

# GENERAL TERMS AND CONDITIONS



## 1. General

- 1.1. The General Terms and Conditions apply to all purchase contracts, contracts to the delivery of work and services and all business relationships between the company scanware electronic GmbH, hereinafter referred to in short as "scanware", and its contractual partners, hereinafter referred to as the "Customer".
- 1.2. The Customer acknowledges the General Terms and Conditions upon placing his order with scanware, however, no later than upon acceptance of the goods.
- 1.3. These General Terms and Conditions shall also apply to future supplies, services and offers made to the Customer, even if they will not expressly be agreed again.
- 1.4. Terms and conditions other than the present Terms and Conditions, in particular Purchaser's general terms and conditions of purchasing, shall not apply, even if scanware does not expressly object to them in each individual case. Even in case scanware does refer to any correspondence containing the Customer's General Terms and Conditions or referring thereto, and does not object on those General Terms and Conditions, scanware does not accept such General Terms and Conditions.

## 2. Offers and orders

- 2.1. All agreements between the Parties, including any amendments thereto and to these General Terms and Conditions shall require written form.
- 2.2. The legal relationship between scanware and the Customer are exclusively determined by written agreements including these General Terms and Conditions which reflect all agreements between the Parties and relating to the contract matter completely. Representations made by scanware verbally prior to entering into a written agreement are replaced by such agreement unless expressly agreed otherwise. Orders placed with scanware become binding only with their written acceptance. Scanware may accept offers within the 14 days following their respective receipt. Written acceptance shall be replaced by the invoice if the order is executed immediately.
- 2.3. scanware has no obligation to accept an order.
- 2.4. Offers made by scanware shall be non-binding as long as the binding character of the offer has not been recorded in writing. Brochures, price lists, circulars and similar shall not be deemed offers.
- 2.5. The present General Terms and Conditions shall form an integral part of each offer by scanware
- 2.6. Representations regarding product qualities or guarantees with respect the durability or configuration form an integral part of the contract only when they are given in writing and express. Information provided in brochures shall not be deemed a representation of qualities in the legal sense unless the contrary has been expressly agreed in writing. Amendments or aberrations due to the amendment of legal provisions or technical improvements as well as the replacement of technical parts by equivalent technical parts are in any case permitted as long as the usability for the purpose foreseen in the agreement between the Parties is not impaired.

## 3. Prices

- 3.1. Prices shall be in EUROS (EUR) excluding packaging for delivery ex Bickenbach plus VAT applicable on the date of invoicing, as well as any other statutory levies and charges on the delivery made.
- 3.2. In the event that the agreed prices are based on scanware's price lists and it is agreed to deliver the goods more than four months after conclusion of the contract, the list prices applicable upon delivery shall apply (reduced by an agreed fixed or per cent discount).

## 4. Shipment and transfer of risks

- 4.1. Delivery is made at scanware's site. In the event that the Customer requires shipment, he has to bear the shipping cost.
- 4.2. Delivery dates prospectively by scanware are estimated only unless a fixed term or a fixed date is expressly agreed or promised. In the event that shipment is agreed, delivery dates or delivery terms refer to the date the goods are handed over to the carrier or any third person charged with the shipment.
- 4.3. scanware may - regardless of its rights due to a delay of the Customer - request a prolongation of the delivery date or delivery term by a period equal to a period the Customer has been in default with his obligations towards scanware.
- 4.4. In the event that the Customer does not comply with his obligations under an agreement, or does not comply with such obligations in time, scanware has, regardless of its further rights, the right to refuse performance until the Customer complies with his obligations entirely. scanware's right to resign from the contract remains unaffected.
- 4.5. scanware may not be held liable in the event of impossibility of delivery or a delay in delivery if this is due to force majeure or other circumstances unforeseeable at the date of the conclusion of the agreement (e.g. disruptions of any kind, difficulties in procuring raw material or energy, delays in transportation, strike, lock-out, shortfall of manpower, energy or raw material, difficulties with procuring official authorisations, failure of furnishers to deliver required right material completely and in time) and not attributable to scanware. scanware entitled to resign from the contract if such events materially complicate or permanently hinder the execution of the contract. In the event that such events only temporarily hinder the execution of the contract, the terms of delivery or execution are prolonged until such event is eliminated and an adequate start-up-period has expired. To the extent the retard due to events referred to above is unacceptable to the Customer, he is entitled to resign from the contract by written declaration which has to be made without any undue delay.
- 4.6. In the event of a delay in delivery or performance for other reasons, the Customer may, partly or entirely, resign from the contract if he has set scanware a deadline of at least four weeks without success.
- 4.7. Partial deliveries by scanware are allowed only if a partial delivery is acceptable for the Customer and the delivery of the remaining ordered goods is secured.
- 4.8. In the event of a default by scanware or an impossibility to deliver or perform, scanware's liability is limited according to the provisions set forth in sec. 10.

