

## **Terms of purchase**

**IPROTEC GmbH – Dr.-Schott-Str. 35 – D-94227 IPROTEC GmbH**

### **1. Scope of application**

All supplies and services of Suppliers to IPROTEC GmbH shall be governed by these terms only. They shall not apply to construction or labour agreements. Conflicting terms of Supplier shall not apply even if IPROTEC GmbH fails to object to them in a specific case, namely if IPROTEC GmbH accepts supplies ordered without such objection, or if IPROTEC GmbH refers to correspondence which contains, provides for or makes reference to conflicting terms of Supplier.

These terms shall apply to all future agreements with Supplier, even if IPROTEC GmbH does not refer to these terms again.

### **2. Written form**

Supplier shall give all and any notices or declarations to IPROTEC GmbH under or in relation to an agreement in writing. Otherwise, such notices or declarations shall be invalid.

Agreements, amendments or addenda to agreements, as well as individual agreements, shall be read and construed as fixed in writing or as confirmed in writing by IPROTEC GmbH.

### **3. Offers and orders**

If the Supplier does not confirm the order without any changes, without undue delay, at the latest, however, two weeks after receipt, IPROTEC GmbH shall be entitled to cancel such order without any cost. The right of IPROTEC GmbH to provide for a different time for Supplier to confirm such an order shall remain unaffected. Supplier shall confirm such orders without undue delay, however, no later than five working days following receipt of the order.

### **4. Delivery dates and delays**

a) Dates agreed or confirmed for supplies or services shall be binding. If delays are to be expected or have occurred, Supplier shall inform IPROTEC GmbH immediately.

b) If Supplier fails to deliver supplies or services at the date agreed between the parties, Supplier shall be in delay. If, under the agreement between the parties, a date can be identified until which the supplies or services have to be delivered or performed at the latest, Supplier shall likewise be in delay after such date has passed. In the cases under sentences 1 and 2, IPROTEC GmbH shall be entitled to its rights in case of delay of debtor as provided under statutory law.

c) Supplier shall pay to IPROTEC GmbH liquidated damages of 0,5 per cent of the value of supplies or services for each new week of delay, up to a maximum of 5 per cent of the value of supplies or services. Supplier may prove that actual damages of IPROTEC GmbH are lower. Nothing in this paragraph shall restrict the right of IPROTEC GmbH to claim higher damages.

d) If Supplier fails to deliver its supplies or performs its services even after an appropriate deadline set by IPROTEC GmbH has expired, IPROTEC GmbH shall, after such expiry, be entitled to entrust the supplies or deliveries to a third party and to charge necessary expenses and additional cost to Supplier. IPROTEC GmbH shall be entitled, at the same

time, to claim damages in lieu of performance.

## **5. Prices**

a) Prices stated in an order shall be binding. They are based on Incoterms 2010 DDP IPROTEC GmbH (delivered duty paid IPROTEC GmbH). The price shall comprise installation or implementation of devices, cost for packaging, duties, transportation and, if applicable, insurance. Supplier shall take back packaging material at its own cost upon request of IPROTEC GmbH.

b) Unless stipulated otherwise, IPROTEC GmbH shall pay the price following delivery of products or approval of services and receipt of the correct invoice (lit. c) within 14 days with a discount of 3 per cent, or within 30 days net.

c) Supplier shall state the order number and the date of the order in all confirmations, delivery documents or invoices. If one of these statements is missing, IPROTEC GmbH shall be entitled to return the invoice. In any case, periods for payment under lit. b shall be extended by such time by which review and processing of an invoices is delayed because of missing statements.

d) IPROTEC GmbH shall not owe interest on receivables due. IPROTEC GmbH shall not be in delay of payment unless dunned in writing by Supplier. Interest for delay in payment shall be five per cent points above the base rate.

e) IPROTEC GmbH shall be entitled to retention and set-off as provided under the law. Furthermore, IPROTEC GmbH may withhold payments even if due as long as obligations of Supplier arising out of incomplete or defective supplies are open.

## **6. Deliveries**

a) Supplier may subcontract supplies or services with the prior written consent of IPROTEC GmbH only. Supplier shall remain responsible for complying with all obligations to IPROTEC GmbH in any case.

b) Deliveries in part shall be subject to the prior written consent of IPROTEC GmbH.

c) A technical description and a manual for use shall be supplied without charge for instruments and technical devices. Software shall be deemed supplied no sooner than complete documentation relating to systems and users has been handed over. If software has been developed for IPROTEC GmbH, programmes shall be supplied in a source code format, too.

