

## General Terms and Conditions of Business of Cleverbridge GmbH and Cleverbridge, Inc.

Cleverbridge GmbH, Gereonstr. 43-65, 50670 Cologne (Germany) and Cleverbridge, Inc., 350 N Clark St Suite 700, Chicago, IL 60654, USA, both further referred to in brief as "**Cleverbridge**" are ecommerce businesses that trade internationally.

### 1. Definitions

The following terms shall have the following meanings in the context of these General Terms and Conditions of Business ("**Ts&Cs**"):

- 1.1 "**Business**" means any Customer who enters into a legal transaction in the course of its trade, business or profession.
- 1.2 "**Cleverbridge Website**" means any web page operated by Cleverbridge for the sale of the Products and Services that is identifiable from the Ts&Cs as well as Cleverbridge's legal information posted on it. Web pages operated by Suppliers are expressly not covered by this definition.
- 1.3 "**Consumer**" means any Customer who is a natural person and who enters into a legal transaction for a purpose that cannot be attributed to that person's trade, business or profession (Section 13 BGB).
- 1.4 "**Customer**" means any natural or legal entity or partnership with legal capacity that places an order for Products and Services on a Cleverbridge Website. The term Customer shall, unless otherwise specified, mean both, Consumers and Businesses.
- 1.5 "**Products**" means (a) a decryption or authorization code, a series or authorization number, a download link or similar code or mechanism, that gives the Customer access, first-time use or continued use of a Software or a Service, or (b) other products (including physical products).
- 1.6 "**Service**" means all the Supplier's services sold by Cleverbridge to the Customer via Cleverbridge Website.
- 1.7 "**Software**" means all the Supplier's computer programs marketed in any form and through any medium via Cleverbridge Website.
- 1.8 "**Subscription**" means Products or Services with recurring payment obligations ("**Subscriptions**"). The payments are due at the agreed interval(s).
- 1.9 "**Subscription Payment Interval**" means the agreed intervals at which the payments of Subscriptions are due.
- 1.10 "**Supplier**" means any natural person or legal entity that provides, generates, manufactures, or delivers Products and Services to Cleverbridge for the purpose of resale to a Customer.

### 2. Subject Matter and Scope

These Ts&Cs apply to all offers, acceptances, deployments, deliveries of services and supplies by Cleverbridge or to the Customer in connection with the sale of Products and Services as defined in Clauses 1.5 and 1.6 via a Cleverbridge Website. Deviating terms of the Customer or third parties shall only become part of this contract upon written acceptance by Cleverbridge. These Ts&Cs shall apply even where Cleverbridge performs its contractual obligations without reservation despite being aware that the Customer's conditions are inconsistent with the Ts&Cs. Where the sale of Products and Services includes the provision of Services or other performance by third parties, the particular license and other conditions of the third party shall apply above and beyond these Ts&Cs.

### 3. Entry into a Contract (Offer, Confirmation and Acceptance)

- 3.1 An order placed by the Customer represents an offer to Cleverbridge for the purchase of Products and Services under these Ts&Cs. Such orders are subject to subsequent acceptance by Cleverbridge. The Customer order is accepted through express confirmation or at the latest by the provision of the ordered Products and Services.
- 3.2 Cleverbridge may, at its own discretion, use third parties to carry out its services.

### 4. Customer Warranties

The Customer warrants that all the information the Customer provided when placing the order (including, but not limited to, personal data and payment data) was up-to-date and accurate in all material respects. The costs arising in relation to any incorrect data submitted by Customer or data amended by Customer after the submission of Customer's order shall

be borne by the Customer. To the extent that the Customer has access to a customer account with Cleverbridge, the Customer is responsible for maintaining and immediately updating the Customer account details to ensure constant and continuous accuracy and completeness; the Customer shall not disclose the password used to access the customer account to third parties for any reason.

## **5. Approvals, Exports, Customs Duties**

- 5.1 To the extent that an approval or license from the government or other authority is required for the acquisition, transportation, or use of Products and Services, the Customer shall be obliged to obtain such approval or license at Customer's own cost and provide Cleverbridge with evidence of the same upon request. The fact that the Customer has yet to obtain an approval or license shall not entitle the Customer to withhold or delay payment. All costs and expenses incurred to Cleverbridge on the basis of such a failure to obtain an approval or license or its being obtained erroneously shall be for the account of the Customer. For Consumers, this shall not apply in relation to an approval or other permit for transportation.
- 5.2 The Products and Services sold by Cleverbridge and made available to the Customer electronically or physically may give the Customer access to technologies and Software which are subject to the export controls of the Federal Republic of Germany, the export controls of the United States of America or those of the countries in which the Products and Services are being marketed or in which they are being used. The Customer undertakes to observe these export controls. Cleverbridge shall be entitled to withdraw from the Contract where the Customer breaches export controls.
- 5.3 Importing goods into the European Economic Area may, where specific goods values are exceeded, lead to customs duties (e.g. where the value of the goods exceeds the Customer's personal allowance). Upon the arrival of the goods at the place designated by the Customer the latter may incur customs duties, import duties, or taxes imposed by the relevant authorities. All such additional costs shall be borne by the Customer as they are beyond Cleverbridge's control and the latter has no knowledge of them. More detailed information on customs regulations or duties can be obtained by the Customer from the customs office responsible for Customer's jurisdiction.

