

## GENERAL TERMS AND CONDITIONS OF SALE

of Tennagels Medientechnik GmbH

(Last updated: 17.05.2023)

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Local court Düsseldorf HRB 49822

Chief Executive: Axel Heppener (CEO)

Tax ID 133 / 5874 / 1108

VAT No. DE 814 020 895

D-U-N-S-No. 33 33 25 699

EAR-No. 32839972

Stadtsparkasse Düsseldorf

BIC DE46 3005 0110 1004 2011 98

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## **§1 Subject Matter of the Contract, Validity of the General Terms and Conditions of Sale**

Tennagels Medientechnik GmbH (hereinafter „Tennagels“) sells goods to commercial customers (hereinafter „Buyer“), such as LED screens, integrated media, holography, touchtables, kinetics, special media technology solutions and software programming, and, if desired, will also undertake the installation and assembly of these items for the Buyer; The following General Terms and Conditions of Sale (GTCS) apply to all agreements concluded in the aforementioned context between Tennagels and the Buyer, insofar as the Parties have not expressly agreed otherwise and/or no legal provisions exist that may require amendments. The Buyer's terms and conditions of business shall only constitute the subject matter of a contractual relationship concluded between the Parties when in accordance with the following Tennagels GTCS or the validity of conditions to which Tennagels expressly agreed to in writing upon conclusion of the contract.

## **§2 Offers**

All offers are made in writing and remain subject to change until the time the order is expressly confirmed in writing by Tennagels.

## **§3 Prices**

- (i)** The prices are valid for collection from the Factory, unless otherwise agreed.
- (ii)** Tennagels shall be entitled to adjust the agreed prices accordingly if there is a change in costs between the order confirmation and date of delivery, and if there are more than six weeks between the conclusion of the contract and the agreed delivery date. This shall apply in particular in the event of a change in the costs of raw materials and supplies, unfinished and finished products, personnel, packaging, freight, taxes and other charges, as well as other manufacturing, distribution and administrative costs. The Buyer is only entitled to withdraw from the contract if the price is to increase by more than 3 %.
- (iii)** For services ordered by the Buyer for which no prices have been agreed between the Parties, Tennagels shall charge the prices that are in line with the market value on the day of delivery.
- (iv)** All prices are exclusive of value added tax at the rate applicable at the time of purchase.
- (v)** In addition to the agreed remuneration, the Buyer shall bear all necessary ancillary costs such as travel expenses, costs for the transport of tools and personal luggage as well as allowances, provided that Tennagels undertakes the installation or assembly and unless otherwise agreed to between the Parties.

## **§4 Terms of Payment**

- (i)** The terms of payment stated in the order confirmation apply. Unless otherwise stated in the order confirmation, payment shall be made without deductions to the bank account specified by Tennagels within 14 days of the invoice date.
- (ii)** Cheques are only accepted on account of performance; bills of exchange are not accepted.
- (iii)** In the event of late payment, Tennagels shall charge interest on arrears at the statutory rate. Tennagels reserves the right to assert any additional damages.
- (iv)** Advance payments shall not be subject to interest. Expenses of any kind shall be borne by the Buyer.
- (v)** Tennagels shall be entitled to claim immediate payment from the Buyer, sufficient collateral or to withdraw from the contract without obligation to pay damages, and to postpone the fulfilment of any orders still to be executed insofar as circumstances become known after conclusion of the contract that are likely to reduce the creditworthiness of the Buyer. In the event of suspension of payments or insolvency of the Buyer, all outstanding invoices are due for immediate payment.
- (vi)** Partial deliveries at the request of the Buyer shall be invoiced separately.

## §5 Set-off and Retention

- (i)** In the event that the Buyer defaults on a due payment, Tennagels shall be entitled to withhold the services owed until the default has been settled.
- (ii)** The assertion of a right of retention by the Buyer shall only be permissible if its claim is based on the contract established between the Parties and is undisputed or legally established.
- (iii)** A set-off is only permissible with undisputed or legally established claims.

