

## **GENERAL BUSINESS AND DELIVERY TERMS AND CONDITIONS DIAS INFRARED GMBH**

These general business and delivery terms and conditions shall apply to the legal relationship between DIAS Infrared GmbH and corporations/ businesspersons that employ the services of DIAS Infrared GmbH.

### **SECTION 1 GENERAL CONDITIONS/SCOPE OF APPLICATION**

1. These general business and delivery terms (hereinafter referred to GTC) determine the legal relationship between DIAS Infrared GmbH (hereinafter referred to as DIAS) and the purchasers of services and deliveries by DIAS (hereinafter referred to as the Customer).

2. These GTC apply to all commercial transactions and contractual relationships between DIAS and the Customer that are associated with services and/or deliveries of goods from DIAS (hereinafter, "services" will also refer to and include delivery of goods). DIAS renders all services on the basis of these GTC. The valid version (of the GTC) at the time of services rendered applies in as far as it has not been modified through other agreements.

3. These GTC also apply when the Customer makes use of conditions other than these, or provides services to the Customer with knowledge of adverse GTC of the Customer. Differing, modified or adverse GTC of the Customer do not become part of the contract, even with knowledge of these. The exception is that a written agreement from DIAS exists in regard to their applicability.

4. These GTC only apply toward businesspersons in accordance with Section 14 of the German Civil Code. A businessperson is any natural person or partnership authorised by law which, at the time the agreement is concluded, exercised its commercial or independent professional activity. By submitting a legally binding declaration, the Customer pledges to act within his capacity as a businessperson according to Section 14 of the BGB (German Civil Code). These GTC also apply to future legal transactions between the Customer and DIAS, unless the contractual parties agree upon new GTC as part of the contract.

### **SECTION 2 CONCLUSION OF CONTRACT**

1. When DIAS offers its deliveries and/ or services, it does not constitute a binding proposal. It is merely an invitation ad offerendum. This implies a transaction, which serves as the preparation for the Customer to make an offer.

2. With his order, the Customer submits a binding proposal to conclude a contract. DIAS accepts this proposal by sending an order confirmation. The Customer is bound to the binding proposal sent for 14 days. Once this deadline has passed, the Customer may retract from his proposal in writing, should the proposal have not yet been accepted by means of an order confirmation.

3. Orders only become legally binding with the written confirmation by DIAS. The subject and contents of the contract, as well as the corresponding items delivered, are solely the result of the sent order confirmation, as well as these GTC.

4. Pictures, drawings, weight, mass and performance data provided in orders and related documents are only then definitive when these specifications have been expressly declared as binding.

5. DIAS reserves the proprietary rights and copyrights of all documents, in particular of cost estimates, drawings and proposal documents, as well as of all other documents sent. The Customer does not have the right to make these documents available to third parties without prior consent from DIAS. The Customer is obligated to return these documents to DIAS without being asked should the contractual relationship not materialise.

### SECTION 3 PRICES/SHIPPING

1. All prices are in Euro and are subject to the VAT applicable at the time of order. The conditions in Section 7, Para. 1 are explicitly referred to.

2. All stated prices are quoted ex works, in as far as no other individual written contractual agreements have been met. In this respect, the universal incoterm conditions apply, whereby fundamentally delivery ex works is the agreed upon applicable method. The Customer thereby bears all transport and export costs that may be incurred, as well as all other delivery-related and accrued costs relating to this. The stated prices do not include the costs for installation and assembly. These costs will be agreed upon separately. The abovementioned terms also do not include any packaging costs that may result. The Customer is bound to adhere to existing customs obligations and to observe the corresponding information, as well as to bear the costs that may result. DIAS is not obligated to provide information to this effect.

3. Prices are only valid for the respective order; they are not valid retrospectively or for future orders.

4. The goods are shipped in accordance with the incoterm conditions.

5. The services are shipped in the manner deemed most economical by DIAS in as far as no other agreement has been reached or it is stated otherwise in these GTC. We cannot assume liability for the shipment method that appears to be the most economical, fastest or most secure. The Customer bears the fundamental obligation to insure the goods/ shipment against damages and other factors.

