

General Terms and Conditions of Comtronic GmbH for use in business transactions with contractors

Updated: December 2014



§ 1 General terms:

- (1) Legal relations between Comtronic GmbH (hereinafter: Comtronic) and customers in connection with deliveries and/or services (hereinafter: Deliveries) by Comtronic shall be governed exclusively by these General Terms and Conditions (hereinafter: GTC) to companies, legal entities under public law or public law special fund (hereinafter: Customer).
- (2) Conflicting or differing terms of the customer shall only be valid if expressly acknowledged by Comtronic in writing.
- (3) Any assignment of claims against Comtronic to third parties is hereby excluded. Section 354 of the *Handelsgesetzbuch* (HGB – German Commercial Code) remains unaffected.

§ 2 Estimate, confirmation of order and documents

- (1) All estimates shall be non-committal and without obligation until conclusion of a contract. Comtronic reserves the right to make technical modifications to components and/or technical enhancements.
- (2) Comtronic shall retain the unrestricted ownership rights, copyright and exploitation rights to cost estimates, drawings and other documents (hereinafter: Documents). The Documents may only be copied or made accessible to third parties with the prior consent of Comtronic and must be promptly returned to Comtronic at its request in the event that Comtronic is not awarded the order.
- (3) Orders shall not be deemed to have been accepted with legally binding force unless confirmed in writing by Comtronic. The content and scope of any agreements made shall be based on Comtronic's written confirmation of order. Once a contract has been concluded, any verbal ancillary agreements made shall not be binding on Comtronic unless this is expressly confirmed by Comtronic. In the event of any inconsistency between the written confirmation of Comtronic and these Terms and Conditions, the written form confirmation is before.
- (4) Comtronic reserves the right to make technical modifications in terms of design, form and material, including during the delivery period, insofar as the customer may reasonably be expected to accept such modifications. Information provided in estimates and attached drawings and illustrations with regard to deliveries and their dimensions and weights shall only be approximate, unless expressly described as binding.

§ 3 Delivery, delivery period, delay

- (1) Unless otherwise agreed, Deliveries shall be made ex works or warehouse for account of the customer. A transport insurance policy shall only be taken out at the customer's request and for its account. The mode of dispatch shall be left to the discretion of Comtronic unless otherwise agreed.
- (2) Comtronic shall be entitled to make partial deliveries following prior notification, provided that such deliveries take the interests of the customer into account.
- (3) The delivery periods specified by Comtronic shall only be deemed binding if they have been expressly agreed as fixed.
- (4) Observance of delivery deadlines shall be subject to the requirement that any and all Documents, required approvals and releases to be supplied by the customer, and in particular designs, are received in due time and that the customer adheres to agreed payment terms and other obligations. If such requirements are not satisfied in due time, deadlines shall be extended accordingly. This shall not apply in the event that Comtronic is responsible for the delay. Delays due to licensing in accordance with §12 (1) set deadlines and delivery periods expire. Be required approvals are not granted, the purchaser is in default of acceptance.
- (5) If failure to observe delivery deadlines is due to force majeure, for example mobilisation, war, riot or similar events such as strike or lock-out, deadlines shall be extended accordingly. The same shall apply in the event that Comtronic does not receive supplies in due time or in the proper manner.
- (6) In case of delay in delivery or performance on the part of Comtronic, the customer shall set a reasonable extended deadline of at least 20 working days. If Comtronic does not deliver or perform within such extended period, the customer may – provided it can show probable cause that it has suffered loss as a result – demand compensation for each full week of delay in the amount of 0.5% in each case, subject to an overall maximum of 5% of the price of the part of the delivery that could not be put into useful operation as a result of the delay.
- (7) Claims for damages on the part of the customer based on delay in delivery and claims for damages in lieu of performance that exceed the limits specified under (6) shall be excluded in all cases of delayed delivery, except in cases of deliberate intent, gross negligence or in cases where liability is mandatory due to injury to life, body or health.
- (8) The customer undertakes to state at Comtronic's request and within a reasonable period whether it intends to withdraw from the contract due to the delay or to insist on performance.

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§ 4 Prices, payment terms and set-off

(1) All prices are quoted ex works exclusive of packaging and sales tax applicable at the current statutory rate. Unless otherwise agreed, the price does not contain the costs of recycling, salvage or waste disposal in accordance with EC Directive 2002/95/EC (WEEE) and the *Gesetz über das Inverkehrbringen, die Rücknahme und die umweltverträgliche Entsorgung von Elektro- und Elektronikgeräten* (ElektroG – German Act Governing the Sale, Return and Environmentally Sound Disposal of Electrical and Electronic Equipment).

