

Standard Terms and Conditions of the company innovaphone AG (hereinafter referred to as "innovaphone")

1. Scope of application

innovaphone will make deliveries exclusively on the basis of the following Standard Terms and Conditions and the provisions in the respective applicable distributor price list, unless otherwise agreed upon in writing. In addition, the Company refers to the terms of the licences by the manufacturers that are delivered together with the products as agreed in the contract (the Products).

Deviating terms and conditions by the customer are not valid, unless confirmed in writing by innovaphone. The same applies to any modifications and amendments to these Standard Terms and Conditions.

Oral commitments and side agreements require written confirmation by innovaphone.

2. Deliveries and services

2.1. Any documents like illustrations, drawings and weight specifications are not deemed contractually agreed upon, unless stated by innovaphone expressly to be contractually binding.

2.2. innovaphone is entitled to deliver Products that differ from the customer's order, if the change in product does not affect the technical performance and the functionality and - if a specific design had been agreed upon - does not refer to the appearance of the Products.

2.3. The Company reserves the right to make and invoice partial deliveries, unless otherwise agreed upon in writing or unless the customer proves that partial delivery would be against his interests.

2.4. Delivery dates agreed upon are deemed met, if the Products were handed over to the carrier by the agreed delivery date, unless otherwise expressly agreed upon in writing.

If the shipment of goods that are ready for dispatch is delayed for reasons for which innovaphone is not responsible, the Products may be put into storage at the customer's cost and risk.

2.5. Delivery dates are agreed upon on the basis of innovaphone's expected ability to perform with the proviso that there are no unforeseen circumstances or impediments, regardless of whether these occur on the part of innovaphone or the manufacturer, such as force majeure, governmental measures, non-issuance of official approvals, industrial actions of all types, sabotage, raw materials shortages or delayed delivery of materials for which the Company is not responsible. These types of occurrences extend the delivery period accordingly. This also applies if they occur while a shipment is already delayed.

If delivery by innovaphone is delayed, the customer is entitled to rescind the contract fully or partially after expiry of an appropriate grace period that was set in writing. If innovaphone fails to meet an appropriate grace period set by the customer, the customer is entitled to claim compensation for any damage suffered due to the delay in the maximum amount of 0.5 % per completed week (in total limited to a maximum of 5 %) of the value of the part of the total delivery that could not be put into operation for the intended purpose due to delayed completion of individual parts. The damages to be paid by innovaphone pursuant to this shall be offset against the final invoice. Any claims for damages beyond this scope on the part of the customer for delayed delivery are excluded. This also applies to cases, when a grace period set has expired.

2.6. Any potential taking out of transport insurance or taking over of transport costs has no effect on the passing of risk.

3. Cancellation and refusal to accept the goods

3.1. If the customer cancels an order confirmed by innovaphone fully or partially without being entitled to do so or if the customer refuses to accept ordered goods fully or partially without authorisation despite being granted a grace period of 10 days, innovaphone is entitled to rescind the contract without setting a further grace period and regardless of the requirements pursuant to Section 323 (2) BGB [German Civil Code] and to demand from the customer lump-sum damages amounting to 30% of the order value of the cancelled or refused goods. The customer has the right to prove that the actual damage incurred by innovaphone is significantly lower than the lump-sum claim for damages.

Alternatively, innovaphone shall also be entitled to calculate the actual damage incurred due to the customer's cancellation or refusal to accept.

Any further rights on the part of innovaphone are not excluded by the provision above.

3.2. Agreements concerning the change of delivery dates require written form. If the delivery date is changed by more than four weeks at the customer's request, innovaphone shall be entitled to claim an advance payment from the customer amounting to 50% of the order value.

4. Acceptance and passing of risk

4.1. The customer shall carefully examine the goods for completeness and compliance with the invoice immediately after receipt of the goods. If the customer fails to make notification of defects within a period of 8 days following receipt of the delivery, the goods are deemed accepted. Notifications of defect must contain an exact description of the defect they refer to. This obligation is also binding for the customer, if the goods are intended for resale. Obvious defects must be declared vis-a-vis the carrier immediately upon handover from the forwarder, post, rail etc. If the goods are collected personally, the customer shall immediately inspect the goods for obvious defects upon handover. In case of hidden defects, the aforementioned period commences from the point in time when these first become apparent. Notifications of defect are no longer accepted after expiry of said period.

4.2. Immaterial defects that do not impair the functionality of the delivery object do not entitle the customer to refuse acceptance.

4.3. The risk passes to the customer upon handover of the Products to the carrier, his agents or other persons appointed by innovaphone, but at the latest upon direct handover of the Products to the customer or his agents. This provision shall also apply in cases of return shipments after rectification of defects or in case of service performance for payment.

5. Prices and payment conditions

5.1. The prices stated in the respective applicable distributor price list are ex warehouse Sindelfingen. The customer will additionally be invoiced value-added tax and other statutory duties in the country of delivery as well as packaging, cost of transport and transport insurance.