### SECTION 4 PASSING OF RISK

1. The services are shipped at the Customer's risk in as far as no other agreement has been reached or it is stated otherwise in these GTC. This risk is transferred to the Customer when the services are handed over to a suitable carrier company. This also applies if DIAS assumes shipments of the services through a transport person appointed by DIAS.

2. In as far as DIAS is contractually responsible for the installation and/ or assembly, the risk is transferred to the Customer when the Customer takes over the goods in their corporation, or when the Customer refuses acceptance of the items without legal grounds, or when the Customer is in arrears. The Customer is obligated to declare acceptance of the plant within three days of starting operation, or to submit in writing, facts that oppose an acceptance. In as far as the delivery is made by a carrier company and DIAS is still obligated to install and/ or assemble the goods, the risk of the shipment is transferred to the carrier company when the goods are handed over. The Customer stores the goods at his location at his own risk.

3. The Customer may not refuse the receipt and/ or acceptance of the shipment due to insignificant flaws. The storage on location is at the Customer's own risk and cost.

## SECTION 5 RETENTION OF TITLE/ OFFSETTING/ RIGHT OF RETENTION

1. The purchaser shall only be entitled to offset with claims, which have been legally established or are undisputed. The Customer is only entitled the right of retention with respect to claims made by DIAS if these claims are undisputed or have been determined to be legally binding.

2. Deliverables (goods subject to retention of title) from DIAS remain the property of DIAS until all claims towards the Customer from the business relationship have been fulfilled.

3. The goods subject to retention of title, which are the property of DIAS, may only be sold and/ or handled in the normal course of business. Selling and/ or handling are also not permitted if the Customer is in arrears with the contractually stipulated payment obligations. The Customer hereby already surrenders his future claims from resale against third parties – including existing ancillary rights and claims – as security to DIAS in the case of resale of the goods subject to retention of title. An explanation from the Customer extending beyond this is not required in this case.

4. In as far resale of the goods subject to retention of title follows with other items and no individual price has been agreed upon for the goods subject to retention of title, the Customer will surrender part of the total claim, which corresponds to the actual value of the goods subject to retention of title, to DIAS.

5. The Customer is expressly permitted to process, intermix and/ or combine the goods subject to retention of title with other items. The, in this case, newly created goods will be considered goods subject to retention of title in this respect.

6. Processing is done for DIAS. DIAS and the Customer already agree that when goods are combined and/or intermixed with other things which are not owned by DIAS, that DIAS acquires the co-ownership share in the amount of the value of the combined and/ or intermixed goods subject to retention of title at the time of combining and/ or intermixing. The assignment of a claim stated in Section 5, Para. 3 is, however, restricted to the amount that corresponds to the value of the processed, intermixed or combined goods subject to title of retention.

7. The Customer is entitled and obligated to demand the claims outlined in this clause. This does not apply if the Customer is in arrears with his payments towards DIAS and DIAS pronounces the revocation of the authority to collect. At the request of DIAS, the Customer must communicate the scope of the resale, processing, combining and/ or intermixing of the goods to the full extent.

8. DIAS will release part of the security interest at the request of the Customer should the value of the security interest of DIAS exceed the amount of the insured claims by more than 10%.

9. The Customer is not permitted to pawn or assign as security the goods subject to retention of title. In case of breach of contract, in particular when in arrears, the complete outstanding amount is due immediately for payment.

#### SECTION 6 OBLIGATION TO EXAMINE AND GIVE NOTICE OF DEFECTS/ OBLIGATION TO ACCEPT DELIVERY

1. The Customer is subject to the obligation to examine and give notice of defects in accordance with Section 377 of the German Commercial Code. The Customer must examine the goods immediately upon delivery by DIAS and/ or receipt of goods, in as far this is possible in the normal course of business. DIAS must be informed without delay if defects present themselves. The goods are considered approved should the Customer not notify DIAS of these defects, unless it is a defect that was not noticeable during the inspection. If such a defect presents itself at a later time, DIAS must be notified immediately upon discovery of the defect. Otherwise, these goods will, in view of this defect, be considered approved.

