

# GENERAL CONDITIONS

**For delivery of machinery and services of IPROTEC GmbH, Germany.**

Effective as of August 1, 2006

**for use with** natural persons and legal entities (companies) who enter into an agreement or contract within the scope of their commercial or independent professional work and legal entities of public law or a public-law special fund.

## **I General provisions**

1. The general conditions of IPROTEC GmbH apply for all deliveries and services unless any special contractual agreements have been entered into.

Deviating contractual conditions of the orderer shall not become part of the contract, neither by acceptance of the order nor by his order confirmation under reference to his general terms and conditions. A contract shall be entered into with the written order confirmation by IPROTEC GmbH, unless something different is expressly agreed on.

2. The documents that are part of the offer, such as figures, drawings, weight and size indications, are only approximates unless expressly designated as binding. IPROTEC GmbH reserves title and copyright in any cost estimates, drawings and other documents – also in electronic form; they must not be made accessible to any third parties. Supplier must only make plans designated as confidential by the orderer to third parties with his consent.

## **II Scope of the delivery**

The scope of the delivery shall be according to the written order confirmation of IPROTEC GmbH, if supplier's offer is made with a binding period of time and acceptance thereof occurs in time, the offer shall be relevant unless the order confirmation is not sent in time. Amendments, modifications and/or alterations require supplier's written confirmation.

## **III Price and payment**

1. The prices are deemed ex works unless expressly agreed otherwise, including loading in the factory, but excluding unloading. The prices shall be excl. VAT at the respective statutory amount.
2. Unless explicitly agreed otherwise, payment shall be made in cash without any deduction, in freely transferable funds at supplier's place of business, as follows:
  - 30% downpayment after receipt of the order confirmation,
  - 60% once the orderer's been notified that the main parts are ready for shipment and the remainder within one (1) more month after risk transfer.
3. The orderer may only declare retention or set-off against undisputed or legally

validly determined counterclaims.

#### **IV. Delivery time**

1. The delivery period shall commence upon dispatch of the order confirmation, but not before provision of the documents, approvals, releases to be provided by the orderer and prior to unconditional receipt in full of the agreed downpayment.
2. The delivery period shall be or is deemed to have been complied with if the object to be delivered has left the factory on or prior to expiry thereof or if readiness for shipment has been reported. If acceptance is required, the acceptance date shall be relevant, alternatively the information on readiness for acceptance, unless the acceptance can be refused with justification.
3. The delivery period extends appropriately if delays occur due to force majeure, labour disputes (including strike and including any thereof occurring in supplier's facility), suppliers or other events outside of the area of influence of supplier. Supplier shall not be responsible or held liable for such circumstances even if they occur during its default. Supplier shall, in urgent cases, notify orderer of commencement and termination of any such event as soon as possible.
4. If the orderer has suffered damages due to delay as a direct result of supplier's fault, orderer shall be entitled to default compensation. Such compensation shall amount to ½% (in words: zero-point-five per cent) for each complete week of delay, but, in event, not to exceed 5 % (in words: five percent) of the value of the part or portion of the overall delivery that cannot be used in time or according to the contract due to such delay. Any excess damage is only reimbursed in cases of section VIII 5.
5. If, upon orderer's request, shipment is postponed, effective one (1) month after notification of readiness for shipment, any costs resulting from or relating to storage, and in case of storage at supplier's factory, at least ½% (in words: zero-point-five percent) of the invoiced amount for each month. Irrespective thereof, supplier shall be entitled to dispose of the object otherwise subsequent to setting and following expiry of a reasonable deadline and to supply the orderer within a reasonably extended period.
6. Compliance with the delivery period requires performance of the orderer's contractual obligations.

#### **V. Passing of risk and acceptance**

1. Risk shall pass to the orderer at the latest when dispatching the parts of the delivery, even if partial deliveries are made or supplier has assumed any other services, e.g. the shipping costs or transport and setup. On request of the orderer, supplier shall insure the shipment against theft, breakage, transport, fire and water damage and any other insurable risks at the orderer's expense. Where acceptance is required, it shall be essential for passing of the risk. It shall take place without delay at the date of acceptance.
2. If shipping is delayed due to circumstances that are due to the orderer's fault, the risk shall pass to the orderer from the day on which readiness for shipment

is declared, but supplier shall be obliged to take out the insurances desired by the orderer on the request and expense of the orderer.

3. Delivered objects must be accepted by the orderer notwithstanding the rights from section VII even if they have any inessential defects.
4. Partial deliveries are admissible.

