

# Terms of Delivery and Payment

of ITD GmbH, Sportplatzstraße 3, 84381 Johanniskirchen

## 1. General

All our deliveries and services shall be subject exclusively to the following terms of delivery and payment. Purchase conditions of our customers with different wording shall not apply unless expressly accepted by us in writing. No oral agreement of any kind shall have force of law. All orders shall be subject to written confirmation by us.

## 2. Prices and Terms of Payment

Our prices shall be understood ex works, in EURO, net of the statutory applicable rate of VAT. Freight and packing costs will be charged separately. Packing material may be returned in the case of Franco domicile deliveries. All price scales specify net prices and apply exclusively to the items identified in the catalogue by the order number. We will submit separate quotations for modified items. Prices may be subject to alteration. The prices stated in the order confirmation or invoice shall be applicable at all times.

The minimum net order value shall be EUR 40. Orders amounting to less than this net value will be subject to an additional charge of EUR 5 to cover administrative costs.

Call orders will be accepted under the following conditions:

- a) such call orders do not extend over a period of more than six months and
- b) the net value of the order is at least EUR 10.000 and
- c) the net value of one call order is at least EUR 2.500 and
- d) the call dates are fixed on receipt of the order.

If at the end of the 6-month period any part of the call order remains outstanding, we shall be entitled to effect immediate delivery of such residual quantity in a single consignment or, alternatively, to apply paragraph 4 of Section 3 mutatis mutandis after an extension period of 14 days. We shall furthermore be entitled to charge the higher price retrospectively. A discount of 2% of the value of the ordered items will be applicable to payments effected within 10 days of the invoice date, otherwise payment shall be effected net and no later than 30 days after the invoice date. Bills of exchange and cheques are only deemed as payment when they are cleared funds. Bills of exchange will only be accepted after prior agreement, on account of performance or subject to eligibility for discount. All costs incurred in relation to the bill of exchange shall be borne by the customer and are payable immediately in cash. Discount deductions are excluded when payments are made with bills of exchange. Pursuant to Articles 352 and 353 of the German Commercial Code (HGB 352, 353) any delay in payment will be subject to interest at a rate of 5%, effective from the date on which payment falls due. If a payment is remains unpaid following a payment reminder, we will charge interest on arrears at an interest rate of 8% above the relevant interest base rate pursuant to Article § 247 German Civil Code (BGB). Compensation may be claimed for any additional damages arising from delayed performance. Our customers may not claim any right to refuse performance. They shall only be entitled to offset any payments due against an undisputed or legally established claim. Our claims - including those against which respite has been granted - shall fall due immediately in the event of default, financial difficulties or the initiation of bankruptcy or composition proceedings.

In the case of orders with a net value of more than EUR 10.000 we shall be entitled to claim on the basis of the following terms of payment:

- 1/3 payment on account after order confirmation,
- 1/3 payment on account when logistic readiness for delivery is notified,
- 1/3 payment after delivery is effected, but at least 30 days after logistic readiness for delivery has been notified.

## 3. Delivery

Delivery dates quoted by us will be adhered to as far as possible, but shall not be binding on us. In the case of delays in delivery of up to 3 weeks, the customer shall have no claim to a reduction in price or to compensation. Our obligation to deliver shall not commence until the customer has fulfilled his or her contractual obligations. In the event of force majeure, strikes, shortage of materials or plant interruptions of any kind, we shall be released from our delivery obligations throughout the duration of the effects caused by such event or we may withdraw from the contract in full or in part. Tolerances in dimensions weight and performance etc. are permissible and we reserve the right to effect model changes or technical modifications.

Tolerances in quantity are permitted in respect of items made to order ( $\pm$  10% up to 50 items,  $\pm$  5% for 51 items or more). Unless otherwise stated, consignment shall be effected by a forwarding agent commissioned by us, by rail or by post, depending on the size and weight of the consignment. In the event of the consignment being deferred at the customer's request, the customer shall bear the cost of storage calculated with effect from the month following the month in which notice was given that the consignment was ready for shipment. If goods are stored on our own premises, we will charge a storage fee of at least 0.5% of the invoice amount for every month or fraction of a month.

Moreover, if the deadline of 14 days for acceptance set by us expires without delivery having been taken, we shall be entitled to otherwise dispose of the items and charge any resulting costs to the customer. Cancellation (including part cancellation) of an order requires our express written consent. We reserve the right to claim for any resulting damages and at least 30% of the value of the ordered items. The customer has the right to prove a lower claim in a particular case (see paragraph of Section 5).

## 4. Passage of Risk and Acceptance of Goods

The risk shall pass to the customer at the point in time when the consignment leaves our premises. This shall also apply to Franco domicile consignments and in the event of delays in logistic readiness for shipment which is beyond our control. We shall conclude transport insurance on behalf of the customer for all consignments and on the customer's account. The customer shall be obliged to accept any goods delivered and this obligation shall also apply in the case of part delivery. Clearly identifiable damage to goods or packaging must be notified when accepting from the shipping agent / freight forwarder, confirmed by means of a receipt and ITD must be informed at the same time. Damage which can only be identified after the transport packaging has been removed must be notified to ITD GmbH immediately after receipt of the goods, but at the latest within seven calendar days.

