



## General Sales and Delivery Terms

### Tonfunkt Systementwicklung und Service GmbH As of: October 2016

#### I. General Clauses

1. Our Goods and Services follow the following terms and conditions without exception. Contradictory or deviating terms and conditions from our Customers shall only be recognized if we have given express written consent.
2. We reserve and retain all property rights and copyrights to samples, cost estimates and similar information, whether physical or immaterial - including electronic formats; they may not be accessible to third parties. We undertake to grant access to third parties to this information with the Customer's consent.
3. Partial deliveries and partial services are permissible. § 266 of the German Civil Code is waived.
4. Our offers are subject to change, as long as they have not been specifically designated as binding.

#### II. Conclusion of Contract

1. Items contained within catalogues, brochures, images, and price lists including Services, prices, parameters and so on are not binding as long as it is not expressly stated otherwise.
2. TSES is responsible for the procurement and stocking of all materials essential to the manufacturing process. In cases of emergency material purchasing which occurs through need at short notice of the Customer and must be confirmed in writing, the Customer covers the resulting additional charges.
3. Material that been altered technically, as requested by the Customer, must be taken by the Customer regardless.
4. In case of cancellation or the reduction of a binding order from a Customer, they will either be stockpiled or in cases of items that are obligated to be delivered (unprocessed material, semi-finished products), Customers will be reimbursed. For finished products, the reconcilable sales price will be calculated.
5. Provided that the supply chain of the Customer is appropriate and the supplier selection is not performed by TSES, we are not responsible for the quality of the supplier. We perform only standard testing upon receipt.
6. TSES is not accountable for by installation Services from Customers unless this is expressly contractually arranged. If rendered with consent of the Customer, then a reasonable remuneration based on location will be stipulated.

#### III. Price and Terms of Payment

1. Our prices are the net price plus the respective value added tax. As long as no changes are agreed upon, payment shall be made within 10 calendar days after receipt of the invoice.
2. Partial deliveries will be billed immediately and are each due and payable individually, regardless of the completion status of the total Delivery.
- We reserve the right to adjust our prices to a reasonable extent if after the conclusion of the contract the costs have increased or decreased, especially on the basis of labour agreements, changes in the freight, shipping or shipping-related costs or material costs. These will be verified with the Customer upon request.
4. The Customer can exercise a right of retention if it is based on the same contractual relationship; compensation and retention by the principal of disputed invoices are barred.

#### IV. Reservation of Title

1. We reserve the right on the proprietary of the Goods until receipt of full payment from a current business relationship.

2. During the course of the existence of right of ownership with the supplier, the Customer is prohibited from hypothecation and chattel mortgaging.

Further use within the prudent company is only allowed per the terms and only on the condition that the reseller receives payment from its Customers and that ownership only takes effect after fulfilment by the Customer of the payment obligations.

3. If the Customer resells the Goods subject to reservation of title, he hereby assigns all his future claims against his Customers along with all subsidiary rights - including any current account receivables - for security purposes, without further notice being required. If the Goods are sold or disposed of together with other Goods, without a separate selling price having been agreed upon, the Customer will assign the part of the overall price demands which corresponds to the price of the Goods subject to retention of title stated in our invoice.

4. The manipulation of Goods by the Customer are invariably effected on our behalf. The new item shall be deemed Goods subject to retention of title. In case of a conjunction or mixing of Goods with Goods subject to retention of title that are not our property, we shall gain joint ownership of the new Goods to the amount of the proportion of the value of the merchandise to the other processed objects at the time of processing. For damages arising as a result of manipulation, the same shall apply as for Goods delivered under reservation subject to retention of title.

#### V. Delivery Time/Impossibility/Contract Adjustment

1. Compliance with the Delivery times specified by us assumes the timely and complete receipt of all documents to be supplied as well as assistance to be provided by the Customer (granting authorisations, releases, drawings, Stock lists, etc.), as well as suitable maturity payments and the adherence to the obligations of the Customer. In cases of failure to comply with such prerequisites, the Delivery period will be extended accordingly of essential transactions corresponding to at least the duration of the delay. This does not apply if we are responsible for the delay.

2. If the non-observance of the Delivery is due to:

- Force majeure such as mobilisation, war, terror attacks, or the like

- Attacks on our IT system, provided that they have been carried out despite usual diligence to protective measures will result in the extension by a reasonable period of time.

3. The Customer is obliged to declare within a reasonable period of time whether on account of the delay in Delivery he elects to withdraw from the contract or whether he still accepts the pending Delivery.