## **6. Prices, Payment Conditions, Taxes, and Default**

- 6.1 Payments by Customers  
6.1.1 Timing

The payment of the purchase price is due immediately upon entry into the contract and shall take place in the manner specified on the Cleverbridge Website. With the exception of purchase orders and pay-per-use products, payments shall take place prior to delivery. For pay-per-use products, Customer shall be billed automatically at the intervals indicated on the Cleverbridge Website. Where the Customer has purchased a Subscription, the Customer shall at each Subscription Payment Interval pay the price of the Subscription or make the corresponding purchase price available using the payment option agreed upon between the Customer and Cleverbridge.

- 6.1.2 Taxes and Duties

If Customer is required to pay or withhold any tax for payments to Cleverbridge where Cleverbridge does not adopt the self-declaration procedure for the specific country where Customer is located, Cleverbridge remains entitled to the full amount of the Purchase Price, free of any deductions. The Purchase Price shall be increased by the amount of taxes paid or withheld by Customer (i.e. a price gross-up). Cleverbridge shall only be obliged to provide Customer with general (non-Customer-specific) documentation to prove its residency upon Customer's request. Customer shall provide documentation to Cleverbridge that certifies that Customer has paid all applicable taxes to the relevant tax authority within 30 days after the date of Customer's purchase.

To the extent that a self-declaration or "file and pay" procedure is provided under the applicable tax law of a country and to the extent that Cleverbridge makes use of this procedure, Cleverbridge will invoice Customer for the aforementioned taxes and report them to competent tax authorities via the self-declaration/file and pay procedure. Customer has the option to file and pay the taxes to the competent tax authorities, if permitted by applicable tax law. In such cases, Cleverbridge will reimburse Customer for taxes Customer already invoiced and paid, provided that Customer offer proof of tax payment by submitting an official tax certificate identifying Cleverbridge as the beneficiary of the payment and stating the amount and category of the taxes paid.

Customer shall bear any additional taxes and duties imposed on the sale of the Product. This applies correspondingly to changes of the taxes and duties already billed to Customer. Cleverbridge will pass on

any applicable abolitions and reductions of taxes and duties to Customer.

## 6.2 Payments by Businesses

To Business, the following provisions shall apply:

In the event that the Customer is a Business, it shall identify itself as such when the order is placed. Cleverbridge may consider the address provided as Business's place of business, unless indicated otherwise. If Business's VAT ID is registered to another country, Cleverbridge may also employ that information for tax purposes. Cleverbridge will apply taxes to the extent required by law. Cleverbridge may apply and charge taxes after the Business has made the payment for the Products and Services according to Clause 6.1. The Business is then obliged to subsequently pay the remaining amount of taxes to Cleverbridge. Additionally, as a recipient of the Products and Services, the Business may have the obligation to remit VAT, sales taxes, or similar consumption taxes ("Reverse Charge Mechanism"). If the Business is required to pay or withhold any tax for payments made to Cleverbridge, Cleverbridge remains entitled to the amount due under Clause 6.1 in full and free of any deductions. The purchase price shall be increased by the amount of taxes paid or withheld by the Business (gross-up). The Business will provide documentation to Cleverbridge, which certifies that all applicable taxes have been paid to the relevant tax authority within 30 days after the date of payment of the purchase price. For purposes of this Clause, taxes means any sales, use, gross receipts, business, occupation, and other taxes (other than taxes on the income of Cleverbridge) and similar charges imposed by any government or other authority, with the exception of VAT levied by a member of the European Union.

## 6.3 Individual Payment Methods

Customer's bank or credit card issuer may charge additional service fees for international credit card payments ("Foreign Transaction Fee"), depending on whether the Customer provides the payment in a foreign currency or to a merchant established in another country (e.g. Cleverbridge as merchant established in Germany).

Foreign Transaction Fees charges and amounts are individually agreed upon between banks / credit card issuers and Customers. Cleverbridge has no insight into such agreements and can therefore provide no information on Foreign Transaction Fees and similar fees or charges. THE PARTIES AGREE THAT, THEREFORE, ANY LIABILITY ON THE PART OF CLEVERBRIDGE FOR CHARGED FOREIGN TRANSACTION FEES IS EXCLUDED AND THAT THE CUSTOMER IS SOLELY AND EXCLUSIVELY LIABLE FOR PAYING SUCH FOREIGN TRANSACTION FEES.

6.4 If the Customer chooses SEPA direct debit as applicable payment method, the Customer will be notified by means of a pre-notification ("Pre-Notification") directly after submitting the order. The Customer's account will be charged the day after Pre-Notification.

Should the payment be declined or reversed, for example, due to erroneous account data or insufficient funds in the Customer's account, Cleverbridge is entitled to invoice an additional EUR 10.00 to compensate Cleverbridge for the related additional work and transaction costs. This fee shall not be levied if the Customer provides evidence that no loss at all has been suffered, or one that is significantly less than the fee of EUR 10.00. Cleverbridge shall be entitled to claim for compensation of higher actual costs upon providing evidence of the same.

