

Standard Terms of Business  
of TAB Austria Industrie- und Unterhaltungselektronik GmbH & CoKG  
Haider Strasse 40, A-4052 Ansfelden

### **1. Application of the terms of business**

The following contractual terms apply without limitation to entrepreneurs within the meaning of Sec. 343 of the Business Code.

Our deliveries, services and quotations are provided exclusively on the basis of these Standard Terms of Business of TAB GmbH – hereinafter TAB – even if not specifically referred to in oral or telephone negotiations.

They shall thus also apply to all future business relationships even if not expressly agreed again. These terms shall be deemed to be recognized at the latest upon acceptance of the goods or service.

Departures from these terms, in particular through the sending of conflicting terms of purchase shall only apply if we have expressly recognized such in writing.

The failure to exercise individual rights pursuant to these terms shall not constitute a waiver of other rights.

### **2. Quotations and conclusion of contract**

a) Our quotations shall be revocable and without obligation.

b) The client shall be bound to its order for a period of three weeks. Orders shall only become legally effective once the delivery has been effected by us or once we have issued our written confirmation, which shall be deemed to have been issued if we do not refuse the order within 3 weeks of receipt thereof at Ansfelden.

c) Collateral agreements and additions shall only be valid if confirmed by us in writing. The waiver of this requirement of the written form shall likewise only be permitted with our written confirmation.

d) Descriptions of the subject matter of delivery and technical details shall be without obligation and shall not be deemed to be a guarantee of specific qualities.

### **3. Prices**

All prices shall be net prices exclusive of value-added tax, which shall be payable by the client at the statutory rate applicable at the time. These prices shall be ex-warehouse Ansfelden, exclusive of freight, packing, insurance and assembly.

### **4. Delivery periods**

4.1. The agreement of delivery dates or periods shall require the written form. Unless the contrary is agreed, delivery dates and periods shall be without obligation.

4.2. Even if deadlines and periods have been agreed with binding effect, we shall not be liable for delays in delivery and performance due to force majeure and due to events that render our delivery substantially more difficult or impossible – including material procurement difficulties occurring subsequently, interruptions to business operations, strike, lock-out, personnel shortages, deficiencies in means of transport, official regulations etc. – including if such occur at our suppliers' or their suppliers'. Such shall entitle us to postpone delivery or performance by the duration of the impediment plus a reasonable start-up time, or to withdraw from the contract in whole or in part with respect to the part not yet performed.

4.3. If the impediment lasts longer than 3 months, the client shall be entitled to withdraw from the part of the contract not yet performed, after first setting a reasonable grace period. The client shall not be entitled to derive a claim for damages if the delivery period is prolonged, or if we are released from our obligations.

4.4. We shall be entitled to effect part-deliveries and part-performance at any time.

## 5. Place of performance, dispatch and transfer of risk

5.1. Place of performance shall be the registered office of TAB at Haider Strasse 40, 4052 Ansfelden. Packaging and dispatch shall be at the client's expense and risk. At the client's express request and expense, the shipment shall be insured against breakage, transport and fire damage.

5.2. The use and price risk shall transfer to the client upon handover for dispatch or notification of readiness for dispatch. Dispatch shall be at the client's risk.

## 6. Warranty and liability

6.1. The goods supplied by us shall be carefully checked upon arrival and any defects shall be noted in detail on the delivery note or consignment note; failure to do so shall result in the loss of all claims. If an immediate check is not possible upon receipt of the goods, this fact must be noted on the delivery note or consignment note, on pain of the loss of all claims, and a detailed written protest concerning any defects found in a subsequent inspection shall be lodged within a period of three days from delivery of the goods, such period being deemed to be recognized by both parties as being reasonable.

The client's rights shall only be preserved if any protest concerning a defect to be noted on the delivery note or consignment note is received by us within 8 days following receipt of the goods.

6.2. Protests concerning concealed defects must be lodged immediately upon discovery, and at the latest three months after receipt of the goods.

6.3 If a third party has repaired or attempted to repair the goods supplied, no protests shall be accepted. The same shall apply if the client improperly interferes with the goods supplied.

