

Section 1: Scope

(1) These Terms and Conditions of Sale and Delivery shall apply exclusively to deliveries, the performance and offers of **ProCom Professional Communication & Service GmbH** (hereinafter referred to as the "Seller"), unless the Seller gives its explicit written consent to other terms and conditions. These Terms and Conditions of Sale and Delivery shall also apply if the Seller delivers goods without reservation or accepts an order without reservation despite being aware of terms and conditions of sale and delivery of the Purchaser which conflict with or differ from these Terms and Conditions of Sale and Delivery.

(2) The Terms and Conditions of Sale and Delivery shall apply only if the Purchaser is an entrepreneur (within the meaning of Section 14 of the German Civil Code (*BGB*)), a legal person under public law or a special fund under public law.

(3) These Terms and Conditions of Sale and Delivery shall also apply to all future contracts relating to the sale and/or delivery of movable objects with the Purchaser, without the Seller having to point this out again in every single case.

(4) Our separate General Terms and Conditions of Services shall apply to services and service work.

Section 2: Offer, conclusion of contracts

(1) The Seller's offers shall be without commitment and non-binding, unless otherwise stated in the offer.

(2) The Purchaser's order shall be a legally binding offer to conclude a contract.

(3) A delivery contract shall be formed only when the Seller issues a written order confirmation, which the Seller can do within two weeks of receiving the Purchaser's order. The order confirmation's contents shall govern the content of the contract; if the Purchaser does not object to it immediately, the contract shall be based on the order confirmation's contents. If an order confirmation is not issued, a delivery contract (to which these Terms and Conditions of Sale and Delivery shall apply) shall be formed by the goods being made ready for shipment. In such a case, the Purchaser shall waive the requirement for it to receive a declaration of acceptance of the order from the Seller.

(4) The Seller reserves the right to make changes to the technical concept on which the offer is based, provided that does not impair the performance and quality of the offered deliverable or negatively affect the price or delivery date.

Section 3: Prices/terms of payment/offsetting

(1) Unless otherwise agreed by the Parties in an individual case, the Seller's prices shall be "EXW domicile of the Seller" (Incoterms 2010); statutory value-added tax at the

rate applicable at the time of invoicing shall be charged on top of the prices. The current prices at the time of the offer shall apply in principle.

(2) Invoices shall be payable without any deduction within 30 days of delivery of the goods and invoicing. Regardless of that, the Seller shall be authorized at any time to make delivery contingent on concurrent payment or demand a down-payment before delivery, without having to give any reasons for doing so. Unless otherwise agreed, a down-payment of 30% of the value of orders worth €100,000 and above shall be payable.

(3) The Purchaser shall be in delay when the period of payment (30 days) specified in Subsection (2) expires. If the Purchaser is in delay, the Seller shall be authorized to demand interest on arrears at eight (8) percentage points above the base interest rate. The entitlement to commercial interest on arrears (Section 353 of the German Commercial Code (*HGB*)) shall remain unaffected. The right to claim further damage shall not be excluded.

(4) All payments shall be made in euros. The costs of transferring money shall be borne by the Purchaser.

(5) Bills of exchange or checks, which the Seller reserves the right to accept, shall not be regarded as payment until they have been redeemed.

(6) The Purchaser can only offset its claims against claims that are not disputed or that have been legally established with final and binding effect.

Section 4: Reservation of ownership

(1) The Seller shall retain ownership of the delivered objects until it receives all payments due at the time the respective contract was concluded.

(2) The retained goods shall be stored separately from goods that are the property of the ordering party or a third party and shall be indicated so as to be clearly identifiable as being the Seller's property.

(3) The Purchaser shall be authorized to resell and/or process the retained goods in the ordinary course of business.

