

# General Terms and Conditions of Business of AI Analytical Innovations GmbH

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All our business transactions, including future transactions, shall be subject to the terms and conditions outlined below.

## **1. Application**

Unless otherwise agreed upon in writing, our deliveries and services are subject to the following terms and conditions. Any diverging terms shall only be valid if explicitly acknowledged by us in writing. So if diverging terms of the customer or the supplier are to substitute these General Terms and Conditions, they will have to be agreed upon explicitly by the parties. If any of the provisions should be or become ineffective, that will not affect the validity of the remaining provisions. These General Terms and Conditions shall be equally applicable to future contracts, deliveries and services, although not explicitly agreed upon once again.

## **2. Taking Effect of the Contract**

- a) Our offers are not binding. Purchase orders and all the delivery contracts shall not become binding but with our written confirmation.
- b) In the event of immediate performance of contract, the confirmation of order shall be superseded by our invoice.
- c) Any modifications of or amendments to the contract, as well as collateral agreements must be confirmed in writing to become effective.

## **3. Delivery, Acceptance, Passing of Risk**

- a) Delivery dates shall be legally binding only if we have explicitly confirmed the date as fixed date. If we should not meet a fixed date wrongfully, the customer shall be entitled to rescind the contract upon the fruitless expiration of a reasonable period of grace of a minimum four weeks to be set in writing. Our fault is subject to the condition that we ourselves have been delivered in a correct and timely manner. Any damage claims resulting from delay in delivery or the impossibility of performance shall be limited to a maximum 5 % of the invoice value. The above limitation of liability shall not apply in case we are liable on a mandatory legal basis for intent or gross negligence.
- b) If shipment is postponed on the customer's request, we shall be entitled to invoice to the customer the warehousing costs incurred as a consequence thereof, which shall be no less than 0.3 % of the order value per week. The goods shall be stored at the customer's risk.
- c) Any and all deliveries are made ex our company's domicile at Moosbach. We shall be entitled to partial shipment if allowed by the nature of the object of delivery.
- d) The risk of loss, deterioration and shipment shall in any event pass to the customer once the object of delivery leaves our business and warehousing facilities, which shall be equally applicable to deliveries free domicile. The foregoing is not applicable, however, in case of the customer's default. In such a case the customer will be liable for the performance also in case of accidental events unless the damage would also have occurred had the performance been rendered in a timely manner.
- e) In case the goods should be received in a damaged condition, the customer is obligated to require without undue delay that the facts be established or a confirmation be given by the carrier, respectively, in order to protect the right to damage compensation by the railway / the mail / the parcel services, the forwarder, or third parties. The customer shall notify to us any damages immediately, but no later than within one week of the receipt of goods.
- f) We are entitled, but under no obligation, to take out a transport insurance policy at the customer's expense, provided that the customer has not given any own instructions regarding the type or the scope of insurance against damages to goods in transit. The costs for such

transport insurance policy shall in any event be for the account of the customer.

- g) In case of force majeure and in case of delayed or incorrect supply by subcontractors not due to our fault, we are entitled at our option to either postpone the delivery for the time the obstruction persists plus a reasonable transition, or rescind the contract in case of circumstances we cannot be reasonably expected to accept.

## **4. Prices and Terms of Payment**

- a) Unless otherwise agreed upon, the sales price is the list price applicable on the date of placing the order. The prices are net prices ex our company's domicile at Moosbach plus VAT and costs for packaging and freight.
- b) In case of an order volume exceeding € 15,000 we reserve the right to invoice 1/3 at the receipt of order, 1/3 at delivery, and 4 weeks upon delivery another 1/3 of the order value.
- c) All invoices shall be due for payment – save as otherwise agreed in writing in individual cases – in Euro within thirty days as of the invoice date without any deduction.
- d) Repairs and services rendered shall be payable immediately plus VAT. The price list valid on the date of rendering the performance shall be applicable.
- e) In case our payment dates are exceeded, we shall be entitled to invoice interest at a rate of 2 % above the official rate of discount as applicable from time to time.
- f) All our claims shall become due immediately irrespective of the term of any accepted bills obtained, if the agreed terms of payment will not be complied with despite reminder, or a deterioration occurs in the financial condition of the customer jeopardizing our claims (§321 BGB (*German Civil Code*)). Cheques and bills of exchange shall be accepted on account of performance only, any costs associated therewith being at the customer's expense.
- g) In case of cancellation of an order not attributable to our fault, we are entitled to invoice to the customer all the costs we incurred or will incur, including commissions we have to pay.
- h) Withholding of payment for complaints or counterclaims is excluded. Setting off against counterclaims that are neither recognized by declaratory judgement nor acknowledged by us is excluded.

## **5. Warranty, Liability, Defects**

- a) For defects, also including the absence of warranted characteristics, the warranty period is 6 months as of the date of passing of the risk. For replacement parts, as well as for repair services and replacement deliveries the warranty period shall also be 6 months.
- b) The suitability of our deliveries and services for the respective purpose of the customer shall be the exclusive responsibility of the customer, although the customer may have obtained our advice in this respect.
- c) Regardless of the obligation defined in §377 HGB (*German Commercial Code*) the customer has to carry out an appropriate incoming inspection immediately. To safeguard warranty claims, any detected defects, or discrepancies in quantities in breach of contract, or technical deviations must be notified in writing without undue delay. The mere return of the goods shall not be deemed a notice of defects.
- d) Warranty is regulated as follows: The customer shall notify in writing to AI Analytical Innovations GmbH any occurring defects immediately upon their detection.

