

## **General Terms and Conditions of Sale and Payment for TechnoTeam Bildverarbeitung GmbH Ilmenau**

As per 01/2003

### **§ 1 General Terms**

1. For all deliveries and performances of the TechnoTeam Bildverarbeitung GmbH, hereinafter also referred to as "TTBV", the following conditions shall be exclusively authoritative even if, in the course of a business connection, TTBV does not issue a particular confirmation of the order. Any deviations from these conditions or any subsidiary agreements shall be effective only when confirmed in writing by TTBV via mail or e-mail.
2. Any diverging conditions established by the Customer are hereby expressly objected to.
3. TTBV shall reserve its rights of sale based on title and copyright without restriction to drawings, samples and other documents (hereinafter referred to as documents). Third parties may only be allowed access to the Documents after TTBV has given its prior consent and the Documents are to be returned to TTBV upon request if an order is not placed.
4. The Customer has the non-exclusive right to use standard software with the agreed performance characteristics in unamended form on the ordered goods.

### **§ 2 Offer and Conclusion of Contract**

1. Offers made by TTBV - referring also to advertisements, brochures, and other documents - shall remain subject to change by TTBV. Samples, illustrations, dimensions and weight information, performance ratings and specifications of other properties shall contain merely a more detailed description of the objects of the contract and shall not constitute warranties, unless expressly agreed upon as such with TTBV.
2. Contracts on the delivery of TTBV products shall be effected only upon confirmation of the order in writing issued by TTBV. In the event of prompt execution of the order the delivery note or invoice, as the case may be, shall be deemed a confirmation of the order.
3. Warranties, subsidiary agreements, modifications and amendments of a contract concluded with TTBV shall be effective only if confirmed in writing by TTBV.

### **§ 3 Terms and conditions of delivery, Default**

1. Compliance with delivery dates is based on the assumption that all technical and other details of the order have been clarified, any documents which may be required from the Customer have been supplied, any down payment which may have been agreed has been paid, as well as compliance with the agreed obligations of the Customer. The delivery dates shall be extended as appropriate, and by at least the period of time in which the Customer is in arrears with his contractual duties.
2. In the event of force majeure and all unforeseen hindrances occurring after the contract has been signed, for which TTBV is not to blame, in particular operational breakdowns, strike, lock out, or disruptions in the traffic routes, shall extend the delivery period, in so far as it can be proven that such hindrances are of considerable significance to the delivery of the sold goods – even if the supplier is already in default – by the duration of such measures and hindrances. This shall also apply in those cases in which this circumstance occurs at the suppliers of TTBV and their subcontractors. The beginning and end of such hindrances are to be notified by TTBV to the Customer as soon as possible. The Customer may demand a statement from TTBV as to whether TTBV will withdraw from the contract or supply within a reasonable period of time. If TTBV does not make a statement without delay, the Customer may withdraw from the contract.

3. If TTBV finds itself in default, the Customer may, provided that he submits a credible case that he has sustained a loss as a result, demand compensation for every completed week of default amounting to 0.25%, up to a maximum of 5%, of the total price of the part to be delivered which has not been delivered on time.
4. Not only the Customer's claims for compensation for damages on account of default of delivery, but also his claims for compensation instead of performance in excess of the limits named in clause 3 are ruled out in the event of default in delivery, even after the expiry of a period set by TTBV for delivery. This shall not apply provided that liability is compulsory in cases of intent, gross negligence or loss of life, physical injury or impairment to health. The Customer may only withdraw from the contract within the scope of the law of Germany provided that TTBV is responsible for the default in delivery. A change in the burden of proof to the detriment of the Customer is not connected with the above arrangement.
5. At the demand of TTBV, the Customer shall be obliged to state within a reasonable period of time whether he will withdraw from the contract on account of the delay in delivery or whether he will insist upon the delivery.
6. TTBV shall be entitled to make partial deliveries and to present partial invoices as appropriate.
7. If the dispatch of the goods is delayed at the request of the Customer by more than two weeks after the agreed delivery date or, if no exact delivery date has been agreed, following the notification of the readiness for dispatch, TTBV shall be entitled to invoice the Customer a lump sum for each month commenced for storage charges amounting to 0.5% of the price of the consignment, up to a maximum however of 5%. The right of the parties to the contract to prove that the storage costs incurred are higher or lower shall not be affected. The goods shall be put into store at the risk of the Customer. If the Customer is in default in taking delivery, TTBV's account shall be payable immediately.

