

General Terms and Conditions of Second-IT GmbH

- hereinafter referred to as Second-IT -
dated 15 November 2004

1. General

Our supplies, performances and offers are administered exclusively by virtue of the following general terms and conditions.

They shall also apply to all future supplies, performances and offers, even if the validity has not been again expressly stipulated. The general terms and conditions shall be deemed as accepted by the acceptance of our performances.

It is expressly stipulated that contradictory purchase terms of our customers that deviate from ours shall not be accepted. Any contradictory confirmations by the buyer referring to his terms of business are not accepted.

Deviating agreements with our employees, as well as any other agreements, shall only be effective if they have been confirmed in writing by a representative employee of Second-IT.

2. Offers and conclusion of agreement

Our offers shall always be subject to alteration without notice and without any commitment, i.e. they shall be understood as a request to provide an offer. Commissions shall only be considered as accepted if confirmed by us in writing, and respectively accepted by the supply of the commissioned goods. The delivery note or commercial docket shall be regarded as the order confirmation.

3. Prices and terms of payment

Price lists and other advertising documentation shall be subject to change without notice and without any commitment. The prices comply with the respective applicable price list that is subject to change at any time. Unless otherwise stated the prices shown shall be in Euros, including the currently applicable Value Added Tax, plus shipping and transportation charges, as well as freight insurance if ex-stock parcel post shipment. The purchase price shall be immediately payable in cash if the goods are collected, or if supplied, by cash on delivery. Deviating terms of payment shall require our special written agreement.

Unless otherwise provided by Second-IT each payment shall be allocated to the oldest unpaid invoice.

Obvious errors in calculation or clerical errors shall entitle us to rectification, even with previously prepared invoices that have already been settled by the customer at the initial amount.

Only undisputed or legally established debts shall entitle the customer to set-off. The customer shall be entitled to assert for right of retention only if his claims are founded upon the same agreement.

Interest payable for detention shall be charged at 8% beyond the prevailing base lending rate of the European Central Bank (ECB). Provided we can provide evidence to charge at a higher interest rate or the customer provides evidence for charging at a lower interest

rate, then such rate shall be charged either higher or lower. Any possible discounts shall not be granted if the customer is in default with payments from previous deliveries.

If the customer is in arrears with payments Second-IT shall be entitled, upon prior notification, to enter the customer's premises and to retrieve the goods. Second-IT shall be entitled to prohibit the customer from removing the goods until the purchase price has been liquidated.

If the seller becomes aware of facts after conclusion of the agreement, in particular in respect of payment delays from previous deliveries which, according to the seller's discretion, it is deduced that the title on the purchase price is endangered by a credibility gap of the buyer, we shall be entitled to demand, at our own discretion, concurrent payment, proportionate securities or cash before delivery and, in the case of refusal, to repudiate the agreement whereby invoices of partial deliveries provided shall become due with immediate effect.

4. Delivery times, extraordinary items, goods for re-marketing

Delivery times and deadlines shall be mandatory only if confirmed by Second-IT in writing. Delivery times shall commence as of the date of confirmation.

Circumstances such as force majeure, war, natural disasters, governmental acts, unforeseen shortage of manpower or transportation sources, mechanical or electrical break-down, strikes and lock-outs that cause a discontinuance or limitation of company operational activities shall invoke a reasonable extension beyond the scheduled deadline for a while, insofar as these circumstances have a significant influence on the delivery of the sold object. The circumstances cited shall suspend Second-IT from the committed delivery obligations during the course of impediment. This shall also apply if such impediments occur to the suppliers or sub-suppliers of Second-IT. The seller shall inform the customer of such impediments as soon as possible. The customer shall be entitled to request from the seller a statement to the effect whether he wants to withdraw from the contract or whether he wants delivery within a reasonable period of time. The seller shall be entitled to withdraw from the contract at his own discretion even without such a request after a reasonable waiting period of time. If the seller fails to respond to the request immediately the customer shall be entitled to withdraw. The parties agree that in such events any claims for indemnification shall be excluded.

In terms of his own negligence and that of his vicarious agents the seller shall be liable only for damage caused intentionally or by gross negligence. The seller shall not be liable for faults attributable to his previous suppliers. However, the seller shall be liable to assign to the customer possible claims towards his previous suppliers.

In the event of deferred delivery, which is justified by the seller, the customer shall be liable to declare, upon the seller's request and within a reasonable period of time, whether he still insists on delivery or whether he intends to withdraw from the contract and/or will demand indemnification instead of performance.

It is agreed that all extraordinary items (goods for re-marketing) will be delivered only while stock lasts. If such stock has run out the delivery performance of Second-IT shall be regarded as impossible and this shall release Second-IT from the obligation to deliver. Second-IT will inform the customer of such non-availability of goods as soon as possible and restore considerations. Further claims shall not be asserted.

5. Passing of risk and acceptance

Principally, Second-IT only sells to individuals who collect the goods themselves. Any services exceeding the provision for collection shall be considered as a courtesy. Second-IT shall neither justify any entitlements nor will it assume any liability.

