

IT Concepts GmbH: General Terms and Conditions of Business

§ 1 Scope of the Conditions

- (1) The following General Terms and Conditions of Business apply exclusively to all contractual relationships between IT Concepts GmbH (hereinafter referred to as "ITC") and the customer. These also apply to all future business relationships, even if they are not expressly agreed on again.
- (2) These conditions will be deemed to have been accepted on acceptance of the goods or the service/s at the latest. Conditions of ITC that conflict with or deviate from these Conditions will not be acknowledged unless ITC would have expressly agreed to their validity in writing. ITC's Conditions also apply if it supplies goods or services without reservation while being aware of the customer's deviating conditions. All agreements made between ITC and the customer are to be recorded in writing.

§ 2 Offer and Conclusion of a Contract

- (1) The offers by ITC are subject to alteration without notice and non-binding. If the order is to be qualified as an offer pursuant to Paragraph 145 of the German Civil Code, ITC may accept the offer within two weeks. Declarations of acceptance, all orders and other oral agreements must be in writing or in telex, fax or email form from ITC to be legally valid. Orders of the customer are binding for the customer.
- (2) Drawings, illustrations, measurements, weights and other performance data are only binding if this has been expressly agreed on.

§ 3 Prices

Unless otherwise agreed on, ITC's prices are ex warehouse and exclude packaging. The statutory value added tax is not included in the prices; this is shown separately at its statutory rate in the invoice on the day the invoice is issued.

§ 4 Delivery and Performance Period, Customer's Obligations

- (1) Delivery dates or periods and performance dates or periods which are agreed to as binding or non-binding must be set down in writing.
- (2) If the supply of goods or services is delayed, either partially or entirely, by circumstances for which ITC is not responsible, in particular by events such as Acts of God, traffic disruptions, strike, fire, water damage, power cuts, operational disruptions, official measures, lock-outs, lack of materials or other unavoidable events – even if they happen to suppliers of ITC or its own upstream suppliers, ITC is also, in the case of bindingly agreed dates and periods, entitled to extend the delivery period by the duration of the delay plus an additional start-up period or wholly or partially cancel the agreement due to the as yet unfulfilled part of the agreement.
- (3) If the delay lasts longer than three months, the customer will, after setting an appropriate grace period, be entitled to cancel the agreement in respect of the as yet unfulfilled part of the agreement. If the delivery period is extended or if ITC is released from its obligations, the customer may not derive any damage claims there from.
- (4) ITC is entitled to make partial deliveries of goods and supply partial services at any time. This entitlement also extends to invoicing for such partial deliveries or services.
- (5) ITC's adherence to its obligations in the supply of goods and services presumes the timely and correct fulfillment of the obligations of the customer. In particular, the customer is obliged to ensure at its own expense that delivery, installation, setting-up and commissioning, can be begun and carried out without interruption as agreed. This also includes the unhindered access to the property and buildings and machinery (hardware) of the customer if this is required to provide the contractual services.
- (6) If the customer falls into arrears, ITC will be entitled to demand compensation for the damage it suffers; the start of delay in acceptance will be accompanied by the transfer of the risk to the customer of coincidental worsening and coincidental destruction.
- (7) If desired, a quote will be prepared before repairs or maintenance are carried out. This quote will be charged for if the repairs or maintenance are not commissioned.

§ 5 Cancelling/Amending Orders

- (1) In all cases where the article of sale is not produced or supplied due to the fault of the customer, the customer will be required to pay the agreed fee. The same will apply if the customer reduces the extent of the order after receiving the confirmation of the order. However, in this case ITC must offset what it saves in expenses, acquires through other use of its employees' labour or maliciously refrains from acquiring.
- (2) Additional orders and alterations to the scope of services before and during the production stage are to be issued by the customer separately. Altered or additional orders are not included in the pricing information or offers prepared by ITC and are to be paid for separately. In particular, additional work in this context is defined as those services which are or have yet to be carried out in order to adapt the article of sale contrary to the specifications and instructions of the customer.

§ 6 Industrial Property Rights and Copyright

If ITC is required to deliver the article of sale according to standards laid down by the customer (drawings, models, samples, sketches, etc.), the customer is responsible for ensuring that industrial property rights of third parties are not breached. In cases of culpable breach of duty, the customer will be required, when is first called on to do so, to indemnify ITC from any claims by third parties.

§ 7 Transfer of Risk, Acceptance

The risk of loss or damage of the article of sale transfers to the customer as soon as acceptance of the work has been completed or as soon as the shipment has been transferred to the person carrying out the transport or has left ITC's warehouse for the purpose of shipment. If the goods are collected by the customer or if the customer organises transport itself or if shipment is delayed and ITC is not responsible for this, risk transfers to the customer when ITC reports that the goods are ready to be delivered. This also applies to partial deliveries. After the transfer of risk, the customer bears the risk for each type of loss or damage to the article of sale or the work.

