

# ITK Delivery Conditions

For use in legal transactions with entrepreneurs, public law legal entities and public law special funds.

## 1. General Provisions

- 1.1 Our deliveries shall exclusively be governed by the terms and conditions set forth hereunder (hereinafter referred to as "Terms and Conditions"). Terms and conditions opposing or deviating from our Terms and Conditions shall not apply unless we have expressly agreed to their applicability. The following Terms and Conditions shall also apply if, notwithstanding our knowledge of deviating or opposing terms and conditions of the customer, we unconditionally perform delivery to the customer.
- 1.2 Oral agreements before or at the time when the contract was concluded shall require written confirmation by us to be effective.
- 1.3 Cost estimates are non-binding except as otherwise expressly agreed.
- 1.4 These Terms and Conditions shall also govern all future deliveries to the customer pending the entry into effect of our new terms and conditions of delivery.

## 2. Prices

- 2.1 Invoices shall be calculated on the basis of the list prices in effect on the date of delivery plus VAT. VAT will not be charged only if the conditions for export shipments to be exempted from such tax have been met.
- 2.2 In the absence of any special agreement, prices and conditions for delivery shall deemed to be "free carrier, FCA" (Inco-terms® 2020) shipping point of the delivering factory, excluding packaging.
- 2.3 We reserve the right to adjust our prices appropriately in the event of cost increases incurred after the contract has been entered into, in particular in case of wage cost changes, for instance due to collective bargaining agreements, or changes in the price of materials, provided an interval of more than four (4) months elapses between the date of contract signing and delivery. Upon request, we shall evidence such changes to the customer.
- 2.4 Spare parts and products which have been repaired shall be shipped against a reasonable flat rate charge for shipping and packaging in addition to the charges for the service rendered by us, except where this is covered by liability for defects.
- 2.5 Except as otherwise agreed upon in writing, invoices shall be due upon issuance of the invoice. Payment shall be effected within 30 days of the invoice date without deduction. In the case of late payment, we shall be entitled to charge default interest at the statutory rate. Our right to claim additional damages shall remain unaffected.
- 2.6 Moreover, we shall be entitled to offset payments against the oldest outstanding amount receivable.
- 2.7 Payment by means of bill of exchange is only permissible if agreed with us in advance. We shall only accept bills of exchange and cheques on account of performance and they shall not be deemed to constitute payment until honoured.
- 2.8 The Customer shall be entitled to withhold payments or offset against counterclaims only to the extent that its counterclaims are undisputed or recognized by a final and binding judgment or becomes ready to be decided in a pending law suit.
- 2.9 If, after the contract has been entered into, we become aware of circumstances that may result in our claims to be in jeopardy due to customer's inadequate ability to pay, we shall have the right to perform outstanding deliveries only against prepayment or against the provision of security and, following the expiry of a deadline set to this effect, to terminate or rescind from the contract.

## 3. Delivery, Delivery Dates, Default

- 3.1 The commencement of and adherence to agreed delivery dates is predicated upon the fulfilment of the customer's obligations to cooperate, in particular for the supply of equipment, documents, permits, investigations, releases, and compliance with agreed payment conditions. In the event that the customer's obligations to co-operate

are not fulfilled properly or in a timely manner, delivery deadlines shall be extended appropriately.

- 3.2 We are entitled to have our deliveries and services performed by third parties, including but not limited to our affiliated companies, as subcontractors.
- 3.3 We are not liable for the impossibility of supply / other performance or for delays - also from our subcontractors - insofar as these were caused by Acts of God or other events unforeseeable at the time the contract was concluded we are not responsible for (e.g. disruption of operations of all kinds, difficulties in material or energy procurement, transport delays, strikes, legitimate lockouts, lack of manpower, energy or raw materials, war, acts of terrorism, difficulties in obtaining the necessary official permits, official measures, epidemics or the incorrect or untimely supply / other performance by our suppliers / subcontractors). If non-compliance with the delivery date is resulting from such events, the delivery dates agreed upon shall be extended for the period of such hindrance.
- 3.4 If we are in default with our delivery, the customer shall declare upon our request and within a reasonable period of time whether it insists upon performance of delivery or asserts its other statutory rights.
- 3.5 In case of delayed delivery, the customer may rescind the contract within the framework of statutory provisions only insofar as we are responsible for the delay.
- 3.6 Clause 8 applies to claims to damages by the customer on account of delayed delivery.
- 3.7 In the event that the customer causes shipment or delivery to be delayed (default of acceptance) or if the customer does not comply with its obligations to cooperate culpably, we shall be entitled to claim any loss or damage resulting thereof. Without proof of any actually accrued loss or damage, we shall be entitled to claim a lump sum fee for additional expenditures in the amount 0.5 % of the price of the products or services concerned for each inchoate month, but not exceeding the aggregate amount of 5 % of the price for the products or services concerned. The parties shall, however, have the right to provide evidence for higher or lower loss or damages actually accrued.
- 3.8 Part shipments and corresponding invoices are admissible unless this is an unreasonable hardship for the customer.

