

# GENERAL TERMS AND CONDITIONS OF BUSINESS 04/2006

## ASIS GmbH

### § 1 General Provisions

- (1) All of our deliveries, services and offers shall be based solely on these terms and conditions even if this is not explicitly stated during negotiations. We shall not accept conflicting terms and conditions even if we did not expressly disagree with them or if we refer to a letter of the contractual party in which the party's terms and conditions are referred to. Our terms and conditions shall apply in relation to all contracts with companies, legal entities under public law and special funds under public law and including any future business relations even if they are not yet expressly agreed upon. Our general terms and conditions shall be deemed as accepted by the time our goods are accepted at the latest.
- (2) Terms and conditions of the customer that conflict with or deviate from our terms and conditions shall only be applicable if we agree with their validity explicitly and in writing.
- (3) In the case of unanticipated difficulties that are beyond our control and that we are not able to prevent despite using reasonable care according to the circumstances – whether they occurred at our facilities or at the facilities of a subcontractor - including but not limited to cases of force majeure (e.g. war, fire and natural catastrophes), delays concerning the delivery of main raw products, we shall be entitled to withdraw from the agreement partly or entirely or to extend the period of time of the service by the same length of time as the difficulty. We shall have the same rights in the case of strikes or lock-outs at our facilities or the facilities of any of our pre-suppliers. We shall notify the customer of any such circumstances without delay and will reimburse him any advance payments that have already been made.
- (4) If the performance of our services is delayed the customer shall be entitled to terminate the contract if we fail to meet a reasonable deadline; if the service is impossible, he shall be entitled to exercise this right without the prior setting of a deadline. Notwithstanding paragraph 5 and § 10 that are not intended to reverse the burden of proof, claims for damages (including any possible consequential damages) shall be excluded; the same shall apply to the compensation of expenses.

### § 2 Offer, Termination of Contract and Documents

- (1) Our sales employees are not authorized to make oral collateral agreements or assurances that exceed the content of the written agreement. All provisions of this agreement are put down in the written deeds. Oral collateral agreements shall not be binding.
- (2) Any given delivery times shall be approximate and not binding unless their binding force was explicitly confirmed. Details about the contract item or the service (e.g. technical information, tolerances, dimensions, weights etc.) and its representation shall solely be deemed descriptions and identifications that shall only be binding if we confirm their binding character explicitly. Contract items and performances are subject to standard technical and structural changes if they do not unduly affect the customer and if they do not affect the usability of the object of the sale or the service.
- (3) Our offers remain non-binding until the completion of the agreement.
- (4) Any design drawings, designs, cost estimates and similar company objects, of material or non-material quality, are protected by property rights and copyrights. They must remain strictly confidential. They may not be disclosed to third parties without our agreement. If the customer violates this obligation he shall be fully liable in accordance with the legal regulations. Reference advertisements using our name and similar references shall only be admissible with prior agreement.

### § 3 Prices

- (1) Our prices are ex works, plus loading and plus packaging. The customer shall be responsible for unloading and storing the goods. The statutory value added tax on the day of the invoice will be added to the price. Prices are not binding until the completion of the agreement. The customer shall cover the costs of any transport assurances or similar assurances agreed upon unless stipulated otherwise. In the case of partial deliveries, every delivery can be invoiced separately.
  - a. For services within the European Union the customer must provide his VAT number in time before the contractual service date as proof of his exemption from turnover tax. If the customer fails to provide the number completely and in time, the applicable turnover tax at the time must be charged.
  - b. For services outside of the European Union we are authorized to subsequently add the statutory turnover tax if the customer fails to send the necessary documents and / or proof for the purposes of turnover tax law (e.g. proof of exportation) within one month after the respective dispatch.
- (2) We reserve the right to adjust the price with prior notification of the customer if the price basis has changed (e.g. rise in prices of raw material, rise in wages) until the day of the service and if that day is more than 4 months after the completion of the agreement.
- (3) The prices of the offer shall only be valid if the complete services are ordered. If no prices are agreed upon at the completion of the agreement, our prices on the day of the service shall be applicable.

