

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF THE COMPANY ICPDAS-EUROPE GMBH

A. GENERAL PROVISIONS

I. SCOPE, GENERAL

1. These General Terms and Conditions of Sale and Delivery (GTC (international)) of the company ICPDAS-EUROPE GmbH, Mahdenstraße 3, 72768 Reutlingen, Germany (hereinafter called: "ICPDAS-EUROPE" or "we") are applicable to all transactions concerning the delivery of goods to customers (hereinafter called: "Purchase Contracts ") or the rendering of services, in particular repair and customer service performances, to customers by ICPDAS-EUROPE (hereinafter called: "Contracts for Work and Services"), insofar as the permanent establishment of the Customer that is of relevance to the contract is not located in Germany.
2. The scope of application of these GTC (international) is limited to contracts with entrepreneurs, legal entities under public law or special assets under public law. These GTC are not applicable to transactions with consumers within the meaning of § 13 of the German Civil Code ("BGB").
3. These GTC (international) are exclusively applicable. The application of Customer conditions that contradict, supplement or deviate from our GTC (international) is herewith rejected. These shall not be applicable even if we execute the Customer delivery in the knowledge of or without expressly rejecting deviating Customer conditions.
4. Individual agreements reached with the Customer on a case-by-case basis (including collateral agreements, supplements and amendments) shall in every case have precedence over these GTC (international). The content of such agreements shall be in accordance with a written contract or our written confirmation.
5. These GTC (international) shall also be applicable to future transactions between ICPDAS-EUROPE and the Customer, without the need to make renewed reference to these.
6. Legally significant declarations and notices that the Customer makes to us after the signing of the contract or that may need to be submitted (e.g. imposition of deadlines, defect notices, etc.), must be made in writing in order to be valid.
7. Rights that ICPDAS-EUROPE has under statutory regulations or other agreements that extend beyond these GTC (international) remain unaffected.

II. RIGHTS TO OUR DOCUMENTS, APPROVAL OF THE CUSTOMER

1. Offers, cost estimates and other documents presented within the context of the process of establishing the contract shall remain our property and may be made available to any third party only with our prior written consent.
2. All rights, in particular patent rights, copyrights and inventor rights, to documents, samples, appliances, tools, drawings, cost estimates, drafts and plans are held exclusively by us. They may be made available to third parties only insofar as we have expressly agreed to this in writing.
3. If we make aforementioned items or documents available, this shall not entail any transfer of rights or granting of rights (utilisation licence) to the Customer.
4. The Customer issues his assurance that documents made available to us by him do not breach third-party rights. The Customer shall be responsible for ensuring that the documents made available to us by him, in particular drawings, plans, etc., are drawn to scale, are directly suitable for the purpose of determining the contractually owed performance, and correspond to the actual conditions.

III. CONTRACTUAL CONCLUSION

1. Our offers, unless these do not expressly state otherwise, are without obligation and non-binding. This also applies if we have made catalogues, technical documentation or other product descriptions available to the Customer – including in electronic form.
2. The contract shall be established by our order confirmation pursuant to Fig. 3 or our rendering of the performance pursuant to Fig. 4.
3. We are entitled to accept an offer submitted by the Customer by means of order confirmation within ten working days of the receipt of the offer.
4. The contractual conclusion shall be established by our rendering of the performance, insofar as we have begun rendering the performance within ten working days of receipt of the Customer offer, and the Customer has been informed of this.

IV. CONTRACT CONTENT, MODIFICATION OF THE CONTRACTUALLY OWED PERFORMANCE, LEGAL DEFECTS

1. The contractually owed performance shall be determined by the agreement reached, in particular the order confirmation.
2. The agreement of a guarantee or the assumption of a procurement risk must be made in writing in order to be valid.
3. The contractually owed performance is free of legal defects, insofar as a third party cannot in this respect assert any claims against the Customer on the territory of the Federal Republic of Germany. ICPDAS-EUROPE shall be responsible for ensuring that the performance is unencumbered by third party rights in respect of other states only if we have confirmed this in writing.
4. Retrospective amendments or modifications of the performance owed by ICPDAS-EUROPE shall be permitted, insofar as these are customary or technically necessary and do not unreasonably inconvenience the Customer.

V. UTILISATION RIGHTS

1. We grant the Customer a simple utilisation right to copyrights, commercial proprietary rights and know-how to the extent that this is necessary for the contractually compliant utilisation. The Customer may not make copies on machines, systems and data processing units that are not specified in the contract.
2. The Customer is permitted to exercise any possible further use only after we have agreed to this in writing.