## **VI. Retention of title**

1. Supplier reserves all right, title and interest in or with respect to the delivered object until any and all payments under or in connection with the delivery contract have been unconditionally received in full.
2. Supplier shall have the right to insure the delivered object on orderer's expense against theft, breakage, fire, water and other damage unless orderer's proven conclusion thereof.
3. Prior to acceptance and payment in full, the orderer must not and is prevented from pledging or granting the delivered object as collateral. Supplier must be informed forthwith and without undue delay in case of attachment or seizure or any other third-party disposals.
4. In case of orderer's non-contractual conduct or behaviour, particularly in case of a payment default, supplier is, following expiry of a reasonable deadline, entitled to take back the object and the orderer shall be unconditionally obliged to release the same.
5. Extended and expanded reservation of title in case of permanent business relationships and admissibility of further sale of the goods subject to retention of title:
  - a) Supplier reserves all right, title and interest, including all ancillary rights, it has or may have with respect to the delivered objects/goods until all claims of supplier against the orderer resulting from or relating to the business relationship, including any future claims from contracts entered into, either concurrently or subsequently, have been complied with in full – subject to prohibition/ban of excess collateral. This shall also apply if individual or all claims of supplier were included in a current account and the balance has been determined and accepted. In case of conduct of the orderer in violation of the contract, specifically in case of default of payment, supplier shall have the right to take back the object of the delivery after setting a grace period and the orderer shall be obliged to release it. The orderer shall inform supplier in writing without delay in case of attachment or other third-party access.
  - b) The orderer shall have the right to sell on the delivered object in the ordinary course of business. However, orderer assigns all claims that arise or may arise against the purchaser or any third party from further sale to the accepting supplier, irrespective whether any the goods being subject to retention of title were sold on without or after processing. The orderer remains entitled to collect this claim even after the assignment. Supplier's right to collect the claim directly shall remain unaffected thereby, but

supplier commits to not collecting the claims contingent upon and unless orderer's complying with its payment obligations. Supplier may demand disclosure of assigned claims and corresponding debtors thereof by orderer together with all information necessary or required to collect the same and orderer further undertakes to submit all associated documents and to inform debtors of such assignment. Provided the delivered object is sold on together with goods other than supplier goods, the orderer's claim against the purchaser is deemed assigned in an amount corresponding to the delivery price agreed upon between supplier and orderer.

- c) Processing or conversion of goods subject to retention of title shall always be performed by the orderer for supplier. If goods being subject to retention of title are processed with objects other than supplier objects or goods, supplier shall automatically acquire joint ownership in the new object in proportion of the value of the goods being subject to retention of title to the other processed objects at the time of processing. Irrespective thereof, conditions set forth herein for goods being subject to retention of title apply *mutatis mutandis* to the object resulting from processing. Supplier undertakes to release the collateral subject, in all respects, to the value thereof exceeding the underlying, secured claims, subject to the same not having been settled, by 25%.

## VII. Defects of material and title

For defects of material and title of the delivery, which also includes the lack of expressly warranted qualities, supplier shall be liable as follows, under exclusion of any further claims and notwithstanding section VIII 4:

1. In supplier's discretion, all parts that were defective upon transfer of risk shall be improved or re-delivered free of charge. Any such defects found shall be reported to supplier forthwith and without delay. Replaced parts shall become supplier's property.
2. Warranty shall not be accepted and is explicitly excluded for any damages caused for one of the following reasons:

Unsuitable or improper use, defective assembly or commissioning by the orderer or third parties, natural wear, defective or negligent treatment, unsuitable operating equipment, replacement materials, defective construction work, unsuitable construction ground, chemical, electrochemical or electrical influences where not due to supplier's fault.

3. The orderer shall provide supplier with the required time and opportunity for performance of any improvements and replacement deliveries that appear necessary upon coordination with supplier; otherwise, supplier shall be released from his liability for defects.

Only in urgent cases of direct danger to operational security and to avoid and/or prevent disproportionate damage, in which case orderer must promptly inform supplier, or if supplier is, upon two preceding written requests and following lapse of a reasonable time period, in default with remedial action, orderer shall be entitled to rectify the same either directly or by retaining a qualified third party and to demand compensation from supplier for necessary

and proven cost.)

4. Of the direct costs arising from improvement or replacement delivery, supplier shall assume the costs for the replacement part, including shipping, and appropriate costs for installation and removal, as well as, if reasonably appropriate from case to case, the costs for provision of any installers or helpers. Apart therefrom, orderer shall bear the costs.
5. Notwithstanding the foregoing and for the avoidance of doubt, supplier's liability shall be excluded in full for any direct and/or indirect damages and/or consequences, including, but not limited to, consequential damages, arising or following from or which may arise or follow from any improper or inappropriate modification, rectification or maintenance by any third party.
6. If use of the object of the delivery leads to violation of the any commercial property or copyrights in the country, the supplier shall ensure at his expense that the orderer can continue to use the delivered object. This shall be done by the supplier changing the object suitably so that there is no violation of property rights anymore. If this is not reasonable from an economic point of view or if it cannot be done within an appropriate period of time, the orderer shall have the right to declare rescission of the contract. Under the prerequisites named, the supplier shall also have a right to declare rescission of the contract.
7. The supplier's obligations specified in Section VII 6 shall be final, subject to liability according to Section VIII 5 in case of violation of property and copyrights. They shall only be present where orderer informs supplier without delay of the assertion of such violation of property or copyright, orderer supports supplier at an appropriate scope in defence against the asserted claims or supplier enables performance of modification measures according to VII 6, supplier retains all defence measures, including settlement out of court, the legal defect is not due to any instruction of the orderer and the violation of rights was not caused by the orderer having changed the delivered object independently or used it in any non-contractual manner.

