

## Standard Terms and Conditions of Sale systec POS-Technology GmbH

hereinafter referred to as the Seller

To be used in dealings with:

1. all persons pursuing a commercial or self-employed activity at the time the contract was signed (contractors).
2. public law legal entities or special assets under public law.

### I. General

1. All deliveries and services provided are based on these terms and conditions. Unless the Seller expressly consents to their application, contrary terms and conditions of the Purchaser will not become part of the contract, even if the order is accepted. This will also apply should the Seller carry out deliveries without reservation in spite of being aware of the Purchaser's contrary terms and conditions. Silence will expressly not be deemed consent to contrary terms and conditions. These terms and conditions will also apply to future contracts as part of an ongoing business relationship without their having to be included in the contract in the form of an express declaration.
2. Written agreements concluded between the parties are conclusive. Verbal agreements must be confirmed in writing in order to be valid.

### II. Conclusion of a contract

1. Unless the order confirmation states anything to the contrary, the Seller's quotations are subject to change. Should the Purchaser's order be an offer in accordance with § 145 of the German Civil Code, the Seller may accept this offer within three weeks or carry out the delivery within this period of time.
2. Declarations of intent that are prepared and transmitted with the aid of electronic data processing are valid. The sender must record receipt by the recipient and the text must be stored. The sender's right of representation on the Purchaser's side will be assumed, provided its absence is not obvious to the Seller without referring to documents. This will apply in particular should the sender already have carried out a transaction with the Purchaser and the Purchaser has not objected to the absence of a right of representation.
3. Drawings, reproductions, dimensions, weights or other data concerning the services as well as specifications of technical or mechanical qualities are only binding when this has been expressly agreed.
4. The Seller retains rights of ownership and copyright to samples, cost estimates, drawings and other documents and information, also in electronic form. This also applies to such written documents as are not declared confidential. The Customer requires express written consent before they may be passed on to third parties.

### III. Prices and payments

1. The prices apply to the goods and services listed in the order confirmation. Additional or special services will be invoiced separately. Prices are to be understood as "ex factory D-82178 Puchheim" including loading in the factory, packaging and unloading. Freight costs will be invoiced as incurred. All prices are also to be understood as plus the legally applicable value added tax.
2. Should delivery or part-delivery be made in accordance with contractual agreements but later than four months after the conclusion of the contract and should cost increases on the goods delivered have occurred after the conclusion of the contract – due especially to increases in prices by suppliers, changes in currency parities or increases in customs and import duties and taxes – the Seller is entitled to increase commensurately the price of deliveries or part-deliveries not yet carried out. The Purchaser has the right to rescind the contract within two weeks of receiving notification of the price increase should the price increase exceed 5% of the price of the whole delivery.
3. Unless anything to the contrary has been agreed, the Seller's invoices are payable immediately after the delivery without any deductions and at the latest within a period of thirty days of the due date. The deduction of a cash discount requires a separate written agreement.
4. The Purchaser will only be entitled to withhold payments or to deduct counter-claims provided that his counter-claims are undisputed or have been recognised in law.
5. Payments will not be considered to have been made until the amount is credited without reservation. This also applies in the case of payment by cheque or bill of exchange. Bills of exchange will only be accepted after special agreement. Bank and discounting charges incurred thereby will be paid by the Customer.
6. The Seller will be entitled to demand cash in advance or the provision of security and to declare open receivables due for immediate payment should he become aware of any circumstances that give rise to doubts on the Purchaser's ability to pay or creditworthiness.

### IV. Delivery

1. Unless a binding delivery date has been expressly agreed, stated delivery periods and delivery dates are approximations.
2. The Seller's compliance with delivery periods and delivery dates presupposes that all commercial and technical questions between the contractual parties have been clarified and that the Customer has fulfilled all of his obligations, such as for example providing all official certificates or permits or having made a prepayment. The delivery time will be postponed accordingly should this not be the case. This will not apply should the Seller be responsible for the delay.
3. Compliance with the delivery time is conditional on the Seller himself receiving correct delivery on time. The Seller will notify the Purchaser as soon as possible of any delays that become evident.
4. The Seller is also not liable should delivery be impossible or for delays in delivery should these have been caused by *force majeure* or other events that were not foreseeable at the time the contract was concluded (e.g. operational breakdowns, difficulties in procuring materials, raw materials or energy, transport delays, strikes, legal lockouts, , difficulties in obtaining the required official permits, measures imposed by public authorities) and provided that the Seller is not responsible for them.

