

Standard Terms and Conditions ds automation gmbh

1. General

These Standard Terms and Conditions (STC's) form the basis of all we do in business operations insofar as no other arrangement is agreed to in writing and insofar as the applicability of these STC's is not expressly opposed in writing. If our contracting partner ("the Customer") also uses standard terms and conditions, there are only applicable if this is agreed when the contract is concluded (i.e. when agreement is reached on an order).

2. Conclusion of Contract / Subject of Contract

2.1 All agreements between us and our Customer must be made in writing. Oral side agreements, regardless of their form, do not take effect until confirmed in writing by both parties.

2.2 We are bound by our contractual offers for two weeks. Binding offers of the Customer are evaluated by us within two weeks of receipt.

2.3 Upon request of our Customer we calculate the total costs to be expected to the best of our knowledge. Such calculations are non-binding insofar as they are not explicitly confirmed in writing as being binding.

2.4 We are authorised to hire subcontractors at our discretion so that we are able to fulfil all the duties incumbent on us. Employees of subcontractors are equivalent to our own employees within the meaning of these STC's.

2.5 Minor deviations from the description of the subject of contract are deemed to have been approved and do not affect fulfillment of the contract. Insofar as is not unreasonable for the Customer, we may, without changing the subject of contract accordingly, make changes and improvements at any time for the sake of technical progress or of increasing the value of the goods.

3. Obligations to Cooperate

3.1 Our Customer designates in writing a suitable person from among its employees as contact partner for us. This person shall be responsible for coordinating the activities pertaining to the contract and for receiving all invoices, notices and documentation from us. We shall be given timely advance notice in writing whenever this contact person is replaced.

3.2 If performance to be rendered by us is to be rendered on the Customer's premises, we shall be given entrance / access to the areas and systems (e.g. computers) in question and such facilities will be placed at our disposal so we can perform in accordance with the contract.

3.3 All information, facilities, documentation, test data and supporting activities which we request shall be supplied free of charge so that we can perform under the contract, whereby the Customer ensures that all information which we request so we can perform under the contract and which is placed at our disposal is correct and complete.

4. Acceptance

This section applies in the case of performance rendered under a contract for work.

The Customer declares acceptance of the work result in writing and without delay in the event that this result fits the description of performance and is free of other defects too. The Customer may not refuse to accept the work result in the event of negligible defects. If the Customer does not declare acceptance within four weeks of being notified by us that this work result is ready for operation, we extend this deadline by another four weeks. The work result is deemed to have been accepted if this new deadline expires but the Customer has not provided us in writing with a proper description of any defects. The work result is also deemed to have been accepted if this result or essential parts thereof are employed by or on the premises of the Customer.

5. Change of Performance

5.1 If the contracting parties recognize that agreements on schedules or an order which has been placed are erroneous, incomplete or, objectively speaking, cannot be executed as is and if this makes it necessary to change or supplement the order, the parties shall notify each other in writing without delay. The Customer shall, without delay, take all decisions required to continue the order and notify us thereof in writing.

5.2 The effort required to execute the given order shall be recalculated on the basis of the changes insofar as nothing else is agreed.

5.3 Each change and/or supplement to the contract must be made in writing.

5.4 We shall be compensated for any additional effort which arises from modifications of the original order or from idle time. Agreed execution deadlines are extended accordingly.

5.5 If the Customer requests a change, we shall evaluate it for technical feasibility and reasonableness. If a change is agreed, this additional work shall be compensated in accordance with these STC's and the prices which are valid when the change is agreed or in accordance with a special agreement concluded by the parties in writing.

6. Prices and Payment Conditions

6.1 The prices quoted are the prices "ex factory" and without freight or packaging.

6.2 We reserve the right to make reasonable changes in our prices if, after the contract is concluded, we are faced with cost reductions or increases, especially those due to new wage agreements or increases in prices of materials. Such changes in our costs shall be proven to our Customer upon request.

6.3 Statutory value added tax is not included in the prices quoted. The amount levied is the amount due as of the date of invoice and this amount is stated in the invoice. In the case of partners located outside Germany the invoice also includes the applicable customs duties and other charges.

6.4 Insofar as the terms of the order do not imply something else, the purchase price is due for payment in the full amount within 15 days of date of invoice.