## 4. Complaints and Notification of Defects

- 4.1 The customer must notify us immediately in writing, however no later than 15 days after receipt of the goods, of any recognisable defects. Adhesive labels on the boxes, labels showing the contents and the control slips enclosed with the shipment shall be submitted to us together with the notification of the defect. Any other defects must be notified by the customer in writing immediately after discovery thereof. The date of receipt by us of notification of a defect shall determine whether or not notification is in good time.
- 4.2 If the notification of a defect is unjustified we shall be entitled to demand compensation from the customer for any expenses we have incurred.
- 4.3 Claims on account of defects shall be excluded if the notification of the defect is not received in good time.
- 4.4 Claims for loss or damage in transit shall be made within the limitations governed by the respective freight contract or by law.
- 4.5 The customer may not refuse to take delivery on account of minor defects.

## 5. Defects/Defects of Title

- 5.1 The limitation period for claims on account of quality defects shall be twelve (12) months from the delivery of the products (passing of risk). The foregoing provision shall not apply insofar as longer limitation periods are prescribed by statute pursuant to Section 438 para 1 (2) (building constructions and goods for building constructions), Section 479 para 1 (claim to recourse) and Section 634a (construction defects) German Civil Code [BGB].
- 5.2 In the event that a quality defect, the cause of which already existed on the date of transfer of risk, arises within the limitation period, we may affect subsequent performance at our discretion either by remedying the defect or delivering a defect-free product.

- 5.3 The time bar does not start to run again as a result of the subsequent performance.
- 5.4 If subsequent performance should be abortive, the customer may — without prejudice to any claims to damages — rescind the contract or reduce the amount of payment in accordance with statutory provisions.
- 5.5 Claims by the customer on account of expenditure required for the purpose of subsequent performance, in particular costs of transport, transportation, labour and materials, shall be governed by statutory provisions. They shall, however, be excluded insofar as such expenditure is increased due to the fact that the product delivered was subsequently taken to a place other than the branch operation of the customer unless such removal is in accordance with the designated use of the product.
- 5.6 Claims for subsequent performance shall be excluded in case of a minor deviation from the quality agreed upon or in case of a minor impairment in usability. Further rights and claims shall remain unaffected.
- 5.7 The following are not deemed to be defects:
- ordinary wear and tear;
  - characteristics of the product and damage caused after the date of transfer of risk due to improper handling, storage or erection, noncompliance with installation or handling regulations or to excessive strain or use;
  - characteristics of the product or damage caused by force majeure, special external circumstances not foreseen under the terms of the contract or due to the use of the product beyond normal use or the use provided for under the terms of the contract;
  - non-reproducible software errors.
- 5.8 We assume no liability for the quality of the product based on the design or choice of material insofar as the customer stipulated the design or material.
- 5.9 Claims to recourse against us by the customer shall only exist insofar as the customer has not reached any agreements with its customer which are more far-reaching than statutory claims on account of defects, for instance accommodation agreements.
- 5.10 Claims on account of defects including claims to recourse by the customer shall be excluded insofar as the customer has had the defect remedied by a specialised workshop/service station not authorised by us.
- 5.11 Clauses 5.2, 5.5, 5.6 shall not apply insofar as our product was proved to be sold by the customer or customer of the customer to a consumer without being processed or installed into another product.
- 5.12 The rights of the buyer due to a defect are excluded if he has knowledge of the defect at the time when the contract is entered into. The provisions of section 442 (1) BGB (German Civil Code) also apply in the event of lack of knowledge due to slight negligence.
- 5.13 Our obligation to pay damages and to compensate for abortive expenditure within the meaning of Section 284 BGB on account of defects shall be governed by clause 8 in all other respects. Any further-reaching claims or claims by the customer on account of defects other than those covered by this clause 5 are excluded.
- 5.14 The provisions of this clause 5 shall apply mutatis mutandis to defects of title which are not constituted by the infringement of third party industrial property rights.

