

# GENERAL TERMS AND CONDITIONS

General Terms and Conditions of Sale, Delivery, and Payment of IT-CUBE SYSTEMS GmbH, version: 16 December 2010

## Applicability

Unless otherwise agreed between IT-CUBE SYSTEMS GmbH (hereinafter referred to as "IT-CUBE SYSTEMS") and the customer, the following terms and conditions shall apply to all deliveries and services of IT-CUBE SYSTEMS.

In cases in which IT-CUBE SYSTEMS delivers software, hardware, or appliances, as well as maintenance and support services of third-party manufacturers, their licence terms shall have priority over these General Terms and Conditions. The customer shall comply with the licence and copyright terms of the respective manufacturers and suppliers.

## I. General

1. Our deliveries and services are provided exclusively under these terms and conditions. This shall also apply to all future offers, deliveries, and services, without the need for a new agreement. Deviating or supplemental terms and conditions of the customer are hereby objected to unless their applicability is expressly approved in writing. This also applies to engagement, award, or tender terms and conditions under public law or other standard engagement, award, or tender terms and conditions.

2. Even if we do not respond to order confirmations and/or confirmation letters of the customer that contain terms and conditions or refer to terms and conditions that deviate from these terms and conditions or restrict them or if we render performance despite receiving such order confirmations and/or confirmation letters of the customer, this shall not constitute an acknowledgment of deviating or restricting terms and conditions of the customer. The customer declares its agreement to our terms and conditions by acceptance of our delivery and service at the latest. Agreements deviating from these terms and conditions shall only be valid if expressly confirmed by us in writing.

## II. Offer and Contract Conclusion

1. Our offers are subject to confirmation. A contract is only concluded by virtue of our written order confirmation. The same applies to supplements, amendments, and side agreements. To be valid, assurances must expressly be designated as such and must be made in writing. This requirement cannot be waived. The sending of the invoice always constitutes an order confirmation.

2. Specified quantities, measurements, colours, and weights are always subject to common tolerances.

3. If a specification sheet does not exist or a precise, self-contained service and function description has not been provided by the customer, we shall only owe standard services without any special properties outside the usual scope of application.

4. Without an explicit order of the customer and especially without a specification sheet or a precise written service description of the customer, we are under no obligation to provide advice on the utilisation and application possibilities, technical problem solutions, and cost/benefit ratio or to elaborate a specification sheet. To be valid, changes to customer documents that become necessary or take place require our written approval.

## III. Prices

1. All prices are subject to the applicable statutory VAT.  
2. All payments shall be due immediately upon receipt of the invoice without any deductions, unless a different payment method has been agreed.

3. Unless expressly agreed otherwise, the remuneration shall be paid on the basis of the remuneration rates of IT-CUBE SYSTEMS as valid at the time of conclusion of the contract.

4. In the case of delayed payment by the customer, IT-CUBE SYSTEMS shall be entitled to charge the customer interest

amounting to two (2) percentage points over the applicable statutory default interest rate. This does not affect our right to assert a higher damage due to the delay.

5. IT-CUBE SYSTEMS may refuse the provision of deliveries and services if a lack of capacity of the customer becomes obvious after the conclusion of the contract, especially if the customer falls into arrears. The right to refuse performance does not apply if the customer effects the consideration, makes advance payment, or furnishes collateral. If the consideration, advance payments, or collateral are not provided even after the end of a reasonable grace period, IT-CUBE SYSTEMS may fully or partly withdraw from individual or all affected contracts. The right of IT-CUBE SYSTEMS to assert further rights remains unaffected.

6. The customer may only offset undisputed or legally established counterclaims. The customer is only entitled to exercise a right of retention if its counterclaim is based on the same contractual relationship as the respective claim and is undisputed or legally established.

7. Should new laws or ordinances result in the amendment of existing regulations according to which IT-CUBE SYSTEMS is under the obligation to dispose of hardware and software products purchased by the customer, the customer will be charged for these costs at the applicable disposal rates.