### § 4 Terms of Payment

- (1) Prices shall be payable (without deductions) promptly after receipt of the invoice unless otherwise stated on the order confirmation (alternatively on the invoice). The customer shall fall into arrears without further reminder 10 days after receipt of the invoice.
- (2) If the customer falls into arrears we are entitled to charge interest on arrears to the amount of 8 % above basic interest rates. At any time we may prove a higher interest penalty and charge the customer accordingly. If a customer falls into arrears, we are authorized to revoke any rebates, discounts or other reductions that have been agreed upon. We are entitled to make further deliveries only against cash in advance.
- (3) Non-compliance with the conditions of payment, default or circumstances which may reduce the creditworthiness of the customer make all accounts payable to us immediately due.
- (4) The customer shall only be entitled to rights of set-off if his counterclaims have been judged as final, are undisputed or have been acknowledged by us. The customer is entitled to exercise a right of retention in as far as his counterclaim resides in the same contractual relationship and the counterclaim has been acknowledged or been judged as final or is ready for judgment.
- (5) We are not obliged to accept bills of exchange or cheques. Any bills of exchange or cheques accepted as payment are always subject to redemption (on account of payment, not as conditional payment); they are booked on the day when we are able to draw the covering amount. Bills of exchange are credited after deduction of any discounts, stamp duties and bank charges and - if applicable - collection costs that we were passed on to us.
- (6) Further contractual and / or legal claims on the grounds of default shall remain unaffected.

### § 5 Terms of Delivery and Delivery Difficulties

- (1) The period of time for the service starts on the date when the order confirmation was dispatched but not before the customer has provided all necessary documents, permissions and releases and before the agreed advance payment has arrived and all technical and commercial questions have been answered.
- (2) The period of time for the service shall be deemed as observed if, up until the termination of the period, the contractual goods have left the works or if readiness for the service has been communicated.

### § 6 Passage of Risk, Acceptance of the Goods and Services, Partial Deliveries

- (1) If the liability is to be discharged at the domicile of the debtor, the risk shall pass to the customer when the goods are set aside and made available in accordance with the contract. If the obligations are to be performed at the debtor's place of business, the risk shall pass to the customer when the goods are transferred to the transport person. If the obligation is to be performed at the creditor's address, the risk shall pass when the goods leave the works. The same applies in the case of delay of the creditor. The INCOTERMS that are valid at the time shall be deemed as agreed upon.
- (2) In the case of service contracts the risk passes two weeks after the customer was notified that the goods are ready for dispatch unless the customer notifies us within that period in writing of important defects. The use of the contractual goods by the customer for production purposes shall be deemed as acceptance. Partial deliveries shall be admitted and shall result in the passage of risk as well.
- (3) The customer has to accept delivered goods even if they have minor defects notwithstanding his rights according to §§ 8 - 10. Partial deliveries shall be acceptable in so far as the customer can be reasonably expected to accept them. The stipulations relating to the passage of risks shall be valid accordingly.

