



## ituma GmbH

General Terms and Conditions of Business (issued June 2016)

This is a translation of our General Terms and Conditions of Business which are governed by and to be construed according to the Laws of Germany. Therefore, this translation is provided for convenience only and will be prevailed by the German version in any case of discrepancy or doubt.

### 1.1 Applicability

These General Terms and Conditions of Business shall apply to all business relations of ituma GmbH (hereinafter referred to as "ituma") with entrepreneurs as defined by Section 14 (1) of the German Civil Code [BGB] and also public law entities or public special funds (hereinafter referred to as "customers"). The General Terms and Conditions shall form a framework agreement for all sales contracts, contracts for services and contracts for work involving products (e.g. hardware, software, accessories and other merchandise), including their installation and implementation, and for other services (e.g. consultancy services, services involving the preparation of concepts and training, maintenance and support services).

1.2 These General Terms and Conditions of Business shall apply exclusively. Any divergent, conflicting or supplementary General Terms and Conditions of Business of customers shall only form part of the contract if and to the extent that a member of the management or a person holding commercial power of attorney [Prokurist] of ituma has expressly agreed to their validity. This requirement for consent shall in particular also apply if ituma executes delivery to the customer without reservation while having knowledge of the customer's General Terms and Conditions of Business.

1.3 In order to be valid, all additions and supplements to and/or deviations from these General Terms and Conditions of Business must be agreed in writing. This shall also apply to the provisions of this clause, No. 1.3.

### 2. Quotations, conclusion of contracts

2.1 ituma quotations are subject to change without notice and are not binding. This shall also apply if, prior to conclusion of a contract, the customer has been provided with catalogues, product descriptions or technical documentation (e.g. drawings, plans, calculations, costings). All quotations or other promises of performance by ituma shall be subject to it receiving timely, correct and complete delivery from upstream suppliers; this shall also apply if ituma promises specific delivery times or periods.

2.2 When a customer places an order this shall be deemed a binding offer of contract, provided nothing to the contrary results from the purchase order or the other agreements. E-mail purchase orders shall also be binding. ituma shall be entitled to accept such offer of contract within 2 weeks of receipt. Acceptance may be issued either in writing (e.g. by means of an order confirmation) or implicitly by delivery of the goods to the customer. ituma reserves the right to make customary commercial changes, especially changes of a technical or optical nature; such changes shall not justify any deviation from the purchase order.

2.3 If the order confirmation contains details that deviate from the purchase order or from any other mandate, said deviations shall be deemed to have been approved by the customer if he does not submit a written objection to these deviations immediately on receipt of the order confirmation.

### 3. Scope of performance

3.1 The type and extent of the performance to be provided by ituma under the contract shall be stated in the order confirmation or in a performance specification enclosed with the order confirmation. Unless otherwise agreed and provided this is possible, the customer shall on delivery or rendering of the service receive the non-exclusive right to use the services provided in accordance with the order confirmation or performance specification in the extent specified therein. For software, the provisions of No. 12 of these General Terms and Conditions of Business shall apply. This shall not affect ituma's right of disposal or other intangible property rights in respect of models, methods, processes, etc. that have been provided or developed by it.

3.2 ituma shall be entitled to arrange for all obligations vis-à-vis the customer to be fulfilled by qualified vicarious agents including sub-contractors. In doing so, it shall only use persons who appear sufficiently qualified to provide the services that are owed in a proper way.

3.3 As a rule, the installation and implementation of the products supplied by us shall constitute additional services to the purchase contract and are only to be provided if they are expressly agreed as a service under a contract for works and services.

3.4 All descriptions of the object of performance shall contain only indications of quality; warranties shall require a separate written agreement.

### 4. Prices

4.1 Unless otherwise agreed on an individual basis, all prices shall be ex-warehouse and exclusive of the statutory rate of VAT. For sales by delivery to a place other than the place of performance, the customer shall bear any ex-warehouse transport costs and also the costs of any transport insurance required by the customer. The customer shall pay any customs duties, charges, taxes and other public charges. ituma shall not take back any transport packaging or other packaging pursuant to the German Packaging Ordinance [Verpackungsordnung], and such packaging shall become the customer's property; pallets shall be excluded from this provision. Where assembly or installation at the customer's is requested, a separate agreement on corresponding remuneration must be concluded unless such assembly or installation expressly forms an integral part of the order confirmation.