## §6 Retention of Title

- (i)** The delivered goods shall remain the property of Tennagels until payment of all outstanding invoices, including those invoices that are due in the future arising from the business relationship, irrespective of the legal grounds on which they are derived. In the case of regular invoicing, the retention of title shall be deemed security for the outstanding amount owed to Tennagels.
- (ii)** The Buyer may resell the goods subject to retention of title in the ordinary course of business, but only against cash payment or under retention of title and under the condition that the Buyer's claims from the sale are transferred to Tennagels. The Buyer is not entitled to dispose of the goods in any other way, in particular to pledge them or assign them as security.
- (iii)** The Buyer hereby cedes to Tennagels all claims against third parties that arise from contracts, dispositions or other legal acts with regard to the reserved goods, including his trade margin. Tennagels accepts this cession. By way of exception, only the partial amount corresponding to the invoice value of the goods delivered by Tennagels shall be ceded to Tennagels with priority over the remaining claim, provided that the commercial goods are resold together with objects not belonging to Tennagels for a total price or the claim from the resale also relates to other services provided by the Buyer.
- (iv)** The processing of the delivered goods shall be carried out for Tennagels without Tennagels incurring any liabilities as a result. If the Buyer applies and combines the goods with other goods not belonging to Tennagels, Tennagels shall acquire co-ownership of the new object in the ratio of the value of the goods subject to retention of ownership to the other goods at the time of processing or combination. In the event that the Buyer has already established an expectant right prior to process the item, the Buyer and Tennagels hereby agree that an equivalent expectant right shall arise in the new item created through the processing.
- (v)** Despite the cession, the Buyer remains authorised to collect claims arising from the contracts, dispositions or other legal acts within the scope of § 4. Tennagel's authority to collect shall remain unaffected by that of the Buyer. Tennagels shall not collect the claims as long as the Buyer is not in default of payment, insolvency, bankruptcy or any other threat to the Seller's interest in security. Tennagels may at any time request from the Buyer the information required to assert the claims of Tennagels.
- (vi)** The Buyer shall notify Tennagels immediately of any impending or actual access by third parties to the goods subject to the agreed retention of title or the claims ceded to Tennagels as well as of any other interferences, in particular through global cessions, etc. The Buyer shall bear the costs of a legal defence against the interference of third parties if it does not notify Tennagels or does not notify Tennagels in good time and, in the event of a successful intervention, to the extent that the enforcement of costs was attempted in vain with the third party as debtor.
- (vii)** Tennagels shall be entitled to the return of any goods in which it has title if the Buyer is in default of payment or if it breaches any obligations to which it is subject. A right of retention cannot be asserted against this right of return.
- (viii)** Tennagels may revoke the authorisation to resell or collect claims assigned to Tennagels in the event of late payment, insolvency or bankruptcy of the Buyer, or any other threat to the security interest. The assertion of the right for return and the seizure of goods owned by Tennagels shall not be deemed withdrawal from the contract.
- (iv)** Tennagels shall only take out transport insurance at the express request and at the expense of the Buyer.

## §7 Delivery, Packaging and Transfer of Risk

**(i)** Unless otherwise agreed in writing, the delivery clause shall be „ex works“ (EXW - Incoterms 2010), even if the freight and other costs are borne by Tennagels. Tennagels may combine several orders of the Buyer in one shipment, unless a separate delivery has been expressly agreed between the Parties in writing beforehand. Tennagels shall decide on the type of delivery and the transport partner.

**(ii)** The goods are packed at the expense of the Buyer. Disposable packaging will not be taken back.

**(iii)** The risk is transferred to the Buyer as follows, even in the case of freight paid delivery:

**a)** for deliveries without installation or assembly, when the goods have been dispatched or collected,

**b)** for deliveries with installation or assembly on the day of acceptance in the Buyer's factory or, if agreed, after a fault-free trial operation.

**(iv)** Tennagels shall only take out transport insurance at the express request and at the expense of the Buyer.

## §8 Delivery Period

**(i)** Delivery shall take place within the fastest possible time by Tennagels, unless a delivery period has been expressly agreed between the Parties.

**(ii)** The delivery period begins with the notification of all circumstances essential for the execution of the order as well as the Buyer's compliance with the agreed Terms of Payment. The deadline is deemed to have been met if readiness for dispatch has been notified or the goods have left the Factory by the time the deadline expires.

**(iii)** Agreed delivery periods are considered as approximate. Taking into account the agreed delivery time, minor overruns of up to 2 weeks shall be deemed to be in accordance with the contract.

**(iv)** Penalties for delay and liability for delay damages caused by ordinary negligence to non-essential legal assets are excluded, notwithstanding any statutory right of withdrawal.

**(v)** The Buyer shall only be entitled to withdraw from the contract insofar it has, in writing, previously set Tennagels a reasonable grace period for delivery and the subsequent delivery is not fulfilled.

**(vi)** The Buyer shall only be entitled to damages in lieu of services if the delay that has occurred is due to intent or gross negligence; any claim for damages shall be limited in amount to the foreseeable damage.