### § 7 Reservation of Title

- (1) We shall remain owner of all goods until we have received the full payments. If the contract is concluded with a company, we shall reserve the ownership rights to any delivered goods until the customer has paid all present and future claims resulting from the business relation. The reservation of title also includes spare parts or replacement parts including e.g. engines, control devices etc., even if they are installed since this does not result in them becoming crucial components to the purposes of § 93 BGB.
- (2) If the customer breaches the contract, especially in the case of default in payment, we shall be entitled to take the goods back after the customer has failed to meet a set payment deadline. The taking back alone shall only be deemed as termination of the contract if a deadline set by us was not met and the termination was declared explicitly. The customer shall be responsible for the costs we incur related to the taking back (in particular transport costs). We shall also be entitled to prohibit the customer from any resale or processing, combination or mixing of the goods delivered under reservation of title and to revoke the direct debit authorization (§ 7V). The customer shall only be able to demand the delivery of goods that were taken back without explicit declaration of termination after the purchase price and any costs have been paid in full.
- (3) The customer shall be obliged to treat the goods with care (including necessary inspection and maintenance works).
- (4) The customer may not pledge the contractual goods or the claims for them or transfer them as security or assign them. In the case of pledging or other interventions of third parties the customer has to notify us without delay in writing so that we may be able to file a suit in accordance with § 771 ZPO [German Code of Civil Procedure]. The customer shall be responsible for any costs ensuing from this action that we have to pay even having won the action according to § 771 ZPO.
- (5) The customer shall be entitled to resell, process or mix the goods of sale within the framework of his normal business operation. However, as a precautionary measure he hereby assigns any claims resulting from the resale, the processing, the mixing or other legal arguments (in particular resulting from insurances or unlawful acts) to the amount of the final invoice amount (including VAT) and all subsidiary rights to us. If we are joint owners of the delivered goods due to the reservation of title, the claims shall be assigned in proportion to the portion of joint ownership. If the delivered goods are sold together with third-party-goods not owned by the customer, the resulting claims shall be assigned to us according to the proportion of the final invoice amount of our goods to the final invoice amount of the third-party-goods. The customer shall remain entitled to collect these claims even after the assignment while our right to collect the claims ourselves remains nevertheless unaffected. However, we undertake to refrain from collecting the claims as long as the customer meets his payment obligations from the collected revenues, is not in default in payment and the customer has not filed for bankruptcy or suspension of payments. If this is the case though, the customer shall be obliged to disclose to us upon our request the assigned claims and the debtors, to give us all details that are needed to

collect the claims, to hand over the associated documents and to notify the debtors (third parties) of the assignment.

The same applies if the customer resells, processes or mixes the goods of purchase contrary to the terms of the contract.

- (6) The reservation of title also covers any products at their full value that result from the processing or transformation of our goods. These proceedings take place for us so that we shall be regarded as the producer. If the mixing or transformation is carried out with other goods that do not belong to us, we shall acquire joint ownership of the new goods in proportion to the objective value of these goods; as a precautionary measure it is hereby agreed that in that case the customer shall keep the goods safely in custody for us.  
If our goods under reservation of title are combined with other movable goods so that they form a unit or if they are inextricably mixed and if the other item is to be regarded as the main item, the customer shall transfer proportional joint ownership to us, insofar as he owns the main item; the customer shall keep the produced items in joint ownership safely in custody for us. For items that are produced in this way the same stipulations shall apply as for any goods that are delivered under reservation of title.
- (7) The customer shall also assign the claims securing our claims against him to us, that arise against a third party from combining the contractual goods with a piece of property. The assignment ranks before any other rights.
- (8) The securities to which we are entitled shall be released if the estimated value of our securities exceeds the nominal value of the secured claims by more than 50%; we shall decide which securities are to be released.
- (9) If certain conditions or formal requirements are attached to the validity of the reservation of title in the country of destination, the customer shall be responsible for fulfilling them.

### § 8 Warranty of Quality and Warranty of Title

In the case of the sale of any used goods to entrepreneurs, warranty is excluded. In all other cases we warrant for defects of the delivered goods as follows if the customer is a businessperson, but only if the customer properly meets his obligations concerning inspection and deficiency claims in accordance with § 377 HGB (the deficiency claim has to be provided in writing):

- (1) If the goods of sale are deficient, we shall be entitled to either remedy the defect or deliver faultless goods (subsequent performance) provided it is more than only a slight defect. The customer is obliged to give us the necessary time and opportunity for the subsequent performance, if we do not get this opportunity, we shall not warrant for the ensuing consequences.  
If one or both kinds of subsequent performance are not possible or unreasonable, we are entitled to refuse the performance.  
We are entitled to refuse subsequent performance as long as the customer does not meet his payment obligations to us to the extent corresponding to the part of the service that is free of faults.
- (2) If the subsequent performance according to paragraph 1 is not possible or fails, the customer is entitled to either reduce the purchase price accordingly or to withdraw from the contract in accordance with legal stipulations; this applies particularly in the case of culpable delays or refusal of subsequent performance or if the subsequent performance fails for the second time.  
Further claims of the customer regardless of the legal argument are in accordance to § 10 excluded or limited.
- (3) We are not liable for damages arising from the following circumstances: unsuitable or improper use, faulty installation by the customer or third parties, natural and usual wear and tear, faulty or negligent treatment, overuse, unsuitable operating materials, faulty construction work, unsuitable foundation soil, replacement materials, chemical, electro-chemical or electric influences (insofar as we are not responsible for them), wrong or incomplete information by the customer, inexpert modifications or modifications without our prior permission or repair work by the customer or third parties.
- (4) Claims on the grounds of deficiencies shall come under the statute of limitations one year after the delivery of the purchased goods, provided we did not commit acts of criminal intent or gross negligence and no injury to life, limb or health occurred.  
If goods are used in a building in accordance with their usual manner of use and if they cause this building to be deficient, they shall only come under the statute of limitations after five years.