2. The Customer's refusal to accept goods due to extraneous defects is impermissible.

3. The goods/ delivery must be examined without delay if the delivery is shipped within 4 weeks. The notification of defects must be submitted in writing.

4. The Customer is obligated to accept the shipment/ goods, in as far as the goods are functional and free of defects.

#### SECTION 7 ASSEMBLY/ SET-UP/ INSTALLATION

1. Fundamentally, assembly and/ or set-up and/ or installation of the goods is not contractually obligatory. Anything to the contrary must be contractually agreed upon by the contractual parties. Inherently, the prices indicated do not include assembly and/ or set-up and/ or installation (hereinafter referred to as assembly).

2. In as far as DIAS is commissioned for assembly, the Customer must accomplish all prerequisites in order for DIAS to perform the assembly in accordance with the contractual agreement and as per the agreed upon scope without disruption. This pertains in particular all work that allows the services from DIAS can be carried out, as well as the provision of professionals, for whom the costs will be borne by the Customer. The materials and provisions must also be supplied in such a way that assembly may be undertaken immediately. Delays, which emerge during assembly and can be traced back to the Customer's aforementioned performance, will be placed to the debit of the Customer. The resulting costs from this in regards to staff, the journey to and from the site as well as increased output must be proved by DIAS and are borne by the Customer.

3. In this case, the Customer must make all materials and items available, which are required for professional assembly. This applies to all materials that come into question for fulfilling the services, as long as no other contractual conditions have been provided. The assembly team must be informed of all construction plans and hidden wiring, as well as specifics in regard to the location at which the assembly is to take place.

4. The Customer is obligated to meet with all safety precautions and measures, in order to guarantee the safety of the assembly professionals appointed by DIAS. In this respect, appropriate protective clothing is to be made available as well.

#### SECTION 8 TERMS OF DELIVERY/ ADDITIONAL DELIVERY TERMS/ RIGHT TO WITHDRAWAL

1. The terms of delivery and the particulars of the respective conditions of delivery are the result of the contractual agreement by the contractual parties. The contractually agreed upon terms of delivery begins with the receipt of the order confirmation pertaining to the contractual relationship.

2. The agreed upon delivery date will be extended proportionally if all documents that are to be supplied by the Customer as well as the documents required for the fulfilment of the contract, and/ or the necessary permits are not received on time or cannot be presented. The same applies in regards to delays, for which the Customer is responsible, as well as if the Customer violated the abovementioned contractual obligations.

3. The terms of delivery will be extended proportionally in particular if terms are not adhered to due to force majeure and/ or problems of national/ international law and/ or can be traced back to the conduct of third parties, which are neither represented by the Customer nor by DIAS, and which could not have been prevented even in keeping with the care required during transport. This also applies in regards to deliveries to DIAS that do not arrive by the deadline, for which DIAS is not responsible. In this case, the Customer will be informed without delay and a new delivery date will be agreed on.

4. The conditions of this clause respectively apply when an agreement has been reached between the parties in regards to an installation, assembly and/ or set-up period. The deadline in this respect, however, presumes that the Customer fulfils his obligations as contractually outlined above, in particular that the materials, devices and/ or connections to be installed are free from defects and installed according to regulations.

5. DIAS reserves the right to perform and invoice partial services, unless delivery of partial services cannot be reasonably expected from the Customer.

6. The Customer cannot raise any damage compensation claims in regards to delay and/ or uncompleted services should the delivery terms be extended for the reasons mentioned above.

7. The Customer shall only be able to withdraw from the underlying contract if the delivery or installation deadlines indicated by DIAS are exceeded, there is a delay of more than 6 weeks, or if a reasonable period of grace cannot be complied with due to the fault of DIAS.

8. In as far as the Customer can prove that damage was incurred and that the delay is the fault of DIAS, he has the right to claim compensation for each full week in the amount of 0.5%, and up to a maximum of 5%, for the part of the shipment that cannot be used due to the delay. DIAS reserves the right to prove that damages were not as significant or major.