**(vii)** The exclusion of liability **(iv)** and the limitation of liability pursuant to **(vi)** shall not apply insofar as a commercial fixed-date transaction has been agreed in writing and Tennagels is responsible for the delay in delivery due to intent or gross negligence.

**(viii)** Tennagels shall be permitted to render partial services insofar as this is acceptable to the Buyer.

**(ix)** Tennagels may charge the Buyer storage fees of 0.5% for each month or part thereof, up to a maximum of 5% of the price of the items of the deliveries, if dispatch or delivery is delayed at the request of the Buyer by more than one month after notification of readiness for dispatch. The Parties are permitted to prove higher or lower storage costs.

## §9 Exemption From the Obligation to Render Services

Tennagels shall be released from its existing service obligations for the duration of an interruption and to the extent of its effect, insofar as unforeseeable, unavoidable events that are beyond the control of Tennagels and for which Tennagels is not responsible, such as epidemics, a pandemic, energy or material shortages, operational or traffic disruptions, industrial disputes (strike or lockout) or if other cases of force majeure at Tennagels or its suppliers render these services impossible to carry out. Tennagels shall, however, be obliged, within the bounds of reasonableness, to immediately provide the Buyer with the necessary information about such circumstances and to adjust its obligations in good faith according to the changed circumstances. For this purpose, Tennagels may, for example, extend an agreed delivery period accordingly or, in the event of an interruption that is not of short duration, withdraw from the contract in whole or in part.

## §10 Installation and Assembly

**(i)** The Buyer is obliged to accept the costs for, and provide in good time:

- a)** the commodities and materials required for assembly and commissioning, such as scaffolding, lifting equipment and other devices, fuels and lubricants as well as for all ancillary work that is not related to the industry;
- b)** energy and water at the location of use, including connections, heating and lighting;
- c)** sufficiently large, suitable, dry and lockable rooms at the assembly site for the storage of materials, tools, etc. and adequate working and recreation rooms for the assembly personnel; furthermore, the Buyer shall take the same measures to protect the assets of Tennagels and the assembly personnel at the installation site as it would to protect its own personnel and property;
- d)** protective clothing and protective devices that are required due to special circumstances at the installation site.

**(ii)** Prior to the start of the installation work, the buyer must provide the necessary information without prior request that relate to the location of concealed power-, gas- and water-lines or similar installations as well as the necessary structural data. The Buyer shall ensure that the assembly and commissioning are not interrupted by means of mobile communication.

**(iii)** Before assembly or installation begin, the materials and objects required to commence work must be available on the site of assembly or installation, and all preparatory work must have progressed to the extent that assembly or installation can be started as agreed and carried out without interruption.

**(iv)** Insofar as installation, assembly or commissioning is delayed by circumstances for which Tennagels is not responsible, the Buyer shall certify the costs at a reasonable extent for the waiting time and additionally required travel by Tennagels or the assembly personnel.

**(v)** On a weekly basis, the Buyer shall certify to Tennagels without delay the duration of the working hours of the installation personnel as well as the completion of installation, assembly or commissioning.

**(vi)** The Buyer is to accept the service rendered within two weeks of completion at the latest, provided the completion is asserted by Tennagels; if this is not done, the acceptance is deemed to have been effected. Acceptance shall also be deemed to have taken place when the delivery – if applicable after completion of an agreed test phase – has been put into use by the customer.

## §11 Software Licensing

**(i)** The Buyer is granted a non-exclusive right of use to software belonging to and supplied with the goods, including its documentation.

**(ii)** If applicable, the software is provided for use on the delivery item intended for this purpose.

**(iii)** The use of the software on more than one system is not licensed. The granting of sub-licenses is not permitted.

**(iv)** The Buyer may only copy, revise, translate or convert the software from the object code to the source code to the extent permitted by law (cf. §§ 69a) ff. UrhG) (Act on Copyright and Related Rights). All other rights to the software and documents, including copies, shall remain the property of Tennagels and/or, if applicable, the supplier of the software.

**(v)** The Buyer undertakes not to remove manufacturer's details, in particular copyright notices, or to change them without the prior consent of Tennagels.

## §12 Licensing and Protection of Trademarks and Copyrights

**(i)** Markings affixed to the goods, even in combination with other distinctive elements, are registered trademarks. The Buyer is granted a non-exclusive licence for use, limited to the country in which the trademark is to be used in accordance with the agreement between the Parties.

