

ise Individuelle Software und Elektronik GmbH

Terms and Conditions of Sale, Delivery and Payment

Following the General Conditions for Supply of Products and Services issued by the German Electrical and Electronic Manufacturer's Association (ZVEI) as of January 2018

Scope, definitions

Scope:

1. These Terms and Conditions of Sale, Delivery and Payment apply only to entrepreneurs, legal persons under public law or special funds under public law under the terms of Section 310 Para. 1 of the German Civil Code (BGB).
2. Any terms of Customer running contrary to or diverging from these Conditions of Sale shall not be recognised unless they have been expressly agreed to by **ise** in writing.
3. These Terms and Conditions of Sale, Delivery and Payment apply to all future transactions with Customer, provided that they are legal transactions of a related kind.

Definitions:

The terms "**ise**", "Customer" and "Entrepreneur" have the following meanings:

ise is

ise Individuelle Software und Elektronik GmbH,
Osterstraße 15,
26122 Oldenburg

Customer is any entrepreneur that **ise** enters into a contract with in accordance with Section 2 of these General Terms and Conditions.

Entrepreneur is any natural or legal person or partnership with legal capacity which is exercising its trade or profession when entering into a transaction with **ise**.

1. General provisions

1. **ise** reserves without limitation its rights of ownership and exploitation of copyright in respect of cost estimates, drawings and other documents. The documents may be made available to third parties only with **ise's** prior written consent. If the order is not placed, they must be returned to **ise** upon request without undue delay. Sentences 1 and 2 apply mutatis mutandis to Customers' documents. However, these may be made available to any third parties that **ise** has commissioned, to the extent permitted, to deliver the products and services.
2. Partial deliveries are permitted if they are acceptable to Customer.

2. Offer and conclusion of the contract

If a purchase order can be regarded as an offer under the terms of Section 145 of the German Civil Code (BGB), **ise** can accept this within two weeks.

3. Scope of the deliveries and services

The documents, drawings, information about weights, samples etc. enclosed with **ise's** offer are only approximate, unless otherwise stated in the offer. **ise** expressly reserves the right to make changes to the design, layout, choice of materials and manufacturing process even after sending the order confirmation, provided that this does not affect the quality, price and/or material functional data or the delivery period and that this is acceptable to Customer.

4. Delivery periods

1. The delivery period specified by **ise** is not binding, unless other agreements are reached with Customer. This is explicitly dependent on correct and punctual deliveries being made to **ise**.
2. The compliance with delivery periods requires the timely receipt of all Documents to be supplied by the Purchaser, the necessary permits and approvals, in particular plans, as well as the compliance with the agreed payment terms and other obligations to be met by the Purchaser. Should these requirements not be fulfilled on time, the delivery deadlines are extended appropriately on condition that the Supplier is not culpably responsible for the delay.

The delivery period will be extended if unforeseen, unusual and unavoidable events occur, e.g.

- a) force majeure, such as mobilisation, war, terror attacks, rebellion or similar events (e.g. strike, lockout or pandemic);

- b) virus attacks or other attacks on the Supplier's IT systems occurring despite protective measures were in place that complied with the principles of proper care;
 - c) hindrances attributable to German, US or otherwise applicable national, EU or international rules of foreign trade law or to other circumstances for which Supplier is not responsible; or
 - d) the fact that Supplier does not receive its own supplies in due time or in due form.
3. If the shipment of the goods is delayed at Customer's request or for other reasons, for which **ise** is not responsible, Customer will pay the resulting additional costs and will bear the risk of the goods being accidentally destroyed or damaged after notification of readiness for delivery.
 4. If the product is stored at **ise** (or on the premises of **ise**'s authorised representatives), **ise** is entitled to charge at least 0.5 % of the price of the delivery for every month or part of a month of storage. **ise** reserves the right to make other claims, in particular under the terms of Section 373 of the German Commercial Code (HGB).
 5. **ise** reserves the right to make partial and early deliveries.
 6. In the event of a delay in delivery, for which **ise** is responsible, Customer is obliged to grant **ise** in writing an appropriate extension period. If, in the event of a delay in delivery, Customer grants **ise** an extension period that is reasonable in the circumstances and if **ise** misses the new deadline due to reasons, for which **ise** is responsible, Customer is entitled to withdraw from the contract. Customer may only claim compensation if any losses or damage suffered were caused intentionally or as a result of gross negligence.
 7. If the contract is a fixed-date transaction under the terms of Section 376 of the German Commercial Code (HGB), the previous paragraph applies, with the proviso that Customer can withdraw in writing from the contract to the exclusion of all further rights, unless the losses or damage suffered were caused intentionally or as a result of gross negligence.

