

Terms and Conditions

GENERAL TERMS AND CONDITIONS OF ITelSys GmbH (Germany)

Version 201901a

ARTICLE 1: APPLICABILITY OF THESE TERMS AND CONDITIONS

The following terms and conditions apply to all agreements – including future agreements – within the context of which "ITelSys GmbH", hereinafter to be referred to as "ITelSys", supplies or makes available items or software, under whatever title – including purchase, licence or contract – or performs any other service, and to any statements made in that context. The terms "product" or "item" are hereinafter also taken to mean software and the performance of a service, unless the contrary is evidently the case. All parties assigned by ITelSys for the performance of this agreement can rely upon these general terms and conditions. The other party to ITelSys shall hereinafter be referred to as "the customer". These conditions shall govern any contract between ITelSys and the customer and shall be read in conjunction with ITelSys's offer and the Policy (defined in article 9 paragraph 2) which shall constitute the entire agreement between ITelSys and the customer to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made by the customer.

ARTICLE 2: CONCLUSION AND CONTENT OF THE AGREEMENT; SECURITY

1. Unless otherwise stated, all offers made by ITelSys are without obligation. ITelSys is entitled to cancel any contract during a period of three working days after receipt of acceptance from the customer. In due observance thereof, the agreement between ITelSys and the customer will be concluded when the customer accepts ITelSys's offer unconditionally or when ITelSys accepts the customer's order, subject to conditions or otherwise. If ITelSys sends out a written confirmation or acceptance, the content thereof is considered to be agreed, unless the customer objects in writing within three working days of the dispatch of the written confirmation or acceptance. With regard to the prices, ITelSys refers to the provisions contained in article 3. For software, please refer to article 5 and elsewhere.

2. Cancellation of an agreement once it has been concluded at the request of the customer can only take place if ITelSys gives its consent in writing; such consent will always be given on condition that all costs incurred by ITelSys and the damage it has suffered, including (without limitation) loss of profit, are compensated.

3. ITelSys is always entitled to demand the provision of adequate security before the contract is concluded. Even after the agreement has been concluded, ITelSys is entitled to do this if it has reasonable grounds to suspect that the customer will not fulfil its obligations. This will always be the case if the customer fails to satisfy a claim payable to ITelSys despite notice of default.

4. The (potential) customer bears the risk for the incorrect provision of information if this is done verbally.

5. If ITelSys shows or submits to the customer documentation, illustrations, samples or models, in any way whatsoever, this will serve purely for reference purposes; the item/service need not necessarily conform to such a description, unless and insofar as the parties expressly agree the contrary in writing.

6. Unless otherwise agreed in writing, in relation to the products to be delivered/made available by it, ITelSys will never be bound to do more than deliver/make available said products in accordance with its own specifications contained in its documentation. This documentation is available to the customer in writing in the form of brochures or otherwise, and/or electronically via publication on its website. The customer acknowledges and agrees that it has consulted this documentation by the time of ordering at the latest, and that it understands and accepts it. Advice given by ITelSys (verbally or otherwise) – including if ITelSys gives advice on how to use its products – is not intended, under any circumstances, to make ITelSys bound by specifications other than those found in the above documentation, unless otherwise agreed in writing. Unless the customer specifies to ITelSys the purpose for which it intends to use the products prior to the contract being concluded, ITelSys accepts no liability for their suitability for any particular purpose, save where the suitability of a product for a specific purpose explicitly appears from the aforementioned documentation

ARTICLE 3: PRICES; PAYMENT AND COSTS

1. Unless expressly stated otherwise in writing by ITelSys, the prices it quotes: (a) are based on ITelSys's list prices that are valid at the time the order is confirmed; (b) are based on the conditions of delivery outlined in article 4 paragraph 1 or agreed individually with the customer; (c) exclude VAT, import/export duties and other taxes, levies and duties; (d) exclude assembly, installation and commissioning costs, unless expressly stipulated otherwise; (e) if ITelSys has to carry out the work specified in sub-clause (d) above, prices

are provided on condition that the customer will fulfil its obligations specified in article 6.

