



General Terms and Conditions of SHF Communication Technologies AG*

as of June 2014

Section I - General Provisions

1. Legal relations between SHF Communication Technologies AG (hereinafter „SHF) and the Customer in connection with supplies and/ or services of SHF (hereinafter “Supplies”) shall be solely governed by this General Terms and Conditions (hereinafter „T&C”). The Customer’s general terms and conditions shall apply only if expressly accepted by SHF. The scope of delivery shall be determined by congruent mutual written declarations.
2. SHF reserves any industrial property rights and/ or copyrights regarding to quotations, descriptions, manuals, data-sheets, drawings and other documents (hereinafter “Documents”) provided for the Customer. These Documents shall not be made accessible to third parties without prior express written consent of SHF. Upon request these Documents shall be returned immediately to SHF. Sentences 1 to 3 shall apply mutatis mutandis to the Customer’s Documents. These may, however, be made accessible to those third parties to whom SHF has rightfully subcontracted Supplies.
3. The Customer has the non-exclusive right to use standard software and firmware, provided that it remains unchanged, is used within the agreed performance parameters and on the agreed equipment.
4. SHF is entitled to partial deliveries unless they are unreasonable to accept for the Customer.

Section II - Prices, Terms of Payment and Set-Offs

1. All relevant prices are subjected to respective agreement between SHF and the Customer. Unless otherwise agreed all prices are ex works excluding packaging, transport, insurance and other costs. Value added tax shall be added at the applicable rate.
2. If SHF is also responsible for assembly and installation the Customer shall pay the agreed payment and any incidental costs required, e.g. travelling and transport costs as well as allowances.
3. As for goods or services that are not to be supplied within four months of entering into an agreement, SHF shall be entitled to adjust the price in the intervening time period due to changed market conditions, increases in procurement costs and wages or material costs. The same shall apply, independent of the period in which goods or services shall be supplied, to goods and services that are supplied or rendered as part of a recurring obligation. If SHF has agreed on prices contingent on certain pricing factors, which would include but not limited to prices for raw material but also quantities, with customers, changes in such price factors may result in corresponding price

adjustments independent of the period for delivery and performance.

4. All payments shall be made free SHF’s office and are initially charged against debt due.
5. The Customer is not allowed to offset against disputed or not legally binding accounts.

Section III - Retention of Title

1. Objects of delivery (hereinafter “Retained Goods”) shall remain the property of SHF until each and every claim, including conditional and subsidiary claim maintained by SHF towards the Customer on account of the business relationship has been satisfied. If the combined value of SHF’s security interests exceeds the value of all secured claims by more than 20%, SHF shall release a corresponding part of the security interest if requested by Customer. SHF is allowed to choose which security interest is to be released.
2. For the duration of the retention of title the Customer may not pledge the Retained Goods or use them as security. Resale shall be possible only for resellers in the ordinary course of business and on condition that the reseller would receive payment from their customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment.
3. a) In case of reselling Retained Goods by the Customer, he assigns to SHF all claims arising from resale including but not limited to any collateral rights and all balance claims as security without any further special declarations being necessary. The Customer is entitled and obligated to collect assigned account.
b) If the Retained Goods are sold on together with other objects and no individual price has been settled with respect of the Retained Goods, customer shall assign to SHF such part of the overall price which is equal to the amount invoiced by SHF for the Retained Goods.
4. a) The Customer may process, merge or combine Retained Goods with other items. Any processing is always made for SHF. The Customer shall handle and keep safe the new items thus created for SHF with the care of a prudent businessman. The retention of title also covers the new items.
b) SHF and the Customer agree that in case of processing, merging or combining Retained Goods with other items not belonging to SHF, the Customer assigns in advance its ownership or co-ownership rights to SHF.
c) The provisions of Section III(3) shall also apply to the new items. Assignment shall only apply to the amount corresponding to the value invoiced by SHF for Retained Goods that have been processed, merged or combined.
5. Until further notice the Customer may collect assigned accounts relating to resale. SHF is entitled to withdraw permission in case of substantial reason including but not limited to payment delay and stoppage, start of insolvency

*) This is a translation of German version. The original German text shall prevail.

proceedings, bill protest or indication of excessive indebtedness or imminent insolvency. After expiration of an additional period SHF may unveil the assignment, realize the assigned claims and demand Customer to inform their purchaser of the assignment.

6. The Customer shall inform SHF of any seizure or other act of intervention by third parties. If a reasonable interest can be proven, the Customer shall provide SHF with all information and/ or documents necessary to assert the claims of SHF against purchaser.
7. Where Customer fails to fulfill his duties or otherwise violates his obligation, expressly in the event of default in payment, SHF is entitled to withdraw from contract and take back the Retained Goods provided that Customer was given an appropriate period of time before. The statutory regulations concerning the dispensability of the fixing of a time-limit shall remain unaffected. The Customer shall be obliged to return the Retained Goods. Taking back or seize the Retained Goods or exercise retention of title by SHF does not constitute withdrawal of contract unless otherwise declared.