(4) The Purchaser's claims from resale of the retained goods (including any claims from insurance or due to a wrongful act if the goods are lost or destroyed) are hereby assigned to the Seller by way of security. The Seller hereby accepts said assignment. The Purchaser shall be authorized to collect the assigned claims as long as it meets its payment obligations. If the Purchaser is in delay in payment, the Seller shall be authorized to revoke the authorization to collect claims. In such a case, the Purchaser shall be obliged at the Seller's request to provide the Seller with all the information required to collect the claims, to permit the existence of the assigned claim to be examined by an agent of it on the basis of the Pur-

chaser's bookkeeping and to report the assignment to its debtors.

(5) If the retained goods are processed by the Purchaser, it is hereby agreed that the goods shall be processed on behalf of and for the account of the Seller as the manufacturer and the Seller shall directly acquire ownership or – if the goods are processed from or in connection with materials from multiple owners or the value of the processed object is greater than the value of the delivered goods – co-ownership (fractional co-ownership) of the newly created object to the ratio of the value of the object delivered to the value of the newly created object. If the Seller loses its ownership of the retained goods as a result of combination or mixing of them or if it should not become owner of the produced object if the retained goods are processed, the Purchaser hereby transfers beforehand a share of ownership of the unitary object corresponding to the pro-rata value of the delivered object. The Seller hereby accepts this offer. Handover of the object shall be replaced by its being held in safekeeping free of charge.

(6) Before the secured claims are paid in full, the delivered objects that are subject to reservation of ownership shall not be pledged or transferred as security to any third party. The Purchaser shall notify the Seller immediately in writing if any third party seizes the Seller's property.

(7) If the Purchaser is in delay in payment, an application has been filed for instigation of insolvency proceedings on the Purchaser's assets, expectancy to them is transferred to a third party or the Purchaser's business establishment is transferred to a third party, the Seller shall be authorized in accordance with statutory provisions to rescind the contract and demand surrender of the delivered goods. If the Purchaser does not pay the due purchase price, the Seller shall claim these rights only if it has previously set a reasonable deadline for the Purchaser to pay and this deadline has expired without payment being made or if such a deadline can be dispensed with in accordance with statutory provisions. The Seller may enter the Purchaser's business premises for the purpose of demanding surrender of the goods. After the retained goods have been taken back, the Seller shall be authorized to sell or realize the goods on the open market. The proceeds from their sale or realization shall be offset against the liability owed by the Purchaser (minus reasonable costs of sale/realization).

(8) The Seller undertakes, at the Purchaser's request, to release security to which it is entitled insofar as it exceeds the value of the claims to be secured, where these have not yet been settled, by more than 20%. The Seller shall be responsible for choosing which security is to be released.

Section 5: Software

(1) The Purchaser shall be granted the non-exclusive and non-assignable right to use standard software with the agreed features in unmodified form on the agreed devices.

(2) Ownership of and/or all other rights to the software shall remain with the Seller. Programs shall not be copied or modified or disclosed to third parties without the Seller's prior written consent.

(3) After the agreed period of usage has expired, the Purchaser shall, at our choice, either return the original programs and all copies of them or destroy them and give the Seller written confirmation that this has been done.

(4) Software shall only be transferred to third parties for their use only in conjunction with the devices (hardware) procured by the Purchaser or with license keys if only software is supplied. The Purchaser shall conclude a written agreement with the third party to the effect that the third party undertakes to comply with the same contractual conditions as regards use of the software.

(5) Software maintenance shall be agreed separately for the software. This shall comprise, in accordance with the service agreement, all measures that the Seller believes necessary to maintain the system's operational reliability, in particular technical adaptations and improvements (software updates).

(6) Whenever a system is or goods are resold, only the above rights of the Purchaser in relation to the programs shall pass to the new purchasers; all other rights to the programs shall remain exclusively with the Seller.

Section 6: Copyrights and confidentiality

(1) The Seller reserves the copyrights to all submitted offers, cost estimates, planning, plan drawings and system concepts, as well as drawings, figures, calculations, models, etc., provided to the Purchaser without restriction.