6.5 In case of any advance deliveries (purchase order or purchase with grant of a direct debit authorization) payments shall be made in full irrespective of any claims for short deliveries or Product defects. Cleverbridge reserves the right to cancel any order if payment has not been completed within 14 days.

In collaboration with Klarna Bank AB, Sveavägen 46, Stockholm, Sweden ([About Klarna](#)), Cleverbridge offers the payment options purchase order and "Klarna Pay Now/Sofortüberweisung" to customers.

"Klarna Pay later" is only available for consumers. Payments are made to Klarna.

More information on Klarna's Privacy Policy can be found [here](#).

6.6 If payment is made with any one of the following payment methods, Customer will have 14 days to complete the order by providing funds for the order: Boletto Bancário, Konbini, PayNearMe, wire transfer. Cleverbridge reserves the right to cancel any order if payment has not been completed within 14 days.

6.7 If Cleverbridge and Customer agree on using bills of exchange or checks as payment method, payment shall only be considered made once they have been redeemed. Discount and collection charges shall be for the Customer's account. Cleverbridge shall not be liable for their prompt submission.

6.8 Card Refresher Service for American Express® customers within the USA

American Express customers agree that Cleverbridge may receive information from the credit card issuer regarding the customer's updated card account status, including cancellation of the credit card account and

changes to the credit card number or expiration date. It is the obligation of the customer to determine whether the customer's credit card issuer provides the Card Refresher Service.

#### 6.9 Default of Payment

To the extent that, in case of purchase on account, the invoice includes a payment deadline the Customer shall be in default of payment if the full purchase price payment is not credited to a Cleverbridge account or received by Cleverbridge by such deadline. This also applies if selected payment method is insufficient to cover full amount within such deadline. In case Cleverbridge and Customer have agreed on direct debit as payment method, this shall only apply if Cleverbridge has reasonably tried to debit the amount from the bank account.

#### 6.10 Default interest for Customers placing their order from outside the USA

Where a Consumer defaults, the Consumer shall pay Cleverbridge late payment interest of five percentage points (5%) over the base rate applicable at the time of the default. Where a Business defaults, the interest rate shall be nine percentage points (9%) over the base rate. "Base rate" means a variable interest rate set at half-yearly intervals by the German Central Bank ("Bundesbank") which, increased by a fixed margin, gives the late-payment interest rate (<https://www.bundesbank.de/en/bundesbank/organisation/gtc-and-legal-basis/basic-rate-of-interest-616708>).

#### 6.11 Default interest for Customers placing their order from within the USA

Without limiting other remedies, Cleverbridge reserves the right to charge a late fee on all past due payments equivalent to the lesser of one and a half percent (1.5%) per month on the unpaid balance or the highest rate allowed by applicable law.

6.12 In case of default Cleverbridge reserves the right to cancel the order and/or claim damages.

### 7. Price Adjustment for Subscription Products and Subscription Services

- 7.1 The price for the Products and Services consists of the sales margin of Cleverbridge, the procurement costs of Cleverbridge for the Products and Services and the applicable taxes. The sales margin covers the costs of Cleverbridge for the IT infrastructure, personnel and transaction processing. During the lifetime of a Subscription, the framework for the price calculation may change from one Subscription Payment Interval to the next. Therefore, in this Clause 7 the Parties agree upon the requirement and procedures for adapting the Subscription price.
- 7.2 Any additional taxes and duties imposed on the sales of Product and Service shall be borne by the Customer. This applies correspondingly to changes of the taxes and duties already billed to Customer; Cleverbridge is also obliged to pass on abolitions and reductions of taxes and duties.
- 7.3 On the basis of this contract, Cleverbridge will adapt the prices for the Products and Services to the change in costs Cleverbridge incurs or in prices Cleverbridge has to pay for Products and Services at its reasonable discretion. The price may be increased and will be decreased if e.g. the procurement costs for Products and Services rise or fall, or other changes in the economic and legal framework result in changed costs (e.g. through increased costs for the IT infrastructure or transaction processing). If costs of one type rise, e.g. procurement costs, Cleverbridge may increase the price only to the extent there are no falling costs of another type. If costs of one type fall, e.g. procurement costs, Cleverbridge will reduce the price to the extent this is not balanced out by rising prices of another type. Exercising reasonable discretion, Cleverbridge will define the time of price change in a way that cost reductions have at least the same effect on the price change as cost increases.
- 7.4 Cleverbridge will inform Customer in a timely manner about any price changes so that the Customer is able to cancel the Subscription before the first billing of the changed price.

### 8. Delivery, Delivery Period

- 8.1 The delivery of the ordered goods shall be carried out according to the delivery information on the relevant Cleverbridge Website, as amended from time to time.
- 8.2 For Customers placing their order from within the USA, the delivery dates are estimates only.
- 8.3 The agreed delivery period shall begin upon receipt of payment in full by Cleverbridge and Customer's accurate supply of all data necessary for the processing of the order to Cleverbridge or the payment services provider selected by the Customer.
- 8.4 Delivery delays caused by statutory or official arrangements (e.g. import and export restrictions) and that are not the fault of Cleverbridge shall extend the delivery period for a time equivalent to the duration of such obstacles. In important cases Cleverbridge shall immediately notify the Customer of their commencement and termination, to the extent Cleverbridge is aware of the same.