The right to abatement and termination of the contract are excluded provided that the right to subsequent performance has expired.

Nevertheless, in the afore-mentioned case (sentence 3) the customer is entitled to refuse the payment of the purchase price insofar as he would be entitled to do so on account of the abatement or termination; if the termination of contract is excluded and the customer subsequently refuses to pay, we shall be entitled to withdraw from the contract.

A reversal of the burden of proof is not intended.

- (5) Assurances and warranties shall only be binding if we provide them explicitly and in writing.
- (6) Additionally, in the case of infringements of property rights or copyrights the following shall apply:  
Claims shall only be valid, if

- the customer notifies us without delay and in writing of the alleged infringements of property rights or copyrights and their nature,
- the customer supports us to a reasonable extent in defending the alleged claims or enables us to take modification measures,
- all means of defence including settlements out of court remain open to us,
- the property right or copyright infringement does not result from an order or a specification of the customer and
- the property right or copyright infringement was not caused because the customer modified the contractual goods without our permission or used it in a manner that is not in accordance with the stipulations of this contract.

If the use of the contractual goods leads to property right or copyright infringements, we shall generally provide the customer with the right to further use the contractual goods or we modify the contractual goods in a manner that the property or copyright infringement ceases to exist; if this is not possible in an economically reasonable way or within an appropriate time limit, the parties are entitled to withdraw from the contract or the customer is entitled to abatement. § 10 shall apply regarding claims for damages and expense compensation.

### § 9 Works and Work Performance Contracts, Service Contracts

- (1) We shall warrant for deficiencies of services rendered according to a works contract pursuant to § 8 I –III, V, VI. The customer has the statutory right to commission or perform repairs of defects according to § 637 BGB; this right shall be excluded if we are also entitled to refuse subsequent performance.
- (2) The right to subsequent performance, damages and expenses compensation falls under the statute of limitations one year after the acceptance, provided we did not commit acts of criminal intent, gross negligence and the defect did not cause injury to life, limb or health.  
This does not apply in the case of buildings and works if the service consists of

rendering a planning or supervising service for the construction; in that case the term of limitation shall be five years.

The right to commission or to perform repairs of defects, the right to abatement and the right to exercise the right of termination shall be excluded, insofar as the right to subsequent performance has fallen under the statute of limitation and we invoke it. Nevertheless, in the afore-mentioned case (sentence 3) the customer shall be entitled to refuse payment insofar as he would be entitled to do so on account of the termination of contract or the abatement; if the termination of contract is excluded and the customer subsequently refuses to pay, we shall be entitled to withdraw from the contract.

A reversal of the burden of proof is not intended.

- (3) The estimates shall only be binding if we confirm this explicitly and in writing.
- (4) The customer shall be responsible for instructing our personnel at his expense about existing safety instructions and dangers and for taking all necessary measures to ensure the safety of persons and objects at the place of work. The customer shall be obliged to assist our personnel in executing the works at his own expense and to the necessary extent and to provide the necessary supportive measures including but not limited to preparation of the construction site, provision of tools and lifting gear, provision of water and electricity. The supportive measures of the customer have to ensure that our works can start immediately after the arrival of our personnel and continue without delays until the acceptance. If a customer does not fulfil his obligations, we shall be entitled but not obliged to perform or commission the measures that fall into the responsibility of the customer in his stead and at his expense.
- (5) If we are not able to render a service for reasons outside of our control, the customer shall be obliged to reimburse the services already rendered and the incurred expenses. If the service fails or deteriorates through no fault of our own before acceptance, the customer shall reimburse us the price less saved expenses.
- (6) Parts that are replaced in the course of an exchange procedure shall become our property.
- (7) Only repair deadlines that we confirmed in writing shall be binding.
- (8) In the case of contracts concerning the delivery of movable goods that are to be produced or processed § 8 shall apply.
- (9) In the case of service contracts § 10 shall apply accordingly.

