

General Terms and Conditions



A. Scope of application

1. The Standard Terms and Conditions of Business of ISP*D International Software Partners (ISP*D) shall govern all legal transactions with customers which do not involve end consumers. All quotations, goods, work and services (including service and consulting) supplied by ISP*D shall be provided only on the basis of ISP*D's Standard Terms and Conditions of Business. The applicable version of these Standard Terms and Conditions shall also govern all future business relations between ISP*D and the customer.

2. These Standard Terms and Conditions of Business shall be deemed accepted by no later than the time when the customer accepts the delivery of the goods or the work and services. On request, ISP*D shall provide the customer with a copy of these Standard Terms and Conditions. They may also be viewed online at www.ispd.de, downloaded and printed out. If the customer has any contradictory Terms and Conditions, these shall not apply, even if ISP*D does not expressly raise an objection to them.

B. Standard provisions concerning the contract

1. Formation of the contract, contents and requirement for the written form

(1) Any side agreements, undertakings and other agreements that are made prior to or on placing a written order or prior to or on forming a written contract must be made in writing in order to be effective. All amendments and additions to the written contract, particularly amendments and resolutions decided in project discussions, must be recorded in writing in order to be effective. Written confirmation of the amendments or additions may only be given by authorised representatives of ISP*D. The written contract shall represent the entire agreement concerning ISP*D's obligations.

(2) Details set out in a contract concerning methods of funding (e.g. through leasing) shall merely represent terms of payment and shall not otherwise affect the validity of the contract.

2. Involvement of third parties in the formation of the contract

If a distribution partner of ISP*D has been involved in forming the contract, ISP*D shall not recognise objections made by the customer deriving from an additional contract with the distribution partner.

3. Time limits for the performance of contractual obligations

(1) The deadlines and time limits for the performance of contractual obligations shall only be binding if ISP*D has confirmed them in writing and the customer has given ISP*D all the necessary information and documents in good time, has made any down payments agreed on, has issued approvals and releases and has cooperated in every other required form. Periods of time that have been agreed for the performance of contractual obligations shall start to run on the date when the order is acknowledged. In the case of additional or amplified orders at a later date, the time limits shall be appropriately extended. Part-deliveries shall be permissible within the delivery periods specified by ISP*D, as long as this does not negatively affect the use of the items in question.

(2) The customer undertakes to notify ISP*D in good time of any postponed deadlines so that ISP*D can make the appropriate arrangements. ISP*D undertakes to immediately notify the customer if there will be any delay in the performance of its contractual obligations or if such performance becomes impossible due to circumstances which are beyond ISP*D's control.

(3) If the customer fails to fully comply with its duty to cooperate and ISP*D consequently delays in performing its own contractual obligations, the agreed time limits shall be automatically extended by a reasonable amount of time, but at least for a time corresponding to the duration of the delay. ISP*D shall also have the right to adjust the remuneration if this involves additional time, effort or expense.

4. Performance of contractual obligations

(1) Unforeseeable and unavoidable incidents as well as incidents that are beyond ISP*D's control and which are not its fault, such as force majeure, war, natural disasters or industrial disputes, shall release ISP*D from the duty to perform its contractual obligations for the duration of the disruption. The customer shall be appropriately notified if such a disruption occurs. If it is impossible to foresee when the disruption will end or if it lasts for longer than one month, each Party shall have the right to terminate the contract. This shall also apply if the suppliers of ISP*D or their own suppliers are affected by such circumstances.

(2) In as far as ISP*D has to rely on the delivery of non self-produced goods in order to perform its contractual obligations and these goods are not stocked in its warehouse when the order is placed, ISP*D shall have the right to terminate the contract if ISP*D is not supplied by its own supplier and ISP*D is in no way at fault or if ISP*D cannot procure the goods sold, despite making reasonable efforts, or if such goods can only be procured at excessive expense. ISP*D shall immediately notify the customer that its services are unavailable and reimburse the customer for any amounts that the customer has already paid.

(3) If the items called off by the customer cause the customer's credit limit to become overdrawn, ISP*D shall be released from its obligations to perform. The customer, however, shall be given the opportunity to purchase the goods against payment in cash if its credit limit has been overdrawn.

(4) ISP*D shall have the right to make constructional or structural changes to the contractual item as long as these changes are not fundamental and only involve an insignificant restriction on the usual purpose or the purpose agreed by contract.

5. Passage of risk

(1) The risk of the accidental destruction of the items to be delivered shall pass to the customer as soon as they have been handed over to the customer. The goods shall be deemed handed over to the customer even if the customer is in default of acceptance.