## 8.5 Physical Products and Services

8.5.1 To the extent the Customer fails to accept the delivered Products, or to the extent the Customer rejects them, risk of damage or loss of the Product shall pass to the Customer without prejudice to all other rights to which Cleverbridge is entitled:

Cleverbridge shall be entitled, at the Customer's risk and cost, to endeavor to have the Product delivered by such means it deems suitable and reasonable and to put the Product into storage at the Customer's risk and cost.

8.5.2 Cleverbridge shall be entitled to make partial deliveries to the extent this is reasonable. To the extent Cleverbridge makes partial deliveries to Businesses each partial delivery shall represent a separate contract and Businesses shall, in case of defects in one or more partial deliveries, not be entitled to cancel subsequent partial deliveries.

8.5.3 The risk of accidental destruction and accidental deterioration is assumed by Businesses as soon as the Product is received by the person carrying out transportation but no later than upon entering the Customer's possession.

## 9. Retention of Title

Cleverbridge retains title to the Product until payment in full of all claims under the contract including secondary claims (e.g. costs of exchange, financing costs, interest etc.) is received.

## 10. Usage Rights, License

10.1 To the extent that the Products and Services delivered by Cleverbridge consist of or include an activation code as described in Clause 1.5 (a) or a Service, the Customer accepts that the use of the corresponding Software or respectively the provision of the corresponding Service is subject to acceptance of Supplier's licensing conditions and terms of use ("EULA"). The Customer receives the EULA upon purchasing the Software or the Service. The EULA can also be enclosed with the software or communicated to the Customer before or during use of a Service. The Customer acknowledges that the Software or Service may only be reproduced, adapted, transmitted, made available, marketed, altered, disassembled, decompiled, re-transmitted or combined with other software or another Service as expressly permitted under the EULA or the applicable law.

### 10.2 Where the Customer

- a) does not receive the EULA prior to purchase of the relevant Product or the relevant Service or the EULA are not enclosed with the Software and
- b) the Customer does not use or has not used the Software or the Service, or
- c) does not agree to the licensing conditions and terms of use and does not wish to use the Software or the Service on the basis of these licensing conditions and terms of use, the Customer may contact Cleverbridge and request the repayment of the amounts paid for the Software or the Service. Cleverbridge may, in return, request the return of the Software or Service to Cleverbridge (where possible). In this case, however, the Customer shall have no rights whatsoever to use such Software or such Service.

## 11. Privacy

Customer data is subject to electronic data processing. Where necessary, Cleverbridge forwards personal data to the Supplier of the Products and Services purchased by the Customer, service partners or affiliated companies, some of which may be located outside the European Economic Area, including the USA, subject to compliance with the statutory requirements concerning appropriate safeguards. Cleverbridge's full privacy policy can be viewed under "[Privacy Policy](#)".

## 12. Defects, Claims in respect of Defects and Exclusion of Liability

Cleverbridge is only legally responsible for the proper condition of Products and Services as defined in Clauses 1.5 and 1.6. Since Cleverbridge does not sell Software, the corresponding liability is waived in Clauses 12.6.2 and 12.7.1.

The provisions of Sections 12.1 – 12.6 shall apply only to Customers who place an order from outside the USA. Section 12.7 shall apply to Customers who place an order from within the USA.

12.1 All information on Cleverbridge's Products and Services is merely by way of description and does not represent a guarantee.

12.2 Defective Products and Services

A Product is defective where it lacks the agreed quality, is not suitable for the agreed use or appropriate for the customary use and does not demonstrate the quality usual for Products of the same type and which the purchaser can expect of this type of Product. A Product is also defective where it infringes industrial property rights, copyright or other third-party rights. The technical and legal regulations applicable in Germany shall apply unless specifically agreed otherwise.

Services or the provision of Services are defective to the extent they do not comply with the contractual agreements.

### 12.3 Duty of Inspection and Notification

Businesses shall be obliged to test the Products under normal operating conditions immediately after delivery and to make sure that they are in perfect condition, match the Product description and are complete. Claims may only be made with respect to rights based on Product defects or a short delivery if the Customer notifies Cleverbridge in writing or by email of the Product defects or short delivery immediately and in any case no later than five days after receipt of the Products or in the case of a hidden defect, immediately after becoming aware of the respective hidden defect. Section 377 of the German Commercial Code [HGB] shall also apply.

### 12.4 Claims for Defects by Customers placing their order from outside the USA

According to German law, as applicable pursuant to Clauses 17.1.1 and Customers have the following claims for defects:

#### 12.4.1 Claims for Defects by Businesses

Where Cleverbridge has carried out or delivered defective Products and Services to a Business, Cleverbridge may choose either

1. to make good the defects by way of substitute performance or
2. to replace the defective Products and Services with a new Product or Service free of defects.