(2) The documents specified in Section 6 (1) shall be made available to third parties only with the Seller's prior consent and, if the Seller is not awarded the order, shall be returned immediately upon request.

Section 7: Shipment

(1) Unless otherwise agreed by the Purchaser and Seller in an individual case, the goods shall be delivered "EXW domicile of the Seller" (Incoterms 2010). The Seller shall take out insurance to cover the customary transportation risks at the request and expense of the Purchaser.

(2) If delivery is delayed at the instigation of the Purchaser or if delivery on call has been agreed in an individual case and the Purchaser does not call off the delivery within 14 days of being notified that it is ready for ship-

ment, the goods shall be held in safekeeping or stored at the Seller at the Purchaser's risk and expense and deemed to have been delivered "EXW domicile of the Seller" (Incoterms 2010).

Section 7: Deliveries / delivery period

(1) The deadlines for deliveries shall be agreed by the Parties. If the Parties have agreed a delivery period, it shall commence on the date of the written order confirmation or – if one has not been issued – on the date the goods are ready for shipment.

(2) So that the agreed delivery and performance deadlines can be observed, all documents to be furnished by the Purchaser must be received on time and the Purchaser must provide all necessary information on time and fulfill all its other obligations. If these conditions are not fulfilled on time, the deadlines or periods shall be extended by a reasonable amount; this shall not apply if the Seller is to blame for the delays.

(3) If the Seller realizes that an agreed deadline cannot be observed, the Seller shall notify the Purchaser immediately.

(4) The Seller shall not be liable for delays in delivery caused by force majeure or other events, either at its or a supplier's establishment, that were not foreseeable at the time the contract was concluded and for which the Seller is not to blame (e.g. strike, lockout, disruption to business operations, the Seller not being supplied on time, delays in transportation, poor weather conditions, government restrictions, intervention by sovereign powers, measures under monetary or trade policy, natural disasters, fire, flooding, piracy, impediment to transport routes, etc.). The delivery period shall be extended by the duration of the temporary impediment for which the Seller is not to blame.

(5) The Seller shall be authorized to make partial deliveries if (i) the partial delivery can be used by the Purchaser for the contractually intended purpose, (ii) delivery of the remaining goods is ensured and (iii) the Purchaser does not incur any extra costs as a result.

(6) Claims for damages due to impossibility of delivery or delays in delivery shall be restricted in accordance with the provisions in Section 9 (6) of these General Terms and Conditions of Sale and Delivery.

Section 8: Reservation of the right to rescind contracts

(1) The Seller shall be authorized to rescind the contract if force majeure, strikes or natural disasters or a failure on the part of its suppliers to deliver goods, deliver the correct goods or deliver goods on time significantly impede delivery or make it impossible and this impediment for which the Seller is not to blame is not merely of a temporary nature.

(2) The Seller shall be authorized to rescind the contract if the Purchaser has made false or incomplete representations concerning its creditworthiness.

Section 9: Warranty / damages / liability

Unless otherwise specified in the following, the statutory provisions shall apply to the rights of the Purchaser in the event of defects and legal imperfections in title.

(1) The Purchaser shall examine the received goods for defects as soon as they arrive. The Purchaser shall notify the Seller in writing about obvious defects as soon as the delivery is received, but within no later than ten (10) business days (Mondays to Fridays) of its receipt, and about hidden defects as soon as they are discovered, but within no later than seven (7) business days of their being discovered. Otherwise, the delivery shall be deemed to have been approved.

(2) The Purchaser shall give the Seller opportunity to examine the complaint and in particular shall make the goods complained about and their packaging available for inspection by the Seller. At the request of the Seller, the goods complained about shall be returned to the Seller with carriage prepaid within 14 days. If the notice of defects is justified, the Seller shall reimburse the costs of the cheapest method of shipment; this shall not apply if the goods are at a location other than the location where they were intended to be used.

