

# Overland-Tandberg General Terms and Conditions of Sale and Delivery

## 1. General, Scope of Applicability

- (1) Our Conditions of Sale apply exclusively for all current and future contracts, deliveries and services; we do not accept conflicting or different conditions of the Buyer unless we have previously expressly consented, in writing, to their applicability. Our Conditions of Sale also apply if we perform the delivery to the Buyer without reservation despite being aware of conflicting or different conditions of the Buyer.
- (2) All agreements made between us and the Buyer for the performance of this contract are laid down in writing in this contract.
- (3) Our Conditions of Sale apply only for businesses, public law legal entities and public law special funds as defined by section 310, paragraph 1 of the German Civil Code (BGB).

## 2. Offer, Offer Documents

- (1) Our offers are not binding. Technical changes and changes in shape, colour and/or weight remain reserved in a scope reasonably acceptable for the Buyer.
- (2) If the order is to be qualified as an offer pursuant to section 145 of the German Civil Code (BGB), we are entitled to accept such order within a period of four weeks. The acceptance can be effected in writing or by delivery of the goods to the Buyer.
- (3) We reserve all ownership rights and copyrights in respect of pictures, illustrations, drawings, calculations, software and other documents. This also applies for such written documents that are marked 'confidential'. The Buyer requires our express written consent for the disclosure/distribution to a third party.
- (4) If the subject of the contract of sale is also software, the Buyer acquires hereto only a non-exclusive, time-limited right of use. The Buyer may not change the software. We do not owe the Buyer the delivery of the source program. The Buyer may only make a backup copy for his own backup and documentation purposes and may not distribute such copy to third parties. He may use the software temporarily always only within the scope of the purchased licence. A simultaneous installation, keeping available or use of the software at several workstations is not permitted. The Buyer of the software must purchase a corresponding number of software products if he wants to simultaneously use the software at additional workstations, e.g. by several employees. If the Buyer changes the hardware he must completely and permanently delete the software from the old hardware. The Buyer expressly acknowledges the copyright capability of the software delivered by us and regards it, and the user documentation, as our business secret. The Buyer may not lease, lend or otherwise make available the software to a third party without our consent. A resale is only permitted if the purchaser confirms to us in writing that these contract provisions shall continue to apply. If the Buyer breaches these provisions, he shall be obliged to pay a contract penalty amounting to 5 times the selling price of the software. The Buyer is obliged to observe the herewith associated copyrights and other industrial property rights and effectively pass on existing use restrictions in the case of a resale. The use in a network is subject to the purchase of a special network usage licence.

## 3. Prices, Terms and Conditions of Payment

- (1) Unless the order acknowledgement states otherwise, our prices within the EC are 'franco domicile', inclusive of delivery and duty (DDP/Delivery Duty Paid). If our cost prices or freight costs, packaging costs, rates, fees, duty costs or taxes increase after conclusion of contract, we shall be entitled to make corresponding price adjustments if the delivery does not occur within four months following the conclusion of contract.
- (2) Our prices do not include VAT. VAT at the statutory level on the day of invoicing will be shown separately on the invoice.
- (3) The deduction of an early payment discount requires a separate written agreement.
- (4) Unless the order acknowledgement states otherwise, the selling price is due for payment net (without deduction) within 30 days from invoice date. The statutory provisions for the consequences of default of payment shall apply.
- (5) The Buyer has an offsetting right only when his counterclaim is res judicata, undisputed or acknowledged by us. The Buyer is only entitled to exercise his payment retention right if his counterclaim is based on the same contract relationship.
- (6) A flat-rate compensation of 15% of the selling price shall apply if the Buyer does not accept the sale item or if we are entitled to demand compensation due to non-performance of contract; the Buyer is entitled to prove a smaller loss. We are entitled to prove a greater loss.

