



# TERMS FOR SALE, DELIVERY AND LICENSE

IGEL Technology B.V., November 2017

## I. GENERAL PROVISIONS

### 1. Scope of Application

- (1) These Terms for Sale, Delivery and License shall be applicable to all sales and deliveries, respectively deliveries of hard- and software-products and all services like repair, consultancy, training and support (further referred to as “IGEL-Products”) of IGEL Technology B.V. (further referred to as: “IGEL”) to legal entities (further referred to as: “Customers”). The bold - typed emphasises serve only for better orientation of the readers and have no subject-matter meaning.
- (2) These Terms for Sale, Delivery and License are a substantial part of all offers, acceptances of contracts and apply to all sales contracts of IGEL. These Terms for Sale Delivery and License also apply to all prior acts or legal acts by IGEL and the Customer. In the event of any conflict between specific arrangements with the Customer and these Terms for Sale Delivery and License the specific arrangements shall prevail.
- (3) IGEL does not acknowledge general terms of trade of the Customers, as well as when in a particular case IGEL does not explicitly object, unless IGEL has approved the application of these Customer’s terms explicitly and in writing. These Terms for Sale, Delivery and License also apply exclusively when IGEL starts performance of a particular contract without a specific reservation despite knowledge of Customers’ terms of trade, which are contradictory or different from these Terms for Sale, Delivery and License.
- (4) These Terms for Sale, Delivery and License are also applicable for all future transactions with Customers and even if IGEL does not explicitly indicate that its terms shall apply; and until IGEL puts into effect new terms. The incorporation of the new terms into the business relation between IGEL and the customer becomes effective when IGEL indicates explicitly that there are new terms in effect and makes them available on the IGEL - webpage on the internet.



- (5) With the exception of the managing director, the officer with statutory authority and the trade representatives, the staff members of IGEL are not entitled to enter into agreements deviating from the present terms.

### 2. Offers and Conclusion of Contracts

- (1) Offers by IGEL are always non-binding (the so called “invitatio ad offerendum”), unless they are indicated in writing as binding. A binding agreement shall only be reached when IGEL confirms explicitly in writing the order of the Customer or starts performance of delivery. The Customer is bound by its order/offer for one week, provided that there is not a longer binding period agreed or customary, or the Customer has declared in its order/offer explicitly a shorter binding period.
- (2) For the determination of the provisions of the delivery and the specific terms of the contract IGEL’s written confirmation of the order is solely authoritative. Collateral agreements have to be always approved in the form provided in § 27 Sec. (4) (**Final clauses**) of these Terms of Sale, Delivery and License.
- (3) IGEL reserves all rights, in particular the ownership and the copyright, on any preliminary estimate of costs, designs, plans or specific technical documentation, which IGEL provides to the Customer before or after the conclusion of the contract. Without the approval of IGEL the Customer is not allowed to provide, to copy, to duplicate, to deliver or otherwise to give any information to third parties. Those have to be returned to IGEL immediately upon request.
- (4) In case that there were agreed special provisions for a particular order, they will expire with the completion of the particular order and will not have any effect to other orders running at the same time or following ones.

### 3. Prices

- (1) All prices appointed by IGEL as well as processing and printing expenses, unless otherwise agreed by the parties, are valid “net ex works” in terms of § 27 Sec. (2) (**Final clauses**) of these Terms for Sale, Delivery and License, that is without the expenses for packing, loading, insurance (in particular transport insurance), duties and taxes, transport costs and turnover tax.



- (2) All the prices are regarded as in EURO, unless another currency is explicitly appointed in IGEL's confirmation of the order.
- (3) In case of unforeseeable extraordinary cost increases, such as labor costs due to collective agreements in the industry or due to internal contracts or other costs necessary for the provision of services (such as those for materials, energy, transport, external work, financing etc.) or by price increases from suppliers or currency fluctuations, IGEL is entitled to adjust the prices accordingly to the Customers.