2. ITelSys is entitled to vary any prices agreed with the customer if and in as far as cost determinants for the product change between the date of the purchase agreement and delivery date.

3. Payment must be made within 40 days of the date of ITelSys's invoice to the account nominated in the invoice or else in cash at the offices of ITelSys. The customer cannot use rights of set-off or suspension of performance under any circumstances. As soon as the period of 40 days expires the customer will be in default, with no requirement of notice to this effect, and it will owe interest on the end total of the invoice proportionate to the statutory interest rate as specified in the German Civil Code. After each period of one year, the amount on which interest is calculated will be increased by the interest owing for that year.

4. If ITelSys has reasonable grounds to suspect that the customer will not meet its obligations, as specified in article 2 paragraph 3, ITelSys will be entitled to cash on delivery within Germany and (with regard to consignments destined for delivery outside Germany) to demand advance payment of the purchase price and, where the occasion arises, transport costs.

5. The customer will owe ITelSys all extrajudicial and court costs if it fails to make payment of the sum due despite a warning to do so, and ITelSys places the claim in the hands of a third party. In respect of these costs, the customer will owe a sum that is calculated proportionate to the rate charged by ITelSys's legal adviser for similar business per unit of time, where reasonable, plus reasonable expenses payable by this legal adviser to third parties. In respect of the extrajudicial costs, the generally accepted minimum rates will apply at least – where necessary in due observance of the relevant report: "preliminary work" – while in respect of the court costs at least the amounts to be settled by the courts outside the agreement apply.

6. Payments to be made by the customer or third parties will always be applied in the first instance to those claims for which ITelSys cannot assert the retention of title and right of pledge described in article 7. In observance thereof, payments will be applied in the first instance to all costs owed, thereafter to all outstanding interest and, finally, to the most senior capital debt.

ARTICLE 4: DELIVERY

1. Unless otherwise agreed, delivery will always be effected under customer's premises or ITelSys's store in Hamburg.

2. The customer is obliged vis-à-vis ITelSys to take immediate delivery of the purchased item/service offered, as soon as offered. If the customer fails to take delivery of the item, the item will be deemed to have been delivered at the time ITelSys offered the item (without prejudice to ITelSys's right to cancel the contract and/or compensation), and ITelSys will retain such items from that moment on at the customer's expense and risk. ITelSys is entitled in that instance to invoice the customer. It shall remain the customer's responsibility to insure the item and ITelSys shall have no liability for loss of or damage to the item following the customer's failure to take delivery under this article 4 paragraph 2.

3. Agreed delivery dates are approximate only and ITelSys shall not be liable for any delay in delivery however caused. Time for delivery shall not be of the essence of the contract unless otherwise agreed by ITelSys in writing. In the event of late delivery, ITelSys must be given written notice of default; ITelSys must be granted a reasonable deadline, set in consultation with it, within which it can perform. In general 3 months needed from the P.O till to deliver in your premises. ITelSys also accept partial deliveries of a whole P.O within the same year when only the first delivery has to be approximately 3 months and rest as agreed by P.O.

4. ITelSys is entitled to make partial deliveries provided that this is done within the agreed deadline or within any extended delivery period agreed in accordance with paragraphs 3 and 5 of this Article 4.

5. The delivery date will be extended if and insofar as the customer has failed to meet its obligations towards ITelSys, including payment obligations and obligations to provide the necessary information and resources. Agreed delivery times are laid down in the expectation that ITelSys can continue to operate as anticipated at the time the agreement was concluded.

6. The significance of delivery terms and conditions will be interpreted on the basis of the latest edition of the Incoterms supplied by the International Chamber of Commerce.

7. If the customer wants to return items to ITelSys, the prior consent of the latter is required, as laid down in the ITelSys Hamburg Warranty and Repair Policy referred to in article 9 paragraph 2.