VI. PERFORMANCE PERIOD, SELF-SUPPLY RESERVATION, FORCE MAJEURE AND RIGHT OF WITHDRAWAL

1. Unless otherwise agreed on a case-by-case basis, any possible reported performance periods represent merely approximate deadlines.
2. The start of an agreed performance rendering period shall be subject to clarification of all technical questions. The performance rendering period shall not begin before the Customer has completed his associated duties of cooperation.
3. If an advance payment obligation of the Customer is agreed, such as for example the performance of a down-payment, an agreed performance rendering period shall not commence before the Customer has fulfilled his respective advance payment obligation.
4. ICPDAS-EUROPE shall be entitled to assert the plea of an unfulfilled contract.
5. An agreed performance rendering period shall be subject to the condition of complete and punctual delivery by our contracting partner (self-supply reservation). This shall not apply if the contractual agreement clearly indicates that we have assumed the procurement risk or in a case of unlimited indeterminate obligation. Our performance obligation shall also not be waived by the self-supply reservation if we have not concluded a congruent hedging transaction with our suppliers or culpably caused the non-fulfilment of this congruent hedging transaction in respect of the performance to be rendered for the Customer. ICPDAS-EUROPE shall inform the Customer without delay, insofar as the performance of the congruent hedging transaction is not available.
6. The performance rendering period shall be reasonably extended in the event of force majeure. Excluded from this are those cases in which an instance of force majeure as well as the duration thereof does not have any impact on the performance rendering period. When quantifying the reasonable extension of the performance rendering period, the duration of the obstruction and a reasonable start-up period must also be taken into account. Instances of force majeure also constitute events that were unforeseeable at the time of the signing of the contract, such as energy or raw material shortages, strikes, lockouts, official measures, terrorist attacks and war. ICPDAS-EUROPE shall inform the Customer without delay about the existence of force majeure as well as the anticipated end of this circumstance. If the force majeure continues without interruption for more than three months, or if the delivery deadline is extended by more than four months due to several instances of force majeure, then both the Customer as well as ICPDAS-EUROPE shall be entitled to withdraw from the contract. In the event of force majeure, the assertion of compensation claims and further claims shall be excluded. The counter-performance obligation shall be waived, and already-performed down-payments shall be reimbursed. The provisions of this Fig. shall be correspondingly applicable insofar as the circumstances occur at a sub-supplier and impact the delivery to ICPDAS-EUROPE.
7. Compensation claims brought on the grounds of failure to adhere to the performance rendering period shall be based on A. IX. Liability.

VII. ACCEPTANCE DEFAULT, DELAY DAMAGES

1. If the Customer does not accept the goods in good time, or if he otherwise defaults on the acceptance, then for each commenced working day he shall owe ICPDAS-EUROPE a sum amounting to 0.1 % of the respective order value, although not exceeding 5 % of the respective order value.
2. The onus shall be on the Customer to demonstrate that lower or no damage was caused, while ICPDAS-EUROPE reserves the right to demonstrate that the damage was higher.

VIII. PRICES, TERMS AND CONDITIONS OF PAYMENT

1. All prices are net prices and are payable together with the respective applicable statutory value added tax.
2. All possible other incurred costs, in particular for the settlement of payments, transport, import and export customs duties, fees, shall be borne by the Customer.
3. Unless otherwise agreed, payments are due net within ten calendar days from the transfer of risk. Payments must be made at the business domicile of ICPDAS-EUROPE in Reutlingen. Payment costs and risks shall be borne by the Customer.
4. A cash discount shall be subject to a separate agreement on a case-by-case basis.
5. The acceptance of cheques and bills of exchange shall be subject to an express written agreement.

IX. LIABILITY

1. ICPDAS-EUROPE shall be liable in accordance with the statutory provisions in the event of a culpable breach of duty for all damages arising out of mortal injuries, physical injuries or health impairment.
2. ICPDAS-EUROPE shall be liable in accordance with the statutory provisions in the event of a culpable breach of material contractual obligations. Liability shall, however, be limited to the foreseeable, contractually typical damage if ICPDAS-EUROPE did not breach material contractual obligations wilfully or with gross negligence. Material contractual obligations mean those that are absolutely essential to achieve the purpose associated with the contract, and that the Customer is entitled to expect are being adhered to.
3. ICPDAS-EUROPE shall be liable for the grossly negligent and wilful breach of non-material contractual obligations.
4. ICPDAS-EUROPE shall be liable in accordance with the provisions of the applicable product liability act.
5. If a contractual guarantee has been agreed, ICPDAS-EUROPE shall be liable in accordance with the guarantee declaration.
6. In other respects, liability shall be excluded.
7. To the extent that our liability is limited or excluded on the basis of the above Figs., this shall also apply to the liability of our statutory representatives and vicarious agents, including our workers and employees.