### **4. Foreign trade**

- (1) In case of deliveries to foreign countries these Terms for Sale, Delivery and License shall be applicable together with the "International Commercial Terms" ("Incoterms") published by the International Chamber of Commerce in their newest re-drafting (Incoterms 2010) provided that in the confirmation of the order, respectively in the binding offer, IGEL refers to one of the concerned Incoterms (for e.g. by means of the clauses "cif", "ex work", "fob", etc.).
- (2) Import duties, fees for consultation and different levied taxes/fees based on regulations of the country of destination are generally not included in the appointed prices of IGEL (accordingly to the simultaneously applicable § 3 Sec. 1 of these Terms for Sale, Delivery and License). When in case of exception taxes shall explicitly be included in the price, the agreed price increases accordingly if the tax rate increases after the conclusion of the agreement.
- (3) IGEL is only obliged to comply with foreign regulations if the Customer gave detailed information for that in advance.

### **5. Permission for Export and Import**

- (1) IGEL-Products are exclusively intended for the use in the Country of Delivery, which is the country that the Parties mutually agreed to be Country of Delivery.
- (2) In the event IGEL-Products are delivered to a foreign country, trade - and export regulations must be observed. This is the case for export regulations of the country of origin (Germany) and the export restrictions of the suppliers' countries of origin, for example the USA and the special export restrictions of the particular supplier.



- (3) The re-export of IGEL-Products – individually or in an integrated form – by the Customer to a third country, is additionally subject to the trade regulations of the Country of Delivery as per § 5 (1). The Customer is obligated to inform itself independently about the relevant regulations and to get IGEL’s written approval regarding the re-export to the third country before the re-export to the third country. It is the sole responsibility of the Customer to obtain the possibly necessary permissions of the competent foreign trade authority before it re-exports the goods. The Customer is responsible to ensure the compliance with the relevant provisions until the IGEL-Products reach the end user in the third country.
- (4) If IGEL delivers the IGEL-Products directly to a third country, the Customer likewise has the obligation and the responsibility to inform itself about the relevant regulations/ foreign trade regulations and to get IGEL’s written approval regarding the delivery to the third country before IGEL carries out the delivery. §5 (3) applies accordingly.

## II. CONTRACTUAL OBLIGATIONS

### 6. Payment, Delay

- (1) IGEL’s contract claim for payment is due immediately at the delivery of the IGEL-Products and without deduction. The Customer is in delay for payment when he doesn’t perform payment during the period of 14 days after the due date as mentioned on the invoice but at latest 30 days after start of delivery.
- (2) IGEL expressly reserves the right to decline Customer’s checks and bills of exchange. The acceptance of such payment method is always regarded as conditional performance. These payment methods will only be unconditionally accepted in the event that they can be cashed. All costs connected with the acceptance of such payment methods, for example but not limited to collection expenses and bill of exchange taxes, are to be borne by the Customer. Credit notes for bills of exchange and checks are regarded as valid under the condition of the invoice amount’s receipt; they are effected at the value date on which IGEL has access to the equivalent amount.



- (3) In cases where IGEL issues its invoice to a person other than to its contract partner (the Customer) that shall not be considered as
- an alteration of the contract partner;
  - a discharge of the Customer from its obligation for payment;
  - as an acknowledgement of IGEL's consenting to a cumulative assumption of the debt or as
  - as IGEL's consenting for a taking-over of the contract.
- (4) The Customer will be charged with € 10,00 for each reminder for payment after the due date. This fee does not affect the legal rights of IGEL by law.
- (5) In case of a delay in payment or of protest of the cheque or of the bill of exchange or in case of other circumstances, which entitle IGEL to demand a cash advance or provision of security, IGEL may terminate any agreement with the Customer regarding the entire business relation between IGEL and the Customer.

### **7. Set-off, Retention, Assignment**

- (1) The Customer is not entitled to set off a claim or to retain payment.
- (2) The Customer is not entitled to assign claims from the contract to third parties without the written approval of IGEL.

### **8. Delivery**

- (1) The appointed period/date of delivery is generally not binding, unless IGEL confirms explicitly and in writing the appointed period/date is to be binding. In the event the Customer does not cooperate with IGEL in accordance with § 9 of these Terms for Sale, Delivery and License, the delivery period shall be extended with a reasonable term.
- (2) In case that the Parties have not agreed to a binding delivery term, respectively date of delivery, IGEL shall only be in delay with its obligation to deliver and to perform, when the Customer sends a reminder to IGEL indicating a reasonable period of grace and when the period has unsuccessfully expired and the further legal preconditions have been met.