4.2 The customer shall pay the individual amounts for other services as detailed in the order confirmation. The customer shall reimburse ituma for all reasonable travel expenses and other expenses incurred in providing performance.

4.3 ituma reserves the right to make reasonable changes to the prices in the event of reductions or increases in costs between conclusion and fulfilment of the contract; this shall in particular apply where these are the result of collective pay agreements or of changes in upstream suppliers' prices. Evidence of these shall be provided to the customer on request.

### 5. Terms of payment

5.1 Unless a different payment period is agreed in the order confirmation, invoices shall be due immediately and must be paid within 30 days of receipt of the invoice and delivery of the goods. The customer shall be deemed to be in default on expiry of this period. If the customer is in arrears with his payment obligations, all existing claims of ituma from the entire business relationship shall become payable immediately.

5.2 Other services that are provided over a long period shall be invoiced to the customer in advance.

5.3 Payments shall be deemed to have been received once ituma is able to dispose over the amounts.

5.4 Cheques and bills of exchange or comparable means of payment shall only be accepted subject to their being covered on account of performance. Payments must be effected on a non-cash basis to one of ituma's business accounts. The customer shall bear any cheque or bill of exchange costs incurred and also any costs incurred by any type of non-cash payments.

5.5 ituma reserves the right to use partial billing if partial deliveries are effected.

### 6. Time of performance, delivery

6.1 Delivery shall be ex-warehouse; this shall also be deemed to be the place of performance. The goods may be shipped to another destination at the customer's request (sale by delivery to a place other than the place of performance). Unless self-collection/collection by a third party has been agreed and provided the customer has not issued any special instructions, ituma shall be entitled to specify the type of shipping (including in particular the shipping company, the shipping method and packaging).

6.2 The dates and times specified for provision of performance shall only be deemed estimates. Even if binding delivery dates

have been agreed, ituma shall not be deemed to be in default without an explicit reminder from the customer. In the event of late deliveries to ituma by upstream suppliers where ituma is not to blame for such late deliveries, ituma may not be deemed to be in default for the duration of the delay in delivery.

6.3 If ituma is unable to adhere to delivery or performance deadlines due to reasons for which it is not responsible (non-availability of performance), it shall inform the customer of this without delay and at the same time set a reasonable new delivery/performance deadline. If performance is not available within the new delivery/performance deadline either, ituma shall be entitled to withdraw, either in whole or in part, from the contract. Any counter-performance already effected by the customer shall be reimbursed without delay. In this context, non-availability of performance shall in particular be deemed to include the failure of upstream suppliers to effect delivery on time, if congruent cover business was concluded. This shall not affect the statutory rights and obligations of the parties to the contract.

6.4 If the customer fails to accept the delivery at the latest by the contractually agreed date or defaults on acceptance in any other way, ituma shall be entitled to invoice prices in accordance with the price lists applicable when the performance owed under the contract was actually provided.

6.5 If the customer defaults on acceptance, the claim for counter performance to which ituma is entitled shall become due even if delivery has not yet been effected. This shall not affect any more extensive rights.

#### **7. Installation, system implementation**

7.1 Any installation and/or system implementation at the customer's premises shall only take place if it has been expressly agreed.

7.2 The customer must ensure all structural, technical and other requirements for the installation and/or system implementation are in place by the time delivery is effected.

7.3 The customer shall be deemed to be in default of acceptance if he fails to carry out the corresponding preparatory work at all or fails to carry it out completely or fails to carry it out in good time before the planned delivery / performance date. In such case ituma may set the customer a reasonable period of grace in which to carry out such preparatory work, and shall be entitled to withdraw from the contract after expiry of such period.

7.4 Unless otherwise agreed, the work on installation and/or system implementation shall commence on delivery. It shall be coordinated in consultation with the customer in such a way as to ensure that any disruption to the customer's ongoing business operations is kept to the minimum possible level.

#### **8. Acceptance of installations and implementations**

8.1 If ituma has expressly agreed to carry out installation and/or system implementation at the customer's premises, then ituma shall, as part of the acceptance procedure, conduct an installation test and/or a test run to verify proper functioning of the products. The procedure for the installation test used and the duration of the test run shall be at ituma's sole discretion and shall differ for each product.

