

## General Terms and Conditions of Sale

### § 1 General - Controlling Provisions

1. No terms and conditions other than our Terms and Conditions of Sale contained herein shall apply unless expressly approved in writing by us. Our Terms and Conditions of Sale shall also apply in the event we make delivery to the customer without objection although aware of the existence of terms and conditions of the customer that differ from or supplement our Terms and Conditions of Sale.

2. All agreements made between us and the customer in connection with the execution of this agreement are contained herein in writing. Our employees are not entitled to make verbal commitments which are outside the scope of the written agreement.

3. Our Terms and Conditions of Sale shall apply to transactions with entrepreneurs ("Unternehmer") in the sense of Section 14 German Civil Code, legal entities under public law and public special funds.

4. Our Terms and Conditions of Sale shall also apply to all present and future commercial relations with the customer.

### § 2 Acceptance of Orders

1. Our offers are subject to change. We reserve the right to make insignificant technical changes or insignificant changes in design, colour and/or weight to the customary extent.

2. In the case of orders pursuant to Section 145 German Civil Code (BGB), we may at

our option accept such orders within 2 weeks of receipt.

3. Unless specified otherwise in these Terms and Conditions of Sale or in our written confirmation, a reference to a clause of the INCOTERMS shall be understood as a reference to the INCOTERMS in the version effective as of the date of this agreement.

4. Delivery is contingent upon correct and timely delivery of necessary materials or merchandise to us ("Obtaining supplies oneself clause") insofar as the self-delivery constitutes a covering transaction which is congruent with the contract concluded between the customer and ourselves. We will inform the customer without delay in the event of non-availability and in the event of rescission promptly refund any payment received.

5. All rights to illustrations, drawings, calculations and other documents shall remain our property. This shall also apply to any written materials designated as "confidential". The customer shall obtain our express approval in writing before making any such materials available to other parties.

6. The customer is obliged to maintain confidentiality in respect of any information provided by us – in whichever form – in the scope of the business relationship. He shall not use the information for other than the contractual purposes and shall not make them available to any third party without our prior written consent. As far as we consent that the information is passed on to a third party the customer shall put such third party under an equal obligation of confidentiality. The confidentiality oblige-

tion does not apply to information that is publicly known, has been obtained from a third party without violating confidentiality obligations, or is to be disclosed due to legal obligations or court or official orders, whereby the disclosure in these cases is to be limited to the necessary extent. Section 5 of the GeschGehG remains unaffected.

7. The customer shall comply with the applicable data protection laws and regulations.

### § 3 Prices – Terms of Payment

1. Unless specified otherwise in our written confirmation, our prices are “ex works” (exw) and exclusive of packing which will be invoiced separately.

2. We reserve the right to modify our prices accordingly in the event of increases in costs for reasons beyond our control, including but not necessarily limited to increases due to wage agreements or changes in the prices of materials, which, taking into account the development of the other cost items, lead to a cost increase in relation to the overall product. We will document any such cost increases at the customer's request. In the event of a price increase of more than 10%, the customer shall be entitled to rescind the contract.

3. Our prices are exclusive of applicable value added tax (VAT). Applicable value added tax will be included separately in the invoice on the billing day.

4. Unless specified otherwise in our written confirmation, the customer shall pay the net purchase price (without discount) within 10 days of receipt of the invoice, at which time the invoice shall become due

and payable. Legal remedies shall apply in the case of past due accounts.

5. The customer shall only be entitled to offset any counterclaims or to rely on any retention right if the corresponding counterclaims are determined by a non-appealable court decision or are undisputed or recognized by us. This restriction shall not apply to claims of the customer due to defects resulting from the same contractual relationship as our claim.

### § 4 Delivery – Delayed Acceptance – Delayed Delivery

1. Delivery dates are subject to timely receipt by us of all documentation to be supplied by the customer, required permits and approvals, including but not necessarily limited to plans and are also subject to performance of other obligations by the customer. If these conditions are not fulfilled in due time, delivery shall be delayed until all of these conditions have been fulfilled. This shall not apply in the event of delays for which we are responsible.

2. Our obligation to make delivery is contingent upon timely and proper performance of the customer's obligations. We reserve the defence of non-performance of contract (Section 320 German Civil Code – BGB) and the defence of uncertainty (Section 321 German Civil Code - BGB).

3. We may make partial delivery if no undue convenience is caused to the customer.

4. If dispatch or delivery is delayed at the customer's request by more than one month after notification of readiness for

dispatch, we may charge storage fees at the usual rate in the Ahrensburg region for each month or part thereof. The parties to the agreement may claim higher or lower storage costs if any difference can be documented.

5. In the event the customer delays acceptance or fails to perform other obligations, we may at our option claim reimbursement for any related damages sustained by us, including but not necessarily limited to reimbursement for additional expenses, without prejudice to further claims.

6. In the event of a situation pursuant to Section 5 above, risk of loss or damage shall pass to the customer upon the occurrence of any such delay or default on the part of the latter.

