

General Delivery Terms

of IPWatch GmbH

(Status as of January 2016)

1. Application

- 1.1. All deliveries, services and quotations by IPWatch GmbH, Hilgerstraße 23, 45141 Essen, Germany (hereinafter: "IPWatch") shall be made, provided and prepared solely on the basis of these General Delivery Terms. These shall be an integral part of all contracts that IPWatch concludes with its buyers for supplies or services. They shall apply also to all future deliveries, services or quotations by IPWatch, even if they have not been separately agreed again.
- 1.2. The general terms and conditions of the buyer or of third parties shall not be applicable even if IPWatch does not separately object to their application in individual cases. Even if IPWatch refers to a letter that contains the buyer's or a third party's general terms and conditions that refers to such, this does not constitute any consent to the application of those terms and conditions. The buyer shall be obliged to confirm in writing for IPWatch the sole application of these General Purchasing Conditions.
- 1.3. These General Delivery Terms shall apply only if the buyer is an entrepreneur.

2. Quotation and conclusion of contract

- 2.1. All quotations from IPWatch shall be subject to alteration and be without engagement as long as they are not expressly marked as binding or contain a defined acceptance period. IPWatch can accept purchase orders or orders within fourteen days of their receipt.
- 2.2. Solely decisive for the legal relations between IPWatch and the Buyer shall be the contract of purchase concluded in writing, including these General Delivery Terms. This completely reflects all of the agreements between the parties to the contract regarding the subject matter of the contract. Any verbal assurances given by IPWatch before the conclusion of this contract shall be legally non-binding and verbal agreements between the parties to the contract shall be superseded by the written contract unless it can in each case be seen from the written contract that they continue to apply bindingly.
- 2.3. Any additions and amendments to the agreements reached including these General Delivery Terms shall require to be made in writing in order to be effective. With the exception of managing directors or holders of a general commercial power of attorney, the employees of IPWatch shall not be entitled to come to any verbal agreements deviating therefrom. In order to comply with the requirement of the written form a telecommunication transmission, in particular by telefax or e-mail will be sufficient if the copy of the signed declaration is transmitted.
- 2.4. Details from IPWatch concerning the subject matter of the delivery or service (e.g. weights, dimensions, utility value, load-bearing capacity, tolerances and technical data) as well as representations of same (e.g. drawings and illustrations) shall be only approximately decisive unless the usability for the contractually envisaged purpose requires exact conformity. They shall not be guaranteed characteristics, but descriptions or identification markings of the delivery or service. Deviations usual in the trade and deviations which occur due to legal regulations or technical improvements, as well as the replacement of components by equivalent parts shall be admissible as long as they do not adversely affect the usability for the contractually intended purpose.
- 2.5. IPWatch shall reserve ownership of or copyright for all of the quotations and estimates submitted by it as well as for all of the drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids made available to the buyer. The buyer must not make these items as such, or content-wise, accessible to third parties without the express consent of IPWatch, must not make them known, use them or duplicate them itself or through third parties. At IPWatch's request it must return them completely to the former and destroy any copies possibly made if they are no longer required by it in the normal course of business or if negotiations do not lead to the conclusion of a contract.

3. Prices and payment

- 3.1.** The prices shall apply to the scope of supply and services listed in the order confirmations. Additional or special work/services shall be charged for separately. The prices are to be understood as in EURO ex works plus packaging, statutory value-added tax, in the case of export deliveries, customs duty as well as charges and other public charges.
- 3.2.** If the prices agreed are based on the IPWatch list prices and delivery is not to be made until more than four months after the conclusion of the contract, the IPWatch list prices applying at the time of delivery shall apply (in each case minus an agreed percentage or fixed discount).
- 3.3.** Invoice amounts are to be paid within thirty days without any deduction unless agreed otherwise in writing. Decisive for the date of payment shall be receipt by IPWatch. Cheques shall be deemed to constitute payment only after they have been honoured.
- 3.4.** Offsetting against any buyer's counterclaims or the withholding of payments because of such claims shall only be admissible insofar as the counterclaims are undisputed or have been the subject of a final and non-appealable court decision.
- 3.5.** IPWatch shall be entitled to execute or to provide any still outstanding deliveries or services only against payment in advance or against provision of security if circumstances come to its notice after the conclusion of the contract that are liable to considerably reduce the buyer's credit standing and by which the payment of IPWatch's outstanding claims by the buyer from the respective contractual relationship (including from other individual orders to which the same framework contract applies) is endangered.