## 4. Delivery Time

- (1) The start of the delivery time stated by us is subject to clarification of all technical details.
- (2) The compliance with our delivery obligation is also subject to the timely and proper fulfilment of the Buyer's obligations. The defence of non-performance of contract remains reserved.
- (3) If the Buyer is in default of acceptance or culpably breaches other co-operation obligations, we shall be entitled to claim compensation for the resulting loss incurred by us, including any extra expenditure. The right to pursue broader claims remains reserved.
- (4) If the prerequisites of clause (3) are fulfilled, the risk of accidental loss or deterioration of the sale item shall pass to the Buyer on the day he defaulted in acceptance/payment.
- (5) We are liable in accordance with the statutory provisions if the underlying contract of sale concerns a 'transaction for delivery by a fixed date (Fixgeschäft)' as defined by section 286 (2), item 4 of the German Civil Code (BGB) or by section 376 of the German Commercial Code (HGB). We are also liable in accordance with the statutory provisions if the Buyer is entitled to claim that he has ceased to have an interest in the further contract fulfilment as a result of our culpable default in delivery.
- (6) We are liable in accordance with the statutory provisions if the default in delivery is due to a breach of contract caused intentionally or by gross negligence on our part; we are also liable for the fault of our representatives or vicarious agents. Our compensation liability is limited to the foreseeable, typically occurring loss if the default in delivery is not due to an intentional breach of contract for which we are responsible.
- (7) We are liable in accordance with the statutory provisions if the default in delivery for which we are responsible is due to a culpable breach of a material contractual obligation; in this case however, the compensation liability is limited to the foreseeable, typically occurring loss.
- (8) Otherwise, our liability in the event of a default in delivery shall be limited to a flat-rate default compensation of 0.5% of the declared value of the goods for each complete week of default but not exceeding a maximum of 5% of the declared value of the goods.
- (9) Mandatory statutory entitlements and rights of the Buyer remain reserved.

## 5. Passing of Risk, Packaging Costs

- (1) Unless the order acknowledgement states otherwise, the agreed delivery term is 'franco domicile'. The passing of risk is effected with the handover of the sale item to the carrier or freight forwarder.
- (2) Transport packaging and other packaging pursuant to the provision of the Packaging Decree will not be taken back; pallets are excluded. The Buyer is obliged to dispose of the packaging at his own cost.

## 6. Liability for Defect

- (1) Defect claims of the Buyer are subject to the proper fulfilment of his mandatory examination and complaint obligations pursuant to section 377 of the German Commercial Code (HGB).
- (2) If the sale item is defective, we are entitled, at our option, either subsequent performance in the form of a

defect repair or the delivery of a new defect-free item. In the case of a defect repair, we are obliged to bear all expenditure necessary for the defect repair, in particular transport, travelling, labour and material costs, provided that these are not increased as a result of the sale item having been moved to a place other than the place of performance. Costs for removal or mounting only if the condition as a fault-based indemnity is constituted.

- (3) The Buyer is entitled to demand, at his option, the rescission of the contract or a reduction in the selling price if the subsequent performance is fruitless.
- (4) We are liable in accordance with the statutory provisions if the Buyer asserts compensation claims based on intentional act or gross negligence on our part or on the part of our representatives or vicarious agents. The compensation liability is limited to the foreseeable, typically occurring loss if there was no intentional breach of contract on our part.
- (5) We are liable in accordance with the statutory provisions if we culpably breach a material contractual obligation; in this case however, the compensation liability is limited to the foreseeable, typically occurring loss.
- (6) The liability due to culpable destruction of life, personal injury or health damage remains unaffected; this also applies for the mandatory liability pursuant to the Product Liability Act.
- (7) The liability is excluded unless otherwise provided for above.
- (8) The limitation period for defect claims of new goods is 12 months, starting from the passing of risk. The limitation period is only 6 months if the subject of the contract of sale is/are used goods.
- (9) The limitation period in the case of a delivery recourse pursuant to sections 478 and 479 of the German Civil Code (BGB) remains unaffected; it is two years, starting from delivery of the defective item. This shortening of the limitation period is compensated by the granted discounts.

## 7. Total Liability

- (1) A broader liability for compensation than provided for in section 6 is excluded – regardless of the legal nature of the asserted claims. This particularly applies for compensation claims based on culpa in contrahendo or other breach of obligations, and for claims in tort for compensation of property damage pursuant to section 823 of the German Civil Code.
- (2) If the compensation liability on our part is excluded or limited, such exclusion/limitation shall also apply in respect of the personal compensation liability of our employees, representatives and vicarious agents.