- 4.9. The risk of loss or damage to the goods passes to the Customer at the latest with dispatch of the respective good (the beginning of the dispatch being decisive) to the carrier or any third person charged with the shipment. The same applies in the event of partial delivery for each partial delivery and in the event that scanware owes further services (e.g. shipment, installation.) In the event that shipment or dispatch is delayed due to circumstances attributable to the Customer, the risk shall pass to the
- 4.10. Customer at the day, the goods are declared ready for shipping by scanware to the Customer.
- 4.11. Cost for the storage of the goods after the risk has passed to the Customer, are borne by the Customer. The storage cost are 2% of the invoices amount with regard to the goods to be stored if storage is performed by scanware.
- 4.12. Transport insurance to the point of transfer as defined by the Customer shall be performed and calculated by scanware with an insured amount of EUR 25,000 maximum unless excluded in writing by the Customer. The goods are, when shipped, additionally insured against theft, against breakage, transportation, fire and water damage risk or comparable risks only upon the express request of the Customer.
- 4.13. In the event that a formal approval of the goods is required, the goods or the work are deemed approved, without prejudice to sec. 9.3 and 9.4, upon
  - a. delivery and, if owed by scanware, installation;
  - b. scanware having informed the Customer with regard to the deemed approval and requested formal approval;
  - c. twelve days having passed since the installation or, in the event that the installation is not completed within three months after delivery or the Customer having begun to use the goods or the work (e.g. launched a plant unless for test runs) and, in the last case, six business days have passed since delivery or installation whichever event occurred earlier and
  - d. the Customer having failed to approve the goods or the work for other reasons than a fault indicated to scanware which makes it impossible to use the goods or materially affects the use.

## 5. Export Authorisations

- All deliveries to other countries are made by scanware subject to an export authorisation under German foreign trade legislation which must be procured by the Customer. It shall be Customer's responsibility to apprise himself of the applicable export authorisation requirements under German federal foreign trade law at his own cost unless scanware undertook to procure the respective authorisation.

## 6. Payments

- 6.1. Payments shall be made within thirty days without any deduction, unless individual payment periods have been agreed. The receipt of the payment by scanware is decisive. Cheques are accepted only upon individual agreement and only on account of payment (zahlungshalber). They are only considered as payment after being encashed and after the end of the protest period. Bank, discount and collection fees are to be borne by the Customer.
- 6.2. The Customer is obliged to pay commercial due interest at an interest rate of 5% per annum if he fails to pay at the due date. In the event of a default, the Customer shall pay interest of at least 8 per cent points above the applicable basis interest rate determined by the European Central Bank; the Customer may prove scanware's damage to be less than the rates determined above.
- 6.3. Payments shall be applied first to settlement of the oldest debts due plus any interest accrued thereon, to the costs of legal prosecution and lastly to payment on the purchase price.
- 6.4. scanware is entitled to deliver outstanding goods or perform outstanding services only after advance payment or provision of a security if and to the extent circumstances come to scanware's knowledge after conclusion of a contract which are able to deteriorate the creditworthiness of the Customer and in consideration of which the payment of scanware's claims towards the Customer out of the enter business relation are jeopardised.
- 6.5. Should the Purchaser fail to comply with his payment obligations and/or other obligations under the General Terms and Conditions, discontinue his payments, or if an application is filed for insolvency proceedings on his assets or those of his legal representatives, the entire residual debt shall fall due for immediate payment. In such case scanware shall be entitled to declare rescission of all contracts and to take back goods already delivered, as well as to demand reimbursement of all costs causally linked to the rescission (e.g. return transport, reduction in value, etc.)
- 6.6. A right of retention in respect of the payment claim due to claims not relating to the deliverable itself is excluded. Set-off against the purchase price claim may be effected only with counterclaims that are uncontested or res judicata.

