

General Terms and Conditions of Sale of Intelligente Sensorsysteme Dresden GmbH (As of: 10.2021)

1. Domain of validity

(1) These Terms and Conditions of Sale apply exclusively for companies, public-law entities or special public funds in the sense of section 310 (1) German Civil Code (BGB). We only acknowledge conflicting terms and conditions of the client or those that diverge from our Terms and Conditions of Sale if we have expressly consented to their validity in writing.

(2) These Terms and Conditions of Sale also apply for all subsequent transactions with the customer if they concern related legal transactions.

2. Offers, orders, conclusions of contract

(1) Our offers are always non-binding and, unless otherwise specified, limited to 30 days following the date of issue. The right of prior sale is expressly reserved.

(2) If the order is qualified as an offer pursuant to section 145 German Civil Code, we may accept it within two weeks. Orders and delivery schedules may also be issued by remote data transfer or fax.

(3) Our employees are only authorised to provide descriptions of the products and services available for sale. Only the customer is liable for selecting the right products and services. Information in catalogues, product descriptions, datasheets, offers, drawings or other documents relating to measurement, quantity, colour, use, technical data and other properties etc. are only descriptions of the delivery item, but do not – unless expressly agreed otherwise – constitute guarantees.

3. Orders: Frozen Zone and Material Release Period

(1) Purchase orders (or equivalents such as call-offs or EDI orders) must cover requirements for a period of at least twelve (12) weeks and be updated every two weeks ("firm orders"). In addition, a non-binding forecast for a period of six (6) months should be submitted.

(2) Each purchase order shall be firm for the initial twelve (12) week period (frozen windows), with the following definitions:

1. Week 1 to Week 4 (production release phase) correspond to orders for the next four weeks from the date of the purchase order. No cancellations/changes to these orders are allowed from the customer side (frozen zone).
2. Week 5 to week 12 (material release phase) from the date of purchase order: Order changes of +/- 15% compared to the previous order for the referring weeks are permitted on the part of the customer.

4. Prices/payment

(1) If no other agreement has been made, our prices apply "ex works", excluding packaging and subject to applicable VAT. Costs of packaging are invoiced separately. Prices are in euro unless specified otherwise.

(2) The purchase price must be paid exclusively to the specified account. A discount may only be applied if this has been agreed separately in writing.

(3) If not agreed otherwise, the purchase price must be paid within 30 days of the invoice date. Default interest in the amount of 8 % p.a. shall be charged over the respective prime rate. We reserve the right to claim further damages in respect of losses arising from the default.

(4) We reserve the right to make initial deliveries on the basis of C.O.D. or cash in advance.

(5) If we become aware of circumstances, which cast doubt on the credit worthiness of the customer after we accepted an order, we are entitled to only make our delivery on the basis of C.O.D. or payment in advance.

(6) If no fixed price(s) have been agreed, we reserve the right to make reasonable price changes in connection with changes in the cost of wages, materials and distribution for deliveries made 3 months or more after the conclusion of the agreement.

5. Set-off and retention

The customer is only entitled to set-off if its counterclaims are undisputed or have been legally established. The customer is only entitled to assert rights of retention on the basis of counterclaims arising from the same contractual relationship.

6. Delivery, delivery deadlines, delivery note

(1) Delivery dates or periods, which have not been expressly agreed with binding effect, only represent non-binding information. The delivery period we have specified begins upon prompt and proper fulfilment of the customer's obligations. The plea of non-performance of the agreement is reserved. If not otherwise agreed, the customer must accept partial deliveries.

(2) If the customer defaults on acceptance or if it breaches other duties to collaborate, we are entitled to demand the compensation of the damages including any increased expenditure. We reserve the assertion of further claims. If the above prerequisites are at hand, the risk of accidental loss or accidental deterioration of the purchased item is transferred to the customer on the date said party defaults on acceptance or enters into debtor's delay.

