

1) Scope

1.1 All supplies by **LSK Data Systems GmbH** shall exclusively be subject to the General Terms and Conditions set forth below as well as the provisions stipulated in the respectively valid price list, unless agreed otherwise in writing. Any contrary or deviating terms and conditions of Buyer shall not be effective unless they were confirmed in writing by **LSK Data Systems GmbH**. This shall apply analogously to any amendments, modifications and/or supplements to these General Terms and Conditions of **LSK Data Systems GmbH**.

1.2 Our General Conditions of Supply and terms of payment shall also apply to repeat orders and follow-up transactions even if no express reference is made to them, provided that they were sent to Buyer in connection with a former order confirmed by us.

1.3 Our General Terms and Conditions shall only be applicable in relation to business people and entities as defined in § 14 BGB [German Civil Code].

2) Place of Performance, Delivery

2.1 The place of performance for all and any obligations ensuing from the contractual relationship shall be the place of the commercial settlement of **LSK Data Systems GmbH**.

2.2 Delivery will be ex stock from the respective warehouse. Buyer shall bear the accruing cost of transport and packaging. It shall be at the discretion of **LSK Data Systems GmbH** to provide for insurance coverage against transport risks of any kind for the contractual products to be shipped. The cost of transport insurance shall be borne by Buyer.

3) Contract Content and Scope of Performance

3.1 Proposals submitted by **LSK Data Systems GmbH** shall be without engagement and subject to change without notice. A contract shall not materialize until **LSK Data Systems GmbH** has issued a written confirmation of order.

3.2 **LSK Data Systems GmbH** shall be entitled to supply modified and adjusted contractual products in derogation of Buyer's order specification for reasons of production technology or development progress provided that their functional capability is not impaired by such modifications and/or adjustments.

3.3 **LSK Data Systems GmbH** expressly reserves the right to provide and invoice part shipments.

4) Time of Delivery and Interruption of Delivery Period

4.1 Times of delivery as agreed shall be deemed complied with if the contractual product is handed over to carrier at the agreed delivery date. Should the shipment of merchandise ready for dispatch be delayed for reasons not imputable to **LSK Data Systems GmbH**, the contractual products may be warehoused at the expense and risk of Buyer.

4.2 Should Buyer be in default of acceptance or should he culpably infringe any other obligation to cooperate, **LSK Data Systems GmbH** shall have the right to claim indemnity for any damage caused in this connection, including compensation for any additional expenses. **LSK Data Systems GmbH** additionally reserves the right to assert further claims.

4.3 **LSK Data Systems GmbH** shall only be liable for timely procurement of the article of sale to the extent that it received itself the article of sale and/or the requisite subsupplies in due time. **LSK Data Systems GmbH** will inform Buyer without undue delay whenever the article of sale should not be available on time and, should **LSK Data Systems GmbH** want to rescind the contract, it will immediately exercise the right of rescission. Buyer shall have the burden of proof that any infringement of duty in connection with the procurement of the article of sale is imputable to Vendor.

4.4 Any default in delivery for which **LSK Data Systems GmbH** is not answerable, originating for example from an event of force majeure, governmental interference, failure to grant official permits, labor disputes of any kind, sabotage, shortage of raw materials, delayed delivery of materials through no fault of Vendor, shall extend the time of delivery accordingly even in those cases in which such an event occurs in a period of an already manifest delay. Should the delay in delivery prevail for more than six weeks, **LSK Data Systems GmbH** shall have the right to rescind the contract totally or partly.

4.5 After the elapse of the time of delivery an extension of time by 12 workdays shall tacitly become effective. On expiration of the extension of delivery time, the contract shall be deemed rescinded with the exclusion of claims for damages unless Buyer declares during the extension of delivery time that he insists on contract performance.

4.6 Before expiration of the extension of delivery time, any claims of Buyer based on delayed delivery shall be excluded.

5) Delay in Delivery and Payment of Damages

Any claims against **LSK Data Systems GmbH** for the payment of damages on the grounds of delay in performance in addition to contract performance or in place of performance shall be excluded.

6) Cancellation and Adjournment of Delivery Dates

6.1 In case that Buyer should cancel already confirmed orders totally or partly, **LSK Data Systems GmbH** may assert claims for the payment of damages in accordance with the list price of the order without requiring the presentation of separate evidence.

