



# TERMS FOR SALE, DELIVERY AND LICENSE

IGEL Technology GmbH, August 2018

## I. GENERAL PROVISIONS

### 1. Scope of Application

- (1) These Terms for Sale, Delivery and License (“Terms”) apply to sales and deliveries of hardware and software products (“IGEL-Products”) of IGEL Technology GmbH (“IGEL”) and to deliveries of all IGEL-Products or any other goods manufactured or supplied by IGEL to any purchaser of the IGEL-Products, firm or company which enters into an agreement with IGEL (“Customer”). The bold-typed emphasizes serve only for better orientation of the reader and have no subject-matter meaning.
- (2) These Terms form an essential part of all offers by and conclusions of contracts and contracts with IGEL.
- (3) IGEL does not accept any terms and conditions of the Customer, even if IGEL does not explicitly object, unless IGEL has approved the application of these Customer’s general terms explicitly and in writing. These Terms also apply exclusively when IGEL starts performance of a particular contract without a specific reservation despite knowledge of the Customers terms and conditions, which are contradictory to or different from these Terms.
- (4) These Terms also apply to all future transactions between IGEL and the Customer, even without further explicit reference from IGEL being required, and remain valid until IGEL puts new/revised Terms into effect. The incorporation of the new Terms into the relation between IGEL and the Customer takes place by referring that new Terms are in effect and by their provision on the IGEL website <https://www.igel.com/terms-conditions/>.
- (5) With the exception of the managing director, the authorized officer (procurist) and the trade representatives, the staff members of IGEL are not entitled to enter into agreements that differ from these Terms.



## 2. Offers and Conclusion of Contracts

- (1) Offers by IGEL are always non-binding (the so called “invitatio ad offerendum”), unless they are explicitly and in writing referred to as binding. An agreement is only concluded if and in so far as IGEL accepts an order of the Customer in writing or delivers the IGEL-Products. The Customer is bound to an order or offer for one week, unless agreed otherwise in writing.
- (2) The scope of delivery and the contract conditions are determined solely by the written order conformation from IGEL. Additional agreements always require the form as specified in § 20 Sec. 3 (final clauses) of these Terms.
- (3) In the event that parties have agreed upon special provisions for a particular order, those special provisions will expire with the completion of the particular order and will not have any effect to other orders running at the same time or to subsequent orders.

## 3. Prices

- (1) All prices given by IGEL are net “ex works” in accordance with § 4 Sec. 1 (Terms of Delivery) of these Terms, that is without the expenses for taxes and duties, loading, insurance (in particular transport insurance), transport costs and turnover tax and other costs.
- (2) All prices are quoted in EURO, unless another currency is explicitly appointed in IGEL’s order confirmation.

## 4. Terms of Delivery

- (1) All deliveries by IGEL shall be “ex works” (in accordance with Incoterms 2010) IGEL’s warehouse as indicated in the order confirmation. Incoterms 2010 shall also apply if IGEL refers to another delivery clause (e.g. “cif”, “fob”, etc.) in its order confirmation.
- (2) IGEL is only obliged to comply with foreign packaging, weight and customs regulations if explicitly agreed between the parties and if the Customer provides all the necessary information.



## 5. Permission for Export and Import/Embargos

- (1) IGEL-Products are exclusively intended to remain and to be used in the first Country of Delivery as agreed between the parties.
- (2) In the event IGEL-Products are delivered to a foreign country, trade and export regulations must be observed by the Customer, in particular the export and foreign trade regulations of the country of origin of IGEL-Products (Germany) as well as the export regulations of the suppliers' countries of origin.
- (3) The re-export of IGEL-Products – individually or in an integrated form – by the Customer, is additionally subject to the trade- and export regulations of the country of delivery as referred to in § 5 Sec. 1 of these Terms. The Customer is obliged to inform itself autonomously about the relevant regulations and to get IGEL's written approval regarding the delivery to the concerned country before the IGEL-Products export to a foreign country. It is the sole responsibility of the Customer to obtain the necessary permits of the competent foreign trade authority before it exports the IGEL-Products. The Customer is responsible to ensure the compliance with the relevant provisions until the IGEL-Products reach the end user.
- (4) If IGEL delivers the IGEL-Products directly to a third country on the instructions of the Customer, § 5 Sec. 3 of these Terms applies.
- (5) In addition, the Customer must observe and comply with IGEL's instructions on export controlled software, materials and services as provided on IGEL's website <https://www.igel.com/terms-conditions/>.