§ 8 Warranty

- (1) The warranty period for material defects or deficiency in title is 12 months and begins when risk transfers. The sale of used articles is made to the exclusion of all warranties.
- (2) If the customer is a merchant, it assumes an obligation to examine for and notify faults in respect of all goods and services supplied by ITC pursuant to Section 377 of the German Commercial Code. Where a contract for work and services is concluded, Section 377 of the German Commercial Code applies in a similar fashion. After risk has transferred or the goods have been accepted respectively, the customer is required to examine it immediately and report any defects it finds – or concealed defects after they have been discovered – to ITC in writing, in a comprehensible manner and within seven days at the latest. The customer is obliged to make available to ITC all information and verifiable documentation necessary for the discovery of faults or defects. If ITC cannot find the defect in an examination, the customer will bear the cost of the examination.
- (3) Where a defect is found, ITC is initially entitled, at its option, to try three times to correct the defect or supply replacement goods (supplementary performance). If supplementary performance fails, the customer's rights will not be affected after a deadline has been set. The deadline must be notified in writing and the period must consist of at least 14 working days.
- (4) If the customer is legally entitled to cancel the agreement, the compensation obligation pursuant to Section 346, Sub-Section 3, No. 3 of the German Civil Code applies only if the customer has observed the due care of a conscientious businessman.
- (5) ITC's right to supplementary performance may not be dispensed with until compensation has been paid, even if the customer has already demanded it.
- (6) If operational or maintenance instructions from ITC are not followed, if the products are altered, if parts are exchanged or if consumable materials are used which do not correspond with the original specifications, all warranties null and void if the customer does not contradict a correspondingly substantiated claim that that one of these circumstances caused the defect.

§ 9 Retention of Title

- (1) ITC retains ownership of the article of sale until all payments arising from the business relationship with the customer have been received. In the case of non-contractual actions by the customer, in particular in the case of arrears of payment, ITC will be entitled to demand that the article of sale be returned. The return of the article of sale includes cancellation of the agreement. After taking back the article of sale, ITC is authorised to resell it and the proceeds from the sale will be offset against the open account receivable of the customer less appropriate costs of the sale.
- (2) The customer may only sell the article of sale in the course of normal business. The customer is not entitled to pledge the article of sale, assign it as security or otherwise dispose of it in such a way that might impair ITC's ownership of it. The customer immediately assigns the proceeds from the on-sale to ITC; ITC accepts this assignment. Subject to revocation, the customer is authorised to collect in its own name the proceeds assigned to ITC in a trustee capacity for ITC. ITC can cancel this authorisation and the customer's entitlement to resell the article at any time if the customer is in arrears with essential obligations such as the payment to ITC. The customer will, at all times, give ITC all the information it wishes concerning the article of sale or the claims that have accordingly been assigned to ITC. Where the articles are processed, mixed or altered, ITC will acquire joint ownership of the new item in proportion to the value of the article of sale (invoice amount including value added tax) to the other mixed or processed items.
- (3) ITC undertakes to release the securities to which it is entitled on request by the customer to the extent that the realisable value of these securities exceed by more than 10% the secured claims against the customer (including all balance claims from current account) that are due to ITC from every legal reason now or in future; the choice of the securities to be released will be made by ITC.

- (4) In the case of access to the goods subject to retention of title by third parties, in particular pledges, the customer will make these parties aware of ITC ownership and inform ITC immediately so that ITC can enforce its ownership rights. If the third party is not able to reimburse ITC for the court or out-of-court costs that arise in this connection, the customer will be liable for these.

§ 10 Payment

- (1) ITC's invoices are due immediately and payable within 10 days after the invoice date.
- (2) In case of a delivery abroad, ITC will be entitled to demand advance payment from the customer or alternatively, at its option, for the purpose of securing its payment claims, the handing over of an unlimited, demand a directly enforceable surety from a major bank subject to the laws of the Federal Republic of Germany in the amount of the order value of the article sale.
- (3) Should the customer fall into payment arrears, ITC will be entitled to demand interest in the amount of 10 percent over the respective base lending rate of the European Central Bank as from the relevant date. The interest is to be set at a lower rate if the customer can demonstrate a lower level of indebtedness; ITC is entitled to prove a higher level of damage.
- (4) If the customer fails to fulfil his payment obligations on the basis of this agreement within one calendar week, ITC will be entitled to cease all further work. Resulting delays are not to be included in contract penalty agreements.
- (5) The customer is only entitled to offset rights or to rights of retention if its counter-claims have been established in law, are undisputed or have been acknowledged by ITC. As well, the customer is only authorised to exercise its right of retention if its counter-claim is based on the same contractual relationship.

§ 11 Limitation of Liability

- (1) Damages claims – regardless of legal reason – both against ITC and its subcontractors and assistants will not be recognised provided they have not been caused deliberately or maliciously. If ITC is not accused of any deliberate breach of contract, its liability for damage claims will be limited to the foreseeable damage customary in contracts of this nature.
- (2) In all cases ITC's liability for harm to human life, physical injury or human health, pursuant to the German Product Liability Act and other product liability claims and in the case of the assumption of a warranty by ITC will remain unaffected. If the customer invokes the assumption of a warranty, it will bear the onus of proof if a warranty claim is made. Neither will liability on the part of ITC be affected for the culpable breach of an essential contractual duty, a so-called cardinal obligation, whose fulfilment enables the fulfilment of the agreement; however, in this case liability for damage will be limited to foreseeable damage customary in contracts of this nature.

§ 12 Confidentiality

The customer and ITC undertake to keep secret indefinitely all business and operational secrets of the other party of which they become aware in connection with or by chance in the fulfilment of the agreement, not to pass these to third parties or to otherwise exploit them.

§ 13 Assignment, Applicable Law, Place of Jurisdiction, Place of Fulfilment and Miscellaneous

- (1) ITC is entitled to assign its claims for the supply of goods and services.
- (2) These conditions of business and all business relationships between ITC and the customer are governed by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on the International Sale of Goods (CISG).
- (3) If the supplier is a "Vollkaufmann" (i.e. registered trader) within the meaning of the German Commercial Code, a legal person in public law or a special public fund, the head offices of the customer will be the exclusive place of jurisdiction for all disputes arising directly or indirectly from this contractual relationship.
- (4) Should a provision in these conditions of business or a provision in any other agreements be or become invalid, the validity of all other provisions or agreements will not be affected.