## IV. Time of Delivery and Service

1. All agreements about delivery times are subject to due upstream supply of IT-CUBE SYSTEMS. Moreover, the performance is subject to the condition that the necessary spare parts or devices are generally available and on stock at the manufacturers.

2. If no particular time is specified for our delivery or service, it will take place as soon as possible. We do not guarantee the specified delivery/service periods/dates. We may also deliver or perform before a specified date and before the end of a specified period. Moreover, we shall be entitled to make partial payments and/or partial deliveries. The specified periods for our deliveries shall start from the date of our orders. Delivery and service deadlines will be deemed complied with if we issue a shipping order or inform the customer that the goods are ready for shipment.

3. We shall be entitled to fully or partly postpone the execution of concluded contracts or to withdraw from these contracts if we are hindered from or impaired in the fulfilment of our obligations due to the advent of circumstances that we did not foresee and for which we are not responsible, such as force majeure, late supply by our upstream suppliers, etc. In this case, the customer shall not be entitled to any compensation claims. Moreover, the customer is not entitled to withdraw from the contract. If official orders that pertain to concluded contracts are imposed upon us after the conclusion of the contract, we may, at our own discretion, withdraw from these contracts or fulfil these at duly modified conditions. In case we withdraw from the contract, the customer shall not be entitled to any compensation claims. At the request of the customer, we shall exercise our discretion without delay.

4. Compliance with the specified or agreed delivery time is only possible if the customer fulfils its contractual obligations, especially the agreed payment terms and the due receipt of all documents to be provided by the customer.

5. Damage compensation claims due to non-compliance with specified or agreed delivery dates are categorically excluded.

6. The customer may withdraw due to delivery delays if the delay exceeds four (4) weeks and the customer has granted, in writing, an additional grace period of four (4) weeks.

## V. Cooperation Obligations of the Customer

1. In the event of on-site provision of professional services, the customer shall grant IT-CUBE SYSTEMS the space and time needed for their performance and provide any needed and reasonable support during the preparation and performance.

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Moreover, the customer guarantees compliance with all provisions under occupational safety law.

2. The customer shall ensure suitable conditions and proper use of the systems and applications included in the contract. Before any work on its systems and/or applications, the customer shall take all needed precautions to minimise errors, e.g. by backing up all programs, configurations, and data to external storage media.

3. The customer shall make available all systems required for work to be done on site, such as telephone, data, and Internet connections, at its own expense.

4. The customer shall be responsible for the necessary and timely cooperation of the companies engaged by or affiliated with him. In particular, this applies to the establishment of all needed preconditions for the performance and information or data as well as any needed staff support.

5. IT-CUBE SYSTEMS shall not be responsible in this respect, especially in the case of delays of faulty performance due to the lack of cooperation.

### VI. Delivery, Risk Transfer, Insurance

All deliveries are subject to lien with the following extension.

1. Unless expressly agreed otherwise in writing, the customer alone shall be responsible for the selection of ordered items and for the results the customer intends to achieve with these, as well as for the interaction of individual components.

If IT-CUBE SYSTEMS installs software that has been licensed to the customer by the manufacturer of the software and/or of the menus on the hardware of the customer by order of the customer, the customer assures IT-CUBE SYSTEMS that it has at least obtained the number of licences that it has requested IT-CUBE SYSTEMS to install. Furthermore, it guarantees that according to the licence terms, it is entitled to request IT-CUBE SYSTEMS to render such a service. The customer fully indemnifies IT-CUBE SYSTEMS against all third-party claims that may be asserted in connection with this service.

If the customer makes software available to IT-CUBE SYSTEMS within the scope of the agreed performance, the customer guarantees that it is entitled to permit IT-CUBE SYSTEMS to use the software. The customer fully indemnifies IT-CUBE SYSTEMS against all third-party claims that may be asserted in connection with this use.

2. IT-CUBE SYSTEMS reserves the right to deliver successor models instead of the ordered items in the event the products are discontinued by the manufacturer, provided that their functions and quality are comparable and they meet the specifications requested by the customer. In such cases, IT-CUBE SYSTEMS will duly inform the customer of the price of the successor model. If no agreement is reached, IT-CUBE SYSTEMS shall offer the customer a suitable alternative item.