## II. CONTRACTUAL OBLIGATIONS

### 6. Payment, Default in Payment

- (1) IGEL invoices the Customer after shipment. Payment must be made within a period of 30 days starting on the date after the invoice date. Upon exceeding the payment term, the Customer shall be in default.
- (2) In the case that IGEL issues its invoice to a third party other than the Customer, it shall not be considered as an alteration of the contract party and, in particular, nor as a discharge of the Customer from its payment obligations. If IGEL issues an in-



voice to a third party, it shall only be considered as the consent to a cumulative assumption of the debt, but not as a contract takeover by the third party.

- (3) The Customer will be charged with € 10,00 for each reminder for payment after the due date. This fee does not affect any legal rights of IGEL. IGEL's statutory rights in the event of default of payment by the Customer shall remain unaffected.

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

- (1) The Customer is not entitled to set off a claim or to retain payment unless its counterclaim is acknowledged in writing by IGEL or is confirmed by a competent court decision. This also applies to the Customers right to plea non-fulfilment of the contract as referred to in § 320 BGB (German Civil Code).
- (2) The Customer is not entitled to assign claims from the contract to third parties without the written approval of IGEL.

### **8. Date of Delivery/Default in Delivery**

- (1) Delivery of the IGEL-Products will take place as soon as possible. Specified delivery terms shall not be binding, unless IGEL explicitly confirms in writing that the delivery term is binding. In the event of noncompliance of § 9 of these Terms by the Customer, the delivery term shall be extended with a reasonable term.
- (2) In the event that parties have not agreed on a binding delivery term, IGEL shall only be in default of delivery, if the Customer sends a reminder to IGEL indicating a reasonable period of grace, that period has unsuccessfully expired and the further legal preconditions have been met.
- (3) Delivery and performance by IGEL is always subject to correct and timely delivery by IGEL's suppliers. Any delivery delay or delivery failure due to IGEL's suppliers (without IGEL's own negligence) shall not be considered as a default of IGEL.
- (4) If IGEL is unable to comply with its obligations towards the Customer within the delivery term due to force majeure, the delivery term will be extended. Force majeure includes at least any circumstance that is independent on the will of IGEL, including but not limited to armed conflicts, official interventions and prohibitions, delays in transport or customs clearance, damages in transit, energy shortage and raw materials scarcity, labour disputes and default on performance by a major



component supplier which is difficult to replace, industrial action, official directive, and faults by third parties engaged by IGEL. The extension of the delivery term shall be no longer than six months. After the expiry of the extended delivery term both parties are entitled to terminate the contract.

- (5) IGEL is entitled to make partial deliveries, in which case IGEL is also entitled to issue invoices for each partial delivery.

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

- (1) In case the effectiveness or performance of the contract requires specific permissions, licenses (for e.g. licenses for import or export) or similar, they must be obtained by the Customer, unless the parties explicitly agreed otherwise.
- (2) In addition to the above, the Customer is obliged to cooperate and work in good faith in order to carry out the provisions of the contract, in particular to obtain the necessary permits and to provide the additional devices and parts for reconstruction.
- (3) IGEL is entitled to set a reasonable term for the Customer to cooperate in order to carry out the provisions of the contract (for example, the application for a necessary permit). After the unsuccessful expiry of that term, IGEL is entitled to terminate the contract. When the necessary licenses or permits are not obtained within three (3) months after the conclusion of the contract, IGEL is entitled to terminate the contract without further notice.
- (4) If delivery of the IGEL-Product is delayed because the Customer does not comply with § 9 Sec. 1 and 2 of these Terms or if the Customer is in delay of acceptance of delivery IGEL is entitled to claim reimbursement for additional expenses, e.g. warehousing and storage costs. Warehousing and storage costs will be charged as a lump sum with 0,5 % of the invoiced sum per month beginning 1 week after IGELs notification of readiness for dispatch of the IGEL-Products. Customer shall be entitled to provide evidence that the real costs for warehousing and storage are lower than the lump sum. IGEL is entitled to provide evidence that the real costs for warehousing and storage are higher than the lump sum. All rights of IGEL to withdraw from the contract and to claim compensation for damages are reserved.