(2) Payments must be made within 30 days net of receipt of invoice in each case.

(3) In the event that payment deadlines are not met, Comtronic shall be entitled to charge default interest in the amount of 9 percentage points over and above the base interest rate. In addition Comtronic is entitled to payment of a lump sum amounting to 40 euros. Further claims in the event of default shall remain unaffected.

(4) If costs and interest accrue, Comtronic shall be entitled to set off payments firstly against costs, then against interest and finally against the main payment.

(5) The customer may only set off its own claims against claims of Comtronic if such counterclaims are undisputed or have been recognised by declaratory judgment, whereby counterclaims from the same contractual relationship are excepted from set-off.

(6) Should the customer be in default of payment or should reasonable doubts exist as to the customer's ability to pay or its creditworthiness, Comtronic shall be authorised – notwithstanding its other rights – to demand advance payment or provision of security for Deliveries that have yet to be made and to demand immediate settlement of all claims arising from the business connection.

§ 5 Retention of title

(1) Comtronic shall retain title to all the items it has delivered (retained goods) until the customer has settled all claims, based on whatever legal grounds, arising out of the legal relationship on which the delivery is based, including any claims that may arise in the future or qualified claims under contracts concluded at the same time.

(2) Such retention shall also extend to new products created by adapting and processing the retained goods. Processing shall be carried out for Comtronic as manufacturer within the meaning of Section 950 of the *Bürgerliches Gesetzbuch* (BGB – German Civil Code). Retention of title shall also extend to the respective balance of account, insofar as Comtronic posts claims against the customer to an open account (extended retention of title until all claims have been discharged).

(3) The customer shall be entitled to resell the delivery item in the ordinary course of business; however, it hereby assigns to Comtronic all claims against its customers or third parties accruing to it and arising out of the resale, irrespective of whether the delivery item is resold without processing or after processing, transformation or combination. If retained goods are resold together with other goods that are not delivered by Comtronic at a total price, the claims shall be assigned at the value of Comtronic's invoice for the respective retained goods sold. If the assigned claim is recorded in an open account, the customer hereby assigns to Comtronic a part of the balance of account corresponding to the amount of this claim, including the closing balance from the current account. Comtronic undertakes only to use such assignment to satisfy the amount of the unsettled claims and to distribute any surplus proceeds. The customer shall be authorised to collect such claims, including after assignment, until such authorisation is revoked by Comtronic. Comtronic's authority to collect the claims itself shall remain unaffected thereby; however, Comtronic undertakes not to collect the claims, provided that the customer is not delayed in fulfilling its payment obligations. In the event of default, Comtronic may revoke the customer's authority to collect claims and demand that the customer disclose the assigned claims and their respective debtors, provide all the information required for collecting the claims, supply the documents relating to them and inform third party debtors of the assignment. The customer is otherwise not authorised to resell the items.

(4) If the delivery item is inseparably combined with other items that do not belong to Comtronic, Comtronic shall acquire joint title to the new item in proportion to the value of the delivery item in relation to the other combined items at the time of combining. The same shall apply if the delivery item is combined with other items of movable property in such a way that they become material components of a single item. If the items are mixed or combined in such a way that the customer's item is to be regarded as the main item, it is agreed that the customer shall transfer joint title to Comtronic on a pro rata basis. The customer shall hold joint title on behalf of Comtronic.

(5) Comtronic hereby transfers the new joint title to the new item produced through processing, transformation or combination to which it is entitled to the customer under the same conditions as those applying to the original delivery item. The provisions on the retained goods shall apply mutatis mutandis to the new item created through processing, transformation or combination. To the extent that third parties are entitled to joint title to the new item, the customer shall only assign claims accruing to it and arising out of the resale to Comtronic in proportion to Comtronic's co-owner's share.

(6) As security for Comtronic's claims, the customer shall also assign to Comtronic claims against third parties accruing to it as a result of combining the delivery item with a plot of land.

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(7) Should the value (in the case of claims the nominal value, in the case of movable property the estimated value) of the securities in place exceed the secured claims by more than 50%, Comtronic is obligated at the request of the customer to release securities selected by Comtronic up to the amount of the excess.

(8) If Comtronic enforces retention of title, this shall only be deemed a rescission of the contract if Comtronic expressly rescinds the contract in writing. The right of the customer to hold retained goods shall lapse if it does not perform its obligations hereunder or its obligations under another contract.