4. Should on request of the Customer the dispatch or Delivery be postponed for more than one month after the cargo is ready, storage charges can be debited to the Customer for each commenced month in the amount of 0.5% of the price of the objects of Delivery, not exceeding a total of 5%. The proof of higher or lower storage fees shall remain reserved to the parties to the contract.

5. To the extent that Delivery is not possible, the Customer is entitled to demand compensation unless we are not responsible for such impossibility. The Customer's claim to compensation for damages shall, however, be restricted to 10% of the value of that part of Delivery, which could not be used for the intended purpose because of such impossibility. This restriction shall not be applicable as far as cases of intent, gross negligence or injury to human life, body and health are liable. The above rulings do not constitute any change in the burden of proof to the disadvantage of the Customer. The right of the Customer to withdraw from the contract shall remain unaffected.



6. Where unforeseeable events within the meaning of Section V.2 substantially change the economic importance or the contents of the Supplies or have a significant impact on our company, the contract is appropriately adapted in good faith. In so far as this is not economically justifiable, we have the right to withdraw from the contract. If we want to make use of this right to rescind, we shall notify the Customer immediately upon becoming aware of the extent of the event, even if the Customer has already agreed to an extension of the Delivery period.

## VI. Transfer of Risk

1. Even with freight-free Delivery, the risk shall pass as follows:

- in cases of Delivery without installation or assembly, in cases of preparation for shipping or in cases of collection: At the Customer's request and expense, deliveries are insured by us against customary transport risks.

- in case of Delivery with installation or assembly: on the day of acceptance on the Customer's premise or - unless agreed otherwise - following proper trial operation.

2. If the shipping, the Delivery, the commencement, the implementation of installation or assembly, the acquisition in the Customer's premise or trial operation are delayed for reasons attributable to the Customer or the Customer delays acceptance for other reasons, the risk shall be transferred to the Customer.

## VII. Arraignment

The Customer shall not refuse receipt of deliveries due to unimportant defects or shortages.

## VIII. Latent Defects

1. TSES cannot be held liable for the electrical functionality of components for which no corresponding tests are commissioned and performed.

If the Customer performs functionality tests and confirms the functional suitability, the performance and Delivery of TSES is accepted.

2. All parts that prove to be defective due to circumstances prior to the transfer of risk - regardless of appearances - shall be reworked or replaced at our discretion. Any defect must be communicated to us in writing without delay and given the opportunity for replacement or repair within a reasonable period of time. As a rule, repair warrants twice as long.

3. All guarantees and claims expire 12 months after the transfer of risk. For wearing parts the guarantees and claims expire 6 months after the transfer of risk. This does not apply to the extent that the law under § 438, paragraph 1, number 2 (Buildings and items used for buildings) 479 paragraph 1 (Right of Recourse) and 634a, paragraph 1, number 2 (Construction Defects) of the German Civil Code requires longer deadlines as well as in cases of death, personal injury, damage to health or in cases of wilful acts or gross negligence related, in damage resulting from the breaches of duties or fraudulent concealments of defects by us.

4. In case of reports of defects, Customer's payments may be withheld pursuant of Section III.4 only in which it is in reasonable proportion to the occurred defects of quality. The Customer can hold back payments only if a complaint is made about whose justification can be no doubt. In the event that the complaint as to defects is incorrect, we may demand from the Customer our expenses for work undertaken. This also applies if the Customer did not know or unintentionally did not recognise that the cause of the purported defects was within his area of responsibility. This applies especially to investigative and testing costs. If there is no defect and TSES proves this to the Customer, a suitable remuneration based on location for investigative and testing

costs applies as agreed upon. The price list sets the fixed rate.

5. There will be no claims for defects in the case of only slight variation from the agreed quality, in the cases of only slight impairment in serviceability, natural wear and tear or damage which was incurred after the transfer of risk as a result of faulty or negligent treatment, excessive use, use of unsuitable equipment and facilities, of defective construction works, of unsuitable building ground or as a result of special exterior influences which in the agreement were not assumed and also where there are Software defects that cannot be reproduced. If the way the Customer or a third party makes changes to the Goods or repairs them is faulty, there is no claim to warranty for these or for the effects of the same.

6. Claims on the part of the Customer for necessary costs for the purpose of supplementary performance, especially transport, travel and labour costs and costs of materials shall be ruled out in as much as such expenditure increases as a result of the object of the Delivery having been subsequently taken to another location than the site of the Customer, unless this transfer corresponds to its intended purpose.