### 10. Reservation of Title

- (1) Title to the IGEL-Products shall only be transferred to the Customer after it has paid in full all that which the Customer owes or will owe to IGEL under any agreement or otherwise. If there is a current account with the Customer, the entire reserved title on IGEL-Products shall be used to secure the payment of the outstanding claim. To the extent that under the national law of the Customer the validity of the reservation of title is subject to special conditions or formalities (for example registration), the Customer is obliged to comply with those conditions or formal requirements at its own expense.
- (2) A breach of the contract by the Customer, in particular in the event of a delayed payment or a filed petition for insolvency, shall entitle IGEL to demand the IGEL-Products from the Customer without any period of grace or, if necessary, to demand the assignment of the claim for return of property against third parties. The withdrawal or the seizure of the IGEL-Products by IGEL shall not be regarded as a termination of the contract by IGEL, unless explicitly stated otherwise in writing. The Customer shall bear the costs of 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 proper business operation, as long as it is not in default, and/or there is no filed petition for insolvency or it is not obliged to file such petition. In case of resell of the reserved IGEL-Products on credit, the Customer is obliged to secure the rights of IGEL on the reserved IGEL-Products. Pledges, security transfers, resale to the financing of the IGEL-Products (for example to leasing companies) and/or leases to third parties are only allowed with the prior written consent of IGEL.
- (4) If the Customer resells the IGEL-Products, it thereby assigns to IGEL its 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 authorized to collect the sum from the subsequent buyer until revocation by IGEL. With the revocation of the authorization 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 carefully store the IGEL-Products owned or co-owned by IGEL at its own expense, to insure them against theft, breakage, fire, water and other damages and to prove the conclusion of the insurance upon IGEL's request.
- (6) The Customer is obliged to keep the IGEL-Products that are subject to the reservation of title in proper conditions and to have any necessary repairs carried out immediately by one of the IGEL's authorized qualified workshops. The Customer ensures that the IGEL-Products are marked as property of IGEL or that the property is otherwise clearly identifiable.
- (7) The Customer is obliged to inform IGEL immediately about any seizure of the retained IGEL-Products by third parties as soon as the Customer becomes aware of such event. The Customer is also obliged to provide IGEL all the information and documents as necessary for an intervention. 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 those costs cannot be attained by the creditors.
- (8) By connecting the retained IGEL-Products, regardless of whether hardware or software, with other products to a uniform new product, the co-ownership of the new product is due to IGEL. The share in the co-ownership is defined by the ratio of the value of the reserved IGEL-Products to the invoice value of the other products.
- (9) If the Customer acquires the sole ownership over the new product, regardless of whether hardware or software, on the ground of legal provisions, parties agree that IGEL acquires the co-ownership of the new product as defined by the ratio of the value of the reserved IGEL-Products to the invoice value of the other products. The Customer shall store the new products free of charge in accordance with § 10 Sec. 5 of these Terms for IGEL.





### III. WARRANTY FOR MATERIAL DEFECTS; WITHDRAWAL AND LIABILITY FOR DAMAGES

#### 11. Warranty for Material Defects

- (1) IGEL warrants that the IGEL-Products are free from defects in materials and workmanship. The Customer purchases the IGEL-Products “as is”.
- (2) A guarantee is only granted if and for so far as stated by IGEL. In particular, statements in catalogues, folders, promotional literature as well as written or oral statements which have not been included in IGEL’s order confirmation do not constitute any guarantee obligation.
- (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 IGEL-Product, as long as no deduction of the usability occurs from that.
- (4) IGEL is not liable for the correctness and fulfilment of public statements and commitments of third parties (including the suppliers or resellers of IGEL or the manufacturers). IGEL is in particular not liable for public statements by IGEL or by designated third parties when the statement was already corrected at the moment of the conclusion of the contract or when the Customer could not prove that the respective statement influenced its purchase decision.
- (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 upon the request of the Customer,
  - because in the environment of the IGEL-Product were found inappropriate or excessive air- and/or heat-conditions or, power fluctuations and power cuts or, electromagnetic radiations beyond statutory law.
  - because the Customer has not considered Technical Specifications and the Safety Instructions of the IGEL-Product,
  - because the Customer does not use the IGEL-Product competently or has overstrained the IGEL-Product,





- because the Customer has modified or extended the IGEL-Product with parts or components from third parties without the prior written confirmation from IGEL of the compatibility of the parts or components with the IGEL-Product,
- because the Customer has disassembled or modified the IGEL-Product without the prior written approval of IGEL.

### 12. Notice of a Lack of Conformity

(1) Claims for defects are also excluded if the Customer does not complain about a defect of the IGEL-Product in accordance with the following provisions:

- apparent defects: any lack of conformity, which at the inspection of the IGEL-Product is recognizable, has to be noticed to IGEL within at latest in five working days after the delivery of the IGEL-Product and before further manufacturing/ processing/ usage,
- hidden defects: 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.
- For the adherence to the term for notice, it is sufficient to dispatch the notification of the lack of conformity in due time. The Customer must describe the defects to the best of his ability.

