

GENERAL DELIVERY AND PAYMENT CONDITIONS  
OF  
**MICROMEDIA B.V.**  
Established and residing in Nijmegen, The Netherlands

Deposited by the *Kamer van Koophandel en Fabrieken* in Arnhem on 14 July 2004

**Article 1: Definitions**

1.1 As used herein:

**Micromedia**

Micromedia B.V. , residing on the Beurtvaartweg 2, 6541 BW in Nijmegen

**Other Party**

The term "other party" in these conditions refers to any individual or legal entity that wishes to or has already closed an agreement with Micromedia as outlined in article 2.

**Products**

Where the term "product/s" is used in these conditions, is meant to be understood software, data, and all information technology in the broadest sense of the word.

**Article 2: Application**

- 2.1 These general delivery and payment conditions are applicable to the completion, content and execution of all past and present Micromedia agreements whereby Micromedia functions as (potential) seller and/or supplier of products.
- 2.2 These conditions shall apply to all future agreements. The application of other conditions is emphatically rejected. Deviations from these conditions must be mutually agreed upon, confirmed in writing and are applicable only to the specific agreement.

**Article 3: Quotes**

- 3.1 Quotes from Micromedia are without obligation and are valid for a period of 14 days unless otherwise mentioned or agreed upon. By complex price quotes, a proportional price can not be guaranteed on partial orders.
- 3.2 All specifications will be given as accurately as possible, yet products or services can not be required to adhere to these approximations. The same applies to samples, catalogues, drawings, models, budgets, plans and other documents. Additionally, these remain the property of Micromedia and must be returned upon the first request at the cost of the other party.
- 3.3 In the event that, after requesting a quote, the other party does not wish to come to an agreement, Micromedia reserves the right to charge the other party for all costs related to the making of the offer.

**Article 4: Agreements**

- 4.1 An agreement is in effect at the moment of written acceptance by Micromedia or through the execution of the agreement in the name of Micromedia.
- 4.2 The text of the contract and/or the order confirmation reflect the agreement. Supplements and/or modifications to the agreed product, service or performance are applicable only after written acceptance by Micromedia, or through the actual execution of thereof. Micromedia is entitled to charge the other party the going rate for any and all modifications to the agreement as well adjust the agreed upon delivery time.
- 4.3 Prior to the agreement as well as during the execution of the agreement, the other party is obligated to supply Micromedia with all relevant information, documents and materials which are reasonably needed for a proper execution of the agreement. In the event that the necessary information/documents/materials

- are not made available to Micromedia in a timely fashion, Micromedia reserves the right to suspend the execution of the agreement and/or to charge the other party at the going rate for the extra costs incurred due to the delay.
- 4.4 Micromedia reserves the right to utilize a third party if, in her opinion, it is necessary for the proper execution of the agreement.
  - 4.5 By agreements made with multiple parties is each of the parties individually and primarily liable for the fulfilment of all obligations to Micromedia.

#### **Article 5: Prices**

- 5.1 The prices quoted include delivery to the warehouse/offices of the other Party within the Netherlands (DDP), are exclusive VAT and other governmental imposed levies, and exclusive other costs not specifically covered in the agreement such as packaging, freight, loading en unloading, installation, assembly and insurance unless otherwise mentioned.
- 5.2 In the event that after the agreement is made, the labour , production or material costs rise, Micromedia reserves the right to pass this increase on to the other party. By an increase of more than 10% within 3 months of the agreement shall Micromedia inform the other party prior to execution of the agreement. The other party shall then have the right to annul the agreement in writing at no extra cost provided Micromedia does not wish to execute the agreement for a nominal fee or without increase.
- 5.3 Unless otherwise mentioned, all quotes are given in Euros. Currency fluctuations are the risk of the other party.

