

General Terms and Conditions of sales (04/2016)

1. Scope of application:

- 1.1. Our General Terms apply for all sales and business deals of TMS Tools Mobile Services GmbH, following only mentioned as TMS, with their customers. Also if any changes or adjustments of contracts occur. Any business deals based on special conditions, as indicated in our contracts are primarily valid. For all business-actions with clients apply these General Terms and Conditions unless they do not meet relevant terms and conditions of the consumer protection laws.
- 1.2. Conditions of purchase of customers are not acceptable by TMS. Even if they were not explicitly denied. All other conditions are only valid if TMS accepts the customers purchase conditions by signature. Which are only valid for exact this single business action.
- 1.3. The customer accepts our General Terms and Conditions also, if he does contradict them, but does accept the performance of TMS.

2. Offers and Data

- 2.1. All offers of TMS are generally non-binding offers. Any change of any service, price or other issue is only possible prior to conclusion of the contract.
- 2.2. Indication of weight and measurements in our offers and brochures may be imprecise. All illustrations provide simple explanations relating to the content of the text and might be different from the product
- 2.3. Any drawings supplied and/or sketches present only a schematic illustration and are only for visualization, and cannot be used for technical planning.
- 2.4. Plans, Sketches, cost estimates, technical data, samples, brochures and pictures that might be part of the offer, will always remain property of TMS. Each use, reproduction, duplication or distribution to third parties, as well as publication or presentation will need prior written approval of TMS.

3. Contracts of new and used goods

- 3.1. This contract is valid once order confirmation has been duly signed.
- 3.2. Construction and form changes, also after conclusion of contract, remain reserved as far as appearance and function of goods are not changed considerably, and it is to a reasonably extend for the customer.
- 3.3. Sale offers of used goods - TMS has the right to an intermediate sale.

4. Delivery deadlines, delivery time, delivery delay

- 4.1. TMS has the right to carry out partial or advance deliveries.
- 4.2. If the client does not accept the supplied goods at the appropriate location, or at the contractually agreed time, the delay depends not on wrong handling or failure of TMS, and therefore TMS can insist on fulfilment of the contract, or can retire from the contract after setting an additional respite.

4.3. An agreed delivery deadline will be extended in case of higher forces, as well as in case of unforeseen hindrances, which are beyond the control of TMS. The same applies if the circumstances affect the supplier of TMS.

4.4. A given delivery deadline will be extended to the extent of the time, whereas the customer has to disclose required specifications and/or changes, or additions which affect the object of purchase. TMS reserves the right to decline the acceptance of changes after contract conclusion.

4.5. If delivery or collection time is postponed upon request of the Customer, then storage cost will be charged at the minimum rate of 1% percent of the amount due for each started month.

5. Acceptance, Handover

5.1. A formal handover will only take place if this is expressly agreed, or if it is legally or regulatory required. The costs applicable to this shall be borne by the customer.

6. Delivery and Transfer of risk

6.1. Goods of TMS, which are „free delivered „by a forwarding agent to the customer, have to be examined immediately. Any defects of damages have to be indicated on the transport documents. Otherwise, the claim of defects or damages, which are or might be caused during or by transportation, will be excluded.

6.2. The customer has to make sure at his costs that all necessary means of transportation and loading tackles (crane, etc.) can reach the site of installation without problems. The costs for the preparation of the installation surface for the set up shall be borne by the customer.

6.3. Delivery delays that result from the above-mentioned reasons will be charged to the customer.

7. Price, Payment

7.1. Prices are, if not agreed otherwise, ex stock TMS.

7.2. All prices, if not indicated otherwise, are net prices, plus the legal value added tax (VAT).

7.3. In case of customer default or delayed payment, TMS has the right to accept payments of third parties, even if the customer enters an objection.

7.4. The buyer has no right to withhold payments because of warranty claims or other reasons not accepted by TMS.

7.5. In case of customer delayed agreed payments or any delay with other services, TMS can insist on execution of contract, or fulfilment of contract, or can delay execution of services until outstanding payments or other services have been settled. An appropriate extension of the delivery time may be claimed. TMS can declare the full purchase price to be due, or can retire from the contract after setting an appropriate additional respite.

7.6. If no exonerating reason exists on the part of the purchaser, TMS will charge default interest in the rate of 1.5 % p.m.

8. Reservation of proprietary

8.1. Until purchaser has met all financial obligations, TMS reserves itself the right of ownership of all objects of the contract.

8.2. TMS is entitled to indicate their ownership on the exterior of the items being sold in a visible manner.

8.3. The purchaser shall comply with the required formal requirements for the reservation of title. In the event of attachment or any other claim, the buyer shall draw attention to Sellers (TMS) title and immediately inform TMS of the attachment or levy.

