

# Terms of Sale of vhf camfacture AG

## 1. Validity

All offers, deliveries and other services are exclusively executed according to the following conditions in its newest version. Our Terms of Sale also apply to all our future business transactions. General terms and conditions of trade of the contracting party which are not explicitly accepted by us, are not valid. Our Terms of Sale also apply if we unconditionally execute the delivery to the contracting party knowing about its adverse or differing conditions. As far as nothing else is explicitly mentioned the legal requirements apply. Alterations and completions of this conditions need to be in written form. Eventual verbal agreements are immediately to be confirmed in writing in detail by the contracting parties. Our Terms of Sale only apply to companies in terms of § 310 par. 1 German BGB.

## 2. Offers

- a. Our offers are without engagement and non-binding. Enquiries of contractual parties which are not content of an order or of an order confirmation are without obligation for us.
- b. If offers or order confirmations are based on data like images or drawings these are to be considered as non-binding. Copyright and proprietary right are reserved by us for all of this documents. These documents are not to be made accessible to a third party without previously having given our written consent. Specifications and indications of weight are to be considered as customary approximate values unless they are explicitly declared as binding by us.

## 3. Conclusion of a Contract and Scope of Delivery

- a. If an offer on our part is followed by an order of the contracting party the contract is only achieved by a written order confirmation from which the content and scope of the owed obligation exclusively arises. If an order of our contracting party is not followed by an order confirmation on our part as for example regarding tools and expendable items, the contract is concluded by the execution of the order by us. In this case content and scope of the owed obligation arise from the article specifications of the valid vhf catalogues in question. If an article is not listed in the catalogues and the delivery is executed anyway, content and scope of the obligation arise from the written order.
- b. We are entitled to alterate and modify the delivery item as long as it does not contradict the order confirmation.

## 4. Prices, Terms of Payment

- a. Unless something else is indicated in the order confirmation, our prices are to be considered ex works excluding packaging, freight, conveyance, postage, insurance, custom duties as well as the respective VAT which applies.
- b. Unless fixed prices are stipulated, the prices of our valid price list apply. The fixed prices of the price list are valid provided that our Terms of Sale are unconditionally accepted by our contracting party.
- c. The minimum order value for Germany amounts to EUR 50. If the order value is less than EUR 50 we are entitled to raise an additional charge of EUR 5. Regarding deliveries to foreign countries the minimum order value amounts to EUR 100 for the EU and Switzerland and beyond these countries to EUR 250. The additional charge is EUR 10 (EU and Switzerland) respectively EUR 25 (worldwide). Unless something else was stipulated, deliveries to foreign countries are only executed against payment in ad-

vance or with credit card.

- d. Invoices are to be paid within 30 days from the date indicated in the invoice unless something else was stipulated. Bills of exchange and cheques are accepted by appointment only and under the precondition of its discountability. The contracting party is charged all bill and discount fees. Payments are only considered as effected on definite credit entry on our account.
- e. If, after the conclusion of the contract, it becomes recognisable that our payment claim is at risk due to lacking capability of our contractual partner, we may refuse the obligation and appoint a time limit for the contractual partner in which he has to pay the delivery step by step or provide security. On refusal of the contracting party or unsuccessful deadline we are entitled to withdraw from the contract and demand compensation.
- f. In case of delay in payment we are entitled to charge interest for delay of 8 percentage points beyond the respective basic interest rate. The enforcement of further damages caused by delay remains unaffected.
- g. The contractual partner can only count up with a claim towards us if the claim is unquestioned by us or established legally valid. For exercising a right of retention the contracting party is only authorised insofar as his counterclaim is based on the same contractual relationship. A right of retention is not due to the contracting party concerning partial performances as per § 320 par. 2 German BGB.

