

## **General Terms and Conditions of Business of cyber Wear Heidelberg GmbH 03/19**

### **Preamble**

These General Terms and Conditions of Business apply to all business relationships between cyber-Wear Heidelberg GmbH, Elsa-Brändström-Str. 4, 68229 Mannheim, Germany, represented by its managing directors: Mr Steven Baumgaertner and Mr Roman Weiss (hereinafter referred to as cyber-Wear Heidelberg GmbH), and its customers in the version valid at the time of concluding the contract.

### **§ 1 General information**

#### **a) Contractual agreement**

The contractual language is German.

#### **b) Conclusion of contract**

The description of the product range in the internet is subject to change and unbinding. The customer shall submit a binding offer to cyber-Wear Heidelberg GmbH when he completes the online ordering process.

The ordering process is broken down into the following three steps:

- In the first step the customer selects the required goods, the country of delivery and the mode of payment.
- In the second step the customer enters his data, including the billing address and any differing delivery address. In addition, he confirms the inclusion of the General Terms and Conditions of Business and the right of revocation. At this point the customer also has the option of ordering a free newsletter.
- In the third step the customer has the chance to check all his details (e.g. name, address, mode of payment, ordered items) again and to correct any input errors before he confirms his order by clicking on the "Conclude order" button.

When he orders by email, fax, telephone or post the customer declares his binding contractual offer. cyber-Wear Heidelberg GmbH shall confirm receipt of the customer's order immediately. The confirmation of receipt still does not constitute binding acceptance of the order. cyber-Wear Heidelberg GmbH is entitled to accept as binding the contractual offer in the order within one week after receipt of the contractual offer by email, fax, telephone or post or by delivery of the goods. On acceptance a contract is formed between cyber-Wear Heidelberg GmbH and the customer.

#### **c) Storage of the contractual text**

The contractual text is stored by cyber-Wear Heidelberg GmbH and sent to the customer in writing (e.g. by email, fax or post) after dispatching his order along with the available General Terms and Conditions of Business and the customer information. The contractual text can however no longer be accessed by the customer via the seller's website after dispatch of his order. The customer can print out the relevant website with the contractual text via the browser's print function.

### **§ 2 Delivery**

#### **a) Part deliveries**

cyber-Wear Heidelberg GmbH is entitled to make part deliveries if this is reasonable for the customer. However, in the event of part deliveries the customer will not incur any additional forwarding costs.

#### **b) Delivery and performance delays**

cyber-Wear Heidelberg GmbH is not responsible for any delivery and performance delays due to force majeure and extraordinary and unforeseeable events which cannot be prevented even if extreme care is taken by cyber-Wear Heidelberg GmbH (this includes, in particular, strikes, official or judicial directives and cases of incorrect or improper self-delivery despite any relevant covering transaction). They give cyber-Wear Heidelberg GmbH the right to postpone delivery by the duration of the hindering event.

#### **c) Withdrawal**

In the case of non-availability for the aforementioned reasons cyber-Wear Heidelberg GmbH may withdraw from the contract. cyber-Wear Heidelberg GmbH shall undertake to inform the customer immediately about the non-availability and refund him any already paid consideration without delay.

#### **d) Exclusion of delivery**

P.O. Box address deliveries are excluded.

#### **e) Default of acceptance**

Should the customer fall into default of acceptance with regard to the ordered goods, cyber-Wear Heidelberg GmbH is entitled, after setting an appropriate period of grace, to withdraw from the contract and to claim payment of damages for default or non-performance. During the default of acceptance the customer bears the risk of accidental loss or accidental deterioration. This does not apply in the event that the customer exercises his statutory right of revocation by non-acceptance of the goods.

#### **f) Period of performance**

Unless otherwise expressly agreed, cyber-Wear shall deliver within 5 days. In the case of payment in advance the delivery period shall commence on the day after the order for payment has been issued to the paying bank or in the case of cash on delivery or payment by invoice on the day after conclusion of the contract. The period of performance shall end on the following fifth day. If the last day of the performance period falls on a Saturday, Sunday or on a general officially recognised public holiday at the place of performance, the performance period shall end on the next working day.

### **§ 3 Payment**

#### **a) Prices and forwarding costs**

All prices are inclusive of the value added tax applicable at the time of delivery and exclusive of packaging and dispatch costs, which are listed separately.