(2) The risk of the accidental destruction of the items to be shipped shall already pass to the customer when a consignment has been handed over to the party responsible for transport or when it has left the warehouse in order to be shipped. This shall also be the case with carriage-paid delivery and if the customer has expressly or implicitly requested the goods to be shipped, particularly by indicating a delivery address. If the dispatch of the goods is delayed at the customer's wish, the risk of accidental destruction shall pass to the customer when notice is given that the goods are ready to be shipped. ISP*D shall be entitled but not obliged to insure the consignment in the customer's name and on the customer's account.

6. Reservation of title

(1) ISP*D reserves title to the delivered goods until all its present and future claims against the customer in connection with the items delivered have been settled in full. If deliveries are made on current account, the reservation of title shall serve to secure the balance due to ISP*D.

(2) The customer shall only have the right to sell products under reservation of title, particularly in combination with items belonging to third parties, if this is done in the normal course of business. The customer shall not have the right to pledge the goods under reservation of title elsewhere, to assign them by way of security or to make other dispositions that jeopardise ISP*D's title.

(3) The customer hereby assigns its claims from the resale of the goods to ISP*D. ISP*D hereby accepts this assignment. If the customer sells the goods under reservation of title after they have been combined with other goods or together with other goods, the claim shall only be assigned in proportion to the price agreed between ISP*D and the customer, plus a safety margin of 10% of this price.

(4) Until further notice the customer is authorised to collect the debts from the claims assigned to ISP*D in its own name and to hold them in trust on ISP*D's behalf. ISP*D may revoke this authorisation and the entitlement to sell the goods if the customer fails to comply with material obligations, such as making payments. If the customer fails to comply with material obligations, the customer, at ISP*D's request, must notify ISP*D of the necessary data, particularly of the buyer's name, address and telephone number, and the goods sold to this buyer so that ISP*D can notify the buyer of the assignment and collect the debt itself.

(5) In the case of seizures of the goods or other interferences by third parties with the reservation of title or the assigned claims to payment, the customer must immediately notify this third party of the reservation of title and ISP*D's ownership of the goods and also of the assignment of the claim. The customer must also notify ISP*D immediately by telephone, stating the facts and shall also provide this information in writing on request. Furthermore the customer must notify ISP*D of the name of the third party (parties) who are seizing the items or attaching the claims or causing any other disruptions so that ISP*D is in a position to defend its legal interests vis-à-vis this third party. The customer shall bear the costs incurred in warding off such interferences.

(6) If the realisable value of the collateral exceeds the total sum of ISP*D's claims by more than 10%, the customer shall have the right to demand the release of the corresponding collateral.

7. Prices and terms of payment

(1) If the Contracting Parties have not agreed on a certain price, it shall be calculated according to ISP*D's price list, as applicable on the date that the contract is formed, plus packaging, transport, transport insurance and value added tax. The hourly rates, travelling expenses and other incidental expenses shall depend on ISP*D's applicable price list.

(2) If nothing else has been agreed in the individual case, the following terms of payment shall apply: all prices are quoted before value added tax. All invoices issued by ISP*D shall be due for immediate payment without any deductions unless ISP*D has allowed a certain period of time for payment in the invoice. If the customer does not pay the invoice within 14 days of receipt or within the period indicated in the invoice or by another date agreed under another contract, the customer shall be in default without a further reminder being required (section 286 (2) points (1) and (2) of the German Civil Code). An event in this meaning shall be the receipt of the invoice. Consequently default interest shall become payable at a rate of eight per cent above the base rate (section 288 (2) of the German Civil Code). ISP*D reserves the right to claim further damages due to default.

(3) It is expressly agreed that section 632 a of the German Civil Code shall not apply in the case of invoices issued in respect of part-deliveries. If nothing else has been agreed by contract, settlement for part-deliveries shall be made at the end of each month according to the deliveries made so far.

- (4) If installation, assembly and set-up work should be required in order to make the items supplied by ISP*D operable, ISP*D shall issue a separate invoice for this work unless the Parties have expressly agreed something to the contrary. All support services that ISP*D offers and that the customer wishes to take advantage of shall be paid for separately according to time and effort.
- (5) Price increases due to increases in the rate of value added tax shall be borne by the customer.

8. Contractual right of lien

ISP*D shall have a contractual right of lien in respect of the items that come into its possession under this contract in order to secure its claims in respect of the work and services provided. The right of lien shall also extend to claims from earlier work, goods delivered and other work and services in as far as they are connected with the item on which this work was performed.

