

# DICAD Systeme GmbH

## Terms and Conditions

### for Transactions with Businesspersons

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#### 1. General Provisions, Scope of Application

- a) Our following Terms and Conditions shall apply exclusively to all agreements concluded with a businessperson. We do not accept any terms and conditions of the contracting partner contrary to or deviating from our Terms and Conditions unless we have expressly agreed in writing to the application. Our Terms and Conditions shall apply exclusively even if we have, having knowledge of the contracting partner's deviating terms and conditions, unreservedly rendered our services to the contracting partner.
- b) These Terms and Conditions shall also apply to all future business transactions entered into with the contracting partner.

#### 2. Prices and Offer

- a) Our offers shall be subject to confirmation and shall only become binding upon our written confirmation of the order.
- b) Unless otherwise agreed, the prices of our current pricelist shall be applicable plus the relevant statutory value-added tax. In the case of doubt the prices quoted in our order confirmations are calculated as net prices plus the relevant statutory value-added tax.
- c) Unless otherwise agreed, our delivery charges shall be applicable to delivery from DICAD. Shipping charges and other additional services shall be invoiced separately.

#### 3. Payment

- a) Unless otherwise agreed and to the extent that neither para. b) nor c) apply, the invoiced amount shall be payable within 8 days of receipt of the invoice. Any deductions of a cash discount require explicit agreement. Should the invoiced amount not be paid by the contracting partner within 10 days of receipt of the invoice the contracting partner shall, without any separate reminder, be in default. In the event of the contracting partner's default of payment, we shall be entitled to charge the statutory amount of interest on arrears, at least at the rate of 12 % p. a. Our right to establish a claim for higher damages caused by delay remains hereof unaffected.
- b) In the case of orders for the delivery of computer systems up to the value of € 1,000.00 (including value added tax) the purchasing price shall be due upon delivery. The delivery in these cases will take place on a 'cash on delivery' basis ie only if the invoiced amount is paid by cash, cheque or by credit card. We will safeguard that delivery only takes place in accordance with these conditions.
- c) In the case of orders for the delivery of computer systems with the value of € 1,000.00 (including value added tax) or more 50 % of the purchase price shall be due three days after order confirmation, 40 % upon delivery and the rest upon installation and notification of readiness of operation. In the case that the delivery of the computer systems shall be delayed for more than one month due to circumstances for which we are not responsible (the residual) purchasing price shall become due one month after supply readiness has been declared. In this case the contracting partner shall be in default with the respective partial performance without any separate reminder likewise. For the legal consequences of the default para a) shall apply accordingly.
- d) Payment by bill requires explicit agreement. In the case of payment by cheque or bill, fulfillment shall not occur until validation of the bank credit. Any discount charges and collection charges shall be borne by the contracting partner. We assume no liability for the timely submission or an act of protest.
- e) The contracting partner only has the right of set-off and the right of retention if its counterclaim is legally established, undisputed or recognized by us.
- f) If after the conclusion of the contract it becomes apparent that our claim for payment is endangered by the contracting partner's lack of ability we shall be entitled to refuse performance. This right ceases if such counter-performance is effected or security is provided for it. In the case that the contracting partner fails to effect the complete counter-performance or to provide security for it within one week of demand we shall be entitled to withdraw from the contract. § 323 BGB (German Civil Code) shall apply accordingly. Our right to claim damages in compliance with the statutory requirements remains unaffected.

- g) The assignments of claims of the contracting partner out of our mutual business relationship shall be valid only with our prior written consent. § 354 a HGB (German Commercial Code) remains unaffected.

#### 4. Delivery

- a) In the case of delivery the risk shall be transferred to the contracting partner upon shipment, even if delivery free of charge has been agreed or the shipment occurs by means of our own vehicles.
- b) Scheduled delivery dates are only binding if we undertake a written and explicit guarantee of compliance.
- c) Should a binding delivery date not be met by us, the contracting partner is entitled and obliged to provide us with, in writing, a reasonable extension of time. The extension of time must amount to at least 14 days. Following an unsuccessful expiry of the extension of time, the contracting partner may rescind the agreement. In the event of Force Majeure both parties may only rescind the agreement following a two month period, unless such time shall be unreasonable for particular reasons for one of the parties.
- d) In the case of default in delivery the contracting partner can only demand indemnification instead of performance in accordance with the statutory provisions and within the terms of No. 6 para i) and j) and only then, when the contracting partner informs us upon the setting of the extension of time required by law that the contracting partner will assert indemnification claims upon the failure of the delivery/performance.
- e) Unless otherwise agreed upon, partial deliveries shall be permissible

