

1. Subject

1. These general terms and conditions are valid for all of the business between IPRO GmbH (hereinafter "IPRO") and the customer, particularly for the sale of data processing devices (hardware), the transfer of usage rights for programmes (software) as well as the services to be provided in this context, even if these general terms and conditions are not mentioned in later contracts. They are correspondingly valid for work and services. Instead of the admission of delivered products, in work the acceptance and in services the receipt of the services takes place.
2. Terms of the customer that are contradictory to, additional to or deviating from these general terms and conditions do not become contract content unless IPRO agrees to their validity in writing. These general terms and conditions are also valid if IPRO unconditionally carries out a delivery to the customer having regard to its contradictory, additional or deviating conditions. Rights that IPRO is entitled to according to statutory requirements or other agreements beyond these general terms and conditions remain unaffected.
3. Programmes are programmes for data processing systems including the associated service descriptions and the user manual.

2. Conclusion of contract

1. Offers by IPRO are non-binding and without obligation.
2. An order only becomes binding when it has been confirmed by IPRO with a written order confirmation within two weeks or when IPRO carries out the order, particularly if IPRO complies with the order by delivering the products. An order confirmation created with the help of automatic facilities in which the signature and name are missing, is considered to be in writing. If the order confirmation contains obvious mistakes, clerical errors or calculation errors, it is not binding for IPRO. A lack of response by IPRO to offers, orders, requests or other declarations of the orderer is only considered as consent if this has been agreed upon in writing in advance.

3. Scope of service

1. The service comprises the delivery of the hardware and software (on data carriers in directly executable machine code) to the customer installation site as well as the operational transfer, if nothing deviating is agreed upon. The written order confirmation by IPRO is decisive for the scope of delivery. Changes to the scope of delivery by the customer require written confirmation by IPRO to become effective. Changes of the products are reserved if they are customary deviations or the deviations are within the DIN tolerances or if the changes are not significant and reasonable for the customer. The same applies to the specification and design.
2. In the absence of another agreement, the programmes are transferred for non-exclusive, non-transferable, time-limited use. The use of programmes on numerous computers or in networks is only permitted with the prior agreement of IPRO. All copyrights to the software remain with us unreservedly, even after payment by the customer. The customer obligates themselves not to copy the entrusted programmes – with the exception of backup copies for the purpose of manufacturing – and not to pass on the programmes or programme carriers to third parties. We are, however, prepared to agree to the transfer of usage rights to third parties if such a transfer is required in order to finance the system or the one-time licence fee.
3. IPRO is entitled to have any services rendered by third parties.
4. The customer ensures that there are sufficient power supply connections and, if necessary, data connections in the extent required available. The manufacture or extension of electricity or data connections or lines is invoiced separately.
5. The training of the customer and their employees takes place in the scope agreed upon in the contract.
6. During the limitation period of defect claims (clause 7 section 8) the customer has a right to free delivery of each new version or improvement of IPRO programmes that are approved during this time. If the customer declines the acceptance, the programme warranty no longer covers those errors that no longer occur in the improved version.

4. Retention of title

1. The title of the delivered hardware is only delivered to the customer after complete payment of the fee and all claims that IPRO is entitled to from the customer as per the business relationship. Until complete payment the customer may not have the hardware or grant third parties possession of the hardware. The customer is obligated to treat the products under retention of title with care for the duration of the retention of title. They are, in particular, obligated to sufficiently insure the products at their own cost against fire and water damage and theft to the original value. The customer must prove the transaction of the insurance upon the request of IPRO. The customer already transfers all claims for compensation from this insurance to IPRO. IPRO hereby accepts the transfer. If the transfer should not be permitted, the customer hereby advises the insurer to make any payments exclusively to IPRO. Further claims by IPRO remain unaffected.
2. The right of use according to no. 3 section 2 is transferred with reservation of withdrawal at any time until complete payment of the fee.
3. Until this point in time the customer must immediately inform us of every ownership or usage right impairment, particularly the access of third parties to the goods in the case of a seizure. The costs for defence against such right impairments are borne by the customer.

5. Time and place of performance, delay, retention

1. The agreement of delivery periods and deadlines must be in writing. Delivery periods and deadlines are non-binding, unless they are described as binding by IPRO in writing in advance. The delivery period begins with the sending of the order confirmation by IPRO, however, not before the complete provision of the documents, approvals and releases to be procured by the customer, the clarification of all technical questions as well as the receipt of an agreed upon advance payment as well as the timely and contractual, especially fault-free, delivery of the additional parts. In the case of a deadline, the deadline is delayed within reason if the customer does not provide the documents and approvals to be procured by them in time, does not grant releases on time, does not completely clarify all technical questions on time, the agreed upon advance payment is not completely received by IPRO or additional parts are not delivered on time and contractually, particularly fault-free. Upholding the delivery time requires the timely and proper fulfilling of the remaining obligations of the customer.
2. The delivery time is upheld if the products leave the warehouse up to their expiry or IPRO has disclosed it is ready for collection or shipment. Upholding the delivery time is subject to the reservation of proper, particularly timely, self-delivery by IPRO, unless IPRO is responsible for the improper self-delivery. In the case of improper self-delivery, IPRO is entitled to withdraw from the contract. IPRO immediately informs the customer if IPRO is availing its right to withdrawal and returns any preliminary work provided by the customer.
3. The place of fulfilment for all services of the customer and by IPRO is the IPRO headquarters, unless otherwise agreed.
4. Counterclaims of the customer only entitle them to compensation if they are legally determined or indisputable. The customer can only make a right of retention valid if their counterclaim is based upon the same contractual relationship.