§ 6 Rights to software

(1) The customer shall have the non-exclusive right to use standard software and firmware with the agreed features in an unmodified form on the agreed equipment. The customer may create one back-up copy without the requirement for an explicit agreement.

(2) All software programs shall remain the property of Comtronic. Any programs, documentation and subsequent additions made available to the customer may only be used in the operation of previously determined equipment that has been specified to the customer in writing.

(3) A non-exclusive and non-transferable right of use for internal operation of the goods for which programs were delivered shall be granted in respect of programs and the documentation and subsequent additions relating to them. In the case of programs and documentation that have been commissioned by the customer and constitute deliveries by Comtronic, the customer shall be granted the required number of individual licences for end customers within the scope of a non-exclusive and non-transferable licence.

(4) As a rule, source programs shall not be provided. Rights shall only be granted on the basis of a separate written agreement.

§ 7 Industrial property rights

(1) The customer shall not acquire any rights to use the industrial property rights of Comtronic beyond exploitation, in accordance with regulations and the contract, of the rights of use required for the Deliveries.

(2) Should a third party assert legitimate claims against Comtronic due to infringement of protective rights as a result of deliveries made by Comtronic and used according to contract, Comtronic shall be liable to the customer as stipulated below within the period specified in § 8 (2):

a) Comtronic shall, at its option and expense, either obtain the right to use the delivered goods on behalf of the customer, provide exemption from protective rights, exchange the delivered goods for other goods of comparable quality or take back the goods against reimbursement of the purchase price from the point at which the customer is prohibited from using the delivered goods in whole or in part with final and binding effect.

b) The duty of Comtronic to pay damages shall be governed by § 10.

c) The aforementioned obligations of Comtronic shall only come into existence if the customer informs Comtronic of the claims asserted by third parties in writing without delay and does not acknowledge any infringement and Comtronic reserves the right to take all necessary defensive and extrajudicial measures.

d) Claims of the customer are precluded to the extent that the infringement of protective rights is caused by specific requirements of the customer, by an application that Comtronic could not have foreseen or by the fact that the delivery was modified by the customer or used together with products that were not delivered by Comtronic.

e) Further claims or claims other than those specified under § 7 that are asserted by the customer against Comtronic or its vicarious agents due to a defect of title are hereby excluded.

§ 8 Passing of risk

(1) The risk shall pass to the customer upon acceptance or, if no acceptance has been agreed, upon handover of the goods at Comtronic's factory or warehouse. Dispatch and transport shall be carried out at the customer's risk in all cases. The risk shall also pass to the customer in the case of partial deliveries as soon as the shipment has been transferred to the person responsible for transport or has left the warehouse in case of dispatch or the factory in the case of delivery. If dispatch or delivery is delayed at the request of the customer or through the fault of the customer, the risk shall pass to the latter upon notification of readiness for dispatch.

§ 9 Liability for defects

(1) Claims of the customer based on defects in the delivery item shall only exist if the customer has duly fulfilled its obligation to examine the goods and to make any complaints in respect of defects immediately on receipt of the goods in accordance with Section 377 of the German Commercial Code. The customer must bring complaints in respect of defective or incomplete deliveries to the notice of Comtronic in writing no later than two weeks after the arrival of the goods at their destination and in the case of latent defects no later than two weeks after discovery. The delivery shall otherwise be deemed approved.

(2) Claims for subsequent performance shall become statute-barred 12 months after commencement of the statutory limitation period. The same shall apply in the case of rescission and reductions in price. This time limit shall not apply if the law prescribes longer time limits in accordance with Section 438 (1) no. 2 (building structures and items for building structures), Section 479 (1) (right of recourse) and Section 634a (1) no. 2 (construction defects) of the German Civil Code or in case of deliberate intent, fraudulent concealment of the defect or non-compliance with an express quality guarantee. The statutory regulations on suspending, interrupting or restarting the running of the statute of limitations shall remain unaffected.

(3) If notice of defects is justified and given in due time, subsequent performance shall take the form of removal of defects or replacement deliveries at the option of Comtronic. In case of removal of defects, Comtronic shall decide whether this shall take the form of repair or replacement of defective parts.

(4) The customer may rescind the contract or request a reduction in the purchase price if the subsequent improvement or replacement delivery has conclusively failed or if at least two deadlines it has set have expired without result, unless the setting of a deadline for subsequent performance is not essential in accordance with statutory provisions. In case of rescission, the customer shall be liable if the goods have deteriorated or perished as a result of deliberate intent or gross negligence. In case of fraudulent concealment of a defect or in case of assumption of an express quality guarantee within the meaning of Section 444 of the German Civil Code, the rights of the customer shall be based exclusively on the statutory provisions.