7. All events of force majeure (e.g. mobilization, war, insurrection, strikes, lawful lockout, the effects of pandemics or epidemics or similar events) which are beyond our control and which prevent us from fulfilling our contractual duties, justify that we may postpone delivery dates for the duration of the hindrance. We will immediately inform the customer of the fact that a hindrance has occurred and of its expected duration. In the event the duration of such an occurrence exceeds a period of three months, either party may cancel the agreement.

8. In the event of delay in delivery, our liability for damages in addition to performance (damages for delay) is limited to 5% of the net contract price of the goods delivered late and for damages in place of performance up to a maximum of 25% of the net contract price of the goods

delivered late, provided that we and our vicarious agents are not guilty of either intent or gross negligence. Liability in the event of injury to body, life or health remains unaffected.

## **§ 5 Rescission of contract**

1. The customer may rescind the agreement pursuant to the statutory provisions only in the event of culpable default by us. However, in the case of defects (Section 7 below), the statutory requirements shall apply without amendments.

2. The customer shall in the event of default by us inform us within a reasonable period after being asked to do so by us whether he intends to rescind the agreement due to the event of the default or whether he insists upon delivery.

## **§ 6 Transfer of Risk of Loss or Damage**

1. Unless specified otherwise in our written confirmation, our prices are understood to be "ex works" (exw).

2. We reserve the right to ship merchandise from locations other than the place of delivery. At the request of the customer, we will have the merchandise insured during transport, in which case the customer shall bear the corresponding costs.

## **§ 7 Claims for defects**

1. Claims for defects may not be made for damage incurred after risk of loss or damage passes to the customer, excessive

use, unsuitable operating consumables, improper site preparation or unusual external factors not provided for in the agreement. In the event of improper modifications or maintenance by the customer, we can assume no responsibility for such modifications or maintenance or the ramifications thereof.

2. The customer's rights in the case of a defect are dependent upon proper inspection and notification in compliance with Section 377 German Commercial Code (HGB). Notification of defects must be made in writing. The customer shall bear the burden of proof in connection with all such claims, including but not necessarily limited to proof of the existence of the defect (unless otherwise stipulated in § 478 BGB), the time of occurrence of the defect and timely notification of the defect.

3. In the event of notification of a defect, the customer may withhold payment only in a reasonable amount with respect to the extent of the defect. The customer may not refuse to accept delivery in the event of insignificant defects.

4. In the event of a defect, we may at our option repair the defective merchandise or deliver new merchandise free of defects to replace the original merchandise.

5. In the event we do not meet our respective obligation, the repair is unsuccessful or unreasonable, the customer may at its option rescind the agreement or request a reduction in price. In the event of insignificant breaches, including but not necessarily limited to negligible defects, the customer may not rescind the agreement. Our liability for damages vis-à-vis the customer is based

on § 8 (General Liability) of these general terms and conditions of sale.

6. The limitation period for claims for defects is 12 months. In deviation thereof, the statutory warranty period shall apply to claims for damages based on wilful misconduct or gross negligence or on culpable injury to life, limb or health. The cases of sec. 438 para 1 no. 2 and of § 634a para 1 no. 2 of the German Civil Code (BGB) remain unaffected as well.

The statute of limitation regulations in the event of a delivery recourse according to § 445b BGB remain unaffected. Recourse claims against us according to § 445a BGB (entrepreneur's recourse) only exist insofar as the customer has not made any agreements with his buyer that go beyond the statutory claims for defects.

## **§ 8 General Liability**

1. Insofar as the customer asserts damage claims which are based on wilful intent or gross negligence, including wilful intent or gross negligence of our representatives or vicarious agents, we are liable pursuant to the statutory regulations.

2. We are also liable pursuant to the statutory regulations insofar as we culpably breach an essential contractual duty (essential contractual duties are such duties which are necessary to achieve the contract purpose and which the customer relied on and was allowed to rely on); however, in this case, liability for damages - subject to intentional or grossly negligent breach of duty - is also limited to the foreseeable, typically occurring damage.

3. Liability for culpable injury to life, the body or health remains unaffected; this also applies to the mandatory liability according to product liability law.

4. Liability for damages other than that provided for above is excluded, regardless of the legal nature of the claim, including but not necessarily limited to claims for damages due to negligence in connection with the acceptance of the order, other breaches of obligations or claims for damages to property pursuant to Section 823 German Civil Code (BGB).

5. The exclusion pursuant to Section 8.4 above also applies in the event the customer claims reimbursement for futile expenses instead of damages.

6. Insofar as liability for damages is excluded or limited, this shall also apply to claims for damages against our employees, representatives and agents.

## § 9 Usage Rights and Intellectual Property

1. The customer has the non-exclusive right to use the standard software and firmware, with the agreed performance characteristics, in an unmodified form and within the agreed devices. The customer may make a backup copy of the standard software without the need for an expressed agreement.
2. We and our affiliated companies own various registered and unregistered intellectual property rights ("Background IP", including but not limited to patents, trademarks, know-how and copyrights). The Customer is only granted a non-exclusive, non-

transferable right to use the Background IP, which is limited to fulfilling the purpose of the agreement.