- (3) Customer acknowledges that IGEL's performance and delivery depends on IGEL's suppliers. A delay of delivery or non-performance of delivery that results from a failure of IGEL's suppliers (without any cooperative fault of IGEL) shall not be considered as a breach of IGEL.
- (4) IGEL shall not be responsible for any delay of the delivery/performance resulting from a force majeure or similar circumstances, which derive from circumstances which IGEL cannot influence, e.g. industrial action, official directive, and also when these circumstances appear in the sphere of IGEL's suppliers or sub-suppliers. In these cases the period of delivery is extended until the duration of the force majeure circumstances including a reasonable initial period, but not longer than six months. After the expiry of its period both parties are entitled to the contract.
- (5) IGEL is entitled to partial delivery, unless agreed otherwise. In cases of partial delivery IGEL is entitled to issue invoices for each partial delivery.
- (6) In case that the delivery according to the request of the Customer is delayed as a result of a Customer's failure to perform a required cooperative act (for e.g. delivery of additional devices and parts for reconstruction), or the Customer does not accept the delivered item, or the delivery is not performed because the Customer fails to perform its obligation for payment, then IGEL is entitled to demand for a compensation for the additional expenses which occur, and in particular the expenses for storage. The expenses for storage can be charged from the beginning of one week after the notification of the readiness to dispatch with 0,5% lump sum of the invoiced sum for every month. IGEL reserves the right to prove higher expenses and/or compensation and herewith does not waive any other legal remedy.

### **9. Duties and Obligations of the Customer to Cooperate**

- (1) In case the effectiveness of the contract or the performance of the contract requires specific permissions or licenses (for e.g. licenses for import or export) or similar, they are to be obtained by the Customer, unless the parties agreed explicitly something else.
- (2) The Customer is furthermore obliged to cooperate timely in accordance with the contract and in good faith, in particular to obtain the required permissions and to provide the additional devices and parts for reconstruction.



IGEL is entitled to set a reasonable deadline to the Customer for the performance of the act of cooperation (for e.g. the request for a necessary permission). After the unsuccessful expiry of that deadline IGEL is entitled to terminate the contract. When the required licenses or permissions are not provided before the expiry of three (3) months after the conclusion of the contract IGEL is entitled without further preconditions to terminate the contract.

### **10. Transfer of Risk**

- (1) The risk transfers to the Customer when the IGEL-Products are handed over to the first carrier for transmission to the Customer (for e.g. forwarding agent, carrier or similar) for loading, if transportation by IGEL is agreed the risk transfers to the Customer when loading begins, but at latest when the IGEL-Products leave the factory as place of performance (comp. § 27, Sec. (2) of these Terms for Sale, Delivery and License). The same applies even if IGEL has undertaken the expenses for the transport or has undertaken another performance like the installation.
- (2) If IGEL performs the dispatch of the products later than the first possible date of delivery upon request of the customer or on similar grounds deriving from the Customer's sphere, then the risk shall pass to the Customer at the moment of notification of the readiness for dispatch by IGEL.
- (3) An insurance of the IGEL-Products, for e.g. against theft, break, transport, fire or water damages or similar risks, will be provided by IGEL only upon explicit request of the Customer and will always be at the expense of the Customer.
- (4) Return of the IGEL-Products to IGEL - reserving other explicit agreements - will be at the expense and under the risk of the Customer.

### **11. Retention of Title**

- (1) IGEL retains the title of the IGEL-Products until full payment of all accounts receivable which are existing and which can accrue in the future from the business relation with the Customer. At the start of a running account with the Customer, the entire retained property serves to secure the claim for the balance of the account. As long as according to the Customer's national law the validity of its retention of



title depends on particular preconditions or formal requirements (for e.g. on a registration), the Customer is obliged to fulfil at its own expenses the preconditions or the formal requirements for the validity of the retention of the title.