4. Delivery and delivery time

4.1. Deliveries shall be made ex works.

- 4.1.** Deliveries shall be made ex works.
- 4.2.** Periods of time and dates for deliveries and services offered by IPWatch shall always only be considered approximate unless a fixed period of time or a fixed date has been promised or agreed. If shipment has been agreed, delivery times and delivery dates shall refer to the point in time of transfer to the forwarding agent, carrier or third party otherwise entrusted with transportation.
- 4.3.** IPWatch can – without prejudice to its rights resulting from the buyer's default – demand from the buyer an extension of periods of time for delivery and services or a postponement of delivery and service dates by the period of time in which the buyer does not meet its contractual obligations in relation to IPWatch.
- 4.4.** IPWatch does not accept liability for impossibility of delivery or for delays in delivery if these have been caused by force majeure or any other events not foreseeable at the point in time of the conclusion of the contract (e.g. all kinds of disruptions of business or operations, difficulties in the procurement of material or energy, transport delays, strikes, lawful lockouts, shortage of manpower, energy or raw materials, difficulties with the procurement of necessary official approvals, official measures or missing, incorrect or unpunctual delivery by suppliers), for which IPWatch is not responsible. If such events make delivery or the work/service considerably more difficult or impossible for IPWatch and the disruption is not only of a temporary nature, IPWatch shall be entitled to withdraw from the contract. In the case of disruptions of a temporary nature the delivery or service times shall be extended or the delivery or service dates shall be postponed by the period of the disruption plus a reasonable lead time. If the buyer cannot be expected to accept the delivery or service due to the delay, it can withdraw from the contract by means of a written declaration to IPWatch without undue delay.
- 4.5.** IPWatch shall be entitled to make part deliveries if
 - the part delivery is useable for the buyer within the scope of the intended contractual purpose,
 - delivery of the remaining goods ordered is ensured and
 - the buyer does not in this way incur any considerable additional effort/expenditure or additional costs (unless IPWatch declares itself willing to bear these costs).

- 4.6.** If IPWatch defaults on a delivery or service or if a delivery or service, no matter for what reason, becomes impossible for it, IPWatch's liability shall be restricted to damages in accordance with Item 8 of these General DeliverTerms.

5. Place of performance, shipping, packaging, passing of risk, acceptance

- 5.1.** The place of performance for all commitments under the contractual relationship shall be 45141 Essen, unless provided for otherwise.
- 5.2.** The mode of shipment and the packaging shall be subject to IPWatch's due professional discretion.
- 5.3.** The risk passes to the buyer at the latest upon the handover of the item delivered (the beginning of the loading operation being decisive) to the forwarding agent, carrier or to third parties otherwise intended for the execution of shipment. This shall also apply if part deliveries are made or IPWatch has taken on other work/ services (e.g. shipment or installation). If shipment or handover is delayed due to a circumstance caused by the buyer, the risk shall pass to the buyer from the day on which the item to be supplied is ready for shipment and IPWatch has advised the buyer of this.
- 5.4.** Any warehousing costs after the passing of risk shall be borne by the buyer. In the case of warehousing by IPWatch the warehousing costs shall amount to 0.25 % of the invoice amount for the items delivered to be warehoused per full week completed. The right to claim for and to provide evidence of further or lower warehousing costs shall be reserved.
- 5.5.** The consignment shall be insured by IPWatch against theft, breakage, damage in transit, fire and water damage or other insurable risks only at the buyer's express request and at its expense.
- 5.6.** As far as acceptance has to be carried out, the item purchased shall be deemed to have been accepted if
- delivery and, if IPWatch also owes the installation, installation have been completed,
 - IPWatch has informed the buyer with reference to the assumed acceptance according to this Item 5.6 and has requested it to carry out acceptance,
 - twelve work days have passed since the delivery or installation or the buyer has started to use the item bought (e.g. has commissioned the plant supplied) and in this case six work days have
 - passed since delivery or installation and the buyer has during this period of time omitted to carry
 - out acceptance for a reason other than a defect indicated by IPWatch that makes use of the item bought impossible or considerably adversely affects it.

6. Warranty, material defects

- 6.1.** The warranty period amounts to one year from delivery or, if acceptance is necessary, from acceptance.
- 6.2.** The items delivered are to be carefully examined without undue delay after delivery to the buyer or the third party designated by it. They shall with regard to any obvious defects or other defects that would have been recognizable after careful examination without undue delay, be deemed to have been approved by the buyer unless IPWatch receives a written notification of defects within seven work days of delivery. With regard to other defects, the items delivered shall be deemed to have been approved by the buyer unless the notification of defects reaches IPWatch within seven work days after the point in time at which the defect became apparent; if the defect was already recognizable for the buyer during normal use at an earlier point in time, that earlier point in time is, however, decisive for the start of the notification period for defects. At the request of IPWatch an item delivered that has been complained about is to be returned to IPWatch carriage paid. In the case of a justified notification of defects IPWatch shall refund the cost of the cheapest forwarding route; this shall not apply if the costs increase because the item supplied is at a different place than the place of use for the intended purpose.