#### 5. Rights of the Customer, Scope of Supply

- a) Delivery item shall be the executable program files of the software including the user documentation. The source-code of the software shall not be part of the scope of supply.
- b) We grant the customer the non-exclusive and non-transferable license to use the contractual software to the extent as agreed upon in the contract.
- c) Should the software be used on a multiprocessor-system with shared access for several users an additional license fee must be paid.
- d) Making a copy of the software shall only be permissible for the purpose of this agreement or for backup purposes. Insofar as the originals carry an endorsement documenting a protection by copyright the customer shall be obliged to attach such endorsement to the copies likewise.
- e) Reproduction of the software for other purposes, in particular for transfer to third parties, shall not be permitted. Resale of the data processing media carrying the software shall only be permissible if we were informed of the name and address of the purchaser.
- f) The customer undertakes to store the software in a manner that best possible prevents unauthorized reproduction of the software by third parties. In the event of a culpable breach of that obligation the customer shall be obliged to pay liquidated damages amounting to the tenfold list price of the software, however, not exceeding € 10,000.
- g) The customer shall not be entitled to reverse engineer, decompile or disassemble the software or to use components of the software to generate separate applications.
- h) The customer hereby accepts us as the sole licensor of the software and the copy rights involved. Our rights as sole licensor shall also refer to all extensions of the software which are delivered to the customer by us, unless otherwise specified in writing.
- i) The hereby accepts all our trade mark rights, rights to the name and patent rights with respect to the software and the appertaining documentations. The customer shall not be allowed to alter or remove copyright information in the programs or the associated documentations.

## 6. Requirements to give notice of Defects, Warranty for Defects, Indemnification

- a) The delivered goods are to be immediately examined by the purchaser for completeness and defects. Delivery of a lesser amount, wrong delivery and delivery of goods which are visibly damaged shall be recorded on the receipt of delivery. Any complaints are to be immediately notified to us in writing. Should the purchaser not comply with this obligation, the goods shall be deemed to be approved, except if a defect which was not immediately discernible upon examination exists. Should a non-discerned defect become apparent at a later stage, the purchaser shall specifically and immediately notify us upon discovery thereof. Should the purchaser not comply with this obligation, the goods shall be deemed to be approved in respect of such defect likewise.
- b) Upon a timely and warrantable complaint regarding the goods, we shall be entitled, at our option, either to take back the defective goods and to replace it with goods pursuant to the agreement or - if possible and reasonable for the purchaser - to repair the delivered goods.
- In order to fulfill the obligation under the warranty we shall also be entitled to provide the customer with a new version of the software. The obligation under the warranty shall be deemed to be satisfied if delivery of an alternate solution of the defective function is made which allows the customer the agreed upon use.
- c) Should we in cases of timely and warrantable complaints be disinclined or not in a position to remedy a defect or replace the defective good within a reasonable time limit, the purchaser shall, at its choice, be entitled to withdraw from the agreement or to demand a reduction of the purchase price.
- d) For provided hardware, we warrant the absence of defects in material and manufacturing at the time of the passing of the risk.
- e) For provided software, we warrant the compliance of the software delivered with the program specifications released in the pertaining data sheet, provided the software has been installed in accordance with the guidelines of the manufacturer. However, the warranty shall be excluded if the customer makes modifications or extensions of the software named in the contract, unless the customer can prove that the defect has no causal connection with the modifications or extensions.
- f) We do not warrant that the software named in the contract meets the individual demands of the customer. In particular we do not warrant the achievement of the aimed economic success.
- g) The warranty is excluded as far as the programs, software, etc. are made available to the customer as third party products against reimbursement of the distribution costs (copying-expenses, postages, etc.) only.
- h) For the loss of data and programs and the recovery thereof we shall only be liable in accordance with the terms of No. 6 para i. and j. and insofar as the loss had not been avoidable by reasonable precautions taken by the customer, in particular by daily backups of all data and programs.
- i) Irrespective of the legal basis therefore (including claims for tortious acts), our liability for indemnification is based upon statutory regulations, to the extent that damage has arisen as a result of a willful act or gross negligence on our part, our legal representatives or vicarious agents. Liability for ordinary negligence shall be excluded to the extent that no culpable breach of a substantive contractual obligation exists or that we have taken over a guarantee or the exercise risk. This liability limitation shall not apply to the injury of life, body or health of a person as well as to liabilities arising out of the Product Liability Act (ProdHG).
- j) Indemnification claims against us shall be limited to typical, foreseeable damage. This shall not apply to claims involving a willful act or gross negligence on our part, our legal representatives or vicarious agents. This limitation shall not apply to liability for damage arising out of the injury to life, body or health of a person, nor to liabilities arising out of the Product Liability Act (ProdHG).