- (2) In case of a breach of the contract by the Customer, in particular in case of a delay for payment or in case of an application for a proceeding for insolvency, IGEL is entitled to request from the Customer the purchased objects back without any grace period to be set, or in the same case, to request the assignment of the claim for return of property against third parties. The withdrawal of the IGEL-Products and the seizure of the reserved IGEL-Products by IGEL shall not be regarded as a termination of the contract by IGEL, unless it is declared explicitly and in writing. The Customer shall undertake the expenses for the withdrawal. IGEL is entitled to monetize the repossessed IGEL-Products. Any depreciation of the IGEL-Products will be borne by the Customer.
- (3) The Customer is entitled to resell the retained IGEL-Products within the scope of an orderly business operation, as long as he is not in delay, and/or there is not a filed application for beginning of insolvency proceedings over its property or he is obliged to apply for insolvency proceedings. In case of resale of the reserved IGEL-Product on credit, the Customer is obliged to secure the rights of IGEL on the reserved IGEL-Products. Hypothecation, pledge, transfer of ownership by way of security, further transfer to the financing of the IGEL-Products (for e.g. to leasing company) and/or transfer of the use to third parties is not allowed. This provision has legal effect.
- (4) If the Customer resells the reserved IGEL-Products, he thus assigns to IGEL his claim for payment against the subsequent buyer together with all the accessory rights in order to secure the claim of IGEL. However, IGEL can request that the Customer notifies its debtors of the assignment. The Customer is authorised to collect the sum from the subsequent buyer until revocation by IGEL. With the revocation of the authorisation to collect payments, the Customer has to provide IGEL with the required data needed for the collection of the claim and in the same case the Customer has to support IGEL in claiming the accounts receivable.
- (5) The Customer is obliged to keep diligently and at its own expense the IGEL-Products in their custody with (co-)ownership of IGEL, particularly to insure them





against theft, break, fire, water or similar damages and to prove the existence of the insurance upon IGEL's request.

- (6) The Customer is during the retention of the property obliged to keep the IGEL-Products in proper conditions and to admit necessary repairs immediately and to be performed in one of the IGEL's authorised service center. The Customer ensures that the IGEL-Products are marked as property of IGEL or that the property is otherwise clearly identifiable.
- (7) Seizures by third parties over the retained IGEL-Products have to be reported by the Customer to IGEL immediately after the Customer becomes aware of such. In such a case the Customer shall transfer all the necessary information and documents for each seizure to IGEL. The Customer is liable for the expenses which arise from the lift of the seizure, in particular for the costs of IGEL's lodgement of intervention on the seizure, as long as they cannot be attained by the creditors.
- (8) In case of connection of the retained IGEL-Products with other new integrative products, the co-ownership of the new product is due to IGEL. The share in the co-ownership is defined according to the proportion of the value of the reserved objects towards the invoice value of the other objects.
- (9) If on the ground of legal provisions the Customer acquires the sole ownership over the new product, then the Customer and IGEL shall agree that IGEL will keep the co-ownership of the new product in proportion of the value of the integrated purchased objects towards the invoice value of the other product. The Customer shall keep in custody in accordance with § 11 (5) of this Terms the new objects for IGEL free of charge.

### **III. DEFECTS, WITHDRAWAL AND COMPENSATION FOR DAMAGES**

#### **12. Defects and Guarantees**

- (1) IGEL guarantees that the delivered IGEL-Products have no considerable defects at the moment of transfer of the risk.