9. Set-off, right of retention, transfer of rights and obligations

- (1) The customer may only set off claims against claims of ISP*D if ISP*D has not disputed such claims or if they have been recognised through a final court judgment. The customer may not assert a right of retention based on another contract with ISP*D.
- (2) ISP*D shall be entitled to transfer rights and obligations under the contract to a third party. ISP*D may transfer obligations to a third party without needing to seek the customer's consent.

C. Breaches of obligation and liability

1. ISP*D's rights in the case of late payment

- (1) Without prejudice to any other rights, ISP*D may demand the return of or take back items that have been delivered in order to secure its claims if the customer defaults on its payment obligations. ISP*D must have first announced such a measure to the customer and have set a reasonable extended deadline for payment to be made. Within one month of taking back the goods ISP*D shall notify the customer of what other rights ISP*D intends to assert in relation to the customer's failure to pay by the due date. This one-month period shall not commence until all items have been returned to ISP*D. This shall not affect the provisions of part B, clause 7.
- (2) ISP*D may suspend the performance of a contract or a number of contracts that are closely related in terms of time and subject matter, if the customer defaults on a payment or if there are justified reasons to believe that the customer will soon become insolvent. In this case ISP*D may also demand concurrent payment or partial payment, even if it has been agreed in the contract that ISP*D must first perform the work and services or first deliver the goods. ISP*D shall also have the right to demand sufficient collateral for claims that have not yet become due. If the customer provides no collateral or insufficient collateral, ISP*D may suspend all further performance and assert the claims arising from the customer's breach of contract.

2. ISP*D's rights in the case of default of acceptance

- (1) If the customer does not accept the goods agreed by contract, ISP*D may set a reasonable deadline and, if this expires to no avail, make alternative use of the items to be delivered. ISP*D is under no obligation to deliver a replacement if the goods that have been sold cannot be procured despite making reasonable efforts, or can only be procured at excessive expense. In these circumstances the customer shall forfeit the right to the delivery of a replacement once ISP*D has given notice that it is impossible or extremely difficult to supply the goods unless the customer signals its agreement to an alternative delivery offered by ISP*D.
- (2) If the customer does not accept the goods offered by ISP*D as agreed by contract and this means that the customer is in default of acceptance, ISP*D shall have the right to demand compensation of 15% of the agreed price of the goods, without having to provide any evidence. ISP*D reserves the right to claim higher damages, in accordance with the actual loss. The customer shall have the right to prove that ISP*D suffered only a much lesser loss or no loss at all.
- (3) If the dispatch of the goods is delayed at the customer's wishes, ISP*D shall have the right to invoice the customer for at least 0.03% of the invoice amount for each day or part of a day in order to cover the costs incurred in storing the goods. ISP*D shall have this right as from the first month after giving notification that it is ready to ship the goods.

3. Customer's obligation to examine the goods

The customer shall immediately examine the goods on their receipt in order to establish whether they are defective and, in particular, whether there are any differences in volumes and other obvious defects (section 377 of the German Commercial Code – Handelsgesetzbuch - HGB). "Obvious" shall be understood as defects that are so manifest that they would easily be noticed by an average buyer who lacks specialised knowledge and without close inspection. If the customer establishes that the consignment differs from what has been agreed by contract, the customer must keep the goods ready to be returned and in an intact condition. The customer must notify ISP*D in writing of any differences in volumes, obvious defects and incorrect deliveries within five working days of delivery (working days being understood as Mondays to Fridays). After the expiry of this period allowed for submitting complaints, no further

claims may be made under warranty on grounds of differences in volumes and obvious defects. In order to comply with the time limit it shall be sufficient to send out notice in good time. The customer shall bear the full burden of proof in relation to all preconditions for making a claim, particularly with regard to differences in volumes and obvious defects, the time when these defects were discovered and that notice to ISP*D was sent in good time. In the case of all complaints ISP*D shall have the right to inspect and examine the work or goods about which a complaint has been made. The customer shall grant ISP*D the necessary time and opportunity to do this.

4. ISP*D's warranty in the case of contracts of sale

(1) ISP*D's obligations under warranty shall commence on the delivery of the goods. If the goods are shipped, the warranty period shall commence when they are made available at the customer's place of destination, but no later than two weeks after the goods have been dispatched. If nothing else is agreed, the warranty period shall be one year.

(2) ISP*D shall initially fulfil its obligations under the warranty by repairing the goods or delivering a replacement, as ISP*D may choose. ISP*D shall have the right to consider which option to exercise for at least 48 hours of two working days (Mondays to Fridays), as from the time that ISP*D receives notice from the customer. The customer shall tolerate two attempts at subsequent improvement. If these attempts fail, the customer shall have the option of either reducing the purchase price or rescinding the contract. The right of rescission, however, shall be excluded in the case of only slight breaches of contract (breaches of obligations), particularly if differences in volumes or defects are only minor. The customer shall support ISP*D in rectifying the defects in as far as the customer can be reasonably expected to do so.