3. Unless otherwise agreed, the shipment shall take place by means of a suitable method and with the usual packaging. The risk shall be transferred to the customer upon submission of the item to the forwarder or to the customer. Should a delivery be delayed due to circumstances for which the customer is responsible, the risk will be transferred to the customer as soon as it is informed that the goods are ready for shipment.

4. IT-CUBE SYSTEMS reserves the right to perform partial deliveries, as far as the customer can reasonably be expected to accept such.

5. Unless otherwise agreed between the parties in writing, the delivered goods are only intended for use in the country of destination indicated by the delivery address.

6. IT-CUBE SYSTEMS may deliver program and product documentation and other documents in German or English.

### VII. Acceptance, Default of Acceptance

1. Work and implementation services rendered by IT-CUBE

SYSTEMS shall be accepted by the customer in the presence of representatives of both parties within two (2) weeks of the handover. If the customer fails to perform the acceptance for reasons other than a defect, the acceptance will be deemed declared if the customer does not refuse, in writing, the acceptance within a period of four (4) weeks of the provision for acceptance. As long as the customer's written confirmation of acceptance has not been submitted to IT-CUBE SYSTEMS, the customer is not entitled to use the work productively. If the customer uses the work productively nevertheless, this will be regarded as acceptance.

2. If the customer is in default of acceptance or if it breaches other cooperation obligations, IT-CUBE SYSTEMS may duly store the devices at the risk and expense of the customer. Notwithstanding other rights, IT-CUBE SYSTEMS shall be entitled to withdraw from the contract if a reasonable grace period granted to the customer for the acceptance of the delivery expires without success.

3. If the customer misses agreed on-site appointments, IT-CUBE SYSTEMS may charge him for the costs of the deployment on the basis of the common hourly rates, unless IT-CUBE SYSTEMS is able to duly deploy the employee elsewhere.

### VIII. Security Agreements

All deliveries are subject to lien with the following extension.

1. All goods delivered by us shall remain our property (goods subject to lien) until all claims against the customer from the business relationship with us have been fully paid.

2. The customer may process goods subject to lien within the scope of its operations. The processing of goods subject to lien by the customer takes place on our behalf. By processing, the customer does not become the owner. Rather, when goods subject to lien are processed by the customer, we become the owners of the intermediate or final products, i.e. we are considered to be their manufacturer.

3. If the processing of the goods results in the mixing or blending with other items that do not belong to us, we shall become co-owners of the items in the proportion of the value of our goods to the value of the other processed goods at the time of the processing.

4. Subsections 2 and 3 shall apply even if the new products are more valuable than the processed goods; however, the processed goods shall only serve as our collateral in the amount of the value of our goods delivered subject to lien.

5. a: The customer may only resell, let, or lease the goods delivered by us and any new items resulting from their processing within the course of its ordinary business operations. Other methods of disposal, especially pledging or assignment as collateral, also for refinancing purposes at the customer or a leasing company, are not permitted without our written approval.

b: In the case of resale, letting, or leasing of the items, the customer shall conclude agreements with its buyers in order to make sure that the ownership in general, but also in the case of processing by the buyers, remains with us, and the processor, tenant, or lessee is merely the custodian.

c: Letting and leasing shall be discontinued from the time from which we prohibit such.

d: The customer shall not sell machines and tools made available by us, as these are only delivered for use at the customer's facilities.

6. a: Transfer of claims: The customer hereby assigns all claims, rent, or leasing instalments of the customer from the resale, letting, or leasing of the goods delivered by us and from any new items resulting from their processing to us in their full amount, regardless of whether the items are sold to one or several buyers. The assigned claims, rent, or leasing instalments shall serve as collateral for our claims against the customer/lessor in the respective amount for the purpose of collateralising our purchase price claim.

b: The customer may collect the claims assigned to us; however, it shall immediately transfer these to us to the extent

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that our claims are due. Moreover, it shall post claims assigned to us separately and keep them separately upon collection to the extent that they do not yet need to be transferred to us as specified above.

c: We will not make use of our collection right for as long as the customer duly fulfils its payment obligations towards us.

d: The customer shall no longer accept any payments for assigned claims from the time from which we prohibit the customer from collecting these.

e: At our request, the customer shall name the debtors of assigned claims, inform the debtors of the assignment, and give us the documents needed to assert the assigned claims.

f: In the event of delayed payment, the customer shall grant us or our agent access to its business records at all times.