## 5. Delivery

- a. Delivery dates and periods apply only roughly and are not binding for us unless a delivery date was explicitly stipulated in writing to be binding. Correct and on-time self-delivery remains reserved.
- b. Delivery periods start with the date of the order confirmation or on receipt of the payment if payment in advance was stipulated. Delivery periods and dates are observed when the delivery item has left our plant by their expiry or if the contracting party has communicated readiness for dispatch in written form.
- c. Delivery dates and delivery periods are adequately prolonged if the contractual partner delays or refrains necessary or stipulated actions of co-operation on his part as well as in case of force majeure and all other obstacles for which we are not responsible and which have considerable influence on the delivery or obligation, especially concerning strikes and lockouts at our premises, the places of our suppliers or their subcontractors. If the delivery or obligation becomes impossible or infeasible due to the above-mentioned circumstances thus we are released from our delivery commitment. If the delivery period is prolonged or if we are released from the delivery commitment, the contracting party can not deduce claims for compensation from it.
- d. Alterations of the contract lead to reversal of appointed dates and periods unless something else is stipulated. If, after the conclusion of the contract, the contracting party requests alterations and amendments which makes the observance of the delivery date impossible, the delivery date is prolonged corresponding to the alterations and amendments for a period which is appropriate for the production of these alterations and amendments.
- e. A right of retention is due to us for further deliveries as long as all previous deliveries are paid.
- f. We are entitled to carry out part deliveries and invoice them separately.

## 6. Dispatch and Transfer of Risk

- a. Due to the lack of special agreements the choice of the dispatch route and the dispatch type are at our

discretion. On request of the contracting party the delivery items is insured for shipping. The contracting party bears the costs for dispatch, customary packaging and for the transport insurance.

- b. Goods which are communicated as ready for dispatch have to be immediately taken into charge by the contracting party, otherwise we are entitled to dispatch them at our own choice and/or store them at cost and risk of the contracting party.
- c. On handing over the delivery item to railway, forwarding agent, carrier and other miscellaneous dispatch agents or with the communication of the readiness for dispatch or at the latest on leaving the works or depot, the risk is transferred to the contracting party also if we have undertaken delivery. The dispatch is always executed on behalf of the contracting party.
- d. The contracting party is obliged to take the delivery item even if it shows slight variations of the stipulated state or slight interferences of use only.
- e. If dispatch is delayed on request of the orderer, the contracting party can be charged with the costs resulting from stocking. If we accommodatingly agree to taking back a ordered and properly delivered article, we are entitled to charge an adequate fee for restoring.

## 7. Assembly and Installation

- a. The assembly, installation and starting up is executed by us only on written agreement. Unless something else is stipulated the buyer is responsible for it himself.
- b. If assembly, installation and starting up of the complete CAM system is undertaken by us an information letter for the purpose of a trouble-free delivery and installation is sent by us in good time prior to the delivery. The letter informs about all necessary requirements (required storage space and passage latitude, requirements of the assembly place, necessity of a forklift for unloading, etc.). On part of the buyer, it has to be ensured that all mentioned requirements are met prior to the delivery. Unless something else is stipulated, the contracting party bears the costs for assembly, installation and starting up including travel costs according to our valid rates and price lists.
- c. Concerning deliveries with assembly and installation by us, the risk is transferred on the day of handing over at the premises of the buyer, or, if a trial operation is stipulated, after the faultless trial run.

## 8. Delay in Delivery and Impossibility

- a. In case of delay in delivery, withdrawal instead of obligation furthermore requires that the contracting party has fixed an adequate deadline for the performance of the contractually owed obligation provided with a threat of refusal to accept performance by letter. The deadline amounts to at least 25 % of the stipulated or indicated delivery period, however at least 14 days. After the expiry of this deadline the contractual partner is committed, on our request, to declare himself whether he insists on the delivery or withdraws from the contract. The contracting party is not entitled to refuse the delivery or to withdraw instead of the performance, if he doesn't submit such a declaration within an adequate deadline fixed by us.
- b. In the case of impossibility or delay of our duty to perform, the contracting party can only withdraw from the contract if we are responsible for the violation of duty.
- c. The contracting party can not withdraw prior to maturity of the obligation or on slight violation of duty on our part. Withdrawal is excluded if the contracting party is solely or mainly responsible for the circumstances which would entitle him for a withdrawal or if a circumstance for which we are not

responsible occurs during the delay in acceptance of the orderer.