(3) If an object has a defect, the Seller shall be entitled to remedy that by rectifying the defect or delivering a new object that does not have a defect, at its choice.

(4) The warranty shall lapse if the Purchaser changes the supplied object, or has it changed by third parties, without the Seller's consent and as a result rectification of the defect is impossible or unreasonably impeded. However, the Purchaser shall always bear the extra costs of rectifying a defect incurred as a result of such a change.

(5) If repair of the object or delivery of a replacement for it is not possible or is refused or is not carried out or fails for other reasons for which the Seller is to blame within a reasonable period of time set by the Purchaser, the Purchaser can rescind the contract or reduce the purchase price, at its choice. The purchase price can only be corrected by the Seller correcting the invoice or granting a credit note. A period of time does not need to be set in cases where it is not required by law.

(6) Further claims of the Purchaser, in particular for damages in lieu of performance and compensation for other direct or indirect damage – including concomitant or consequential damage, on whatever legal grounds – shall be excluded. This shall not apply if

a) the Seller has concealed a defect or legal imperfection in title with intent to deceive or explicitly warrants that the goods do not have a defect or legal imperfection in

title or has assumed a warranty for the quality of the goods;

b) the damage is due to intent or gross negligence on the part of the Seller, one of its legal representatives or vicarious agents or a negligent breach of cardinal contractual obligations by the Seller or said persons. Cardinal contractual obligations are obligations whose fulfillment is vital to implementation of the contract and which the contractual partner regularly relies and may rely on to be complied with. In the case of violation of cardinal contractual obligations through slight negligence, the level of damages payable by the Seller in the event of damage to property and economic loss shall be limited to foreseeable damage that is typical of the contract.

c) a culpable breach of duty by the Seller or its legal representatives or vicarious agents has resulted in injury to body or health;

d) there is mandatory liability under the German Product Liability Act (*Produkthaftungsgesetz*).

(7) The provisions in accordance with the above subsection shall apply accordingly to direct claims of the Purchaser against the Seller's legal representatives or vicarious agents.

(8) The statutory provisions in the case of final delivery to a consumer (recourse against the supplier in accordance with Sections 478 and 479 of the German Civil Code (*BGB*)) shall remain unaffected in all cases.

Section 10: Export

(1) The goods supplied by the Seller may be exported to other countries specified as part of the order in a non-installed state only with the Seller's written consent. This shall not apply to re-exports within the territory of the European Economic Area.

(2) If the above obligation is violated, the Seller shall be entitled to possible claims for damages, as well as the right to rescind current orders.

(3) When exporting the products procured from the Seller, the Purchaser undertakes to comply with the regulations of the German Foreign Trade and Payments Act (*Außenwirtschaftsgesetz*), the U.S. Export Administration Regulations and any other export control regulations, to obtain information on all export regulations to be heeded under its own responsibility and to obtain all necessary permits on its own.

Section 11: Limitation of legal action

(1) Section 438 of the German Civil Code (*BGB*) shall apply to the limitation of legal action.

(2) All claims not covered by the exclusion of liability in accordance with Section 9 (6) and any in-rem claims for surrender of goods shall be time-barred in accordance with the statutory provisions.

(3) All other claims by the Parties against each other shall become time-barred within a period of two years as of the start of the statutory period of limitation.

Section 12: Place of performance / place of jurisdiction / language / applicable law / miscellaneous

(1) Unless otherwise explicitly agreed, the place of performance shall be the place of the Seller's registered offices.

(2) Any disputes from the supply relationship in Germany and internationally shall be settled solely before a competent court of law at the Seller's domicile in the Federal Republic of Germany. The Seller shall also be authorized to take legal action against the Purchaser at the latter's place of jurisdiction.

(3) The law of the Federal Republic of Germany shall apply. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

(4) If individual provisions of these General Terms and Conditions of Sale and Delivery are or become void or invalid in full or in part, this shall not affect the validity of the other provisions.