#### **b) Payment default**

The customer is in default with a payment if the payment is not received by cyber-Wear Heidelberg GmbH within two weeks after receipt of the invoice. In case of default of payment interest of 5 percentage points above the base rate of the European Central Bank or 8% above the base rate of the European Central Bank in the case of legal transactions in which no consumer is involved shall be charged. Should the customer default on his payments cyber-Wear Heidelberg GmbH reserves the right to charge dunning fees of € 5.00. The right to claim any further damages shall remain unaffected. The customer still has the possibility of proving that cyber-Wear Heidelberg GmbH incurred lesser or no damage.

#### **c) Right of retention**

The customer is only entitled to assert a right of retention for such claims which are due and result from the same legal relationship as the customer's obligation.

### **§ 4 Cancellation instructions**

#### **Cancellation instructions**

##### **Right of revocation**

You have the right to cancel this contract within fourteen days without giving reasons.

The revocation period is fourteen days from the date on which you or a third party nominated by you, who is not the carrier, has taken possession of the goods.

In order to exercise your right of revocation you must inform us (cyber-Wear Heidelberg GmbH, Elsa-Brändström-Str. 4, 68229 Mannheim, Germany, Email to: info@mycybergroup.com, Fax: +49(0)621 30983 444) by means of a clear declaration (e.g. a letter sent by post, fax or email) of your decision to cancel this contract. You can use the attached specimen revocation form for this, but this is not compulsory.

For the revocation deadline to be met, it is sufficient that you send the notification of the exercise of the right of revocation before the revocation period expires.

##### **Consequences of the revocation**

If you cancel this contract, we have to pay back to you all the payments that we have received from you, including delivery costs (with the exception of the additional costs resulting from that fact that you chose a different type of delivery than the cheapest standard delivery that we offer) promptly and no later than within fourteen days from the day on which we received the notification of your revocation of this contract. For this repayment we shall use the same mode of payment that you used for the original transaction unless otherwise expressly agreed with you; on no account will you be charged a fee for this repayment. We may refuse to repay you the money until we have received back the goods or until you have furnished proof that you have sent back the goods, whichever is the earlier.

You shall send back the goods to us or surrender them to us without delay and in each case no later than within fourteen days from the date on which you inform us of the revocation of this contract. The deadline has been met if you dispatch the goods before the end of the deadline of fourteen days. You shall bear the direct costs of returning the goods.

You must only pay us compensation for loss of value of the goods if this loss of value is attributable to unnecessary handling of the goods to examine the quality, characteristics and functionality of the goods.

**- End of the cancellation instructions -**

## **Exclusion of the right of revocation**

The right of revocation does not apply to contracts for the delivery of goods

- which are produced according to the customer's specification or are clearly tailored to his personal needs or which are not suitable for return by virtue of their nature,
- which can perish quickly or whose sell-by date would be quickly exceeded,
- which would not be suitable for return due to health protection or hygiene reasons if their seal was removed after delivery,
- if they were mixed inseparably with other goods after delivery by virtue of their nature,
- which can be classified as alcoholic beverages.

## **Special information about the premature expiry of the right of revocation**

In the case of contracts for the delivery of sealed goods which are not suitable for return due to health protection or hygiene reasons your right of revocation will expire prematurely if the seal on the goods was removed after delivery. In the case of contracts for the delivery of sound or video recordings or computer software in a sealed package your right of revocation will expire prematurely if the seal was removed after delivery.

## **§ 5 Reservation of title**

The delivered goods shall remain the property of cyber-Wear Heidelberg GmbH until the purchase price has been paid in full. The customer shall handle goods which are subject to a simple reservation of title with care at all times. The customer shall assign any claims or compensation which he receives for the damage, destruction or loss of the delivered goods to cyber-Wear Heidelberg GmbH. If the customer acts contrary to the contract, particularly in the case of payment default, cyber-Wear Heidelberg GmbH is entitled to take back the purchased item. This taking back of the purchased item shall be regarded as a withdrawal from the contract.

## **§ 6 Warranty**

### **a) Warranty claim**

Statutory warranty rights apply to any goods purchased from the online shop of cyber-Wear Heidelberg GmbH.

A warranty claim may only arise with regard to the quality of the goods. Reasonable deviations in the aesthetic attributes of the goods do not fall under the warranty claim.