Section IV - Terms of Delivery, Default

1. All terms of delivery and/ or services or deadlines are only binding if they have been confirmed in writing by Customer and SHF.
2. Compliance by SHF with the periods for Deliveries and/or Services requires that all obligations of the Customer are fulfilled properly and in due time, in particular, that all documents, approvals and releases to be furnished by the Customer are received by SHF in time, and that such other obligations are satisfied which are required for the Deliveries and/or Services by SHF to be carried out properly and in due time.
3. If failure to comply with any terms of delivery caused by:
 - a) force majeure including but not limited to mobilization, war, act of terror, riots or similar events (e.g. strikes or lockouts);
 - b) Virus, DDoS-or other attacks on SHF's IT-System occurring despite exercising protective measures;
 - c) barriers arising from German, US or otherwise applicable national, EU or international rules of foreign trade law or from other circumstances SHF is not responsible for; or
 - d) an event of delayed or improper delivery to SHF by third supplierterms of delivery shall be extended accordingly.
4. Subsequent modifications or additions to the contract introduced by the Customer and agreed between him and SHF shall cause schedules and deadlines already agreed upon to be extended accordingly.

5. In the event of default by SHF, the Customer may demand compensation for provable damages, to the amount for each week of the delay of 0.5 % of the value of that part of the delivery, which cannot be used on time or as intended as a consequence of the delay, however not exceeding a total of 5% of the value.
6. All further damage claims exceeding the limits specified in Section IV(5), causing by default of delivery or instead of performance shall be excluded, even upon expiry of deadline for delivery set to SHF by Customer. This shall not apply in case of intent or gross negligence, injury to life, body and health and/ or willful or grossly negligent breach of duty by SHF.
7. The Customer is obliged to declare within a reasonable time whether he wishes to withdraw from contract due to delay of delivery or insists on delivery of Supplies, if requested by SHF.
8. If dispatch or delivery is postponed by more than one month due to Customers request, SHF may charge the Customer, for every additional month commenced, storage costs of 0.5% of the price of items stored, but no more than a total of 5%. The parties may prove that higher or lower storage costs have been incurred.

Section V - Passing of Risk

1. Even if delivery has been agreed freight free, the risk shall pass to the Customer as follows:
 - a) If delivery does not include assembly or installation, at the time when items are shipped or picked up by carrier. Upon Customer's request, SHF shall provide insurance against the usual risks of transportation at Customer's expense.
 - b) If delivery includes assembly and installation, at the day of taking-over in Customer's facilities.
2. The risk shall pass to the Customer if dispatch or delivery, start of assembly or installation, taking-over or test run is delayed due to reasons Customer is responsible for or in any other case of default in acceptance by Customer.

Section VI - Assembly and Installation

If assembly, installation or commissioning is delayed as result of circumstances SHF is not responsible for, the Customer shall bear reasonable costs for standby-time and additional all necessary traveling expenditures of installation personnel.

Section VII - Acceptance

Acceptance may not be refused due to minor defects. **Section VIII - Defects as to Quality**

1. Defective parts or defective services shall be, at SHF's option, repaired, replaced or provided again free of charge provided that cause of defect was present at passing of risk.
2. SHF shall be given the opportunity to repair or replace the defective products within a reasonable time period.

Generally the Customer is obliged to grant SHF two attempts. If repair or replacement is unsuccessful, the Customer is entitled to withdraw from contract or reduce the amount of payment. Any claims for damages the Customer is entitled to according to Section VIII(9) shall be unaffected.

3. Claims for repair or replacement come under the statute of limitation of twelve months calculated from start of limitation; the same shall apply mutatis mutandis to withdrawal and reducing of payment. Deviating hereof, all claims described above come under the statute of limitation of six months if SHF repairs, delivers (spare parts) or provides customer services after the expiration of first limitation period. Section VIII(1) shall apply correspondingly. These terms shall not apply where longer periods are mandatory prescribed by law, in case of intent, fraudulent concealment of defectiveness or non-compliance with guaranteed characteristics. Legal provisions regarding suspension and recommencement of limitation periods shall be unaffected.
4. Notification of any defectiveness shall be given in written form without undue delay by Customer.
5. In case of notification of defectiveness the Customer may withhold payments to an amount that is in reasonable proportion of defectiveness. This shall not apply, if the claimed defectiveness is justified and uncontested. In case of statute-barred claims the Customer has no right to withhold payments. Unjustified notification of defectiveness shall entitle SHF to demand reimbursement of expenses.
6. There shall be no claims based on defectiveness in cases of minor deviations from agreed quality, only insignificant impairment of usability, natural wear and tear or damages arising, after passing of risk, from defecting and negligent treatment, improper use (without attention to instructions, manuals and directions given by SHF), excessive strain, unsuitable equipment or particular external influences that are not preconditions in accordance with the contract or from non-reproducible software errors. Claims based on defectiveness attributable to improper modification or maintenance are likewise excluded.
7. The Customer shall have no claim with respect to expenses incurred in the course of supplementary performance, including but not limited to costs of travel, transport, labor and material, provided that expenses are increased due to Customer transported merchandise to another location than his office unless transport complies with its intended use.
8. The Customer shall have no claim for damages based on defectiveness. This shall not apply in case of fraudulent concealment of defect, non-compliance to a guarantee of quality, injury of life, body and health and/ or willful or grossly negligent breach of duty on the part of SHF and shall not reverse the burden of proof to the disadvantage of the Customer.