The parties agree that the receiver is responsible for insuring against loading and despatching risks (with the exemption of parcel post shipments). With the provision of goods the risk shall pass over to the customer following notification of readiness for collection.

The conclusion of transport insurance resides solely with the customer.

Second-IT will conclude transport insurance (individuals collecting goods themselves are exempted) without any obligation and right of recourse. The costs shall be borne by the customer (item 3).

Partial deliveries shall be permissible to a reasonable extent.

The customer shall be committed to accept the goods provided that such goods are not full of apparent technical defects.

If the customer refuses to accept the goods ordered Second-IT shall be entitled to grant a reasonable delay in writing, with the declaration that Second-IT will repudiate the agreement upon expiration of the term. Upon unsuccessful expiration of the period of grace Second-IT shall be entitled to resign from the agreement with a written statement or to claim compensation. There shall be no need to lay down an extension period if the customer seriously and finally declines acceptance, or if it has become unambiguous that the customer is incapable of payment of the purchase price even within the period of grace.

Provided that Second-IT requests indemnification in accordance with the section cited above such indemnification shall amount to 15% (fifteen per cent) of the agreed purchase price. The amount of claim shall be quoted higher or lower if Second-IT provides evidences of higher damage or if the customer provides evidence of less damage.

6. Retention of title

Second-IT reserves the unrestricted right of property on the entire goods delivered – including future deliveries - until complete payment has been received on the entire purchase price. The customer shall be committed to store the respective goods separately from other goods. In cases of current accounts, the reserved title will provide security to Second-IT for the respective balance due. This shall particularly apply to public companies, public funds and merchants whereby the sales agreement forms part of the ability to carry on business.

The customer shall be committed to insure the reserved goods at his own expense and to maintain such insurance. In the event of maturity the customer shall relinquish all claims towards the insurance company to Second-IT up to the amount of our demand.

In the event of seizure of the reserved goods by third parties the customer shall inform third parties that the property belongs to Second-IT and informs Second-IT immediately. If the customer fails to carry out both of these actions this represents a contractual breach that commits to indemnity.

The customer shall be entitled to re-sell or to process the purchased goods in the ordinary course of business if Second-IT has granted its written consent.

If the customer processes the reserved goods into a new chattel such processing shall occur on behalf of the seller without becoming incumbent. The new chattel shall become the property of the seller.

Should the sold goods be inseparably mixed with other objects not belonging to the seller, the seller shall acquire co-ownership of the new goods in regard to the relationship of the objective value of the sold goods to the other objects when mixed together. Should the reserved goods be mixed with goods not belonging to the seller in accordance with §§ 947, 948 BGB (German Civil Code) the seller shall acquire co-ownership analogous to the statutory provisions. Should the customer acquire exclusive ownership by linkage or mixing he assigns co-ownership to the seller in the ratio of the reserved goods to the other objects at the time of mixing. In such cases the customer shall be committed to secure those chattels being in the seller's ownership or co-ownership free of charge. If the reserved goods are being sold solely, or together with goods not belonging to the seller, the customer shall assign any claims arising out of the re-sale in the amount of the reserved goods value or at mixing, prior to re-sale of the seller's co-ownership and together with all additional rights at the time of the contractual conclusion; the seller shall accept the assignment. The value of the reserved goods shall be the seller's invoiced amount. Should the re-sold reserved goods be in the co-ownership of the seller the assignment of claims shall cover the amount corresponding to the seller's proportional value in the co-ownership. Bailed or chattel mortgages of the seller's ownership to third parties shall not be permitted. For reasons of security the customer shall immediately assign to the seller the full extent of all claims arising from the re-sale or any other legal reasons (e.g. insurance – tortuous acts) in respect of the reserved goods (including all balance debts from current accounts).

The seller shall confer revocable authority to the customer to collect, on his behalf, the claims assigned to the seller, and place these in the seller's account.

The seller shall not make any use of his own power to collect, unless the customer meets his financial responsibilities, even towards third parties. At the customer's request the seller shall name the debtors of the claims assigned and notify them of such assignment; the seller shall be entitled to inform the debtor of the assignment.

Provided that the value of securities exceeds our claims by more than 20% (twenty per cent), we will release securities at our own discretion upon request of the customer.

In the event of a customer's behaviour being contrary to the terms of the agreement – in particular default in payment or other breaches of duty arising out of the title retention – we shall be entitled, irrespective of our other claims, to demand restitution of the reserved goods and, upon written notification and a reasonable deadline, to offer the goods by private sale in the open market to achieve the optimum by appropriating the proceeds of the realisation on the purchase price. The customer shall bear all incurred expenses of returns and realisations of the subject matter of the agreement. The enforcement of the retention of title by us, if the customer fails to meet his obligations, shall not mean repudiation from the agreement unless it concerns the hire purchase transaction of a non-merchandise. In this case the rules governing the Consumer Credit Law shall apply.

The right of re-sale, re-use or install of the reserved goods, or the power to collect assigned claims, shall be excluded by the suspension of payments and/or motion to apply for insolvency. This shall not apply to the official receiver in insolvency proceedings.