## 6. Free Software and Open Source Software

Our supplies and services may contain free software and open source software ("FOSS") which is subject to separate FOSS license terms. The customer shall be obliged to observe and comply with such terms and shall perform any obligations arising thereof, including but not limited to obligations regarding documentation or provision of source code of the FOSS component. This applies in particular in case of a distribution of the FOSS component itself or as part of the product to third parties (to the extent authorized under the agreement).

An overview of the FOSS components contained in the respective supplies and services and the corresponding FOSS license terms form part of the delivery.

If and to the extent necessary in the context of certain FOSS licenses (e.g. LGPL-2.1), reverse engineering of the relevant component shall be permitted. This does not apply to other components of the software.

## 7. Industrial Property Rights and Copyright

- 7.1 We shall not be liable for claims arising from an infringement of third party intellectual or industrial property rights or copyright (hereinafter: industrial property right) if the industrial property right is or was owned by the customer or by an enterprise in which the customer holds, directly or indirectly, a majority of the shares or voting rights.
- 7.2 We shall not be liable for claims arising from an infringement of third party industrial property rights unless at least one industrial property right from the property right family has been published either by the European Patent Office or in one of the following countries: Federal Republic of Germany, France, Great Britain, Austria or the USA.
- 7.3 The customer must notify us immediately of (alleged) infringements of industrial property rights and of risks of infringement in this respect which become known and, at our request — insofar as possible — allow us to conduct the litigation (including non-judicial proceedings).
- 7.4 We are entitled, at our discretion, to obtain a right of use for a product infringing an industrial property right, to modify it so that it no longer infringes the industrial property right or to replace it by an equivalent substitute product which no longer infringes the industrial property right. If this is not possible subject to reasonable conditions or within a reasonable period of time, the customer shall — insofar as the customer allowed us to carry out a modification — be entitled to the statutory rights of rescission. Subject to the aforementioned preconditions we too shall have a right of rescission. The ruling set forth in clause 5.9 shall apply accordingly. We reserve the right to carry out the action at our disposal under the terms of sentence one of this clause 7.4 even if the infringement of the industrial property right has not been ruled on by a court of law with res judicata effect or recognised by us.
- 7.5 Claims by the customer are excluded insofar as the customer is responsible for the infringement of the industrial property right or if the customer has not supported us to a reasonable extent in the defence against claims by third parties.
- 7.6 Claims by the customer are also excluded if the products were manufactured in accordance with the specifications or instructions of the customer or if the (alleged) infringement of the industrial property right ensues from the use in conjunction with another product not stemming from us or if the products are used in a manner which we were unable to foresee.
- 7.7 Our obligation to pay damages in case of infringements of industrial property rights is governed by clause 8 in all other respects.
- 7.8 Clause 5.1 applies mutatis mutandis to the limitation period for claims based on infringements of industrial property rights.
- 7.9 If the product comprises integrated electronics, components implementing Standards, and/or related software, supplied provided by sub-suppliers, which may make use of third party intellectual property rights, licenses to use such third party intellectual property rights for the product, and corresponding indemnifications for claims against the customer based on such third party intellectual property rights, are not part of our deliverables. Customer may be required to obtain licenses from the owners of these third party intellectual property rights directly. "Standards" shall mean technical specifications or functions (i) adopted by a standards organization (inter alia ETSI or IEEE), (ii) defined by research institutes, industrial companies or other market participants to ensure technical conformity or compatibility, or (iii) established by common practice in a particular technical field.
- 7.10 At the request of the customer, we shall inform the customer about any integrated electronics, components implementing Standards, and related software, contained in the product. In the event of alleged infringements of third party intellectual property rights by customer's use of integrated electronics, components implementing Standards, and/or related software, contained in the product, we shall reasonably provide the customer with relevant information on request against such allegations. This includes the provision of any documents which we control and is entitled to provide to the customer.
- 7.11 Further-reaching claims or claims other than those claims of the customer governed by this clause 7 and clause 8 on account of an infringement of third party industrial property rights are excluded.