9. DIAS reserves the right to withdraw from the contract in the case that the Customer is delayed in accepting the delivery or refuses the delivery without just cause, as well as a reasonable period

of grace of 10 days has passed without success. In this case, DIAS has the right to demand that the Customer refund the costs incurred through storage. The right to enforce default interest claims remains unaffected thereby. The obligation to refund the storage costs also exists when DIAS does not invoke its contractual right to withdraw from the contract. The monthly storage charge is 1.0% of the respective shipment value, yet not more than 5%. The Customer reserves the right to prove that damages were not as significant or major.

## SECTION 9 PAYMENT TERMS

The payment terms comply with the contractual agreement reached by the contractual parties. The invoices must be paid in full within 30 days from date of invoice should no separate agreement have been reached.

## SECTION 10 MATERIALS DEFECT LIABILITY/WARRANTY/ GUARANTEE / DAMAGE CLAIMS/DISCLAIMER OF LIABILITY

1. The legal regulations apply in regards to the materials defect liability and warranty in far as no other agreement has been reached. DIAS assumes a 24-month guarantee for goods and shipments in as far as no other agreement has been reached.
2. Damage claims by the Customer, incidentally, exist only if the Customer has met his contractual obligations in accordance with these GTC, and if, in this case, there are downright/ visible damages. Furthermore, damage complaints must be submitted in writing.
3. DIAS is obligated to amend or delivery new goods free of charge, in as far as the foregoing conditions have been fulfilled, if a materials defect exists and has existed at the time of passing of risk. DIAS must, in this respect, be granted a reasonable deadline for supplementary performance. There is no seller's warranty for normal wear, in particular pertaining to expendable parts.

A seller's warranty and/ or guarantee obligation, as well as an obligation for damage compensation is not constituted above all when damages or other disorders on equipment, shipments or similar items emerge that can be traced back to inappropriate handling, incorrect operations and/ or by not complying with the required maintenance measures. Moreover, claims for damage compensation, warranty and/ or guarantee cannot be asserted if damages or disorders are due to programmes rendered by the Customer or third parties, installed equipment, resources, and/ or other defective services have been installed or performed through the Customer and/ or third parties, and/ or if assembly was carried out by the Customer and/ or the Customer interfered with the goods. This applies, among other things, to the point of intersection between the provision by DIAS and the Customer's or a third party's programming services. Functionality in this respect cannot be guaranteed.

4. Supplementary performance claims expire within 12 months from the beginning of the legal statute of limitations. This statute of limitations does not apply if different conditions have been stipulated in Section 438, Para. 1 No. 2 of the German Civil Code and this is a case in point. The statute of limitations of 12 months moreover does not apply in cases of intent, gross negligence and malicious concealment.

5. In particular, claims for defects do not exist if there

- is extraneous interference of the usability
- are damages, which can be traced back to excessive use and/ or misuse
- faulty connection of other performance-based components, i.e. faulty interfaces and/ or flawed performance-based components, which are to be connected via the interface
- actions by third parties, which have influence on the functionality of the goods

6. Further damage compensation claims other than those regulated in this contract, such as delayed services, breach of a contractual obligation and/ or due to unauthorised dealings, are excluded, unless these can be attributed to intent, gross negligence, and malicious concealment, or due to injury to life, bodily injury or injury to health. The foregoing disclaimer of liability furthermore does not apply if the regulations of the Product Liability Act are adhered to, a significant contractual obligation is infringed and/ or a guarantee that was taken over is not observed. Subject to the foregoing rules, DIAS moreover does not assume liability for consequential damages and lost profits.

7. The exclusions of potential damage compensation claims mentioned in this Figure also apply to any conduct whatsoever of subcontractors and DIAS employees.

8. DIAS and/ or its subcontractors and legal representatives do not assume liability for financial losses in regards to indirect damages, in particular consequential damages, unforeseeable damages or atypical damages in the case of slight negligence.

9. All abovementioned guarantee and warranty regulations, as well as the hereby resulting claims, refer to the proper functionality of the delivered goods, yet not to the use of the goods/ the pursued application of the delivery, a specific economic or other success or other results. For this, the Customer must meet the necessary requirements himself.