(3) If the attempt at improvement fails and the customer decides to rescind the contract, the customer shall not be entitled to claim damages on grounds of the complaint made to ISP*D.

(4) If the defects have been caused by circumstances that are not the fault of ISP*D, but which fall within the customer's sphere of risk, ISP*D shall have no obligations under the warranty. This shall be the case, for instance, if disruptions occur due to the use of unsuitable operating materials or if the preconditions for installation are not observed. Furthermore ISP*D shall have no obligations under warranty if the customer has made changes to or interfered with the item sold unless the customer, on reporting the error to ISP*D, proves that the interference was not the cause of the error.

(5) Warranted characteristics shall be understood as only those characteristics that are expressly stated to be warranted. Such a promise shall apply only until the end of the warranty period. If the warranted characteristics are missing or incomplete, the customer shall initially have a claim to immediate improvement by ISP*D. If this attempt at improvement fails, the customer shall have the right to demand an appropriate reduction in price.

(6) If the customer obtains updates or upgrades of standard software from a third party (e.g. through downloading them online over the Internet), ISP*D shall not be liable for any resulting errors and defects. The customer shall bear the burden of proving that an error or defect does not result from an update or upgrade obtained from a third party.

(7) The customer must immediately notify ISP*D in writing and in an understandable form of any errors that occur despite the fact that the customer has used the goods as has been agreed by contract, and must provide the information suitable for rectifying the error, if possible on one of ISP*D's error report forms (to be obtained at: www.ispd.de). The error shall be rectified at ISP*D's principal place of business. The customer shall return the purchased item properly packed.

(8) If ISP*D has become active due to an error report from the customer, without such an error existing, or if ISP*D was under no obligation under warranty to rectify the error, ISP*D can claim reimbursement from the customer for the work and effort involved. This shall be done on the basis of ISP*D's price list, as applicable at the time that the work was performed.

(9) The foregoing provisions shall have no bearing on part D. clause 5.

5. Liability

(1) ISP*D shall only be liable for a grossly negligent or deliberate breach of duty and for claims that the customer has under the Product Liability Act or for claims due to loss of life, physical injury or damage to health. ISP*D shall not be liable for lost profits, indirect damage, consequential damage and the claims of third parties, with the exception of claims arising from the infringement of the industrial property rights of third parties.

(2) In as far as liability for negligent breaches of duty cannot be excluded, ISP*D's liability to pay damages shall be limited to the foreseeable, typical and direct damage that is usual for the kind of goods, work or services in question.

(3) In as far as ISP*D's liability is limited or excluded, this shall also apply in relation to the personal liability of ISP*D's legal representatives, employees, freelance staff, other representatives and vicarious agents.

(4) ISP*D shall not be liable for defects that occur in connection with a modification to the system environment made or caused by the customer or in connection with other interventions by third parties. The customer shall bear the onus of showing that defects that occur are not causally linked to a modification of the system environment or any other intervention by third parties.

D. Special agreements for services

1. Necessary revisions of cost estimates

The customer must provide ISP*D with full information regarding all circumstances affecting the realisation of the agreements made with ISP*D. When preparing a cost estimate for the work and services, ISP*D shall assume that the information the customer has provided is correct. If this information should prove to be inaccurate or incomplete, thus involving additional work for ISP*D, ISP*D shall not generally be bound by its quotation and shall prepare a new cost estimate.

2. Customer's duty to cooperate

(1) For a successful realisation of the project ISP*D expects the customer to take all the necessary measures at its own site in order to ensure that ISP*D's staff are able to work in the data processing environment in a way that is necessary for the proper provision of the services. They particularly need to be punctually provided with all information they require in order to perform their work. The customer shall gratuitously provide ISP*D with all the support and cooperation that is necessary in order for the work and services to be performed (e.g. information materials, computing times, test data, work-places, means of communication).

(2) If the customer fails to adequately comply with its duty to cooperate and ISP*D is consequently late in performing its contractual obligations, the agreed deadlines shall automatically be extended to take account of this, but at least by the duration of the delay. ISP*D shall also have the right to make an appropriate adjustment to the remuneration if this results in additional expenditure.

3. Remuneration

If nothing else has been agreed under the contract, ISP*D shall charge for services according to the time spent and on the basis of the applicable hourly rates indicated in ISP*D's price list. Travelling expenses shall be charged at a flat rate according to distance zones. In addition, travelling and accommodation expenses and the cost of materials shall be charged according to the rates set out in ISP*D's applicable price list according to accountable expenditure.