6.2 Any agreement on an adjournment of delivery dates shall require the written form. It shall not be acceptable to cancel purchase orders after delivery.

7) Transfer of Risk

The place of performance shall be the place of the commercial settlement of **LSK Data Systems GmbH**. If, at Buyer's request, **LSK Data Systems GmbH** is to deliver the merchandise to a place different from the place of performance, the risk shall pass over to Buyer as soon as **LSK Data Systems GmbH** has handed out the merchandise to the forwarding agent, carrier or any other individual or entity named responsible for executing the dispatch. Buyer shall bear the cost of shipment from the place of performance.

8) Acceptance

8.1 On receipt of the merchandise, Buyer shall immediately check it for completeness and for damage. Should Buyer fail to lodge a complaint within a period of 12 workdays of receipt of the consignment, it shall be considered accepted.

8.2 If **LSK Data Systems GmbH** supplies individualized software, Buyer shall be under the obligation to accept it and undertake a demonstrable functional test within 12 workdays.

9) Liability for Defects

9.1 **LSK Data Systems GmbH** represents and warrants that the contractual products exhibit the properties and condition as contractually agreed and described in the product information included in the supply. **LSK Data Systems GmbH** does not assume any liability for properties above and beyond such information. This notwithstanding, **LSK Data Systems GmbH** will fully transmit to Buyer any guarantee and property warranties granted by manufacturers without assuming any liability for them.

9.2 Immaterial deviations from the agreed properties and condition or immaterial impairments of serviceability shall not justify any claims for making good any defects.

9.3 Buyer acknowledges that according to the state of the art it is not possible to absolutely exclude any hardware/software defects under all conditions of application.

9.4 **LSK Data Systems GmbH's** liability for defects shall not be applicable if the contractual product is improperly installed by Buyer or third parties, if it is serviced by such parties on their own, repaired, modified and/or exposed to ambient conditions which are not in conformance with the installation requirements unless Buyer is able to demonstrate that such circumstances have not been the cause of the defect complained about. Furthermore, liability for defects shall not apply if technical original signs are altered or removed without prior written consent of **LSK Data Systems GmbH**.

10) Notice of Defects

10.1 Notices of defect shall be reported in writing to **LSK Data Systems GmbH** at the latest within 12 workdays of receipt of the contractual products. In the case of justified notices of defects **LSK Data Systems GmbH** shall have the right to make good such defects or to supply defect-free replacement products. In such a case **LSK Data Systems GmbH** will bear the shipping expenses. Should the rectification of defects fail, Buyer shall only be entitled to reduce the purchase price or to rescind the contract. At any rate, rectification of a defect shall only be considered to have failed after a second attempt has proved to be unsuccessful.

10.2 Upon elapse of the period mentioned in item 10.1 above Buyer may only reduce the purchase price or rescind the contract.

10.3 Hidden defects shall be notified by Buyer to **LSK Data Systems GmbH** immediately after discovering them. A defect notified timely shall only entitle Buyer to reduce the purchase price or to rescind the contract.

10.4 Should the examination of a notice of defect prove that liability for defects is not applicable, the examination costs and any repair work that may turn out to be necessary will be charged to Buyer at the respectively valid service prices.

11) Liability

11.1 Any claims against **LSK Data Systems GmbH** for payment of damages in addition to performance or in place of performance shall be excluded, irrespective of the alleged cause in law, especially due to default, defects, infringement of duties under contractual obligation or due to tort.

11.2 **LSK Data Systems GmbH** shall be liable under legal provisions in the event of intent or gross negligence even on the part of an agent or vicarious agent. For the rest, **LSK Data Systems GmbH** shall only be held liable under the product liability law, in the case of endangerment of human life, bodily injury or impairment of health or because of culpable infringement of material contractual obligations. However, any claim for payment of damages based on the infringement of material contractual obligations shall be limited to contract-typical, foreseeable damage. **LSK Data Systems GmbH's** liability shall also be limited to contract-typical, foreseeable damage in cases of gross negligence.

11.3 Liability for damage caused by the merchandise delivered to other objects shall be absolutely excluded, however. This shall not apply to the extent that intent or gross negligence apply or in the case of injury to life, body, health.