7. We undertake to release the collateral we are entitled to hereunder in case its value exceeds the collateralised claim by more than 50%.

8. The lien according to these provisions shall persist even if individual claims of ours are included in a current account and the balance is drawn and recognised.

9. If goods delivered by us or new items resulting from their processing or claims from their resale, which we are entitled to, are seized, the customer shall notify us without delay and provide us with the documents on the basis of which we can assert our rights.

10. The customer shall insure goods delivered subject to lien against theft, fire, and water.

11. In the case of cheques, payment by note, and bills of exchange, our lien will only expire when the bill of exchange is conclusively honoured.

### IX. Payments

1. As a matter of principle, our claims are due for payment without any deductions immediately upon receipt of the invoice, unless a different payment deadline has been agreed in writing. Bills of exchange and cheques are only accepted on the basis of special agreements and only in lieu of payment and will be credited under reserve after deducting any fees, interest, commission, costs, and taxes incurred. Payments by the customer will only be deemed made when we have full access to the amount; we do not accept any liability in the case of payment by bill of exchange or cheque.

2. In the event of delayed payment, we shall be entitled to withhold all deliveries.

3. Offsetting and retention against our claim are not permissible under any circumstances. Especially defect reports, complaints, or returns do not entitle the customer to withhold payments.

4. In the event of delayed payment, dishonour of cheques or bills of exchange, and/or justified doubts concerning the customer's creditworthiness, all our claims from the business relationship shall become due immediately. In this case, we may demand advance payment or collateral for all our claims from the business relationship and postpone our performance until the advance payment or collateral is provided. If the advance payment or collateral is not provided within three (3) days, we may, at our own discretion, withdraw from the contract or claim damages due to non-performance. The creditworthiness of the customer will already be considered to be doubtful if a bank or credit agency implies that the customer's payment behaviour is irregular or if caution is advised. The customer shall inform us without delay of any payment difficulties.

5. In the event of delayed payment, we shall also be entitled to take back goods delivered by us without engaging the bailiff. For this purpose, the customer shall permit the persons appointed by us to access its business and warehouse premises at all times. At our discretion, the parts taken back will be credited to the customer at the invoiced prices or at the prices valid on the date of the taking back. Notwithstanding a higher damage, we may deduct at least 25% of the net invoice price plus the expenses incurred from the taking back

for the lost profit and the expenses incurred from the delivery. Further deductions may be made if the goods are no longer as good as new. The taking back of the goods shall only constitute a withdrawal from the purchase contract if we expressly declare so in writing. The customer may furnish proof of a lower damage.

6. In the case of delayed payment, we may charge the customer interest amounting to the interest rate for overdraft facilities charged by commercial banks, but at last four (4) percentage points over the discount rate of the German Bundesbank. The interest shall be due immediately.

7. Rights under Section 36 of the German Rules of Conciliation (VerglO) shall not exist for us and for the customer.

### X. Warranty

1. Warranty for hardware: We guarantee that the goods do not have any defects that nullify or reduce the value or suitability for the usual or contractually designated purpose. The warranty does not cover the elimination of defects resulting from normal wear and tear, external influences, or incorrect operation. The warranty will not apply if the customer modifies devices, elements, or additional equipment or has them modified by third parties without our approval, unless the customer produces comprehensive evidence that the particular defects were not completely or partly caused by such modifications and that the modifications will not make the elimination of the defects more difficult.