Where the substitute performance fails, the Business shall be able to bring a claim with respect to its statutory warranty rights under the following conditions:

1. The right to lower the relevant purchase price (price reduction) is excluded.
2. The right of cancellation shall be limited to the relevant Products and Services.
3. Where the Business is entitled to claim damages in lieu of performance or to rescind the contract or to claim substitute performance, Cleverbridge may require the Business to exercise its rights within a reasonable period of time. The Business shall notify Cleverbridge of its decision in this regard. Where the Business fails to exercise its rights within a reasonable period of time, a claim may only be brought for damages in lieu of performance and a notice of rescission may only be given where an additional deadline of reasonable duration for substitute performance by Cleverbridge, to be specified by the Business, has expired unsuccessfully.
4. The limitation period for defects claims by Businesses according to Section 437 No. 1 and No. 2 BGB shall be twelve (12) months from delivery of the Product.

#### 12.4.2 Claims for Defects by Consumers

Where Cleverbridge has carried out or delivered defective Products and Services to a Consumer, the latter may choose whether Cleverbridge should make good the defects by way of substitute performance or replace the defective Products and Services with a new Product or Service free of defects. Cleverbridge is, however, entitled to refuse the selected form of substitute performance where this is possible only at excessive cost and the other form of substitute performance is available without material disadvantage to the Consumer.

Where the substitute performance fails, it shall generally be at the Consumer's discretion to opt for a lowering of the purchase price (reduction) or to rescind the contract.

The limitation period for defects claims by Consumers shall be twenty-four (24) months from delivery of the Product.

Consumers residing in France can find additional/deviating rights under the following [link](#).

### 12.5 Legal Consequences of Rescission

Where the Customer exercises an existing right of rescission, the contractual parties shall return the Services received and surrender any use or enjoyment derived. At the same time, the Customer's right to use the Products or Services shall cease. In the case of Software previously purchased the Customer shall immediately remove this from all installations, storage media and other files and shall destroy the physical components of the Products and



Services as well as any copies made of the Software. In addition, the Customer shall make a separate statement in text form (e.g. in writing, by fax or by email) that it will undertake the actions set out above.

#### 12.6 Disclaimer for Customers placing their order from outside the USA

- 12.6.1 ANY LIABILITY ON THE PART OF CLEVERBRIDGE FOR CONSEQUENCES THAT HAVE ARISEN FROM ALTERATIONS MADE TO THE PRODUCTS AND SERVICES BY THE CUSTOMER OR BY A THIRD PARTY OR THAT HAVE ARISEN THROUGH THE MISHANDLING OR INCORRECT OPERATION OF THE PRODUCTS AND SERVICES SHALL BE EXCLUDED.
- 12.6.2 CLEVERBRIDGE ONLY SELLS PRODUCTS AND SERVICES AS DEFINED IN CLAUSES 1.5 and 1.6. THEREFORE ANY LIABILITY ON THE PART OF CLEVERBRIDGE FOR THE ADEQUACY OF THE OPERATION OF SOFTWARE AND SERVICES PROVIDED BY SUPPLIERS FOR THE SPECIFIC REQUIREMENTS OF THE CUSTOMER OR FOR THE COMPATIBILITY OF THESE SOFTWARE AND SERVICES WITH COMPONENTS WITHIN THE SPECIFIC HARDWARE CONFIGURATION AT THE CUSTOMER'S PREMISES SHALL BE EXCLUDED.
- 12.6.3 UNLESS OTHERWISE SPECIFIED IN THIS CLAUSE 12.6, LIABILITY ON THE PART OF CLEVERBRIDGE FOR ACTS OR OMISSIONS SHALL BE STRICTLY EXCLUDED.
- 12.6.4 WHERE CLEVERBRIDGE NEGLIGENTLY BREACHES A MATERIAL CONTRACTUAL OBLIGATION, CLEVERBRIDGE'S LIABILITY FOR DAMAGES SHALL BE LIMITED TO FORESEEABLE DAMAGE TYPICALLY ARISING IN SUCH CIRCUMSTANCES. MATERIAL CONTRACTUAL OBLIGATIONS ARE THOSE THAT NEED TO BE COMPLIED WITH IF THE PURPOSE OF THE CONTRACT IS TO BE ACHIEVED.
- 12.6.5 WHERE THE CUSTOMER BRINGS DAMAGES CLAIMS BASED ON CLEVERBRIDGE'S DELIBERATE OR RECKLESS BREACH OR ON THE ABSENCE OF A FEATURE GUARANTEED BY CLEVERBRIDGE, CLEVERBRIDGE SHALL BEAR LIABILITY WITHIN THE STATUTORY LIMITS.
- 12.6.6 THIS SHALL BE WITHOUT PREJUDICE TO CLEVERBRIDGE'S LIABILITY FOR CULPABLE LOSS OF LIFE, PERSONAL INJURY OR DAMAGE TO HEALTH. THE SAME SHALL APPLY TO LIABILITY UNDER THE GERMAN PRODUCT LIABILITY ACT.
- 12.6.7 WHERE CLEVERBRIDGE'S LIABILITY IS EXCLUDED OR LIMITED, THIS SHALL ALSO APPLY TO THE PERSONAL LIABILITY OF CLEVERBRIDGE'S WORKERS, EMPLOYEES, CO-WORKERS, LEGAL REPRESENTATIVES AND VICARIOUS AGENTS.

