

General terms and conditions of sale and delivery

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1. Application area

All the business relationships of itv-gmbh - hereinafter referred to in abbreviated form as "supplier" - and its business partners - hereinafter referred to in abbreviated form as "orderer" - concerning the sale of products and the provision of repair and other services shall be carried out exclusively on the basis of the following general terms and conditions of sale and delivery, provided that the orderer is a merchant, a public corporation or a special public fund. Conflicting purchasing conditions of the orderer shall only become terms of the contract if this has been expressly agreed in writing.

2. Conclusion of the contract

Quotations submitted by the supplier shall be subject to confirmation. The orderer shall be committed to his order for a period of twelve weeks.

A contract shall not come into existence until the written order confirmation issued by the supplier reaches the orderer. This confirmation alone shall be authoritative with respect to the scope and content of the mutual contractual commitments.

3. Delivery / damages

(1) Delivery dates shall only be binding if this is expressly agreed in writing.

(2) The delivery commitments of the supplier shall be subject to the reservation that the supplier is supplied correctly and punctually himself, unless the supplier himself is to blame for the inaccurate / non-punctual delivery.

(3) The time when the product is despatched from the factory / warehouse shall be authoritative as far as the observance of delivery dates / delivery periods is concerned, or the time when notification is given that delivery can be made, when shipment is delayed for reasons for which the supplier is not responsible.

(4) If shipment / presentation of the object that is being supplied / repaired is delayed for more than 10 days for reasons for which the orderer is responsible, the risk of accidental loss and deterioration of the object shall pass to the orderer. When an additional period granted of 14 days ends, the supplier shall be entitled to withdraw from the contract and to demand damages amounting to at least 20 per cent of the agreed delivery / repair price, unless the orderer proves that the supplier has suffered smaller damage. More extensive claims by the supplier shall not be excluded by this provision.

(5) If the orderer fetches goods that are not destined for the territory of the European Community, the orderer shall pay an amount equivalent to the VAT that applies in the case of domestic deliveries in addition to the agreed payment if he does not present the proof of export that is needed for tax purposes.

4. Shipment / transfer of the risk

(1) Unless agreement is reached to the contrary, shipment shall be made according to the requirements of the product and the rules of the supplier.

(2) If transport damage occurs, the orderer shall ascertain all the necessary facts immediately, so that claims for damages can be made.

(3) The risk of accidental loss and deterioration of the object delivered shall transfer to the orderer at the latest when the object is passed on to the orderer if it is being fetched or when the object is passed on to the transport company / carrier commissioned in the case of shipment. The supplier shall only obtain insurance cover at the express instruction and expense of the orderer.

5. Prices / terms and conditions of payment

(1) Agreed prices shall be net, without any deductions and excluding VAT at the applicable rate in each case.

(2) Invoices shall be payable on receipt. In the case of orders with a value of more than € 5 000, a downpayment of 30% of the product / service payment shall be paid on receipt of the order confirmation and the remainder shall be paid when notification is given that delivery can be made. Different terms and conditions of payment shall only apply if arranged in writing.

(3) If there is a delay in payment, the supplier shall be entitled to payment of the legally stipulated default interest. This shall also apply if the object delivered is not accepted punctually in accordance with Article 3 Paragraph 4.

(4) The orderer shall only be able to claim a right of retention on the basis of undisputed or legally finalised counterclaims.

(5) If the financial circumstances of the orderer deteriorate after conclusion of the contract to such an extent that there appears to be a risk that the claims held by the supplier on the basis of the contractual relationship might not be satisfied, the supplier shall be entitled to discontinue processing of the contract until appropriate securities have been provided and to withdraw from the contract if such securities are not provided within 10 days of the request to do so. Article 3 Paragraph 4 Sentences 2 and 3 shall apply accordingly in this case.

6. Reservation of title

(1) All objects supplied by the supplier shall remain his property until the orderer has paid his liabilities from the business relationship with the supplier. If there is a delay in payment, the supplier shall be entitled to insure objects delivered at the expense of the orderer against fire, water and other damage, unless the orderer provides evidence of the existence of insurance of the same kind of his own and assigns the claims from such insurance to the supplier.