6. Payment terms

1. All prices stated are considered as in addition to the respectively valid value added tax.
2. In the absence of a special agreement, the delivery price is to be paid within 14 days of the invoice date. The payment date is the day on which IPRO has access to the delivery price. In the case of a default of payment, the customer must pay default interest amounting to 9% points above the respective base interest rate p.a. Further claims by IPRO remain unaffected.

7. Claims for defects

1. The risk of accidental loss is transferred to the customer with notification of the operational readiness by IPRO.
2. The defect rights of the customer require that the delivered products be checked immediately after delivery, where reasonable also with test use, and IPRO be immediately informed of open defects in writing, no later than two weeks after delivery of the products. IPRO must be notified in writing of any hidden defects immediately after their discovery. The customer must describe the defect in writing in their notification to IPRO. The claims for defects of the customer also require that, in installation, commissioning, operation and maintenance of the products the instructions, notes, directives and conditions are upheld in the technical notes and operating instructions and other documents of the products.
3. In the event of defects of the products, IPRO is entitled to rectification by elimination of the defect or delivery of a defect-free product at its own discretion. In the event of rectification, IPRO is obligated to bear all costs required for the purpose of rectification, particularly transportation, road, working and material costs, provided that these are not increased by the products being moved to a site other than the delivery address. Personnel and material costs that the customer claims in this context are to be calculated on a cost price basis. Replaced parts become the property of IPRO and are to be returned to IPRO.
4. If IPRO is not ready or in a position for rectification, the customer can choose to withdraw from the contract or reduce the delivery price without affecting any claims for compensation for damage or use. The same applies if the rectification fails, is unreasonable to the customer or is delayed beyond appropriate deadlines for reasons that IPRO has given.
5. If programmes are used on computers that were not purchased by IPRO, the guarantee does not cover such errors that are a result of the missing compatibility to the hardware recommended by IPRO.
6. If in an attempted improvement it transpires that there is an operation or compatibility error, IPRO can demand remuneration according to its usual rates for the amount of work provided, including travel and incidental costs.
7. The liability for defects does not comprise the guarantee for use or its success. Otherwise, this provision conclusively provides for the responsibility for defects rights.
8. The limitation period for the claims for defects of the customer is one year. If the defective products have been used for their normal use for a structure and caused their defectiveness or it is a question of a defect in a structure, then the limitation period is five years. It is also valid for claims from unauthorised use that is based on a defect of the products. The limitation period begins with the notification of the readiness for operation by IPRO or with the delivery of the products if no commissioning by IPRO is agreed upon. The reduction of limitation is not valid for the unlimited liability of IPRO for damages from the violation of a guarantee or from damage to life, body or health, for malice or gross negligence and for product errors or if IPRO has accepted a procurement risk. A statement by IPRO on a claim for defects made by the customer is not to be viewed as an entry into negotiations regarding the claim or the circumstances on which the claim is based, if the claim for defects is fully rejected by IPRO.

8. Liability

1. For damages from the violation of a guarantee or from damage to life, body or health IPRO has unlimited liability. The same applies to malice and gross negligence or if IPRO has accepted a procurement risk. For minor negligence, IPRO is only liable if significant obligations were violated, which arise from the nature of the contract and which are of particular importance for achieving the contract purpose. Upon the violation of such obligations, delay and impossibility the liability of IPRO is limited to those damages that

typically have to be anticipated as part of this contract. Mandatory legal liability for product faults remains unaffected.

2. If the liability of IPRO is precluded or limited, this also applies to personal liability of the employees, workers, representatives and vicarious agents of IPRO.

9. Secrecy

1. The contracting parties obligate themselves to keeping secret all confidential facts and information of the other party revealed in the course of business, if these are not commonly known or not demonstrably known to the receiving party before admission of the contractual relationship, without being obligated to secrecy, the receiving party was informed by a third party without violating an obligation of secrecy after admission of the contractual relationship, or developed themselves by the receiving party after admission of the contractual relationship.
2. In particular, according to clause 9 section 1, the customer must ensure that neither they nor their employees make the programmes, offer documents, operating manuals or copies thereof available to third parties. Upholding of these obligations is to be ensured by suitable measures.
3. The reproduction of programmes is – if they are not copy protected – permissible for the creation of backup copies. The reproduction of associated programme documents is only permitted for the customer's own use.

10. Transfer

The transfer of rights and obligations of the customer from the business relationship with IPRO can only take place with the prior written consent of IPRO.

11. Final provisions

1. Changes to the contract must be made in writing. Verbal ancillary agreements, assurances and other agreements are only binding if they are immediately confirmed in writing by IPRO.
2. The law of the Federal Republic of Germany applies to the legal relationships of the customer to IPRO, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
3. Should a provision of these general terms and conditions be or become wholly or partially ineffective or impracticable or should there be a loophole in these general terms and conditions, the validity of the remaining provisions are not affected by this. In place of the ineffective or impracticable provision the effective or practicable provision is considered as agreed that comes closest to the purpose of the ineffective or impracticable provision. In the event of a loophole the provision is considered as agreed that corresponds to what would have been agreed according to the purpose of these general terms and conditions, if the contracting parties had considered the matter from the outset.
4. If the customer is a trader, the exclusive place of jurisdiction is agreed upon as being the IPRO headquarters. IPRO is also entitled to bring a suit at the location of the customer as well as at every other place of jurisdiction.

IPRO GmbH

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