#### **Article 6: Delivery/Contract duration**

- 6.1 All products shall be delivered out of the Micromedia warehouse/offices. All risk transfers to the other party at the moment of delivery. Products are considered to be delivered from the moment that they are ready for pick-up at Micromedia by the freight company. Services are deemed to be delivered at the moment that the other party is informed by Micromedia.
- 6.2 In the event that the order to be delivered is comprised of individual, independent products, Micromedia reserves the right to deliver and invoice these products separately.
- 6.3 Micromedia reserves the right to deliver products that may deviate from the agreement slightly if, in the opinion of Micromedia, the products to be delivered are of equal or better quality.
- 6.4 By long-standing agreements and delivery upon demand, the other party is obligated to accept the agreed upon quantities of products or services within the agreed upon time period, or within 6 months of the date of agreement if no time period has been agreed upon. For delivery upon demand the other party is required to allow Micromedia a period of not less than five workdays to deliver.
- 6.5 The estimated delivery date shall, to the best of Micromedia's ability, be met but remain estimations and are not binding. A delivery date becomes applicable only after receipt of the required information, materials, prepayment and /or confirmation of credit from the other party.
- 6.6 Micromedia shall inform the other party in the event that an estimated delivery date can not be met and propose a new delivery date. Should Micromedia fail to inform the other party of a delay in delivery, the other party may propose in writing a new reasonable delivery date. In the event of delivery delays Micromedia is not liable for damages, however the other party has the right to partially nullify the agreement in writing for that portion which has been delayed four weeks after notifying Micromedia in writing that they will be held accountable for non-compliance.
- 6.7 The other party is required to accept delivery. In the event that the other Party does not accept delivery within a reasonable time period, Micromedia reserves the right to store the goods at the cost and risk of the other party and/or after seven days nullify the agreement and invoice the other party for costs made.

#### **Article 7: Packaging**

- 7.1 Packaging/pallets will be charged separately on the invoice. Packaging/Pallets will be credited only after they are received by Micromedia at the expense of the other party in an undamaged and clean state.

#### **Article 8: Transport**

- 8.1 Micromedia can, at the request of the other party or when the execution of the agreements requires it, arrange for the transport of the goods to the business address of the other party or another separate address as requested by the other party. The other party assumes all risk related to transport. Micromedia strongly recommend that the other party maintain sufficient insurance coverage for this purpose.
- 8.2 The means of transportation, the transporter, the packaging and the route shall be determined by Micromedia unless other specific instructions are given by the other party and any related increases in costs are assumed by the other party.

#### **Article 9: Force Majeure**

- 9.1 If, in the opinion of Micromedia, circumstances beyond her control lead to delays in or failure of performance, Micromedia reserves the right to partially or fully annul the agreement and/or temporarily postpone fulfilment of the agreement until such time that the circumstances have returned to normal without penalty or liability.
- 9.2 Under "force majeure" is understood, among other things: calamities, natural disasters, government regulations, war, rebellion, strikes, unusual stagnation in production or transport, unusual absenteeism due to illness and other unpredictable circumstances which may affect business of Micromedia or her suppliers.
- 9.3 In the event that the force majeure shall have a duration of longer than three months, both parties shall retain the right to annul the agreement in writing. Micromedia reserves the right to invoice the other party for those portions of the agreement fulfilled prior to the force majeure. Neither party is entitled to any form of compensation for damages.

#### **Article 10: Transfer of Ownership**

- 10.1 Micromedia retains ownership of all delivered products until the moment that the other party has fully fulfilled all obligations towards Micromedia related to past deliveries and deliveries yet to made, including obligations related to shortcomings in the fulfilment of previous agreements.
- 10.2 The other party is obligated to manage and store the products separately from similar products in such a way that the products are easily recognizable as the property of Micromedia.
- 10.3 As long as ownership of the property has not been transferred to the other party, the other party is not authorized to convey rights related to the delivered goods, nor give these under any title for use on a third party.
- 10.4 In the event that the delivered goods are incorporated in, processed or combined with other products, Micromedia immediately has the right to co-ownership of the goods wherein the products are incorporated equal to the value of the delivered goods.
- 10.5 The other party is authorized to use or sell the delivered goods solely within normal business practices and conform the intended use. By reselling of the products whereby ownership has not yet transferred or where there is a question of co-ownership, the other party is obligated to maintain the same terms of ownership as described in these conditions. At the moment of resell Micromedia also retains silent property rights on the claim/s of the other party against their customer/s and reserves the right to inform the customer/s of the other party of this claim and demand and receive payment of the claim directly.
- 10.6 In the event that the other party fails to honour one of her contractual obligations or goes into liquidation as may be the case due to death,

application for bankruptcy, presentation or filing for insolvency or application of the Law on Debt Cleansing of Natural Persons, Micromedia has the right to consider the agreement as cancelled by the other party and to reclaim her (partially) unpaid property without notice or judicial intervention.

- 10.7 After cancellation and reclamation of the products Micromedia is authorized to bill the other party for the costs related to cancellation and reclamation, without prejudice of her right to compensatory damages.
- 10.8 Upon a penalty of a fine of € 500.00 per day, the other party is obligated upon the first request to immediately provide Micromedia with any information and the necessary cooperation to implement the claim and eventual reclamation of Micromedia property. The other party grants, by virtue of this agreement, Micromedia the irrevocable right to enter all premises where the goods may be stored.