(3) In the event of default in delivery, which is attributed to us on the basis of a culpable breach of a cardinal duty of this agreement or another intentional or grossly negligent breach of this agreement for which we are accountable and where culpability is attributed to our representatives or vicarious agents, we shall be held liable in accordance with statutory provisions subject to the stipulation that liability to compensate damages is limited to foreseeable damages typical of such contracts. Further liability for default in delivery, which is attributed to us, is excluded. Further statutory claims and rights of the customer, to which it is entitled in addition to the claim for the compensation of damages on the basis of default in delivery attributed to us, remain unaffected. The deadlines shall be extended by a reasonable amount if failure to comply with deadlines is attributed to an Act of God, e.g. war, unrest or similar events such as a strike or lock-out. If deliveries and/or services cannot be provided in a timely manner in full or in part without this being attributed to us, then we are entitled to choose between complete or partial withdrawal from the agreement.

7. Shipping and transfer of risk

When goods are shipped at the request of the customer, the risk of accidental loss and accidental deterioration of the goods is transferred to the customer at the time of shipment. The goods are shipped ex works at the cost and risk of the customer.

8. Retention of title

(1) We retain the title to the delivered item until full payment of all receivables resulting out of the delivery agreement. This also applies for all subsequent deliveries, even if we do not always expressly cite this provision. We are entitled to take back the purchased item if the customer acts in breach of this agreement.

(2) The customer is obligated to handle the purchased item with care as long as the title has not been transferred to him. Said party is in particular obligated to adequately insure valuable goods at the new value against the risk of theft, fire and water damage. If maintenance and inspection work must be performed, the customer must execute it in a timely manner and at its own expense. To the extent the title has not yet been transferred, the customer must immediately notify us in writing if the delivered item has been seized or exposed to other third-party intervention. If the third party is unable to reimburse the judicial and extrajudicial costs of a suit pursuant to section 771 German Civil Proceedings Ordinance (ZPO), the customer shall be liable for any loss we suffered.

(3) The customer is entitled to resell the retained good in connection with normal business transactions. The customer shall, already at this time, assign the receivables of the buyer in connection with the resale of the retained good to us in the amount of the agreed invoice total (including VAT). This assignment applies regardless whether the purchased item has been resold in an unprocessed or processed state. The customer is also authorised to collect the receivable, even after having assigned it. This does not affect our authorisation to collect the receivable ourselves. However, we will not collect the receivable as long as the customer satisfies its payment obligations with the proceeds collected, does not default, no application for the initiation of insolvency proceedings has been submitted and payments have not been suspended.

(4) Processing or modification of the purchased item by the customer always takes place in our name and for our order. In this case, the customer's reversionary interest to the purchased item continues to apply for the modified item. If the purchased item is processed together with other objects, which do not belong to us, we will acquire co-ownership of the new item in proportion to the objective value of our purchased item to the other processed objects at the time of processing. The same applies if the purchased item is combined with other items. If it is combined such that the customer's item is considered the principle item, then it shall be deemed agreed that the customer transfers us co-ownership pro rata and that the resulting sole ownership or co-ownership is kept for us. To secure our receivables vis-à-vis the customer, the customer shall also assign us all claims which arise against third parties through the combination of goods subject to the retention of title with real property; we accept this assignment already now.

(5) We undertake to release the collateral, to which we are entitled, if the customer requests this to the extent its value exceeds the value of the receivables to be secured by more than 20 %.

9. Handed over documents

We retain the rights of ownership and copyrights to all documents such as calculations, drawings etc., which are handed over to the customer in connection with the placement of the order. These documents may not be made available to third parties unless we grant the customer our express written consent. If we do not accept the offer of the customer within the period specified under item 2 of these Terms and Conditions, these documents must be immediately returned to us. The contractual partners undertake to treat all commercial and technical information, which is not publicly known and which it became aware of in connection with this business relationship, as a business secret.

10. Warranty, report of defects and recourse/manufacturer's recourse

(1) Warranty rights of the customer require that said party has properly complied with its duties to examine and report defects pursuant to section 377 German Commercial Code (HGB).

(2) Defect claims for new merchandise expire in 12 months following successful delivery of the goods, which we delivered, to the customer's location. Warranty claims are excluded for the sale of used goods. The above provisions do not apply to the extent the law pursuant to section 438 (1) no. 2 BGB (buildings and items used for buildings), section 479 (1) BGB (right of recourse) and section 634a (1) BGB (construction defects) imperatively prescribes longer periods. Our consent is required before goods are returned.