#### 12.7 Disclaimer for Customers placing their order from within the USA

- 12.7.1 The Supplier might offer certain warranties for their (or some of their) Software, but Cleverbridge does not offer any warranty on Software purchased through the Cleverbridge Website. CLEVERBRIDGE MAKES NO WARRANTIES AND DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS WITH RESPECT TO THE SOFTWARE, WHETHER EXPRESS OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, SYSTEM INTEGRATION, QUIET ENJOYMENT, AND ACCURACY.
- 12.7.2 IN NO EVENT SHALL CLEVERBRIDGE BE LIABLE TO THE CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE, EVEN IF CLEVERBRIDGE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING ANY LOSS OF REVENUE, LOSS OF CUSTOMERS, LOSS OF GOODWILL, OR LOSS OF PROFITS, ARISING OUT OF OR IN RELATION TO THESE TERMS, WHETHER ARISING UNDER CONTRACT, TORT OR ANY OTHER LEGAL OR EQUITABLE THEORY. IN NO EVENT SHALL CLEVERBRIDGE'S TOTAL, CUMULATIVE LIABILITY HEREUNDER EXCEED THE PURCHASE PRICE FOR THE SPECIFIC PRODUCTS AND SERVICES GIVING RISE TO THE CLAIM. MULTIPLE CLAIMS WILL NOT ENLARGE THIS LIMIT. THIS LIMITATION OF LIABILITY SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY EXCLUSIVE REMEDY HEREIN.

### 13. Revocation Right for Consumers

The provisions of this Clause 13 shall only apply to Consumers who place an order from a member state of the European Union:

#### 13.1 Revocation

- 13.1.1 Consumers shall have the right to revoke this contract within fourteen (14) days without stating a reason.
- 13.1.2 In the case of a contract for Services or a contract for the delivery of individually acquired or recurring digital content not installed on a physical data carrier, the revocation period shall be fourteen days from the

date the contract was concluded.

In the case of a purchase contract for the delivery of goods (e.g. back-up CDs), the revocation period shall be fourteen days from the date on which the Consumer – or a third party designated by the Consumer who is not a freight carrier – takes possession of the goods.

- 13.1.3 Under Section 312g (2) BGB, the right of revocation does not arise or exist with respect to contracts for the delivery of goods if they are not ready-made but were manufactured in accordance with an individual choice or determination of the Consumer or are clearly tailored to the personal needs of the Consumer (Section 312g (2) No. 1 BGB), and with respect to contracts for the delivery of audio and video recordings or computer software in a sealed package if the seal was broken after delivery (Section 312g (2) No. 6 BGB).

### 13.2 WAIVER OF THE RIGHT OF REVOCATION

THE PROVISIONS OF THIS CLAUSE 13.2 SHALL ONLY APPLY TO CONSUMERS WHO ENTER INTO A CONTRACT FOR THE DELIVERY OF DIGITAL CONTENT NOT INSTALLED ON A PHYSICAL DATA CARRIER.

IN ACCORDANCE WITH SECTION 356 (5) BGB, THE CONSUMER

- 1) EXPRESSLY AGREES THAT CLEVERBRIDGE SHALL COMMENCE THE EXECUTION OF THIS CONTRACT BEFORE THE EXPIRATION OF THE REVOCATION PERIOD, AND
- 2) IS AWARE THAT HE WILL LOSE HIS RIGHT OF REVOCATION WHEN THE EXECUTION OF THIS CONTRACT COMMENCES.

Any money-back-guarantee or other guarantee or warranty of similar content granted by Cleverbridge as regulated in Clause 14 shall not be affected by this Clause.

- 13.3 To exercise the right of revocation, the Consumer must inform Cleverbridge (Cleverbridge GmbH, Gereonstr. 43-65, 50670 Cologne, Germany, tel: +49 221 - 222 45 – 0, fax: +49 221 - 222 45 – 19, email: [cs@cleverbridge.com](mailto:cs@cleverbridge.com)) by making a clear declaration of his decision to revoke the contract (e.g. by letter sent by regular mail, fax, or email.) The Consumer can use the model revocation form following these revocation instructions for this purpose, but it is not a requirement.

To meet the revocation deadline, it is sufficient for the Consumer to send notice that he is exercising his right of revocation prior to the expiration of the revocation period.

### 13.4 Legal Consequences of Revocation

- 13.4.1 If the Consumer revokes this contract, Cleverbridge must promptly refund all of the payments Cleverbridge received from the Consumer, including delivery costs, no later than fourteen days from the date on which the notice of revocation of the contract was received by Cleverbridge (with the exception of additional costs incurred because the Consumer has chosen a different mode of delivery than the most cost-effective one, i.e. the standard mode of delivery offered by Cleverbridge). For this refund, Cleverbridge shall use the same means of payment that was used by the Consumer in the original transaction, unless otherwise expressly agreed with the Consumer. In no case shall the Consumer be charged a fee for the refund.