8. The provisions of this article also relate to each individual delivery within the context of a delivery-on-call agreement.

ARTICLE 5: SOFTWARE AND INTELLECTUAL PROPERTY

1. If ITelSys sells software or items containing software – or makes software available under a different title – it is acknowledged and agreed between the parties that despite the use of words such as "buy" or "sell",

a licence is merely being granted for this software, and the software is not being sold. This licence is not exclusive and is not subject to transfer or sublicensing. The licensed software is for internal use only by the customer and, unless otherwise agreed, only for use on one computer. If ITelSys, for its part, has obtained a sub-licence for the software, it is acknowledged and agreed between the parties that the entitled party is the owner of the software and can realise rights of ownership regarding it. The provisions contained in article 4 apply mutatis mutandis to the granting of the licence.

2. The intellectual property rights with regard to the documentation specified in article 2 paragraph 6 and other documents including (but not limited to) offers supplied by ITelSys to the customer rests solely with ITelSys. The customer shall return such documents to ITelSys immediately upon demand.

3. The customer is not permitted to remove or modify any notice in relation to copyright, brand names, trade names or other intellectual or industrial property rights from the software or from movable goods supplied.

4. ITelSys is entitled to adopt technical measures to protect the equipment and software it is going to provide.

5. The customer is not allowed, without the prior written consent of ITelSys to dismantle or decompile, reverse engineer, copy, translate, adapt, introduce variations to, or modify all or part of the software supplied by ITelSys, except where permission is granted as a result of the applicable licence terms and conditions and in accordance with German law.

6. If the customer modifies the software and equipment supplied by ITelSys under any Contract to which these conditions apply to such an extent that the result is new original work, the customer undertakes to assign all intellectual and industrial property rights, including copyright, in relation to this new original work to ITelSys without compensation.

7. If ITelSys supplies drivers to enable the correct operation of hardware products, and problems arise in relation to the operation of these drivers, the onus is on the customer to prove that the driver is faulty.

8. If the customer manufactures applications itself with the help of a software package to be supplied by ITelSys, the customer becomes the owner of these applications. If the applications manufactured by the customer do not work properly, and it is the customer's opinion that this is the result of a fault in the software supplied by ITelSys, the onus is on the customer to prove that this is the case.

9. If ITelSys is commissioned by the customer to manufacture software components, such as, for example, an ActiveX component, the customer becomes the owner thereof upon payment, unless otherwise agreed. If the customer alleges that the software manufactured by ITelSys is faulty, the onus is on the customer to prove this.

ARTICLE 6: INSTALLATION OF HARDWARE AND SOFTWARE

1. Any assembly or installation work will be carried out at the customer's expense, unless otherwise agreed in writing. Interconnection of items supplied by ITelSys or software installation is not included in the price, unless otherwise agreed in writing. Coupling with existing equipment and/or software is only implemented if expressly agreed and against payment based on the rates in force at ITelSys. The installation site must satisfy technical requirements and – if appropriate – the individual requirements agreed by ITelSys and its customers.

2. Assembly/installation/commissioning work will be deemed to be completed at the first of the following points in time:

(a). the time at which the customer has approved the work after inspection or has put the work into commission (whichever is earlier); when a part is put into commission it is deemed to have been delivered; or

(b). the time when eight working days have passed since the day on which ITelSys notified the customer in writing that the work was installed, completed/finished and/or operational, and no written comments or complaints concerning the work have been received from the customer within this period, or if the customer has omitted to request an acceptance test from ITelSys within this period of time. ITelSys is also entitled to demand an acceptance test. Once this test has been carried out, with the co-operation of each of the parties, ITelSys will present a completion form to the customer on which the latter can record its approval. Minor, non-essential faults that ITelSys will rectify as soon as possible, do not constitute grounds for withholding approval. Following delivery, ITelSys's liability is limited to any hidden defects that are the responsibility of ITelSys, on condition that the customer notifies ITelSys within ten working days of their discovery.

