

General Terms of Trade and Delivery of Umwelt- und Ingenieurtechnik GmbH Dresden

- GTTD Edition June 2006 -

§ 1 General provisions

- (1) These General Terms of Trade and Delivery (hereafter abbreviated to GTTD) apply to all quotations, deliveries and services (hereafter abbreviated to deliveries) by Umwelt- und Ingenieurtechnik GmbH Dresden (hereafter abbreviated to UIT) to their contractors. They also apply to all future business between the contract parties, without requiring additional notification thereof.
- (2) These GTTD apply exclusively to contracts made with UIT. Any conflicting and/or additional general terms of trade of the contractor are controverted; they do not apply unless UIT expressly states its approval in writing.

§ 2 Prices, due dates and payments

- (1) Unless contrary written agreements are made, the agreed prices are "ex works" and exclude loading, packaging, transport, storage, assembly and provision of a fitter, as well as the legal sales tax.
- (2) Payments must only be made to the specified account of UIT. Discounts may only be deducted with special written approval.
- (3) Unless other agreements are made, all payments must be made within 21 days of the invoice being issued.
- (4) Should the contractor fall into arrears, or if conditions become known after the contract is made which call their creditworthiness into question, UIT is entitled to demand immediate payment of the entire remaining debt of the contractor, to demand advance payments or security payments, or, after the expiry of a suitable extension period, to cancel the contract without affecting other rights. Doubts as to the creditworthiness of the contractor arise for UIT in particular if the contractor ceases to make payments, insolvency proceedings are started, or applies for insolvency proceedings and is refused for lack of assets.
- (5) In addition to the rights from par. (4), UIT is entitled to retain due deliveries and services (including those from other contracts) and, if services have already been rendered, to demand immediate payment of all amounts outstanding.
- (6) Unless fixed price agreements are made, UIT reserves the right to make appropriate price changes as a result of changing costs for wages and/or power and/or materials and or auxiliary and operating materials.

§ 3 Offset and rights of retention

- (1) The customer is only entitled to offset if their counterclaims are found to be legally binding or are uncontested. The ordering party is only entitled to exercise a right to retention if the counterclaim is based on the same contractual relationship.

§ 4 Delivery and delivery periods

- (1) UIT is entitled to make partial deliveries and provide partial services and to invoice these, and to change the materials of the products to be delivered without the permission of the contractor, provided this does not affect the properties or functionality of the products.
- (2) For on-time delivery, the contractor must provide all provisions, documents, approvals, releases punctually and comply with agreed payment conditions incl. advance payments and all other obligations required for delivery. If this is not the case, the delivery period shall be extended by an appropriate period. The defence of unfulfilled contractual obligations is reserved. If the contractor does not fulfil these obligations, UIT is also entitled to cancel the contract after the expiry of an appropriate extension period.
- (3) The delivery period shall be considered to have been observed if, at its expiry, a delivery has been shipped, or the contractor has been informed of shipping readiness.
- (4) The delivery period shall be extended by an appropriate period as a result of industrial action, measures by the authorities, force majeure, or the occurrence of similar events which can be proven to adversely affect the ability of UIT to deliver.
- (5) If the promised service is not available as UIT has not received deliveries from their subcontractors, UIT is entitled to provide a service equivalent in quality and price. § 2 Par. (6) remains unaffected. If this is also impossible, UIT is entitled to cancel the contract. If this is the case, UIT shall inform the contractor of the non-availability without delay and reimburse any payments already made by the contractor immediately.

- (6) Claims by the contractor for damages due to delivery delays or damages instead of the service are excluded for all cases of delayed delivery, even after the expiry of a set delivery period. This does not apply in cases of mandatory liability for intent, gross negligence or harm to life and limb or health. The contractor can only cancel the contract if UIT is responsible for the violation of an obligation – unless there is a material defect. The above regulations do not affect the onus of proof to the disadvantage of the contractor.
- (7) The contractor is obliged to state to UIT within an appropriate period on request whether they intend to cancel the contract or insist on delivery due to the delayed delivery.

§ 5 Transfer of risk

- (1) When UIT states that the delivery object is ready for shipping, the contractor must call it without delay.
- (2) The risk passes to the contractor when the delivery object has been brought to the shipping point or collected, even if freight-free delivery has been agreed. On request, and at the cost of the contractor, UIT can insure deliveries against the usual transport risks.
- (3) UIT shall select the shipping method.

