

General Terms and Conditions of Sale and Delivery of INDECT Electronics & Distribution GmbH

1 General

1.1 These general Terms and Conditions of Sale and Delivery apply to all deliveries and services provided by INDECT Electronics & Distribution GmbH, in the following referred to as "IED", to other companies, referred to as the "client". IED carries out delivery business, service and maintenance activities and project business.

1.2 IED does not acknowledge any of the client's term and conditions that contradict or deviate from this document, unless IED has explicitly consented to their application in writing. Also individual agreements are to be put down in writing.

2 Order, Scope of Services, Documentation

2.1 Our order confirmations are the basis of our deliveries and services. In the absence of an order confirmation the content of the quote as provided by IED is understood as agreed.

2.2 Quotes and cost estimates for repair and installation works are **without engagement**.

2.3 In order to enable IED to provide a quote the client shall provide the required information about the location and layout of other installations such as sprinklers, ventilation facilities, lighting and power lines. IED is not to be held liable for incomplete information provided by the client—who is to bear any additional costs caused by such incomplete information.

3 Prices, Terms of Payment, Set-Off

3.1 Our prices are "Ex-Works", excluding statutory value-added tax. Packaging, loading and shipping costs as well as any import and customs duties are to be borne by the client.

3.2 If IED is in charge of installation, the client shall bear all ancillary costs such as travelling expenses and accommodation in addition to the agreed remuneration.

3.3 Delivery costs are charged on a time and material basis. When shipping with a freight forwarder, IED additionally charges a standard rate hour; when shipping with a parcel service half a standard rate hour, as service fee.

3.4 Payment is to be effected to IED's bank account, without any deductions. Invoices issued by IED are payable within 30 days after invoice date. If payment is delayed, IED is entitled to charge default interest at a rate of 12 % above the base rate p.a. IED reserves the right to assert claims for a greater loss.

3.5 Payment is due as follows:

- 30 % when the order is placed
- 40 % when readiness to delivery is declared
- 20 % after completed installation
- 10 % when acceptance is declared

IED is entitled to claim a bank guarantee as collateral for the payment plan. If the client is unable to provide an Austrian bank guarantee, IED is entitled to withdraw from the contract.

3.6 If the client does not meet his payment obligations within the deadlines, IED is entitled to refuse delivery, deliver only against payment in advance, and—after the expiry of a grace period of 14 days—withdraw from the contract and claim for indemnification.

3.7 The client is entitled to offset claims only with indisputable counterclaims or counterclaims that have become res judicata. The client has no retention right on account of debt claims that do not emanate from the same contractual relationship.

4 Delivery

4.1 Adherence to delivery deadlines presupposes that all technical questions to be clarified between IED and the client have been settled and the client has fulfilled all his obligations, such as, in particular, delivery of drawings, approvals and agreed payments. In case such obligations are not complied with in due time, the deadlines shall be adequately postponed.

4.2 Partial deliveries are permissible. IED is further entitled to make deliveries prior to the agreed deadline.

4.3 If IED is prevented from delivering within the deadlines by circumstances that had not been detectable until after the contract was concluded, notably by force majeure, natural disasters, labour disputes, interventions by public authorities, delays caused by customs clearance, transport disruptions or similar factors, the delivery obligation is suspended for the duration of the hindrance and in the scope of its effect. IED must immediately inform the client in writing that a temporary hindrance or impossibility of providing the delivery or service has occurred, and state the reasons for that. If the suspension of the contractual obligation is not reasonable to the client, he is entitled to set an acceptable deadline, after the expiry of which the client is entitled to withdraw from the contract. IED is not to be held liable for failure to deliver or delay attributable to the above described reasons. Claims for indemnification or refunding of expenditures are excluded. If the client is responsible for delayed performance, the agreed deliv-

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ery periods and the agreed delivery deadlines are extended accordingly.

- 4.4 IED shall be liable for delayed delivery for every full week to the extent of a flat rate delay indemnification of 0.5 % per week, up to a maximum of 5 % of the order value of the deliveries and services affected by the delay. Any claims beyond are excluded unless the delay is attributable to, at least, gross negligence by IED, its organs or vicarious agents.