8.2 The provisions of No. 16.4 shall apply where defects are identified that prevent successful completion of the installation test. Following subsequent performance, the acceptance test must be repeated at ituma's expense. In such cases, ituma shall agree a date with the customer that – taking into account all circumstances – should be as soon as possible after the date of the unsuccessful acceptance test.

8.3 Where no defects are identified that impede acceptance, the report on the installation test results and the date shall be signed by the customer. This date of signature shall be deemed the "installation date" and, should no test run be performed, also the "acceptance date".

8.4 If a test run is performed in addition to the installation test, it shall commence on the installation date. Defects that are identified during the test run shall be rectified by ituma at its own expense and the test run shall be extended by the time taken to rectify the defects. Acceptance shall be deemed to have been issued if the customer does not notify any defects that impede acceptance at the end of the test run.

#### **9. Cancellations**

9.1 Cancellations of purchase orders which do not involve defective goods or services may only be made with ituma's consent. In such cases ituma reserves the right to charge an appropriate cancellation fee and to demand the reimbursement of its own costs and expenses.

#### **10. Transfer of risk**

Risk of accidental loss and accidental deterioration of the goods shall transfer to the customer when the goods are handed over. Handover shall not be dependent on whether the customer defaults on acceptance. For sales by delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the goods shall be transferred on their handover to the freight forwarder, the carrier or other person or institute charged with effecting shipment.

#### **11. Reservation of ownership**

11.1 ituma shall reserve ownership of the sold goods until full payment of all receivables (including future receivables) resulting from a current business relationship.

11.2 Before full payment of the secured receivables, goods that are subject to reservation of ownership may not be pledged to third parties or transferred by way of security. The customer must inform ituma without delay if and to the extent that third parties seize goods that are subject to reservation of ownership.

11.3 If the customer acts in violation of the contract (especially where this involves non-payment of the remuneration due), ituma shall be entitled to withdraw from the contract in accordance with statutory provisions or/and to demand the return of the goods on account of reservation of ownership. If ituma demands the return of the goods this shall not at the same time represent a declaration that it is withdrawing from the contract; on the contrary, ituma shall be entitled merely to demand the return of the goods and to reserve the right to declare withdrawal from the contract. If the customer is in default of payment, ituma may only assert these rights if it has previously set the customer a reasonable period in which to make payment but this has not produced results, or if statutory provisions do not require such a deadline to be set.

11.4 The customer shall in the ordinary course of business be entitled to sell on and/or process the goods that are subject to reservation of ownership. In such case the following provisions shall additionally apply.

11.4.1 Reservation of ownership shall extend to the full value of the products created as a result of processing, mixing or combining the goods, whereby ituma shall be deemed manufacturer. If, during processing, mixing or combining with goods of third parties, said third-parties retain their right of ownership, then ituma shall acquire co-ownership pro-rata to the invoice values of the goods that have been processed, mixed or combined. In all other respects the same provisions shall apply to the resulting product as those for goods delivered subject to reservation of ownership.

11.4.2 The customer here and now assigns to ituma by way of security any receivables from third parties arising from the resale of the goods or of the product, and assigns said receivables in the full amount/in the amount of any co-ownership share in accordance with No. 11.4.1 above. Ituma hereby accepts the assignment. The customer's obligations specified in No. 11.2 shall also apply in respect of the assigned receivables.

11.4.3 The customer shall remain authorised to collect the receivable in addition to ituma. ituma undertakes not to collect the receivable provided that the customer fulfils his payment obligations to ituma, that he does not default on payment, that no application to open insolvency proceedings is made and that the customer does not stop payments. If this is the case, however, ituma may demand that the customer informs it of the assigned receivables and their debtors, provides it with all information required for collection, provides it with the corresponding documents and notifies the debtors (third parties) of the assignment.

11.4.4 If the value of the collateral exceeds ituma's receivables by more than 10%, ituma shall at the customer's request release collateral of its choosing to the said extent.

11.5 The customer must insure the products, at its own expense, against theft, breakage, fire damage, water damage and other damage; the products must be insured for their nominal value and the customer must provide evidence of such insurance on request.