Both parties are entitled to rescind the contract should such events seriously delay the delivery or the service or render it impossible and the impediment is not of a purely temporary nature. In the event of impediments of a temporary nature, delivery or service periods or dates will be extended or postponed by the length of the impediment plus an appropriate start-up time. Should a delivery delay of more than three months occur as a result and should it be demonstrably unreasonable to expect the Purchaser to accept the delivery or the service owing to the delay, he may rescind the unfulfilled part of the contract by notifying the Seller immediately in writing. Should delivery delays occur, the Seller will inform the Purchaser as soon as possible of changes in delivery dates. Claims for compensation by the Purchaser are excluded.

5. The delivery time will have been complied with should the goods to be delivered have left the Seller's factory by the time of its expiry or notification has been given that the goods are ready for dispatch. Should acceptance be required, except in cases where acceptance is justifiably refused, the date of acceptance is the determining factor or alternatively the date on which it is notified that the goods are ready to be accepted.

6. Should dispatch or acceptance of the goods to be delivered be delayed for reasons for which the Purchaser is responsible, he will be charged for any costs incurred as a result of the delay, starting a week after notification that the goods are ready to be dispatched or accepted.

7. Should the Purchaser be in arrears in accepting the goods or should he culpably fail to fulfil his obligations to cooperate and should it subsequently be impossible for the Seller to perform the service or he be unable to do so and should the Customer be solely or largely responsible for these circumstances, the Purchaser will still be obliged to perform his side of the contract.

8. The Purchaser is entitled to demand a lump sum amount of compensation should the Seller fall into arrears and should the Purchaser incur damage as a result. This amount will be 0.5% for each complete week of the delay, subject to a total maximum of 5%, of the value of that part of the total delivery that cannot be used on time or according to contract as a result of this delay. Subject to the exceptions provided for in law, should the Purchaser set the Seller a reasonable deadline for the delivery after it has become due and should this deadline not be complied with, the Purchaser is entitled to rescind the contract as far as this is permitted by law. He undertakes, when requested to do so by the Seller, to state within a reasonable period of time whether he will make use of his right to rescind the contract. Additional claims on grounds of delayed delivery will be determined solely by section VIII,2 of these Terms and Conditions. Moreover, these Terms and Conditions are conclusive.

9. The Seller is entitled to make part-deliveries and perform services in stages provided that this is not unreasonable for the Purchaser.

#### **V. Transfer of risk, acceptance**

1. Risk will pass to the Purchaser once the goods to be delivered have been handed over to the freight forwarder or have left the Seller's factory premises to be dispatched, even if part-deliveries still have to be made or the Seller has assumed other services, such as freight costs or delivery and installation. Should acceptance be required, this will determine the transfer of risk. It must be carried out immediately or alternatively after the Seller has reported that the goods are ready for acceptance. Unless a major defect is present, the Purchaser may not refuse acceptance.

2. Should dispatch or acceptance be delayed or not take place for reasons not attributable to the Seller, risk will be transferred to the Purchaser at the time it is reported that the goods are ready for shipment or acceptance. The Seller undertakes to insure the goods at the Purchaser's expense, should he request this.

#### **VI. Reservation of title**

1. The reservation of title agreed below serves to secure all the Seller's current and future claims against the Purchaser arising from the business relationship between the parties, including balances on current accounts and also from other contractual relationships provided that comparable products are involved.

2. Goods delivered by the Seller to the Purchaser remain the property of the Seller until all secured claims are paid in full. The goods as well as any goods replacing these goods in accordance with this clause covered by reservation of title will be referred to hereinafter as reserved goods.

3. The Purchaser will look after the reserved goods on behalf of the Seller at no expense and is obliged to insure them at their value as new at his own expense against damage from fire, water and theft. The Seller may demand proof of insurance cover.

4. The Purchaser is entitled to process and to sell the reserved goods as part of his proper business activity up to the time the goods are commercialised. Pledging and transfer of title by way of security are permitted.

5. Should the Purchaser process the reserved goods, it is agreed that this processing will take place in the name of and for the account of the Seller as manufacturer and that the Seller acquires direct title, or – should the processing include several owners' materials or the value of the processed goods be higher than the value of the reserved goods – co-ownership (fractional ownership) of the newly created goods in proportion of the value of the reserved goods to the value of the newly created goods. Should no such acquisition of title occur on behalf of the Seller, the Purchaser transfers to the Seller with immediate effect his future title or co-ownership of the newly created goods – in the same relationship as described above – as security. Should the reserved goods be combined or inseparably mixed with other goods to form a homogeneous product and should some other product be regarded as the main product, the Purchaser will transfer co-ownership of the new product to the extent that it belongs to him, in the same proportion as described in sentence 1. The Purchaser absolves the Seller from all obligations arising in connection with the Seller's status as owner.