§ 6 Retention of title

- (1) UIT retains title to the delivered goods until all claims from the business relationship have been fulfilled. The contractor is not entitled to pledge the goods or transfer them as security until then.
- (2) The Contractor is entitled to sell the goods onwards under retention of title as part of the routine course of business. In doing so, they already cede to UIT all claims arising from their customers to the amount owed to UIT. UIT accepts the cession. The contractor is still entitled to collect the ceded claim. This entitlement to collect becomes void if the contractor falls into arrears or undergoes any other kind of financial collapse.
- (3) Any finishing or processing of the reserved goods shall be performed for UIT with not obligations arising from this for UIT. In the case of processing with external items which do not belong to UIT, UIT is entitled to a proportionate co-ownership share of the resulting item in the relation of the invoice value of the reserved goods to the remaining items at the time of processing. The same applies if the contractor assumes sole ownership under § 947 Par. 2 of the German Legal Code (BGB). The new item, which the contractor stores for UIT free of charge, is a reserved good as defined by this provision. If the reserved goods are sold or used, the contractor already passes the resulting purchase price or labour costs to UIT at this point, regardless of whether the reserved goods are passed to either one or more recipients without or after processing, alone or together with external items. Additional claims related to the reserved goods, especially insurance claims, are also ceded to the same extent. UIT accepts the cession.
- (4) The contractor must inform UIT without delay of seizure, confiscation or other dispositions or interventions by third parties.
- (5) Should the contractor violate their obligations, in particular by delaying payment, UIT is entitled, after the expiry of an appropriate period set for the contractor to fulfil their contractual obligations, to cancel the contract and retrieve the reserved goods, and to enter the property of the contractor for this purpose and to use the goods to offset the liabilities to UIT.
- (6) UIT undertakes to release the existing securities on request by the contractor where the realistic value of the security exceeds the amounts to be guaranteed by more than 20%.

§ 7 Material defects

- (1) The contractor may not refuse to accept deliveries due to negligible defects. § 377 of the German Commercial Code (HGB) applies with the proviso that obvious and/or recognised defects must be notified specifically in writing within 8 days at the latest, and before the goods are finished, processed or combined.
- (2) Claims for material defects become invalid 12 months after the day of the transfer of risk. That does not apply where longer periods are legally mandatory and in cases of harm to life, limb or health, and for intentional or grossly negligent violation of obligations by UIT as well as for malicious concealment of a fault.

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- (3) All those parts or services which develop material defects within the period of limitation must be repaired, or new parts delivered or services re-performed free of charge at the choice of UIT, if the cause was already present at the time of the transfer of risk. For software errors, instructions on avoiding the effects of the error are sufficient supplementary performance.
- (4) No claims for defects may be made for negligible deviation from the agreed condition, negligible impairment of the usability, natural wear or damage which were caused after the transfer of risk by improper or careless handling, use of unsuitable operating equipment, faulty construction work, overvoltage, lightning and other external influences, and by unprofessional changes or repair work or unprofessional maintenance work in accordance with the operating instructions and for non-reproducible software errors.
- (5) When notifying defects, the contractor may only retain payment proportionately to an amount appropriate to the material defects which have occurred. If the notification of defects was unjustified, UIT can demand that the contractor compensate them for the resulting costs.
- (6) Claims of the contractor for the costs required for supplementary performance, especially transport, distance, work and material costs are excluded, where the costs increase because the object of delivery was moved to another location to the subsidiary of the contractor, unless the movement corresponds to its contractual use.
- (7) Claims to recourse of the contractor against UIT in accordance with § 478 of the German Legal Code (BGB) only exist where the contractor has not made any agreements with their customer exceeding the legal claims for defects. For the scope of the claim for recourse of the contractor against UIT under § 478 Par. 2 of the German Legal Code (BGB), Par. (7) applies accordingly.
- (8) § 9 also applies for claims for damages. Further or other claims of the contractor against UIT than those regulated in § 7 and their fulfilment assistants due to a material defect are excluded.