2. Warranty for software: The customer shall inspect software promptly upon delivery and notify the seller without delay in writing of any obvious errors. We guarantee that in terms of its function, the software largely corresponds to the program description in the enclosed written material. However, we do not guarantee that the software is suitable for the purposes of the customer and that it will work with the user's existing hardware or software. The defect and the way how it appears shall be described in detail in a written defect report so as to enable a review of the defect (e.g. submission of the error messages) and to ensure that no operating error has occurred (e.g. description of the work steps). The delivery of manuals and documentation beyond the written material/program description delivered with the software and the user guidance and/or online help implemented in the software or initial training shall only be owed if this has been expressly agreed in writing between the parties. In the event of such an express agreement, requirements concerning the content, language, and scope of a manual and/or documentation to be delivered are not defined, and the delivery of a brief tutorial shall be deemed sufficient unless the parties have agreed further specifications in writing.

3. Joint regulations for hardware and software: The customer and we agree that the explanations and descriptions of the hardware and software in the manual and/or in the price list do not constitute any assurance of particular properties. The warranty term is twelve (12) months, beginning from the date of delivery. If the customer is a consumer as defined in the German Civil Code (BGB), the warranty term is two (2) years, beginning from the delivery of the goods. The customer shall inform us (and not any travelling salespeople or representatives) without delay, at the latest within one (1) week of the receipt, in writing of any defects that arise during the warrant term. If a defect report turns out to be justified, the customer shall indicate what kind of supplemental performance it wishes (rectification of the delivered items or delivery of new, flawless items) and grant a reasonable period for the supplemental performance. We may refuse the selected type of supplemental performance if this would involve disproportionately high costs and if the other type of supplemental performance would not result in major disadvantages for the customer. Moreover, we may refuse the supplemental performance entirely if this would involve disproportionately high costs. We shall be entitled to two (2) supplemental performance attempts for the same or directly related defect within the peri-

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od specified by the customer. Following the second failed supplemental performance attempt, the customer may demand reduction or withdraw from the contract. The right of withdrawal or reduction may already be exercised after the first failed supplemental performance attempt if the customer cannot reasonably be expected to accept a second attempt within the specified period or if supplemental performance has been refused under the conditions outlined above. Withdrawal due to a minor defect is excluded. If the customer has asserted warranty claims against us and it emerges that there is no defect or the asserted defect is not covered by our warranty, the customer shall reimburse us for all incurred expenses, provided it is guilty of asserting the claims through intent or gross negligence. The provision of an instruction manual in English is generally permissible. The same shall apply if the subject matter of the contract can only be delivered as an English edition.

### XI. Liability and Damages

For claims of the customer under a works agreement, service agreement or maintenance agreement, IT-CUBE SYSTEMS, its employees, owner, representatives, agents, or assistants shall only be liable as follows, no matter what the legal basis may be, especially for the breach of a duty from the obligation or tort:

1. IT-CUBE SYSTEMS shall be liable according to the statutory provisions for all kinds of damage in the event of intent, gross negligence, and personal injury.

2. Notwithstanding the liability for intent and gross negligence, IT-CUBE SYSTEMS shall only be liable for slight negligence in the case of a breach of a material obligation.

3. In this case, the liability of IT-CUBE SYSTEMS that arises from or in connection with this contract shall be limited as follows:

- With respect to a claim or a number of related claims from the same incident, IT-CUBE SYSTEMS shall be liable up to an amount that corresponds to the sum that the customer paid or should have paid in the three (3) months preceding the incident for the services responsible for the incident, under the condition that one and the same incident can never establish the basis for liability claims both under this service agreement and under another service agreement.
- The total liability of IT-CUBE SYSTEMS for all claims under this contract is limited to the following maximum amounts during one contract year (corresponds to a period of twelve (12) months from the date of the conclusion of the contract):
  - €500,000 for property damage,
  - €1,000,000 for personal injury, and
  - €100,000 for financial losses.
- Any further liability for slight negligence, especially for unforeseeable, untypical damage and consequential damage, is excluded.

4. Within the scope of the implementation and support, IT-CUBE SYSTEMS shall especially not be liable for indirect damage such as lost profit, costs, and damage resulting from claims that third parties assert against the customer.

5. IT-CUBE SYSTEMS shall not be liable for damage caused by vulnerabilities in the customer's network which have not been detected by IT-CUBE SYSTEMS.

