

## 1. Scope of reference

- 1.1 The deliveries of Controlware shall be made exclusively in accordance with the General Standard Terms and Conditions hereinbelow, unless otherwise agreed in writing. Reference is also made to the license terms of the manufacturers that are enclosed with the contractual products.
- 1.2 Other standard terms and conditions of the ordering party shall only be effective if they have been confirmed in writing by Controlware. The same shall apply to changes and supplements to the present General Standard Terms and Conditions.
- 1.3 Oral promises and ancillary agreements shall require the written confirmation of Controlware.

## 2. Contract

- 2.1 The quotations shall be without engagement. A contract shall only be formed as a result of written confirmation of the order and shall comply exclusively with these terms and conditions, which are acknowledged by the ordering party by means of the order or acceptance.
- 2.2 The ordering party shall be bound by its order. Controlware shall have the right to accept or reject the order within 30 working days.

## 3. Scope and delivery obligation

- 3.1 The written order confirmation shall be authoritative for the scope of the delivery.
- 3.2 The documents belonging to the quotation, such as figures, drawings and weights, are only approximately authoritative, unless expressly indicated as being binding. Controlware shall have the right to supply contractual products differing from the order if the change in product does not impair the technical performance and proper functioning and – if a certain design was agreed – does not affect the external appearance of the contractual products.
- 3.3 The right to make partial deliveries and invoice them shall be reserved, unless otherwise agreed in writing or the ordering party proves that the partial delivery is of no interest for it.
- 3.4 The measured values specified are without the effect of any interference or other disruptions from the environment.

## 4. Prices

- 4.1 All prices shall be ex Dietzenbach, unless otherwise agreed in writing. The prices for the products shall include the costs for normal packaging. If the ordering party demands a special type of packaging, it shall bear the extra costs thereof. The packaging costs for the delivery of spare parts, accessories and consumables shall be invoiced separately.
- 4.2 All customs duties, fees, import and export charges and the like shall be borne by the ordering party.
- 4.3 The ordering party shall bear the transport costs ex Dietzenbach. Unless otherwise agreed, Controlware shall have the right, but not be obliged, to insure the goods to be sent against all types of transport risk at the expense of the customer. This and any assumption of the transport costs shall not have any effect on the passage of risk.
- 4.4 The delivery and installation of the devices and the instruction of operating staff shall be borne by the ordering party. The costs for installation shall be charged in accordance with the service price list.
- 4.5 The quoted price is based on the manufacturer price lists valid at the time of the order or on material, energy and labour costs. If delivery of the ordered object is desired at a time later than three months after conclusion of the contract and these costs have increased in the meantime, the price shall be upwardly adjusted in percentage terms.

## 5. Payment

- 5.1 Payments shall be made without deduction within 30 days after the invoice date. In the event of overdue payment, Controlware shall have the right to withhold further deliveries until payment is received.
- 5.2 Bills of exchange shall only be accepted following special agreement and then only on account of payment and free of costs and expenses. No fulfilment of the pecuniary claim shall prevail in the case of so-called check/bill of exchange cover.
- 5.3 In the case of a temporary insolvency or an insolvency or any changes in the credit worthiness of the ordering party, which become known to Controlware after conclusion of the contract and jeopardise payment, the performance of services may be refused until full payment is made and immediate payment of all open invoices may be demanded, even if specific payment terms have been agreed.
- 5.4 In the event of a refusal to pay despite requests stage by stage in exchange for performance of services, Controlware shall have the right, without fixing a time limit and regardless of the requirements of sec. 323 subsec. 2 BGB (German Civil Code), to withdraw from the contract in full or in part and to demand the surrender of already delivered products, without prejudice to further claims for damages. If the ordering party falls into arrears with its payment obligation or violates one of the obligations arising from the agreed reservation of ownership, the entire remaining debt shall be due immediately.
- 5.5 The assertion of rights of lien not resulting from the same contractual relationship and offsetting with counter-claims of the ordering party shall be excluded. A different situation shall apply if the claims of the ordering party have been acknowledged in writing or ruled on finally and absolutely by court order.
- 5.6 If the ordering party is in default of payment, statutory interest plus commission and costs shall be charged. The assertion of further damage caused by delay shall be reserved.
- 5.7 If payment by instalment has been agreed and the ordering party is in arrears with one instalment in full or in part for more than 14 days, the entire remaining amount shall be due immediately and further deliveries shall be stopped.