- (2) Details of the subject matter of the delivery, the appearance, capacity, measurement and weight of the IGEL-Products, etc. that were made at the conclusion of the contract in valid descriptions of the IGEL-Products represent no guarantee, but only a description of the IGEL-Products, which are only to be regarded as approximate. A guarantee is available only when IGEL has appointed it explicitly and in writing as such.
- (3) When after the conclusion of the contract alterations are carried out on any of the IGEL-Products concerning construction, material, and model, these alterations do not represent a defect of the purchased IGEL-Products, as long as no deduction of the value occurs from that.
- (4) IGEL is not liable for public statements of third parties (including the suppliers of IGEL or the manufacturers) when IGEL did not know about these statements or was not obliged to know. IGEL is not liable for public statements through IGEL or third parties when the statement at the moment of the conclusion of the contract was already corrected or when the Customer could not prove that the respective statement has influenced its decision to purchase.
- (5) The guarantee for defects and damages is excluded when they arise
- because a certain construction or a certain material for the purchased IGEL-Product was chosen under the instruction of the Customer,
  - because the Customer has installed the purchased IGEL-Product or put it in operation incorrectly,
  - because the Customer operates the purchased IGEL-Product incorrectly or he does not use appropriate operating instruments,
  - because the Customer has not considered user manual or the rules for maintenance,
  - because the Customer does not use the purchased IGEL-Product competently or has overstrained the IGEL-Product,
  - because the Customer has attached external parts or components (products by other manufacturers), although they were not permitted in the user manual or by a written explanation by IGEL,
  - because the Customer has decomposed or changed the purchased IGEL-Product without the prior approval of IGEL,



- because the Customer has installed incorrectly the purchased IGEL-Product into another item ( even if the installation into the other item might be allowed).

### 13. Notice of a lack of conformity

(1) The Customer loses the right to rely on a lack of conformity of the IGEL-Product, when the Customer does not give notice to IGEL specifying the kind and nature of the lack of conformity in accordance with the following rules:

- any lack of conformity, which at the inspection of the IGEL-Product are recognizable, has to be noticed in writing to IGEL within at latest in five working days after the delivery of the IGEL-Product and before further manufacturing/ processing/ usage (if possible under the dispatch of the provided printed forms by IGEL),
- any hidden lack of conformity, which at the inspection of the IGEL-Product could not be discovered, has to be noticed in writing to IGEL within five working days after the defect is discovered or should have been discovered through due diligence. For the adherence to the term for notice, it is sufficient to dispatch the notification of the lack of conformity in due time.

(2) A notice of a lack of conformity does not abolish the duties of the Customer for acceptance and payment of the IGEL-Products, unless the defectiveness of the IGEL-Products is not controversial or has already become *res judicata*.

### 14. Remedies

(1) If there is a lack of conformity in the purchased IGEL-Products, IGEL is entitled to its own choice to remove the defects, by means of for example extra work/improvement of the IGEL-Products, or replacement of the complained parts or to deliver another product without defects. If one of these forms of additional performance is connected with considerable disadvantages for the Customer, the Customer is entitled to request another type of additional performance.

(2) IGEL is entitled to install as spare parts either new parts or used parts considered good as new.



- (3) In case of remedying a defect, the repairing of the IGEL-Product, respectively the substitute delivery, IGEL bears the necessary expenses, in particular the wage, material and freight expenses. Exchanged old parts of the IGEL-Product become property of IGEL.
- (4) In cases of guarantees with foreign Customers, IGEL shall not generally bear the expenses and similar specific expenses, which are connected with the place of usage, respectively the exporting country of the purchased IGEL-Products.
- (5) When the delivery of a substitute product fails, the Customer is entitled to proceed to the other legal claims for lacks of conformity, in particular to reduce the purchase price or to withdraw from the contract. In case of partial performance the Customer may withdraw from the whole contract only if he has no provable interest of partial performance and the breach of the duty is considerable. Claims for compensation for damages due to the lack of conformity may be established only under the preconditions appointed in § 17 (**Duty of IGEL to Compensate the Damages**).
- (6) If an inspection of the IGEL-Products confirms that the purchased IGEL-Products do not represent a lack of conformity, IGEL is entitled to charge its expenses for the inspection according to its general hourly rates of payment on the account of the Customer.

### 15. Limitation period

- (1) The limitation period for claims for a lack of conformity amounts to one year from the delivery.
- (2) The running of the limitation period shall not be interrupted when IGEL performs remedies, regardless if IGEL remedies the lack of conformity by delivery of a substitute part or product or if IGEL remedies the lack of conformity by repair. The limitation period of the replaced parts applies also to the installed spare part.

### 16. Withdrawal

- (1) In the event the IGEL-Products will be defective then the Customer has the right to terminate the contract in accordance with the conditions of 6:265 of the Dutch Civil Code. In cases where the Customer claims a breach of the contract, excluding claims of defect of the IGEL-Product, the Customer has only a right to terminate



the agreement in the event of intent and/or negligence of IGEL in the performance under the contract.