## 8. Reservation of Ownership

- (1) We reserve the ownership of the sale item until receipt of all payments from the entire business relationship, including future debts arising from simultaneously or subsequently concluded contracts including follow-up orders, repeat orders, spare-part orders etc. We are entitled to take back the sale item if the Buyer is in breach of contract, and particularly if he is in default of payment. If we take back the sale item, this does not constitute a rescission of contract unless we have declared such in writing. If we levy execution against the sale item, this always constitutes a rescission of the contract. We are entitled to sell the sale item after we have taken it back, the proceeds from the sale – less reasonable selling costs – shall be credited to the Buyer's debts.
- (2) The Buyer is obliged to handle the sale item with care; he is particularly obliged to sufficiently insure, at his own cost and for new value, the sale item against fire, water, excessive voltage, rudimentary-damage and theft. Any necessary maintenance and service work must be carried out timely by the Buyer at his own cost.
- (3) The Buyer must immediately notify us, in writing, of a seizure or other interventions by a third party in order to allow us to file a third party objection action in accordance with section 771 of the German Civil Procedure Law (ZPO). The Buyer is liable for the expenditure incurred by us if the third party is not in a position to compensate us for the in-court and out-of-court costs of an action pursuant to section 771 of the German Civil Procedure Law (ZPO).
- (4) The Buyer is entitled to sell the sale item in the ordinary course of business; however, he assigns to us in advance, to a level equal to the total sum (including VAT) of our invoice, all accounts receivable that he is owed by his customer or a third party as a result of the sale of the sale item, regardless of whether the sale item was sold without or after a processing. The Buyer remains entitled to collect these accounts receivable even after the assignment. Our entitlement to collect the accounts receivable ourselves is unaffected by this. However, we undertake not to collect the accounts receivable provided that the Buyer fulfils his payment obligations from the received income, is not in default of payment and particularly that no application for the opening of composition or insolvency proceedings has been filed and that payment has not been stopped. However, if this is the case, we are entitled to demand that the Buyer informs us of the assigned accounts receivable and the debtors, gives us all the information necessary for the collection, gives us the related documents and notifies the debtor (third party) of the assignment.
- (5) The processing or transformation of the sale item by the Buyer is always performed for us, without any resulting obligation on our part. If the sale item is processed with other items not owned by us, we acquire the joint ownership of the new item in the ratio of the value of the sale item (invoice total sum including VAT) to the other processed items at the time of the processing. The contract provisions concerning the sale item supplied subject to the reservation of ownership shall also apply for the item resulting from the processing.
- (6) If the sale item is inseparably mixed with other items not owned by us, we acquire joint ownership of the new item in the ratio of the value of the sale item (invoice total sum including VAT) to the other mixed items at the time of mixing. If the mixing is done in such a manner that the Buyer's item must be regarded as the main item, the Buyer undertakes to assign to us a joint ownership in accordance with the aforementioned ratio. The Buyer holds in trust for us the thus resulting sole ownership or joint ownership item.
- (7) As security for the accounts receivable owed to us by the Buyer, the Buyer also assigns to us the accounts receivable owed to him by a third party as a result of the sale item being combined with a plot of land.
- (8) We undertake to release, upon the Buyer's request, the security we are entitled to, to the extent that the realisable value of our security exceeds the thus protected accounts receivable by more than 10%; we are entitled to choose the security to be released.

## 9. Place of Jurisdiction / Performance, Data Protection

- (1) Our place of business is the place of jurisdiction if the Buyer is a businessman as defined by German law, a legal entity under public law or a public special fund; we are however also entitled to bring an action against the Buyer at his place of domicile.
- (2) The law of the Federal Republic of Germany shall apply exclusively and to the explicit exclusion of the UN Sales Convention.
- (3) Our place of business is the place of performance if the order acknowledgement does not state otherwise.
- (4) Company and personal data shall be stored within the scope necessary for the processing of the order (Section 26 of the German Data Protection Act - BDSG).