5.2. Payments are due within 30 days after issuing of the invoice without any deductions. The invoice is issued upon delivery. Acceptance of bills of exchange and cheques is subject to the condition that said cheque or bill of exchange is honoured.

In cases of failure to meet payment dates, innovaphone shall, without having to issue a warning letter, be entitled to claim default interests 8% above the applicable base interest rate. The right to claim further damages resulting from default remains unaffected therefrom.

5.3. Notwithstanding any deviating provisions by the customer, innovaphone shall be entitled to credit payments against a customer's older debts first. If costs and interests have already been incurred due to the delay, innovaphone shall be entitled to credit the payment first against the costs, then against the interests and finally against the principal invoice amount.

5.4. Any offsetting or assertion of a right of retention on the part of the customer based on counter claims that are not acknowledged by innovaphone or which are not res judicata shall be excluded.

5.5. If the customer fails to meet the payment date stated in item 5.2. or any other payment date agreed upon separately in writing with innovaphone, innovaphone shall be entitled to make future deliveries conditional upon contemporaneous payment in cash or request the customer to make advance payments or provide security. Any delays in payment on the part of the customer further have the consequence that all payment

claims of innovaphone resulting from the business relationship with the customer, for which innovaphone accepted bills for collection or agreed to payment by instalments, will fall due immediately.

6. Retention of title

6.1. The goods delivered by innovaphone to the customer shall remain the property of innovaphone until all claims of innovaphone against the customer resulting from the business relationship have been met in full.

6.2. The customer is revocably authorised to pass on the goods that are subject to retention of title in the normal course of business, but not to pledge these or provide them as any type of security. If third parties take hold of the goods subject to retention of title, the customer shall immediately notify such third party that these are the property of innovaphone and inform innovaphone thereof immediately. In case of resale of said goods to third parties, the customer is responsible for ensuring that the third party observes the rights of innovaphone.

6.3. If the goods subject to retention of title are mixed or combined with goods not in the ownership of innovaphone, innovaphone shall acquire co-ownership in relation of the invoice value of the goods subject to retention of title to the other goods. Any alterations to and processing of the goods subject to retention of title is performed on behalf of innovaphone as the manufacturer in terms of Section 950 BGB, without entailing any obligation for innovaphone. Innovaphone obtains co-ownership in the processed goods in terms of the provision above.

6.4. In case of delayed payment or illiquidity on the part of the customer, innovaphone is authorised to access the customer's business premises to assert its right of retention relating to the goods subject to such title and take hold of those goods without this requiring setting of a further grace period or meeting any of the other requirements defined in Section 323 (2) BGB, unless the amount of the delayed payment is immaterial.

6.5. If innovaphone secures goods at the customer's or third party premises to assert its retention of title, this does not constitute contract rescission.

6.6. The customer assigns his claims in the amount of the respective invoice value resulting from passing on the goods subject to retention of title to innovaphone in advance at the time the order is placed. The customer is authorised and obliged to collect these claims in the course of normal business. At innovaphone's request, the customer shall identify the assigned claims. In order to secure its payment claims, innovaphone may disclose this assignment if the customer delays payment or becomes illiquid.

6.7. If the value of the securities exceeds innovaphone's payment claims by more than 20%, innovaphone shall release the part of the securities exceeding that value upon the customer's request.

6.8. Objects that are delivered for test and presentation purposes, remain the property of innovaphone. Use thereof is subject to a separate agreement with innovaphone.

Following expiry of the period agreed upon for testing and presentation or at innovaphone's request if such period was not agreed upon, the customer shall take out transport insurance and return the test or presentation devices to innovaphone at his own cost. If the customer delays return of the devices for more than 14 days, innovaphone shall be entitled to request compensation for the use thereof in the amount of 2% of the list price of the device for each month of delayed return that has commenced. This does not exclude further claims on the part of innovaphone.

7. Warranty

7.1. Any information provided by innovaphone regarding the products and services is merely information on the nature of the products, unless innovaphone expressly warrants or guarantees certain characteristics of the product or the services. Any technical specifications and descriptions of the products in the product information leaflet alone do not represent a promise regarding certain characteristics or a guarantee in this respect. Specific characteristics are not deemed promised or guaranteed, unless the respective specifications are confirmed to be guaranteed characteristics by innovaphone in writing.

7.2. The parties are aware of the fact that errors in software cannot be excluded for all scopes of application for technical reasons. innovaphone does therefore not guarantee that the functions of the program will meet the customer's requirements or are compatible with the selection made by the customer.

7.3. Defects and damage caused by the following reasons in particular are excluded from warranty: operational wear and tear and loss in value from normal use / improper use, operating errors and negligent behaviour on the part of the customer / operation with the wrong type of electricity or voltage and connection to unsuitable electricity sources / fire, lightning, explosion or grid-related overvoltage / dampness of all types / wrong or faulty program, software and/or processing data or consumables, unless the customer is able to prove that these circumstances did not cause the defect in question.

The warranty also expires, if the serial number, model name or similar labels that serve to identify the product have been removed or have been obliterated.