## 7. Reservation of title, pledge, assignment

- 7.1. scanware shall retain title in the delivered goods until payment in full of the purchase price including default interest and costs of any legal prosecution.
- 7.2. Up to transfer of title in the goods delivered by scanware to the purchaser, the purchaser shall not legally dispose of such goods and in particular neither pledge such goods nor transfer the same to third parties by way of security.
- 7.3. If the goods are attached or confiscated, the Purchaser shall inform scanware without undue delay and bear all costs arising in connection with the release of the goods. The Purchaser may sell the goods within the ordinary scope of business as long as he is not in default towards scanware with the performance of his obligations. The risk of loss, damage or wear and tear during the period of reservation of title shall be borne by the Purchaser. If the Purchaser combines the goods with other items, scanware shall acquire co-ownership in the combined items in the amount of the invoice value of the goods delivered to him by scanware. The Customer insofar acts by order of scanware. The Customer shall assign to scanware his claims for further transfer of the reserved goods in the amount of their respective net invoice value as security. scanware hereby accepts such assignment. The Purchaser's right to sell the goods delivered by scanware shall end if the Purchaser is in payment arrears or becomes insolvent.

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- In such case, the Purchaser may dispose over the reserved goods only with the written consent of scanware.
- 7.4. The Customer may not assign any of its rights against scanware to third persons without the prior written approval of scanware.
- 8. Delivery cancellation**
- 8.1. If the Customer cancels purchase orders in whole or in part and fails to comply with its obligation to take delivery, scanware shall be entitled to claim, instead of the damage incurred, liquidated damages (pauschalierter Schadenersatz) pursuant to the following provisions.
- 8.2. The deliverables already produced at the time of rescission of contract shall be paid at the rate of 40% of the net purchase price, unless the Customer proves a lesser damage.
- 8.3. This shall be without prejudice to the right to claim damages for non-performance if the Customer fails to pay partial deliveries as contractually agreed and for that reason residual deliveries are refused by scanware.
- 9. Warranty**
- 9.1. The warranty term shall be 24 months from receipt of the goods by the Purchaser for new devices and 12 months for used devices. The warranty term shall begin with the receipt of the goods by the Customer or by a third person determined by the Customer. If a formal approval (Abnahme) is required, sec. 4.12 shall apply accordingly.
- 9.2. The Purchaser shall inspect the goods without undue delay after these have been delivered.
- 9.3. Transport damage and short quantities shall be notified to scanware in writing by the Customer within 8 days from receipt of the delivery.
- 9.4. If any other defect is discovered, the Customer shall notify scanware thereof in writing without any undue delay and return the defective goods free to destination (frei Haus), providing a precise statement as to the nature of the alleged defects. If the Purchaser fails to effect notification, the goods shall be deemed accepted unless it was not possible to identify the defect in a thorough inspection. In such cases, the defect must be notified to scanware in writing without undue delay after being discovered. Otherwise, the goods shall be deemed accepted despite the presence of the defect.
- 9.5. In the event of justified notification of defects, scanware shall perform its warranty obligations at its own discretion either by way of remedial action or by replacement delivery. In the event of justified notification of defects, scanware shall also reimburse the cost of the shipment back to scanware and the cost of the shipment of the surrogate goods. The same applies for the cost of removal and installation of the defect goods but limited to an amount of EUR 1,500.
- 9.6. For the remedial action, the Purchaser shall grant scanware 2 attempts each with a reasonable period of at least 4 weeks. If the attempts fail, the Purchaser shall be entitled to rescind the purchase contract. In the event that these attempts fail, the Customer shall have the right to resign from the contract.
- 9.7. If original technical markings such as type plates or serial numbers on components have been dismantled or removed any burden of proof on scanware shall be reversed unless the Customer proves that the technical markings had not been properly installed or have not been installed at all at the time of the receipt of the goods.
- 10. Liability**
- 10.1. scanware's liability for damages, regardless of its legal basis (but in particular without limitation for impossibility or default, deficient or false delivery, breach of contract, breach of obligations in the state of negotiating the contract and tort), is, insofar such liability is subject to a fault (Verschulden) limited according to this sec. 10.