ARTICLE 7: RETENTION OF TITLE AND PLEDGE

1. All deliveries take place subject to retention of title. ITelSys retains ownership of the items delivered or to be delivered to the customer under any agreement to which these conditions apply until the customer has effected the following:

(a). paid the price in full for all these items, plus all outstanding interest and costs,

(b). paid all debts in full relating to the work carried out or to be carried out by ITelSys on its behalf, within the context of the agreements concerned,

(c). paid all debts owed by it to ITelSys due to failure to meet the above obligations.

The customer cannot use the item falling under the retention of title in any way as security for claims other than those of ITelSys.

2. The parties agree that a right of pledge in favour of ITelSys will be established on movable, non-registered property, obtained by ITelSys from the customer, as security on claims that ITelSys has, or will obtain, on the customer, for whatever reason. The right of pledge will be established without further formalities at the moment ITelSys takes possession of the item in question.

3. If any third party claims any right to, or in connection with, an item falling under retention of title, or an item on which right of pledge is established as specified in the previous paragraph, the customer is obliged to notify this third party without delay of ITelSys's right and inform ITelSys without delay about this matter.

ARTICLE 8: FORCE MAJEURE

In addition to what is deemed to be force majeure in German Law, the following situations also apply as such: strikes and/or illness of ITelSys's employees, breach of contract and/or force majeure on the part of its suppliers, carriers or other third parties involved in the agreement, traffic congestion, natural disaster, war or mobilisation, blocking government measures, fire and other accidents in its company, as well as other circumstances due to which it cannot reasonably be required to continue performance of the agreement or do so fully. In addition, force majeure will be deemed to have occurred if it can be reasonably assumed that the hindrance will render all or part of the agreement definitively impossible. Thus, if force majeure occurs and either party is prevented, hindered or delayed from performing its obligations under any contract to which these Conditions relate for a limited period, each of the parties is entitled to dissolve the agreement fully or in respect of the part to which force majeure applies. In the latter case, the parties will be obliged to perform the undissolved part of the agreement. The customer's right of dissolution as specified in the previous sentence will not apply if it has no interest in immediate termination, or no interest that can reasonably be respected. In this connection, the customer must supply ITelSys with information if required and give grounds for any dissolution. If a decision is taken to proceed with dissolution as laid down in this article, neither party will owe compensation to the other in respect of the dissolved part of the agreement.

ARTICLE 9: INSPECTION AND COMPLAINTS

1. The customer is obliged to inspect the items supplied by ITelSys /the service performed by ITelSys immediately upon delivery to ascertain satisfactory quality, insofar as such an inspection is reasonably possible within the said time frame, and in any event to perform a check to ascertain volumes and any immediately visible faults. If the customer wants to make complaints in this respect, it must provide written notice outlining the nature of the problem to ITelSys and make a record on the delivery note, within fifteen working days of delivery of the item/service.

2. Without prejudice to the provisions of paragraph 1 of this article, complaints made by the customer will be handled on the basis of the "ITelSys Hamburg Warranty and Repair Policy" in force from time to time (hereinafter "the Policy"), which is available either in hard copy upon request from ITelSys or can be found at the following internet address: <http://itelsys.de>. In this text the term "warranty" implies nothing other than an attributable shortcoming.

3. In respect of delivery following completion of assembly/installation/commissioning work, the provisions contained in article 6 shall apply.

4. Submission of a complaint does not release the customer from its payment obligation and does not entitle it to defer any payment.

ARTICLE 10: LIABILITY

1. For the different products, ITelSys employs various warranty periods. These are set out in the Policy referred to in article 9 paragraph 2. For composite products, such as computers, there is no warranty period for the product as a whole, but only warranty periods for the component parts individually, as described in the Policy.