6.5 In the case of payment default, we are entitled to charge default interest in the amount of 8% per year above the applicable base interest rate of the European Central Bank.

6.6 If instalments are agreed and an instalment is in default, the entire balance becomes due for payment at once.

7. Offsets, Assignment and Statute of Limitations

7.1 Offsets against our invoices are only allowed if the counterclaim has become enforceable under law, if it is not disputed, or if it has been recognized by us. There are no retention rights for counterclaims which we object to.

7.2 Claims of our Customer based on individual contracts may only be assigned to a third party on the basis of our prior written consent.

7.3 Any and all claims of our Customer against us become time-barred after expiry of twelve months of when the applicable individual contract was discharged. After expiry of twelve months we are entitled to destroy documents from the Customer insofar as nothing else was agreed in the given contract.

8. Delivery, Packaging and Return of Goods

8.1 Insofar as no specific delivery time has been agreed, we give notice of the time of each delivery as soon as possible. If delivery is delayed for reasons for which we are not responsible, especially in cases of force majeure, disruptions in operations and strikes, claims for damages are excluded and a reasonable extension of the delivery time is deemed to have been granted. We inform our Customer in writing at once whenever a delay seems to be not unlikely, giving the reasons and anticipated duration of the delay.

8.2 Partial deliveries are permissible.

8.2 If we are already in default with a delivery and our Customer sets us a reasonable period of grace, then, if we do not deliver accordingly, our Customer is entitled to withdraw from the contract.

8.3 Insofar as nothing else is implied by our confirmation of an order, delivery "ex factory" is agreed. All risks pass to the Customer when the goods are handed over to the shipper.

8.4 Except for pallets, packaging will not be taken back as provided in the German Packaging Ordinance.

8.5 We can take out shipping insurance at our discretion and at the Customer's expense if this has not been explicitly declined in advance.

8.6 Returns of goods are only possible on the basis of a previous agreement, which can only apply to goods which are free from defects. The costs of return transport are assumed by the Customer. If goods are returned within four weeks of delivery, 75% of the value of the goods will be reimbursed, subject to sentence 1. If return delivery takes place later, then no more than 50% of the value of the goods can be reimbursed.

9. Rights to Subject of Contract and Retention of Title

9.1 We reserve the ownership and originator's rights to all drawings, calculations and other documents. These may only be made accessible to third parties on the basis of our prior written consent.

9.2 We reserve, independently of the rights to the subject of contract which we grant to the Customer, the right to continue to employ the know how and applied methods acquired during execution of the order; this applies most especially to the so called development tool. The Customer does not thereby acquire any rights of usage whatsoever to the development components employed, such as, for example, models, methods, programs or program modules, not even when such components are a prerequisite for operability of the programs developed for the Customer.

9.3 Publications on deliveries and services are up to the Customer and us. Either can demand that the company name and shares of the other be mentioned.

9.4 We alone retain all rights, including all rights of usage, to the goods delivered through us until all of our claims against the Customer, including all those from other contracts, have been paid in full.

9.5 In the event of conduct on the part of the Customer which is contrary to the contract, especially in the case of delayed payment, we are authorised to take back the subject of contract. In the mere act of taking back the subject of contract we do not withdraw from the contract; we only withdraw if we expressly declare that.

9.6 The Customer is obliged to us to handle with care the goods delivered through us for as long as ownership has not yet passed to the Customer in accordance with point 9.4; in particular, the Customer is obliged to us to insure these at its own expense for their value when new against damages from fire, water and theft.

9.7 Likewise, the Customer shall notify us in writing without delay in the case of a levy of attachment or other intervention by a third party; if the Customer fails to do so, the Customer is liable to us for the resulting damages.

9.8 The Customer assigns to us, as collateral for our claims against the Customer, its claims against its own customers. The Customer is normally entitled to collect these claims of ours for us in the course of orderly conduct of business; however, we do reserve the right to notify such a third party of the assignment to us and to collect the claims against the said third party ourselves. The Customer is obliged to place at our disposal all the information required for this.

9.9 We agree to release the collateral from the Customer to which we are entitled insofar as the realisable value of this collateral exceeds the claims of ours by more than 20%. It is we who decide which collateral is released.

