

General Terms and Conditions of Schindler Technik AG for deliveries, work and service performance but excluding maintenance services

1. Area of application, conclusion of the contract

1.1 These general terms and conditions apply to all delivery agreements or work and service performance with the exception of maintenance services concluded by Schindler Technik AG (hereafter: STAG) as contractor with a principal (hereafter: CUSTOMER). Their parameters apply to current and future business relationships as well as to any applicable preliminary contractual negotiations.

1.2 These terms and conditions apply exclusively. Contradictory terms and conditions (e.g. purchasing conditions) of the customer only apply when STAG expressly agrees in writing. References to terms and conditions by means of a standard form is expressly revoked, whereas revocation after receipt of the respective terms and conditions by STAG is not required to be repeated. The performance of services or their acceptance does not specifically mean that STAG approves of such terms and conditions.

1.3 The description of services, calculations and offers are to enable the customer to decide internally on an approval in principle to the contractual agreements and are non-binding. An unlimited offer loses any existent binding effect six weeks at the latest after the date of dispatch should it not have been accepted up to that time.

2. Provision of services, delivery and acceptance

2.1 The details of the services and their features as well as any guarantees are to be specifically agreed in writing in the respective contract.

2.2 STAG and the customer are aware that it is not possible to develop infallible software programs in practice at the present state of technology and knowledge. Insofar as STAG is to develop, adapt or deliver software programs then only such software programs owed under the contract that do not contain markedly more errors and not markedly different to those customary in the market.

2.3 Partial deliveries are permitted in principle and may be settled independently. Deviations in the goods or other services from the original agreement are permitted insofar as they fulfil or exceed the agreed service features. This applies especially should the originally goods be no longer available for delivery.

2.4 Time limits given are non-binding and only represent an approximate service period unless their binding obligation has been expressly agreed in writing.

2.5 Should a functional specification document or a comparable specification be drawn up by STAG in the process of implementing a contract then this document replaces all prior service descriptions agreed in this regard on its approval by the customer. The customer is to verify and approve such a document within 14 days after submission.

2.6 STAG is to appoint a project leader for orders that considerably exceed the scope of delivery of hardware and/or software (projects) and the customer is to appoint at least one contact person. The customer is to make an employee available to undertake coordination activities on a full time basis for larger projects (e.g. those of greater complexity or those with a work and/or service performance volume of more than 20.000 €). The customer is to provide the contact person with all the necessary authority to ensure expeditious completion of the work and to agree binding arrangements with STAG on the further progress of work.

2.7 Should STAG manufacture or considerably change moveable goods within the scope of contracts with the customer then the parties are to conduct an inspection of performance. In this case and insofar as acceptance of a particular service is legally prescribed, the following applies:

As soon as STAG is prepared, STAG informs the customer of its readiness to conduct an acceptance inspection. The customer then inspects the service for compliance with the contract. The period for inspection begins with the notification of inspection readiness and lasts two weeks. The customer undertakes the inspection in such a way that also comprehensively tests such component parts that are used only on an irregular basis or at fixed time intervals e.g. yearly. In order to conclude the work in the shortest possible time in the interest of both parties, the customer is not to terminate the inspection should deficiencies appear that hinder the acceptance but only be constrained insofar as the defects make it necessary. The customer is to report in writing on the defects without delay. Obvious defects are considered accepted should the customer not complain within the inspection period.

2.8 The customer is entitled to refuse the acceptance should the defects reported still be apparent two weeks after the expiry of the inspection period should these considerably restrict the usability of the service provided. Otherwise the acceptance is considered as granted on expiry of the inspection period. The customer is to confirm the acceptance to STAG in writing on request.

2.9 Should the customer make use of the service productively beyond the extent required for the inspection then the service is considered as accepted. This applies independently of whether STAG has notified its readiness for inspection.

2.10 Should parts of the service be separable then a partial acceptance is to take place. The last partial acceptance simultaneously represents in these cases the final acceptance. Otherwise the contractual regulations for acceptances apply for the partial acceptance accordingly.

2.11 STAG is to install their services in accordance with the agreement in the facilities of the customer. The customer is to make appropriate prior arrangements in good time (e.g. granting rights of administration, access etc.)

2.12 At the request of the customer STAG is to also dispatch their services to the customer at the cost and risk of the customer. Method of dispatch and mode of transport are to be agreed separately.

3. Cooperation of the customer

3.1 STAG is only able to properly perform its services when the customer cooperates appropriately. Independently of specific regulations in individual contracts the customer is therefore required as a material part of the contractual obligation to provide STAG with at least the necessary information on the organization and system environment or those of any end users, provide test data and cooperate in technical trials and test runs, check and accept functional specification documents, conduct acceptance inspections, provide the prerequisites for installations in their own company or that of the end user, enabling STAG to connect their own services to the designated interfaces and to deliver complete error reports in each service phase.

