

Contractual, delivery and payment conditions of ICS Software GmbH

Preamble

The following contractual, delivery and payment conditions apply to all sales and deliveries of hardware, accessories and organizational resources (goods). The buyer acknowledges them as binding conditions for the present contract and for all future business transactions with ICS Software GmbH (hereinafter referred to as: ICS Software). Any agreement deviating from these conditions must be confirmed in written form. The buyer waives enforcement of its own purchasing conditions. Moreover, these are not going to be subject matter of the contract, not even as a result of our silence or deliveries from ICS Software.

I. Scope of deliveries or services

1. The mutual written undertakings are decisive for the scope of deliveries or services. If a contract is concluded without the submission of such mutual undertakings, then either the written order confirmation of the supplier or, if the latter is not required, the written order of the buyer shall be decisive.
2. The provisions of the Association of German Electrical Engineers (German abbr. VDE) apply to all deliveries or services, insofar as these are relevant to the safety of the deliveries or services to be supplied. Variations are permitted provided that equivalent safety is guaranteed in another form.
3. The supplier reserves the unrestricted right to ownership and copyright exploitation rights in cost estimates, drawings and any other documents; they must not be made accessible to third parties. Drawings and other documents that are part of the offer shall be promptly returned upon request if the order has not been placed with the party making the offer.
4. Collateral agreements shall only be valid if they have been confirmed in writing.
5. Scope of delivery with regard to labels
 - 5.1. Excess or short deliveries cannot be avoided - even in the case of consecutively numbered labels - and are therefore permissible to the following extent:
 - a. in case of a printing volume of more than 50,000 pieces, up to +/- 10 %
 - b. in case of a printing volume of 50,000 pieces and less, up to +/- 15 %
 - c. in case of a printing volume of 20,000 pieces and less, up to +/- 20 %
 - d. in case of a printing volume of 10,000 pieces and less, up to +/- 30 %
 - 5.2. Raw material and auxiliary material tolerances which have been predetermined by our primary suppliers, as well as general differences which are customary in the line of business (size, colour, rubber coating, quality and execution, as well as production-related, unavoidable deficiencies) shall not constitute grounds for complaint on the part of the buyer.

II. Prices

The prices apply to any delivery without assembly or erection ex works excluding packaging.

III. Retention of title

1. The goods remain the property of ICS Software until payment of all claims originating from the business relationship with the buyer has been made.
2. The buyer may only sell, lease out or dispose of the goods in any other way after receiving written permission from ICS Software, as long as any obligation of the buyer towards ICS Software exists. In particular, the buyer is not authorized to pledge or assign the goods subject to retention of title by way of security in this case.
3. If the buyer is in default with performance of any contractual obligation, the buyer shall grant ICS Software access to the goods at any time, and hand them over at the request of ICS Software.
4. The customer hereby already assigns to ICS Software its claims arising from the resale of the reserved goods by way of security, up to the value of the outstanding purchase price owed to ICS Software. The customer is entitled to collect outstanding payments in the normal course of business. ICS Software may revoke the said permission due to a justified interest. At the request of ICS Software, the customer shall provide information on the assigned claims and the respective debtors. The assignment may be disclosed at any time.
5. The buyer must inform ICS Software immediately in writing of any third-party access to the reserved goods, and support ICS Software in all ways in its intervention measures. The costs arising from this as well as all expenditures for the maintenance and storage of the goods shall be borne by the buyer.

IV. Payment conditions

1. Payments are to be made without any deductions to the designated paying agent / bank account of the supplier, and must be free of transaction charges.
2. The buyer may only offset such claims that are undisputed or have been determined in a legally binding manner.

V. Time limit for deliveries or performance of services

1. The period for deliveries or performance of services shall commence on the day on which agreement regarding the order relevant to the contract between the buyer and the supplier is available in writing. The compliance with the agreed time limit for deliveries or performance of services requires the timely receipt of all documents, required permissions, releases, the timely clarification and approval of plans, to be provided by the customer, and the compliance with the agreed payment conditions and other obligations by the customer. If these prerequisites are not fulfilled in a timely manner, the deadline shall be extended correspondingly.
2. The time limit shall be deemed observed:
 - 2.1. in case of delivery without erection or assembly, if the operational goods have been dispatched or collected within the agreed delivery or service period. If the delivery is delayed for reasons for which the buyer is responsible, the deadline shall be considered observed when readiness for dispatch is notified within the agreed period;
 - 2.2. in case of delivery with erection or assembly, as long as this is undertaken within the agreed period.