(2) If ownership of the objects supplied by the supplier (reserved goods) becomes extinct due to processing and/or combination with other objects, this processing / combination shall be carried out in the name and on behalf of the supplier, without the latter entering into any commitment as a result, provided that the supplier acquires ownership of the new object or co-ownership in the ratio of the invoice values of the goods he supplied to the total combined goods.

(3) The right held by the orderer to dispose of the reserved goods as well as the claims arising from resale of them in the proper course of business can be revoked by the supplier at any time for an important reason. The claims to which the orderer is entitled from resale of the reserved goods shall already be assigned to the supplier on sale, provided that the latter is entitled to enforce them in his own name. The orderer is obliged to make all the data needed for collection purposes available to him on request within five days.

(4) Unusual disposals of the reserved goods as well as pledging of them, transfer of them by way of security and assignment of them for security purposes shall not be allowed. Access to the reserved goods by third parties shall be notified to the supplier immediately.

If the rights granted to the orderer in this Article are exceeded in any way and if there are any violations of the agreed payment arrangements, all unsettled claims held by the supplier against the orderer shall become due and shall entitle the supplier to demand immediate surrender of the reserved goods. A right held by the orderer to possess them shall lapse in this context.

(5) Enforcement by the supplier of the reservation of title and of the return of the reserved goods shall not be considered as withdrawal from the contract.

(6) If the value of the reserved goods provided for in this Article exceeds the supplier's claims by more than 20 per cent, the supplier shall be willing at the orderer's request to release an appropriate proportion of the securities of the supplier's choice.

7. Repairs / contractual lien

(1) On the basis of his claims, including previous claims, arising from the provision of repair and other services, the supplier shall have a contractual lien and retention right to the objects of the orderer that have come into his possession for the provision of such services.

(2) Parts replaced in the context of the provision of repair and other services shall become the property of the supplier.

8. Force majeure

The supplier and the orderer shall be exempted from their commitments for the time and to the extent that they are prevented from meeting these commitments because of force majeure. Force majeure shall therefore be defined as any event that the parties to the contract were unable to prevent even though they took maximum care, including industrial conflicts, major interruptions of operations, major machine breakdowns, major fires, general material, supply and transport bottlenecks and similar events that make performance of the contract impossible. If such bottlenecks last for longer than three months, either party to the contract shall be entitled to withdraw from the contract affected, to the exclusion of any more extensive claims.

9. Warranty

(1) Apparent faults shall be examined and notified to the supplier by the orderer in writing with specific information within one calendar week after he has taken over the object bought / repaired. The same shall apply to faults that are not immediately apparent on careful examination, as soon as they are noticed for the first time. If faults are not notified in the proper form or within the right time, this shall lead to the loss of the relevant warranty claims.

(2) The warranty of the supplier shall consist of his own choice of either repairing the damage (subsequent improvement) or supplying replacement goods without any faults (replacement delivery), to the exclusion of all more extensive claims. The orderer shall make the faulty goods available to the supplier at the latter's plant and at his own expense so that a fault can be determined and remedied. Return delivery - by standard means of transport - shall be carried out at the expense of the supplier.

(3) If subsequent improvement / replacement delivery is made twice without positive results, the orderer shall have the right to withdraw from the contract or to demand a reduction in the purchase price that takes account of the remaining fault.

The orderer shall not have any more extensive claims, unless the fault relates to a special property of the object bought that the supplier has promised expressly and in writing.

10. Liability / damages

The orderer shall only have claims to damages of whatever kind and for whatever reason - to the exclusion of all more extensive claims - if the supplier and/or his senior executives have acted with intent or gross negligence in this respect or to the extent that the violation of major contractual commitments is involved. In these cases, the damage that has to be replaced shall be limited to the typical, foreseeable damage.

11. Place of performance / jurisdiction

(1) The place of performance for the mutual contractual commitments of the parties to the contract shall be the registered office of the supplier.

(2) The place of jurisdiction for all disputes between the parties to the contract that cannot be settled amicably, including summary procedures, shall be Kempten / Allgäu / Germany.

(3) The laws of the Federal Republic of Germany shall also apply. Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

(4) If individual provisions of these general terms and conditions of sale and delivery are or become ineffective, this shall not affect the validity of the other provisions. In such a case, the parties to the contract shall agree on a legally valid replacement provision that is as close an approximation as possible to the economic effect of the ineffective provision.