## 9. Rights to the Software

- a. Our software (programme and user manual) are legally protected. Any rights to the software and other items which are relinquished to the orderer in the context of contract initiation and execution are exclusively due to us. Provided that the rights are due to a third party we possess of appropriate exploitation rights.
- b. The orderer gets a simple, regionally and temporarily not restricted, non-exclusive right of use to the software. For the lack of other agreements, the software may only be used with hardware supplied by us, or, if the orderer uses own hardware, it may only be installed on one computer.
- c. Apart from that, the obligatory regulations of the copyright law (§ 69 a ff German UrhG) additionally apply regarding the rights of use.
- d. The orderer obtains the software consisting of the machine programme and the user manual. For the lack of other agreements, the programmes and the manual are delivered on CD-ROM. The orderer has no right to the surrender of the source programme.

## 10. Defects

- a. The nature of the delivery items exclusively arises from the indications in the order confirmation or in case that the delivery is executed without order confirmation from the article specifications of the valid vhf catalogues in question. If an article is not listed in the catalogues and the delivery is executed anyway without order confirmation, content and scope of the obligation arise from the written order. The contracting party bears the risk of suitability of the delivery items for the intended purpose as well as for the compatibility with other components or systems. Crucial to the contractual nature of the delivery items is exclusively its nature at the transfer of risk.
- b. We are particularly not liable for disorders and/or damages which arise from improper or inappropriate use or operation, incorrect installation respectively start up by the contracting party or third parties, lacking compatibility with other systems or modules, customary wearout, incorrect or careless handling as well as for consequences of inappropriate alterations or maintenances carried out without our agreement by the contracting party or third parties. The contracting party is responsible for the backup of data.
- c. Defects of title or material defects, the lack of the nature of the delivery item guaranteed by us (hereinafter referred to as: defects) as well as over-, under- and misdelivery (hereinafter: discrepancies) are to be immediately claimed in writing within two weeks from the receipt of the delivery item at the latest if it relates to discrepancies or externally identifiable defects. Unapparent defects are to be claimed immediately when detected. If discrepancies or defects are not claimed within the mentioned deadlines, any claims for defects against us are excluded.
- d. If a defect or discrepancy has been claimed on time, the contracting party has, at our choice, the right to supplementary performance by rectification or to subsequent delivery. The necessary expenditures for it like the labour, transport, travel and material costs are borne by us if they are essential for the removal of defects and if they do not increase as a result of placing the delivery item to another location than the point of delivery unless this conforms with its intended usage. If no defect was detected, we are entitled to charge the verification costs as per our charging rates including travel costs.
- e. The contracting party has to grant us the necessary time and occasion to carry out a rectification or subsequent delivery on arrangement. The contracting party is committed to send us a precise and comprehensive description of all defects or malfunctions and to support us when carrying out the analysis and removal of defects. Rectification attempts are due to us in the legal extent. Because of the complexity of software several rectification attempts may potentially be necessary.
- f. We are entitled to perform the rectification accord-

ing to our terms of guarantee as per the following paragraph no. 11. The contracting party is in any case obliged to send us the defective components free of charge if requested. In this case, the removal of defects is carried out the way that we send a zero-defect component free of charge to the contracting party. If the defect can not be removed in this way, the amendment is executed by a service technician on site.

We are also entitled to remove defects of the software by data transmission and the installation of patches or alternative programme parts. An equivalent new programme release or the equivalent previous programme release which do not include the defect has to be accepted by the contractual partner if this is reasonable for him. If the contracting party refuses us these possibilities, we are exempt from any liability.

- g. If the supplementary performance fails, the contracting party is entitled to reduce the payment and to withdraw from the contract, if a significant violation of duty exists.
- h. Claims for defects prescribe in 12 month from the handing over of the delivery item unless we are accused of intent or gross negligence including intent or gross negligence of our representatives or vicarious agents, or in the context of our released guarantees in particular according to the following paragraph no. 11.

## 11. Warranty for CAM Systems

We grant a warranty to our contracting party when buying a complete CAM system as per separate declaration. Details arise from the contents of the warranty. However, a claim for the issue of a warranty does not exist.