9. Warranty

9.1. In case of warranty - TMS can choose between improvement and replacement within an appropriate time limit.

9.2. The replaced or defective goods or parts will remain available for TMS.

9.3. TMS can only cover the costs incurred by the customer's own elimination of defects, if prior written confirmation exists.

9.4. Warranty obligation of TMS apply only for defaults, which occur in compliance with the requirements of the operating licenses and under conventional use.

9.5. Used goods and parts will be sold as inspected. For commercial customers under exclusion of any other claims.

9.6. As of the beginning of the warranty period, TMS shall not accept any liability that extends beyond.

10. Liability

10.1. It is understood that TMS does not have to provide the purchaser with any compensation for injuries to individuals, damages of goods, which are not subject matter of the contract, for any damages and loss of profits.

10.2. Potential damages have to be proven by the purchaser. Shifting of the burden of proof will be excluded.

10.3. The purchased objects provide only that level of safety that can be expected on basis of approval regulations, operating manuals, registration provisions of TMS, which can be expected for the treatment and handling of these goods.

10.4. All claims of compensation due to damages of supplies and/or services have to be – if not explicitly accepted by TMS – legally established within a warranty period of 6 months. Otherwise, the claims will expire.

11. Claim/Place of jurisdiction

11.1. Place of jurisdiction is Vienna, Austria

11.2. All legal relationships between the customer and TMS have to be exclusively governed by Austrian law.

11.3. TMS may also sue at the place of jurisdiction responsible for the buyer.

12. General Data Protection Regulation (GDPR)

12.1. This Data Protection Regulation will inform all users this website in accordance to GDPR, regarding the nature and extent of use of personalized data. TMS takes Data Protection very serious, and all personalized data is used confidential and in accordance to legal regulations. Note that all data transmissions might contain safety bridges. Therefore, a complete protection against outsiders is unrealizable.

13. Access Data

13.1. Our website saves Data as server-log files – note that following data is recorded:

- visited Websites
- time of Access
- quantity of data in byte
- source/link from where contact was transferred
- used Browser
- used operating system
- used IP-address

All data is for statistical reasons and for improvement of our website. In case of unlawful use - TMS may use the collected data.

14. Cookies

14.1. TMS Website uses cookies. By use of cookies, TMS can improve user-friendly application, as well as safety. Common Browser enable you to deactivate cookies. In that case, it is not guaranteed that all functions of the website can be accessed without restrictions.

15. Processing of personal data

15.1. TMS saves and processes personal data only within legal limits, or if consent by customer has been collected prior to use. Personal data means any information that may be used to identify an individual, and can be backtracked to that individual, such as name, E-mail address and phone number

16. Handling of contact details

16.1. If TMS is contacted, they will save all required data to be able to proceed with order processing, or to answer inquiries. Without prior consent, no information is forwarded to third parties.

17. Handling of comments and contributions

17.1. If comments or information is sent, then the IP-address is stored. This is for the safety of the website. If any comment contravenes the law or is suggestive in nature, then the IP-address is stored to be able to identify the right person.

18. The rights of persons affected

18.1. All data, name, address, purchased goods and purchasing data and date have to be stored until expiry of product liability (10 years). Processing of data is in accordance to legal regulations of § 96 par 3 TKG as well as par 6 sec 1 lit a (approval) and/or lit b (mandatory for fulfilment of the contract) acc. to GDPR.

The persons affected have following seven rights in accordance to GDPR:

- right of objection (customer can object prior approval of data processing)
- right of data portability (exclusively data supplied by customer may be transferred to third parties)
- right of limitation (processing personal data)
- right of elimination („right to be forgotten“)
- right of rectification
- right of information
- right of information in case of sensitive data

19. Procedure in case of an inquiry:

- inquiries must be in written form
- verification of identity of person concerned
- survey of which and how data is processed (analog or digital)
- verification if the right of inquiry/elimination/... exists
- assessing if inquiry can and may be processed (retention requirements have priority, data provision may not affect the rights of third parties)
- Answering of the inquiry in addition to provision of stored data file within 1 months (2 months if very complex)
- recording of each inquiry and response (logbook)

You have the right of information, rectification and deletion, limitation, data portability, revocation and contradiction. If you believe that the use of your data is violates the Data protection law, or if you think any of your demand have been violated, you can file a complaint with the Austrian Data Protection Authority.

Contact data of the Austria Data Protection Authority:

Österreichische Datenschutzbehörde Wickenburggasse 8 1080 Wien Telefon: +43 1 521 52-25 69 E-Mail: dsb@dsb.gv.at