X. SUPPORT IN PRODUCT LIABILITY CASES

1. The Customer shall not alter safety-relevant aspects of the products. The Customer shall in particular not amend or remove existing warnings about the danger of improper use. If this obligation is breached, the Customer shall indemnify ICPDAS-EUROPE internally in respect of third-party product liability claims, unless the Customer was not responsible for the fault that triggered the liability.
2. If ICPDAS-EUROPE is obliged to introduce measures, in particular product warnings or product recalls, then the Customer shall support ICPDAS-EUROPE in such endeavours to the best of his ability.
3. The Customer shall inform ICPDAS-EUROPE in writing without delay about any risks that become known to him.

XI. OFFSETTING, RIGHT OF RETENTION

1. The Customer may only offset claims that are uncontested or have become res judicata.
2. Fig. 1 applies correspondingly to the exercise of a right of retention.

XII. PROHIBITION OF ASSIGNMENT

1. The Customer may assign rights and obligations arising out of this agreement to third parties wholly or in part only with our prior written consent.
2. Fig. 1 does not apply to the assignment of a payment claim within the meaning of § 354a of the German Commercial Code ("HGB").

XIII. RESERVATION OF TITLE

1. Goods delivered by us shall remain our property until the payment has been made in full (goods subject to reservation of title).
2. The Customer is obliged to insure goods that are subject to reservation of title sufficiently against fire, water and theft at his own expense.

XIV. SETTLEMENT OF DISPUTES, APPLICABLE LAW

1. The exclusive place of jurisdiction is the court with competence for the registered domicile of ICPDAS-EUROPE in Reutlingen, Germany.
2. ICPDAS-EUROPE shall furthermore be entitled to take legal action against the Customer at his general place of jurisdiction.
3. If the relevant permanent establishment of the customer for the rendering of the respective performance is located outside the European Union as well as outside the states of Switzerland, Norway and Iceland, then all disputes between ICPDAS-EUROPE and the Customer shall be definitively decided in accordance with the Rules of Arbitration of the German Institute of Arbitration, whereby recourse to ordinary legal channels shall be excluded. The place of the arbitration proceedings is Stuttgart. The number of arbitrators is three. The language of the arbitration proceedings is German.
4. The law of the Federal Republic of Germany is applicable, whereby the UN Sales Convention is excluded.

XV. WRITTEN FORM REQUIREMENT

All amendments and supplements to these GTC (international) as well as the waiver of its assertion must be made in writing in order to be valid. This also applies in respect of a possible waiver of the written form requirement.

XVI. SEVERABILITY CLAUSE

1. If one or more of the provisions of these GTC (international) or parts of a provision are invalid, this invalidity shall not affect the validity of the remaining provisions or of the contract as a whole.
2. Fig. 1 shall be correspondingly applicable in the event of an omission in the contractual provisions.

B. SPECIAL PROVISIONS FOR PURCHASE CONTRACTS

In addition to the rules set out under A. General Provisions, the following rules are also applicable to purchase contracts, whereby in the event of contradictory provisions, the special provisions of this Section shall have precedence.

I. PARTIAL DELIVERY

We are entitled to make partial deliveries, insofar this is not unreasonable for the Customer. A partial delivery is in particular not unreasonable if the partial delivery can be used by the Customer in accordance with the intended purpose, the delivery of the remaining ordered goods is safeguarded, and the partial delivery does not cause the Customer to incur any substantially higher overheads or additional costs.

II. TRANSFER OF RISK

1. The risk of accidental destruction shall be transferred to the Customer at the time of the handover of the goods to the Customer. The handover to the Customer shall be equivalent to the handover to his forwarding agent or to a third party designated by him.
2. If the Customer does not at the time of dispatch accept the goods that have been declared ready for dispatch, the risk of accidental destruction shall be transferred to the Customer at the time of dispatch.

III. NOTICE OF DEFECTS

1. The Customer shall be responsible for examining whether the received goods are free of defects within ten working days from the transfer of risk.
2. If a defect is apparent, this must be reported within five working days of its actual discovery. This shall apply irrespective of whether the defect was discovered within the context of the examination pursuant to Fig. 1 or at a later date.