9. Any other or additional claims of Customer exceeding the claims provided for in Section VIII, based on defectiveness, are excluded.

Section IX - Industrial Property Rights and Copyrights; Defects in Title

1. Unless otherwise agreed, SHF shall provide the Supplies free from third parties' industrial property rights and copyrights (hereinafter: "IPR") only with respect to the country of delivery. If a third party asserts a justified claim against the Customer based on infringement of an IPR by the Supplies made by SHF and used in accordance with contract, SHF shall be liable to the Customer within the term referred to in Section VIII(3) as follows:
 - a) SHF shall choose whether to obtain, at own expense, the right to use the IPR with respect to the Supplies concerned or whether to modify the Supplies in such way that they no longer infringe the IPR or replace them. If this would be impossible for SHF due to unreasonable conditions, the Customer may withdraw from contract or reduce the amount of payment according to statutory regulations.
 - b) SHF's liability to pay damages is governed by Section XII.
 - c) Any obligation stated in Section IX shall apply only if the Customer (i) immediately notifies SHF of any such claim asserted by third party in written form, (ii) does not recognize the existence of an infringement and (iii) leaves any protective measures and out of court settlements to SHF's discretion. If the Customer stops using Supplies in order to reduce damage or for other good reason, he shall be obliged to inform the third party that the suspension of use does not involve any acknowledgement of the alleged infringement.
2. Claims of the Customer shall be excluded if (i) he is responsible for infringement of IPR, (ii) the infringement of IPR is caused by specification made by the Customer or by a type of use not foreseeable by SHF or (iii) the Supplies have been modified by the Customer or being used together with products not provided by SHF.
3. In addition Section VIII(4, 5, 9) shall apply with regard to claims of the Customer against SHF pursuant to Section IX(1[a]).
4. Where other defects in title occur, Section VIII shall apply accordingly.
5. Any other claims of the Customer against SHF or its agents or any such claims exceeding the claims provided for in Section IX, based on defect of title, are excluded.

Section X - Conditional Performance

1. The performance of this contract is subject to absence of any impediments or barriers under German, US or otherwise applicable national, EU or international rules of foreign trade law or any embargos or other sanctions.

2. The Customer shall provide all information and documents required for export, transport and import purposes.

the United Convention on contracts for the International Sale of Goods (CISG).

Section XI - Impossibility of Performance, Adaption of Contract

1. In case of delivery is impossible, the Customer is entitled to demand damages unless SHF is not responsible for impossibility. The Customer's claim for damages is, however, limited to an amount of 10% of the value of that part of Supplies which cannot be used for the purposes of contract due to impossibility. This limitation shall not apply if liability is based on intent or gross negligence or injury to life, body and health and shall not reverse the burden of proof to the disadvantage of the Customer. The right of withdrawal shall be unaffected hereby.
2. Where events within the meaning of Section IV(2a-2c) substantially change economic importance or content of Supplies or considerably affect SHF's business operation, the contract shall be adapted acting appropriately and in good faith. If this appears not possible on economic acceptable conditions, SHF shall have the right to withdraw from contract. The same applies, if required export permits are not granted or cannot be used. SHF is obliged to inform the Customer immediately of its intention to withdraw from contract even if extension of delivery period has previously been agreed with the Customer.

Section XII - Other Claims for Damages

1. Unless otherwise provided by rules of General Terms of Conditions, the Customer shall have no claim for damages based on whatever legal reason, including infringement of duties arising in connection with the contract or any tortious act.
2. This does not apply if liability is based on
 - a) German Product Liability Act (Produkthaftungsgesetz);
 - b) Intent;
 - c) Gross negligence of owners, members of management, executives or agents;
 - d) Fraud;
 - e) Failure to comply with a guarantee granted;
 - f) Negligent injury of life, boy and health;
 - g) Negligent breach of fundamental conditions of contract whose fulfillment shapes the contract and in which the Customer normally may trust.

However, SHF's liability arising from a breach of fundamental condition of contract shall be limited to the compensation of the typical damage foreseeable on conclusion of the contract.

3. The Provisions stated in Section XII shall not reverse the burden of proof to the disadvantage of the Customer.

Section XIII - Place of Jurisdiction; Applicable Law

1. Sole venue for all disputes arising directly or indirectly out of contract shall be Berlin.
2. The contract and its interpretation shall be governed by German law and expressly to the inclusion of the rules of

Section XIV - Severability Clause

Should individual provisions of this General Terms and Conditions be legally invalid, the remaining provisions will be binding. This shall not apply if it would constitute an unreasonable hardship for one of the parties to be obligated to continue the contract.