5. Transfer of risk, shipment

1. The Incoterms® rules, as amended, currently Incoterms® 2020, "EXW" (ex works) clause, applies to the relationship between **ise** and Customer. The risk of the goods being accidentally destroyed or damaged is transferred to Customer when the goods are shipped to Customer and, at the latest, when they leave the factory/warehouse. This applies regardless of whether or not the goods are shipped from the place of fulfilment and regardless of who is responsible for the shipping costs.
2. If **ise** takes responsibility for the transport insurance as part of its general insurance policy, the terms and conditions of the insurance apply and the following documents must be provided by Customer:

- a) Factual report from the transport company (for example the receipt from the haulage firm)
 - b) Original copy of the consignment note
 - c) Transfer of rights for the damage caused
3. If **ise** is responsible for the transport damage, Customer must inform **ise** in writing immediately after receiving the shipment that transport damage has occurred. The damaged parts must be sent back to **ise** or to the relevant **ise** warehouse free of charge.
 4. Customer may not refuse to accept deliveries because of minor defects.

6. Prices, payment terms, securities

1. **ise**'s prices are quoted ex works or from the relevant warehouse and exclude the cost of packaging and the respective statutory VAT at the current rate. The cost of the packaging will be invoiced separately.
2. Unless a fixed price agreement has been reached with Customer, **ise** reserves the right to make appropriate adjustments to the prices as a result of changes in the cost of salaries, materials and sales for deliveries that are made three months or more after the contract is concluded.
3. All Customer's payments must be made to **ise**'s bank account on the agreed dates.
4. If Customer's financial situation changes after the date on which **ise** sends out the order confirmation and if this could call into question Customer's ability to fulfil its payment obligations, **ise** is entitled to withhold delivery of the goods or to require Customer to provide security. If Customer does not comply with **ise**'s request for security within a reasonable period, **ise** is entitled to withdraw from the contract.
5. **ise** representatives and **ise** travelling personnel are not authorised to accept payment or means of payment unless they have permission to do so.
6. Customer is obliged to comply with **ise**'s request to pay within the term of payment stated in the offer/contract upon receipt of the goods. At the end of this period Customer is considered to be in default, without a further reminder being necessary.
7. If **ise** has taken responsibility for setting up and assembling the goods, unless otherwise agreed, Customer will pay all the necessary incidental costs such as travel costs, costs of transporting the employee's tools and luggage and the accommodation allowance, in addition to the agreed payment for the work.

7. Offsetting payments and rights of retention

Customer is entitled to offset payments to **ise** only if its counterclaims are res judicata or are undisputed. Customer is entitled to exercise a right of retention with regard to **ise** only if its counterclaim is based on the same contractual relationship.

8. Defects

ise's liability for defects is as follows:

1. All the parts or services that prove to have a defect within the period of limitations – regardless of the operating period – must at **ise's** discretion be rectified or replaced with new parts or services, provided that the cause of the defect already existed at the time when the risk was transferred.
2. The period of limitations for claims for defects is 24 months. This does not apply if the law specifies longer periods under the terms of Section 438 Para. 1 Point 2 (buildings and items for buildings), Section 479 Para. 1 (recourse claims) and Section 634a Para. 1 Point 2 (construction defects) of the German Civil Code (BGB). It also does not apply in the case of loss of life, injury or harm to health or of an intentional or grossly negligent breach of duty on the part of **ise** or of malicious silence with regard to a defect. The statutory regulations concerning the suspension of limitations and the suspension and restarting of the periods remain unaffected.
3. Customer must inspect goods and services immediately after receiving them. Section 377 of the German Commercial Code (HGB) applies. Customer must inform **ise** of defects in writing, by email or by fax within a period of two weeks. The decisive factor is the date on which **ise** receives the complaint. In the case of obvious defects, this period begins when the goods are delivered to Customer. In the case of hidden defects, it begins when the defects are identified by Customer. If **ise** is not notified of the defect within the specified period, Customer cannot make any warranty claims. Customer bears the full burden of proof in respect of all claims, in particular with regard to the defect itself, the date on which it was identified, and the timeliness of the complaint.
4. In the case of complaints that are submitted in due time and form, Customer is entitled to withhold payments that are proportionate to the defects that have been identified. Customer can withhold payments only if a complaint has been made, whose justification is beyond doubt. If the complaint was made wrongly, **ise** is entitled to require that Customer reimburse it for any expenses incurred.
5. First of all, **ise** must be given a reasonable opportunity to rectify the problem within a reasonable period. Any parts that have been replaced must be sent back to **ise** on request free of charge.
6. If the attempt to rectify the problem fails (under the terms of Section 440 of the German Civil Code (BGB)), Customer can withdraw from the contract or

reduce the payment amount, notwithstanding any claims for damages under the terms of Section 12.

7. Claims cannot be made for defects if there is only a minor deviation from the product's agreed level of quality or a minor impairment of the usability of the product or if there is natural wear or damage which occurred after the transfer of risks as a result of incorrect or negligent handling, excessive loads, unsuitable operating resources, faulty construction work, an unsuitable building area or external influences which are not implied in the contract or if there are unreproducible software errors. If Customer or a third party makes improper changes or carries out improper repairs, Customer is not entitled to make a claim for defects for these problems or the resulting consequences. **ise's** warranty terms require the product to be fitted correctly and to be started up and used precisely in accordance with the operating instructions.
8. Customer cannot make any claims for the necessary expenses incurred for the purpose of rectifying the problem and in particular the cost of transport, travel, labour and material, if the expenses have increased because the object of delivery was subsequently taken to a location other than Customer's site, unless taking it to the other location corresponds with its intended use.
9. Customer may make recourse claims against **ise** under the terms of Section 478 of the German Civil Code (BGB) (recourse of the entrepreneur) only if Customer has not reached any agreements with its own customer that go beyond the statutory claims for defects. With regard to the scope of Customer's recourse claim against **ise** under the terms of Section 478 Para. 2 of the German Civil Code (BGB), this Section 8 Point 7 and Point 8 additionally apply mutatis mutandis.
10. With regard to claims for damages, Section 12 (Other claims for damages) of these Terms and Conditions of Sale, Delivery and Payment otherwise applies. Customer cannot make further claims or claims other than those described in this Section 8 against **ise** and its agents because of a defect.

9. Returns processing (Return of goods)

1. If Customer's warranty claim is not valid, **ise** is not obliged to take the goods back.
2. If **ise** makes an exception and agrees to take back Customer's goods without a warranty claim being made, this constitutes a voluntary measure and does not involve the recognition of legal obligations. This does not justify Customer making a claim for the refund of the purchase price.
3. If **ise** processes a return without a warranty claim being made as described in Point 2 above, Customer will be charged a flat-rate processing fee.

