

# General Terms of Sale of IVC Concept GmbH

## § 1 Validity of the terms

1. Purchase contracts are concluded between the seller and the buyer and are processed solely on the basis of these Terms of Sale in their current version. The terms thus also apply to all business transactions in future, even if they are not expressly agreed once more. The buyer's conditions in deviation to these Terms of Sale are invalid.

2. All agreements made to execute the contract shall be recorded in writing in this contract.

## § 2 Offers

1. This purchase contract enters force once it is signed by both parties in a legally binding manner. If the form is signed unilaterally by the seller, it is then regarded as an offer, to which the seller is bound for 5 days from receipt by the buyer.

2. The seller reserves the ownership and the copyright to all documents handed over to the buyer, insofar as these are not an object of this purchase contract or main components or accessories of the purchase item. These documents may not be made accessible to third parties without the prior approval of the seller in writing; they must be returned to the seller once the purchase contract has been executed.

## § 3 Prices and conditions of payment

1. The price stated in the offer/purchase contract is binding.

2. The price does not contain value-added tax, which will be added to the purchase price at the prevailing rate.

3. The seller expressly reserves the right to reject cheques and bills of exchange. Such are only ever taken in to facilitate payment.

4. The deduction of discounts requires a separate agreement in writing.

5. Unless regulated to the contrary in the offer/purchase contract, the purchase price is due for payment net, without discount, within 5 days of delivery. If the purchaser is in default of payment, the seller is entitled to charge default interest at 5% above the prevailing discount rate of the German Bundesbank. The seller is entitled to pursue higher default damages, insofar as it is able to demonstrate such. The buyer is entitled to demonstrate to the seller that it has incurred much lower losses as a consequence of the default of payment, or none at all.

6. If the buyer requests that the purchase item be shipped to a place other than the place of handover, the seller shall commission a properly qualified carrier for the transport. Unless a different regulation is contained in the purchase contract, the buyer bears all the costs and risks associated with the transport, including transport insurance and customs duties. The buyer must report any transport damage to the seller in writing without delay, although at the latest 6 days after the date of transport.

7. The buyer does not accrue any rights of offsetting unless its counter-claims have been established by a court of law, are undisputed or have been recognised by the seller. The buyer does not have a right of retention unless its counter-claim is based on the same contractual relationship.

## § 4 Warranty

1. The purchase item is known to the buyer. Unless regulated otherwise in the offer/purchase contract, the purchase item is a used device. The seller gives no warranty whatsoever that the purchase item is suitable for a particular purpose. The seller is entitled to deliver an equivalent, fully compatible object instead of the purchase item.

2. If the purchase item is a used device, it is sold by the seller under the exclusion of any warranty and without the assurance of particular characteristics, unless something to the contrary is regulated below.

3. When selling used objects, and in deviation to No. 2, the seller assures that the purchase item has a manufacturer's maintenance certificate (e.g. IBM-MAQ-Letter), insofar as the manufacturer usually issues such a maintenance certificate.

4. If the purchase item is a device sealed by the manufacturer, the buyer must check that the seal is intact immediately upon receipt of the purchase item and confirm this to the freight carrier. The buyer may not accept devices with broken seals. In the case of a purchase item sealed by the manufacturer, the seal may only be removed by someone authorised by the Manufacturer. In the case of a purchase item sealed by a third party, the seal may only be removed by someone authorised by this third party.

5. If the purchase item is a new device, the buyer accrues the warranty claims stipulated by law. A prerequisite for warranty claims on the part of the buyer is that it has properly conformed to its obligations of inspection and complaint as prescribed by §§ 377, 378 HGB. The buyer must notify the seller of a defect in writing within 5 days of receipt of the delivery. If the purchase item has a defect for which the seller is responsible, the seller is entitled to rectify the defect or make a replacement delivery at its discretion. If the seller chooses rectification, it is obliged to bear all the expenses required to rectify the defect, in particular the costs of transport, tolls, work and materials, unless these have been increased because the purchase item has been taken to a place other than the place of fulfilment.

6. If the seller is not prepared or is unable to rectify the defect or make a replacement delivery, if it refuses to do so or delays doing so beyond a reasonable period of grace for reasons which it is culpable, or if rectification of the defect/the replacement delivery fails in some other way, the buyer is then entitled to demand, at its discretion, that the contract be rescinded (redhibition) or that the purchase price be reduced (diminution).

