated with due regard for a notice period of 1 month.
- 15.2 Notice by a party must be given in writing by mail, or by way of an e-mail message.
- 15.3 If parties have established that activities are conducted on the basis of an hourly rate, Customer is obliged to pay all activities and costs that have been carried out through the end date to Supplier. If due to the intermediate cancellation loss of turnover is incurred by Supplier or advantages are obtained by Customer, Supplier has the right to bill additional wages.
- 15.4 If parties have established a fixed price, in case of intermediate cancellation Customer continues to owe 100% of the established fixed price.
- 15.5 If Supplier cancels the Agreement intermediately, he never owes compensation of damages to Customer.
- 15.6 In case either party falls into a state of bankruptcy, applies for suspension of payments, or ceases its business operations, the other party has the right to terminate the

Assignment without observing a notice period, all matters subject to the reservation of rights from the Agreement and the law.

Article 16 - Rescission of the Agreement

- 16.1 If the Agreement is rescinded, the claims of Supplier on the Customer are immediately exigible. If Supplier suspends compliance with the obligations, he retains the claims pursuant to the law and the Agreement.
- 16.2 Supplier always retains the right to demand compensation of damages.
- 16.3 Supplier is authorised to suspend compliance with the obligations or to rescind the Agreement, if:
 - Customer does not or does not fully comply with the obligations from the Agreement;
 - Circumstances that have come to the knowledge of Supplier after conclusion of the Agreement provide legitimate grounds to fear that the Customer will not comply with the obligations. In case there are legitimate grounds to fear that the Customer will only partially or will not properly comply, the suspension is only permitted to the extent the shortcoming justifies such;
 - Customer upon conclusion of the Agreement is requested to lodge security for compliance with his obligations and this security fails to be made or is insufficient.

Article 17 - Intellectual property

- 17.1 All copyrights and other rights of intellectual or industrial property to models, techniques, products, instruments, also including software, or other materials such as analyses, designs, reports, as well as preparatory material therefor, lie exclusively with Supplier. Disclosure by Customer may therefore only occur following the written consent obtained from Supplier.
- 17.2 All documents provided by Supplier, such as reports, advice, Agreements, designs, sketches, drawings, etc. are exclusively intended to be used by the Customer for the purpose they were provided for and may not be multiplied, rendered public, or brought to the knowledge of third parties without the prior consent of Supplier, unless it flows differently from the nature of the documents provided.
- 17.3 The Customer has the right to multiply the documents for use within his own organisation, to the extent appropriate within the purpose of the Assignment.
- 17.4 Upon any violation committed by the Customer of the intellectual property rights of Supplier, the Customer owes Supplier a fine of € 10,000 per time, increased by € 1,000 for every day that the violation continues. This leaves unaffected the right of Supplier to demand additional compensation of damages.

Article 18 - Risk transfer

- 18.1 The risk of the product is transferred to the Customer at the moment that Supplier provides them to the Customer.
- 18.2 Regardless of what is stipulated in section 1, parties may establish that Supplier takes care of transport. The risk of storage, loading, transport, and unloading in such case lies with Customer. Customer can insure himself against such risks.

Article 19 - Liability

- 19.1 If Customer proves that he has incurred damage through an action or omission of Supplier, the liability of Supplier is limited to a maximum of one time the cost statement for the relevant Agreement.



- 19.2 In derogation to what is established above, in case of an Assignment with a longer lead time than a half year, the liability is further limited to the part of the billing owed over the last six months that the liability is in regard to.
- 19.3 Supplier has the right at all times to prevent or reduce damage to be incurred or incurred by Customer to the extent possible.
- 19.4 By damage is exclusively intended damage to persons, damage to matters, and direct financial damage.
- 19.5 Supplier is never liable for indirect damage, also including consequential damage, lost profit, missed savings, fines, reputational damage, damage due to the loss or damaging of data, claims/demands by third parties, and damage due to operational stagnation.
- 19.6 The limitations of liability for damage stipulated in these conditions do not apply if the damage can be attributed to the wilful intent or gross negligence, that can be equated with the former, of a manager of Supplier.
- 19.7 The limitations of liability set forth in this article are also stipulated for the benefit of persons or third parties deployed by Supplier that therefore can appeal directly to these limitations of liability as a result.
- 19.8 A series of interrelated events counts as a single event.
- 19.9 Supplier is not liable for damage, of any nature whatsoever, because Supplier relied on incorrect and/or incomplete information that was provided by the Customer, unless such incorrectness or incompleteness should have been knowable to Supplier.
- 19.10 Supplier does not accept any design responsibility. Any possible designs only count as an advice or exemplary indication.