## 6. Delivery

- 6.1 Liability for the failure to observe the shipping or delivery dates or delivery deadlines specified by Controlware shall only be assumed if they have been expressly designated as binding. The specified deadlines shall commence with the date of the written declaration of receipt and confirmation of the order, but not before production of

the documents, permits and releases to be obtained by the ordering party or before creation of all the other prerequisites. Changes to a contract shall accordingly entail an extension to the envisaged deadlines. Agreed delivery deadlines shall be regarded as having been fulfilled if the contractual product has been handed over to the shipper by the agreed deadline, unless expressly agreed otherwise in writing. If the dispatch of goods that are ready for shipment is delayed for reasons for which Controlware is not to blame, the contractual products can be stored at the expense and risk of the customer.

- 6.2 If a binding shipment or delivery date has been exceeded, the ordering party shall have the obligation to set a period of grace of one month in writing and, if this expires fruitlessly, the ordering party shall be entitled to withdraw from the contract or demand damages for non-performance. If the ordering party claims damages due to non-performance, its claim shall, in the case of slight negligence, be restricted to typical, direct damage up to half the agreed price of the product that has not been delivered or installed. Compensation for the damage caused by delay may only be demanded if Controlware has acted in a grossly negligent manner or intentionally.
- 6.3 If Controlware is not responsible for a failed delivery since the delivery is dependent on Controlware itself obtaining supplies from an upstream supplier, and if these supplies from the upstream supplier are not obtained, not only for a temporary period of time, despite prompt conclusion of the transaction to ensure coverage and despite taking all available measures, Controlware shall have the right to withdraw from the contract without obligation to pay damages. A different situation shall apply only if the failure to obtain the supplies is the fault of Controlware.

## 7. Receipt, acceptance, and passage of risk

- 7.1 The ordering party shall take receipt of the delivery immediately after being requested to do so. Receipt shall be confirmed in writing. If the ordering party does not take receipt of a delivery, it shall be in default and shall be obliged to compensate Controlware for the damage that has occurred. The ordering party shall be obliged to check the goods immediately after receipt for completeness according to and conformity with the delivery note and the order. If no notice of defects is issued within a period of eight days after receipt of the delivery, the goods shall be regarded as having been delivered according to the contract. If an installation is subject of the service rendered by Controlware, Controlware shall, after completion of the installation, notify the ordering party of an appropriate period of time for acceptance. Controlware shall have the right to demand partial acceptance for independent functional units. If the ordering party does not accept the service rendered by Controlware within this period of time, the service shall be regarded as accepted. The ordering party shall be obliged to inform Controlware in writing within this period of any reasons which, in its point of view, contradict an acceptance. In the case of the handover of the installation/commissioning, a written acceptance test report shall be drawn up by both parties.
- 7.2 If the customer does not take receipt of the delivery in spite of a reminder that specifies a time limit of 10 days, or if the ordering party cancels a binding order, Controlware shall have the right, without prejudice to the assertion of a higher actual damage, to claim 10 % of the agreed purchase price for the costs incurred as a result of the processing of the order and for the loss of prospective profits. If the ordering party proves that no damage at all or considerably less damage has occurred, the compensation for damages shall be reduced accordingly.
- 7.3 If shipment is delayed at the request of the ordering party, documented storage costs corresponding to the usual market level can be charged following expiration of one month after the agreed shipment date.
- 7.4 The risk shall pass to the ordering party with first handover of the delivery by Controlware to the forwarder. If Controlware delivers the products itself, the risk shall pass to the ordering party upon loading of the products onto the first transport vehicle. Special agreements, e.g. means of transport, shall not affect the time of the passage of risk. If the ordering party is in default in taking delivery, the risk shall also pass to it in this case. If desired, appropriate insurance can be taken out at the expense of the ordering party.
- 7.5 If goods determined for repair or replacement are returned to Controlware within the warranty period, the risk shall pass from the ordering party to Controlware with first handover of the goods by the ordering party to the forwarder selected by Controlware; the transport costs shall be borne by Controlware in this case. If goods are returned outside of the warranty period, the ordering party shall bear the transport costs on its own and shall have the right to select both the forwarder as well as the transport features on its own.