4. Acceptance of the work and services

(1) A completion certificate shall be prepared on the acceptance of the work and services performed by ISP*D. In signing this completion certificate, the customer shall confirm that all work and services performed under the contract have been completed and placed at the customer's disposal and that the contract has been discharged. If partial work and services are agreed, this provision shall apply in the same manner to such partial work and services.

(2) In the case of HelpDesk agreements ISP*D shall prepare a monthly status report which the customer shall immediately verify. If the customer does not give ISP*D notice of errors in this status report within 14 days of receipt, either by letter or by e-mail, the status report shall be deemed approved.

(3) If ISP*D carries out work and services for the customer after the project has been completed, such work and services shall be charged for separately on the basis of ISP*D's current price list, unless the customer has formed a separate contract with ISP*D in this respect (e.g. in the form of a maintenance and/or hotline agreement).

5. Warranty in the case of the obligation to produce a particular result

(1) The obligations under warranty shall commence on the acceptance of the work.

(2) The customer must accept the work as soon as ISP*D has given notice that the work has been completed. If the customer does not accept the work within a reasonable time limit set by ISP*D, despite being obliged to do so, the work shall nevertheless be deemed accepted. ISP*D guarantees that the work shall be properly completed according to the state of the art. Any claims under warranty for this work shall expire at the end of the warranty period.

(3) Furthermore the claims under warranty shall become statute-barred after one year, in as far as nothing else has been agreed.

(4) The provisions of part C. clause 4. shall apply analogously.

(5) If ISP*D has become active due to an error report from the customer, without such an error existing, or if ISP*D was under no obligation to rectify this error under the warranty, ISP*D can demand reimbursement from the customer for the time and effort spent, on the basis of ISP*D's price list, as applicable at the time that the work was performed.

6. Ownership of materials

On the full payment of the agreed price, including reimbursement for additional work and services above and beyond the original volume of the order, the concepts and documents that have been prepared shall become the customer's property.

7. Loss of data

ISP*D regards it as absolutely essential that the customer has a functioning data backup system at all times. It shall be the customer's sole responsibility to organise and guarantee proper data backup unless

ISP*D has expressly undertaken to do so in writing. A customer shall not have the right to claim damages from ISP*D due to loss of data if the loss would not have occurred had the customer had a proper data backup system.

E. Sending in hardware for repair

1. Shipping/packaging/accessories

(1) If goods are sent for repair this must be done free domicile to ISP*D's business address. The goods shall be returned at the customer's expense. The foregoing provisions shall not apply to goods that are still under the statutory or a contractual warranty.

(2) Goods must be properly packed when they are sent in for repair, if possible in the original packaging. In the case of laser printers, toner, containers of used toner, the developing unit and the drums must be removed and the manufacturer's shipping instructions observed.

(3) The customer must make a note on the delivery note or repair order of any accessories and fitted options that are returned along with the goods. Accessories that are not listed shall not be replaced if they are lost.

(4) The customer must immediately examine the goods on their return to establish whether they are complete and intact. Damage occurring during transport or shortfalls must be immediately notified to the forwarding agent or parcel service that delivers them and noted on the shipping documents. If ISP*D receives no notification within 7 days after the returned goods have been accepted, they shall be considered to have been returned complete and intact.

2. Repair order/cost estimate

(1) The goods returned for repair must be accompanied by a detailed error report and, if possible, sample printouts and test files on data carriers.

(2) If the customer wishes a cost estimate before the repair, this must be clearly noted on the accompanying documents. If the customer does not place a repair order, it shall reimburse ISP*D for the costs of preparing the cost estimate.

F. Final provisions

1. Standard conditions

A contract between the customer and ISP*D shall be governed only by German law. The UN Sales Convention shall not apply. The language of the contract is German. The place of jurisdiction is Leipzig. ISP*D also has the right to bring an action in the place where the customer has its principal place of business. The place of performance for all goods, work and services supplied by ISP*D and the place of payment for payments made by the customer is Leipzig.

2. Export of data processing systems

The export of data processing systems is subject to special export control legislation. Approval has to be sought from the responsible bodies.

3. Severability

If individual provisions of the foregoing Terms and Conditions should be or become partially or entirely void or should they prove to contain a gap, this shall not affect the validity of the remaining provisions. The void provision shall be replaced or the gap shall be filled by an appropriate provision that comes closest to the intent of the users of these Terms and Conditions or of the Contracting Parties or to what would have been their intent had this point been given consideration.

Status of these Standard Terms and Conditions: 1 November 2006