## 7. Statute of Limitations

In the case of contract of sale, contract for work or contract for delivery of work the claims of the purchaser or the customer shall be subject to the following statute of limitations periods:

### a) Contract of Sale / Contract for Delivery of Work

- (1) The purchaser's warranty claims pursuant to § 437 BGB (German Civil Code) shall in the circumstances under § 438 para 1 no. 3 BGB (German Civil Code) be subject to a statute of limitations period of one year. The limitation period shall commence upon the delivery of the goods.
- (2) Claims by the purchaser for indemnification due to breach of obligation which is not based on defects of the delivered goods (§ 280 BGB - German Civil Code) shall have a statute of limitations period of one year, commencing upon the statutorily stipulated date.
- (3) Para (1) and (2) do not apply in the circumstances under § 438 para 1 no. 1 and no. 2 and §§ 478, 479 BGB (German Civil Code), nor to indemnification claims arising out of injury to the life, body or health of a person. Furthermore, they shall not apply in circumstances where a willful act or gross negligence on our part, our legal representatives or vicarious agents has occurred.

### b) Contract for Work

- (1) The customer's warranty claims pursuant to § 634 BGB (German Civil Code) shall in the circumstances under § 634 a para 1 no. 1 BGB (German Civil Code) be subject to a statute of limitations period of one year. The limitation period shall commence upon acceptance of the work.
- (2) In the circumstances under § 634 a para 1 no. 3 BGB (German Civil Code) a statute of limitations period of one year shall apply, commencing upon the statutorily stipulated date.

(3) Para (2) shall apply accordingly for claims by the customer for indemnification due to breach of obligation (§ 280 BGB - German Civil Code), which are not covered under para (1) or (2).

(4) Para (1) to (3) do not apply to indemnification claims arising out of injury to the life, body or health of a person, nor in circumstances where a willful act or gross negligence on our part, our legal representatives or vicarious agents has occurred.

## 8. Retention of Title

Any transactions dealing with the delivery of goods shall be subject to the following retention of title.

- a) We retain title to the delivered goods until full payment is made of all obligations, including accessory claims in close connection with the delivered goods (e.g. interest for delay, compensation for default, etc.) and claims arising out of other agreements concluded with the contracting partner in respect of our mutual business relationship. The listing of individual receivables into the running account or the strike of a balance and the acceptance thereof shall not remove the retention of title. In the event of the purchaser/customer's default of payment, we shall be entitled, upon notification of a recession, to take back the goods and the purchaser/customer shall be obliged to return the reserved goods.
- b) Should the reserved goods be sold by the purchaser/customer, irrespective of whether the goods are sold alone or together with further goods not delivered by us, the purchaser assigns to us at this time all receivables amounting to the value of the reserved goods, which accrue out of the resale by the purchaser, together with all ancillary rights. We accept the assignment. In the case that we hold co-ownership of the reserved goods being sold the assignment of receivables amounts to the proportionate value of our co-ownership.
- c) The purchaser/customer shall be entitled to resell, use and install the reserved goods in its ordinary course of business only and provided that the receivables assigned in advance are passed over to us effectively. The purchaser/customer shall not be entitled to dispose of the reserved goods in a different manner, in particular he is not entitled to pawn the reserved goods or to transfer them by way of security.
- d) The purchaser/customer shall remain empowered - revocation reserved - to collect the receivables. We undertake not to make use of our entitlement to collect the receivables, as long as the purchaser/customer complies with its payment obligations. Upon demand the purchaser/customer shall inform us about the debtors of the transferred receivables and shall notify its debtors of the transfer thereof. We are also entitled to notify the debtors of the transfer by ourselves.
- e) The purchaser/customer shall immediately inform us about all compulsory execution measures of third parties in regard to the reserved goods or the receivables assigned to us by handing over of all relevant documents.
- f) The right to resell, use or install the reserved goods ceases upon suspension of payment or upon application for insolvency proceedings or implementation of out of court debt settlement proceedings. The same applies to the collection authorization of the receivables assigned. Furthermore the collection authorization ceases in the event of a bill or cheque protest.
- g) To the extent that the value of our securities exceeds the secured receivables by more than 10% the purchaser/customer shall be entitled to demand retransfer or release of the securities. Upon satisfaction of all our claims against the purchaser/customer arising out of delivery transactions the title of the reserved goods and the assigned receivables will be transferred to the purchaser/customer.

## 9. Applicable Law, Jurisdiction, Place of Performance, Data Protection

- a) The law of the Federal Republic of Germany shall be applicable to these Terms and Conditions and to the entire legal relationship between the Parties with the exception of International Private Law and the UN Convention on Contracts for the International Sale of Goods.
- b) Insofar as the Contracting Partner is a businessperson ("Kaufmann", §§ 1 ff. German Commercial Code), a legal person governed by public law or a special fund governed by public law, jurisdiction for all disputes arising directly or indirectly out of this agreement shall be our place of business.
- c) Except as otherwise agreed the place of performance shall be our place of business.
- d) The data of the Contracting Partner will be recorded and processed by us in so far as it is necessary for business and permissible within the scope of the statutory provisions of the Federal Data Protection Law (§ 26 BDSG).

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