

Standard Terms and Conditions of Sale and Delivery of Formac Elektronik GmbH

§ 1 Scope of the Terms and Conditions, Subsidiary agreements

1.1 The following Standard Terms and Conditions of Business (Standard Terms and Conditions) shall apply to all deliveries and services that we (Formac Elektronik GmbH) carry out for our customers, notably to the sale of computer hardware including the system software.

1.2 Our Standard Terms and Conditions shall apply exclusively and in their newest wording each time. We shall point out any change to the Standard Terms and Conditions to the customers.

1.3 Deviating and supplementing terms and conditions of business of our customer shall only become part of the contract if and insofar as we expressly confirm this. In other respects, these Standard Terms and Conditions shall apply exclusively under protest against the terms and conditions of the customer.

1.4 Subsidiary agreements, changes and amendments to these Standard Terms and Conditions that are not reached directly with our managing directors or *Prokurists* [holders of a special statutory authority] shall only be effective if confirmed in writing. Subject to such confirmation, our employees are not authorized to reach deviating agreements.

§ 2 Selection, Offers, Confirmation of the order

2.1 Responsibility for the selection of the devices (including the work results to be brought about through their operation) shall be borne by the customer. All information in prospectuses, announcements, advertisements etc. are – even regarding prices – non-binding. Deviations customary in the trade are permitted and shall not establish any agreement with regard to the nature of the goods.

2.2 The customer shall be bound by orders for four weeks from their receipt. Within this set term, we may accept the offer by a confirmation of the order or by sending the ordered goods to the customer.

2.3 We reserve the right to make product changes that do not significantly interfere with the intended purpose as provided in the contract or the interests of the customer, even after the confirmation of the order.

§ 3 Prices

3.1 For the order, the list price on the date of the acceptance as provided in item no. 2.2 shall apply. All prices are net prices and are quoted ex Works Blankenfelde; the customer must additionally pay turnover tax as well as freight, insurance and packaging costs.

3.2 In the case of contracts with an agreed time of delivery of more than four months, we reserve the right to increase the prices as stated in our price list. The same shall apply if the actual delivery can only take place after more than four months by reason of a circumstance lying in the sphere of responsibility of the customer. If the increase amounts to more than 5% of the agreed price, the customer shall have the right to rescind the contract.

§ 4 Times of delivery, Default in delivery, Passing of risk

4.1 Agreed times of delivery can only be complied with if the customer has fulfilled the duties incumbent on it, such as e.g. the payment of an agreed downpayment within the time specified, complete provision of any supporting documents to be made available etc. In the event of subsequent changes or supplementary requests by the customer, the time of delivery shall be extended by the duration of the agreed set term. The time of delivery shall be complied with if the goods have been handed over to the transport manager by its expiry or the readiness for dispatch is notified to the customer.

4.2 All agreed set terms and dates shall be subject to proper and timely delivery to us. Furthermore, we are entitled to withhold deliveries or rescind the contract after the expiry to no avail of a reasonable

extension of time set for the performance of the service or supplementary performance – unless the setting of an extension of time is legally unnecessary, if and as long as the customer fails to comply with its own obligations, notably in the event of exceeding the agreed periods allowed for payment or a credit limit.

4.3 If agreed dates of delivery are not complied with, the customer must set for us in writing a reasonable extension of time for the performance of the service or supplementary performance of at least two weeks – unless the setting of an extension of time is legally unnecessary. After the expiry to no avail of the extension of time, the customer may rescind the contract. The customer may only claim damages in lieu of the performance of the service if the exceeding of the agreed date of delivery is through our own fault on account of a deliberate act or gross negligence committed by us or slightly negligent breach of a material contractual obligation (cardinal duty) has occurred.

4.4 If we are responsible for the non-compliance with mandatory binding set terms and dates or are in default, in the event of a claim being asserted, the customer shall be entitled to compensation for default in performance in the amount of 0.5% of the purchase price for each complete week of the default. Further claims shall be excluded, unless the customer can furnish documentary proof that it has gone to great lengths to obtain replacement goods elsewhere.