3. Any possible discovered defects must be reported to us at least in text form. The complaint must include a detailed description, enabling the presumed cause as well as the consequences to be identified. Upon request, suitable documentary material, in particular in the form of photographs, must be made available to us.
4. If the Customer fails to fulfil his obligations to examine the goods and to issue a complaint, the performance shall be deemed to have been accepted and he shall not be entitled to warranty rights. This shall not be applicable, insofar as we maliciously concealed the defect or if the exclusion would be incompatible with the provisions of a guarantee.
5. The Customer is obliged to cover the costs incurred by ICPDAS-EUROPE in conjunction with a culpably issued unjustified complaint.
6. The deadlines pursuant to Fig. 1 and 2 shall commence, insofar as ICPDAS-EUROPE is required to provide documentation, only once the Customer has received the documentation.

IV. WARRANTY

1. If ICPDAS-EUROPE renders a defective performance, that is to say if the actual performance rendered falls short of the contractually owed performance (defectiveness), the claims of the Customer shall be based on the following provisions.
2. The Customer shall initially only be entitled to demand that ICPDAS-EUROPE rectifies the poor fulfilment (defect rectification) within a reasonable period. ICPDAS-EUROPE shall be entitled to choose of the manner of the defect rectification that ICPDAS-EUROPE uses to rectify the poor fulfilment, essentially either rectification or replacement delivery. For the purpose of rectifying the defect, the Customer shall grant ICPDAS-EUROPE or third parties commissioned by ICPDAS-EUROPE access to the goods as well as necessary and appropriate support measures. ICPDAS-EUROPE shall cover the necessary cost of the defect rectification. ICPDAS-EUROPE shall not cover additional expenditure incurred because the goods had been brought to a destination other than the original destination.
3. If ICPDAS-EUROPE does not rectify the defect within the reasonable period, or if the manner of the defect rectification selected by ICPDAS-EUROPE does not eliminate the defect, the Customer shall be entitled to reduce the purchase price.
4. The Customer shall essentially be entitled to rescind the contract only
 - a) in the event of a material contractual breach, and
 - b) if the defect rectification was not performed within the reasonable period or did not eliminate the defect.
 Lit. b) does not have to be fulfilled for the rescinding of the contract if the defect rectification is unreasonable for the Customer on account of the circumstances of the particular case, or if this will clearly remain unsuccessful.
5. The Customer shall also be entitled to rescind the contract if ICPDAS-EUROPE, in the event of failure to adhere to the delivery period, notwithstanding the granting of a further reasonable period of grace, amounting as a rule to not less than two weeks, fails to render the performance.
6. The Customer is obliged to assert the claims pursuant to Fig. 2 – 5 within a reasonable period. The Customer must call upon ICPDAS-EUROPE to perform the actions in writing.
7. If the non-performance or poor performance relates only to a part of the delivery, the claims pursuant to Fig. 2 and 3 shall be applicable only to the respective part that is affected by the non-performance or poor performance. In a case of this nature, the rescinding of the entire contract (Fig. 4 and 5) may be declared only if the incomplete nature of the delivery or only partially contractually-compliant delivery individually represents a material contractual breach.
8. In derogation of § 438 Para. 1 No. 3 BGB, warranty claims – with the exception of claims for compensation – shall be statute-barred within twelve months from the date of the transfer of risk. This shall not apply in the event of maliciously concealed defects or other mandatory statutory regulations.
9. Aforementioned claims brought on the grounds of poor fulfilment that are attributable to improper handling by the Customer or the failure to comply with instructions for use are excluded.
10. Fig. 4.b) as well as Fig. 4 Sentence 2, shall be correspondingly applicable to the assertion of compensation claims brought on the grounds of defectiveness. In addition, A. IX. and B. V. Liability are also applicable.

V. LIABILITY

1. ICPDAS-EUROPE shall be liable for any wilful or grossly negligent breach of duty.
2. In cases of grossly negligent breach of duty, liability pursuant to Fig. 1 is limited to three times the respective order value. If three times the respective order values however amounts to less than the sum of EUR 2,500.00, the maximum liability sum of ICPDAS-EUROPE shall be EUR 2,500.00. In respect of the aforementioned provision, ICPDAS-EUROPE recommends that an additional insurance policy should be taken out.
3. Liability for other negligent breaches of obligations or damage caused without fault is excluded.
4. To the extent that our liability is limited or excluded on the basis of A. IX. and the above Figs., this shall also apply to the liability of our statutory representatives and vicarious agents, including our workers and employees.