3. If the non-compliance of the time limit for deliveries or performance of services is demonstrably attributable to mobilization, war, rebellion, strike, lock out or the occurrence of unforeseen obstacles which are beyond the control of the supplier, the deadline shall be extended appropriately. In the event of non-compliance with the deadline for reasons other than those specified in section 3, para. 1, the buyer may, if the buyer can establish credibly that it has suffered damage owing to the delay, demand compensation for default amounting to 0.5% for each complete week of the delay, up to a total amount of 5% of the value of the part of the goods or services which could not be put into useful operation due to individual constituent components thereof not being completed on time. Any other compensation claims of the buyer shall be excluded in all cases of delayed delivery, even after the expiry of an extension of time granted to the supplier. This shall not apply in so far as there is compulsory liability in cases of wilful intent or of gross negligence. The right of the buyer to withdraw from the contract after unsuccessful expiry of an extension of time granted to the supplier for the delivery remains unaffected.
4. If the dispatch or delivery is delayed at the buyer's request, the buyer may be charged storage costs equal to 0.5% of the invoice amount for each commenced month, starting one month after notification of the consignment being ready for shipment; the storage charge shall be limited to a maximum of 5% of the invoice amount, unless proof is provided that higher costs have accrued.

VI. Passing of risk

The risk shall be transferred to the buyer when the goods which are ready for operation have been dispatched or collected, even if carriage-paid delivery has been agreed. The goods shall be packed with the utmost care. The shipping shall be carried out to the best judgment of the supplier. At the request and cost of the buyer, the shipment will be insured by the supplier against damages from breakage, transportation and fire.

VII. Acceptance of goods

1. The buyer shall take delivery of the supplied goods, even if they are slightly defective.
2. Partial deliveries are permissible.

VIII. Warranty

1. Short or wrong deliveries, as well as defects which are immediately apparent, must be objected by the buyer in writing within 8 days after receipt of delivery. Defects which cannot be detected instantly must be claimed within 6 months.
2. If the complaint proves to be justified, ICS Software shall remedy the defects at its own choice, either by free-of-charge repair or replacement delivery. In case of failure of the repair or replacement delivery, the buyer shall, at the buyer's discretion, have the right to demand reduction of the purchase price or cancellation of the contract.
3. The warranty obligation of ICS Software ceases to apply to the extent that the defects that have occurred in the supplied goods are attributable to improper handling or storage (approx. + 20°C in the case of labels), normal wear and tear, or to excessive use of or interventions into or modifications to the supplied goods without having obtained a prior written permission from ICS Software for this purpose.
4. The same applies if the defect is attributable to the performance of repair work done by personnel that have not been authorized by ICS Software or to use of data carriers, consumables or any other accessories which have not been supplied or recommended for use by ICS Software.
5. Damage sustained during the transport of the supplied goods is not included in the warranty obligation. Place of performance for warranty is the principal office of ICS Software. Wearing parts are, as a matter of principle, subject to a guarantee for warranty obligations. If the buyer's complaint turns out to be unjustified, the buyer shall bear the costs incurred by having taken recourse to ICS Software.

IX. Other claims for compensation

1. Beyond the claims for compensation regulated in these terms and conditions, ICS Software – for any legal reason whatsoever – shall only be liable in so far as ICS Software is culpable of wilful intent or gross negligence or mandatory liability is applicable in case of a lack of assured properties. This applies in particular to damages not caused to the supplied goods themselves.
2. ICS Software shall not be liable for indirect damage, consequential damage and loss of profit.
3. In each case of damage, liability shall be limited to three times the order value, and to a maximum of five hundred thousand euros.
4. Claims for compensation against ICS Software come under the statute of limitations after 12 months.
5. The personal liability of ICS Software employees who have become active as vicarious agents of ICS Software shall be ruled out.

X. Property right

ICS Software assumes liability for ensuring that the sold goods as such are free of property rights of third parties in the Federal Republic of Germany. If third parties should assert justified claims based on property rights, ICS Software, at its discretion and at its expense, shall either obtain a licence for the buyer or replace the sold goods with goods which are not subject to property rights, or take back any such goods upon repayment of the purchase price. In respect of any further claims, ICS Software shall be liable in accordance with section IX. ICS Software shall not assume liability if the use of the sold goods encroaches upon third-party property rights.

