

## **General Terms and Conditions THALES-instruments GmbH**

### **§ 1 Scope of application – subject matter of the contract**

1. Our General Terms and Conditions shall apply to delivery and installation of chattels in accordance with the contract concluded between us and the customer.
2. Our General Terms and Conditions shall apply exclusively; we shall not accept conflicting conditions of the customer or conditions of the customer deviating from our General Terms and Conditions, unless we have expressly approved their validity in writing. Our General Terms and Conditions shall also apply if we perform the delivery without reservation while being aware of conflicting conditions of the customer or conditions of the customer deviating from our General Terms and Conditions.
3. Our General Terms and Conditions shall exclusively apply towards entrepreneurs, legal entities under public law or special assets under public law in terms of § 310 section 1 *BGB* [German Civil Code].
4. Our General Terms and Conditions shall also apply to all future business transactions with the customer/purchaser as far as they are legal transactions of related kind.

### **§ 2 Tender – conclusion of contract – tender documents**

1. As far as an order is to be deemed as a tender in accordance with § 145 *BGB*, we can accept this within 2 weeks by sending a confirmation of order or by delivery of the goods or by performance of the works and handing over of the work, as the case may be. Tenders or quotes previously given by us shall be subject to change.
2. All quantities stated in our tenders and/or quotes shall only be the approximately determined values. The final quantities the invoicing shall be based on shall comply with the actually performed deliveries and services to be determined by measurement of quantities; in case of hourly rate works according to the actually performed working hours.
3. We shall reserve property rights and copyrights to illustrations, drawings, calculations and other documents. This shall also apply to such written documents that are identified as "confidential". Prior to their passing-on to third parties, the customer/purchaser shall require our express written consent.
4. The customer/purchaser shall be obliged to provide all documents and data required to perform the order and to update them where necessary. The customer/purchaser shall furthermore be obliged to participate in the performance of the order by participation in arranged work meetings and by appointing a responsible contact person who has to be authorised to make all necessary decisions in line with the performance of the order.
5. We shall assure the confidential handling of all information and documents received from the purchaser as well as of the results developed within performance of the order.

### **§ 3 Prices and terms of payment**

1. Unless otherwise agreed in writing, our prices shall apply ex works excluding packaging and plus value-added tax in the respectively valid amount. Costs of the packaging shall be invoiced separately.
2. The prices agreed in the contract shall be applicable. Unless a fixed price agreement was made, reasonable changes in price due to changed wage, material and distribution costs for deliveries performed 3 months or later after conclusion of the contract shall remain reserved. Price increases are possible if certain difficulties for our performance of service occur after conclusion of the contract that had not been notified to us in writing prior to submitting the tender. Such difficulties could be for example: not freely accessible installation zones, installation zones that are not free of cables, lines and warfare agents as well as bad weather.
3. All extra works exceeding the offered scope of services with respect to quality, content and duration shall be ordered in writing. All works and services additionally requested by the purchaser for reasons we are not responsible for shall be invoiced to the customer/purchaser by us in accordance with the accrued labour and material costs. Extra works due to delays we are not responsible for shall be additionally invoiced in accordance with the accrued labour and material costs, namely on the basis of the hourly rates of the employees involved and the required time as well as the material costs.
4. Unless otherwise agreed, the purchase price/the overall remuneration (after deduction of partial payment performed, as the case may be) shall be paid within 10 days after delivery/acceptance. The deduction of discount shall only be permissible in case of special written agreement. The statutory regulations concerning the consequences of delay in payment shall apply. The assertion of a higher damage caused by delay shall remain reserved. The payments of the purchase price/the overall remuneration shall exclusively be made to the account stated in the confirmation of order.
5. For self-contained service parts, we can demand a part payment in the amount of the service value performed in accordance with the statutory provision.
6. The customer/purchaser shall only be entitled to set-off rights if their counterclaims are effectively identified, undisputed or acknowledged by us. A right of retention shall be excluded unless the counterclaim of the purchaser/customer arises from the same contractual relationship and is undisputed or effectively identified.

### **§ 4 Time of performance – transfer of risk**

1. Delivery periods/performance or completion periods stated by us shall be extended in case of strike and force majeure by the duration of the delay. The beginning of the delivery periods/performance or completion periods stated by us shall require the due and proper fulfilment of the obligations of the customer/purchaser. The defence of unfulfilled contract shall remain reserved.
2. Unless the confirmation of order states otherwise, delivery shall be agreed "ex works".

### **§ 5 Transfer of risk while using**

1. If the goods are sent to the customer/purchaser on their demand, the risk of accidental perishing or of accidental deterioration of the goods shall be transferred to the customer/purchaser upon dispatch to the customer/purchaser, upon leaving the works/storage at the latest. This shall apply irrespective of whether the dispatch of the goods is performed from the place of fulfilment or who bears the freight costs.