§ 8 Industrial property and copyright rights; lack of title

- (1) All industrial property and copyright rights (hereafter abbreviated to property rights) for design drawings, process descriptions and similar documents created by UIT are reserved by UIT. The client shall be granted simple non-exclusive use rights required for the uses governed by the contract. In particular, the client is not entitled to grant third parties use rights, while reserving the right to use the documents, or to edit and/or change the documents.
- (2) Unless otherwise agreed, UIT is only obliged to fulfil the delivery in the country of the delivery destination without violating the property rights of third parties.
- (3) If UIT manufactured the delivered item based on drawings or other documents provided by the client, the client is responsible for ensuring that the property rights of third parties have not been violated. If third parties prohibit the manufacturing and delivery of such items in particular based on property rights, UIT is entitled - without being obliged to investigate the legal situation - to cease all other activity and to claim damages if the client is liable. The client is also obliged to release UIT from all related claims by third parties immediately.
- (4) If a third party enters claims to the client based on property rights, UIT, to the exclusion of other claims, shall change or replace the delivery item and/or related documents as they see fit and at their own costs within the period set in § 7 Par. (2), such that property rights of third parties are no longer violated but the agreed specifications are still observed, or, by agreeing a licensing contract with the holder of the property rights, shall obtain the additional use rights for the client or accept return delivery of the delivery item and/or the documents with repayment of payments made less an appropriate usage fee for the period the delivery item was available to the client.
- (5) The client is only entitled to make claims in accordance with Par. (4) if the client informs UIT of the claims made by third parties in writing without delay, does not recognise a violation and all defence measures and settlement negotiations are reserved for UIT. UIT is not liable if the violation is based on the use of the delivered item in conjunction with products not supplied by UIT or on modification of an item delivered by UIT, which was not authorised by UIT. Moreover, UIT is not liable for violations of property rights resulting from uses of the delivered item in question other than the intended use. Costs accrued by

UIT in such cases for measures under Par. (4) must be reimbursed by the client.

- (6) If the client ceases to use the delivered item to reduce damages or for other reasons, they are obliged to inform the third party that cessation to use the item is not tantamount to a recognition of a violation of property rights.
- (7) If other lacks of title exist, the provisions in § 7 apply accordingly.
- (8) Further claims of the client against UIT due to a lack of title or claims other than those governed in § 8 are excluded.

§ 9 Other claims for damages

- (1) Claims for damages and compensation of costs of the contractor are excluded regardless of the legal reason, in particular due to violation of obligations from the debt relationship and for unpermitted action. In particular, UIT shall not be liable for intentional conduct of their fulfilment assistants in violation of obligations.
- (2) This does not apply where liability is legally mandatory, e.g. under the product liability law, in cases of intent or gross negligence, due to harm to life, limb or health or due to malicious concealment of a defect or the violation of significant contractual obligations. Damages for violation of significant contractual obligations, however, are limited to typical contractual foreseeable damages, where neither intent nor gross negligence exist or liability is due to harm to life, limb or health.
- (3) The contractor releases UIT from claims from the product liability law for cases in which UIT manufactures a product as commissioned or under the instruction of the contractor, without knowledge of the end product or its intended use.
- (4) Exclusion or limitation of liability to the benefit of UIT also applies to the personal liability of its employees, workers, representatives and fulfilment assistants of UIT.
- (5) The limitation period of these claims for damages of the contractor arising from § 9 is oriented on the limitation period in § 7 Par. (2), which applies for claims for material defects. The legal limitation regulations apply for claims for damages under the product liability law.
- (6) The above provisions do not entail a change of the onus of proof to the disadvantage of the contractor.

§ 10 Other conditions

- (1) These GTTD are subject to the law of the Federal Republic of Germany. The agreement of the United Nations on contracts on international sale of goods (CISG) is not applicable.
- (2) Ordinary courts of law in Dresden have sole jurisdiction for all disputes from legal relationships arising from these GTTD, if the contractor is a businessman as defined by the German Commercial Code (HGB), a legal state PEP or a legal entity of public law.
- (3) In accordance with § 10 Par. 2 Clause 3 of the German Law on Electronic Devices (ElektroG), the parties agree that the contractor alone is responsible for the fulfilment of all obligations arising from this law for treatment, re-use and recycling.
- (4) If the GTTD are translated, and the wording is contradictory or unclear, only the German version is valid.
- (5) UIT saves the data of their customers as part of the mutual business relationship in accordance with the Federal Law on Data Protection (Bundesdatenschutzgesetz).
- (6) Even if individual provisions are or become legally invalid, the remaining parts of the contract remain binding, unless adherence to the contract would represent an unreasonable barrier for one of the parties.