XI. Software

1. Software licence
 - 1.1. Licenced software including subsequent, new versions as well as parts thereof and the relevant documentation may only be used on the central unit on which they were originally installed. Software may only be copied for backup purposes, provided that the copyright notice from the original copy is included and provided that it is only copied for use on that central unit. The customer shall protect the software from access by third parties. Persons exercising the right of use on the customer's behalf shall not be deemed to be third parties. All rights to the utilization of the software remain the property of ICS Software. If the customer violates these licence provisions, ICS Software shall be entitled to terminate the licence after issuing a fruitless warning notice, and to demand return of the software together with all parts and copies.
 - 1.2. The licence shall be deemed to have been granted upon delivery of the software. The relevant licence fee shall fall due at the same time. Upon acceptance of the delivery, the terms and conditions of software shall be deemed to have been accepted.
 - 1.3. The provision of source programs requires a special written agreement.
2. Software warranty
In addition to the provisions laid down in the sections 8 and 9 of these GTC, the following shall apply to software:
 - 2.1. On the basis of the present state of the art, software is never completely error-free as regards its structure. In the event of substantial defects, instructions given for bypassing the consequences of the defect shall be deemed to constitute sufficient subsequent performance.
 - 2.2. ICS Software does not warrant that the program functions will be adequate for the customer's requirements, or that they will work in the combination chosen by the customer. According to the state of the art, an uninterrupted or error-free operation or the complete removal of all potential program errors cannot be guaranteed within the scope of program maintenance.
 - 2.3. Any warranty for the replacement or the loss of data caused by a delivery of software shall be excluded. The customer is obligated to secure its data accordingly.
 - 2.4. Because of the special characteristics of the individual programs, the customer can be informed of the scope of the relevant warranty with legally binding effect in the offer or in a product description.

XII. Export and re-export

1. All deliveries of ICS Software are performed subject to the export permissions of the „Department of Commerce“ in Washington DC/ USA or of the competent authority of another country of delivery.
2. Products and technical know-how supplied by ICS Software are intended for use and to remain in the Federal Republic of Germany due to the ICS Software import licence. Any re-export by the customer must be authorized and is subject to the German foreign trade laws and the US export regulations, the observance of which is the customer's responsibility.

XIII. Collateral agreements, place of jurisdiction, applicable law

1. Collateral agreements, modifications and/or amendments to this contract must be made in writing in order to be valid.
2. If individual provisions listed above are or become legally ineffective, for any legal ground whatsoever, the validity of the remaining provisions shall not be affected.
3. Place of jurisdiction is Kelsterbach, for all disputes arising in connection with the contractual relationship, provided that the buyer is a fully qualified merchant. However, ICS Software shall be entitled to choose the locally competent court for the buyer.
4. The law of the Federal Republic of Germany applies.

XIV. Drafts and tools

1. All rights to own sketches, drafts, final artwork, originals, films, printing, punching and stamping tools etc. in any process and for any purpose shall remain with us, unless anything different has been expressly agreed. Our drafts may not be reproduced, copied, imitated or made accessible to third parties. We reserve our ownership and our rights in relation to the aforesaid even after receipt of payment.
2. If drafts and ideas are made available to us, our rights shall only refer to the part of any draft which has been designed by us.
3. If the relevant order is not placed with us, the orderer shall be charged for the drafts in case the orderer fails to return them to us. Comprehensive design work or the redesign of trademarks, factory brands etc. shall be charged separately, even if the delivery order is placed with us.
4. In the case of sketches, drafts, final artwork, originals, films or any other templates which have been supplied by the orderer, we shall deny any investigation as to whether the drafts prepared by us may violate any existing protected rights (copyright, trademarks etc.) or not, and therefore we shall not assume any responsibility.
5. Galley proofs shall only be submitted at the customer's explicit request. If typeset corrections become necessary due to subsequent modifications which have not been provided for in the manuscript, such corrections shall be charged according to the time expenditure. We shall not be liable for printing errors which the customer has overlooked in the proofs.
6. In the case of stamping, punching and printing tool designs, modifications to the tool can only be made to a limited extent; they shall be charged separately.