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## **General Business Terms and Conditions** **of ticket. International GmbH & Co. KG**

### **1. Scope of Application**

The deliveries, services and offers of TICKET are exclusively subject to these General Business Terms and Conditions, unless otherwise agreed in writing. Supplementary reference is made to the manufacturers' terms of license attached to the contract products. Any deviating General Business Terms and Conditions of the buyer shall, even without explicit objection by TICKET, not be incorporated in the contract, even if the delivery has been performed. Furthermore, the customer's diverging general terms and conditions of business shall only be legally effective, if they are confirmed by TICKET in writing. Any verbal commitments, collateral agreements, amendments and supplements must likewise be confirmed in writing by TICKET.

### **2. Offer and Contract Acceptance**

**2.1.** The offers of TICKET are made without obligation and have no binding force. The customer shall be bound by the given order following expiration of two weeks after placing the order. A contract will only come into existence upon the customer's written order confirmation, at the latest however upon acceptance of the delivery by the customer.

**2.2.** TICKET is entitled to withdraw from contracts upon the occurrence of events showing that the customer is not creditworthy.

**2.3.** TICKET reserves the right to deliver modified or adjusted contract products in derogation of the order placed by the customer, provided this does not interfere with the functionality of those products.

### **3. Deliveries and Delay in Delivery**

**3.1.** All dates of delivery are subject to correct and punctual self-supply, unless TICKET has caused the non-delivery wilfully or by gross negligence. TICKET will then be committed to immediately inform the customer about such non-delivery and to return already effectuated services of the customer without delay. The period of delivery will start to run on the day of TICKET's order confirmation. Agreed delivery deadlines can only be met if the customer has duly complied with his obligations (e.g. timely payment of an agreed deposit, procurement of all required documents, etc.). Any subsequent requests for modifications or supplements by the customer will give rise to a reasonable extension of the delivery period. The delivery deadline shall be deemed to have been met if the goods are shipped or notice of readiness for dispatch is given to the customer until expiration of the delivery period. TICKET reserves the right to perform part deliveries and to issue corresponding invoices. In cases where part deliveries are performed, the respective order value of the goods shall immediately be due for payment upon delivery.

**3.2.** TICKET shall not be responsible, even in case of deadlines or dates of delivery agreed with binding effect, for any delays in delivery and services caused by force majeure or by events which render the delivery essentially more difficult or impossible for TICKET, such as problems with procurement of materials, operational breakdown, strike, government regulations, etc., even if they occur at the

suppliers of TICKET or their subcontractors. Such delays in delivery and services shall entitle TICKET to postpone delivery or service by the duration of the impediment, plus a reasonable start-up period, or to rescind the contract in whole or in part due to the still unfulfilled obligation. TICKET will then be committed to immediately inform the customer about such non-delivery and to return already effectuated services of the customer without delay.

**3.3.** Furthermore, TICKET shall only be late in delivery, if the customer has granted to TICKET an additional minimum period of three weeks in writing. In case of delay in delivery the customer may claim compensation for default amounting to ½% for each complete week of default, however not exceeding 5% of the invoice value of the deliveries or services affected by the failure to deliver. Any additional claims caused by delay will only exist if TICKET is unable to demonstrate that failure to render the service is not due to a circumstance for which TICKET is not responsible.

**3.4.** The agreement on a postponement of delivery dates must be made in writing.

### **4. Shipment and Passing of Risk**

**4.1.** Shipment is performed at TICKET's option at the risk and expense of the customer. Unless otherwise agreed, TICKET shall be entitled, but not committed to insure the goods to be shipped at the customer's expense against any and all transport risks. Both this right and a possible assumption of the transport costs shall not exercise any influence on the passing of risk.

**4.2.** The risk shall pass to the customer upon delivery of the contract product to the carrier, its agents or other persons named by TICKET, however not later than directly upon delivery of the contract product to the customer or to the customer's agents.

**4.3.** If shipment is delayed or rendered impossible through no fault of TICKET, the risk shall pass to the customer upon report of the readiness for dispatch.

**4.4.** The provisions under clauses 4.1 to 4.3 shall also apply in case of services performed against payment.

**4.5.** If, on the customer's request, the shipment of goods is delayed by more than one month following the advice of readiness for dispatch, TICKET shall be entitled to charge the costs incurred in connection with warehousing to the customer's account - in case of storage in the offices of TICKET, however, at least 1% of the invoice amount for each started month.