## 12. Liability

- a. Concerning intent or gross negligence we are fully liable according to the legal requirements and on the basis of the obligatory regulations of the product liability law.
- b. Apart from that, our liability is excluded independent of the legal status of the enforced claim. We are particularly not liable for damages which did not occur on the delivery item itself, for damages of third parties, losses of profit or data losses.
- c. The aforesaid regulation also applies for our legal representatives, employees and vicarious agents.

## 13. Retention of Title

- a. The delivery item remains in our proprietary (goods are subject to retention of title) until all outstanding accounts of the business relationship between us and the contracting party are entirely paid.
- b. Processing and transformation of the delivery item by the contracting party is always carried out for us. Is the delivery item processed with other items which do not belong to us, we thus acquire the joint ownership in the new object in proportion of the value of the delivery item to the other processed items at the time of processing. If the delivery item is inextricably blended with the items not belonging to us, we so value the joint ownership in the new object in proportion to the value of the delivery item to the other blended items at the time of the blending. If the blending occurs in such a way that the object of the contracting party has to be considered as the main thing, the contracting party keeps the thusly originated sole or joint ownership for us. For the new object which originated from processing, linking or blending applies, apart from that, the same as for goods which are subject to retention of title.
- c. The resale of the goods which are subject to retention of title as well as distraints or assignments as security are illegitimate without our previous written agreement. In case a resale, however, has taken place, the contracting party assigns his claims against the buyer resulting from the resale to us.
- d. The contracting party is committed to immediately inform us in writing about distraints or other interventions so that we can take action as per § 771 German ZPO. If the third party should not be in the position to compensate us the legitimate judicial and extra-judicial costs resulting from this claim,

the contracting party is liable for our incurred losses.

- e. In so far as the respective droit, in which area the delivery item is located, does not permit retention of title, we are entitled to execute all rights which we can reserve to the delivery item. The contracting party is committed to contribute to all measures which we want to take for the protection of the proprietary right or another security interest of the delivery item.
- f. The rights of use to the software supplied by us are transferred to the orderer with complete payment of the contractual remuneration only. Beforehand the orderer disposes only of a provisional right of use which is revocable according to the law of obligations. The rights of use are to be considered as revoked on exercising the retention of title.

## 14. Infringements of an Industrial Property

The orderer immediately informs us in writing if third parties assert infringements of industrial property of the delivery items against him. In this case the orderer authorises us to solely carry on the controversy with the third party. As long as we make use of this authorisation the orderer is not allowed to accept claims on his own without our agreement; in this case we repel the claims of the third party at our own expenses and release the orderer of all costs which are related with the repelling of these claims insofar as they are not based on behaviour contrary to duty of the orderer (e.g. usage contrary to duty).

## 15. Confidentiality

- a. The contracting party commits to keep in confidence all information, materials, software etc. which he obtained previous to or during the execution of the contract as business and company secret and not to make it available for third parties.
- b. If, on request of the contractual partner, deliveries are executed duty unpaid, he is liable for possible additional charges of the customs administration towards us and releases us of such claims.

## 16. Deliveries to Foreign Countries

- a. In case of the export of products the contracting party has to observe the German export regulations and to point out to his customer that in case of export German export regulations apply.
- b. If, on request of the contractual partner, deliveries are executed duty unpaid, he is liable for possible additional charges of the customs administration towards us and releases us of such claims.

## 17. Place of Fulfilment, Legal Domicile, Applicable Law, Salvatorious Clause

- a. Place of fulfilment and legal domicile for all obligations which arise directly or indirectly from the contractual relationship is our place of business in 72119 Ammerbuch, Germany. We are also entitled to go to law at the place of business of the contracting party.
- b. The droit of the Federal Republic of Germany excluding the regulations of the international civil law and UN Convention on Contracts for the International Sale of Goods (CISG) applies.
- c. Rights which arise from this contract may only be transferred from the orderer or us to third parties on mutual agreement.
- d. If a regulation is or becomes void under this conditions, the validity of the contract for the rest is not affected. The contracting parties are obliged to substitute the void regulation with a regulation which preferably matches its commercial outcome.

## 18. Language

These Terms of Sale are issued in German and in English. In cases of doubt, the German wording shall prevail.