#### **Article 11: Industrial Rights to Ownership**

- 11.1 All industrial and/or intellectual ownership rights related to plans, model, brand, author's rights, product specifications, design, graphic design, programming, etc. are reserved by Micromedia.
- 11.2 Micromedia shall take all reasonable precautions to insure that she does not infringe on the industrial/intellectual ownership rights of another in the Netherlands. In the event that, despite Micromedia's efforts, such an infringement shall occur is the opposing party obligated to notify Micromedia immediately.
- 11.3 The other party declares with the acceptance of this agreement that they shall refrain from any infringement on the industrial/intellectual property rights of Micromedia, including when the rights have not been registered, and shall strive to prevent and/or end infringement of these rights by third parties.
- 11.4 The other party is not permitted to change, partially or in its whole, goods delivered or to furnish them with another brand name or packaging.
- 11.5 The other party guarantees that the assignment or information provided by her shall not cause an infringement on the rights of third parties nor result in legal stipulations and fully indemnifies Micromedia against all claims by third parties.
- 11.6 Micromedia reserves the right to use information obtained in the process of implementing orders for other purposes, in so far that no confidential information is released to third parties.

#### **Article 12: Guarantee**

- 12.1 Micromedia provides a guarantee only if it is agreed to in writing. Factory guarantees within the applicable regulations shall, whenever possible, be provided to the other party.
- 12.2 Provided guarantees are not binding when the other party does not use the goods as intended and conform specifications, has revised or modified the products, or used, maintained, repaired or altered the products injudiciously nor are the guarantees binding when the other party fails to honour her obligations to Micromedia.

#### **Article 13: Reclamations**

- 13.1 The other party is obligated direct upon receipt of the goods or services to check for visible shortages, damage and deficiencies and to report these, in writing, per fax (+31 (0)24 6452539) to Micromedia's customer service department along with a copy of the related shipping list. All other reclamations related to delivered goods, services or invoices must be reported in writing within 7 days of receipt of the shipment. The reason for reclamation must be fully described.
- 13.2 Invoices are deemed to be approved and all rights to reclamation

- lapse by failure to process shipments or report deficiencies in a timely fashion.
- 13.3 Deviations from the in the Netherlands usual standards of delivery must be agreed upon in advance. Minor and/or usual deviations in quality or quantity of a shipment (included but not limited to: quantity, size, sort, colour, weight, design) are never reason for reclamation.
- 13.4 Only and in as far as a reclamation is considered justified by Micromedia, are the payment obligations of the other party solely with respect to the pertinent (partial) delivery suspended. Micromedia shall restore the agreed upon deficiencies within a reasonable period of time unless Micromedia gives preference to issuing a credit note to the other party for the (partial) delivery.
- 13.5 In the event the Micromedia denies a timely reclamation while the other party maintains the claim, Micromedia reserves the right to have an judgement binding on both parties made by and impartial expert or independent examiner with the cost to be borne by the party in error.
- 13.6 Micromedia reserves the right to charge the other party for all costs made related to an unjust reclamation or reclamation that is not made in a timely fashion.
- 13.7 Return of delivered goods is at the cost and risk of the other party and is only permitted with written permission from Micromedia and under Micromedia's conditions. In so far as the nature of the reclamation permits, must the goods be returned to Micromedia for inspection in an unused and sealed state

#### **Article 14: Liability**

- 14.1 All products and services will be delivered to the best of Micromedia's ability. Micromedia accepts liability solely for direct damages which are a direct result of her gross or intended negligence. Indirect damages, lost profits, lost goodwill and damage caused by third parties shall not be considered for compensation. The other party is advised to maintain sufficient insurance coverage.
- 14.2 All advice is given by Micromedia to the best of her knowledge and without obligation with respect to liability.
- 14.3 In all situations is Micromedia's liability limited to reasonable compensation of the damage suffered, with a maximum of the agreed value of the shipment in question.
- 14.4 Damages must be reported to Micromedia in writing within 10 days of discovery, all rights to compensation lapse by failure to do so. All claims to damage compensation lapse after a period of 1 year, to be calculated from the first day of Micromedia's liability.
- 14.5 The other party indemnifies Micromedia against all claims for damages from third parties.
- 14.6 All employees of Micromedia and her subcontractors can refer to these provisions as if they were a party to this contract themselves.
- 14.7 The provisions in this article do not interfere with Micromedia's liability As prescribed by compelling definitions of law.