## 8. Claims to Damages

- 8.1 We are liable to pay damages and compensation of abortive expenditure within the meaning of Section 284 BGB (hereinafter: after

referred to as damages) on account of a violation of contractual and non-contractual obligations only

- (i) in case of intent or gross negligence,
  - (ii) in case of negligent or deliberate fatal injury, physical injury or injury to health,
  - (iii) in case of we have assumed a guarantee with respect to quality or durability,
  - (iv) in case of a negligent or deliberate breach of material contractual duties,
  - (v) on account of compulsory statutory liability pursuant to the German Product Liability Act or
  - (vi) on account of any other compulsory liability.
- 8.2 The damages for a breach of material contractual duties are, however, limited to foreseeable damage, typical for the type of contract, except in the event of intent or gross negligence or on account of fatal injury, physical injury or injury to health or on account of assuming a quality guarantee.
- 8.3 In the event that a defect in our products causes a loss or damage to customer's data and programs, our liability shall not include any expenditures resulting from their recovery. The customer shall insofar be obligated to affect data backups on a regular basis.
- 8.4 No change to the burden of proof to the detriment of the customer is connected with the aforementioned rulings.

#### 9. Retention of Title

- 9.1 We retain title to the products delivered pending full performance of all claims to which we are entitled on the basis of the business relationship.
- 9.2 Should the products in which retained title require maintenance, such maintenance shall be carried out at customer's expense.
- 9.3 The customer is entitled to process our products or connect them with other products within the due course of the customer's business. By way of security for our claims set forth in clause 9.1 above we shall acquire joint ownership in the products created as a result of such processing or connection. The customer hereby transfers such joint ownership to us now already. As an ancillary contractual obligation, the customer shall store free of charge the goods to which we have retained title. The amount of our joint ownership share shall be determined by the ratio between the value of our product (invoiced amount incl. VAT) and the value of the product created by processing or connection at the time of such processing or connection.
- 9.4 The customer shall be entitled to sell the products in the normal course of business against cash payment or subject to retention of title. The customer assigns to us now already all claims in full together with all ancillary rights to which the customer is entitled from the further sale of our product, irrespective of whether our product has been further processed or not. The assigned claims act as security for our claims set forth in clause 9.1 above. The customer is entitled to collect the claims assigned. We may revoke the rights of the customer as set forth in this clause 9.4 if the customer fails to duly comply with its payment duties towards us, is in default in payment, suspends payment, or if insolvency or similar proceedings for the purpose of dept relief have been filed. In addition we shall be entitled to revoke customer's rights set forth in this clause 9.4, if an impairment of the customer's financial situation occurs or is threatening to occur or if the customer should become insolvent. Upon request, the customer shall notify us immediately in writing as to whom the customer has sold the products in which we hold title or joint title, and of the claims to which the customer is entitled from such sale; the customer shall also be obligated to issue to us at its expense publicly certified deeds relating to the assignment of the claims.
- 9.5 At our request the customer shall advise us immediately in writing of the parties to whom the products to which we have retained title or joint title have been sold and of the claims to which the customer is entitled on the basis of such sale and shall issue to us deeds officially authenticated at the customer's expense relating to the assignment of the claims.
- 9.6 The customer is not entitled to effect any other disposals of the products to which we have retained title or joint title or of the claims assigned to us. The customer must notify us immediately of any attachments of or other impairments to the rights of products or claims belonging to us either in whole or in part. The customer shall bear the entire costs which have to be expended in order to cancel the attachment of our retained property or security by third parties

and to re-create the product insofar as it is impossible to retrieve it from the third parties.

- 9.7 If the value of the security existing for us exceeds the amount of our claims by a total of over 10%, we shall release security to this extent at our discretion at the customer's request.