### **§ 4 Technical Alterations**

TTBV reserves the right to carry out technical alterations, design changes and any other alterations of specifications and performance features insofar as they serve technological progress.

### **§ 5 Prices**

1. Price lists and other general price quotations shall remain subject to change. TTBV shall be bound to prices stated in offers for 2 weeks after the date of making the offer.
2. The prices shall be regarded as being ex Works excluding packaging, loading, transport and insurance plus the rate of value added tax in force at that time. The invoice shall be based on the prices valid on the date on which the order is confirmed, unless a fixed price offer is made by TTBV in writing to the contrary. The stated prices shall only apply for the respective individual order. Confirmed fixed prices shall only apply for the acceptance of the confirmed quantities.
3. Price changes shall be admissible if the date of conclusion of the contract and the agreed date of delivery are more than 4 months apart and if the materials cost or the cost prices determined by the market increase during this period. In this event TTBV is entitled to increase the prices in accordance with the cost increase.

### **§ 6 Passing of Risk**

1. Delivery shall at all events be at the risk of the Customer. The risk shall pass to the Customer upon delivering the goods to a forwarder or carrier, or at the latest upon the goods' leaving storage or upon notification that the goods are ready for dispatch.

2. Unless otherwise agreed TTBV shall choose way and means of dispatch. Dispatch is always carried out uninsured. At the Customer's request and expense TTBV shall insure the goods to the best possible extent.
3. If dispatch is delayed upon the Customer's request or by his fault the goods shall be stored at the Customer's expense and risk. In this event the notification of the goods' readiness for dispatch shall be equivalent to dispatch.
4. All delivered goods shall be accepted by the Customer without prejudice to his rights, even if such goods have been damaged in transit or are defective. In the event of damage in transit the carrier shall confirm the damage before the goods are accepted.
5. First of all TTBV is to be allowed the opportunity to render subsequent fulfilment within an appropriate period of time.
6. Should the subsequent fulfilment go wrong, the Customer may withdraw from the contract in accordance with Art. 11 or reduce the remuneration irrespective of any other claims he may assert for compensation for damages.
7. Warranty claims shall not exist for minor deviation from the agreed quality, if the impairment to use is minor, or in the event of natural wear and tear or damage, occurring after the passing of risk as a result of faulty or negligence treatment, excessive loads or which arises as a result of special external influences not assumed in the contract, as well as for software defects which are not reproducible. If improper modifications or repair work is carried out by the Customer or by third parties, they shall likewise not have any warranty claims for the resultant consequences.

#### **§ 7 Terms of Payment**

1. Unless otherwise agreed upon by TTBV and the Customer invoices shall be due generally 14 days upon their date of issue without any discounts. Cash discount arrangements shall require a separate contract.
2. If the Customer fails to make the due payments in time TTBV, without prejudice to other claims, is entitled to charge 8% interest over the basic interest rate upon commencement of the default. Interest rates shall be higher or lower if TTBV proves a higher interest load or if the Customer proves a lower interest load.
3. All payments shall be made to the TTBV accounts stated in the invoices. Checks and bills eligible for rediscount shall be accepted only as payment, the latter only upon special agreement. Crediting of bills and checks shall be effected subject to collection deducting expenses, the value date being the date on which the equivalent sum is available to TTBV. Discount and bill charges shall be borne by the Customer. Claims by TTBV shall fall due immediately, irrespective of the term of bills taken in or credited, if any, if the terms of payment are not complied with or if facts indicating a substantial deterioration of the Customer's assets become known. In the event of the latter TTBV is entitled to make further deliveries conditional on an advance payment or the provision of appropriate securities. Established credit lines, if any, are always freely revocable.
4. The Customer may offset only against uncontested claims or claims recognized by declaratory judgment. He is entitled only to such liens as are referable to the same contractual relationship.
8. The Customer's claims on account of the expenditure necessary for the purposes of subsequent repairs, in particular transport costs, travelling expenses, labour costs and material costs are ruled out, in so far as the expenses increase because the delivered goods have subsequently been removed to a location other than the Customer's premises, unless the goods are transferred so that they can be used as intended.
9. The Customer's claim against the supplier under a right of recourse in accordance with section 478 of the (German) Civil Code [BGB] (Recourse by the company) shall only exist to the extent that the Customer has not made any agreements with his buyer going beyond the statutory warranty claims. Moreover, the above Clause 8 shall apply accordingly for the scope of the Customer's right of recourse against TTBV in accordance with s. 478 (2) BGB.
10. Moreover Art. 11 (Other claims for compensation for damages) shall apply for claims for compensation for damages. Claims asserted by the Customer against TTBV and its assistants on account of a quality defect, over and above this, or claims other than those regulated in this Art. 8 shall be ruled out.