6. Should the reserved goods be resold, the Purchaser transfers to the Seller with immediate effect the receivable due from the acquirer as a result of this transaction as security or, in the event of co-ownership by the Seller, of the reserved goods in relation to his co-ownership share. The same will apply to other receivables replacing the reserved goods or that otherwise arise with respect to the reserved goods, such as for example insurance claims or claims under tort in the event of loss or destruction. The Seller authorises the Purchaser until further notice to collect the receivables assigned to the Seller in his own name for the Seller's account. The Seller may only revoke the authority to collect should the goods be sold.

7. Should third parties seize the reserved goods, especially as a result of attachment, the Purchaser will immediately acquaint these third parties with the Seller's title and notify the Seller in order to enable him to enforce his rights of ownership. Should the third party be unable to reimburse the Seller the court or out-of-court costs incurred in this connection, the Purchaser will be liable to the Seller for these costs.

8. The Seller will release the reserved goods as well as goods replacing them or accounts receivable of his choice when requested to do so should their value exceed the amount of secured receivables by more than 50%.
9. Should the Seller rescind the contract on account of behaviour by the Purchaser contrary to the contract (enforcement) – especially payment arrears – he is entitled to demand the return of the reserved goods or to sell the substitute collateral.
10. Should, in the case of an export transaction, reservation of title not have the same effect in the Purchaser's country as under German law, the goods will still remain the Seller's property until all of his claims against the Purchaser are paid, provided that this is permitted under the laws of the place in which the goods purchased are located. Should reservation of title as agreed here not have acquired the same effect under the Purchaser's local laws or the laws in which the purchased goods are located as under German law or should it not be enforceable, then the means of security will be considered to have been agreed that, either under the laws of the Purchaser's country or of the place where the purchased goods are located, most closely corresponds with reservation of title in Germany in its function of providing security.

## **VII. Warranty**

The Seller is liable for quality defects and defects of title to the exclusion of any additional claim, but subject to section VIII, as follows:

1. All those parts that prove to be defective due to circumstances that were present before risk was transferred must at the Seller's option be repaired or replaced at the Seller's expense by parts free of defects. The Seller must be informed in writing of such defects as soon as they are established, but at the latest within a week of delivery. The Purchaser is obliged to inspect the goods delivered for defects thoroughly before installation and operation and to notify these immediately. Should defects emerge later, the Purchaser will bear the burden of proof that parts provided by the Seller are defective and that these were already present before risk was transferred, to the exclusion of appearance as proof.
2. After consultation with the Seller, the Purchaser is required to allow the Seller the necessary time and opportunity to carry out all the repairs and replacement deliveries that the Seller considers necessary. The Seller may demand that the defective part should be sent to him for repair and then returned to the Purchaser at the latter's expense in its original or suitable packaging. Should the Purchaser demand that the repairs be carried out on his premises and should this not entail unreasonable effort on the part of the Seller, the repairs will be carried out at the Purchaser's final destination. The Purchaser will pay the additional labour and travel costs. Only in urgent cases in which operational safety is threatened or in order to avoid disproportionately substantial loss or damage, of which however the Seller must be notified immediately, is the Purchaser entitled to repair the defect himself or have it repaired by a third party and to demand the refund of the required expenses from the Seller. The Seller is no longer liable in this case for defects or damage due to repair work carried out by the third party or the Purchaser. The Purchase is not entitled to charge back the purchase price whilst the repair is being carried out.
3. The Purchaser's rights under the guarantee will be limited to an appropriate reduction of the contract price should the repair not succeed and the defect be minor. In addition, the Purchaser has the right to rescind the contract in accordance with the provisions of the law after a reasonable period of time for the repair has elapsed.
4. Liability will not be accepted, particularly in the following cases:  
should the Seller's operating or maintenance instructions not be complied with, should changes have been made to the products, should parts have been exchanged or consumables used that do not comply with the original specifications, also in the event of faulty assembly or commissioning, faulty maintenance, natural wear and tear, the presence of chemical, electro-chemical or electrical influences, provided these are not the responsibility of the Seller.
5. The Purchaser accepts liability for goods manufactured in accordance with drawings, samples or other information provided by the Purchaser in the event of the infringement of proprietary rights or copyright and will indemnify the Seller for any claims. Should the Seller infringe third-party patent rights with a product delivered of his own design, the Purchaser's rights will be limited to exemption from claims pursued by third parties and to the delivery of an equivalent alternative product free of charge as a replacement. The Seller is entitled to pursue litigation himself should he request this.  
In order to counter obligations under section 1, the Seller also has the right either:
  - a) to obtain the required licences to the allegedly infringed patents or
  - b) to provide the Purchaser with different goods or parts thereof that, in the case of an exchange against the infringing goods or parts thereof, remove the charge of infringement with respect to the goods delivered.
6. The provisions concerning warranty will apply conclusively together with the provisions of section VIII.