**(ii)** Unless otherwise agreed, Tennagels is obliged to provide the delivery without any industrial property rights and copyrights of third parties (hereinafter: Property Rights) only in the country of the place of fulfilment. If a third party asserts justified claims against the Buyer due to the infringement of Property Rights by deliveries provided by Tennagels, or used by the Buyer in accordance with the contract, Tennagels shall be liable as follows for a period of 24 months after the purchase of the goods:

**a)** Tennagels shall, at its discretion and at its expense, either obtain a right of use for the deliveries concerned, modify the service so that the Property Right is no longer infringed, or exchange the delivery. If this is not possible under reasonable conditions, the Buyer shall be entitled to the statutory rights of withdrawal or reduction.

**b)** The aforementioned obligations shall only apply insofar as the Buyer informs Tennagels immediately in writing of the claims asserted by the third party, does not acknowledge an infringement, and all defensive measures and settlement negotiations are reserved to Tennagels. If the Buyer discontinues the use of the delivery for reasons of mitigation of damages or other important reasons, the Buyer shall be obliged to inform the third party that the discontinuation of use does not constitute an acknowledgement of an infringement of Property Rights.

**(iii)** Claims of the Buyer shall be excluded if he is responsible for the infringement of Property Rights.

**(iv)** Claims of the Buyer shall also be excluded if the infringement of the Property Right is caused by special specifications given by the Buyer, by an application not foreseeable by Tennagels or by the fact that the delivery is modified by the Buyer or used together with products not supplied by Tennagels.

**(v)** In the event of infringements of industrial Property Rights and other defects of title, the provisions under § 14 and § 15 shall apply accordingly to the claims of the Buyer regulated in § 12 (ii).

**(vi)** Any further or other claims of the Buyer against Tennagels and its vicarious agents are excluded other than those mentioned above or those regulated under § 14 and § 15 due to a violation of rights.

**(vii)** The above provisions shall apply accordingly to technical documents made available to the Buyer.

### §13 Maintenance and Repairs

Maintenance and repairs shall only be carried out if they have been additionally and expressly agreed between the Parties in writing.

### §14 Warranty and Liability

**(i)** Tennagels shall be liable for damages that the Buyer suffers as a result of the its own use of the delivery item and as a result of the fact that the Buyer is liable for damages to third parties from the resale of the delivery item in accordance with the following provisions. Tennagels shall not be liable if and to the extent that the assembly and operating instructions for the delivered goods have not been observed and the defect is caused through such non-compliance or if the delivery item is interrupted by means of mobile communication.

**(ii)** Tennagels warrants the delivered goods to be free from defects in material, professional design and manufacture. The warranty also extends to the fact that Tennagels has complied with the relevant DIN standards, construction and testing principles, DVGW markings, official test certificates and test reports valid at the time of manufacture, insofar as Tennagels has referred to them in the sales documents used. Furthermore, Tennagels shall be liable for damage that occurs if the installation and/or operating instructions enclosed with the product are incorrect, insofar as this is attributable to intent or gross negligence on the part of Tennagels or its vicarious agents.

**(iii)** The information and descriptions stated in Tennagels' catalogues and brochures shall only be considered decisive insofar as they have expressly become part of the individual agreements made between the Parties

**(iv)** Insofar as Tennagels is obliged to provide a warranty, the defective parts/goods may, at the discretion of Tennagels, either be delivered new or repaired itself or by third parties free of charge. If the Buyer is entitled to remedy the defect itself or have it remedied by third parties, Tennagels shall also reimburse the necessary dismantling and installation costs.

**(v)** If Tennagels is not prepared or not in a position to provide subsequent service, in particular if this is delayed beyond a reasonable period or fails in any other way, the Buyer shall be entitled, at its discretion, to claim cancellation of the contract, a corresponding reduction in the purchase price, or damages.

## §15 Limitation of Liability

**(i)** The Buyer is obliged to inspect the goods immediately after receiving them – if possible before un-loading – to ensure that they are complete and free of defects. Complaints about the delivery, in particular all defects that are externally recognisable upon careful inspection, must be received by Tennagels in writing before installation and within two weeks of receipt of the goods. Other defects and any consequential damage must be reported to Tennagels immediately, but at the latest within two weeks after they have been or could have been discovered.

**(ii)** If the Buyer fails to notify Tennagels in writing of a non-concealed defect in the goods within the aforementioned period, the delivered goods shall be deemed to have been accepted.

**(iii)** The Buyer is obliged to ensure that all necessary measures are taken immediately to reduce damage. Tennagels shall be given the opportunity to inspect the defective parts and the damage on site in unaltered condition. The additional costs incurred due to a delayed notification of defects shall be borne by the Buyer. The regulations provided for in § 377 HGB (German Commercial Code) shall remain unaffected by this. Only in urgent cases where safety is jeopardised and in order to prevent disproportionately large damage, or if Tennagels is in default with the repair, or if Tennagels expressly agrees to such repair, shall the Buyer be entitled to remedy the defect in the delivery item itself or have it remedied by third parties. If these obligations are not observed, the warranty or liability assumed by Tennagels shall cease to apply.