(3) If the delivered item exhibits a defect despite due care and the defect already existed at the time the risk was transferred, then we may choose between repairing the item or replacing it providing the defect was reported in a timely manner. We must always be given the opportunity to provide subsequent performance within a reasonable period. The above provision does not affect rights of recourse without restriction.

(4) If subsequent performance fails, the customer – irrespective of any claims for compensation – may withdraw from the agreement or reduce the remuneration.

(5) Defect claims do not exist in the event of only minor divergence from the agreed condition, if usability is only affected to a marginal extent, in the event of natural wear or general wear as well as in the event of damages incurred by incorrect or negligent handling after the transfer of risk, excess stress, unsuitable equipment, incorrect installation and/or commissioning or special external influences, which are not included under the terms and conditions of the agreement. No default claims exist for repairs or modifications improperly performed by the customer or third parties or in connection with their consequences.

(6) Claims of the customer are excluded if they relate to expenses required for subsequent performance, in particular transport, route, work and material costs to the extent the expenses increase because the goods we have delivered have been subsequently brought to a location other than the customer's place of business unless such transport is consistent with the goods' intended use.

(7) The customer only has rights of recourse towards us if the customer has not made any agreements going beyond the imperative statutory rights of recourse with its buyer. Paragraph 6 also applies accordingly to the scope of the customer's right of recourse towards the supplier.

11. Liability

(1) We are liable without limitation, as prescribed by statutory provisions, for injury to life, body and health, which are attributed to a negligent or intentional breach of duty by ourselves, our legal representatives or other vicarious agents as well as for damages covered by liability in accordance with the German Production Liability Act (Produkthaftungsgesetz).

(2) We are liable, as prescribed by statutory provisions, for damages not described under paragraph (1) and for intentional as well as grossly negligent breaches of duty as well as for malice attributed to us, our legal representatives or our vicarious agents. In this case, however, liability for damages is limited to foreseeable typical damages to the extent we, our legal representatives or our vicarious agents have not acted in an intentional manner. However, we are only liable for damages resulting from the absence of the guaranteed condition or durability, but which do not directly occur in the item if the risk of such damage is clearly covered by the guarantee of condition and durability.

(3) We are also liable for damages incurred by simple negligence to the extent the negligence concerns failure to comply with such contractual duties, which are essential for the fulfilment of the purpose of the agreement (cardinal duties). However, we are only liable to the extent the damages are typical of the agreement and foreseeable.

(4) Any other liability is excluded regardless of the legal nature of the asserted claim; this also applies in particular to claims in tort or claims to the reimbursement of futile expenditure in lieu of performance; our liability as per item 9 of these Terms and Conditions remains unaffected. To the extent our liability is ruled out or restricted, this also applies for the personal liability of our salaried employees, jobholders, employees, representatives and vicarious agents.

12. Export provisions

(1) In the event of export, the customer is obligated to observe and comply with all export control regulations relating to the delivered goods. We are entitled to withdraw from the agreement in the event of non-compliance with export provisions.

(2) If delivery includes export, which is subject to approval, the agreement shall be deemed concluded subject to the condition that definitive approval of export has been received.

The customer is obligated to enclose and submit all documents required for approval. The customer is also obligated, if requested to do so, to provide all where-used lists and/or confirmations of final whereabouts, even if they are not officially required.

(3) In cases involving export/transport, delivery is only exempt from German VAT upon receipt of a proof of export.

13. Place of performance, legal venue, other information

(1) The place of performance and exclusive legal venue for all disputes resulting out of this agreement is our place of business to the extent not specified otherwise in the confirmation of order.

(2) This agreement and all legal relationships between the parties are subject to the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(3) All agreements made between the parties for the purpose of executing this agreement have been recorded in writing in this agreement.

(4) If individual provisions of this agreement are or become invalid or contain a gap, the validity of the remaining provisions shall not be affected by this. The parties undertake to negotiate a legally permissible provision to replace the invalid provision, which comes as close as possible to the economic purpose of the invalid provision and/or to filling the applicable gap.

Dresden

Intelligente Sensordysteme Dresden GmbH