## SECTION 11 SOFTWARE AND PROGRAMMING SERVICES

1. Upon consultation and contractual agreement, DIAS may provide programming services and/ or create software related to the contract. In this respect, the regulations of these GTC apply in as far as no other agreements have been reached.

2. In as far as DIAS is required to create or provide software, DIAS will relinquish this software to the Customer for use in accordance with the conditions specified in this contract. The contents and scope, as well as additional agreements, will only be determined by these GTC. If enhancements and/ or substantiation must be made in this regard, it must be formulated in writing via a separate appendix: "Special object of a contract." In this case, the appendix is an incorporated part of this contract.

3. The Customer is obligated to formulate his programming and/ or software creation demands as precisely and detailed as possible. The Customer will not receive the source code for the contract software. Moreover, the provision of updates and new versions is not owed as per the contract.

4. The contract software must be handed over upon completion and delivery of the goods, unless otherwise regulated. If services are delayed through no fault of DIAS, the completion and delivery deadline will be deferred. The new deadline will be determined in accordance with the regulations outlined in this contract regarding delivery delays. DIAS is not obligated to install the software on the Customer's hardware. As per the contract, a briefing relating to the software is also not owed. Extraneous defects, which do not influence the functionality and ability to use the contract software, do not warrant a refusal of acceptance.

5. DIAS does not assume liability for the technical practicability and usability of the contract software in regards to the purpose of use. Above all, DIAS does not assume liability for a specific scope of protection, commercial applicability and/ or production maturity. DIAS does not assume liability if the Customer takes care of the installation. This also applies if the source code is interfered with and/ or third parties interfere with the source code.

6. Liability for loss of data is limited to the typical recovery costs that would have arisen through the regular and risk-related creation of backup copies. Apart from that, the limitations of liability of these GTC apply.

7. DIAS transfers the basic usage and exploitation right to the Customer. The usage right applies only to the direct use of the contract software by the Customer. The Customer is not authorised for the resale, reproduction, letting or other economic exploitations of the software. The rights in this respect will not be transferred to the Customer. An individual contractual agreement in writing is required if there should be a desire for this to be waived. All payments for the contractual services must be paid in full in order for the agreed upon usage rights to be transferred.

8. The Customer is prohibited from interfering with and reproducing the source code. The liability assumed by DIAS is no longer applicable should the source code be tampered with.

9. DIAS neither assumes liability nor warranty for the functionality and compatibility of the contract software as well as for the functionality and compatibility of any other used installed hardware if the Customer links the contract software from DIAS with different software in terms of content and/ or the Customer has performed advance services in this regard. Advance services by the Customer or by third parties commissioned by the Customer pre-exist if data, software and/ or interfaces, with which the contract software is linked, are made available by the Customer or a third party. DIAS is not obligated to check the respective data, software and/ or interfaces provided. DIAS does not assume liability or warranty for the functionality and compatibility of the contract software and the Customer's existing software as well as for the Customer's or a third party's corresponding interfaces if the services provided by DIAS are brought into contact with the Customer's or a third party's software and/ or interfaces.

## SECTION 12 RESERVATION OF CONTRACT FULFILMENT

The fulfilment of the contract is under the reservation that no actual and/ or legal impediments, in particular national and/ or international regulations, oppose it. The Customer is obligated to provide DIAS with all information and documents required for import and export before the contract is realised.

## SECTION 13 FINAL CLAUSES/JURISDICTION CLAUSE

1. Business relations between DIAS and the Customer are subject solely and exclusively to the laws of the Federal Republic of Germany under the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG). We hereby also clarify that a committee in regards to the use of the CISG exists.

2. The contractual language is German.

3. The legal jurisdiction for any disputes arising from contractual relations between DIAS and the Customer, if the Customer is a businessperson, a corporate body under public law or separate assets subject to public law, is the headquarters of DIAS.

4. The legal enforcement of the remaining regulations is not affected if individual regulations of these GTC should be ineffective or become ineffective, unless adherence to the contract constitutes unreasonable hardship for one of the parties. This also applies if loopholes exist, unless the adherence to the contract is unacceptable for one of the parties.

**Effective: 01.11.2016**

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