10. Confidential Information, Fiduciary Duty and Data Protection.

10.1 All operating and business secrets, all offers of orders and contracts, and all other information, documents, personal data, etc. of each contracting party which is worthy of protection and becomes known to the other party but is not generally known shall be used by the other contracting party only for the purposes agreed under the contract, handled with the confidentiality which is customary in their sector of industry and protected against access by third parties. This also applies to the time after the contractual relationship comes to an end. Transmission to third parties requires the previous written consent of the other party to the contract.

10.2 Each party is at liberty to use the ideas, concepts, experience and technologies which are already known in their sector of industry.

10.3 We are allowed to process the Customer's data with data processing equipment. The persons employed by us are obliged to observe the requirements of the German Data Protection Act.

10.4 When a contract has been discharged, each party is obliged, upon request of the other party, to give back the documents and materials which were received for the purposes of fulfilling the contract. All possible rights of retention are excluded.

10.5 It almost goes without saying that each party shall be loyal to the other both during the period of the contract and 24 months thereafter. Most especially, except as something else is agreed in advance, during this time the Customer shall not avail itself of the services of anyone who has worked for us on the given contract for the Customer, neither directly nor indirectly, neither as a regular employee nor as self-employed contractor.

11. Liability

11.1 In respect to all statutory and contractual factual circumstances of liability for which assumption of responsibility is required, in particular in the cases of default, breach of contract, compensation for damages instead of performance, impossibility of performance, subsequent inability to perform, violation of obligations when concluding the contract and tortious acts – however with the exceptions of liability for warranties, for lack of warranted characteristics and for violation of contractual duties that are indispensable for achieving the purpose of the contract (cardinal duties) – we are only liable in keeping with our liability insurance policy, as follows:

- for material damages and the resulting financial losses as well for the financial losses resulting from personal injury: up to € 1.5 mio. for each insured event;
- for financial losses which do not result from personal injury or material damages: up to € 250,000 for each insured event;
- for damages which are basically not covered by our liability insurance policy: the contract value of that portion of our performance which was a cause of or directly connected with the damages excepting unrealized profits, or €25,000.00, whichever is less, whereby the total contract value is taken if no identifiable portion of our performance was responsible for the damages.
- for subsequent and indirect damages, especially for damages from claims of third parties against the Customer: no compensation for damages.

11.2 In the cases of loss of test data and damages to data media our liability is restricted to the material value of the data media themselves and, most especially, does not cover the effort required to reconstruct lost data.

11.3 We are only liable for breaches of confidentiality if we or one of our employees has acted intentionally or with gross negligence.

11.4 The above restrictions of liability do not apply to the cases of loss of life, bodily injury or damage to health based on an intentional or negligent violation of duty by us or by a legal representative or assistant of ours, nor do they apply to cases of intention or gross negligence by us or by a legal representative or assistant of ours, nor to cases of liability because of the absence of warranted characteristics.

11.5 Claims against people who work for us are excluded insofar as this is permissible by law.

11.6 Liability under the German Product Liability Act is limited to the amounts given above insofar as is permissible.

12. Warranty

12.1 Insofar as is not unreasonable for the Customer, minor deviations in colour, minor differences in dimensions and minor deviations from patterns, samples and templates do not qualify as defects.

12.2 Insofar as there is a defect for which we are responsible, we are entitled to decide whether to remedy the defect or deliver a replacement.

12.3 Liability for defects does not cover natural wear and tear, nor does it cover damages resulting from faulty or negligent handling after transfer of risks to the Customer.

12.4 The time limitation period starts on the day of transfer of risks to the Customer and lasts twelve months.

13. Final Provisions

13.1 Insofar as is not excluded by mandatory provisions of law, the places of jurisdiction and fulfillment are the location in which our business has its seat. In any case, German law applies under explicit exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

13.2 If individual provisions of this contract are ineffective, that does not affect the effectiveness of the remaining provisions. In regard to ineffective conditions in these STC's or individual orders the parties shall find a new arrangement which accords with what is financially desired, as appears to be fair.

13.3 These Standard Terms and Conditions are applicable in the most recent version which has been given to the Customer for its information.