#### **§ 9 Industrial property rights and copyrights; legal defects**

1. Unless otherwise agreed, TTBV shall be obliged to deliver the consignment free of industrial property rights and third party copyrights (hereinafter referred to as proprietary rights) only in the country in which the goods are to be delivered. In so far as a third party asserts substantiated claims against the Customer on account of a breach of proprietary rights by goods delivered by TTBV in accordance with the contract, TTBV shall be liable towards the Customer within the period of time specified in Art. 8 Clause 2 as follows:
  - a) TTBV shall, as it sees fit, and at its costs, either obtain a right of use for the delivered goods concerned or modify them so that the proprietary right is not breached, or exchange it. If it is not possible for TTBV to do so at reasonable terms and conditions, the Customer shall be entitled to the statutory right to withdraw from the contract or to reduce the price.
  - b) The duty of TTBV to render compensation for damages shall be determined in accordance with Art. 11 (Other claims for compensation for damages).
  - c) The above named obligations of TTBV shall only exist if, and so far as the Customer has informed TTBV without delay and in writing of the claims asserted by the third party, does not accept a breach and allows TTBV to take all defensive measures and to conduct negotiations to reach an out of court settlement. If the Customer stops using the delivered goods to reduce the damage or for other important reasons, he shall be obliged to point out to the third party, that by stopping use he is not acknowledging that he is in breach of a proprietary right.
2. Claims by the Customer shall be ruled out in so far as he is to blame for the breach of the proprietary right.

#### **§ 8 Quality defects**

1. The performances of TTBV are to be remedied free of charge as TTBV sees fit. Either a new part is to be supplied or rendered if it shows a quality defect within the period of limitation, provided that its cause already existed at the point in time at which risk was passed over.
2. Claims based on quality defects shall become time-barred in 12 months. This shall not apply in so far as the law of Germany prescribes longer periods as well as in cases of loss of life, physical injury, or impairment to health, or in the event of intent or a grossly negligent breach of duty by TTBV and in the event of malicious concealment of a defect.
3. The Customer has to notify quality defects to TTBV without delay and in writing.
4. In the event that quality defects are notified, the Customer may withhold his payments on a scale in an appropriate ratio to the quality defects which have occurred. The Customer can only retain payments if a quality defect is notified for which there is no doubt with regard to its justification. If the quality defect is wrongly notified, TTBV shall be entitled to demand the reimbursement by the Customer of the expenses it incurs.

3. Moreover, the claims by the Customer shall be ruled out in so far as the breach of the proprietary right is caused by special specifications by the Customer, an application which could not have been foreseen by TTBV or which is caused as a result of the delivered goods being modified by the Customer or used together with products not supplied by TTBV.
4. In the event of breaches of proprietary rights, the provisions in Art. 8 Clauses 4, 5 and 9 shall apply accordingly for the claims of the Customer regulated in Clause 1 a).
5. In the event that there are other legal defects existing, the provisions of Art. 8 shall apply accordingly.
6. Customer claims against TTBV and its assistants in excess of these or claims other than those regulated in this Art. 9 are ruled out.

#### § 10 Impossibility: adjustment of the contract

1. In so far as delivery is impossible, the Customer shall be entitled to demand compensation for damages, unless TTBV is not to blame for this impossibility. However, the Customer's claims to compensation for damages shall be limited to 10% of the value of that part of the delivery which can not be used in expedient operations on account of impossibility. This limitation shall not apply provided that in cases of intent, gross negligence or on account of loss of life, physical injury or impairment to health, liability is compulsory. A change in the burden of proof to the detriment of the customer is not connected with this. The right of the customer to withdraw from the contract shall not be affected.
2. In so far as unforeseeable events within the meaning of force majeure change the economic importance or the contents of the delivery considerably, or have a considerable effect on the operations of TTBV, the contract shall be modified as appropriate in compliance with the tenet of good faith. In so far as this is not justifiable from an economic perspective, TTBV shall be entitled to withdraw from the contract. If TTBV intends to make use of this right to withdraw from the contract, TTBV shall consequently have to notify the Customer of this without delay and to be more precise, also in those cases in which an extension of the delivery period had initially been agreed with the Customer.

