

**GENERAL TERMS AND CONDITIONS OF  
SALE AND DELIVERY (T&C)  
OF THE IT-POWER SERVICES GMBH (IT-PS)  
FOR HARD- UND SOFTWARE**

**SECTION 1  
SCOPE**

- 1.1 These General Terms and Conditions of Sale and Delivery (T&C) shall apply to every sale and transaction between IT-PS and its Clients. IT-PS' general terms and conditions for consulting services shall apply to the supply of services. Any terms and conditions of Client which deviate from these T&C or from any amendments and modifications confirmed in writing by IT-PS are hereby expressly excluded. Any deviation from these T&C must be confirmed in writing to be effective.
  
- 1.2 Until IT-PS issues new T&C, these T&C shall also apply to all future cases, even if those are concluded without any reference to these T&C.

**SECTION 2  
PURCHASE ORDER, DELIVERY, RISK**

- 2.1 Unless another period has been agreed in an offer by IT-PS, IT-PS shall be bound to its offer for 30 days. The Agreement shall come into existence upon acceptance of the offer by Client within this period of time. The goods are subject to prior sale. Dimensions, weights, illustrations, descriptions and the like specified in the catalogues, brochures and other IT-PS documents or specified on the internet are approximate specifications; all specifications are without guarantee. Goods ordered by Client are subject to modifications during the delivery period, if these modifications are attributed to an improvement of technology or to legal requirements (especially by law and jurisdiction) and provided that the modifications are reasonable for Client. IT-PS is not bound to inform Client of modifications of its own accord.
  
- 2.2 Unless otherwise expressly agreed, the goods shall be deemed to be sold "ex works" (EXW). Hardware delivered pursuant to an order via consulting services shall be deemed to be sold "delivered at place" (DAP). Partial deliveries by IT-PS shall be permissible. INCOTERMS as amended from time to time shall apply.

- 2.3 Delivery dates specified by IT-PS are always subject to change and shall be met as far as possible. In the event of disruption, strike, riot, lockout, partial or total closure of the manufacturer, war, government intervention or force majeure the delivery date shall be deferred for the period of the disruption or the operational consequences. The occurrence of any of these events shall entitle IT-PS to withdraw from this Agreement without any liability to pay compensation, if delivery period is extended by more than four weeks.
- 2.4 If it is agreed that Client collects the goods, the risk shall be transferred to Client upon expiry of the collection period or the collection date. In case the goods are shipped, the risk shall be transferred to Client as soon as the shipment has been handed over to the person in charge of the transport. In case the transport is delayed on request of Client, the risk shall be transferred to him/her upon readiness for shipment.
- 2.5 Should IT-PS and Client agree upon a specific period or specific deadline regarding the delivery by IT-PS, default due to a missed deadline or period shall only commence after the receipt of a reminder and after the lapse of a reasonable period of time granted of at least six weeks. Only after occurrence of default and after the lapse of a further reasonable period of time set by IT-PS shall Client be entitled to withdraw from the Agreement or to assert compensation.
- 2.7 Unless otherwise expressly agreed in writing, the term of delivery shall commence as from one of the following dates whichever is the latest:
- a) date of order confirmation
  - b) date on which all technical, commercial and financial requirements are met by Client
  - c) date on which IT-PS receives a deposit to be paid before delivering the goods and/or a bank credit has been opened
- 2.7 Shipments outside of Austria need a separate agreement in writing.

### **SECTION 3 PRICES**

- 3.1 All prices are exclusive of VAT. Prices do not include freight, packaging, transport insurance and VAT and will be additionally invoiced.
- 3.2 Prices shall be computed at the prices valid on the date of signing the Agreement (Section 2.1). Price changes shall be permissible if the period between conclusion of the Agreement and the agreed delivery date is longer than six weeks. In case the producer's prices / factory prices / list prices of IT-PS's suppliers change, IT-PS shall be entitled to change the prices accordingly, even after the conclusion of the Agreement and the purchase order has been made.
- 3.3 Furthermore, IT-PS reserves the right to make the acceptance of orders conditional upon a minimum order value (in any case EUR 2,500.00) and to invoice a minimum quantity surcharge; this in particular also applies to regular business relations.

### **SECTION 4 PAYMENT**

- 4.1 Invoices shall be payable in cash and immediately upon receipt of the invoice, but not later than thirty days after billing date and in full. IT-PS shall be entitled to make the delivery conditional upon prepayment (advance payment).
- 4.2 Payments shall be deemed to have been timely made, if payments are received by IT-PS in cash or are accredited to IT-PS's account on the due date or on the last day of the term of payment.
- 4.3 Client is automatically and without prior notice in default upon expiry of the payment deadline.
- 4.4 Should Client be in default of one single payment, IT-PS shall be entitled
  - a) to invoice reminder charges in the net amount of EUR 40.00 for each (separate) reminder,
  - b) to invoice all additional costs for foreclosure measures taken by a third party (attorney's fees and collection agency's fees) pursuant to the applicable lawyer's tariff and the collection fee regulations respectively,