- (2) In the event the Customer terminates the contract in accordance with § 16.1 IGEL is entitled to calculate a monthly lump sum of 3% of the purchase price for the realized profits from the use of the IGEL-Products, as far as the Customer does not prove a smaller value of the emerged profits. The right of IGEL to prove a higher value of the emerged profits shall be unaffected.

### **17. Duty of IGEL to Compensate the Damages**

- (1) IGEL is liable for a breach of duty in cases of intent and culpable negligence. In cases of simple negligence IGEL is only liable when it has committed a breach of an obligation of the contract which is essential for the performance of the contract. In other cases the claims for compensation of the damages are excluded.
- (2) When IGEL is liable for culpable negligence as per § 17 (1), the liability of IGEL is limited to only those damages which IGEL could have reasonably expected as consequence of the act under the known circumstances.

The limitation of the liability shall not apply for damages of life, body and health.

- (3) When IGEL is liable for simple negligence or culpable negligence of the employees of IGEL or its representatives who are part of the directors or the managerial employees, the liability is limited to double the sum of the respective purchase price. Additionally IGEL is not liable for indirect damages, or damages occurred by defects, or for lost profits.
- (4) The proof of a breach by IGEL, in the scope of the liability to compensate for damages, has to be conducted by the Customer who requests the compensation for damages.
- (5) IGEL is not liable for claims of defective IGEL-Products which are based on a defectiveness of supplied parts, unless IGEL has given a guarantee referring to the supplied part or the defect of the supplied part is evident. IGEL is not obliged to inspect supplied parts.
- (6) Any provision through which the liability of IGEL is excluded or limited shall also apply to the personal liability of the employees or the freelancers of IGEL.



- (7) The Customer is obliged to give notice immediately and in writing to IGEL of the damages for which it wants to make IGEL liable, and if necessary to allow an inspection of the damages.

### **18. Duty of the Customer to Compensate the Damages**

As for IGEL's entitlement to request from the Customer compensation for damages instead of performance, IGEL is entitled to request a lump sum for compensation for damages in the amount of 15% of the purchase price. IGEL reserves the right to claim for higher damages according to the statutory provisions of law.

## **IV. SPECIFIC PROVISIONS FOR SOFTWARE PRODUCTS**

### **19. Type of licenses**

- (1) The Customer acquires a non-exclusive and non-transferable license, without rights to sub-license, to use the IGEL Software.
- (2) Insofar as the Customer has purchased a license to a "bundled" IGEL Software, that is to say, as long as the Customer has purchased an IGEL Hardware product, such as Thin Clients, Zero Clients and All-In-One Clients ("IGEL Hardware Product") or the IGEL UD Pocket product, and these IGEL Hardware Products as well as the UD Pocket are provided by IGEL together with IGEL Software, the license to use the IGEL Software is expressly limited to the use with, and in connection with, the purchased IGEL Hardware Product or the IGEL UD Pocket. Subject to clause §19 (2), the Customer is not permitted to copy or download the IGEL Software in whole or in part to, or use with another hardware product.
- (3) If the IGEL Software is provided to the Customer by way of a download, the acquired license includes the right to copy or download the IGEL Software to an IGEL Hardware Product or a third party hardware product. The simultaneous use of the purchased IGEL Software license on several hardware devices is not permitted.
- (4) The Customer's right of use includes as well the right to provide the IGEL Software to contracted businesses within the framework of cloud or data center services.



## 20. Scope of the usage

- (1) The right of use means the right provided by IGEL to install, load, run and use the IGEL-Software under the terms, of these general conditions ('Terms for Sale, Delivery and License') and the End User License Agreement ('EULA'). Subject to full compliance by Customer of the aforementioned terms and conditions IGEL hereby grants to Customer a non-exclusive and non-transferable right to use the IGEL-Software. Customer may only use the IGEL-Software in its own company for its own projects. Customer is not allowed to grant any (sub-) licenses to any other party. Customer may not distribute, sell, copy, transfer or in any other way lose control over the IGEL-Software.
- (2) Customer is not entitled to make any changes to the IGEL-Software or parts thereof. Customer furthermore is not allowed to reverse engineer or decompile the IGEL-Software or parts thereof, except for those circumstances that are allowed under mandatory copyright law and under the condition that Customer has obtained prior written approval of IGEL to do so. IGEL is entitled to attach conditions to such approval.