6.4 In deviation from § 924 of the Austrian Civil Code (ABGB), the Buyer shall bear the full burden of proof concerning the claim requirements, in particular in respect of the defects themselves, the time of determination of the defect and the timeliness of the defect complaint.

6.5 The client shall file claims against us before the courts within a period of six months from date of transfer of risk pursuant to Section V; failure to do so shall lead to the exclusion of all such claims. If a warranty claim arises within the relationship between the client and its clients, recourse to us pursuant to Sec. 933 b of the General Civil Code shall be excluded.

6.6 If the goods supplied by us are faulty or if defects become apparent within the period agreed in Sec. 6.5, TAB shall at its own discretion effect repairs or provide a replacement within a reasonable period of time. In any event, TAB shall be entitled to provide a replacement instead of effecting repairs. Unless agreed separately with us in writing, there shall be no other or any more extensive claims on whatever legal basis, in particular to the reduction of the charge or compensation for repair works carried out or contracted by the client.

Compensation for any consequential losses resulting from defects shall be limited to direct losses and to one half of the invoiced value of the order in question, and shall only be payable to the client if we or our vicarious agents are guilty of blatant gross negligence or intent.

6.7. The defective goods shall be handed over or returned to us. Repairs cannot be effected at the place of installation. The client shall bear the transport costs and risk.

6.8 Damages claims shall only exist in case of intent or gross negligence and the amount shall be limited to the invoice value - with the exception of personal injury. Damages claims shall always lapse in 6 months following the handover for delivery or notification of readiness for dispatch. The reimbursement of consequential losses or pecuniary losses, loss of interest and losses connected to third party claims shall always be excluded, to the extent permitted by law.

In addition, any rights to rescission on the grounds of mistake by the Customer, also concerning the freedom from defects of the goods, shall be excluded, to the extent permitted by law.

6.9. Use equipment shall be sold without the customer being entitled to any warranty or liability claims.

6.10. The name "TAB" is a registered company name. TAB has industrial property rights with respect to the products supplied by TAB. The client shall only be entitled to use and sell these products within the framework of an ordinary business operation.

6.11. Any recourse claims within the meaning of Paragraph 12 of the Product Liability Act.

6.12. No liability whatsoever shall be assumed for claims resulting from or in connection with soliciting for or the conduct of games of chance, in particular addiction to gambling. The client shall fully indemnify and hold TAB harmless for such claims made by the client's clients against TAB or affiliated enterprises.

6.13. All warranty and liability claims based on this contractual relationship are regulated exhaustively in this Section 6. The client shall not be entitled to any more extensive claims whatsoever.

## **7. Reservation of title**

7.1. We retain title to the goods supplied until the purchase price has been paid in full.

7.2. The pledging or transfer for purposes of collateral of the goods subject to reservation of title shall not be permitted. If third parties take measures against the goods subject to reservation of title, in particular in the form of attachment, the purchaser shall notify us in writing immediately and shall refer the third party to our reservation of title. The purchaser shall be obliged to bear all costs applied to prevent such measures and to obtain the return of the goods supplied, if such costs are not obtainable from the third party.

7.3. The client assigns to us as collateral its receivables resulting from the resale of the goods supplied by us until satisfaction in full of all its obligations to us. Upon request by us, the client shall notify us of the debtors of the assigned receivables, notify the debtors of the assignment and keep the proceeds from the sale of the goods subject to reservation of title separately and in our name. If by virtue of such assignments amount beyond doubt to more than 120% of total amount of our receivables thus secured, we undertake to release at our choice the excess of the outstanding amount at the request of the client.

7.4 The client shall not acquire title to the new product resulting from processing of the goods subject to reservation of title; any such processing shall be effected by the client for TAB.

The client undertakes to store such products free of charge. If the goods subject to reservation of title are processed or mixed with goods owned by a third party, we shall acquire co-ownership of the new product in the ratio that applies between the invoiced value of the goods supplied by us and the invoiced value of the other goods.

7.5. If the client acts in breach of contract, in particular in the event of payment default, TAB shall be entitled to demand the return of the goods subject to reservation of title at the client's expense. The demand for the return and the levy of execution on the goods by TAB shall not constitute a withdrawal from the contract.