#### 10. Rescission/Termination

- 10.1 In case the customer does not comply with its contractual duties, e.g. in case of default of payment, after expiration of a reasonable grace period we shall be entitled to rescind from or terminate the contract. Any other right given by contract or law shall remain unaffected.
- 10.2 We shall be entitled to rescind from or terminate the contract immediately (without any grace period), if the customer suspends payment, or insolvency or similar proceedings for the purpose of dept relief have been filed.
- 10.3 Without providing a grace period, we shall be entitled to withdraw from or terminate the contract, if
- (i) an impairment of the customer's financial situation occurs or is threatening to occur and if as a result thereof customer's ability to fulfill its payment obligations toward us be at risk, or
  - (ii) the customer should become insolvent.
- 10.4 Immediately after customer's receipt of our declaration to withdraw from or terminate the contract, the customer shall be obliged to provide us with access to the products to which we have reserved title and shall render them to us or any designated representative. Upon advance notice, we shall be entitled to take possession of the products to which we retained title for purposes of recovery of our due claims
- 10.5 The rights mentioned in this clause 10 shall be in addition to any statutory right, which shall not be affected thereof.

#### 11. Foreign Trade Law

- 11.1 Each party is entitled to refuse to perform its obligations under this contract insofar as the foreign trade law, including, without limitation, national and international (re-)export control and customs regulations, including embargos and other sanctions, which is applicable to this contract and/or the performance of the contract (hereinafter "Foreign Trade Law") render impossible or prohibit the fulfillment of obligations under this contract. In such cases, either party is entitled to terminate this contract in whole or in part to the extent that the Foreign Trade Law makes it impossible or prohibits the proper fulfillment of obligations under this contract. If, in the event of partial termination, a partial performance is excluded for technical or legal reasons or if one party has no interest in a partial performance, the termination will end the contract in its entirety.
- 11.2 In case of delay in the performance of obligations under this contract caused by licensing, authorization or similar requirements under Foreign Trade Law (hereinafter "Authorization"), the agreed deadlines and dates shall be extended/postponed by the period between the conclusion of the contract and the granting of the Authorization. In the event an Authorization be denied or not granted within 12 months after filing the application, either party is entitled to terminate or rescind from the contract in whole or in part insofar as the performance of the obligation requires this Authorization. If a partial performance is excluded for technical or legal reasons or if one party has no interest in a partial performance, the termination will end the contract in its entirety.
- 11.3 Each party shall notify the other party within a reasonable time period upon becoming aware of a Foreign Trade Law, which may prohibit or render impossible performance according to clause 11.1, or delay performance according to clause 11.2.
- 11.4 Upon request, the customer shall provide any information and documents that we require to comply with Foreign Trade Law or that authorities request from us. This includes information and documentation including, without limitation, on the end user, the destination and the intended (end-)use of the Deliveries and Services. We may, in its sole discretion, refuse to perform its obligations under this contract or terminate the contract, if the customer does not provide us with such information or documents within a reasonable time period set by us.
- 11.5 In the event that the customer provides to any third party (specifically including any affiliate of the customer) any Deliveries and Services,

the customer shall comply with applicable Foreign Trade Law, insofar as customer's non-compliance could lead to a violation of our obligations to act or to refrain under Foreign Trade Law. We are entitled to refuse to perform its obligations under this contract to the extent that customer's breach of duty could lead to a breach of our obligation to act or refrain under Foreign Trade Law, or to terminate the contract for cause, if the customer breaches this obligation.

11.6. Insofar as the customer purchases products from us that fall under the scope of Article 12g of Regulation (EU) No. 833/2014 or Article 8g of Regulation (EC) No. 765/2006 as amended, the following shall apply:

11.6.1 The customer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or Belarus or for use in the Russian Federation or Belarus any goods or technology supplied under or in connection with this contract that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014 or Article 8g of Regulation (EC) No. 765/2006, as amended from time to time.

11.6.2 The customer shall undertake its best efforts to ensure that the purpose of clause 11.6.1 is not frustrated by any third parties further down the commercial chain, including by possible resellers.