### **§ 6 Liability for defects**

1. The warranty rights of the customer/purchaser shall require that they have properly fulfilled their inspection and objection obligations owed in accordance with § 377 *HGB* [German Commercial Code].
2. Claims due to defects shall fall under the statute of limitations 12 months after performed delivery of the chattels delivered by us to our customer/purchaser. Aforementioned provisions shall not apply as far as the law in accordance with § 438 section 1 number 2 *BGB*, § 479 section 1 *BGB* and § 634 a section 1 *BGB* stringently stipulates longer periods. Prior to a possible return of the goods, our consent shall be obtained.
3. If the delivered goods show a defect despite of all exercised diligence that was already present at the time of transfer of risk, we shall warrant by rectification or delivery of replacements or re-manufacturing at our option. The opportunity for supplementary performance within a reasonable period shall always be given to us. Rights to withdrawal shall not be affected by aforementioned regulation without limitation.
4. As far as we refuse the fulfilment seriously and finally or we refuse the removal of the defect and supplementary performance due to unreasonable costs or if it has objectively failed, the customer/purchaser can at their option only claim reduction of the remuneration (reduction) and, if the case may be, claim for damages in line with the following limitation of liability.
5. There shall be no claims due to defects in case of just insignificant deviations from the agreed quality, in case of just insignificant impairments of the usability and in case of natural wear and tear like in case of damages that arise after the transfer of risk due to defective or careless treatment, excessive strain, unsuitable operating resources, defective construction works, unsuitable foundation soil or due to special outer influence that are not presupposed according to the contract. If the customer/purchaser or third parties perform improper repair works or changes, there shall also be no claims due to defects for them and the consequences resulting from them.
6. Claims of the customer/purchaser of the expenses required for the purpose of supplementary performance, especially transport, call-out, labour and material costs shall be excluded as far as the expenses increase because the goods delivered by us were subsequently brought to a place other than the agreed place of delivery of the customer/purchaser.
7. There are rights of recourse of the customer/purchaser against us only insofar as the customer/purchaser did not make agreements beyond the statutorily

mandatory claims due to defects with their consumers. For the extent of the right of recourse of the customer/purchaser against the supplier, section 6 shall apply accordingly.

8. The customer/purchaser shall not receive any guarantees by us in legal terms.
9. § 7 shall apply to claims for damages due to defect.

### **§ 7 Liability for damages**

1. Our liability for contractual breach of duty as well as tort claim shall be limited to intent and gross negligence. This shall not apply in case of violation of life, body and health of the customer/purchaser, claims due to violation of cardinal obligations and compensation of damages caused by delay (§ 286 BGB). Insofar, we shall be liable for every degree of fault.
2. Aforementioned exclusion of liability shall also apply for slightly negligent breach of duty of our vicarious agents.
3. As far as a liability for damages not based on the violation of life, body or health of the customer/purchaser is not excluded for slight negligence, such claims shall fall under the statute of limitations within one year, starting from the accrual of the claim or in case of claims for damages due to defect starting from the handing over of the item; this shall not apply for damages due to defect of the manufactured work.
4. As far as the liability for damages towards us is excluded or limited, this shall also apply with respect to the personal liability for damages of our employees, co-workers, representatives and vicarious agents.

### **§ 8 Reservation of ownership**

1. We shall reserve ownership of the delivered item/the materials delivered by us until complete payment of all receivables against the customer/purchaser, also if the concrete goods were already paid.
2. The customer/purchaser shall be obliged to handle the sales item/the work with care as long as ownership has not yet been transferred to them. They shall especially be obliged to insure it sufficiently at replacement value against theft, fire and water damages at their own cost. If maintenance and inspection works need to be performed, the customer/purchaser shall perform them at their own cost and in due time. As long as ownership has not yet been transferred, the customer/purchaser shall immediately inform us in writing if the delivered item/the work is attached or otherwise exposed to third party interventions. If the third party is not able to reimburse the judicial and extrajudicial costs of an action in accordance with § 771 ZPO [German Code of Civil Procedure] (third party proceedings) to us, the customer/purchaser shall be liable for the loss we suffered.
3. The customer/purchaser shall be entitled to resale of the retained goods in the usual course of business. The customer/purchaser shall assign the receivables from the consumer from the resale of the retained goods in the amount of the invoice final amount (including value-added tax) to us already now. This assignment shall apply irrespective of whether the sales item was resold without

or after processing. The customer/purchaser shall remain authorised to collect the receivable also after the assignment. Our authorisation to collect the receivables ourselves shall remain unaffected. However, we will not collect the receivable as long as the customer/purchaser fulfils their payment obligations from the collected proceeds, is not in delay of payment and especially if there is no request for opening of insolvency proceedings filed and if there is no suspension of payment.

4. The handling and processing or alteration of the sales item/the work by the customer/purchaser shall always be performed on behalf of us and by order for us. In such case, the expectant right of the customer/purchaser to the sales item/the work/the altered item is continued. If the sales item is processed with other items not belonging to us, we shall acquire the co-ownership in the new item in relation of the objective value of our sales item/our work to the other processed items at the time of processing. Same shall apply for the case of mixing. If the mixing is performed in a way that the item of the customer/purchaser is to be deemed as main item, it shall be agreed that the customer/purchaser shall transfer co-ownership to us proportionally and hold the so accrued sole ownership or co-ownership in custody for us. To secure our receivable against the customer/purchaser, the customer/purchaser shall assign such receivables that accrue to them by the connection of the retained goods/the work with a property against a third party to us as well; we shall accept this assignment already now.
5. We shall be obliged to release the security we are entitled to on demand of the customer/purchaser, as far as its value exceeds the receivable to be secured by more than 20%.

#### **§ 9 Statute of limitations of own claims**

1. Our claims for payment shall fall under the statute of limitations in 5 years, deviant from § 195 *BGB*. With respect to the beginning of the limitation period, § 199 *BGB* shall apply.

#### **§ 10 Form of declarations**

1. Declarations and statements relevant to the issue the customer/purchaser has to make towards us or a third party shall be made in writing.

#### **§ 11 Place of performance – choice of law – place of jurisdiction**

1. Unless otherwise stated in the contract, place of performance and payment shall be our place of business.
2. The law of the Federal Republic of Germany shall apply to this contract; the application of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded.
3. For contracts with merchants, legal entities under public law or special assets under public law, exclusive place of jurisdiction shall be the court responsible for our place of business.