2. If ITelSys acknowledges (which acknowledgement will always be conditional unless otherwise stated) that a failing can be attributed to it, ITelSys shall be entitled to remedy such failing and inform the customer of the following within a reasonable period of time after the customer has invoked this failing:

(a). it will deliver/re-deliver any item (or part of an item) which is missing at no extra cost; or:

(b). it will implement remedial action at no extra cost; the replacement parts can be new or reconditioned, at the discretion of ITelSys, and the replaced parts will become the property of ITelSys; or

(c). it will reimburse the purchase price paid.

If ITelSys acts within a reasonable time after the customer has made the complaint, ITelSys's obligations under the agreement shall be deemed to have been fulfilled correctly and the customer shall not be entitled to compensation. If ITelSys elects to reimburse the purchase price, this shall constitute the dissolution of the agreement.

3. ITelSys limits its liability, regardless of the nature thereof, to a maximum of the agreed price for the item/service in question (excluding VAT), except in the case of death or personal injury arising from its negligence or deliberate recklessness, if it is found that it owes compensation under any title whatsoever. The compensation owed by ITelSys will be reduced by a reasonable usage fee.

4. ITelSys will bear no liability, and any claim in respect of an alleged shortcoming on the part of ITelSys will lapse, if the customer carries out modifications and/or adjustments and/or repairs and/or maintenance on the product itself, or has such carried out, or if the delivered item is not being, or has not been, used or handled carefully in accordance with the accompanying or applicable manufacturer's instructions/user manual, or is being, or has been, used or handled improperly or carelessly, or if the item delivered is being used or applied for other than the intended purposes (specified in ITelSys's documentation referred to in article 2 paragraph 6) – including situations where the product is being used in combination with any product or software not supplied by ITelSys whilst the product supplied by ITelSys itself is in compliance with the agreement - or if the item delivered is being, or has been, used in a way that ITelSys could not have reasonably anticipated, or has been manufactured in accordance with the customer's instructions and this has had a bearing on the damage that has arisen. ITelSys is not liable for damage arising as a result of normal wear and tear of the product it has supplied. If and insofar as the provisions of this paragraph conflict with the provisions of the Policy referred to in article 9 paragraph 2, and this Policy applies between the parties, the provisions of the Policy will prevail.

5. Contrary to the provisions above, the following applies: if it proves that ITelSys belongs to an industry where standardisation of agreements via general terms and conditions with limitations/exceptions pertaining to liability is a normal occurrence, and ITelSys concludes the agreement within this industry, or if ITelSys concludes the agreement with a company from another industry that is regularly involved with the industry in which ITelSys operates, and within which the standardisation specified is also present, ITelSys will not be liable, under any circumstances, for (serious) faults caused by persons in its employment who do not belong to the management.

6. Liability shall only be accepted for advice given by ITelSys, up to the maximum amount referred to in this article, if:

(a). ITelSys has received all relevant information, both solicited and unsolicited, from the other party, and

(b). ITelSys has specifically issued advice that has been tailored to and worked out on the basis of the situation in question, and

(c). The customer can prove that ITelSys's advice was followed in full and did not lead to the result that ITelSys had promised.

7. For the purposes of this article unlawful action is also considered as an attributable shortcoming. "Warranty" is understood to mean an attributable shortcoming.

ARTICLE 11: APPLICABLE LAW AND COMPETENT COURT

1. German law applies to all agreements concluded by ITelSys to which these conditions apply to the exclusion, if its terms are in conflict of the United Nations Treaty on international purchase agreements relating to movable goods.

2. All disputes arising between ITelSys and the customer, and to which these general terms and conditions apply, will, unless prevented by imperative terms of law, be settled by the Court in Hamburg, Germany, without prejudice to ITelSys's right to bring legal proceedings against the customer before an otherwise competent court.

Due to the local circumstances, these articles could be subject to change. ITelSys will keep the right to change these articles at any time in order to comply to those circumstances.

Sales Return Policy
RMA Policy