11.6.3 The customer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of clause 11.6.1.

11.6.4 If the customer breaches clause 11.6.1, 11.6.2, or 11.6.3, at least negligently, this shall entitle us to immediately cease further deliveries to the customer and to terminate this contract and any contracts concluded under this contract at any time, insofar as these have not yet been fully performed. In this case, a previous warning letter to be issued before the termination notice shall not be required. The statutory right of both parties to terminate this contract for cause shall not be affected by this.

11.6.5 The customer shall immediately inform us about any problems in applying clauses 11.6.1, 11.6.2, or 11.6.3, including any relevant activities by third parties that could frustrate the purpose of clause 11.6.1. The customer shall make available to us information concerning compliance with the obligations under clauses 11.6.1, 11.6.2, or 11.6.3 within two weeks of the simple request of such information.

11.7.1 For delivery of goods across customs borders to us, the customer is obliged to provide us with all required documents and information such as commercial invoice and delivery note, for a complete and correct import customs declaration to the shipment. In the case of free of charge deliveries to us, the customer is obliged to declare a value, which reflects a fair market price as well as the note "For Customs Purpose Only" in the pro forma invoice. The value has to contain all components of the good such as hardware and respectively software.

11.7.2 Unless explicitly agreed otherwise in written form in the delivery or quotation documents, the customs-cross-border supply or provision of software, technology or other data (e.g. map data) shall be performed exclusively by electronic means (e.g. e-mail or download). This clause does not cover the supply of embedded software (software which is flashed on hardware).

## 12. Occupational safety, health and environmental protection

The customer is responsible for the instruction and safety of our employees on site as well as for preserving third parties from sources of danger. The customer shall ensure that activities are carried out properly and safely so that hazards to people, the environment and work processes are prevented.

The customer shall ensure that all employees have been instructed in the hazards and the conduct and that protective measures have been coordinated. The customer shall instruct our employees in safety-relevant rules at the customer's site before starting work. The safety briefing must be documented.

The customer shall inform us of any mutual hazards before starting work. The necessary protective measures are to be determined together with our contact person. Our written permission must be obtained before starting work which involves an increased or special risk to people or the environment.

## 13. Confidentiality

13.1 All of the business and technical information stemming from us (including characteristics which can be deduced from goods or software delivered and other knowledge or experience) shall be kept secret with respect to third parties if and as long as such information is not proven to be public knowledge or determined by us to be resold by the customer and it may only be made available to those persons within the customer's own operation who necessarily have to be included in the use thereof and who are also committed to secrecy; the information shall remain our exclusive property. Without our prior written consent, such information may not be duplicated or commercially used. At our request, all information stemming from us (including, if applicable, any copies or duplicates prepared) and goods made available on loan must be returned to us immediately in full or destroyed.

13.2 We are using cloud-based applications and technologies. We are entitled to disclose information of our contractual partners to IT-Service-Providers who are commissioned by us or by a company affiliated to us with the operation and administration of IT-Infrastructure as well as cloud services and who need to have knowledge of this information in order to perform these tasks, provided that these IT-Service-Providers have in turn been obligated to maintain confidentiality towards us.

13.3 We reserve all rights to the information mentioned in clause 13.1 above (including copyright and the right to file applications for industrial property rights such as patents, utility models, semiconductor protection etc.).

## 14. Miscellaneous

14.1 If one of the provisions of these Terms and Conditions and the further contracts reached should be or become ineffective, this shall not affect the validity of the remainder of the Terms and Conditions. The contracting parties are obliged to replace the ineffective provision by a ruling approximating most closely the economic success intended by the ineffective provision.

14.2 The courts of Stuttgart (for proceedings at the court of first instance, the district court in 70190 Stuttgart), or, at our discretion, if the customer is,  
(i) a registered merchant or  
(ii) has no general domestic place of jurisdiction or  
(iii) has moved its domicile or normal place of abode abroad after entering into the contract or if its domicile or normal place of abode is unknown,

the courts with jurisdiction at the registered office of the operating facility carrying out the order, shall have jurisdiction and venue.

We are also entitled to take legal action at the court having jurisdiction at the registered office or a branch office of the customer.

14.3 All legal relationships between us and the customer shall be exclusively bound by and construed in accordance with the laws of the Federal Republic of Germany excluding the rules on the conflict of laws and the United Nations Convention on the International Sale of Goods (CISG).