6. IT-CUBE SYSTEMS shall only be liable to the customer for the recovery of data if IT-CUBE SYSTEMS caused their destruction either intentionally or by gross negligence and the customer has made sure that the data can be reconstructed with a reasonable effort from machine-readable data material.

The liability of the parties due to mandatory law (e.g. under the German Product Liability Act (ProdHaftG)) remains unaffected.

The aforesaid limitations of liability also fully apply for the benefit of the employees and freelancers working for IT-CUBE

SYSTEMS.

The customer is responsible for the regular backup of its data. IT-CUBE SYSTEMS shall only be liable for the recovery of data if the customer has taken all required and adequate backup measures and has ensured that the data can be reconstructed with a reasonable effort from data material kept in machine-readable form.

The customer shall report any damage in connection with the above liability provisions to IT-CUBE SYSTEMS without delay in writing or have such recorded by IT-CUBE SYSTEMS in order to ensure that IT-CUBE SYSTEMS is informed as early as possible and is able to take any possible damage minimisation measures together with the customer.

Data stored in electronic logs or other electronic forms is deemed to be reliable proof of data transfers, contracts, and payment transactions between the parties.

### XII. Confidentiality

The sub-contractor shall maintain confidentiality about business and company secrets as well as other information that it gains access to in connection with the performance of the contract. Disclosure of such information to persons not involved in the conclusion, performance, or settlement of the order is subject to the written approval of the other party (pursuant to Section 5 of the German Federal Data Protection Act (BDSG)). This also especially and expressly includes the obligation to comply with the other statutory provisions, especially with the privacy of telecommunications pursuant to Section 85 of the German Telecommunications Act (TKG), the German Telecommunications Data Ordinance (TDSV), and the German Teleservices Data Protection Act (TDDSG). The obligations pursuant to Section 5 (1) and (3) of the German Federal Data Protection Act (BDSG) shall continue to apply without any limitation even after the termination of this contractual relationship. The confidentiality obligation does not apply to information that is publicly known or that the customer learns from a third party without any breach of a confidentiality obligation.

### XIII. Export Regulations

The customer is expressly informed that products and all associated data may be subject to the restrictions of the German Foreign Trade Act (ACT) and/or the U.S. Export Administration Regulations (EAR). The products or associated data or programs may not be used for purposes that violate these export regulations. The products and/or its components shall may not be exported and re-exported without the required permit of the respective country and of the U.S. export administration authorities. Liability claims due to violations of these restrictions shall be borne by the customer in their full scope. The customer shall have the responsibility and diligence duty to obtain information on any export restrictions of the products.

### XIV. Property Rights

1. The customer may only use the programs, drawings, process descriptions, and other documents surrendered to it for the performance of the contract for the contractually designated purpose. All copyrights, rights of use, and other property rights shall remain with IT-CUBE SYSTEMS. The customer is prohibited from using, reproducing, and surrendering these to third parties.

2. IT-CUBE SYSTEMS expressly retains its copyright to the services or deliveries it renders within the scope of the contract. If the services of IT-CUBE SYSTEMS result in a copyright, the customer will be granted the non-exclusive, permanent right of use within the scope of its business operations. The customer is not entitled to granted sublicences or to transfer its rights.

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### XV. Miscellaneous

1. The place of fulfilment for deliveries and payments is our company domicile.
2. The assignment or transfer of rights and/or obligations under this contract by the customer is subject to the prior written approval of IT-CUBE SYSTEMS. In particular, if systems and/or applications covered by a service agreement are forwarded to third parties, the agreed entitlement to the provision of the services will not pass on to the third party, unless IT-CUBE SYSTEMS approves such a transfer of rights expressly and in writing.
3. The local courts responsible at our company domicile shall

have exclusive jurisdiction over legal disputes in case the customer is a registered merchant, a legal entity under public law, or a fund under public law.

4. The laws of the Federal Republic of Germany shall apply, under exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

5. These terms and conditions shall be binding even if individual parts thereof should be invalid. Instead of the invalid or missing agreement, the parties shall make a valid agreement that comes as close as possible to the intended economic objective.

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