### § 10 Termination on the part of the Customer and further Warranty on the part of Asis GmbH

- (1) The statutory right of termination of the customer shall neither be excluded nor limited. Additionally, the statutory and legal rights and claims that we are entitled to shall neither be excluded nor limited.
- (2) We are fully liable only in cases of criminal intent and gross negligence (including of our legal representatives and of persons employed by us in the performance of our obligations) and the culpable injury to life, limb and health. We are also fully liable if a defect is covered by our warranty or an assurance we gave. Our liability with regard to offences endangering persons or objects (especially according to the German product liability law) shall equally be unlimited. Any liability according to the contractor's recourse according to §§ 478 f. BGB remains unaffected.
- (3) In the case of other culpable violations of major contractual obligations (cardinal obligations) our remaining warranty shall be limited to the typical contractually foreseeable damages. Otherwise the warranty shall be excluded regardless of the kind of legal argument used (especially claims resulting from the violation of contractual main and subsidiary obligations, unlawful acts or other torts).
- (4) The same (exclusions, limitations and exceptions hereof) shall be applicable for claims resulting from breach of obligations upon contracting ("culpa in contrahendo").
- (5) In the case of compensation of expenses (except the compensations according to §§ 439 II, 635 II BGB) § 10 shall apply accordingly.
- (6) The exclusion or limitation of our warranty shall also cover our legal representatives and persons employed by us in the performance of our obligations.
- (7) The customer shall be obliged to save his data appropriately and regularly. Within the scope of the stipulations above we shall only be liable for the loss, the deterioration or destruction of data to the value of the costs that would have been incurred to reconstruct the data if they had been properly saved.
- (8) A reversal of the burden of proof is not intended.

### § 11 Particular Stipulations relating to Software

- (1) If software products of other suppliers are included in the scope of delivery, the terms and conditions of these suppliers shall be applied with priority. If they are not provided, we shall send them to the customer upon his request.
- (2) In addition to the general terms and conditions of the software supplier our terms and conditions shall be applicable. If the general terms and conditions of the software supplier are or become invalid, our terms and conditions shall also apply.
- (3) The customer shall receive a permanent, simple, non-exclusive user licence. It is not permissible to issue sublicenses.
- (4) We are principally not obliged to provide the source codes of the software products.
- (5) The customer may only modify our software products within the legally allowable framework. The customer is not authorized to either remove producer details – especially copyright notes – or modify them without our prior written agreement.

### § 12 Place of Performance, Jurisdiction, Applicable Law, Contractual Language and Burden of Proof

- (1) The place of performance shall be the place of dispatch (place of works or storage).
- (2) If the customer is also a businessperson, a legal entity under public law or a special fund under public law, sole venue for all disputes arising hereof shall be our principal place of business. This shall also apply if the customer has no general domestic venue. We are also entitled to bring an action against the customer at all other admissible venues.
- (3) Regarding all claims and rights in relation with this agreement the non-unified law of the Federal Republic of Germany (BGB, HGB) shall be applicable. The UN convention on the international sale of goods (CISG) shall be explicitly excluded. The contractual language shall be German.
- (4) None of the clauses pertaining to these terms and conditions are intended to change the division of burden of proof according to law or case law.

### § 13 Further Provisions

- (1) Any modifications hereof shall only be binding with our prior agreement in writing. For the written agreement a fax may be used.
- (2) In the event that any stipulation of these terms and conditions or parts thereof should be or become void or invalid, this shall not affect the remaining terms and conditions. The parties hereto undertake to agree to a provision that ensures that the economic purpose and meaning of the invalid or void stipulation is largely attained.
- (3) We process all data of the customer exclusively for the purpose of the settlement of a business affair and in accordance with the stipulations of the applicable data protection regulations at that time.