- c) to first cover accrued costs, then accrued default interests and then to set off the earliest debt (any payment allocations by Client are herewith irrelevant),
- d) to charge default interests at the statutory rate (this interest rate shall be raised, if IT-PS has to bear a higher interest rate) without prejudice to the right to claim damages caused by default,
- e) to claim an extension of the delivery period; the period of default, however, being an appropriate extension (this provision applies to cases where the delivery period started prior to the total receipt of payment based on an agreement concerning this matter, cf. Section 2.6 as to the start of the delivery period),
- f) to withhold further deliveries,
- g) to accelerate total payment of the unpaid amount in several instalments (default on payment),
- h) to withdraw from the Agreement, if Client fails to meet a reasonable extension of time, and to assert possible claims for damages.

4.5 IT-PS shall be at liberty to charge Client for any expenses that have been incurred as to the unsettled liabilities.

4.6 Client shall not be entitled by reasons of any counterclaim to setoff payments unless such counterclaims of Client have been accepted by IT-PS or have been established by a final and conclusive court judgment or IT-PS is unable to pay (also see Section 9.3). Client shall not be entitled by reasons of any counterclaim to withhold payments unless such counterclaims of Client have been accepted by IT-PS or have been established by a final and conclusive court judgment or IT-PS is unable to pay.

## **SECTION 5 WARRANTY**

5.1 Client shall inspect the goods immediately upon delivery. IT-PS shall be informed of visible and obvious defects immediately and in writing. IT-PS shall be informed of defects that cannot be detected despite thorough inspection or that become apparent only later immediately after the discovery of such defects. Client shall bear the risk of receiving the notice of defects; if IT-PS does not receive such a notice, the damages have not been filed. If, according to this paragraph, Client does not meet his/her obligation to inform and to inspect in a timely manner, the goods shall

be deemed approved and Client shall not be entitled to assert any claim for defects (especially not from warranty, damage or error).

- 5.2 If a defect exists, IT-PS has the right to subsequent performance either by remedying the defect or delivering a defect-free product (replacement delivery). IT-PS is entitled to choose between remedy of defect and replacement delivery. IT-PS's right to refuse subsequent improvement or replacement delivery remains unaffected when the legal requirements are met (cf. e.g. § 932 para. 4 ABGB).
- 5.3 Unless the defect is insignificant, Client, however, shall be entitled to withdraw from the Agreement (cancellation), or to demand reduction of the purchase price, if subsequent performance fails, in particular if performance is impossible and IT-PS fails to perform within due time, if IT-PS refuses subsequent performance or subsequent performance is culpably delayed by IT-PS.
- 5.4 Client shall allow a reasonable time and opportunity for IT-PS to repair or to deliver replacement, otherwise IT-PS is exempt from its warranty.
- 5.5 Warranty claims may not be asserted for insignificant defects. Defects of parts of the delivery do not entitle Client to reject the remaining delivery.
- 5.6 All warranty claims – except claims for damages arising from death, injury to body or health or due to gross negligence by IT-PS or by its assistants - become statute-barred after six months upon delivery of the goods. Warranty claims can only be asserted by the respective Client. Warranty claims shall not stop the payment of the purchase price when due.
- 5.7 IT-PS is entitled to ask Client to send the defect part to an address specified by IT-PS at IT-PS's expenses or - at the discretion of IT-PS - to keep the defect part or goods ready so that IT-PS or a third party commissioned by IT-PS repairs or exchanges the defect part or goods right at Client's premises.
- 5.8 Wear and tear of the goods shall not constitute a warranty claim. Client is explicitly advised to observe handling, use, maintenance and cleaning instructions attached to the goods. IT-PS shall not be held liable for any damages caused by handling, use, maintenance and/or cleaning differing from the ones specified in the instructions.

- 5.9 IT-PS is entitled to refuse subsequent improvement or replacement delivery until Client has fulfilled its payment obligation equalling the parts free of defects of the delivery performed, if the parts free of defects or the goods as such are of interest for Client (e.g. independent applicability).
- 5.10 IT-PS shall not assume liability for compliance with special provisions of the country of destination.
- 5.11 Claims for damages and other indemnifications of Client in case of a defect are governed by Section 6 of these T&C.

## **SECTION 6 LIABILITY, DAMAGES**

- 6.1 The provisions of the Product Liability Act apply in full.
- 6.2 IT-PS shall not be liable for any damages, except where these violations of agreement arise from wilful act or gross negligence on the part of IT-PS. This shall in particular apply to consequential harm caused by a defect and loss of profit, if, for instance, delivery is delayed or defect or not carried out at all. Client's right to damages remains unaffected in compliance with Section 5.
- 6.3 If the liability of IT-PS is excluded or limited, then such exclusion or limitation shall also apply to the personal liability of employees, representatives and assistants of IT-PS.
- 6.4 IT-PS shall not give any warranty or assume any liability, if the products are modified on Client's or a third party's authority. Furthermore, IT-PS shall not be liable for faults which have been caused by improper handling. If IT-PS is liable for damages, IT-PS shall be entitled to assign all claims by Client against IT-PS to a third-party insurer.
- 6.5 Unless otherwise expressly agreed, the risk of transport lies with Client (cf. Section 2.4).