### **VIII. Liability, exclusions, rescission**

In case of transactions among merchants, a warranty period of twelve (12) months shall apply (pursuant to § 309 no. 8(b) et seqq. German Civil Code) from the date of risk transfer or passing thereof.

The complaint obligation (inspection of the goods without delay) among merchants shall apply (pursuant to § 377 German Commercial Code). If the delivered object could not be used according to the contract by the orderer due to the supplier's fault because of lack of or defective performance of suggestions and consulting before or after conclusion of the contract or other contractual secondary obligations – specifically regarding the operation and maintenance of the object of the delivery – the following liability rules shall apply:

1. The orderer may rescind from the contract if the entire performance is ultimately impossible for supplier prior to risk transfer having occurred or passing of risk. This also applies in case of inability of supplier. Orderer may also rescind from the contract if the performance of a part of the delivery becomes impossible by number when ordering objects of the same type and if orderer is able to

claim a special interest in refusal of partial delivery. If this is not the case, orderer may reduce the compensation accordingly.

2. In case of delivery default within the meaning of Section IV of these delivery conditions, and subject to orderer granting supplier a reasonable deadline following occurrence of supplier's default, and if supplier's not complying therewith, orderer shall be entitled to rescind from the agreement.
3. If impossibility occurs during default of acceptance or due to orderer's fault, orderer's obligation to compensation shall remain unaffected thereby.
4. Orderer also has a right to rescission of the contract if, following two preceding written requests and upon lapse of reasonable period of time, a deadline for improvement or replacement delivery with regard to a defect being subject to supplier's fault within the meaning of these delivery conditions expires without result. Orderer's right to cancellation of the contract shall also apply in other cases of failure of improvement or replacement delivery by supplier
5. Any other further claims of orderer shall be excluded, particularly for termination or reduction of price or reimbursement for damages of any kind, including, but not limited to, consequential damage and lost profits, which are unrelated and have not directly occurred to the delivered object. This exclusion of liability shall not apply in case of wilful intent or gross negligence of the owner or managing employees or in case of culpable violation of essential contractual obligations. In case of culpable violation of essential contractual obligations, the supplier shall be liable only for the reasonably foreseeable damage typical for this type of contract/agreement – except in cases of wilful intent and gross negligence of the owner or managing employees. The exclusion of liability shall also not apply in cases of liability under the product liability act for injury or property damage to privately used objects due to defects of the delivered object. It shall also not apply if any expressly warranted properties are missing if the representation had the purpose of securing orderer against damage that did not occur to the delivered object as such (only adequate damage).
6. Supplier assumes no liability for damage and function impairment caused by technical or other specifications of orderer.

## **IX. Expiration**

All claims of orderer – irrespective on whatever legal or factual grounds – shall expire within twelve (12) months. In case of damages claims according to Section VIII 5 the statutory periods shall apply. The same also apply for defects of a building or delivered objects which are usually used for a building and that have directly caused the defect.

## **IX. Software of supplier**

If the delivered object also contains software of supplier, orderer shall be granted a non-exclusive right for use thereof, including its documentation. The software is provided only for use on the intended delivered object. The software must only be used on

one system. Orderer must only reproduce, revise, translate or convert the software from object code to source code within the legally permissible scope (§ 96a et seqq. German Copyright Act). Orderer undertakes and agrees not to remove manufacturer information and specifically copyright notices or to modify the same without the supplier's express consent. Any other rights in the software and documentation, including copies, shall remain with supplier or the software supplier. The assignment of sublicenses shall not be admissible.

**XI. Applicable law/place of jurisdiction**

1. Unless explicitly agreed otherwise, the relationship between supplier and orderer is subject to and shall be governed by the laws of the Federal Republic of Germany.
2. The place of jurisdiction within the meaning of § 38 para. 1 German Procedural Code (ZPO) shall be the court of supplier's place of incorporation. However, supplier shall have the right to raise a claim at the general place of jurisdiction of orderer or at any other place as well.

**Remark: In case of doubt, the German version shall prevail**

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