4.5 The goods shall be dispatched at the customer's request. The risk shall pass to the customer as soon as the consignment is handed over to the person carrying out the transport. If the dispatching is delayed at the request of the customer, the risk shall pass to it upon notification of the readiness for dispatch.

§ 5 Default in acceptance

5.1 If the customer fails to accept the goods, after an expiry to no avail of an extension of time of at least 10 days, we are entitled to rescind the contract. In the latter case, 15% of the purchase price may be claimed as compensation without documentary proof, unless documentary proof is furnished that only minimal damage or loss has arisen. We reserve the right to assert higher damage or losses actually incurred.

5.2 Instead of the above-mentioned rights, after the expiry to no avail of the extension of time, we are also entitled to dispose of the goods otherwise and subsequently supply the customer anew within a reasonable set term.

5.3 If the dispatch of the goods is delayed after notification of the readiness for dispatch of the goods at the request of the customer or on account of other obstacles in the sphere of responsibility of the customer, we are entitled to invoice the customer for the costs incurred through the storage. In the event of storage in our premises, at least 0.5% of the invoiced amount may be claimed for each month already commenced, unless documentary proof is furnished that less damage or losses have occurred.

§ 6 Payments

6.1 Unless agreed otherwise, our invoices are due for payment without deductions within 10 days from the invoice date. Payments are deemed to be effected upon the entry of a credit on our account.

6.2 Bills of exchange shall only be accepted if this has been expressly agreed beforehand. The acceptance shall always take place for conditional credit only. The credit entry of bills of exchange and cheques shall be subject to their encashment and validation. Discounts and bills charges shall be borne by the customer and are due for payment immediately.

6.3 Subject to an express provision to the contrary in the individual case, the customer shall grant us the right, notwithstanding sections 366 and 367 of the German Civil Code [*Bürgerliches Gesetzbuch* (BGB)], to stipulate what debt will be discharged through a payment.

6.4 A right of set-off shall only be permitted against counterclaims of the customer that are undisputed or recognized by declaratory judgement. Counterclaims based on other contractual relationships shall not entitle the customer to exercise a right of retention. In each case, payments may only be withheld in the amount of any asserted counterclaims to which the customer is entitled.

§ 7 Retention of title

7.1 Until such time as all claims, including balance claims to which we are entitled, based on any legal grounds whatsoever, against the customer or enterprises affiliated with the customer within the meaning of the German Stock Companies Act [*Aktiengesetz*] at the time of the conclusion of the contract or at a later point in time, have been satisfied, the customer shall grant us the following securities; we shall release these at our option upon request if the value of the securities exceeds our claims by more than 20%.

7.2 The delivered goods shall remain our property subject to the terms of the above-mentioned paragraph (goods subject to retention of title). In the event of processing or combining the goods, we shall acquire the prorated co-ownership of the new item in accordance with its invoiced value.

7.3 As long as the customer is not in default with its payments to us, it shall be entitled to process and sell the goods subject to retention of title in the regular course of business. The goods subject to retention of title may not be pledged or assigned to other persons for the purposes of providing security. Furthermore, the customer is obliged to keep the goods subject to retention of title carefully and free of charge and insure these to the usual extent at its own expense.

7.4 The customer hereby assigns to us in advance, by way of security, the claims arising through the resale or for any loss or damage to the goods subject to retention of title, in particular against the insurer. The customer shall be entitled to collect the assigned claims in its own name for our accounts. The authorization for this may be revoked if the customer fails to fulfil its contractual obligations to us.

7.5 The customer shall pass on the retention of title to its own customer in such a way that it retains title to the goods independently with regard to this party in accordance with section 449 BGB until the goods have been paid for completely, unless it resells these for immediate cash payment.

7.6 If the customer defaults in payments or severely infringes other contractual obligations, we shall be entitled to take back the goods subject to retention of title. The taking back of the goods shall not entail a rescission of the contract.