### **b) Passage of risk**

The risk of accidental loss or deterioration of the sold goods shall only be transferred to the customer when the goods are handed over.

### **c) Notification**

Should the customer realise that the secondary packaging has been damaged during transit or discover damage after receiving the goods, cyber-Wear Heidelberg GmbH asks the customer to notify it. However, there is no obligation to notify it, nor will the consumer's warranty rights be affected by failure to notify it.

### **d) Subsequent performance**

If the goods are defective, the customer can at its discretion demand subsequent performance in the form of remedying the defect or supply a replacement. If defects are not remedied even after two attempts, the customer shall be entitled to withdraw from the contract or demand a reduction.

### **e) Rights in the event of insignificant defects**

If there is only an insignificant defect, the customer is only entitled to demand an appropriate reduction of the purchase price to the exclusion of the right of withdrawal.

### **f) Compensation for defects**

No warranty is provided for damage which is attributable to improper handling or use of the goods. cyber-Wear Heidelberg GmbH shall only pay compensation for defects of the goods in the case of intent or gross negligence. This exclusion does not apply to liability for damage arising from loss of life, personal injury or illness. The provisions of the Product Liability Act shall also remain unaffected by the liability exclusion.

### **g) Warranty vis-à-vis entrepreneurs**

The following conditions apply to entrepreneurs in derogation from the statutory warranty provisions: In the event of a defect cyber-Wear Heidelberg GmbH shall carry out the subsequent performance at the customer's discretion in the form of remedying the defect or supplying a replacement. The risk of accidental loss or deterioration of the goods shall already be transferred when they are handed over to the person appointed to transport the goods. Warranty claims shall become statute-barred within one year after the thus defined transfer of risk.

#### **h) Obligation of entrepreneurs to notify defects**

Entrepreneurs must notify any obvious defects immediately in writing; otherwise the right to assert the warranty claim is excluded. Punctual dispatch shall suffice to comply with the deadline. The entrepreneur shall bear the full onus of proof for all conditions of entitlement, especially for the defect itself, for the time of detection of the defect and for the timely notification of defects.

### **§ 7 Liability**

#### **a) Liability exclusion**

cyber-Wear Heidelberg GmbH and its legal representatives and vicarious agents are only liable for intent or gross negligence subject to the following: In the case of simple negligence the liability only applies to the breach of essential contractual obligations, hence such obligations whose observance is of special importance for the attainment of the contractual purpose. The liability is restricted to the foreseeable, contractually typical, direct average damage. cyber-Wear Heidelberg GmbH shall be liable to customers who are not consumers in the event of a grossly negligent breach of non-essential contractual obligations only in the amount of the foreseeable, contractually typical, direct average damage.

#### **b) Liability proviso**

The aforementioned liability exclusion does not apply to liability for damage arising from loss of life, personal injury or illness. The provisions of the Product Liability Act shall also remain unaffected by the liability exclusion.

### **§ 8 Data protection provisions**

cyber-Wear Heidelberg GmbH points out that the data collected within the scope of concluding the contract will be collected, processed and utilised by cyber-Wear Heidelberg GmbH pursuant to the data protection provisions, especially those of the German Federal Data Protection Act (BDSG), the German Telemedia Act (TMG), the German Interstate Broadcasting Treaty (RStV) and the General Data Protection Regulation (GDPR) in order to satisfy the obligations arising from the contract. More detailed information on data protection can be found in the data protection declaration.

### **§ 9 Final provisions**

#### **a) Place of jurisdiction**

The registered office of cyber-Wear Heidelberg GmbH in Mannheim shall be agreed as the sole place of jurisdiction for all legal disputes arising from this contract provided the customer is a merchant, legal entity under public law or special asset under public law or if the customer has no place of jurisdiction in the Federal Republic of Germany.

#### **b) Choice of law**

Unless mandatory statutory provisions provide otherwise under the law in the customer's home country, German law shall be agreed to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

#### **c) Severability clause**

The invalidity of individual provisions shall not affect the validity of the other general terms and conditions of business.

### **Notes on the conciliation procedure**

The European Commission has created an internet platform for online settlement of disputes relating to contractual obligations arising from online contracts (OS platform). We are not obliged to participate in a dispute resolution procedure before a consumer arbitration board and are not prepared to do so. You can reach the OS platform at the following link: <http://ec.europa.eu/consumers/odr/>