

Supplemental Terms and Conditions of Business for Electronic Software Distribution (ESD-GTC) of ALSO Schweiz AG

In addition to the General Terms and Conditions of Business of ALSO Schweiz AG or other terms and conditions of business and/or contract agreed between ALSO and the Customer these Supplemental Terms and Conditions of Business (ESD-GTC) are applicable to the field of electronic software distribution via the technical solution provided by ALSO.

1. Definitions

ALSO Digital – ALSO Digital B.V. is the company affiliated to ALSO that renders services on behalf of ALSO in the field of digital distribution, digital delivery of media and products such as e.g. software, apps, licenses, keys, utilisation rights, music, films, games, e-books, etc..

Digital Products – original versions of digital games and software, including all updates and upgrades and underlying utilisation rights that are made available to ALSO for distribution by Manufacturers.

End User – includes every consumer who procures the Digital Products for their own use and not for the purpose of resale.

EULA (End User License Agreement) – refers to the licensing conditions and utilisation conditions that the Manufacturer imposed upon the End User as a precondition for utilisation of the Digital Product.

Manufacturers – includes the suppliers, manufacturers and licensors from which ALSO has received the right of distribution for the Digital Products.

Customer – means the specialist retailer that obtains goods and/or services from ALSO.

Metadata – information about the digital products (i.e. title, names, images, graphics, trailers, ratings, descriptions, requirements, EAN codes, geographic information, etc.).

SPTC (Special Publisher Terms and Conditions) – supplemental terms and conditions of individual Manufacturers applicable to all distribution partners in particular for digital distribution that ALSO has imposed upon the Customer. The valid version is available under <http://sptc.alsodigital.com>.

Sales Territory – Switzerland and the Principality of Liechtenstein.

2. Distribution Right for Digital Products

2.1 ALSO herewith grants the Customer the non-assignable, non-sub-licensable, non-exclusive right to resell Digital products to End Users within the Sales Territory that ALSO makes available by means of ESD. Resale by the Customer to the End User is permitted exclusively via the technical solution made available by ALSO (provision of a download link in the I-VIS or by e-mail, XML feed, download manager etc.).

2.2 The Sales Territory is applicable until revocation. There is no entitlement to the provision of specific Digital Products or Metadata. ALSO may withdraw, reduce or expand the provision of Digital Products or Metadata at any time.

3. Obligations of the Customer

3.1 The Customer shall fulfil all SPTC requirements. These constitute an integral part of the ESD-GTC. In order to fulfil the respective contractual requirements of the individual Manufacturers, ALSO is required to update the SPTC from time to time. The valid SPTC can be accessed under: <http://sptc.alsodigital.com>.

3.2 The Customer undertakes to keep himself informed and adhered to the terms and conditions of sale of the Manufacturer he is distributing for and to the SPTC in particular.

3.3 If the SPTC are subdivided into several parts in which the specific terms and conditions of the respective Manufacturers are listed, the definitions contained in the SPTC shall be applicable only to the corresponding subdivided part of the SPTC.

The Customer acknowledges that the SPTC regulations are provided by Manufacturer in English. All translated versions are provided simply for understanding reason. In the event of contradictions between any of the translated versions the most recent English version shall prevail.

- 3.4 The Customer is aware of that any failure to fulfil with the SPTC will cause a lapse of the distribution right of the Customer and in legal terms may make it impossible for him to fulfil his obligations vis-à-vis the End User. ALSO and its affiliated companies and the respective Manufacturer shall moreover be entitled to claim compensation from the Customer for all damages and indemnification of any liability claims, costs and expenses (including reasonable legal defence costs) resulting from any breach of the obligations of the Customer pursuant to the SPTC.
- 3.5 The Customer recognises that in addition to the SPTC ALSO may also be bound by further restrictions imposed by the Manufacturers (e.g. technical conditions). The customer undertakes to comply without any delay with these restrictions imposed by the Manufacturer as communicated by ALSO in particular cases.
- 3.6 The Customer is prohibited from downloading Digital Products onto in-house data carriers or servers or the server of a data service provider of the Customer or from making Digital Products or Metadata available in an altered form.
- 3.7 The Customer shall draw the attention of the End User to the fact that under certain circumstances before any download it might be necessary to download and install a special program (e.g. a download manager) that supports the downloading and installation of the Digital Product and would be required for this purpose.
- 3.8 The Customer shall distribute the Digital Products only together with an unaltered version of the EULA of the Manufacturer applicable to the respective Product and shall take steps to ensure that this is included in the contract concluded with the End User. The EULA is always available on the respective website of the Manufacturer.

4. Contractual conclusion and exclusion of return

The Customer shall be bound by his electronic orders. ALSO fulfilled its obligation by providing the link for downloading the software. This consequently means that the Customer may not revoke or withdraw from the contractual conclusion. Any exchange or return of software (or of non-downloaded software) by the Customer or End User is excluded, unless the software cannot be downloaded due to a technical objective impossibility.

5. Intellectual property

The Customer shall observe all intellectual property rights (such as brands, trade names, logos, patents, designs and utility models, domain names and copyrights) pertaining to the Digital Products and Metadata. The Customer acknowledges that ALSO is an authorised distributor of the Digital Products and he observes all intellectual property rights owned by ALSO and ALSO Digital as well as by the copyright holders and Manufacturers or that are licensed by them. All existing industrial property rights for the Products are and remain the property of the Manufacturers of the Digital Products.

6. Order of precedence of the provisions

Possible contradictions between the regulations governing the contractual relationship shall be settled in accordance with the following order of precedence, whereby the first cited regulation shall have precedence over the following: 1. SPTC, 2. the Supplemental Terms and Provisions of Business for Electronic Software Distribution (ESD GTC), 3. the other special terms and conditions agreed between ALSO and the Customer, and 4. the current General Terms and Conditions of Business (GTC) of ALSO.