- 6.3.** In the case of material defects of the items delivered IPWatch shall according to its choice to be made within a reasonable period of time first of all be obliged and entitled to reworking or replacement delivery. In the case of subsequent performance, IPWatch shall not be obliged to bear the cost of the dismantling/removal of the defective item and the cost of the installation of the repaired item and/or replacement item. IPWatch shall not be obliged to bear expenditure incurred due to the fact that the item was taken to a place other than the buyer's commercial establishment.
- 6.4.** If a defect is based on a fault of IPWatch, the buyer can demand damages on the conditions defined in Item 8.
- 6.5.** In the event of defects in components of other manufacturers which IPWatch cannot rectify for licensing or factual reasons, IPWatch shall at its option make its claims under the warranty against the manufacturers and suppliers for the buyer's account or assign them to the buyer. Claims under the warranty against IPWatch shall exist in the case of such defects on the same conditions and in accordance with these General Delivery Terms only if the out-of-court enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or, is pointless due, for example, to an insolvency. For the duration of a legal dispute between the buyer and the manufacturer and/or supplier the period of limitation of the buyer's claims under warranty against IPWatch concerned shall be suspended.
- 6.6.** The warranty shall lapse if, without IPWatch's consent, the buyer alters the item delivered or has it altered by third parties and the rectification of defects is hence made impossible or is made difficult to an unacceptable degree. In any case the buyer must bear the additional costs of rectification of defects incurred as a result of the alteration.
- 6.7.** Supply of used items agreed with the buyer in individual cases shall be done to the exclusion of any warranty for material defects.

7. Industrial property rights

- 7.1.** IPWatch shall guarantee in accordance with this Item 7 that the item delivered is free from third parties' industrial property rights or copyright. Each party to the contract shall inform the other party to the contract in writing without undue delay if claims are raised against it because of the violation of such rights.
- 7.2.** In the event that the item delivered infringes a third party's industrial property right or copyright, IPWatch shall at its option and at its expense modify the item delivered in such a way or replace it so that no third party rights are infringed any longer, but so that the item delivered continues to perform the contractually agreed functions, or shall obtain for the buyer the right of use by the conclusion of a licence agreement. If it does not succeed in doing this within a reasonable period of time, the buyer shall be entitled to withdraw from the contract or to reduce the buying price appropriately. Any possible claims by the buyer for damages shall be subject to the restrictions of Item 8 of these General Delivery Terms.
- 7.3.** In the event of violations of the law by any products of other manufacturers supplied by IPWatch, IPWatch shall, at its option, make its claims against the suppliers and upstream suppliers for the buyer's account or assign them to the buyer. Claims against IPWatch shall in these cases exist in accordance with this Item 7 only if the court enforcement of the aforementioned claims against the manufacturers and upstream suppliers was unsuccessful or, is pointless, for example, due to an insolvency.

8. Liability for damages based on fault

- 8.1.** The liability of IPWatch for damages no matter on what legal grounds, in particular due to impossibility, default, defective or wrong delivery, breach of contract, violation of duties during contractual negotiations and tort shall, if in each such case it depends on fault, be restricted in accordance with this Item 8.

- 8.2.** IPWatch shall not be liable in the case of simple negligence of its boards, statutory representatives, white-collar employees or other vicarious agents, unless a case of the breach of essential contractual duties is involved. Contractually essential are the obligation to timely deliver and/or install the item delivered, its freedom from defects that more than insignificantly negatively affect its functional efficiency or serviceability, as well advisory, protection and care duties that are meant to make possible for the buyer the contractual use of the item delivered or aim at the protection of life and limb of the buyer's personnel or the protection of its property from considerable damage/loss.
- 8.3.** If IPWatch is liable in accordance with Item 8.2 on the grounds of and for damages, this liability shall be limited to damage/loss/injury that IPWatch foresaw at the time of the conclusion of the contract as a possible consequence of a violation of the contract or that it should have foreseen in the case of the application of due diligence and reasonable care. Indirect damage and consequential damage which are the consequence of defects of the item delivered, are, moreover, only able to be compensated for if such damage can typically be expected if the item delivered is used for the intended purpose.
- 8.4.** In the case of liability for simple negligence the compensation obligation of IPWatch for material damage is restricted to an amount of EUR 3,000,000.00 and further financial loss resulting therefrom to an amount of EUR 1,000,000.00 EUR per loss event, even if a breach of essential contractual duties is involved.
- 8.5.** The above stated exclusions from and restrictions of liability shall apply to the same extent in favour of the boards, statutory representatives, white-collar employees and other vicarious agents of IPWatch.
- 8.6.** If IPWatch provides technical information or carries out an advisory activity and this information or advice does not belong to the contractual scope of services owed by it, this shall be done free of charge and to the exclusion of any liability.
- 8.7.** The restrictions of this Item 8 shall not apply to IPWatch's liability for intentional behaviour, for guaranteed characteristics, for injury to life and limb or impairment of health in accordance with the German Product Liability Act.