**(iv)** Claims for material defects shall become invalid after 12 months. This shall not apply where longer periods are prescribed by law according to the German Civil Code (BGB) §§ 438 (1) subparagraph 2 (Buildings and items for buildings), 479 (1) (Right of recourse) and 634 (1) subparagraph 2 (Building defects), as well as in cases of injury to life, body or health, in case of intentional or grossly negligent breach of duty by the supplier and in case of fraudulent concealment of a defect. The legal regulations concerning suspension of the process, suspension and restart of the periods remain unaffected.

**(v)** Claims of the Buyer due to expenses necessary for the purpose of subsequent rectification, in particular transport, travel, labour and material costs, are excluded if the expenses increase due to the goods being moved to a place other than the original delivery location, unless such transfer corresponds to its intended use.

**(vi)** Recourse claims of the Buyer against Tennagels in accordance with § 478 German Civil Code (BGB) (Recourse of the entrepreneur) shall only exist insofar as the Buyer has not entered into any agreements with his customers that exceed the statutory warranty claims. For the scope of the Buyer's right of recourse against Tennagels in accordance with § 478 (2) German Civil Code (BGB), the provisions set out under § 14 and § 15 shall apply accordingly.

**(vii)** Tennagels shall be liable for its own breaches of duty as well as those of its vicarious agents or assistants in the event of ordinary negligence only in the event of a breach of its duties under § 14 (ii), limited to damages up to a maximum amount of € 1 million per damages claim. Any further liability, in particular for financial losses, is excluded. Excluded from this limitation is liability for injury to life, body and health.

**(viii)** Tennagels shall be liable for damages resulting from injury to life, body or health in the event of negligence on its part in accordance with the statutory provisions. For all other damages, Tennagels shall only be liable in case of intent and gross negligence. Liability for ordinary negligence is excluded.

## §16 WEEE and Disposal

**(i)** In accordance with the WEEE directive (<https://www.weee-full-service.com/de/elektrog-weee-richtlinie>), Tennagels charges a fee for the disposal of electronic waste. The fee is based on the type, price and weight of the goods. The amount is added to the individual or final purchase invoice after Tennagels has received the necessary load weight information from the transport company.

**(ii)** Following delivery and/or assembly/installation of goods, the Buyer is responsible for the proper disposal of packaging and installation waste. If packaging and waste is disposed of by Tennagels on its behalf, the Buyer shall reimburse Tennagels for the costs incurred as a result. These costs shall be based on the time spent for disposal and the amount of packaging and waste.

## §17 Data Protection and Confidentiality

**(i)** In accordance with § 33 of the Federal Data Protection Act, the current version of the data protection provisions of Tennagels shall apply. These can be viewed at <https://www.tennagels.com/datenschutz/>

**(ii)** The contracting Parties mutually undertake to maintain confidentiality about the content of the concluded contract and any business and trade secrets of which they become aware even after the contractual relationship has ceased. Should the Buyer fail to comply with the Confidentiality Agreement, Tennagels shall be entitled to terminate the concluded contract(s) with immediate effect.

**(iii)** The obligation of confidentiality does not apply in connection with information that is openly communicated by the contracting Parties or is subject to general accessibility and/or if the contracting Parties have released each other from the obligation of confidentiality in writing beforehand, if they are legally obliged to do so or if disclosure is necessary to protect the legitimate interests of the contracting Parties.

## §18 Final Provisions

**(i)** Ancillary agreements and amendments to the Contract must be made in writing to be effective. This also applies to the cancellation or amendment of the written form agreement itself.

**(ii)** Should individual provisions of these terms of sale or the contract prove invalid or become invalid, the validity of the remaining provisions shall not be affected thereby. The affected provision shall be replaced by a valid provision which comes closest to the economic purpose intended by the invalid clause.

**(iii)** The place of fulfilment is the registered office of Tennagels, unless otherwise stated in the order confirmation. German law shall apply exclusively, with the exception of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

**(iv)** The exclusive legal jurisdiction for all disputes arising directly or indirectly from the contractual relationship is the registered business location of Tennagels.

**(v)** In the interests of easier legibility, the distinction between female and male spelling has been partially omitted in these GTCS and the masculine form has been used in each case. However, the word in question refers to all genders.