3.2 Should only the customer be able to provide this due to their particular access to information, then the customer is obliged to assess the quality of the planning, service description, technical statements and assurances by STAG.

3.3 The customer is obliged to obtain approvals e.g. from public authorities, especially when they affect the service of STAG. STAG is prepared to assume this function should it be required by the customer.

4. Payment

4.1 Insofar as nothing is agreed on the amount of compensation in the contract then the most current version of the STAG price list applies. All prices agreed are net cash prices. Discounts, rebates or other reductions are to be agreed in writing separately.

4.2 Services charged according to time taken are verified by STAG from the records kept by their employees or subcontractors. These records are submitted to the customer at regular intervals. Should the customer not accept a worktime record then STAG is entitled to demand that the correctness of the worktime record be reviewed within five workdays. Should the period expire without the objection being substantiated, then the worktime record is considered as accepted.

4.3 Changes or amendments that originally were not agreed are calculated by STAG by applying the current version of the price list. This also applies to the original service insofar as no conditions for the payment were agreed.

4.4 STAG has a claim to reimbursement of their expenditure apart from payment for their services. Half the travel time is accounted for as work time.

4.5 In addition to the agreed payment, the respective sales tax and/or any other duties and charges due on the trade in goods domestically and abroad are always to be paid should STAG be liable to third parties in this regard.

4.6 Charges for public approvals and requirements or other services to third parties as a result of legal regulations that are imposed more than four months after conclusion of the contract, are paid by the customer.

5. Due date, offsetting, right of retention

5.1 Should no specific payment plan have been agreed then payments at fixed prices are to be made as follows: - 40 % on conclusion of the contract, - 40 % on expiry of half the time planned to the delivery, - 20 % on acceptance, or on delivery should no acceptance be planned.

5.2 Payments for services charged according to time taken are charged as a rule on a monthly basis. Invoices are due immediately on receipt by the customer and are to be paid within 14 days without deductions.

5.3 Offsetting by the customer of counter claims is excluded insofar as they are not related to undisputed, acknowledged or legally binding ascertainable claims.

6. Service and price changes

6.1 Should STAG be accountable for a change where it is not possible to fulfill the service as agreed for reasons caused by STAG or only with considerably more effort and expense, even though STAG possessed sufficient information on all the facts that originally caused them to make the tender offer. In these cases STAG is to adjust their services accordingly and provide a comparable final performance for the customer, insofar as it is possible with appropriate and reasonable effort.

6.2 Should STAG not be accountable for the change then a mutual decision is made with the customer as to whether the change is to be implemented or not. Should the change be implemented then the contractual agreements are to be

renegotiated and re-determined with regard to all the affected positions, especially those of payment, scheduling and the coordination with other services.

6.3 Until there is a new agreement STAG is not accountable for any delay between the time of notification of the planned change up to the agreement on the change. Time schedules are to be determined mutually.

6.4 STAG is entitled to increase prices in accordance with HGB (German Commercial Code) should deliveries of hardware made to merchants should the purchase price worsen to the disadvantage of STAG from the time of placing the binding order to the first possible time of delivery by STAG by more than 3 % as a result an increase in manufacturer/retailer prices due to currency rate fluctuations (convertibility to Euro). The price adjustment may not exceed the increase in manufacturer/retailer prices.

7. Rights of use

7.1 The customer receives an irrevocable, non exclusive, simple and non transferable right of use of the services provided by STAG on payment in full in order to achieve the contractually agreed purpose due under the respective contract.

7.2 Software licenses obtained from third parties provided to the customer by STAG are subject to restrictions related to additional license conditions intended by the supplier of the software or their manufacturer for transmittance to the end user. Non-acceptance and return for reasons of good will are not possible should there be no defects in the hardware or software products on delivery.

7.3 Should STAG make use of third parties services then it is not obliged to grant more extensive rights than those granted to them for transfer to the customer.

7.4 The granting of rights to the underlying software source codes, interim results etc. is not included in the rights granted by these terms and conditions and needs to be separately agreed in writing. This also applies for the granting of more extensive rights (e.g. for processing etc.) to the services. The rights of the customer pursuant to §§ 69d (2), 69d (3) and 69e Copyright Law remain unaffected.

7.5 Should STAG approve or otherwise tolerate any use of the services before the payment in full, then this is revocable at any time. STAG is especially entitled to exercise this revocation should the customer be in arrears of payment without resulting in STAG withdrawing from the contract.

8. Retention of ownership

8.1 Ownership of the property supplied transfers only on payment in full by the customer and when all primary and secondary claims are settled – both future and conditional – arising from the deliveries and services by STAG to the customer.

8.2 The customer of goods subject to retention of title is not entitled to pledge the goods to third parties or to transfer ownership as security.