(2) Complaints do not release the Customer from any acceptance and/or payment obligation, unless the defect of the IGEL-Product is confirmed in writing by IGEL or has already been legally determined.

### 13. Remedies

(1) If there is a lack of conformity of the IGEL-Product, IGEL is entitled to remedy the defects at its sole discretion, either by reworking/repairing the IGEL-Product, by replacement of the defect parts or by delivery of another IGEL-Product as replacement. If one of these forms of remedies entails considerable disadvantages for the Customer, the Customer is entitled to request another type of remedy.

(2) IGEL is entitled to use both either new parts or like-new used parts as spare parts.

(3) In case of the remedy of a defect, the repair of the IGEL-Product, respectively the replacement delivery, IGEL bears the necessary expenses, in particular the wage,



material and freight costs and costs for assembly and disassembly of the IGEL-Product if the Customer has given notice to IGEL in advance that the IGEL-Products will be assembled. Replaced old parts of the IGEL-Product become property of IGEL.

- (4) If the remedy of the IGEL-Product fails, the Customer is entitled to proceed to the other statutory warranty claims, in particular to reduce the purchase price or to withdraw from the contract. In case of partial performance, the Customer may only withdraw from the entire agreement if he demonstrably has no interest in the partial performance and the breach of the duty is substantial. Claims for damages due to the lack of conformity only exists under the conditions as specified in § 16 of these Terms.
- (5) If an inspection of the IGEL-Product confirms that there was no lack of conformity, IGEL is entitled to charge the Customer for the costs of the inspection according to the general hourly rates of payment.

### **14. Limitation period**

- (1) The limitation period for warranty claims is one year from delivery. This limitation period does not apply to IGEL's Hardware Warranty granted to End Users.
- (2) The limitation period will not be extended, impeded or interrupted by the remedy of a defect, irrespective of whether by repair or by replacement. The limitation period of the replaced parts also applies on the installed spare parts.

### **15. Withdrawal**

- (1) The Customer's right to withdraw from the contract is subject to the legal provisions of the German Civil Code, with the proviso that the right of withdrawal due to a breach of the contract not existing in a defect of the IGEL-Product, only exists if IGEL is responsible for such breach.
- (2) In case of a withdrawal from the contract by the Customer, IGEL is entitled to claim compensation for the benefits obtained by the Customer in the amount of 3 % per month of the sales price as a lump sum, unless the Customer proves a lower value of the benefits. IGEL's right to prove a higher value of the benefits remains unaffected.



## 16. Duty of IGEL to Compensate the Damages

(1) For damages of any kind, IGEL is only liable in the case of intentional misconduct and gross negligence. IGEL is only liable for simple negligence in the event of a breach of an obligation of the contract which is essential for the performance of the contract. In all other cases the liability for damages, regardless the basis of the damages, is excluded.

(2) If IGEL is liable for gross negligence as per § 16 Sec. 1 of these Terms, the liability of IGEL is limited to only those damages which IGEL could have reasonably expected under the circumstances known at the time the contract was concluded.

The limitation of the liability shall not apply if IGEL has provided a guarantee for damages that must be reimbursed under the Product Liability Act, as well as for damages of life, limb and health.

(3) If IGEL is liable for simple or gross negligence of the employees of IGEL or its agents that are not operating on a management or executive level, liability is also limited to twice the amount of the respective purchase price. In addition, IGEL is not liable for indirect damages, consequential damages, or for lost profits in the above mentioned cases.

(4) The proof of a breach on the part of IGEL, in the scope of liability for damages, shall be borne by the Customer that requests compensation for damages.

(5) IGEL is not liable for defective parts of IGEL-Products supplied by the Customer or defective parts which were supplied upon request of the Customer or third parties.

(6) Any provision of these Terms that excludes or limits IGEL's liability shall also apply to the personal liability of the employees or the freelance employees of IGEL.

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

## 17. Duty of the Customer to Compensate the Damages

Insofar IGEL is entitled to claim damages from the Customer instead of performance, IGEL shall be entitled to demand a lump sum compensation of 15% of the



purchase price, unless the Customer proves a smaller damage than the lump sum. IGEL reserves the right to claim higher damages according to the statutory law.