- 13.4.2 In the case of a contract for Services, the following shall apply: If the Consumer requested that the Services commence during the revocation period, the Consumer shall pay Cleverbridge a reasonable amount, which corresponds to the percentage of Services provided by the time the Consumer informs Cleverbridge of the exercise of his right to revoke the contract, as compared to the total scope of the Services contemplated by the contract.

- 13.4.3 If there is a purchase contract for the delivery of goods, the following shall apply: Cleverbridge can refuse to make a refund until it has received the goods back or until the Consumer proves that he has sent the goods back, whichever is earlier. The Consumer shall promptly return or send the goods to Cleverbridge no later than fourteen days from the date on which the Consumer informed Cleverbridge of the revocation of the contract. The deadline is met if the Consumer sends the goods before the expiration of the fourteen-day period. The Consumer shall bear the direct costs of returning the goods.

The Consumer must pay for the diminished value of the goods if the diminished value is attributable to his treating the goods in an unnecessary manner to examine their quality, characteristics, and functionality.

#### **End of the revocation instructions**

#### **Model revocation form**

(If you wish to revoke the contract, please fill out this form and send it back.)



To Cleverbridge GmbH, Gereonstr. 43-65, 50670 Cologne, Germany, Fax: +49 221 - 222 45 – 19, email: [cs@cleverbridge.com](mailto:cs@cleverbridge.com)

I/we hereby revoke (\*) the contract for the purchase of the following goods (\*) /the provision of the following services (\*) concluded by me/us

Ordered on (\*) /received on (\*)

Name of the Consumer(s)

Address of the Consumer(s)

Signature of the Consumer(s) (only for notices in paper form)

Date

(\*) Please delete what does not apply.

#### 14. Money-Back-Guarantee

For certain Products and Services Cleverbridge offers a money-back-guarantee only as indicated on the Cleverbridge Website. Under this guarantee, Customers can claim a refund of the purchase price in the same manner they can exercise the right of revocation according to Clause 13.3. The claim for refund is only valid if it has been received by Cleverbridge within the time period indicated on the Cleverbridge Website.

#### 15. Cancellation of Subscriptions

15.1 Customers may cancel Subscriptions to Products and Services as indicated on the Cleverbridge Website. The cancellation will only become effective starting with the date of from the expiry of the then current Subscription term.

15.2 Cleverbridge may cancel the Subscription under the same conditions as the Customer.

15.3 The use of Products and Services sold by Cleverbridge may depend on online platforms maintained by the Supplier, data processed by the Supplier, and on the Supplier's ability to provide the Services. If the Supplier fully or partially discontinues providing the respective online platform, stops processing the data, or stops providing the respective Services ("Shut Down"), Cleverbridge shall be entitled to cancel the Subscription with effect from the date of Shut Down. Cleverbridge shall refund Customer on a pro-rata basis for the time period of the then current Subscription term remaining after the Shut Down.

#### 16. Place of Performance

In the case of contracts with Businesses, the place of delivery and payment shall be agreed as the place where Cleverbridge has its offices i.e. Cologne, Germany.

#### 17. Jurisdiction and Applicable Law

17.1 Jurisdiction and applicable law for Customers placing their order from outside the USA

Customers may contact Cleverbridge via email at [cs@cleverbridge.com](mailto:cs@cleverbridge.com) to resolve any disputes and/or claims. Consumers placing their order from a member state of the European Union can find general information about online dispute resolution obligations and mechanisms [here](#). Cleverbridge does not participate in out-of-court settlement procedures in front of dispute resolution bodies.

17.1.1 Jurisdiction and applicable law for Businesses placing their order from outside the USA

In the case of contracts with Consumers, the general jurisdiction shall be determined on the basis of the German law.

This contract will be construed in accordance with and governed in all respects by the laws of Germany.

The provisions of the UN Convention of 11 April 1980 on Contracts for the International Sale of Goods (the Vienna Convention) shall not apply.

17.1.2 Jurisdiction and applicable law for Consumers placing their order from outside the USA

The exclusive venue for all legal proceedings and/or conflicts arising in relation to this contract is Cologne, Germany.

This contract will be construed in accordance with and governed in all respects by the laws of Germany.

With orders placed by Consumers who have their habitual residence outside the Federal Republic of Germany, mandatory regulations and mandatory protections granted by judicial decision of the respective country of residence shall remain in effect and shall apply accordingly. The provisions of the UN

Convention of 11 April 1980 on Contracts for the International Sale of Goods (the Vienna Convention) shall not apply.

## 17.2 Jurisdiction and applicable law for Customers placing their order from within the USA (Dispute Resolution by Binding Arbitration)

- 17.2.1 Cleverbridge and the Customer agree to arbitrate all disputes and claims between the two parties (the "Parties"). This contract to arbitrate is intended to be broadly interpreted. It includes, but is not limited to:
- Claims arising out of or relating to any aspect of the relationship between the Parties, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory;
  - Claims that arose before this or any prior agreement between the Parties (including, but not limited to, claims relating to advertising);
  - Claims that are currently the subject of purported class action litigation in which Customer is not a member of a certified class; and
  - Claims that may arise after the termination of any agreement between the Parties.

