

Terms and Conditions

Overview

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- II. Terms of use for upload/download area

I. General terms and conditions for buying a digems kit

I.1. General/Conclusion of contract

Sales contracts do not need to be signed by digems.com.

I.2. Prices and payment

- a) For purposes of delivery, catalogue price at time of order is valid.
- b) Our prices include VAT. They are in euros.
- c) Our invoices are immediately payable without discounts. Payment will not occur until digems can dispatch. Discounts and debit charges shall be at the customer's expense. We assume no liability for legal submission.
- d) Surcharges for customs duties in EFTA states and third countries are borne by the customer.

I.3. Delivery

- a) The agreed delivery time begins with the undisputed and confirmed order.
- b) Delays in delivery which are due to legal or official regulations (e.g. import and export restrictions) and for which we are not responsible, lengthen the delivery time according to the length of the obstacle.

I.4. Right to cancellation for distance contracts

A right to cancellation is applied according to the legal framework on distance contracts. It regulates the right to cancellation for the consumer. Independent of this law digems offers the following as its standard: "If you don't like the ordered product, you get your money back, you can exchange it or get a substitute."

I.5. Redemption grace

digems is permitted to take the delivery back out of goodwill.

I.6. Liability disclaimer

- a) We assume no liability for defects and damage that result from unsuitable or improper use, from not following instructions or from faulty or negligent treatment.
- b) Apparent defects are to be reported in writing without delay, at the very latest 10 days after receiving the delivery. Otherwise all warranty claims will be excluded. In commercial transactions § 377, 387 (German Commercial Code) additionally apply.
- c) Insofar as a substantiated defect in the purchased item exists, we are obligated to provide compensation. This liability disclaimer does not apply in case of deliberate or gross negligence.
- d) If not otherwise agreed, further claims of the buyer – irrespective of their legal grounds – are excluded. The aforesaid exemption from liability does not apply if the defect is due to a deliberate act, gross negligence or lack of a guaranteed feature, breach of material contractual duties, default of delivery, impossibility, as well as claims according to §1, 4 of Product Liability Law.

I. 7. Use of customer data

We are permitted to use all data concerning our business transactions with customers according to the German Data Protection Act.

We do not divulge customer data to third parties.

I.8. Place of jurisdiction, partial invalidity, applicable legislation

In commercial transactions with business customers who are not included among the tradesmen identified in § 4 of the German Commercial Code and legal persons under public law, the court of jurisdiction for all legal disputes arising from this agreements, including bill of exchange and check disputes, will be Munich (Germany). If single clauses of this delivery agreement or terms and conditions become ineffective, the remaining provision shall not be affected. German law shall apply to cross-border deliveries.

Dated: 1 Dezember 2012

II. Terms of use for upload/download area

II.1. Your relationship to digems

The terms constitute a legally binding agreement between you and digems regarding the use of the up-/download area (services). It is important that you take time to thoroughly read them.

II.2. Agreeing to the terms

II.2.1. In order to use the up-/download service, you need to first agree to the terms. You may not use these services, if you do not agree to the terms.

II.2.2. You can simply agree to the terms by using the services. You acknowledge and agree that digems will take your using the services as an agreement to the terms.

II.2.3. You may not use the services and you may not agree to the terms if

a) you have not yet reached the legally binding age to enter into a binding contract with digems or

b) if, according to the law of the state where you live or from where you access or use the services, the receiving or use of these services are excluded or are otherwise legally prohibited.

II.2.4. You should print the terms for your files or save them locally.

II.3. Changing the terms

digems may occasionally change their terms. When such changes have taken place, digems will make a new copy accessible on

<http://www.digems.com/TCs>

You acknowledge and agree that digems treats your using the service as your agreeing to the changed terms should you use the services after the date that the terms were changed. You should regularly check whether the terms have been changed.

II.4. General restrictions of use

4.1. digems allows you to access and use the services under the stipulation of the following conditions. In addition you agree that every diversion from one of these terms constitutes a breach of the agreement on your part:

4.2. You agree that you are solely responsible (and that digems is not responsible to you or third parties) in connection with the infringement of your duties according to the terms (including any loss or damage whatsoever that digems' sustains because of it).

II.5. User account

II.5.1. digems.com will not make a user account available. Therefore you will not be able to delete designs/data once they have been uploaded. Hence you should very carefully consider whether you wish to make designs/data available for the digems' community.

By uploading the designs you are making them available to all digems.com users. Hence you should own all rights to the uploaded content and hand them over for free without a time limit to the users/downloaders of the digems' community. You bear the consequences for any copyright infringement yourself.

II.6. Restrictions on content and visual content

II.6.1. Uploaded designs/data may not

- a) infringe upon any personal rights or copyrights or induce someone to do so
- b) discriminate against people or animals or induce discrimination
- c) contain content that is confidential

II.6.2. Downloaded designs are only allowed to be used with the nano 6G iPod. Any further application is prohibited. You will bear the consequences for any copyright infringement yourself.