Article 20 - Complaints

- 20.1 A complaint regarding conducted activities or the amount of the invoice must be communicated in writing, on pain of all claims lapsing, within 30 days after the forwarding date of the invoice or the activities that Customer complains about, or, if Customer demonstrates that he could not have discovered the defect any sooner, within 30 days after discovery of the defect, to Supplier. The complaint must contain a description with the greatest possible detail, including visual material if possible, so that Supplier is able to respond adequately.
- 20.2 In case of a complaint that was legitimately submitted, Supplier has the choice between adjustment of the price that was billed, the improvement free of charges, the implementation anew of the relevant activities, the restoral of a product or activities, or the delivery anew of a (similar) product or partially or completely not carrying out (anymore) of the Assignment against the restitution of the price already paid by Customer in proportion.
- 20.3 A complaint does not suspend the payment obligation of the Customer.

Article 21 - Indemnification

- 21.1 Customer safeguards Supplier, his subordinates and auxiliary persons against claims by third parties with regard to rights of intellectual property to materials or data provided by the Customer.
- 21.2 Customer safeguards Supplier against any possible claims by third parties that incur damage in connection with the implementation of the Agreement that can be attributed to Customer.
- 21.3 Customer safeguards Supplier against claims by third parties on account of damage that was caused because Customer provided Supplier with incorrect or incomplete information.
- 21.4 Customer safeguards Supplier against all claims by third parties - also including shareholders, administrators, trustees, and staff of Customer, as well as affiliated legal

entities and enterprises and others who are involved in the organisation of Customer - that flow from or are related to the activities of Supplier for the benefit of the Customer.

- 21.5 Customer safeguards Supplier against any claim by employees of Customer or other third parties towards Supplier in connection with the violation by Customer of the GDPR and related legislation and regulations.
- 21.6 Customer safeguards Supplier as well against claims by third parties whereby Supplier is designated as a co-perpetrator of Customer.

Article 22 - GDPR and privacy

- 22.1 Between Customer and Supplier, personal data are exchanged. Both parties declare that they observe the General Data Protection Regulation (GDPR).
- 22.2 Supplier uses personal data for the following:
 - a. to be able to maintain the contact and the relationship with the Customer;
 - b. the implementation of the agreement/agreements;
 - c. for the exchange of personal data with third parties if it is necessary for the implementation of the agreement with the Customer;
 - d. to carry out (targeted) marketing and sales activities, such as the provision of information about other products and services of Supplier that may be interesting and relevant to the Customer;
 - e. to be able to comply with other legal obligations;
 - f. to analyse visitors' behaviour on the website;
 - g. to comply with a legal obligation;
 - h. for sound business operations.
 - i. For more purposes, reference is made to the privacy statement.
- 22.3 Supplier may deploy third parties. These third parties may process personal data in the capacity of (sub-)processor.
- 22.4 Supplier has taken adequate technical and organisational measures to secure personal data against loss or unlawful use.
- 22.5 The perusal, correction, and removal of personal data that Supplier processes on the relevant applicant may be requested. After the application, Supplier within four weeks provides a summary of the personal data. The request can be submitted in writing to the address of Supplier. If there are inaccuracies in the registered personal data, Supplier is happy to receive a request for the correction or removal of the data. Supplier may bill a legal fee for a request for the statement.
- 22.6 Supplier exclusively provides personal data to third parties if there is a legal obligation to do so or if such flows from the Agreement or in case it is based on consent. The Customer is responsible for the correct provision, in conformity with the law, of the personal data.
- 22.7 In case of the transfer or sale of the company of Supplier or of a part thereof, the Customer grants permission in advance for the transmission or the selling along of his data. This also flows from the nature of the agreement and the possibility of continuing the agreement.