7.7 Extended retention of title with clause relating to processing

Any handling or processing of the goods subject to retention of title shall be carried out for the purchaser by the seller without the latter incurring obligations based on this. In the event of the processing, connecting, mixing or commingling of the goods subject to retention of title with other goods not belonging to the seller, the seller shall be entitled to the resulting co-ownership of the new item in the proportion of the value of the goods subject to retention of title to the other processed goods at the time of the processing, combining, mixing or commingling. If the purchaser acquires the sole ownership of the new item, the contracting parties agree that the purchaser shall grant to the seller the co-ownership of the new item in the proportion of the value of the processed or combined, mixed or commingled goods subject to retention of title and shall keep these free of charge for the seller.

§ 8 Default in payment

8.1 If the customer fails to fulfil its payment obligations, if in particular cheques are not cashed or the payments are suspended, or if we become aware of circumstances that give rise to significant and well-founded doubts regarding the financial standing of the customer – such as for example the commencement of insolvency proceedings, the dismissal of a petition in insolvency, or a negative written agency report, we are entitled to call the entire outstanding debt due, even if bills of exchange or cheques have been taken in.

8.2 In this case, moreover, we are entitled to claim payment in advance or the provision of security for all still unsettled contracts and if necessary after the expiry to no avail of a reasonable extension of time for the performance of the service or supplementary performance, regularly of two weeks – unless the setting of an extension of time is legally unnecessary – rescind these contracts and claim damages in lieu of performance.

8.3 For the duration of the default in payment, we are entitled to charge interest in the amount of 8% above the basic interest rate (section 247 BGB). The interest shall be due immediately. Both parties reserve the right to furnish documentary proof of lesser or higher damage.

§ 9 Warranty

9.1 The devices delivered by us shall not entail defects that deviate from the agreement with regard to the nature of the goods or in the absence of an agreement regarding the nature of the goods abrogate or reduce the value or fitness for the customary use or the use preconditioned by the contract; an insignificant reduction of the value or the fitness shall be disregarded. For the agreement of a guarantee regarding the nature of the goods (section 443 BGB), § 1 item 1.4 shall apply correspondingly.

9.2 The warranty period for customers that have their exclusive place of business in Germany shall be 24 months, otherwise 12 months. The warranty period shall commence on the date of the delivery of the goods at the customer's business premises. During the execution of the supplementary performance work, the expiry of the limitation period for buyers in actions for breach of warranty shall be delayed. We may refuse the warranty if and as long as the customer fails to fulfil its own obligations in proper form, notably in the event of exceeding the agreed period allowed for payment or a credit limit.

9.3 The customer must inspect the delivered goods immediately upon arrival for transport and other damage or losses and notify us in writing at once of any damage or losses, stating the precise facts and circumstances. In other respects, obvious defects must be notified to us in writing immediately, however at the latest within one week after the delivery. The defective objects must be held in readiness for inspection in the condition in which they were arranged at the time of the detection of the defect. The above-mentioned obligations shall apply correspondingly if defects that already existed at the time of the passing of risk are shown during the warranty period. A breach of these obligations shall result in the loss of the warranty claims. The regulation of section 377 HGB [*German Commercial Code* (Handelsgesetzbuch)] shall remain applicable on a supplementary basis.

9.4 If the operating instructions contain recommendations on problem analysis and error isolation, the customer must follow these in the event of malfunctions, before claiming corrective maintenance by us. Before sending back the goods, their defectiveness must be determined in a discussion with us. If the goods are sent back, we may reject the repair if the consignment is not provided with any copy of the invoice or other proof of delivery. The goods must be sent back to us cleared through customs free domicile; the danger of an accidental perishing or loss shall be borne by the customer. For the inspection of unjustified or incomplete return consignments, we shall charge a handling fee of €50.00 or settle this amount specifically.