**4.6.** The customer shall be committed to accept the goods. If the goods are not accepted by the customer, TICKET shall be entitled, after lapse of a minimum extension of 10 days granted to the customer, to either withdraw from the contract or to claim damages in place of performance. In the latter case 25% of the purchase price can be demanded as compensation in the absence of proof, unless it can be demonstrated that only a minor damage has been suffered. The assertion of a higher amount of damage factually suffered shall be expressly reserved. Instead of asserting the aforementioned rights and after lapse of a reasonable extension granted to the customer, TICKET shall also be entitled to otherwise dispose of the goods and to subsequently supply the customer within a reasonably extended period of time.

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## **5. Acceptance of Goods**

**5.1.** The customer must check the goods immediately upon their arrival as to completeness and compliance with the order confirmation, respectively with the invoice. The customer shall be committed to immediately – not later than within one week following delivery – give written notice to TICKET of any defects or quantity variances. Receipt of the notice of defects at TICKET shall be authoritative for compliance with the deadline. Unless notice of defects is given within this time-limit, the goods shall be deemed to have been accepted. If a defect or a quantity variance, which was not identifiable upon the above mentioned inspection, becomes apparent at a later point in time, the notice must be given immediately – not later than within one week following discovery. Otherwise the goods shall even in consideration of such defect or quantity variance be deemed as approved.

**5.2.** Immaterial defects, which do not interfere with the functionality of the delivered article, shall not entitle the customer to refuse acceptance.

## **6. Prices and Terms of Payment**

**6.1.** The prices reflected by the pertinent order confirmation are ex warehouse Daun. V.A.T. amounts and other statutory duties in the supplying country, as well as cost for packaging, transportation, transport insurance and flat handling charges are charged to the customer's account in accordance with the currently valid price list.

**6.2.** If a period of more than four months lies between contract conclusion and the agreed-upon date of delivery, the prices of TICKET that are valid at the time of delivery or provision shall be applicable. This shall also apply in cases where the actual delivery can only be performed after a period of more than four months due to a fault on the side of the customer or based on a circumstance within the customer's sphere of influence.

**6.3.** Unless otherwise agreed in the order confirmation, payments for deliveries and services shall be due without any deduction immediately upon receipt of invoice. The issuance of invoices is done upon delivery. Bills of exchange and cheques are only accepted on account of performance. If an agreed date for payment is exceeded, TICKET shall be entitled - without any further reminder – to default interest amounting to 9 percentage points above the currently valid basic interest rate. Default interest in the same amount will also accrue as from the date of the reminder forwarded by TICKET. The right to assert an additional claim for damage caused by default shall remain unaffected. Payments shall be deemed to have been duly effected upon credit entry on the account of TICKET.

**6.4.** Despite other instructions given by the customer, TICKET shall be entitled to first allow payments as credit against the customer's older debts. If any costs and amounts of interest have already accrued due to default, TICKET may first allow the payment as credit against such costs, thereafter against the interest and finally against the principal services.

**6.5.** If the customer fails to comply with his payment obligations or suspends his payments, or if TICKET gains knowledge of any other circumstances rendering the credit standing of the customer doubtful, e.g. if TICKET is in re-

ceipt of a written credit report of a credit insurance company questioning the creditworthiness of the contracting partner in view of the agreed volume of business, TICKET may at any time optionally demand delivery of the goods versus cash payment, advance performance or provision of security. In this case all outstanding debts, including those for which TICKET has received bills of exchange or for which payment by instalments has been agreed, shall immediately become due for payment.

In such event TICKET shall furthermore be entitled, following an additional period of reasonable length, to either withdraw from these contracts or to claim damages in place of performance.

**6.6.** The customer shall only be entitled to claim a set-off, retention or reduction of the purchase price, even in cases where notices of defects are given or counter-claims are asserted, if TICKET has given its express consent or if those counter-claims have been recognized by declaratory judgment. A retention of payments by the customer on the grounds of counter-claims resulting from other contractual relationships shall be excluded.

**6.7** If software is purchased, the monthly service payment shall be increased automatically and proportionately on the basis of the software list price and the existing software service contract. If software developments are commissioned (new programming and/or software adaptations), the service fee shall be increased to the same extent.

## **7. Retention of Title**

**7.1.** TICKET shall remain the owner of the contract product up to payment of all, also future debts arising under this contract and furthermore under the entire business relation with the customer.

**7.2.** The customer has the revocable right to use the reserved goods within his ordinary course of business, as long as he is not in default. Any pledging or transfer of security in whatever form shall be inadmissible. In case of attachments of reserved goods by third parties, the customer shall make reference to TICKET's property rights and shall immediately inform TICKET accordingly. Any costs and damages shall be at customer's expense.