Article 23 - Force majeure

- 23.1 By force majeure with regard to the Agreement is intended anything that is defined as such in the law and in jurisprudence.
- 23.2 Supplier is not bound by his obligation from the Agreement if compliance has become impossible due to force majeure; by force majeure is intended in any event, though it is not limited to: illness of Supplier, strikes, cancellation or delay of purchasing materials or of third parties/persons deployed by Supplier, shortcomings or force majeure on the part of suppliers, third parties,



extreme weather conditions, natural disasters, fire, terrorism, pandemics, internet-, security, or electric interruptions or malfunctions, or government interventions.

- 23.3 Supplier has the right during the period that the force majeure continues to suspend the obligations from the Agreement. If this period lasts longer than six months, then each of the parties has the right to rescind the agreement, without any obligation to compensate damage to the other party.

Article 24 - Limitation period

- 24.1 Claims and other powers of Customer on any account whatsoever vis-a-vis Supplier in connection with the conducting of activities by Supplier lapse in any event one year after the moment that Customer became or could reasonably have been aware of the existence of such rights and powers.

Article 25 - Applicable law and choice of court

- 25.1 To all Agreements between Supplier and Customer German legislation is exclusively applicable. The Vienna Commercial Convention is expressly excluded.
- 25.2 All disputes between Supplier and Customer are settled by the competent court of law in the district where Supplier has his place of establishment. Supplier nevertheless has the right to submit the dispute to the court of law that is competent according to the law.

B. Special provisions regarding maintenance

Article 26 - Maintenance and service

- 26.1 By maintenance activities is intended: all activities that the Supplier must carry out to make sure that the technical condition of the system and the functions to be fulfilled by the system will meet the requirements flowing from the Agreement during the maintenance period.
- 26.2 By malfunction is intended: a sudden interruption of the performance of the system.
- 26.3 Supplier exerts himself during the maintenance period to the best of his ability to keep the risk of malfunctions occurring at an acceptable level by way of preventive measures and, to the extent established, resolve malfunctions.
- 26.4 The Supplier is authorised to carry out the maintenance activities at a distance, or to have them carried out by third parties, by way of a connection with the system realized through a telecom facility.
- 26.5 Planned maintenance activities will be scheduled in mutual consultation with the Customer. If the maintenance activities cannot be carried out at the established time, then Supplier has the right to bill the reserved hours and possible travel expenses.
- 26.6 In case of malfunction maintenance, the Customer upon reporting a malfunction grants an assignment to carry out the work that is necessary to resolve the malfunction. The assignment can be resolved at a later time in writing in case this is not possible immediately in view of the urgency of the malfunction. Supplier bills the rates that are effective at such time for these matters, unless established otherwise. Supplier is not liable for damage, also including consequential damage, that occurs due to the malfunction and the not timely reporting of the malfunction. Upon the carrying out of maintenance activities outside regular business hours (9:00 AM – 6:00 PM) a surcharge may apply.
- 26.7 When carrying out maintenance activities, the Supplier is under a best-effort obligation, but not subject to an obligation concerning the results. If Supplier is unable to

resolve a malfunction, then parties will enter into mutual consultation regarding the replacement of the system. Supplier may provide a quotation for this.

- 26.8 If parts must be replaced within the warranty term, Supplier does not bill these new parts to the Customer, but he does bill the hours spent.
- 26.9 During the established maintenance period, the Customer may not deploy any third parties without the permission of Supplier to conduct maintenance on the system. If the Customer nevertheless does so, any possible ongoing warranty will lapse immediately.
- 26.10 Cancellation of the maintenance agreement by the Customer is only possible by way of a written announcement to Supplier. A notice period of 6 months must be observed for cancellation of the entire agreement and a notice period of at least one month for separate planned maintenance activities. In case of a shorter notice period, Supplier has the right to bill a lump sum.