## 5. Return Deliveries

Return deliveries can only be accepted with our prior consent, irrespective of the reason for return. The items must be appropriately packed and provided with a waybill stating the reason for their return, the name of the employee authorizing the return delivery, the consignment number, the article number, the delivery date and, if necessary, the invoice number. If, with our consent, items are returned or exchanged for reasons beyond our control, we shall be entitled to charge at least 30% of the value of the items to cover the costs of the return or exchange. Items made to order, or items that are modified or damaged may not be returned or exchanged. Shipment costs shall be borne by the party returning the items.

## 6. Warranty

a) The deadline for asserting claims and rights relating to defects is two years and commences with the transfer of risk in the case of all claims. Consumables and wear parts such as batteries, come with a 3 month warranty. For special used items, indicated as such in the proposal, the warranty is excluded. Unless otherwise expressly stated, the statutory regulations relating to the commencement of the statute of limitations, the expiry suspension, the suspension and the recommencement of deadlines shall not be affected. The customer must immediately submit a claim after receipt of the goods for any identifiable defects.

b) Defect claims are not deemed to be permissible for minor deviations from the agreed properties or for only minor impairment of the utility, for natural wear and tear as in the case of damage which occurs after the transfer of risk as a consequence of incorrect or negligent handling, excessive loading or on account of specific external influences, which are not included under the terms of the contract. If unprofessional repair work is carried out by the customer or third parties, or modifications are effected on the goods, no defect claims shall be permitted for these actions or for any resulting consequences.

c) The warranty claims shall be restricted, at our discretion, to the right of rework, replacement delivery or reduction in price. The customer shall be entitled to request the cancellation of the sale or a reduction of the purchase price, if the rework or placement of the defective items is not successful. If the rework fails after the second unsuccessful attempt, the rework is deemed to have failed. The statutory cases are not affected in relation to the dispensability of setting a deadline. Claims by the customer relating to the expenses necessary for purposes of follow-up performance, in particular transport, travel, work and material costs, are excluded, to the extent that the expenses increase because the goods supplied by us have been shipped to a different location to that of the branch office of the requisitioner ordering the goods; unless the movement is in accordance with their use in compliance with standard operating procedures.

d) We shall be liable in cases of intentional wrongdoing or gross negligence on our part, by our legal representatives, executive employees, or agents. Furthermore, we shall be liable in accordance with the Product Liability Act, on account of injury to life, body or health, or on account of culpable infringement of substantive contractual obligations. However, any claim in respect of compensation for damages in relation to infringement of substantive contractual obligations, shall be limited to foreseeable damage typical for the contract. Our liability shall be limited to foreseeable damage typical for the contract even in cases of gross negligence. Liability for any damage caused by the deliverable to the legal assets of the purchaser, e.g. consequential damage, is excluded. This shall not be applicable to the extent that intentional wrongdoing or gross negligence have occurred or liability exists in respect of injury to life, body or health. The regulations arising from item 6, section d, sentence 1 and 2 cover compensation for damages instead of performance, irrespective of which legal reasons, in particular on account of defects, infringement of obligations arising from the contractual obligation, or from inadmissible actions. They shall also be applicable in respect of any claim for reimbursement of needless expenses.

e) Rights of recourse of the customer against us shall only be deemed to apply to the extent that the customer has not made any agreements with his buyer extending beyond the statutory mandatory claims relating to defects.

f) The customer shall only transfer his rights arising from the contracts concluded with us with our consent.

## 7. Reservation of Ownership

All delivered items shall remain our property until payment of the purchase price has been effected in full or until the cheques and bills of exchange provided in payment are cleared funds. Until such time as all payments have been made, the customer shall not pledge the items to third parties or transfer ownership of the items by way of security. If goods are pledged or seized, or if third parties dispose over them in some other way, the customer shall inform ITD without delay. If the customer processes the items or converts them into products we shall be deemed the manufacturer and shall acquire title to the intermediate or final products in proportion to the value of our consignment.

## 8. Industrial Property Rights and Copyright

All plans, drawings etc. placed at the customer's disposal shall remain our property and may not be published, duplicated or disseminated to third parties in any other way without our prior written consent.

## 9. Place of Jurisdiction, Place of Fulfilment and Applicable Law

Place of Jurisdiction is Munich. Place of Fulfilment is 84381 Johanniskirchen (Lower Bavaria, Germany). The applicable law is the law of the Federal Republic of Germany as defined in the German Civil Code (BGB) and the German Commercial Code (HGB). The UN Convention on Contracts for the International Sale of Goods is excluded.

Johanniskirchen, November 2010



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