10. Retention of ownership

1. **ise** retains ownership of the items delivered (reserved goods) until all the payments have been received from all the contracts that have been entered into up to the time of the signing of the final contract between Customer and **ise**. Customer can resell the goods that are subject to retention of ownership as part of its normal business. However, Customer will assign to **ise** all claims for the amount of the relevant invoice value that Customer has incurred as a result of the resale of the goods to its own customer or to third parties. Customer is entitled to collect the claims even after they have been assigned. This does not affect **ise's** authorisation to collect the claims itself. In particular, **ise** can require Customer to inform **ise** about the assigned claim, its level and its debtors, to provide all the information needed for the purposes of collection, to submit the accompanying documents to **ise** immediately and to inform the debtor of the assignment of the claim in writing.
2. Customer is not entitled to pledge the reserved goods or to transfer the ownership of them to third parties in order to provide security.
3. If Customer breaches the terms of the contract, specifically by falling into payment arrears, **ise** is entitled to take back the goods. If **ise** takes back or pledges the goods, this does not constitute a withdrawal from the contract on **ise's** part. If **ise** wishes to withdraw from the contract, it will inform Customer of this expressly in writing. Customer must inform **ise** immediately in writing of any pledges or other interventions by third parties.
4. If Customer processes or modifies the purchased item, this is always done in the name of and on behalf of **ise**. In this case Customer retains its expectant right to the purchased item in relation to the unmodified item. If the purchased item is processed with other items not belonging to **ise**, **ise** will acquire co-ownership of the new item in the proportion of the objective value of the purchased item to the value of the other items at the time when they are processed. This also applies to the mixing of items. If the items are mixed in such a way that Customer's product can be regarded as the main product, it is agreed that Customer will transfer proportional co-ownership to **ise** and will safeguard **ise's** resulting sole ownership or co-ownership. In order to provide security for **ise's** claim against Customer, Customer will also assign to **ise** claims against a third party that result from combining the goods under retention of title with a piece of land. **ise** hereby agrees to accept this assignment.
5. **ise** will release Customer's security on request at **ise's** discretion and to the extent that the value of the security exceeds the value of the claims being secured by more than 25 %.

11. Impossibility of delivery, adaption of contract

1. If it is impossible to deliver the goods or services, Customer is entitled to claim damages, unless **ise** is not responsible for the impossibility of delivering the

goods. However, Customer's claim for damages is restricted to 10 % of the value of that part of the delivery that cannot be put into operation because of the impossibility of delivery. This restriction does not apply if mandatory liability is applicable in cases of intent, gross negligence or due to loss of life, injury or harm to health. This does not involve a change in the burden of proof to Customer's disadvantage. Customer's right to withdraw from the contract remains unaffected.

2. Should occurrences as defined by Section 4 Point 2 a) to d) significantly change the economic meaning or the content of the delivery or have a significant effect on the Supplier's operations, the contract will be adapted appropriately in good faith. Where this is economically unjustifiable, the Supplier has the right to withdraw from the contract. The same applies if required export permits are not granted or cannot be used. If the Supplier intends to exercise its right to withdraw from the contract, it must notify the Purchaser thereof without undue delay after having realized the consequences of the event; this applies even if an extension of the delivery period was initially agreed with the Purchaser.

12. Other claims for damages

1. Customer cannot make claims for damages and expenses (referred to in the following as claims for damages) for whatever legal reason and, in particular, due to a breach of contractual obligations or due to unlawful acts. This does not apply if mandatory liability is applicable, for example under the terms of the German Product Liability Act (ProdHaftG), in cases of intent, gross negligence on the part of legal representatives or executives, loss of life, physical injury or harm to health or as a result of the culpable breach of material contractual obligations. However, a claim for damages for the breach of material contractual obligations is restricted to foreseeable damages that are typical for this type of contract, provided that there is no intent or gross negligence involved and that there is no liability for loss of life, injury or harm to health.
2. For the rest, the basis and extent of claims for damages is restricted to the amount of insurance available to **ise** at the time the damage occurred.
3. If Customer is entitled to make claims for damages under the terms of this Section 12, the statutory regulations concerning the period of limitations apply.

13. Conditional performance

1. The performance of this contract is conditional upon that no hindrances attributable to German, US or otherwise applicable national, EU or international rules of foreign trade law or any embargos or other sanctions exist.
2. The Purchaser shall provide any information and documents required for export, transport and import purposes.

14. Place of fulfilment, place of jurisdiction, scope

1. The place of fulfilment for all obligations referred to in this contract, including a claim resulting from withdrawal, is Oldenburg (Oldb), Germany.
2. The places of jurisdiction are the places where the courts with jurisdiction over Oldenburg are located. This also applies to legal proceedings concerning bills of exchange and cheques and, in particular to claims relating to the debt collection procedure. However, if legal proceedings against **ise** are not pending, **ise** is entitled to take proceedings against Customer in the court with jurisdiction over the town where Customer is based.
3. The law of the Federal Republic of Germany applies to all legal relationships relating to this contract. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

15. Binding character of the contract

Even if individual provisions of the contract are or become legally ineffective, the remaining parts of the contract will continue to be binding. This does not apply if adherence to the contract constitutes an unreasonable hardship for one of the parties.

08/2020