7. The Customer has statutory rights of recourse against us pursuant of § 478 (Recourse of the contractor) of the German Civil Code only in so far as the Customer has not reached any agreements with his Customer which go beyond the statutory claims for defects. In addition, item 5 shall apply corresponding to §478 paragraph 2 of the German Civil Code to the scope of the right for recourse of the Customer against us.

8. Our obligation to pay damages in case of infringements of industrial property rights is governed by Section X in all other respects.

## IX. Defects of Title: Intellectual Property Rights

1. Unless otherwise agreed it is our responsibility to deliver the Goods and/or Services, to the destination country free of industrial property rights (IPR) and copyrights of third parties: If a third party asserts a justified claim against the Customer based on an infringement of an IPR with respect to the deliveries made by us per the contract, we shall be liable within the limitation period mentioned in Section VIII.3 as follows:

- a) We will at our sole discretion and our expense, obtain a license for the Services in question, modify the Services in a manner that no IPR are infringed upon or replace the Goods. If none of these measures is feasible at reasonable conditions, the Customer shall be entitled to remedy of withdrawal or reduction of the purchase price.

- b) Our obligation to payment for damages shall be in accordance with Section X.

- c) The above obligations shall apply only if the Customer immediately notifies us of any such claim asserted by the third party, does not concede the existence of an infringement, and leaves any protective measures and settlement negotiations to the discretion of us. If the Customer suspends the use of the Delivery for reasons of minimising damages or other important reasons, the Customer undertakes to inform the third party that this does not constitute an acknowledgement of a violation of proprietary rights.

2. The Customer is obligated to inform us of any legally binding purchase for any work owed by us, whether the ordered work contains the IPR of third parties or if the manufacturer can claim copyright infringement of intellectual property rights. The Customer is required to inform TSES which measures must be taken to insure the rights of third parties.

3. Claims of the Purchaser shall also be excluded if the infringement of Property Rights was caused by an application



unforeseeable by our company or by the fact that the Delivery is changed by the Customer or used together with products which were not delivered by us.

4. In respect to claims by the Customer pursuant to number 1 a) above, Sections VIII and X shall apply mutatis mutandis in the event of an infringement of an IPR.

5. Further reaching claims or any claims made by the Customer against us and our agents based on defects of titles are excluded.

## **IXa. Operating Models, Pre-Production Prototypes, Test Versions of Hardware and Software**

1. If an article according to the contract is a pre-production prototype or operating module, investigative model, or model for release, it should be handled by the Customer with care and diligence due to a lack of qualification approval or an equivalent. It is characterised as an operating model/investigative model/operating model/engineering sample and therefore can have limited functionality or be hazardous for life and limb. This also applies to the use of software for testing purposes such as Beta versions, patches, bugfixes, etc. These types of software not characterised by RTM (Release to Manufacturing) are to be regarded as Engineering Samples. For software that the Customer has created themselves or software from TSES that the Customer themselves or through a third party has been changed or modified or for software from third parties that the Customer has installed onto TSES hardware, all compensation shall be excluded.

2. Lack of registration or insufficient suitability is not a defect; such a model is intended for trials and testing.

3. Damage claims for such models shall be - to the extent permitted by law - excluded.

## **X. Damage Claims**

1. Provided no alternative has been defined in these Sales and Delivery Terms, claims for damages by the Customer, for whatever legal reasons, especially for breaches of contractual obligations and unauthorised actions, are excluded. Consequential damage, meaning damage arising from defective Delivery and service, in another condition as when delivered or Services or through Delivery and service, are excluded. Damage claims by the Customer are always limited to the net price of the order.

2. This does not apply insofar as there is mandatory liability:

- a) product liability law
- b) premeditation
- c) gross negligence by the owner, legal representative, or an employee
- d) malice
- e) violation of the assumed guarantee
- f) culpable injury to life or limb or health
- g) culpable breach of significant contractual obligations

3. No change of burden of proof to the disadvantage of the Customer is connected with the preceding provisions. All claims to compensation for damage expire as stated in Section VIII.3 of this Sales and Delivery Terms.

## **XI. Closing Provisions**

1. The venue for all disputes resulting from the contractual relationship directly or indirectly shall be the locally competent court.

2. In case of legal invalidity of individual regulations remains the contract binding in its other parts. This does not apply in case complying with the terms of the contract would constitute unreasonable hardship for one or both parties.