II.7. User transmissions

II.7.1. You retain all your ownership rights to your user transmissions. In spite of this it is necessary for you to grant digems and other users of the website unconditional user rights. These are described in detail in section 9 of these terms (rights that you grant).

II.7.2. You acknowledge and agree that you are solely responsible for your designs and the consequences of their publication. digems.com does not take over or endorse any user transmissions or opinions, recommendations or advice contained within them, and digems excludes all liability in connection with user transmissions.

II.7.3. You assure and guarantee that you possess all necessary licenses, rights, consent and permission (and will possess them for the whole period of your using the services) that are required so that digems can use your user transmissions to make them available as services by digems and can otherwise use your user transmissions in the way described on the web page and in these terms.

II.8. Content of your user transmissions

II.8.1. You agree that your behaviour while using the website (and the content of all your user transmissions) complies with digems' community regulations ([LINK](#)), which can be accessed in a version that is updated from time to time.

II.8.2. You agree not to post or upload user transmissions the possession of which is illegal in the country of your residency or of which the use or possession by digems in connection with making the service available would be illegal.

II.8.3. You agree not to post or upload any user transmissions which are the object of another person's ownership rights (including confidentiality rights and personal rights) if you do not possess a formal licence or permission from the lawful owner which would allow the posting of the material in question and the concession of a licence to digems according to section 10.1.

II.8.4. digems reserves the right to decide whether pictures made available for download correspond to the requirements of the contents as stipulated in these terms. digems may

remove any pictures without notice and at its sole discretion which breach this agreement.

II.8.5. You acknowledge and agree that while using the up-/download web page and its services you may be confronted with user transmissions that are factually incorrect, offensive and indecent or otherwise that you perceive as disturbing. You agree that this might be the case and renounce herewith any rights and legal remedies that you are entitled to against digems relating to such user transmissions.

II.9. Rights that you grant

II.9.1. By uploading or posting user transmissions and designs/data, you grant

a) a world-wide, non-exclusive and free licence to digems (with a right to sub-licensing) relating to the use, reproduction, sale and production of derivative works, exhibition and listing of user transmissions in connection with the making available of the service and otherwise in connection with the making available of the webpage and digems store, including but not restricted to advertisement for and the resale of the whole or parts of the webpage (and works based and derived from it) regardless of media type or distribution channels used;

b) every user of the website a world-wide, non-exclusive and free licence to broadcast your user transmissions via the nano 6G iPod.

II.10. digems' content

II.10.1. With the exception of user transmissions, all content on the web page including - but without restriction - texts, software, scripts, graphics, photos, sounds, music and interactive elements on the webpage (the "digems' content") is the property of digems or are licensed to digems or are the object of copyright, branding and other intellectual property of digems. All trade or service brands connected with digems' content belong to their respective owners.

II.10.2. digems' content is not allowed to be downloaded, copied, reproduced, sold, transferred, sent, broadcast, licensed or used in any other way or for any other purpose other than the use with the iPod nano 6G without digems' prior written consent. digems reserves all rights not specifically granted and reserves all rights to digems' content.

II.11. digems' links

II.11.1. Some services can contain links to other websites, which do not belong to digems nor are they checked by digems. digems has no control over foreign websites, nor does it take responsibility for the content, data protection regulations or activities of foreign pages.

II.12. Disclaimer of warranty

II.12.1. These regulations do not affect all those regulations which are guaranteed for

every consumer and which cannot be contractually changed or rescinded.

II.12.2. The services are provided "as seen" and digems does not assume any warranty or guarantee for them.

II.12.3. In particular digems does not guarantee that;

- a) using the services will satisfy your expectations,
- b) using the services will not be interrupted, will always be timely, safe and without mistake,
- c) information that you receive as a result of using the services is applicable and reliable and that mistakes in the service or functioning of software, which was received as part of the service, will be remedied.

II. 13. Other conditions, guarantees or terms (including any implicit terms relating to satisfactory quality, use worthiness or compliance with descriptions) are not applicable to the services or only to the degree explicitly declared by the terms.

II.14. No warranty

digems.com does not provide you with a user account. Hence all data that you upload is not suitable for backup and digems.com does not guarantee the continued appearance of the design.

II.15. General terms

II.15.1. These terms constitute the complete legal agreement between you and digems; they define your use of the services and completely replace any prior agreement between you and digems relating to such services.

II.15.2. Insofar as any responsible court decides that any regulation of these terms is ineffective, then that regulation shall be taken out of the terms without touching the validity of the other regulations in these terms. The remaining regulations of the terms remain effective and applicable in this case.

Dated: 1 Dezember 2012