General Terms and Conditions of Business - ibai solutions

1. **General Remarks**

1.1 For the business relations between the business partners our General Terms and Conditions of Business apply exclusively.

1.2 Our General Terms and Conditions of Business are part of each contract.

1.3 These conditions apply likewise to follow-up transactions and to repairs of the deliveries, also when attention has not been drawn to this again.

1.4 All conditions deviating from our General Terms and Conditions of Business require a confirmation in writing by us.

1.5 Terms and conditions of business of the business partner do not become subject matter of the contract, neither by tacit agreement nor by carrying out a service.

2. **Binding Force of Offers and Conclusion of Contract**

2.1 Our offers are always subject to change and non-binding.

2.2 Figures, drawings, as well as technical data in offers, brochures, or other information material represent approximate values only and need not correspond to the respective latest state of the art. They therefore neither substantiate guaranteed properties, nor are they reserved for the contractual designation/stipulations of the object of performance and delivery. We reserve the right to exchange or modify the specifications of the ordered instruments/equipment before delivery when no essential changes of the function result from this.

2.3 Orders only become binding for us on the basis of our written confirmation of order, unless the order has already been carried out by us before.

2.4 The prices stated by us are gross prices.

2.5 The prices exclude packaging, postage, freight and transport insurance ex warehouse to the customer.

2.6 Unpredictable changes of customs, import and export fees, as well as monetary parities entitle us to a corresponding price adjustment.

2.7 We reserve the property rights and the rights of utilization concerning all designs, drawings and other documentation sent with our offer. They cannot be made available to third parties without our consent.

3. **Delivery and Dispatch**

3.1 Delivery times and delivery deadlines are kept whenever possible.

3.2 Agreed delivery deadlines start with sending off the confirmation of order and are kept when at the expiration of the deadline the goods to be delivered have left the depot, or when the customer has been informed that the goods are ready for dispatch.

3.3 All delivery obligations are subject to that we ourselves receive punctual delivery.

3.4 In the case of a delivery delay coming about because of force majors, strike, lock-out, or other circumstances for which we are not responsible, the delivery time is extended appropriately.

3.5 Part-deliveries are admissible to a reasonable extent. They are regarded as transactions of their own.

3.6 In the case of delay on our part the customer has the right of withdrawal from the contract as per the legal regulations. The required extended deadline has to be granted in writing and allow a period of time of at least 4 weeks. Claims for damages because of delay or impossibility of performance are excluded.

3.7 The dispatch to the contracting party is subject to agreement. The goods are sent off from our depot insured. Dispatch and insurance are effected to the account of the customer.

3.8 The risk of damage, loss, or sinking of the goods passes over to the contracting party
A) when collected at the time of handover,
B) when dispatched by us or third parties at the time of handover of the goods to the haulage contractor (forwarding agent, railway, post, aviation company, shipping company),
C) when delivered by us at the time of loading on our vehicle

3.9 When collection or dispatch is delayed or impossible through no fault of ours, the risk passes over to the contracting partner at the time of announcement of the readiness of dispatch.

3.10 In the case that the customer wants the equipment to be delivered and brought into service by us, this is charged separately. Deviating conditions can be agreed upon in the delivery contracts.

3.11 When the contracting party does not take delivery of the goods, we are entitled, after fixing a delay of 14 days, to claim damages of the costs incurred, including any additional expenditure.

4. **Reservation of Ownership**

4.1 The delivered goods remain our property until complete settlement of all obligations from the business connection between the customer and us. We regard as payment only the unreserved receipt of the counter value.

4.2 When the customer falls behind with his obligation to pay, we are entitled to claim the immediate surrender of the goods under reservation of ownership. Unless explicitly declared otherwise by us, this claim of surrender does not constitute a rescission of contract.

4.3 When the customer is in arrears with an agreed installment for more than 10 days (in the case of remittance the day of the entry booking at the bank or postal cheque office is decisive), the total outstanding amount is immediately due for payment. We are then entitled to choose to rescind from the contract or to claim damages for non-performance.

4.4 In the case of seizure or other attempts of third parties to get hold of the goods under property reservation, the customer has to point to our property and to inform us immediately.

4.5 The customer is allowed to resell and process goods under property reservation in the ordinary course of business. He is, however, not entitled to put these goods in pledge or transfer them as a security. The right of resale expires in the case of suspension of payments.

4.6 The customer cedes to us already now the rights of his claims arising from the resale of the goods delivered under property reservation in the amount of the invoice.

4.7 Any processing of the goods under property reservation is carried out by the customer by our order. In this case we acquire the co-ownership of the new product in relation of the amount of the invoice of the goods under property reservation to the amount of the invoice of the other processed goods at the time of processing.

4.8 When the value of the security to which we are entitled from this agreement exceeds our claims by more than 20%, we are on demand of the customer obliged to release at his choice securities up to this maximum value.

5. **Terms of Payment**

5.1 Unless otherwise stated in the offer or in the confirmation of order, payment is to be effected on our bank or post-office account without any deduction within 30 days (crediting to our account must be completed by then) of the date of the invoice. Any complaints have no suspensive effect on the settlement date of the claim. Delay starts from the 31st day of the date of the invoice without a reminder having to be sent bus.

5.2 For orders for the delivery of systems as well as for orders in the value of more than 15.000 Euros the following terms of payment hold:
- 30 % at confirmation of order
- 33 % at delivery
- 34 % 30 days after date of invoice

5.3 Bills of exchange are accepted only when previously agreed upon.

5.4 In the case of delay of payment on the part of the customer we are, regardless of further rights or claims, entitled to demand from the customer interests on the arrears in the amount of 3% above the currently valid bank rate of the Federal Bank of Germany.