#### § 11 Other claims for compensation for damages

1. Claims by the Customer for compensation for damages and for the reimbursement (hereinafter referred to as claims for compensation for damages) shall, regardless of legal reason, in particular on account of breach of duties under the law of obligations, and on account of illegal acts, be ruled out.
2. This shall not apply in so far as liability is compulsory, e.g. in accordance with the (German) Product Liability Act, in cases of intent, gross negligence, on account of loss of life, physical injury or impairment to health on account of a breach of important contractual duties. The claim for compensation for damages for a breach of important contractual duties shall however be limited to damage foreseeable and typical for this type of contract, provided that intent or gross negligence is not present or there is no liability on account of loss of life, physical injury or impairment to health. A change in the burden of proof to the detriment of the Customer is not connected with the above arrangements.
3. In so far as the Customer is entitled to claims to compensation for damages in accordance with this Art. 11, these shall become time-barred with the expiry of the period of limitation applicable for warranty claims in accordance with Art. 8 Clause 2. In the event of claims for compensation for damages, in accordance with the (German) Product Liability Act, the statutory limitation rules shall apply

#### § 12 Reservation of Title

1. Until the satisfaction of all claims, including all balance claims from account current TTBV is entitled to on any legal ground

against the Customer now or in the future, TTBV shall retain title to the delivered goods.

2. In the event of the Customer acting contrary to the terms of the contract, in particular in the event of default in payment, TTBV is entitled to take back the goods after issuing a demand for payment, and the Customer is obliged to return them.
3. The enforcement of the reservation of title and the attachment of the delivered goods by TTBV shall not be deemed a withdrawal from the contract unless the provisions of the consumer credit law apply or unless this has been expressly declared in writing by TTBV.
4. The Customer is entitled to resell the delivered goods in due course of business; he shall, however, already at this time assign to TTBV all claims arising for the Customer from the resale amounting to the purchase price agreed upon by TTBV and the Customer, including the value-added tax prescribed by law, irrespective of whether the delivered goods are resold without or after processing them. TTBV shall accept the assignment. TTBV shall revocably authorize the Customer to collect the claims assigned to TTBV for his account on his own behalf. The authority of TTBV to collect the claims shall not be affected hereby; however, TTBV undertakes not to collect the claims and not to revoke the Customer's authorization to collect as long as the Customer duly meets his financial obligations and is not in default in payment. In this event, however, the Customer hereby irrevocably undertakes to provide, at first request, all information and to present and submit the documents required by TTBV to enforce such rights to TTBV. The Customer is obliged to fully inform TTBV at first request and at any time on the whereabouts of the reserve goods delivered by TTBV. If the Customer has sold these goods or if they are, due to whichever legal grounds, no longer in his possession, he shall notify TTBV thereof, in particular of the claims against third parties he is insofar entitled to based on whichever legal ground. The Customer is obliged to notify the third party of the assignment and to ensure such party makes payment to TTBV immediately.
5. The processing or transformation of the delivered goods by the Customer shall always be carried out on behalf of TTBV but without any obligation arising for TTBV. If the delivered goods are processed with other goods not owned by TTBV, TTBV shall acquire co-ownership of the new product in accordance with the value of the delivered goods in proportion to the value of the other processed goods at the time of processing.
6. If the delivered goods are inseparably mixed with other goods not owned by TTBV, TTBV shall acquire co-ownership of the new product in accordance with the value of the delivered goods in proportion to the value of the other mixed goods. The Customer shall hold the co-ownership in custody for TTBV.
7. The Customer may not pledge the delivered goods or assign them by way of security. In the event of attachment, confiscation or other dispositions by a third party the Customer shall immediately notify TTBV thereof and provide TTBV with all information and documents required for the maintenance of the rights of TTBV. Enforcement officials or third parties, as the case may be, shall be informed of the ownership of TTBV by the Customer.
8. TTBV undertakes to release securities it is entitled to at the Customer's demand if the value of the claims to be secured, as far as they have not been settled yet, exceeds them by more than 20%.

#### § 13 Place of Performance, Jurisdiction, Applicable Law, Final Provisions

1. Place of performance and exclusive jurisdiction for all deliveries and performances as well as payments and all disputes between the parties arising out of the contract, including actions on checks and bills of exchange, shall be Ilmenau, Germany, if the Customer is a merchant registered in the commercial register, a public law entity or a separate fund under public law.

2. German law shall apply exclusively.
3. Transfers of rights and obligations of the Customer arising from the contract concluded with TTBV require a confirmation in writing by TTBV to become effective.
4. If a provision of these terms is or becomes void the validity of the other provisions shall not be affected thereby. The ineffective condition shall be replaced by a provision serving the intended purpose legally and economically in the best possible manner.