**SECTION 7**  
**RETENTION OF TITLE**

- 7.1 The goods remain property of IT-PS until payment is made in full. Retention of title also remains in force, if, on request of Client or IT-PS, the goods are handed over to a forwarding agent.
- 7.2 Client shall be authorised to resell the goods prior to payment in full only upon and in compliance with IT-PS's written approval. The authorisation to resell goods shall be revoked automatically, if payment is delayed or suspended by Client. Until payment in full Client is not authorised to dispose of the reserved goods in any other way than specified in the provisions above; in particular he/she is not entitled to pledge or assign as security any goods that are subject to the title of retention. Client shall prevent any intervention to the property of IT-PS by a third party as well as seizure of the goods subject to the retention of title. Client is obliged to indicate IT-PS's ownership. Client shall notify IT-PS immediately thereof in writing.
- 7.3 IT-PS is entitled to require the immediate return of the goods delivered but not paid in full, if Client does not meet his/her obligation to pay in due time or in full, or if insolvency proceedings against the assets of Client have been requested or opened, or if bankruptcy proceedings have been avoided for lack of cost-covering assets, or if Client has de facto suspended his/her payments or approaches his/her creditors because of settlement out of court.
- 7.4 In the event that Client resells the goods prior to payment in full (see Section 7.2 above) Client hereby assigns to IT-PS all his/her purchase price claims against the buyer as well as all receivables from the resale of goods including all ancillary rights; Client shall record this assignment in his/her accounts. The assigned claims shall secure all claims pursuant to Section 7.1. At IT-PS's request Client shall inform IT-PS of the resale of goods to a third party in order to pay IT-PS within seven days upon notice and shall further provide IT-PS with the information and documents necessary to assert its rights within the same period of time. IT-PS shall be authorised at any time to inform third-party debtors about the assignment.
- 7.5 Unless separately agreed in writing, the taking back of the goods by IT-PS does not imply termination of the Agreement. In the event that goods sold subject to the retention of title are taken back, IT-PS's right to claim damages for non-performance shall remain unaffected. The goods sold subject to the retention of ti-

title shall be deemed to be held in trust by the buyer until the expiry of the retention period. The buyer shall bear the costs involved in IT-PS's enforcement of its rights under retention of title.

## **§ 8**

### **ADDITIONAL PROVISIONS FOR SOFTWARE**

- 8.1 The Software sold by IT-PS to Client is a standard software which has not been developed or programmed according to the individual needs of Client (e.g. specifications). Client acknowledges the scope of the software ordered upon placement of the order. The technical adaptation is shown in the demonstration software and the manual, respectively. Oral statements shall only be part of the scope of services, if a consulting services agreement is concluded.
- 8.2 Unless otherwise expressly agreed, IT-PS provides Client with electronic credentials and/or product key of the sold software.
- 8.3 Client acknowledges that he/she acquires a concession (license, non-exclusive exploitation rights) pursuant to the terms of license or the respective software producer. Client shall inform himself/herself about the respective terms of license prior to the purchase of the software and shall provide for adequate licensing (volume, quantity). Client confirms his/her consent upon purchase of the software.

## **SECTION 9**

### **PLACE OF JURISDICTION AND FINAL PROVISIONS**

- 9.1 Any amendments, modifications or side-agreements to this T&C as well as any warranty must be in writing to be legally applicable. This shall also apply to agreements to change this formal requirement.
- 9.2 The invalidity or unenforceability of any provision of this T&C or agreements amended by such provisions shall not affect the validity or enforceability of this Agreement. The parties hereto agree to replace any invalid provision with a provision that is valid and comes closest to the original intention of the invalid provision.
- 9.3 Client shall not be entitled to set off IT-PS' claims against counterclaims or to withhold payments referring to defects. Client may set off or assert his/her right of retention, only if the claims have expressly been accepted by IT-PS or have been established by a final and conclusive court. (also see Section 4.6).



- 9.4 IT-PS saves and processes name, address (postal address, e-mail address, telephone and possible fax number) and, in case of direct debit, also account data of Client. Disclosure of Client's personal data is only permitted if needed to fulfil the Agreement and in compliance with the provision of the Data Protection Act.
- 9.5 This T&C and any contract amended by this T&C are subject to Austrian law to the exclusion of the UNCITRAL's Sales Convention on Contracts for the International Sale of Goods (= UN Sales Convention / CISG / Vienna Sales Convention) as well as to the exclusion of the reference provisions of international private law and ROM I.
- 9.6 The Austrian court at A-2512, Tribuswinkel, Lower Austria, Austria, shall have exclusive jurisdiction to resolve any disputes arising from this Agreement. IT-PS shall, however, be entitled to file a lawsuit against Client at Client's principal place of business.

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