#### **Article 15: Effects of Termination**

- 15.1 Micromedia may in writing, without obligation for damages or judicial intervention, immediately terminate this agreement with the other Party in the event:
- a. of the other party's request for postponement of payment, or upon the request for an application of the Law on Debt Cleansing of Natural Persons, bankruptcy or a settlement outside of bankruptcy, or seizure of any part of his capital;
  - b. the other party ceases his business activities, no longer endeavours to meet his statutory goals, decides to liquidate, or loses or changes his legal entity;

- c. the other party fails to meet one or more requirements of this agreement and fails to remedy this negligence within 10 days of receipt of a registered letter from Micromedia;
- d. that Micromedia becomes aware of circumstances which gives her good cause to fear that the other party may not meet their obligations;
- e. that Micromedia, when closing this agreement, has requested the other party to provide collateral and the other party fails to provide or provides insufficient collateral;

In the event that the agreement is terminated under the provisions of this article, all payments due to Micromedia shall become immediately due and payable to Micromedia and Micromedia is authorized to terminate all agreements and suspend all shipments without notice or judicial intervention. Micromedia's right to full and complete compensation for capital and other damage shall remain in force.

#### **Article 16: Retention**

- 16.1 Should the other party not meet his obligations or fails to provide adequate collateral, Micromedia is authorized to retain all goods that she is holding for the other party.

#### **Article 17: Payment**

- 17.1 All payment must be transferred within 30 days to the bank/ giro account number provided by Micromedia. The other party is not authorized to any suspension, discounting or counterbalancing of payment unless agreed to in writing by Micromedia.
- 17.2 The other party, by exceeding the agreed upon payment term, shall without further prior notification be in default and all discounts given shall be retroactively reversed.
- 17.3 Payments are to be made in Euros (€) unless another currency has been agreed upon.
- 17.4 All payments shall be applied first to legal costs, then interest and thereafter to the oldest open invoices, regardless of payment details provided.
- 17.5 The other party is obligated at the first request of Micromedia, prior to as well as after the closing of every transaction, to provide collateral in the form desired by Micromedia and, if necessary, supplement this security in order to fulfil her obligations. As long as the other party has not fulfilled this request, Micromedia reserves the right to suspend her commitments to the other party. In the event that the other party has not complied with such a request within 14 days of a written demand, shall all her debts become immediately due.
- 17.6 Should the other party fail to pay her debts within the agreed upon payment terms, interest shall be calculated and due from the date of invoice at a rate of 1% per month or the legal limit, whichever is higher, over all open amounts whereby a full month shall be calculated for a partial month.
- 17.7 All costs related to collections are the responsibility of the other party. The cost of collections shall be no less than 15% of the total debt including interest. Legal costs include but are not limited to actual costs made for attorney fees and trial costs, including costs that exceed liquidation tariffs.

#### **Article 18: Applicable Law and Disputes**

- 18.1 Dutch Law is exclusively applicable to negotiations, content and implementation of all agreements made with Micromedia.

- 18.2 Trade and delivery conditions shall be conform de I.C.C. Incoterms as determined by the International Chamber of Commerce in Paris.
- 18.3 All disputes relating to negotiations, content and implementation of agreements made with Micromedia shall be settled in the court of Arnhem, in so far as the Court is qualified to settle the dispute. Micromedia retains the right to present the dispute to a judge that is qualified according to the Law of International Treaties.

**Article 19: Final Clause**

- 19.1 In the event that condition/s in these Terms of Sale shall be declared not binding, shall the condition/s be replaced by the legal provision which most closely resembles it. The remaining conditions shall remain in full force.
- 19.2 Micromedia reserves the right to change or amend her General Delivery and Payment Conditions. New General Delivery and Payment Conditions shall become effective at the moment determined in the announcement. Micromedia shall endeavour to make the amended conditions available to the other party in a timely fashion. In the event that no time of effectiveness is announced, the new General Delivery and Payment Conditions shall become effective at the moment that the other party is notified.

**I hereby confirm that I have read and accept the General Delivery and Payment Conditions of Micromedia B.V. I further confirm that I am qualified to represent my company in signing this agreement.**

Date: \_\_\_\_\_ Place: \_\_\_\_\_

Company Name: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Signature: \_\_\_\_\_