Upon consultation with AI Analytical Innovations GmbH, the product concerned shall first be returned to AI Analytical Innovations GmbH at the sender's expense. AI Analytical Innovations GmbH shall repair the product without undue delay and free of costs in accordance with the technical requirements. If subsequent rectification should prove abortive twice, the customer may rescind the sales contract or request reduction (lowering of the remuneration). If the defect was caused due to improper handling or inappropriate use, or if technical alterations have been carried out, the customer shall bear all the costs incurred. If the failure is based on a technical defect, we shall bear all the costs of shipment and repair. We reserve the right to carry out the repair on the site where the product has been installed.

- e) The customer has no warranty claims if the customer himself – or through third parties – carried out alterations giving rise to the defect without our written consent, and if such alterations exceeded the required adjustment of the delivered objects.
- f) For any manipulations, alterations and repairs improperly carried out by the customer or third parties the warranty and liability for the consequences resulting from the foregoing shall be barred.
- g) Further claims of the customer against the supplier and its vicarious agents are excluded, especially any claim for compensation of damages that did not occur to the delivered object itself. The above shall not apply in cases where liability is mandatory for wilful acts, gross negligence or the absence of warranted characteristics.
- h) AI Analytical Innovations GmbH shall be liable for consequential damages only in case of intent or gross negligence.
- i) Any claims not explicitly included in these acknowledged claims, especially damage claims for impossibility, delay, breach of collateral contractual obligations, breach of duty when concluding a contract, tortuous acts – also to the extent such claims are associated with the customer's warranty rights – are excluded, unless we are liable under mandatory regulations in cases of intent or gross negligence.

#### **6. Reservation of Title**

Until all the claims have been fulfilled (including all balance claims from current account) that we may have, now or in future, against the customer or its related companies on any legal ground, whatsoever, the following means of security shall be provided to us, which we will release on request if their value should subsistently exceed the claims by more than 20 %:

- a) We retain the title to the goods. Processing or reprocessing shall always be made for us as manufacturer, however without any obligation to us. If our (co-) ownership should expire due to compounding, it is agreed already at this stage that the (co-) ownership of the customer to the compounded object shall pass to us at the prorated value. The customer shall deposit our (co-) owned goods free of costs. Goods to which we are (co-) owners shall hereinafter be referred to as Goods under Reservation.
- b) The customer is entitled to process and sell the Goods under Reservation in the ordinary course of business, provided that the customer is not in default. In processing the Goods under Reservation the customer shall not acquire title pursuant to §950 to the new object. Pledging and transfer by way of security are not allowed. Any claims resulting from the resale of the Goods under Reservation or any other legal ground (insurance, tortuous acts etc.) are fully assigned by the customer to us for security purposes already at this stage. The customer is entitled to collect the claims for as long as it is not in default with its obligations to us.
- c) In case of the customer's conduct in breach of contract, especially in case of delay in payment, we shall be entitled to withdraw the Goods under Reservation or, if applicable, require the assignment of the customer's claims for return vis-à-vis third parties. The withdrawal as well as the pledging of the Goods under Reservation by us does not constitute a rescission of the contract,

unless the German Statute Covering Instalment Sales is to be applied.

- d) The right to resell and the authorization concerning the assigned claims shall cease when payments are suspended, bankruptcy proceedings are petitioned and instituted, and/or in case of judicial or extrajudicial composition proceedings.

#### **7. Industrial Property Rights, Confidentiality**

- a) We retain all proprietary and protective rights, especially the rights to file the application for registration of relevant rights to the documentation submitted in connection with our offer. Such documentation must not be disclosed to any third parties. On request, all the documentation shall be returned to us without undue delay.
- b) We reserve the exclusive right to reproduce and distribute the software programmes we deliver. Reproduction by the customer shall be subject to our written consent.

#### **8. Sundries, Changes of Type**

- a) Service contract law, excluding the law relating to the contract for work and services or the law relating to the sale of goods, shall be applicable to the development of customized software. Warranty and liability for standard software purchased from third parties is excluded.
- b) In case specific items of the contract should be legally ineffective, the remaining parts of the contract shall maintain their binding effect.
- c) We shall always be allowed to carry out design or other changes as technological progress evolves, provided that such changes are not detrimentally modifying output data or specifications of the object of sale or the service rendered.
- d) Our employees and agents are not entitled to make oral collateral agreements, give oral promises, or make oral arrangements concerning amendments to the contract.

#### **9. Place of Performance, Venue, Governing Law**

- a) Place of Performance for all the obligations of the customer shall be Moosbach, Germany.
- b) Venue, also for matters relating to bills of exchange and cheques, shall be the Local Court or the Regional Court, respectively, in Weiden (Germany), provided that the customer is a merchant entered in the commercial register as merchant, or the other prerequisites of §38 ZPO (*German Code of Civil Procedure*) are met.
- c) The business relationship and all the contractual relations between the customer and us shall be exclusively governed by the law of the Federal Republic of Germany excluding the conflict of laws provisions. Especially the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is explicitly excluded.

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