C. SPECIAL PROVISIONS FOR CONTRACTS FOR WORK OR SERVICES

In addition to the rules set out under A. General provisions, the following rules are also applicable to contracts for work and services, whereby in the event of contradictory provisions, the special provisions of this Section shall have precedence.

I. NON-BINDING COST ESTIMATE

1. Unless otherwise agreed on a case-by-case basis, the cost estimates drawn up by us shall not be separately remunerated.
2. Cost estimates drawn up by us are essentially non-binding.
3. A cost estimate shall be considered a fixed price only if this has been expressly agreed. The same applies if a fixed price can be excluded, taking the circumstances of the transaction as well as the interests of both Parties into consideration.

II. REMUNERATION, DOWN-PAYMENTS

1. In the absence of an express agreement on remuneration, the relevant hourly and settlement rates of ICPDAS-EUROPE that are in force at the time of the signing of the contract shall be applicable. These shall be disclosed without delay and free of charge upon request.
2. ICPDAS-EUROPE is entitled to demand reasonable down-payments for contractually rendered performances, in line with the statutory provisions.

III. PERFORMANCES RENDERED BY THIRD PARTIES

ICPDAS-EUROPE is entitled to cause contractually owed performances to be rendered wholly or in part by third parties.

IV. ACCEPTANCE DEADLINE

1. ICPDAS-EUROPE shall report the completion of the rendering of the performance to the Customer (notification).
2. Unless otherwise agreed on a case-by-case basis, the Customer shall be obliged to declare to ICPDAS-EUROPE within a deadline of three working days of the notification whether he has accepted the performance.
3. Irrespective of the receipt of a notification, the Customer shall be obliged to declare to ICPDAS-EUROPE within a deadline of 10 working days of the completion of the performances whether he has accepted the performance.

V. COMPLAINTS CONCERNING RENDERED PERFORMANCES, RMA (RETURN MERCHANDISE AUTHORIZATION) PROCEDURE

1. The Customer is obliged to issue complaints about the performances rendered by ICPDAS-EUROPE at least in text form.
2. At the request of ICPDAS-EUROPE, the Customer must provide a detailed description that makes it possible to identify the suspected causes as well as the effects. Upon request, suitable documentary material, in particular photographs, must be made available to us.
3. The processing of the complaint within the context of the RMA (Return Merchandise Authorization) shall be conducted as follows:
 - a) When repairing complete systems, ICPDAS-EUROPE shall be entitled to delete all data from the equipment, insofar as this is necessary for the repair.
 - b) Before dispatching the equipment, the Customer shall ensure that all of the data on the equipment have been backed up.
 - c) ICPDAS-EUROPE shall not be liable for the cost of a software configuration, for loss of earnings, the loss of data or software or any other consequential damages.
 - d) If the Customer does not have any warranty rights vis-à-vis ICPDAS-EUROPE, and if ICPDAS-EUROPE is commissioned to search for a fault, the Customer shall pay a processing fee amounting to EUR 75.00 plus applicable value added tax as well as the cost of transport. If ICPDAS-EUROPE is subsequently commissioned to carry out the repair, the processing fee shall be offset on a pro rata basis.
 - e) Letter d) Sentence 1 shall be correspondingly applicable in the event that no fault is found.
 - f) The Customer shall use the original packaging for return consignments, insofar as possible. The completed RMA coupon shall be affixed to the outside of the package.
 - g) ICPDAS-EUROPE shall not be liable for transport damage that is attributable to defective packaging.

VI. COST OF RETROSPECTIVE FULFILMENT

ICPDAS-EUROPE shall cover the cost of retrospective fulfilment in accordance with the statutory provisions. ICPDAS-EUROPE shall not cover the additional cost of retrospective fulfilment incurred because the goods had been brought to a destination other than the original place of utilisation.

VII. LIMITATION PERIOD FOR WARRANTY CLAIMS

1. In derogation of § 634a Para. 1 No. 1 BGB, warranty claims brought on the grounds of defects – with the exception of claims for compensation – shall be statute-barred within twelve months from the date of the transfer of risk.
2. This shall not apply in the event of maliciously concealed defects or other mandatory statutory regulations.

VIII. CONTRACTUAL LIEN

1. ICPDAS-EUROPE shall be entitled to a contractual lien for claims arising out of the execution of performances on moveable property manufactured or repaired by it that is owned by the ordering party, if these come into its possession for the purpose of manufacture or repairs.
2. The contractual lien may also be asserted on the grounds of claims arising out of performances rendered on an earlier date, insofar as these are associated with the object of the order.

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