Notwithstanding the foregoing, either party may bring an individual action in small claims court. Customer agrees that, by accepting these terms and conditions, Customer and Cleverbridge are each waiving the right to a trial by jury or to participate in a class action. The transaction between the Parties evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. This arbitration provision shall survive termination of the contract entered into by the Parties.

- 17.2.2 A party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ("Notice"). The Notice to Cleverbridge should be addressed to: Cleverbridge GmbH, Gereonstr. 43-65, 50670 Cologne, Germany, ("Notice Address"). The Notice must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). If Cleverbridge and Customer do not reach an agreement to resolve the claim within thirty (30) days after the Notice is received, Customer or Cleverbridge may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by Cleverbridge or Customer shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which Customer or Cleverbridge is entitled. Customer may download or copy a [form Notice](#).

- 17.2.3 After Cleverbridge receives notice at the Notice Address that Customer has commenced arbitration, it will promptly reimburse Customer for Customer's payment of the filing fee. If Customer is unable to pay this fee, Cleverbridge will pay it directly upon receiving a written request at the Notice Address. The arbitration will be governed by the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by these terms and conditions, and will be administered by the AAA. The AAA Rules are available online at [www.adr.org](http://www.adr.org), by calling the AAA at 1-800-778-7879, or by writing to the Notice Address. All issues are for the arbitrator to decide, including the scope of this arbitration provision, but the arbitrator is bound by the terms of these terms and conditions. Unless Cleverbridge and Customer agree otherwise, any arbitration hearings will take place in the county (or parish) of Customer's billing address. If Customer's claim is for Ten Thousand U.S Dollars (US\$10,000) or less, Cleverbridge agrees that Customer may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If Customer's claim exceeds Ten Thousand U.S Dollars (US\$10,000), the right to a hearing will be determined by the AAA Rules. Except as otherwise provided for herein, Cleverbridge will pay all AAA filing, administration, and arbitrator fees for any arbitration initiated in accordance with the notice requirements above. If, however, the arbitrator finds that the substance of Customer's claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all such fees will be governed by the AAA Rules. In such case, Customer agrees to reimburse Cleverbridge for all monies previously disbursed by it that are otherwise Customer's obligation to pay under the AAA Rules.

- 17.2.4 If, after finding in Customer's favor in any respect on the merits of Customer's claim, the arbitrator issues Customer an award that is:
- Equal to or less than the greater of (a) Two Thousand U.S. Dollars (US\$2,000) or (b) the maximum claim that may be brought in small claims court in the county of the Customer's billing address, and
  - Greater than the value of Cleverbridge's last written settlement offer made before an arbitrator was selected, then Cleverbridge will:

- Pay Customer the greater of (a) Two Thousand U.S. Dollars (US\$2,000) or (b) the maximum claim that may be brought in small claims court in the county of Customer's billing address ("the premium") instead of the arbitrator's award; and
- Pay Customer's attorney, if any, twice the amount of attorneys' fees, and reimburse any expenses that Customer's attorney reasonably accrues for investigating, preparing, and pursuing the Customer's claim in arbitration ("the attorney premium").

If Cleverbridge did not make a written offer to settle the dispute before an arbitrator was selected, Customer and Customer's attorney will be entitled to receive the premium and the attorney premium, respectively, if the arbitrator awards Customer any relief on the merits. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees, expenses, and the premium and the attorney premium at any time during the proceedings and upon request from either party made within fourteen (14) days of the arbitrator's ruling on the merits.

- 17.2.5 The right to attorneys' fees and expenses set forth in Clause 17.2.4 supplements any right to attorneys' fees and expenses Customer may have under applicable law. Thus, if Customer would be entitled to a larger amount under the applicable law, this provision does not preclude the arbitrator from awarding Customer that amount. However, Customer may not recover duplicative awards of attorneys' fees or costs. Although under some laws Cleverbridge may have a right to an award of attorneys' fees and expenses if it prevails in arbitration, Cleverbridge agrees that it will not seek such an award.
- 17.2.6 The arbitrator may award injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. CUSTOMER AND CLEVERBRIDGE AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN CUSTOMER'S OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both Customer and Cleverbridge agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this arbitration provision shall be null and void.
- 17.2.7 This contract will be construed in accordance with and governed in all respects by the laws of the State of Illinois, USA, without regard to any conflicts of law principles that would result in application of laws of any other jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this contract.

## 18. Entire Contract

These Ts&Cs cover the entire contract between the Parties in relation to the stated dealings and replace any previous or simultaneous agreements, communications and arrangements between the Parties (whether oral or in writing) in relation to the present subject matter. Amendments and additions to these Ts&Cs shall be in writing. The written-form requirement may only be waived in writing.

## 19. Validity

Should a provision of these Ts&Cs or a provision within the context of any other agreements be or become invalid then this shall not affect the validity of the other agreements or provisions. The applicable statutory law shall apply in place of the invalid provisions.

Cleverbridge GmbH and Cleverbridge, Inc.

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