- 10.2. scanware may not be held liable for the slight negligence (einfache Fahrlässigkeit) of its organs, legal representative, employees and auxiliary persons unless material contractual obligations have been breached. Material are all obligations with regard to the delivery in time and installation of the goods, the absence of defects which would affect their usability more than insignificantly as well as obligations with respect to advice, security and care which shall grant the usability of the goods by the Customer or the life and health of the Customer's personnel and clients or which shall preserve the Customer's property from considerable damages.
- 10.3. In the event that scanware may in principle be held liable for damages according to sec. 10.2, such liability only covers damages which scanware has foreseen at the time of the conclusion of the contract as possible consequence of a breach of contract or should have reasonably foreseen when applying reasonable care. Indirect damages may only be compensated if such damages are to be expected typically in connection with the use of the goods in compliance with the intended use.
- 10.4. If scanware may be held liable for slight negligence, the obligation to compensate damages with regard to damage of property and economic loss connected thereto is limited to an amount of EUR 5,000,000.-- per case; this applies also when material contractual obligations are breached.
- 10.5. The limitations of liability above also apply in full to the profit of organs, legal representatives, employees and auxiliary persons of scanware.
- 10.6. The limitations of liability do not apply with respect to the liability pursuant to the law on the liability for defect products (Produkthaftungsgesetz), to scanware's liability for intent and for the damage of life, physical integrity or health.
- 10.7. If scanware provides technical information or advice and such information and advice is not a part of scanware's obligation, such information or advice is given free of charge and excluding any liability.
- 10.8. No device produced by scanware nor any part or component may be used in lifesustaining medical or in military systems. scanware may not be held liable for damages arising out of a contravention against such limitation.
- 11. Place of jurisdiction**
- 11.1. Place of jurisdiction over any and all disputes arising between scanware and the Customer shall be Darmstadt if the Customer is a businessman (Kaufmann), a judicial person of public law or a public law special fund or if the Customer does not have an own place of jurisdiction (Gerichtsstand) in the Federal Republic of Germany.
- 11.2. The legal relationships between the Parties shall be governed exclusively by the laws of the Federal Republic of Germany excluding such laws which refers to other jurisdictions and the United Nations convention on the international sale of goods dated 11 April 1980.
- 12. Miscellaneous**
- 12.1. Should one or several provisions of the contract between the Parties or these General Terms and Conditions be or become void or inexecutable, such void or inexecutable provision is deemed replaced by a valid and executable provision which shall comply to the possible extent with what was intended economically and with the interests of the Parties.
- 12.2. Should the contract or these General Terms and Conditions contain gaps, this are deemed replaced by a valid and executable provision which shall comply to the possible extent with what was intended economically and with the interests of the Parties.
- 12.3. scanware reserves the title and intellectual property rights with respect to all offers and estimates of cost, to the drawings, pictures, calculations, prospects, brochures, catalogues, models, tools and auxiliary means. The Customer is not authorised to make them available to third persons, to publish them, to use them directly or indirectly through others or to copy them without the prior written approval of scanware. Upon scanware's request, the Customer has to return such things to scanware and to destroy copies if they are not required any more in the ordinary course of business or if contract negotiations do not lead to a conclusion of a contract.
- 12.4. scanware reserves any right to software developed by scanware. The copying of such software is not authorized except for backups.
- 12.5. Wherever in these General Terms and Conditions German translations are given in italic letters, the meaning of such translation shall prevail over the English wording.
- 13. Validity**
- The current version of these General Terms and Conditions as amended shall apply.
- 14. Additional Advise**
- The Customer acknowledges that scanware will save data with regard to the contractual relationship for the purpose of data handling according to sec. 28 of the Federal Act on the Protection of Data and reserves the right to make such data accessible to third persons (e.g. insurances) to the extent required for the fulfilment of contracts.

Bickenbach, March 2016