12) Statute of Limitation

The period of limitation for claims based on defects of the supply – for whatever cause in law – shall be 6 months from the date of delivery.

13) Payment and Default

13.1 The prices resulting from the respectively valid price list relate to delivery FOB warehouse. Any value-added tax and other statutory charges and/or duties payable in the country of delivery as well as any packaging and transport costs will be additionally invoiced to Buyer in accordance with the price list.

13.2 The purchase price will be billed on delivery and/or placing the merchandise at Buyer's disposal and shall fall due from the date of invoice. Buyer shall be deemed to be in default on the expiration of 14 days from the due date – date of invoice – without any further notification on the part of **LSK Data Systems GmbH** being required. In the event of the existence of defects Buyer shall not have a right of retention unless the supply is manifestly defective. In such a case Buyer shall only be entitled to retention to the extent that the amount retained is in a reasonable relationship with the defects and the presumable cost of rectification (especially the making good of defects).

13.3 Repair invoices as well as services and spare parts shall not be subject to discount and shall be payable "immediately without discount".

13.4 Bills of exchange and checks will only be accepted subject to express prior agreement and free of charges and fees for **LSK Data Systems GmbH**.

13.5 If Buyer is in arrears with a payment obligation towards **LSK Data Systems GmbH**, all previous receivables shall fall due immediately.

13.6 Buyer stipulations to the contrary notwithstanding, **LSK Data Systems GmbH** shall be entitled to credit incoming Buyer payments first against Buyer's oldest liabilities. Inasmuch as costs and interest have been incurred through default, **LSK Data Systems GmbH** shall have the right to credit any payment first against the cost and then against the interest and only finally against the main debt.

13.7 **LSK Data Systems GmbH** shall not be obligated to provide further supplies or other services under current contracts until invoice amounts due are fully paid. **LSK Data Systems GmbH** reserves the right to assert claims for payment of compensation for any loss or damage caused by delay.

13.8 In the case of default in payment, **LSK Data Systems GmbH** shall be entitled to demand default interest at a rate of 8 percent points above the base rate (§ 247 BGB [German Civil Code]). **LSK Data Systems GmbH** shall have the right to provide evidence of higher loss or damage.

13.9 To the extent that any circumstances or information obtained reveal a precarious financial situation of Buyer, **LSK Data Systems GmbH** may at any time opt to demand delivery versus cash payment, advance payment or the provision of security. All pending receivables including those for which **LSK Data Systems GmbH** accepted letters of exchange or for which deferred payment was agreed shall fall due immediately.

14) Prohibition of Setoff and Assignment

14.1 Setoff against and retention of invoice amounts due shall only be allowable in the case of unchallenged or finally confirmed receivables.

14.2 Buyer shall not be entitled to assign claims under the contractual relationship with **LSK Data Systems GmbH**.

14.3 **LSK Data Systems GmbH** shall have the right to assign all and any claims under the business relationships existing with Buyer.

15) Reservation of Title

15.1 The contractual product shall remain the property of **LSK Data Systems GmbH** up to full payment of all receivables from the entire business relationship including all receivables from follow-up orders, supplementary orders, spare parts orders, incidental charges, claims for the payment of damages and expenses associated with the honoring of checks and letters of exchange.

15.2 Buyer shall be required to treat the merchandise delivered with due care; in particular, Buyer shall provide, at his own expense, sufficient reinstatement value insurance coverage against fire, water and theft. To the extent that maintenance and inspection work should be required, Buyer shall timely perform such services at his own expense.

15.3 In the event of garnishment or other third-party interventions, Buyer shall immediately inform **LSK Data Systems GmbH** in order that a suit may be filed pursuant to § 771 ZPO [German Code of Civil Procedure]. Should the third party not be in a position to reimburse to **LSK Data Systems GmbH** the court and out-of-court fees of a suit pursuant to § 771 ZPO, Buyer shall be liable for compensating for the loss thus incurred.