## 8. Force majeure

- 8.1 Liability to pay damages due to non-performance or default shall be excluded for both parties to the contract in the case of events of force majeure which occur or become known after conclusion of the contract. Events of force majeure are inter alia internal unrest, operating disruptions, lack of labour, unavoidable lack of energy or raw materials, strike, lockout, unforeseeable traffic disruptions and orders of public authorities.
- 8.2 Events of force majeure shall discharge Controlware from the obligation to deliver for the duration of the disruptions and their effects. Following the reestablishment of normal circumstances, Controlware shall have the right to deliver the agreed quantity at an accordingly later time. If the events continue for three months or in the case of the lasting unfeasibility of fulfilling performance, Controlware shall have the right to withdraw from the unfulfilled part of the contract.
- 8.3 If the above-mentioned circumstances occur to the ordering party, said legal consequences shall accordingly apply to the obligations affecting the ordering party.

## 9. Reservation of ownership

- 9.1 The delivered products shall remain the property of Controlware until all relevant claims from the business relationship with Controlware are completed.
- 9.2 The ordering party shall be obliged to keep the products which are in the ownership of Controlware in custody with due diligence and to insure them adequately.
- 9.3 The ordering party shall have the right to process and sell the products as part of its normal business. Any integration of the product shall be performed on behalf of Controlware. In the case of implementation with third-party goods by the ordering party, Controlware shall acquire co-ownership of the new object to the level of the invoice value of the supplied product. The new object created from integration shall also be regarded as a supplied product for the purposes of these terms and conditions.

- 9.4 The products shall only be resold under the reservation of ownership until payment by the final purchaser. The ordering party hereby assigns its purchase price claim in full to Controlware as security and shall confirm the assignment in writing upon demand. If the value of the security provided exceeds the claims of Controlware against the ordering party by a total of more than 20%, the part exceeding the claim security shall be returned to this extent at the demand of the ordering party.
- 9.5 The ordering party shall be authorised to collect the claims that have been assigned to Controlware, but not to otherwise dispose of said claims. This authorisation can be revoked at any time. The ordering party shall report any enforcement measure affecting the rights of Controlware without undue delay. The ordering party shall bear the costs of repulsing the enforcement.
- 9.6 If the ordering party is in default of fulfilling claims from the business relationship, Controlware shall have the right, without previously fixing a time limit and regardless of the requirements of sec. 323 subsec. 2 BGB (German Civil Code), to withdraw from the contract, to assert their rights from the reservation of title, and to demand damages.