9.6 If the delivered goods are defective or if they become defective within the limitation period for buyers in actions for breach of warranty through manufacturing and material defects, we shall deliver, preferably according to our choice, either a replacement or remedy the defects. We are entitled to refuse supplementary performance, in accordance with the statutory regulations. In the case of a refusal of supplementary performance, its failure or its unreasonableness, the customer shall be entitled to rescind the contract or reduce the purchase price. We are entitled to undertake up to three attempts at supplementary performance. The customer shall only be entitled to rescind the contract after the expiry to no avail of a reasonable time period for supplementary performance, regularly of six weeks, unless the setting of a time limit is legally unnecessary under the statutory provisions.

9.7 If our operating and preventive maintenance instructions are not followed, changes to the goods are carried out, parts are exchanged, consumable materials that do not conform to the original specifications are used, or measures by third parties not expressly authorized for this are carried out, the warranty shall be dispensed with if the defect is attributable to this. If one of the stated preconditions is satisfied, the customer must prove that the defect is not attributable to this.

9.8 With regard to the customer's warranty claims, the above-mentioned regulations shall apply exclusively. In the case of a fraudulent concealment of a defect or in the case of the assumption of a guarantee regarding the nature of the goods (section 444 BGB), at the time of the passing of risk, the statutory provisions shall apply. Used goods shall be delivered to the exclusion of all warranty, unless an agreement regarding the nature of the goods (section 434 (1) sentence 1 BGB) has been concluded.

9.9 If the ultimate consumer of the goods in the delivery chain is a consumer, subject to the preconditions of section 377 HGB – the customer shall be entitled to a right of recourse in accordance with the statutory provisions. Liability beyond the warranty shall take place in accordance with the

terms of § 10. Direct warranty claims by third parties against us shall be excluded; in particular, the customer may not make declarations of guarantee in our name to its customers or the end consumer or assign its own warranty claims to these.

§ 10 Liability

10.1 In addition to the warranty, we shall only be liable – based on any legal ground whatsoever:

- for intent and gross negligence,
- in the event of a slightly negligent infringement of a material contractual obligation (cardinal duty),
- in the event of the assumption of a guarantee regarding the nature of the goods (section 444 BGB),
- in the event of the fraudulent concealment of a defect,
- for damage or losses arising from the injury to life, limb or health,
- in the event of strict liability in accordance with the Product Liability Act [*Produkthaftungsgesetz*].

10.2 We are only liable for the loss of data insofar as the damage could not have been avoided through the regular – in the case of businesspeople daily – backup of the data.

10.3 The customer is obliged to inspect the goods delivered by us for freedom from errors before it places these into circulation. If it fails to fulfil this obligation, it must indemnify us in the internal relationship against all claims that third parties assert against us in accordance with the regulations of the Product Liability Act [*Produkthaftungsgesetz*].

§ 11 Prohibition of assignment

The rights of the customer arising from the contracts concluded with us may – subject to the regulation of section 354 a of the German Commercial Code [*Handelsgesetzbuch* (HGB)] – only be assigned to third parties with our prior written consent.

§ 12 Data protection

The customer declares its approval to the personal data delivered to us in connection with the business relationship being saved and processed.

§ 13 Property rights

13.1 The delivered goods shall partly include operating systems that are controlled by software protected under copyright law, to which we possess the exclusive exploitation rights. The respective user shall be granted a simple licence to use the software. The copying, modifying, disassembly, decompiling, reverse engineering, amalgamating, combining, translation, adapting or mimicking of the software shall only be permitted insofar as this is required for use in proper form and is customary.

13.2 When selling the product to third parties, the customer must guarantee that a parallel multiple use of the program will be excluded. The customer shall be liable for damage and losses that are incurred through the infringement of the agreement.

§ 14 Place of jurisdiction and applicable law

14.1 If the customer is a merchant, legal entity under public law or a special fund under public law, for all disputes arising from the business relationship, for both parties, Berlin and Potsdam are deemed to be agreed as the exclusive place of jurisdiction. The same shall apply if the place of accommodation or usual place of residence of the customer is unknown on the date of bringing an action. However, we reserve the right also to bring an action at the respective registered office or place of accommodation of the customer.

14.2 For this contract and all disputes arising in connection with it, exclusively German law shall apply. UN sales law shall not apply.