3. The customer shall, in the case of applying or using the goods, respect our industrial property rights, as well as the industrial property rights of third parties.
4. If new intellectual property rights should arise in the course of the fulfilment of the contract, e.g. in the case of design-in services ("Foreground IP"), we shall also be entitled to the exclusive rights of use and ownership of the Foreground IP. The Customer shall only be granted a non-exclusive, limited right of use to the Foreground IP to the same extent as to the Background IP.

## § 10 Retention of Title

1. We retain title to the merchandise until all payments from business with the customer are made in full. In the event the customer has an account with us, our reservation of title also applies to any acknowledged outstanding balance, and the same applies in the event a balance is not acknowledged and a "balance is made for cause", for example, in the event of bankruptcy or insolvency by the customer.
2. If the customer does not fulfil his contractual duties, we are entitled to rescind the contract under the statutory preconditions and request that the goods, which are subject to reservation of title, be handed over.

The customer shall take proper care of the merchandise and shall have the merchandise adequately insured at new value at its own expense against fire

damage, flood damage and theft. In the event maintenance and inspections are necessary, the customer shall have such work carried out on a timely basis at its own expense.

3. In the event of attachment or any other such proceeding initiated by third parties, the customer shall inform us in writing so that we can take action pursuant to Section 771 Code of Civil Procedure (ZPO). In the event any such third party is not in a position to reimburse us for legal and extralegal expenses resulting from such an action pursuant to Section 771 Code of Civil Procedure (ZPO), the customer shall bear any such expenses.

4. The customer may resell the merchandise in the normal course of its business. However, the customer shall assign the full invoiced amount (including VAT) due from its customer or other parties from the sale to the outstanding balance due to us; and this condition shall apply whether or not the merchandise purchased from us is sold without or after processing. The customer shall remain authorized to collect the amount due after assignment to us. Our right to make collection ourselves remains unaffected. However, we agree to refrain from making collection as long as the customer applies the proceeds from the sale to meet its payment obligations toward us, is not in arrears and, in particular, no insolvency proceeds have been opened against the customer and the customer has not suspended payment. In any such event, we may demand that the customer make known to us the assigned receivables and the corresponding debtors, provide all information required for collection, make available the

corresponding documents and inform the debtors (third parties) of the assignment.

5. The processing or modification by the customer of the merchandise is in all cases performed for us. In the event the merchandise is processed with other objects that are not our property, we acquire partial ownership of the object in proportion to the value of the merchandise (total invoice amount, including VAT) as compared with that of the other processed objects at the time of the processing. In addition, the same reservation of title that applies for the merchandise also applies for the object which results from the processing.

6. In the event the merchandise is inextricably combined with objects that are not our property, we acquire partial ownership of the new object in proportion to the value of the merchandise (total invoice amount, including VAT) as compared with that of the other combined objects at the time they are combined. In the event the combination is such that the property of the customer is to be considered the main product, it is agreed that the customer shall transfer proportionate ownership rights to us. The customer shall then hold the resultant sole or partial property for us.

7. The customer shall also assign to us those amounts due from third parties as a result of the attachment of the merchandise to real estate property to secure amounts due to us.

8. In the event the reservation of title or assignment is not effective in the jurisdiction in which the object is located, it is agreed that the security corresponding to



reservation of title or assignment in that jurisdiction shall obtain. If the creation of this security requires actions on the part of the customer, the latter shall at our request take any and all measures required to create and maintain such rights at its own expense.

9. We agree to release securities in our favour at the request of the customer in the event the realizable value of sure securities exceeds the value of the secured amounts due by more than 10%. We may determine at our own discretion which securities to release.

## **§ 11 Support and Assistance**

1. If, in addition to supplying merchandise, we also provide the customer with support and/or assistance with the installation/start-up of the merchandise, the limitation of liability described in Sections 7 and 8 shall apply accordingly.

2. The customer is solely responsible for the correct installation, dimensioning and positioning of the purchase object for the customer's purposes. Unless otherwise agreed in writing, we do not assume any duty to provide consultancy services in this regard. The provision of general information does not constitute a consultancy service on our part and does not release the customer from the responsibility pursuant to sentence 1.

## **§ 12 Venue – Place of Delivery – Governing Law**

1. This agreement shall be subject to the jurisdiction of the courts of our principal place of business in the event the customer is a merchant, a legal entity under public law or a public special fund. For the customer this jurisdiction clause shall apply exclusively. We may, however, alternatively file suit against the customer before the courts of the customer's principal place of business.

2. In the event the customer is a merchant, a legal entity or a public institution and nothing is specified to the contrary in our written confirmation, our principal place of business shall be the place of delivery.

3. This agreement shall be governed by the laws of the Federal Republic of Germany. Application of the United Nations Convention on Contracts for the International Sale of Goods (1980) – CISG – is expressly excluded.

4. In the event of differences of opinion arising from these Terms and Conditions of Sale or in the case of doubt, the original German-language version and it alone shall be legal and binding.

Updates you will find at [www.job-group.de](http://www.job-group.de)

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