## 10. Warranty

- 10.1 Specifications of Controlware regarding the products and the services merely refer to their quality, unless Controlware expressly warrants or guarantees specific properties of the product or the service in writing.
- 10.2 The delivered products are free from mechanical defects and errors in their workmanship. The same shall apply, if commissioned, to the proper installation of the products by Controlware. Excluded from any warranty shall be expendable items and damage which is attributable to typical wear and tear, incorrect installation, use or operation or rectification work, maintenance activities, or changes which have not been expressly authorised by Controlware.
- 10.3 Products, or parts thereof which show defects within the warranty period shall, at the option of Controlware, either be rectified or delivered anew free of charge, provided the ordering party has given written notification of the defects immediately after they have been discovered. The ordering party shall have the obligation to set Controlware a reasonable period of time to rectify the defects. If supplementary performance is not possible within said period, the ordering party shall be entitled to assert the other statutory warranty claims (withdrawal, reduction of purchase price, and damages), provided their further statutory requirements are fulfilled.
- 10.4 If the ordering party brings forward complaints or returns goods to Controlware, the ordering party shall have the obligation to observe and adhere to the RMA regulations enclosed to these Standard Terms and Conditions. In particular, this shall encompass the provision of any required information concerning the malfunction of the product which is known to the ordering party. If the ordering party fails to fulfil, intentionally or negligently, its duty to inform and to co-operate, its warranty claim shall be suspended. If the ordering party does not fulfil its obligations after fixing a time limit, Controlware shall have the right to return the goods to the ordering party against payment. The recognised defects shall be rectified at the option of Controlware either at its premises, at the manufacturer, at a third party, or at the company of the ordering party.
- 10.5 In the case of complaints within the warranty period, the costs of the efforts required for the purpose of supplementary performance, in particular transport, infrastructure, labour, and material costs, arising from return or repair or replacement of the goods, shall be borne by Controlware. In the case of complaints outside the warranty period, the above-mentioned costs shall be borne by the ordering party.
- 10.6 The warranty period shall not be extended by the maintenance or rectification work. In the case of substitute delivery, the period of limitation shall start anew.
- 10.7 All warranty claims shall become statute-barred at the latest after 12 months following delivery or acceptance.
- 10.8 Further claims or other claims than those above mentioned on the part of the ordering party, regardless of the legal reason, in particular for the compensation of damage occurred not directly to the delivered goods or to assets of the ordering party, such as loss of prospective profits or other financial losses, shall be excluded, insofar as Controlware has not acted intentionally or in a grossly negligent manner, or has maliciously concealed the defect causing the damage, or has assumed a warranty for the quality of the goods.
- 10.9 The warranty obligation shall lapse if the supplied objects or rendered services are changed, incorrectly handled, worked or processed. Incorrect handling shall include, inter alia, the necessary observance of installation, operating and maintenance regulations, proof of which shall be furnished by the ordering party.
- 10.10 Used objects shall be supplied without any warranty.
- 10.11 The ordering party is aware of the fact that greater data losses can be avoided through at least daily data backups, and that Controlware shall under no circumstances assume liability for data losses resulting from lack of data backups.

## 11. Liability

- 11.1 Controlware assumes liability for the company and its vicarious agents – without having agreed the amount of damages – if fundamental contractual obligations or common business practices were violated. Liability in such cases shall be restricted to typical, foreseeable damage. There shall be no liability for loss of prospective profits or damage from the claims of third parties against the ordering party.
- 11.2 Controlware shall not be liable, outside the obligation to deliver, for slight negligence on the part of its vicarious agents.
- 11.3 Liability of Controlware for its own intentional and grossly negligent conduct and that of its vicarious agents, as well as liability under product liability law, shall remain unaffected by the above restrictions to liability. Liability for slight negligence shall be excluded.
- 11.4 Employees of Controlware who are active as vicarious agents of Controlware vis-à-vis the ordering party shall not be personally liable towards the ordering party in the case of slight negligence.
- 11.5 Liability of Controlware, as well as of its legal representatives and vicarious agents, for damage from violation of life, body, or health contrary to duty shall remain unaffected.

## 12. Software/consulting services

- 12.1 In the case of contracts comprising or including software or consulting services, specifications shall be agreed before the rendering of such services, but at the latest in the last phase of the service, as a basis for the services to be subsequently performed. This shall also apply to modifications or supplements to such contracts.
- 12.2 In the case of series and standard software, the delivery specification of Controlware shall be regarded as specifications within the meaning of the above section.
- 12.3 The ordering party shall only be entitled to receive the program documents of the application software provided this has been specially developed for the ordering party, the full project planning, programming and data entry costs have been paid, and insofar as no other agreement has been expressly concluded.
- 12.4 However, the parties are aware that, according to the state of the art, it is not possible to exclude all errors in the software under all applications.
- 12.5 Controlware shall not assume any liability for the program functions satisfying the requirements of the ordering party or working together in the selection made by the ordering party.
- 12.6 The work documents and data made available to Controlware shall be held in safekeeping by Controlware with its customary due diligence, notwithstanding the obligation of the ordering party to also hold data given to Controlware itself for the purpose of being able to reconstruct it.