(5) Any claims based on defects shall be excluded if the goods are installed, used or stored in a manner contrary to the operating instructions or instructions of Comtronic or otherwise installed, used or stored in an improper manner or are not used according to contract or if maintenance, repairs or modifications are carried out on the goods or parts thereof by the customer or third parties without the agreement of Comtronic, unless the customer is able to prove that such circumstances were not the cause of the defects for which notice was given.

§ 10 Other claims for damages, limitation of actions

(1) Claims for damages on the part of the customer based on whatever legal reason, in particular due to breach of duties arising out of the obligation or to tortious acts are hereby excluded.

(2) This shall not apply where liability is mandatory, for example in accordance with the *Produkthaftungsgesetz* (ProdHaftG – German Product Liability Act), in cases of deliberate intent or gross negligence, including by legal representatives or executive managers, for malice or non-compliance with a covered warranty, or due to injury to life, body or health or breach of material contractual obligations. However, any claims for damages for breach of material contractual obligations shall be limited to foreseeable damage that is typical for the type of contract, provided that no deliberate intent or gross negligence or liability for injury to life, body or health is involved.

(3) A change in the burden of proof against the ordering party is not related to the above provision.

(4) To the extent that the customer is entitled to claims for damages, these shall become statute-barred on expiry of the limitation period specified under § 9 (2). The same shall apply in the case of claims of the customer connected with measures taken to avert claims (e.g. recall actions). The legal statute of limitations shall apply in the case of claims for damages under the German Product Liability Act.

§ 11 Application for insolvency

(1) The customer shall inform Comtronic without delay if it files an insolvency application itself or if a third party files an insolvency application against it. The entitlement to sell and further process delivered goods belonging to us in the ordinary course of business shall end when the insolvency application is received by the local court.

§ 12 Export Clause

(1) The resale of the goods (contract) can conflict with difficulties at national or international rules, particularly export control laws or other sanctions or embargos. The contract is subject to the purchaser, subject to approval of any resale, for example, be obtained due to the aforementioned provisions by the customer or reseller and provide all information and documents needed for resale. This obligation exists regardless of whether the information provided by Comtronic parts are installed by the customer in their own goods delivered or delivered separately.

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(2) The purchaser is obliged to continue deliveries received from Comtronic goods both to recipients outside and within the EC with all applicable export regulations under German law and EC law and national law on the domicile of the purchaser, and where appropriate in accordance with U.S. to observe law and obtain all necessary government export licenses.

(3) The obligations of the Purchaser shall also include a review of its customers and the end user, especially as regards the question whether these be involved in proliferation activities or might lead to similar warnings, as well as an examination regarding the material, whether it is listed on exports law or could be used sensitively.

(4) In particular, in any case, people / companies or other entities will be supplied by the customer, which are listed on the anti-terror lists of the EC or U.S. sanctions list, which is not even in cross-border trade to be observed.

(5) For deliveries of the purchaser in the embargoed countries in the EC (and possibly in the embargoed countries in the U.S.) need special provision measures are taken to prevent an embargo circumvention, including without obtaining a permit or a no decision by the buyer on his own responsibility export to the competent Authority.

(6) If there is any indication, that may prohibit the supply of goods, the Comtronic has previously delivered to the purchaser, may be contrary to statutory provisions, the purchaser Comtronic informed immediately in writing and in the event of a breach of any Comtronic resulting damage including damage to replace in the form of fines or penalties.

§ 13 Place of performance, place of jurisdiction and applicable law

(1) The place of performance for the mutual obligations arising out of the order shall be Schönau (Heidelberg), Germany.

(2) If the customer is a merchant, a legal entity under public law or a special fund under public law, or if the customer has no residence or registered office in Germany, the exclusive place of jurisdiction for any and all disputes arising indirectly or directly out of this contractual relationship, including actions arising out of cheques and bills, shall be Heidelberg, Germany.

The legal relationship between Comtronic and the customer shall be governed exclusively by German law. Application of the UN Convention on Contracts for the International Sale of Goods is hereby excluded. In case of doubt, Incoterms 2010 shall be authoritative in the interpretation of trade terms.

§ 14 Closing provisions

(1) If individual provisions of this contract are invalid in whole or in part or subsequently lose their validity, this shall not affect the validity of the remaining provisions. In this case the parties agree to replace the invalid provision by a valid provision that, to the extent legally possible, comes closest to the intended commercial purpose of the invalid provision, taking into account the interests of the parties expressed in the contract.

(2) The parties have not made any verbal ancillary agreements.