## **7. Regulatory Issues**

a) Supplier shall comply with all legal or regulatory requirements applicable to its supplies or services. Relevant certificates, instructions for disposal or documents shall be provided with the deliveries free of charge.

b) Supplier shall be solely responsible for complying with provisions for avoiding accidents when fulfilling its obligations. Devices or equipment required under such provisions, as well as manuals or instructions from the manufacturer, shall be provided with the supplies free of charge.

## **8. Transfer of risk, approval**

a) Risk of loss or deterioration shall pass to IPROTec GmbH according to the Incoterms 2010 DDP IPROTec GmbH upon delivery in the IPROTec GmbH premises. In case of deliveries including installation, such risk shall pass as soon as the device has been installed successfully. The approval of the installation shall be fixed in a formal minute.

b) If IPROTec GmbH starts to use a work product, this shall not replace the formal approval procedure.

## **9. Obligation to inspect products and to give notice of defects, effort for inspection**

a) IPROTec GmbH shall inspect products supplied in view of defects which can be detected upon examination of the exterior and review of delivery documents. In addition, IPROTec GmbH shall conduct spot checks according to generally accepted statistical methods. Notice of deviations from the agreement concerning quality or quantity of products shall be deemed timely if sent to Supplier within 14 days following receipt of the products.

b) Without prejudice to any further rights, IPROTec GmbH shall be entitled to inspect a delivery completely to the cost of Supplier if defects exceed maximum tolerances fixed by the parties.

## **10. Warranty for defective products**

a) Supplier shall warrant that products, upon transfer of risk, have the qualities as agreed between the parties and comply with the specifications. IPROTec GmbH shall have all claims provided under the law in case of defective products. A second delivery shall be unacceptable (§ 440 German Civil Code) if defects are caused by errors in development or technical design of products. In such case, IPROTec GmbH shall be entitled to its rights under Section 10 lit. d immediately.

b) As long as a product is not in the custody of IPROTec GmbH, Supplier shall bear the risk of loss or deterioration.

c) In urgent cases, in particular if safety of operations of IPROTec GmbH is endangered or if extraordinarily high damage may arise, furthermore to remedy minor defects, IPROTec GmbH shall be entitled to remedy the defect or possible damage caused by the defect itself or have the defect or such damage remedied by a third party, each at the cost of Supplier. This shall likewise apply if IPROTec GmbH has set an appropriate deadline for second delivery and Supplier has failed to remedy the defect or deliver non-defective products until such deadline. This shall also apply if IPROTec GmbH is forced to remedy or have remedied defects immediately in order to avoid delay of delivery to its own customers.

d) If IPROTec GmbH chooses not to remedy defects itself as provided under lit. c, it may, after having set an appropriate deadline for second delivery, rescind the agreement or to reduce the compensation due under the agreement (reduction of price). In addition to these two alternative remedies, IPROTec GmbH shall have the right to claim damages.

e) Products supplied may not be encumbered by rights of third parties. If software is to be supplied, Supplier shall be liable for holding all rights, namely intellectual property rights, that are required for selling the software.

f) Unless provided otherwise, the period for warranty rights shall extend to 36 months running from transfer of risk under Section 8 lit. a. The period for warranty shall not run for such time beginning by IPROTEC GmbH sending a notice of defects and ending by IPROTEC GmbH receiving non-defective products or services. For parts of deliveries remedied or supplied as replacement for defective products, or services repeated for warranty purposes, the period defined in the first sentence shall run again beginning by receipt of non-defective products or services, unless Supplier has made a replacement delivery or remedied defects only as a matter of courtesy or for other reasons than those of warranty under this Section.

g) Nothing in these Terms shall limit or restrict rights and claims of IPROTEC GmbH as a Purchaser or a Customer for works under statutory law.

### **11. Obligation to hold harmless in case of defects**

Supplier shall defend and hold harmless IPROTEC GmbH against any and all claims raised by third parties – regardless of the cause of action – because of material or legal defects caused by default of Supplier. Supplier will reimburse IPROTEC GmbH necessary cost of legal action required to defend against such claims.

### **12. Technical documentation, tools and production devices**

a) IPROTEC GmbH reserves any and all property rights or copyrights for technical documentation, tools and specifications. Such documents or objects may be used for fulfilling the agreement only and shall be returned to IPROTEC GmbH, including all copies, even without a request, as soon as no supplies are owed under the agreement any more. Supplier waives any rights of retention it may have against IPROTEC GmbH in this respect. Supplier shall not take copies nor replicate such objects unless this is indispensable to fulfill the agreement with IPROTEC GmbH.

b) If Supplier produces or develops objects as defined in Section 12 lit. a wholly or in part at the cost of IPROTEC GmbH, Section 12 lit. a shall apply mutatis mutandis. In such case, IPROTEC GmbH shall acquire joint property of such objects. Supplier shall keep in custody the objects for IPROTEC GmbH free of charge. IPROTEC GmbH may, however, acquire the rights at the objects against payment of expenses of Supplier that have not been amortised yet and require Supplier to return the objects at any time.