7.4. These warranty claims against innovaphone commence upon handover of the object and become time-barred within a period of 12 months. They are not transferable. If the customer is a consumer in terms of Section 13 BGB or if another customer in the delivery chain is such a consumer, the customer's rights pursuant to Section 478 BGB are not affected by the aforementioned provision. Notwithstanding the aforesaid, innovaphone passes any additional or further-reaching warranties or guarantees by the manufacturer on to the customer in full without entering into any obligation of its own in this respect.

7.5. In warranty cases, innovaphone will at its own discretion deliver subsequent performance (rectification of defect or replacement) itself or through its vicarious agents. Replaced parts become the property of innovaphone. If innovaphone refuses to rectify defects or fails to remove the defect within 30 days, the customer is entitled to, at its own discretion, request either rescission of contract or appropriate reduction of the purchase price. Further claims and other claims than those stated above, particularly compensation for damage that does not pertain to the delivery object directly or the ordering party's legal interests, such as lost profit or other economic losses, are excluded, unless innovaphone acted with intent or gross negligence, fraudulently concealed the defect that caused the damage or warranted the respective characteristics of the goods. This limitation of liability does not apply in cases of injuries to life, limb or health due to breach of obligation.

7.6. In cases of subsequent performance innovaphone shall bear all transport, toll, labour and materials costs associated therewith. All other costs associated with the delivery of replacement, particularly insurance, packaging, subsistence and accommodation as well as storage costs shall be borne by the customer.

7.7. If the examination of a notification of defects shows that no warranty case is present, innovaphone is entitled to request reimbursement of its expenses.

7.8. No warranty whatsoever is assumed for the delivery of demonstration devices or used objects. If the customer is a consumer, the warranty period for used objects is one year as from handover thereof. Any claims for damages are excluded. The aforementioned warranty limitations do not apply, if and to the extent that innovaphone acted with intent or gross negligence, fraudulently concealed the defect that caused the damage or warranted the respective characteristics of the goods. This limitation of liability does not apply either in cases of injuries to life, limb or health due to breach of obligation.

8. Liability

8.1. innovaphone's liability resulting from warranty is governed by item 7. Unless otherwise provided for by the following provisions, any further claims on the part of the customers, irrespective of the legal grounds, are excluded. innovaphone thus assumes no liability for damage to

the delivery object itself and innovaphone, in particular, assumes no liability for lost profit or other economic losses on the part of the customer. The obligation of innovaphone to provide replacement is in any case limited to the damage foreseeable at the time the contract was concluded.

8.2. This release from liability does not apply, if material contractual duties were breached or if the damage was caused by grossly negligent or intentional breach of duties on the part of innovaphone or its vicarious agents. The aforementioned liability exclusions and limitations do not apply either to claims pursuant to the Produkthaftungsgesetz [German Product Liability Act] or damage resulting from injuries to life, limb or health due to breach of obligations. As far as liability by innovaphone is excluded or limited, this shall also apply to the personal liability of its employees, officers, representatives and vicarious agents.

9. Export and import permits

9.1. The products and the technical knowhow delivered by innovaphone are intended for use in the delivery country agreed with the customer and are intended to stay there. Re-export of Products, either individually or integrated into a system, may be subject to approval for the customer and is subject to the regulations on foreign trade by the Federal Republic of Germany or any other delivery country agreed upon with the customer. The customer shall enquire about these regulations himself. According to German regulations, such enquiries are to be addressed to Bundesamt für Wirtschaft, 65760 Eschborn/Ts 1; according to US regulations to the US-Department of Commerce, Office of Export Administration, Washington, D.C. 20230. Irrespective of whether the customer states the final place of destination for the delivered Products, the customer himself is responsible for obtaining any approvals required from the respective competent foreign trade authorities before exporting such products.

9.2. Any delivery of Products to third parties by the customer, with or without innovaphone's knowledge, requires transfer of the export permit conditions at the same time. The customer is liable for proper observance of these conditions vis-à-vis innovaphone.

10. General provisions

10.1. The customer shall not be entitled to assign his claims under the contract.

10.2. If the customer is a full merchant, the following shall apply: place of performance and place of jurisdiction, also for actions in connection with cheques, bills of exchange and documents, is Sindelfingen.

10.3. These Standard Terms and Conditions are subject to the statutory provisions valid in the Federal Republic of Germany. The EKG [Uniform Law on the International Sale of Goods], the EAG [Uniform Law on the Conclusion of International Purchase Contracts] and the Vienna UN Convention on International Trade (CISG) are excluded.

10.4. Orders are processed with the help of automatic data processing. The customer hereby grants his explicit consent that all data required for processing the order that came to innovaphone's knowledge in the scope of the contractual relation may be processed and stored.

10.5. innovaphone reserves the right to unilaterally modify these Standard Terms and Conditions at any time. The new standard terms and conditions become applicable and binding to the relation between innovaphone and the customer as soon as the customer places the first order with innovaphone after receipt of the new terms and conditions. This also applies to business relationships that have been in existence for a longer period of time.