## 21. Guarantee/ Liability

- (1) The following provisions under (2) to (7) are applicable supplementary to section III (**DEFECTS, WITHDRAWAL AND COMPENSATION FOR DAMAGES**).
- (2) The IGEL-Software, including updates and upgrades, are provided to Customer "as is". IGEL does not warrant that the IGEL-Software, including updates and upgrades, shall operate without interruption, will be error-free or that it is fit for any particular purpose, or that errors or other defects shall be corrected in updates and/or upgrades.
- (3) IGEL guarantees that the IGEL-Software has the particular functions and characteristics which are indicated in the general IGEL product descriptions and catalogues. IGEL does not guarantee that the IGEL-Software will correspond to the individual requests of the Customers. The Customer bears the sole responsibility for the selection and the usage of the IGEL-Software as well as for the thereby intended results. IGEL does not guarantee for altered or processed versions of the IGEL-Software.



- (4) Each and every liability of IGEL is excluded in the event that the Customer does not comply with the terms and conditions as stated in § 20 (1) or if the Customer does not use or run the IGEL-Software with or in connection with IGEL-Hardware (namely terminal, thin client, thin client cards and thin client upgrade kits) or with third party hardware approved by IGEL.
- (5) IGEL is not liable for the loss of data or its restoration.
- (6) IGEL is not liable for defected economic result, lost profits, lost savings, loss of goodwill, indirect damages, consequential damage, consequential loss, damages as a result of or related to defects and claims of any third parties, damage through business interruptions, mutilation or loss of data and all other forms of damage or injury for which IGEL does not explicitly assume liability.

## V. SPECIFIC PROVISIONS FOR REPAIR SERVICES

### 22. Limitation Period

The limitation period for claims of a lack of conformity in repair services (IGEL-Services) rendered by IGEL amounts to one year beginning from the time of delivery.

### 23. Spare Parts

If it is necessary to install a spare part IGEL is entitled to install either new parts or used parts to be as good as new parts.

## VI. MISCELLANEOUS

### 24. Intellectual Property rights and Copyrights of Third Parties

- (1) In cases where the IGEL-Products were manufactured in accordance with the drafts or designation of the Customer, the Customer indemnifies IGEL against all claims, arising from the breach of intellectual property rights and/or copyrights which are exploited by third parties.
- (2) In cases where the IGEL-Products were delivered to other countries than Germany, IGEL is only liable for a breach of a patent, when the conflicting patent right is granted in Germany and when the IGEL-Product is manufactured in IGEL's own factories. In such a case the liability of IGEL is limited





- to support to the Customer in and out of court and in judicial proceedings against the patent holder, and
- to compensate the Customer for the expenses for proceedings, and
- to indemnify the Customer against the final judgement for compensation for damages to the patent holder.

In cases of IGEL-Products, which were not wholly manufactured in IGEL's own factories, the liability of IGEL is limited by IGEL assigning IGEL's claim against its suppliers to the Customer.

- (3) All intellectual property rights to the IGEL-Software and related documentation are held solely by IGEL Technology GmbH (Bremen, Germany) or its licensors. Customer shall only acquire the rights of use expressly granted in the Agreement, these general conditions ('Terms for Sale, Delivery and License') and the End User License Agreement ('EULA') and subject to the terms and conditions as stated in the Agreement, these general conditions ('Terms for Sale, Delivery and License') and the End User License Agreement ('EULA').
- (4) Customer shall not be allowed to remove or modify any designation concerning copyrights, trademarks, business names or other intellectual or industrial property rights from the IGEL-Software or related documentation.
- (5) IGEL shall be allowed to take technical measures to protect the IGEL-Software or with a view to agreed restrictions. Customer is not allowed to remove or evade such technical measures.
- (6) IGEL shall indemnify Customer against any third party claim stating that the IGEL-Software, related documentation or other relevant materials developed by IGEL infringe intellectual property rights of third parties, on the condition that Customer immediately informs IGEL in writing about the existence and contents of such claim and will let IGEL handle the matter completely, including but not limited to negotiating and agreeing to any settlements. In this respect Customer shall provide - at first request by IGEL - all necessary powers of attorney, information and cooperation to IGEL to defend - if necessary, in Customer's name - against such



third party claims. This indemnification obligation is not applicable in the event alleged infringement relates to changes to the Software, related documentation and other relevant material, which Customer has made or caused third parties to make.