7.6. As soon as the client suspends payments, namely immediately after announcement of the suspension of payments, the client shall send TAB a list of the goods subject to reservation of title still held, including such that have been processed, together with a list of the receivables against third-party debtors with copies of invoices. Amounts received from assigned receivables shall be kept separately until transferred.

## **8. Prohibition on assignment**

All the client's claims based on the present contract shall be non-transferrable.

## **9. Payment, default, off-set**

9.1 Unless otherwise agreed, all payments shall take place immediately following receipt of the invoice. Should the payment of the purchase price take place via bank transfer, the Buyer shall issue the remittance instructions in such a timely manner that the amount due is credited to the bank account stated by us by the due date.

9.2. Cheques and bills shall only be accepted following prior written agreement and always only be on account for payment. Discount, banking and bill charges shall be borne by the client.

9.3. In the event of payment default, it is agreed that the client shall reimburse all reminder and collection costs plus interest at a rate of 10% above the applicable base rate of interest. Payments received shall first be applied to the court costs and to any costs incurred for an – accordingly necessary – extrajudicial collection of the debt, then to interest and finally to the principal.

9.4. Failure to comply with the terms of payment or circumstances that are capable of reducing the purchaser's creditworthiness shall cause all the vendor's receivables to become due for payment immediately. Such shall also entitle the vendor to effect outstanding deliveries only in return for payment in advance or to withdraw from the contract and/or to claim damages for non-performance.

9.5. The client shall not be entitled to retain the payment or a part thereof on the basis of counterclaims, or to offset counterclaims, including such based on complaints.

## **10. Trade-in devices/acceptance in lieu of payment**

If TAB accepts used devices in partial or full payment of the purchase price, the purchaser shall be obliged to notify us of any and every defect in the device delivered in payment. The purchaser shall guarantee that the device only has the defects expressly notified.

If within a period of six months it becomes apparent that the device has defects that were not notified to us, we shall be entitled to return such device and charge the client for the value taken into account.

## **11. General**

11.1. The law of the Republic of Austria shall apply to all legal relations between the parties, and the application of international agreements, in particular the UN law on the sale of goods dated 11.4.1980 and the UNCITRAL convention shall be excluded.

11.2. The sole legal venue is agreed to be the court competent for such cases at Linz, Austria.

11.3. The contractual products are exclusively electrical and electronic goods for commercial purposes within the meaning of Sec. 3 No. 9 of the Old Electrical Appliances Regulation (*Elektroaltgeräteverordnung*), Federal Gazette II 121/2005.

As contract partner, the client shall assume the obligation to accept the return of old appliances imposed upon the manufacturer pursuant to Sec. 10 of the Old Electrical Appliances Regulation, Federal Gazette II 121/2005, and shall grant its customers a contractual right to return such goods to it and undertakes to accept the return of the contractual goods.

If the customers return the contractual goods directly to TAB, the client shall be responsible for collecting the contractual goods from TAB and for the processing of such goods in accordance with the statutory requirements. If the client fails to comply with its obligation to take back such goods, TAB shall be compensated for the expenditure and losses incurred through the return and processing of the contractual goods.

11.4 As contract partner, the client shall participate in a collecting and recycling system within the meaning of Sec. 11 of the Packaging Regulation (*Verpackungsverordnung*), Federal Gazette 648/1996 that shall ensure the return and processing of the packaging of the contractual goods. Written evidence shall be submitted to TAB concerning the legally valid participation in a collecting and recycling system. Such evidence shall be either in the form of the presentation of the contractual agreements or on the order documents.

The client shall compensate TAB for all losses and expenditure incurred by TAB as a result of the client failing to comply with the obligations it has assumed resulting from the Packaging Regulation such as in particular the conditions for participation in a collecting and recycling system.

11.5 The client shall assert any claims from or in connection with its legal relationship with TAB in writing within six months on pain of forfeiture (cf. Secs. 6.4 and 6.7).

11.6. If one or more of the above provisions shall be or become ineffective or unenforceable, this shall not affect the validity of the remaining provisions. The ineffective or unenforceable provision shall be replaced by an effective or enforceable provision that as far as possible implements the commercial purpose pursued in the ineffective or unenforceable provision. **The same shall apply to any unintended gaps in the contract.**

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