15.4 Buyer shall have the right to sell on the merchandise in regular business transaction subject to reservation of title but not to pledge it or transfer it otherwise by way of security. However, even now Buyer agrees to assign to **LSK Data Systems GmbH** all and any receivables to which Buyer may be entitled towards his buyers or third parties as a result of the resale, in the amount of the invoice total (including VAT) of **LSK Data Systems GmbH's** claim irrespective of whether or not the merchandise was sold on directly or after processing. Buyer shall remain authorized to collect such receivables even after assignment. The right of **LSK Data Systems GmbH** to collect by itself the said receivables shall remain unaffected by this. However, **LSK Data Systems GmbH** undertakes not to collect the receivable as long as Buyer meets his payment obligations from the proceeds received, is not in arrears with his payments and, in particular, there is no petition for instituting composition or insolvency proceedings or that payments are suspended. Should this be the case, **LSK Data Systems GmbH** may demand that Buyer discloses the receivables assigned and the names of the respective debtors, provides all information needed for collection, hands out the relevant documents and informs the debtors (third parties) of the assignment.

15.5 Any processing or alteration of the merchandise by Buyer shall always take place on behalf of **LSK Data Systems GmbH**. If the merchandise delivered is processed jointly with other objects not belonging to **LSK Data Systems GmbH**, the latter acquires a co-ownership title to the new item at the ratio of the value of the merchandise delivered (invoice total including VAT) to the other, processed objects at the time of processing. For the rest, the same conditions shall apply to the object obtained by processing as to the merchandise delivered subject to reservation of title.

15.6 Buyer shall be required to disclose to the third party in question at all times the title of property and/or co-ownership title of **LSK Data Systems GmbH** and ensure that the respective third party takes account of the rights of **LSK Data Systems GmbH**.

15.7 In the event of default of payment, including payment related to other supplies or services provided by **LSK Data Systems GmbH** to Buyer or in the event of financial collapse of Buyer, **LSK Data Systems GmbH** shall be entitled to enter the offices of Buyer to assert its reservation of title to the merchandise subject to reservation and to take possession of such merchandise.

15.8 Objects supplied for the purpose of tests and demonstrations shall remain the property of **LSK Data Systems GmbH**. Buyer may only use them subject to a separate agreement with **LSK Data Systems GmbH**.

16) Industrial/Intellectual Property Rights and Copyrights of Third Parties

16.1 **LSK Data Systems GmbH** shall not assume any liability for the absence of potential infringement of third parties' industrial, intellectual property rights and copyrights by the contractual products. Buyer shall immediately inform **LSK Data Systems GmbH** of any claims raised against Buyer on those grounds.

16.2 To the extent that the products delivered were manufactured on the basis of designs or instructions of Buyer, Buyer shall exempt **LSK Data Systems GmbH** from any claims asserted by third parties as a result of an infringement of industrial or intellectual property rights and copyrights. Any costs of litigation shall be reasonably advanced.

17) Export and Import Licenses

The products and technical know how supplied by **LSK Data Systems GmbH** are destined for remaining in the country of delivery agreed with Buyer. Any re-exportation of contractual products – individually or in a system-integrated form – shall require the respective approval to be obtained by Buyer and shall in principle be subject to the foreign trade regulations of the Federal Republic of Germany and/or the respective other country of delivery agreed with Buyer. Buyer shall be required to obtain the necessary information about applicable regulations on his own initiative. Whether or not Buyer discloses the final destination of the contractual products delivered, it shall be Buyer's duty to obtain in his own responsibility the necessary permit from the competent foreign trade regulation authority before exporting such products.

Any resale of contractual products by Buyer to third parties, with or without the knowledge of **LSK Data Systems GmbH**, shall at the same time require the transfer of the export license terms and conditions. Buyer shall be responsible for proper compliance with such terms and conditions towards **LSK Data Systems GmbH**.

18) Place of Jurisdiction

The place of jurisdiction (including for letter of exchange and check disputes) shall be Frankfurt am Main (Germany) provided that Buyer is a businessman or entity as defined by § 14 BGB [German Civil Code].

19) Applicable Law

19.1 The laws of the Federal Republic of Germany shall apply exclusively. The UN Convention on Contracts for the International Sale of Goods dated 11 April 1980 shall be excluded. The contractual relationship shall exclusively be governed by German law, especially pursuant to the German Civil Code and Commercial Code.

19.2 Should one or more provisions of these General Terms and Conditions be invalid or should this contractual text contain a loophole, the contracting parties shall replace the invalid or incomplete provision by appropriate regulations or supplement them such that the commercial intent and purpose of the originally intended regulations are complied with as much as possible. The validity of the other provisions shall remain unaffected.

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