- (7) If it has been established in court as an incontrovertible fact that the IGEL-Software, related documentation or other materials developed by IGEL and provided to Customer infringe any intellectual property right held by a third party, IGEL shall – at its sole discretion – (a) change the IGEL-Software to the extent that it does not infringe such third party rights, (b) provide different IGEL-Software with similar functionality that does not infringe such third party rights, (c) at its expense acquire a license from such third party in order for Customer to continue using the IGEL-Software, (d) or provide any other reasonable solution to Customer. Any further liability of IGEL with respect to infringement of third party rights is excluded.

### **25. Spare parts**

- (1) For the delivery of spare parts and accessories in exchange for old parts at a special spare part price (so called “spare part delivery”), the following specific provisions in Sections 2-4 shall be simultaneously applicable.
- (2) The old parts shall be supplied to IGEL completely freight paid by the Customer and free of charge to IGEL.
- (3) If the spare part is delivered by IGEL before the Customer has delivered the old part, then IGEL, instead of the spare part price, shall for the moment charge the valid price of a new spare part. After the arrival of the old parts, IGEL will credit the difference between the new price and the price for replacement to the Customer.
- (4) The old parts become property of IGEL upon delivery. Through performance of delivery of such old parts the Customer declares implicitly that the Customer was owner of the old part, respectively that the Customer is authorized to pass over the ownership of its old part to IGEL, and that there are no existing rights of third parties over its old part.



## 26. Orders for Printing and Stamping

- (1) The Customer shall inspect galleys and imprints for mistakes and shall return them to IGEL cleared and ready for press. IGEL is not liable for mistakes the Customer is responsible for. Telephonically transmitted texts or alterations demand prior written approval of the Customer.
- (2) IGEL's liability is excluded for documents handed over by the Customer for the performance of the order, in particular films, clichés, data carriers etc. (further called as "patterns"). After the expiry of a term of two years IGEL is authorised to demolish the archived documents without particular notification of the Customer.
- (3) Through the placing of the order the Customer shall not acquire ownership on the creation of the copies and stamps, and similar needed tools. The erasing or demolishing of these tools by IGEL follows after the completion of the order.

## 27. Final clauses

- (1) These Terms for Sale, Delivery and License are exclusively governed by Dutch law. The application of uniform UN- Convention on the International Sale of Goods (CISG) is excluded.
- (2) The place of performance for all obligations in connection with these Terms for Sale, Delivery and License is the factory as pointed out by IGEL in the confirmation of the order (industrial premises). When the dispatch according to the agreement between the parties has to be performed from the factory of a third party, the third party's factory shall be the place of performance.
- (3) Exclusive court of jurisdiction for all litigation consequent from this business relation is the courts of Midden-Nederland, the Netherlands. IGEL is entitled also on its part to sue at the place of the registered office of the Customer.
- (4) Alterations of these Terms for Sale, Delivery and License, supplements and representations demand written form for their effectiveness. The same is also valid and in particular for annulment or alteration of these written clauses. As far as the adherence of the written form is required, the transmission by facsimile is sufficient also. An electronic data transmission (e- mail) is only sufficient as far as these are provided with a qualified electronic signature according to the German Law for signature.

## Terms for Sale, Delivery and License



(5) If one or more provisions of these Terms for Sale, Delivery and License have to be or become ineffective or if these Terms for Sale, Delivery and License include a gap in provisions, the validity of the remaining provisions shall be unaffected. The ineffective or incomplete provision will be replaced through a similar rule, which meets closest the term and the purpose of the desired provision efficiently.