**7.3.** In case of infringement of essential contractual obligations of the buyer, in particular in the event of improper treatment of the object of purchase or default in payment, as well as in case of any attachment of the object of purchase the seller shall be entitled to withdraw from the contract without setting any further deadline and to take the goods owned by him back at the buyer's expense. If the object of purchase is taken back by the seller, this will not imply a withdrawal from the contract, unless such a rescission has been expressly declared by the seller. After having declared withdrawal from the contract and after having taken the object of purchase back, the seller shall be entitled to utilize the object of purchase. The utilization proceeds – less reasonable costs of utilization – shall be allowed as credit against the liabilities of the buyer resulting from the withdrawal from the contract and the pertinent settlement procedure, in particular against the claim for compensation for a decrease in value, for benefits of use and application.

**7.4.** TICKET retains title to goods delivered for test and

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demonstration purposes. These items may only be used by the customer on the basis of a separate agreement concluded with TICKET.

**7.5.** If the value of the goods or accounts receivable of the customer covered by the simple or extended retention of title exceeds all outstanding receivables of TICKET versus the customer by more than 20%, TICKET will on demand of the customer reduce the surplus covering to such an extent as the security interests exceed the claims of TICKET by more than 20%.

## **8. Guarantee/Warranty**

**8.1.** TICKET guarantees that the contract products are not encumbered with any defects, also including a lack of warranted characteristics of said products. The contract products are manufactured with due diligence and care. However, the parties are aware of the fact that it is not possible according to the state of the art to fully exclude any defects of systems, hardware and software under all conceivable conditions of application.

**8.2.** TICKET guarantees that the contract products are in general correctly described in the product information and are basically in good working condition accordingly. The technical data and descriptions included in the product information alone are not to be regarded as guarantee of specific characteristics. A specific quality shall only be deemed to have been guaranteed in a legal sense, if the specifications in each case given by TICKET are expressly confirmed in writing. TICKET does not guarantee that the system functions meet the customer's demands, respectively work together in accordance with the selection made by the customer.

**8.3.** Excluded from the warranty shall especially be those defects or damages, which are due to: service-related wear and tear or loss in value from normal use; improper handling, operating errors and negligent conduct of the customer; operation with a false type of current or voltage, as well as connection to unsuitable sources of power; fire, flash of lightning, explosion or overload caused by the power supply system; dampness of any kind and inaccurate or defective programs, software and/or processing data and consumer parts whatsoever, unless the customer furnishes proof of the fact that these circumstances are not the cause of the notice of defect. The warranty shall furthermore be excluded in cases where the serial number, the type designation or similar marks or features are removed or made illegible.

**8.4.** The warranty claims against TICKET are not assignable. Regardless hereof TICKET will pass any further guarantee and warranty commitments of the manufacturers on to the customer to the full extent, without itself being answerable therefor.

**8.5.** Where a defect of goods is discovered at a later point in time, the customer may no longer use the product and shall be committed to immediately give notice of the defect; if the customer fails to give such notice of defects, the product shall be regarded as approved and insofar all warranty claims of the customer shall be excluded.

**8.6.** If claims under a guarantee are enforced, subsequent improvement or substitute delivery shall be performed at TICKET's option. Replaced parts shall pass into the owner-

ship of TICKET. If TICKET fails to remedy any defects within a reasonable additional period of at least three weeks fixed in writing, the customer shall be entitled to either rescind the contract or to demand a reasonable reduction of the purchase price.

**8.7.** All further or other claims of the customer going beyond these provisions, asserted for any legal ground whatsoever, shall be excluded, unless otherwise stipulated hereunder.

**8.8.** In case of claims based on warranty/guarantee and in case of any repair orders and returns with costs, the customer shall duly observe the handling directives of the after-sales service, respectively the pertinent mode of procedure. In case of any and all return consignments the customer shall bear the risk of accidental deterioration and accidental perishing until receipt of the returned goods at TICKET.

## **9. Liability**

**9.1.** Is TICKET, according to legal regulations and limitations of these conditions, accountable to compensate for damage that has been caused carelessly, liability is restricted as far as life, body and health have not been injured. Liability only takes effect when essential contractual obligations (cardinal obligations) have been breached and is restricted to foreseeable, typical damages at the time of contract conclusion. The same applies for damages that have been caused by a defect of the contractual object.

**9.2.** Independent of a failure by TICKET, a possible liability in case of fraudulent non-disclosure of a defect on the acceptance of the guarantee or procurement risk and according to the Product Liability Act, remains untouched.