9. Retention of title

- 9.1.** The retention of title agreed below serves to secure all of the current and future claims of IPWatch in each case existing against the buyer from the supply relationship concerning goods existing between the parties to the contract (including account balances under a current account relationship restricted to this supply relationship).
- 9.2.** The goods supplied by IPWatch to the buyer shall remain IPWatch's property until the complete payment of all secured claims. The goods as well as the goods subject to the retention of title replacing them according to the following provisions shall hereinafter be referred to as "goods subject to retention of title".
- 9.3.** The buyer shall store the goods subject to retention of title free of charge for IPWatch.
- 9.4.** The buyer shall be entitled to process and sell the goods subject to retention of title until the occurrence of the recovery event (Item 9.9) in the normal course of business. Pledging and transferring by way of security shall be inadmissible.
- 9.5.** If the goods subject to retention of title are processed by the buyer, it is agreed that processing shall take place on behalf of and for the account of IPWatch as the manufacturer and IPWatch shall immediately acquire ownership or – if the processing of materials of several owners takes place or the value of the item processed is higher than the value of the goods subject to retention of title – co-ownership (fractional ownership) of the newly created item in the ration of the value of the goods subject to retention of title to the value of the newly created item. In case no such acquisition of ownership by IPWatch should occur, the buy shall now already transfer its future ownership or – in the above mentioned relationship – co-ownership of the newly created item as security to IPWatch. If the goods subject to retention of title are combined or inseparably mixed with other items to form a uniform item and if one of the other items is to be seen as the main item, IPWatch shall transfer, to the extent that the main item belongs to it, to the buyer a percentage of co-ownership of the uniform item in the ration stated in sentence 1.

- 9.6.** In the event of resale of the goods subject to retention of title the buyer shall now already by way of security assign the claim against the acquirer arising therefrom – in the case of co-ownership by IPWatch of the goods subject to retention of title percentage-wise in accordance with the co-ownership percentage – to IPWatch. The same shall apply to any other claims arising in place of the goods subject to retention of title or otherwise arising with regard to the goods subject to retention of title, such as insurance claims or tort claims in the event of loss or destruction. IPWatch shall empower the buyer revocably to collect the claims assigned to IPWatch in its own name. IPWatch may revoke this empowerment to collect only in the occurrence of the recovery event.
- 9.7.** If third parties gain access to the goods subject to retention of title, in particular by attachment, the buyer shall draw their attention without undue delay to the fact that IPWatch is the owner and inform IPWatch about this in order to enable it to enforce its ownership rights. If the third party is unable to refund IPWatch for the court and out-of-court expenses incurred in this connection, the buyer shall be liable towards IPWatch.
- 9.8.** IPWatch shall release the goods subject to retention of title as well as the items or claims replacing them, as far as their value exceeds the value of the secured claims by more than 50 %. The selection of the items to be released accordingly shall be IPWatch's option.
- 9.9.** If IPWatch withdraws from the contract (recovery event) in the event of breach of contract by the buyer – in particular default in payment, it shall be entitled to demand the handover of the goods subject to retention of title.

10. Final provisions

- 10.1.** If the buyer is a businessman, a legal entity under public law or a special fund under public law or if it does not have any general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for all possible disputes arising from the business relationship between IPWatch and the buyer shall at the option of IPWatch be 45141 Essen or the place of the buyer's registered office. For actions brought against IPWatch in these cases, however, 45141 Essen shall be the exclusive place of jurisdiction. Mandatory legal provisions concerning exclusive places of jurisdiction shall remain unaffected by this provision.
- 10.2.** The relationships between IPWatch and the buyer shall be subject exclusively to the law of the Federal Republic of Germany. The Convention of the United Nations concerning Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.
- 10.3.** If the contract or these General Delivery Terms contain gaps in the provisions, to fill those gaps those legally effective provisions shall be deemed to have been agreed that the parties to the contract would have agreed according to the commercial aims of the contract and the purpose of these General Delivery Terms if they had been aware of the gap in the provisions.