7. Further-going claims on the part of the buyers are excluded, regardless of whatever their legal reason. The seller is not liable for damages which are not incurred on the purchase item itself; in particular, the seller is not liable for foregone profit or other asset losses suffered by the buyer. This exclusion of liability does not apply

if the losses were caused by malice aforethought or gross negligence. Moreover, it does not apply if the buyer pursues claims to damages due to non-fulfilment because an assured characteristic is missing.

8. When selling new devices, the seller assigns the warranty claims it accrues against the manufacturer/supplier to the buyer. The buyer accepts this assignment. The buyer shall pursue warranty claims itself, at its own expense, directly against the manufacturer/the seller's supplier.

9. The buyer can only pursue the warranty claims described in numbers 5-6 against the seller when their pursuit against the manufacturer/the seller's supplier as per number 8 is unsuccessful.

## § 5 Delivery

1. The buyer shall create the prerequisites for installing the purchase item at its own expense, in accordance with the manufacturer's instructions, in good time before the delivery.

2. In order to enable the seller to conform to its delivery obligations, the buyer must properly fulfil its obligations in good time and inform the seller accordingly. The purchase contract becomes null and void if the manufacturer refuses to deliver for reasons which the buyer is responsible.

3. If the purchase item has not been delivered one month after a non-binding delivery date has expired, the buyer can demand in writing that the seller delivers within a deadline of 10 days. If the seller is in default of delivery for reasons which it is culpable, the buyer is entitled to demand a flat-rate recompense for default amounting to max. 5 % of the delivery value. This does not apply if default is attributable to malice aforethought or gross negligence, or if it represents the infringement of a major duty.

4. If the seller is in default and the buyer sets a reasonable period of grace with the threat of rejection, the buyer is then entitled to withdraw from contract after this period of grace has expired fruitlessly. Claims to damages due to non-fulfilment in the amount of the foreseeable losses accrue to the buyer only if default is attributable to malice aforethought or gross negligence, or to the infringement of a major duty. Otherwise liability for damages is limited to 50 % of the losses incurred.

5. The restriction of liability does not apply if a fixed commercial transaction has been agreed.

6. If the buyer is in default of acceptance or if it infringes duties of cooperation, the seller is entitled to demand recompense for the losses it incurs, including any added expenditure.

In this case, the risk of accidental destruction or deterioration of the purchase item is transferred to the buyer as soon as it is in default of acceptance.

7. If deliveries are hindered due to an Act of God or disturbances at the seller's operating premises or those of its suppliers (strikes, lock-outs, civil unrest) – without the seller itself being culpable for such – , the agreed delivery period and the deadlines determined in this section are then extended by the duration of the delays to deliveries caused by these circumstances.

8. If the purchase objects are new IBM devices, the buyer shall issue declarations to the manufacturer concerning delivery and installation only after consultation with the seller.

## § 6 Installation

1. Insofar as necessary, the buyer will deploy properly qualified personnel to install the purchase item, in agreement with the seller, and perform the installation work within 5 working days after delivery. If the purchase item is found to be defective during installation, the buyer shall inform the seller without delay.

2. The buyer shall accept the purchase item without delay after its installation and technical readiness for operation. The purchase item is regarded as accepted on the 5th working day after delivery, if the installation work has not been concluded by the 5th working day for reasons which the seller is not culpable.

## § 7 Reservation of title

1. The purchase item remains the property of the seller until the purchase price has been paid in full. If the buyer disposes over the purchase items, despite the reservation of title, it assigns the receivables and claims it claims from the disposal to the seller as security. The seller accepts the assignment.

2. For the rest, ownership to the purchase item is transferred to the buyer upon handover.

3. Risk is transferred to the buyer upon handover or – if delivery is requested to a place other than the place of handover – upon handover to the party commissioned to execute the shipment.

## § 8 Concluding provisions

1. German law shall prevail exclusively over this contract. No verbal auxiliary accords have been made.

2. If a provision in this contract is or becomes invalid, or if it the contract contains loopholes, this shall not affect the validity of the remaining provisions in the contract. The parties are then obliged to replace invalid provisions or to close loopholes with provisions that come closest to the financial intent of this contract.

3. Mannheim is the place of jurisdiction for any disputes arising from this contract, including receivables from bills of exchange and cheques.

4. The purchase objects are subject to both German and US export regulations. Information and licenses under German law are issued by the Bundesamt für gewerbliche Wirtschaft (Federal Department of Commerce), 65760 Eschborn, and under US law by the US Department of Commerce, Office of Export Administration, Washington, D.C.20044. The buyer is obliged to obtain any licenses required.