6. **Non-compliance with the Terms of Payment**

Non-compliance with the terms of payment ,or circumstances which are suited to reduce the credit standing of the customer, result in that our claims on the customer become due immediately. They entitle us, moreover, to effect further deliveries only against payment in advance.

7. **Guarantee and Liability**

7.1 We guarantee that the sold products are free from material and manufacturing defects at the time of delivery. Calculated from the passing over of the risk to the customer, the liability period is 6 months. For outside products the terms according to the respective manufacturer statements hold.

7.2 Discernible defects shall first be reported by telephone immediately and in writing within 10 working days upon receipt of the goods. We reserve the right to verify the cause of the defect. Defects that are attributable to improper treatment or to a fault of the customer are excluded from the guarantee.

7.3 Defects of a part cannot give cause for complaint of the whole.

7.4 Claims fro guarantee cannot be ceded.

7.5 In the case of justified claims repair or substitute delivery at our choice is effected in appropriate time.

7.6 The goods complained about or the defect part of the goods are to be sent to us free of cost immediately, stating the number and date of the invoice.

7.7 When we let an appropriate extended deadline pass without having eliminated the defect or having effected substitute delivery, or when the attempts to eliminate the defect were without success and this was reprimanded by the customer in writing, the customer can either demand cancellation of the contract redhibition or a reduction of the purchase price.

7.8 The assurance of certain properties of the goods is an assurance in the meaning of § 463 of the German Civil Code only when the properties have expressly been designated as “assured properties” in the confirmation of order.

7.9 Compensatory damages because of non-performance of an assured property can be claimed by the customer only as far as the assurance had the purpose to safeguard him against this.

7.10 Claims for damages on the part of the customer from the breach of an obligation other than by delay or impossibility , from the breach of an obligation in the contract negotiations and from wrongful acts are excluded. This does not hold as far as in cases of intent or gross negligence of the vendor, his legal deputy or vicarious agent, there is obligatory liability. This limitation of liability holds correspondingly for the customer only. We are not liable for indirect damages, consequential damages and lost profits. In each case of damage the liability is limited to three times the amount of the value of the order, however to 10.000 Euros at the most.

7.11 **Guarantee for Software**

According to the present state of the art software is per its structure never completely faultless. In the case of major defects the instruction how to avoid the consequences of the defects also holds as sufficient repair. We do not guarantee that the program functions will suffice the customer’s requirements. The subject-matter of each contract for the transfer of use is a program which is useful in principle in the meaning of the use as per contract. We do not give a guarantee for faults in the selection of the software, for installations carried out by the customer himself, or for the interaction of the delivered software with hardware and software products operated by the customer but not

delivered by us. According to the state of the art an operation free from interruptions or faults or the complete removal of all defects cannot be guaranteed in the framework of the program service.

8. Software License Terms

8.1 **Right of Use of the Program**

With the delivery and payment of software under license the customer does not acquire property of the program, but only the right of use of the program. The programs remain the property of the producer. The use of a program can only take place on one computer system (i.e. one installation). In the case that a computer system on which the installation of the program has taken place is unable to function, the program may be used on an alternative system. The customer is not permitted to make a copy of the program, as a whole or in extracts, for the same or other carriers. Exempt from this are 2 copies, which the customer makes for himself for the purpose of data backup, including the entry of the property rights and the license number of the original diskette. These reproductions must not be passed on to third persons. They may be used by the customer only when the original is not usable any more because of damage or destruction. The customer commits himself to neither passing on the programs and the original data carrier to third persons, nor to making them accessible in any other form. Third persons in this meaning are also branch establishments of the customer or subsidiaries. Excluded is also a copy of the program, on the whole or in extracts, for the purpose of simultaneous multiple use within the firm of the customer for use on several computer systems. Violation of this stipulation entitles us to demand in each case of contravention a penalty for non-performance of the contract in the amount of five times the price of the passed on program.

8.2 The customer acquires property rights of the software developed by us only when this has expressly been agreed upon.

8.3 Multiple use is admissible only on the basis of prior agreement in writing and has to be remunerated separately. By multiple use we understand the use of the software on several hardware systems, or in the case of multi-user systems the simultaneous use by different users of the customer.

8.4 The customer acquires the right of use for that version of the software product which is topical at the time of concluding the contract. We are not obliged to maintain the software, unless a software-maintenance contract with special remuneration has been concluded.

8.5 We have the copyright in the software produced by us. We reserve the exclusive copyright as well as the further rights of use.

8.6 With the delivery of the software the license becomes effective. At the same time the current license fee is due.

8.7 The software products are delivered in the form of an object or in the form of an executable program.

8.8 The conclusion of a cooperation agreement between the customer and us is the prerequisite for the passing on or resale of an application solution which the customer has developed on the basis and with the use of our software for the solution of a specific problem. The contract stipulates the licensing and the commercial terms for the subsequent use.

9. Place of Performance – Place of Jurisdiction

9.1 In the case of disputes, also concerning the validity of the contract or these general terms of sale and delivery, the place of jurisdiction is Leipzig.

9.2 The legal relations between the customer and us are exclusively subject to the law of the Federal Republic of Germany, excluding any other national laws. The validity of the uniform international sales law (EKG, EKAG each of 17.07.1973) is excluded.

10. **Closing Term**

The invalidity of individual terms does not affect the validity of the others. Invalid terms are to be replaced by valid terms that come as close as possible to the desired aim.