5 Transfer of Risk

- 5.1 Transfer of risk is “Ex-Works” (EXW). The risk is transferred to the client when the object of delivery is handed over to the carrier, regardless of who bears the shipping costs. This also applies if IED provides other works or services such as supply, installation or assembly. Upon request by and at the expense of the client, IED shall insure consignments against the usual transport risks.
- 5.2 If a complete installation is supplied to the client and if acceptance is agreed, the risk is transferred to the client when the complete installation is put into operation by the client.
- 5.3 If shipping, delivery or putting into operation is delayed due to circumstances within the client’s responsibility, the risk is transferred to the client on the day on which readiness for shipping is declared, or on the day on which the possibility of the installation being put into service is declared.

6 Installation

The following provisions apply to installation:

- 6.1 The client must take responsibility for and provide in due time:
- all construction work and other ancillary work that is not sector-specific, including specialist and unskilled manpower, the material and required tools;
 - items and material that are necessary for installation and start-up, such as scaffolding, hoisting equipment and other devices;
 - electricity supply on site, including connections and lighting;
 - sufficiently sized, appropriate, dry and lockable rooms on site for storage of machinery, equipment, materials, tools etc.; rooms for work and break rooms for the installation personnel, including sanitary facilities appropriate to the circumstances. Moreover, the client must take the same safety measures for the protection of the property of IED and the installation personnel on site which he would take to protect his own property and workers;

- Protective clothing and protective equipment that comply with the specific circumstances of the respective site.

- 6.2 Prior to installation start, the client is to provide relevant information on the position of hidden power lines, gas and water pipes or similar installations, as well as relevant static information, without further demand.
- 6.3 Prior to installation start, the material, tools and other items required to start work must have been provided at the installation site, and all the preparatory work must have advanced to an extent that installation can be started according to the agreement and carried out without interruption. Approach routes and the installation site must have been levelled and cleared.
- 6.4 If installation or start-up is delayed by circumstances for which IED is not responsible, the client is to bear the costs for idle times and for additional travelling by IED staff to a reasonable degree. If IED is unable to meet other obligations at all or in due time due to such delay, the client indemnifies and holds IED harmless.
- 6.5 Acceptance is only to take place if this has been agreed upon explicitly by contract. This being the case, and IED demanding acceptance of performance after completion, the client is to provide acceptance within two weeks. If this does not happen, acceptance is considered to have taken place. Acceptance is also considered to have taken place if the use of the object of the performance—following the completion of an agreed test phase, if applicable—has commenced.

7 Reservation of Title

- 7.1 IED retains ownership of all goods supplied until all claims to which IED is entitled against the client due to the business relationship have been fulfilled.
- 7.2 The client is obliged to treat the goods subject to retention of title carefully; in particular, it must be adequately insured at his own expense at replacement value. In case of execution or other interference of third parties the client is to notify IED immediately.
- 7.3 Any processing or transformation of the goods subject to retention of title by the client shall always be undertaken on behalf of IED. If IED’s ownership expires through adjunction, it is agreed hereby that the client’s (co-)ownership of the entire object shall be transferred to IED pro rata in terms of its value (invoice value).
- 7.4 Mortgaging or security assignment are not permitted. The client can only sell the goods subject to retention of title in the normal course of business and only under the condition that he receives payment from his customers or makes the transaction subject to the proviso that ownership shall not pass to the customer until the latter has fulfilled his payment obligations. Any claims arising from resale or another legal basis relating to the

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goods subject to retention of title are hereby assigned in full extent to IED by the client by way of security.

8 Duty of Inspection, Notification and Rejection; Warranty

- 8.1 The client must inspect our consignments immediately upon their arrival to ascertain that they comply with the contract. Any wrong quantities or deliveries, or apparent defects, are to be made immediately known to IED by sending a written statement of objections. Defects that only become apparent later are to be made known to IED as soon as their detection becomes possible, in the form described above.
- 8.2 The following warranty periods apply:
3 years for unmoveable parts
1 year for moveable parts, switching elements and spare parts
Warranty periods start at effected delivery.
- 8.3 Any claims by the client because of a defect of the goods are at first restricted to—at the discretion of IED—repair or supply of replacement goods that are free of defects. If remedial actions fail, or if they are unacceptable to the client, or if IED refuses remedial actions seriously and definitively, the client is entitled to claim a price reduction or withdraw from the contract. Liability for indemnification is restricted to the scope as stated in Item 9. This also applies to claims for the reimbursement of expenditures.
- 8.4 All claims derived from defectiveness of the consignment, including any right to indemnification, become invalid after 12 months from delivery (for wear-and-tear parts: after 6 months from delivery), except in the case of intent. This also applies to competing similar indemnification claims, arising out of liability other than contractual liability.
- 8.5 No warranty claims can be made for slight deviation from the agreed condition of the consignment, or in a situation where its usability is only slightly impaired. Warranty is further excluded for damages attributable to improper handling or for use other than provided for in the contract. Notably, this applies to inadequate construction work, unsuitable subsoil or damage caused by particular external influences, which are not provided for in the contract, as well as instances of software errors that are not reproducible. Moreover, if the client or third parties apply modifications or carry out repairs inappropriately, no warranty claims can be made for the latter and the consequences thus arising.