**9.3.** The personal liability of the authorized representatives, employees and vicarious agents of TICKET is excluded for any damages caused by slight negligence.

**9.4.** TICKET shall not be liable for the replacement of data, unless TICKET has caused their destruction intentionally or by gross negligence and if the customer made sure that such data can be reconstructed with justifiable expenditure of time from data material maintained in machine-readable form (data backup). The warranty shall not cover defects caused by external circumstances outside TICKET's sphere of influence. This shall especially apply to cases where data are lost due to the implantation of a so-called "computer virus" through third parties.

## **10. Statute of Limitations**

All warranty claims and claims for damages against TICKET shall become statute-barred upon expiration of one year following delivery/handover or service performance towards the customer. Excluded hereof are claims of damages as a result of injury to life, the body and health and/or claim of damages caused by TICKET due to gross negligence or premeditation. Insofar the statutory limitation periods apply.

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## **11. Industrial Property Rights and Copyrights**

**11.1.** If the scope of delivery also covers products of TICKET or of third parties protected by copyright, these products shall be subject to the applicable license provisions of the manufacturers, which are to be acknowledged by the customer without reservation when placing the order.

**11.2.** TICKET does not assume any liability for non-violation of industrial property rights or copyrights of third parties by the contract products. The customer must immediately give notice to TICKET of any and all claims asserted against the customer on such grounds.

**11.3.** Insofar as the delivered products were manufactured in accordance with designs or instructions of the customer, the customer shall indemnify TICKET against any and all claims asserted by third parties on the basis of a violation of industrial property rights and copyrights. A reasonable amount of money is to be advanced on any costs of litigation.

## **12. Export and Import Licenses**

**12.1.** Products and technical know-how are intended to be used and to remain in the supplying country agreed upon with the customer. A re-exportation of contract products by the customer, either performed individually or in a system-integrated form, is subject to approval and is basically governed by the regulations that are applicable in the supplying country. The customer must independently make inquiries about such rules – in accordance with the German regulations – at the Federal Export Office in 65760 Eschborn/Ts., and – according to the US Regulations - at the US-Department of Commerce, Office of Export Administration, Washington, D.C. 20230. Irrespective of whether the customer specifies the final place of destination of the delivered contract products, the customer shall solely bear responsibility for procurement of any required approval from the competent foreign trade authorities prior to any export of such products.

**12.2.** Each and any onward delivery of contract products by the customer to third parties, with or without knowledge of TICKET, shall simultaneously require a transfer of the export license conditions. The customer shall be liable to TICKET for proper compliance with such conditions.

## **13. Import Turnover Tax**

**13.1.** If the customer's principal place of business is located outside the Federal Republic of Germany, the customer is committed to comply with the currently applicable EU regulations concerning turnover tax on imports. In particular, the customer must disclose the turnover tax ID number to TICKET without separate inquiry. Upon request, the customer shall be committed to furnish the necessary information regarding his capacity as entrepreneur, concerning the use and transport of delivered goods, and concerning the obligation to register for statistical purposes to TICKET.

**13.2.** The customer undertakes to reimburse any expenses – especially handling fees – incurred by TICKET due to insufficient or incorrect specifications made by the customer with respect to import turnover tax.

**13.3.** Any liability of TICKET resulting from the consequences of statements made by the customer with respect to the import turnover tax or pertinent relevant data shall be excluded, unless TICKET has acted intentionally or by gross negligence.

## **14. General Provisions**

**14.1.** Any assignment of rights or transfer of obligations under the contractual relationship shall require TICKET's prior written consent.

**14.2.** The place of jurisdiction for all disputes arising between the contracting parties is Daun, Germany. However, TICKET shall be entitled to institute judicial proceedings at the customer's principal place of business or at any other statutory place of jurisdiction.

**14.3.** These General Business Terms and Conditions shall exclusively be governed by the laws of the Federal Republic of Germany, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

**14.4.** Orders are executed within the TICKET group of companies with the help of automatic data processing. The customer shall hereby give TICKET his express consent to the processing of data disclosed within the scope of contractual relationships and required for contract execution. The customer shall also consent to a situation where TICKET makes use of the data received under the business relationship existing with the customer - within the meaning of the Data Protection Act – for commercial purposes of TICKET, also within the TICKET group of companies.

**14.5.** Should one or several provision(s) of these General Business Terms and Conditions be or become invalid, or should this contract wording contain a regulation gap, the contracting parties undertake to replace or supplement the invalid or incomplete provision by arrangements as closely as possible reflecting the economic purpose and intent of the original regulations. The validity of the remaining provisions shall thereby not be affected.

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