8.3 The customer is only permitted to resell goods subject to retention of title in the proper course of business. The customer cedes to STAG the customer claims arising from resale or other legal claims against third parties as security, including all secondary rights and also to the extent where goods that have been processed or installed. In the latter case, cession affects that part of the value that the goods subject to retention of title have in relation to the whole product. Processing of the goods subject to retention of title by the customer is in any case undertaken for STAG. STAG is co-owner, if necessary in the relation of the processed gross value of the goods to the value of other processed products; this also applies to indivisible integration. The sole and co-ownership is administered by the customer for STAG. STAG is entitled to revoke this authority should the customer not fulfil the payment obligations. The revocation authority also applies to resale with or without processing.

8.4 Should the customer retain claims or resell the goods subject to retention of title in spite of STAG revoking the authority, then the customer or the employees are in breach the contractual agreements. The customer is to instruct third parties on seizure of the goods subject to retention of title on the ownership, especially in cases of assignment and to inform STAG immediately, enabling STAG to assert its rights of ownership. Should the third party not be in the position to reimburse STAG the legal and out of court costs that result, then the customer is liable.

8.5 At the request of the customer STAG is to release security held should it exceed the value of claims secured by more than 20 %.

9. Rights of the customer arising from defects, notification of defects

9.1 The notice of limitations for claims arising from defects is one year unless STAG has deviously concealed the relevant defect.

9.2 Claims arising as a result of such a defect that only slightly or do not minimize the use as contractually required have no substance, unless STAG has guaranteed their absence or otherwise agreed.

9.3 STAG always initially has the right at their discretion to correct the defective services or to supply a replacement. STAG retains the rights to refuse supplementary performance in those cases stipulated by law.

9.4 Should the supplementary performance by STAG fail then the customer is entitled to claim the legal rights within the scope of the contractual agreements and these general terms and conditions after setting an appropriate time limit, insofar as this is not dispensable due to legal stipulations.

9.5 Failure of the supplementary performance is as a rule only to be assumed should there have been three or more attempts at supplementary performance relating to the defect that had not led to an elimination of the defect within an acceptable time period, and that STAG is prepared to undertake this and that it is possible.

9.6 Should the customer undertake to intervene in the services provided by STAG, then the obligation of providing supplementary performance only then arises when the type and extent of the intervention by the customer has been precisely documented, proving that the ascertained problem arises neither directly nor indirectly from the interference and the customer is prepared to bear the additional effort and expense caused to STAG that may arise through the interference.

9.7 Obvious defects are to be claimed immediately – at the latest within 14 days – after delivery or work performance. The same applies for notifications arising from hidden defects after their discovery. Late or improper notification of defects or those arising after processing of the goods subject to retention of title are no longer taken into consideration.

9.8 The elimination of a defect based on a claim does not lead to the period of limitation for claims starting anew as a result of this defect. In this case the limitation period is considered as suspended for the period until the defect is eliminated.

9.9 A check or inspection of a defect is in itself not considered to be a consultation. The non-response of STAG to an offer or a demand by the customer to negotiate is in case of doubt seen as a refusal to negotiate. Should STAG declare itself prepared to negotiate, is there an assumption that out of court negotiations for a suspension of the period of limitations are appropriate. The declaration is to be submitted in writing.

10. Liability and restriction of the period of limitation

STAG is liable should there be no specific liability agreement, for all legal, contractual and pre-contractual claims as follows:

10.1 STAG is liable only for infringement of material contractual obligations and only up to that amount of damage foreseeable for minor negligence by persons infringing their obligations who are neither legal representatives nor management employees when applying all the necessary care and attention.

10.2 STAG is liable only up to that amount of damage foreseeable for minor negligence by persons infringing their obligations who are legal representatives or management employees when applying all the necessary care and attention.

10.3 In the case of 10.1 and 10.2 the restriction of liability does not apply to injuries to life, body and health. Compensation There is however no compensation for consequential damage in the cases of 10.1 and 10.2. The total amount of all damage compensation payment in these cases arising from and in association with a direct contractual relationship is limited to 250.000 €.

10.4 STAG is not liable for interventions by third parties (e.g. by viruses and sabotage programs) arising from the use of the internet by the customer or by employees of STAG insofar as the use of the internet was necessary within the scope of implementing a contract. Other circumstances only apply should STAG have been commissioned to reduce such risks and had not taken sufficient precautions commensurate to the latest standards of technology.

10.5 The period of limitation for non-material contractual infringements is limited to two years.

10.6 The afore mentioned restrictions do not apply to liability in accordance with the product liability law as well as the assurance of properties provided that the assurance intended to prevent the occurrence of the damage.

11. Choice of law and jurisdiction

11.1 The law of the Federal Republic of Germany applies with the sole exception of the UN Sale of Goods Law (UNCITRAL). References to foreign legal regulations are ineffective.

11.2 Should the customer be a merchant then Berlin is the sole court of jurisdiction.

12. Severability clause

Should individual clauses of these general terms and conditions be wholly or partially ineffective, then the efficacy the remaining clauses remain unaffected. The ineffective clause is to be replaced by another that comes closest to the commercial purpose of the ineffective clause but is in itself effective.