### **13. Product Liability**

a) Supplier shall be responsible for any and all claims raised by third parties to the extent damages to persons or property have been caused by a defective product supplied by Supplier. Supplier shall defend and hold harmless IPROTEC GmbH against any liability arising thereof. If IPROTEC GmbH is obliged to call back its own products because of deficiencies of a product supplied by Supplier, Supplier shall bear all cost related to the call back. IPROTEC GmbH shall inform, as far as possible and acceptable, Supplier about the scope of call back measures and grant it an opportunity to comment.

b) Supplier shall take out insurance against product liability risks with a coverage of at least € 5 million and maintains it throughout the business relation with IPROTEC GmbH and up to 3 years later. Supplier shall provide IPROTEC GmbH a copy of the insurance policy upon request.

c) Nothing in this section shall limit any rights under statutory law for products liability.

#### **14. Material provided by IPROTEC GmbH**

a) Material provided by IPROTEC GmbH to Supplier for manufacturing products shall remain the property of IPROTEC GmbH. Supplier shall keep such material in custody applying the care of a prudent businessman and separate them from its own property or property of third parties and label it property of IPROTEC GmbH. Supplier shall take out insurance to the amount of the value of the material against loss or damage. Section 13 lit. b shall apply accordingly. Such material may be used for fulfilling the respective IPROTEC GmbH order only.

b) Any processing, remodelling, combination or amalgamation of material provided by IPROTEC GmbH shall be for the account and to the benefit of IPROTEC GmbH. New products so manufactured shall become property of IPROTEC GmbH immediately. If the material provided by IPROTEC GmbH is only a part of such new products, IPROTEC GmbH shall acquire joint ownership of the new objects to the share corresponding to the value of the material provided by IPROTEC GmbH in relation to the overall value of all material used.

#### **15. Relief from Supplier**

a) IPROTEC GmbH may claim relief within the supply chain as provided by the law (Sections 478 and 479 of the German Civil Code) in addition to, and without prejudice to its warranty rights. IPROTEC GmbH may claim from Supplier the same form of cure which it owes its own customers. The right to opt for a remedy under Section 439 par. 1 German Civil Code shall remain unaffected.

b) IPROTEC GmbH shall use its best endeavours to inform Supplier and ask for the point of view of Supplier within an appropriate period of time before acknowledging or fulfilling its own warranty obligations. If Supplier does not reply within such period of time, the warranty provided by IPROTEC GmbH shall be deemed lawfully owed to the IPROTEC GmbH customer, subject to proof to the contrary by Supplier.

c) IPROTEC GmbH shall be entitled to relief within the supply chain even if products have been processed, amalgamated or combined.

#### **16. Confidentiality**

a) Supplier shall treat the terms of an agreement and all information received from IPROTEC GmbH in relation to the agreement as confidential and shall use it only to the extent necessary to fulfill the agreement. This shall not apply if Supplier proves that it was aware of such information before it entered into contacts with IPROTEC GmbH or has been provided such information later on by a third party without an obligation of confidentiality or that the information was in the public domain or has become public without the responsibility of Supplier.

Supplier shall mention its business relationship with IPROTEC GmbH to third parties with the prior written consent of IPROTEC GmbH only.

b) Supplier shall exhibit products produced exclusively for IPROTEC GmbH, namely according to drawings or specifications provided by IPROTEC GmbH, or manufacture such products for third parties, only with the prior written consent of IPROTEC GmbH.

Supplier shall pay to IPROTec GmbH a contractual penalty of EUR 10,000.00 for any infringement to this Section 16. This shall not exclude the right to claim higher damages.

#### **17. Retention of Title**

Title to products supplied shall pass to IPROTec GmbH without any conditions and independently from payment of the purchase price. In particular, extended or prolonged retention of title shall be excluded. In any case, title to the products shall pass to IPROTec GmbH upon payment of the prices for these very products.

#### **18. Severability**

If any provision in the agreement or in these terms is or becomes invalid, the validity of the other provisions of the agreement or of these terms shall not be affected. If the agreement or these terms have gaps, these gaps shall be deemed filled by provisions which the parties, considering the intention of the agreement and the purpose of the terms, would have agreed upon if they had been aware of the gaps.

#### **19. Place of performance, court of venue, applicable law**

a) Exclusive court of venue, shall be the District Court of Munich I. IPROTec GmbH may also file suit at the place of general jurisdiction of Supplier.

b) The agreement shall be subject to the law of the Federal Republic of Germany, except for its rules of conflicts of law. The UN Convention on International Sales of Goods shall not apply.

c) If in doubt, the German language version of these Terms shall prevail