7. Guarantee/Damage to goods in transit

The customer shall be committed to inspect the goods for any possible shipping damage upon receipt, and to notify the supplier (Post, UPS, forwarder, etc.) immediately of any damage. Any later objections shall not be accepted.

The customer shall be committed to inspect the goods received for any obvious defects that an ordinary customer would notice without any great effort. This shall also apply with respect to the completeness of the delivery. Obvious defects shall be notified in writing within one week after delivery. Any infringement of the duty to inspect the goods and notify any defects shall be considered as accepted with respect to the defect concerned. The duties of inspecting and complaining for merchandisers in accordance with § 377 HGB (German Commercial Code) shall remain unaffected.

The goods offered are basically of a second-hand nature unless otherwise stated. The sale of used items occurs under a limitation period for buyers, in actions for breach of guarantee towards consumers, of one year after delivery. Such guarantee shall be excluded towards customers not being consumers. Such exclusion shall not apply in the failure of a guaranteed quality, fraudulent concealment of a defect, or if and inasmuch as a guarantee has been given.

Any guarantee claims shall be excluded on appliances/equipments where the attached safety labels provided have been removed or broken.

The legal deadlines on guarantee claims to assert claims for indemnity shall remain unaffected from the regulations of item 3 and 4.

In the case of a guarantee promise on condition of the goods, or in the case of fraudulent concealment of a defect, the guarantee shall remain unaffected from the aforementioned provisions. The same shall apply to the legal requirements of §§ 478, 479 BGB (German Civil Code) concerning recourse of the entrepreneur towards the supplier.

The following shall apply if a caveat emptor is not effective: if a defect on the goods is shown Second-IT shall be entitled to rectification of defects or subsequent delivery at our own discretion. In such a case the customer shall request of Second-IT whether such rectification of defects or subsequent delivery will occur. Second-IT shall notify the customer of intended action as soon as possible. The customer shall be entitled to withdraw from the contract or to demand abatement of the purchase price only if he granted Second-IT a reasonable deadline to rectify the defects, or subsequent delivery of the goods has not occurred, or Second-IT denies rectification or replacement of consignment.

Claims shall only be accepted if the defective appliance/equipment is presented in its original packaging with its original despatch labels.

8. Claims for indemnity

Claims for indemnity (hereinafter referred to as "Claims for Indemnity") against us, or our vicarious agents, for whatever cause in law, particularly for failure to comply with duty out of an obligation and out of tortuous act, and also particularly for direct or indirect consequential damages, shall be excluded. This shall not apply unless imperative liability is being provided, especially for injuries to life, limb and health.

The claim for indemnity for the infringement of significant contractual obligations shall be restricted to the contractual, foreseeable damage.

Provided that claims for indemnity exist against us, or our vicarious agents, they shall be subject to a limitation period of 1 (one) year after delivery, unless such claims are not founded upon intention.

9. Service requirements

In order to examine your claims we would need a copy of your purchase invoice/sales slip. If you fail to provide this evidence we shall return the goods to you and charge a handling fee. Any guarantee claims of the customer shall expire if manufacturing and/or identification labels are missing.

Fault diagnosis:

With regard to appliances/equipment reaching us without a detailed fault description ("Defective" or "For repair" is not sufficient) Second-IT shall be entitled to choose between undertaking a fault diagnosis at the consignor's expense, or returning the appliance/equipment not repaired against a handling fee according to our price list.

Unjustified complaints:

In the case of unjustified complaints (no defect detectable, probably operator error) the goods will be returned against a handling fee, or a credit note, less the expenses incurred, will be issued.

Transportation charges:

For justified complaint goods returned to Second-IT the cost of transportation and insurance shall be borne by the consignor. For organisational reasons unpaid deliveries shall not be accepted.

10. Place of performance, venue and applicable law:

The laws of the Federal Republic of Germany shall govern these terms and conditions, including all legal relationships, between Second-IT and its customers. The UN Sales Convention (United Nations Convention on Contracts for the International Sale of Goods) shall not be applicable.

The place of performance for deliveries and payments shall be Mainhardt, Germany, if the customer is a merchant and the conclusion of a contract is part of his business. The courts of Schwaebisch Hall, Germany, shall be the venue for all current and future claims arising out of the business relationship with merchants. The same places of jurisdiction shall be applicable, even if the customer moves his legal place of residence or regular residence out of the scope of the Federal Republic of Germany, and even if the legal place of residence and/or regular residence of the contractual partner is unknown at the time of litigation.

11. Data protection

Regarding the business relationship or connection with it Second-IT shall be entitled to process the data received about the customer, notwithstanding whether this data is originated by the customer or third parties. This notification shall replace the information pursuant to the German Federal Data Protection Act, indicating that personal data is being stored and processed by means of data processing systems.

12. Concluding provisions

If one of the provisions of these General Terms and Conditions proves to be ineffective or unenforceable, or contains loopholes, it shall not concern the effectiveness of the remaining provisions of the agreement. In this event the parties shall substitute the invalid or unenforceable provision by a valid one which as closely as possible meets the economic purpose of the invalid or unenforceable provision.