## **VIII. Provisions covering the Seller's liability**

1. Should the Purchaser be unable to use the goods delivered in accordance with the contract and should this be due to the Seller as a result of omissions or defects in implementing suggestions or advice tendered before or after the contract was concluded or due to the infringement of other ancillary contractual obligations – especially instructions on the operation or maintenance of the goods delivered – the provisions of sections VII, 1,2, and VIII will apply, conclusively and to the exclusion of any other claims.
2. Irrespective of the legal reasons, the Seller will only be liable for damage not occurring in the goods delivered themselves in cases of deliberate intent, gross negligence on the part of the owner/its official bodies or employees, culpable injury to life, limb and health, defects that the Seller has fraudulently concealed, as part of a guarantee undertaking or defects in the goods delivered, to the extent that the German Product Liability Law provides for liability for damage to persons and property in the case of objects used privately.
3. In cases of the culpable infringement of essential contractual obligations, the Seller will also be liable for simple negligence, limited however to damage that could reasonably have been foreseen and is typical for this type of contract.
4. The Seller will only be liable for agents who are not his employees in cases of deliberate intent and gross negligence. Liability in such cases is limited to € 200,000.00 per claim.
5. Additional claims are excluded. This also applies to possible claims against employees, freelance employees, representatives and the Seller's vicarious agents.

## **IX. Data protection and confidential documents**

1. The Purchaser takes note of the fact that the Seller may store data obtained from the contractual relationship (in accordance with § 28 of the German Federal Data Protection Law until 24.5.2018 and then in accordance with article 6 of the General Data Protection Regulation) for purposes of data processing and reserves the right to transmit the data to third parties (e.g. insurance companies) should this be necessary in order to fulfil the contract.
2. Information, drawings, samples and other information provided by the Purchaser will only be treated as confidential when this has been expressly agreed.

#### **X. Software – firmware**

1. Software or firmware (everything stored) and the associated documentation will only be made available to the Purchaser for use in the applications set out in the order specification in the equipment or system delivered for which the software or firmware is supplied.
2. Stored material may not be duplicated. Should data specific to the Customer be stored, the Purchaser or operator may modify this data for use in the equipment or system delivered and for archiving purposes. The Purchaser may not give third parties access to the software or firmware and associated documentation delivered or their contents without prior written consent.
3. All rights to the software or firmware (original, updates) will also remain the property of the Seller. The Purchaser/operator only acquires rights of use as described in the preceding paragraph 1 on confirmation of the order and delivery of the software or firmware. The granting of additional rights, such as for example the transfer of source codes or the right to duplicate software or firmware, is only possible as part of a separate agreement.

#### **XI. Export regulations**

Should the Purchaser intend to export the goods delivered, he is required, especially in the case of software and firmware, to acquaint himself with the scope of German export regulations and to obtain the export permits required under public law.

#### **XII. Time limitation**

All claims by the Purchaser, irrespective of the legal grounds, will expire within 12 months. Compensation claims in accordance with section VIII are subject to the legal deadlines. The Seller's claims to payment expire in three years.

#### **XIII. Applicable law, legal venue, place of fulfilment, severability clause**

1. All legal relationships between the Seller and the Purchaser will be determined solely by the law of the Federal Republic of Germany applicable to the legal relationships of domestic parties with each other. UN purchasing law will not be applicable.
2. The legal venue is the court responsible for the Seller's registered office. The Seller is however entitled to sue at the Purchaser's main registered office. The place of fulfilment for all contractual claims is the Seller's registered office.
3. Should individual provisions of these Standard Terms and Conditions or other contractual agreements be or become invalid or null and void, this will not impair the validity of the remaining provisions. A provision that is invalid or null and void will be replaced by such a provision as most closely corresponds with the commercial goal pursued by the parties. This will also apply in the event of a loophole in the contract.

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