### **18. Specific Provisions for Software Products / IGEL EULA**

- (1) The use of IGEL-Software is subject to the terms and conditions of IGEL-EULA (End User License Agreement) <https://www.igel.com/terms-conditions/>. IGEL-EULA includes the terms and conditions for usage of IGEL-Software as well as specific terms for liability and warranty for defects of IGEL-Software, that take precedence over any contradictory provisions of these Terms. Otherwise the terms of IGEL-EULA shall complement the provisions of these Terms. Usage of the IGEL-Software requires the acceptance of IGEL-EULA and IGEL-EULA is an integral part of the contract between IGEL and the Customer.
- (2) The Customer is obliged to only transfer a user-license of IGEL-Software in combination with IGEL-EULA and to comply with the terms and conditions of IGEL-EULA. The Customer is responsible to ensure that any of its customers is clearly informed about the inclusion of IGEL-EULA and that any of its customers accept the terms of IGEL-EULA.

### **19. Industrial and Intellectual Property Rights of Third Parties**

- (1) The Parties shall inform each other immediately in written form if a third party alleges an infringement of third party rights caused by an IGEL-Product or such an allegation is possible or such a lawsuit is pending.
- (2) IGEL shall in its sole discretion defend or settle claims, lawsuits and other actions of a third party based on an infringement of German industrial or intellectual property rights (e.g. patents, trademarks, copyrights and others).
- (3) IGEL shall indemnify any third parties damage or claim based on an infringement of third party rights according to § 19 Sec. 2 of these Terms under the conditions that these claims are finally determined by a court decision or by a settlement agreement with IGEL provided that Customer gave immediate information as per § 19 Sec. 1 of these Terms or IGEL was not effected by a breach of § 19 Sec. 1 of these Terms.



(4) IGEL shall control any third party dispute completely, including but not limited to defend against those claims and negotiating and agreeing to any settlements. In this respect Customer shall provide support to IGEL. If a third party alleges the infringement of its rights, IGEL is entitled at its sole discretion:

- (i) to acquire at its expense a license for Customer from such third party in order to continue using the IGEL-Product;
- (ii) to change or to replace the IGEL-Product to the extent that it does not infringe such third party rights; or
- (iii) if (i) and (ii) is not reasonable to accept the return of the IGEL-Product concurrently against repayment of the sale price (license fee) on a straight line basis of its depreciation value for three years.

(5) Any liability of IGEL towards the Customer with respect to infringement of third party rights is excluded for third party claims and alleged claims if the claim is founded on:

- (i) the combination, the process or the use of an IGEL-Product together with other products, services, data or other material, that was not delivered by IGEL and if those third party claim would not have arisen without those other products, services, data or material;
- (ii) changes and amendments of the IGEL-Product made by the Customer or its customer or upon request of Customer or its customer;
- (iii) the use IGEL-Product after the Customer or its customer was duly informed by IGEL that they have to refrain from further use of the IGEL-Product with respect to an infringement of third party rights and if IGEL has provided already a new version of the IGEL-Product that does not infringe third party rights;
- (iv) the use of the IGEL-Product contrary to technical specifications and safety instructions of the IGEL-Product or beyond statutory law.

The above provisions constitute the exclusive and sole terms for IGELs liability and Customers claims for third party infringement.



(6) The Customer indemnifies to IGEL all costs and expenses, that IGEL and its subsidiaries or their employees, managers and managing director (“IGEL Indemnitee”) may bear on grounds of an allegation of a third party infringement claim if Customer or its customer were using the IGEL-Product according to § 19 Sec. 5 (i) to (iv) of these Terms or contrary to IGEL-EULA. In this case the Customer is also obliged to compensate all damages and costs of the third party if these are determined by competent court order or by a binding settlement between Customer and third party.

## 20. Final Clauses

- (1) These Terms for Sale, Delivery and License are exclusively governed by German law. The applicability of the Contracts for the International Sale of Goods (CISG) is explicitly excluded.
- (2) Any dispute that may arise in connection with the contract with IGEL or with these Terms must be submitted to the competent court of Bremen (Germany). IGEL also has the right to bring legal action against the Customer at other judicial authorities having jurisdiction to hear such legal actions.
- (3) Alterations, supplements and collateral agreements must be in writing, including the transmission by facsimile or by email as far as these are provided with a signature. The same applies in particular for annulment or alteration of this clause.
- (4) If one or more provisions of these Terms have to be or become ineffective or if these Terms 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 the term and the purpose of the desired provision as nearly as possible.