## 13. Industrial property rights and confidentiality

- 13.1 If a third party should assert claims against the ordering party for the violation of industrial property rights relating to the supplied products, the ordering party shall be obliged to give immediate notification thereof. Controlware shall have the right, if applicable with the support of the ordering party, but at its own expense, to conduct all negotiations for a settlement or any legal proceedings arising therefrom.
- 13.2 If the supplied products have been built in accordance with designs or instructions of the ordering party, the ordering party shall indemnify Controlware against all claims, liabilities, burdens and costs that are asserted by third parties due to violations of patents, trademarks or samples. A reasonable advance on any costs of legal proceedings shall be granted to Controlware.
- 13.3 Controlware shall be obliged to use all knowledge of company secrets and of information that can be classified as confidential it acquires as part of the contractual relationship only for the purpose of implementing this contract. Both parties shall treat all documents and information they receive in and during the fulfilment of a contract with confidentiality and for as long as such documents and information have not become generally known.
- 13.4 These obligations shall also remain in effect after the end of a contract and shall also be imposed on third parties in the case of permitted passing on of documents and information to third parties.

## 14. Rights of ownership

- 14.1 Controlware reserves ownership and proprietary rights to all documents provided by Controlware before or after conclusion of the contract; said documents may only be made accessible to third parties with its express consent. All such drawings and documents shall be returned without demand and without undue delay if the contract does not materialise or is cancelled.

## 15. Services

- 15.1 For the execution of services such as installation of devices, maintenance, overhaul and repair, the ordering party shall take all precautions required to ensure unhindered start and rapid performance of the services. It shall be the sole responsibility of the ordering party to obtain any official permits that may be required.
- 15.2 The prices for the services shall be based on the applicable quotation terms and conditions of Controlware.
- 15.3 Otherwise, the present General Standard Terms and Conditions shall apply to the services, in particular to warranty and restriction of liability. Liability for consequential damage due to defects from services shall be excluded.

## 16. Export and import licenses

- 16.1 Products and technical know-how supplied by Controlware are intended for use and to remain in the country of delivery agreed with the ordering party. Re-exporting of contractual products – individually or integrated in a system – may require the ordering party to obtain a license and shall be subject to the foreign trade regulations of the Federal Republic of Germany or of the other country of delivery agreed with the customer. The ordering party must obtain information on these regulations itself in accordance with German provisions from the Federal Ministry of Economics, 65760 Eschborn/Taunus. Regardless of whether the ordering party specifies the definitive destination of the supplied contractual products, the ordering party shall itself be responsible for obtaining any necessary license from the pertinent foreign trade authorities before exporting such products.
- 16.2 Any further delivery of contractual products to third parties by the ordering party, with or without the knowledge of Controlware, shall at the same time require the transfer of the export license conditions. The ordering party shall be liable to Controlware for the correct observance of these conditions.

## 17. Final provisions

- 17.1 The ordering party may only assign claims against Controlware with the express written consent of Controlware.
- 17.2 If individual points of these terms and conditions are ineffective, the effectiveness of the other provisions shall not be affected thereby. An ineffective provision shall be replaced primarily by the special regulations for commercial business and any trade usage.
- 17.3 The place of fulfilment shall be Controlware Dietzenbach, the place of jurisdiction shall be Frankfurt/Main. However, Controlware shall have the right to take legal proceedings against the ordering party at any other justified place of jurisdiction.
- 17.4 German law shall apply exclusively to the contractual relationship between Controlware and the ordering party. The Uniform Purchase Law (EKG), the Uniform Law on Conclusion of Contracts (EAG) and the Vienna UN agreement on international trade (UNCITRAL) shall be excluded.