9 Liability

- 9.1 IED is liable for damages, regardless of the legal reasons such, only in instances of intent or gross negligence by its organs or vicarious agents. The above liability exclusion for ordinary negligence does not apply

to the violation of material contractual obligations, unless it is a matter of liability for material defects. In case of a violation of material contractual obligations, liability is restricted to typical foreseeable losses. Claims for damages arising out of contractual liability other than the liability outlined in Item 8 become invalid after one year from delivery, except in the case of intent. This also applies to competing similar claims, arising out of liability other than contractual liability.

- 9.2 Liability for damages on account of a certain warranty assumed by IED as well as liability under the Austrian Products Liability Law (Produkthaftungsgesetz) remains unaffected by the above provisions. The same applies to damages emanating from an injury of life, body or health.

10 Software Licensing Terms and Conditions

- 10.1 Licensed Material shall refer to data processing applications and/or licensed data records in machine-readable form, including accompanying documentation. The utilisation of the Licensed Material on an additional number of workstations / operation control computers, functionalities (software modules), as well as front-ends (detectors), beyond the number specified in the relevant order shall only be permissible in accordance with an additional license negotiated in advance. The software applications correspond to the descriptions contained in the documentation; there shall be no obligation to provide application functionality beyond the aforementioned.
- 10.2 The client undertakes not to make any documents, in particular drawings, sketches, fact sheets or other documentation, samples, models or devices provided by IED and the protective marks contained in the Licensed Material, such as copyrights and other legal reservations, available to third parties, neither in its original form, nor in the form of complete or partial copies, and to treat them as intellectual property of IED. This shall also apply in the event of a full or partial sale or closure of the client's business. Employees of the client, or persons, insofar as they are on the client's premises to use the Licensed Material in accordance with these terms and conditions are not referred to as third parties.
- 10.3 IED hereby guarantees that the delivered software complies with contractual requirements under contractual deployment, with state-of-the-art technology, and is free of defects that would negate or diminish its suitability with respect to the aforementioned requirements. No consideration shall be given to any minor reduction in value or suitability. The client is aware that with state-of-the-art technology it is not possible to develop computer applications that are entirely free of errors. In the event that errors occur during contractual utilisation of the software, the client shall notify IED thereof in writing, without delay, and in a comprehensi-

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ble form, providing the appropriate information for error recognition. The client undertakes to provide all reasonable support to IED for the rectification of errors. A prerequisite for entitlement to error rectification shall be that the error is reproducible and can be illustrated by means of machine-produced output.

- 10.4 After receiving the error notification, IED shall in the first instance be entitled to remedy the defect. This shall be done by means of error analysis and localisation, and, consequentially, by installing a defect-remedied version, both via remote access. The client is to provide IED with remote access for error localisation and software update by Internet, free of charge for IED. If the client is unable to comply with this obligation, his claim to defect remedy is void, unless the client assumes all additional costs for error localisation and software installation directly on site.
- 10.5 IED is only liable for data loss and data recovery if such loss could not have been prevented by adequate backup measures taken by the client. Therefore, the client is obliged to perform a data backup at least once per month.

11 Invoicing

- 11.1 IED is entitled to send invoices in electronic format. The client explicitly consents to receiving invoices in electronic format from IED.
- 11.2 IED is entitled to send electronic invoices as e-mail attachments. Using digital signatures or similar is explicitly not required or envisaged.

12 Applicable Law, Jurisdiction

- 12.1 It is agreed upon that Austrian law applies, excluding the United Nations Convention on Contracts for the International Sale of Goods and rules of conflict of laws. This also applies when deliveries are sent to countries other than Austria.
- 12.2 The place of jurisdiction for all disputes arising from a contract shall be the court of jurisdiction over the registered head office of IED. IED shall also be entitled to take action at the client's head office location. The agreement on the place of jurisdiction shall apply even in the event that the client has no place of general jurisdiction located in Austria.
- 12.3 The contractual languages shall be German and English.

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