## 12. Software licences

12.1 If standard software is to be provided by ituma under the contract, the licence terms of the respective software manufacturer shall become part of the contract and the software may only be used in accordance with these licence terms.

12.2 If software that is not standard software is to be provided by ituma under the contract, the type and scope of the user license shall be derived from the order confirmation or from a performance specification enclosed with the order confirmation.

## 13. Personal data

If ituma's work under the contract consists in collecting, storing or processing personal data on behalf of the customer, the customer shall remain the responsible party pursuant to data protection provisions.

## 14. Customer's duty to cooperate

14.1 The customer shall provide ituma in good time and free of charge with all technical data, computer programs, files, documentation, test data and/or other information and aids which he must consider relevant, appropriate and necessary for provision of the contractual performance owed under the order confirmation and/or performance specification or which ituma requests from him. The customer shall bear any ensuing costs if problems, delays, losses, claims or expenses result due to the content, imprecision, incompleteness or inaccuracy of any data, materials or information provided by the customer.

14.2 If the performance to be provided under the contract is provided at the customer's premises, the customer shall provide, free of charge, any offices, services, equipment (e.g. photocopiers, fax machines, computers and modems) and where applicable personnel that are reasonably required in order to provide performance. If employees or vicarious agents of ituma are required to observe company rules on the customer's premises, the customer shall notify ituma of this in good time and shall instruct ituma's employees/vicarious agents accordingly. Apart from such company rules and safety rules, ituma personnel shall in no way be bound by instructions given by the customer and shall not be integrated into the customer's company organisational structure.

14.3 The customer shall comply with all other duties of co-operation applicable under the performance specification or order confirmation.

14.4 If the customer does not fulfil his obligations under the above paragraphs or does not fulfil them in time before the planned delivery date/performance date, then he shall be deemed to be in default as regards acceptance. In such case ituma may set the customer a reasonable period of grace in which to fulfil such duties of cooperation and shall be entitled to withdraw from the contract after such period has expired without result, without prejudice to any further claims.

## 15. Intellectual property

15.1 ituma is either itself the rights holder of all designs, methods, techniques, concepts, software and inventions, irrespective of whether these are used, are produced or have been created in connection with the performance (collectively referred to as "the creations"), and of all related industrial property rights, copyrights, business secrets and all other associated intellectual property, or ituma is authorised by the respective rights holder in respect of utilisation and/or sale. No statement contained in the quotation, in the performance specification, in the order confirmation or in any other document relevant to the contractual relationship may be interpreted in such a way that the customer is tacitly, by passive manifestation of will or in any other way given – beyond the extent prescribed by law – a licence or any other right in, claim to or share in the creations and/or the related ownership.

15.2 The customer shall be obliged to give ituma reasonable support as regards assigning, proving, registering and

asserting its rights in and its ownership of all patents, copyrights and other intellectual property associated with the creations and all other rights held by ituma that have been granted in all countries on the basis of the contractual relationship. This shall inter alia also include producing additional transfer documents and providing support during the registration of patents or copyrights or of other intellectual property. ituma shall assume all related costs.

## 16. Inspection, complaints, acceptance

16.1 The customer shall be obliged to inspect the received goods immediately for obvious defects, including in particular also for obvious missing quantities or damage. Identifiable transport damage must be notified to the carrier immediately in order to be entitled to claim under the carrier's liability. Other obvious defects must be notified in writing without delay, but no later than two weeks after receipt of the goods. The deadline shall be deemed to have been complied with if the complaint in respect of defects is sent off in time. For defects that are not obvious (hidden), the customer shall be obliged to notify these in writing immediately they are discovered. If the customer fails to submit complaints as specified above, the goods shall be deemed to have been approved and ituma shall have no liability for defects that have not been notified. The burden of proof in respect of compliance with the obligation to notify defects in time shall lie with the customer, as shall the burden of proof relating to the existence of a defect and the time it is identified.

16.2 ituma shall not have any obligation, in its capacity as intermediary, to inspect the merchandise that it purchases from upstream suppliers and that it delivers unmodified to the customer.

16.3 Where ituma produces a concept or other type of work within the framework of the performance that is to be provided, the customer must perform the acceptance procedure as soon as the performance is made ready for acceptance. ituma may set a reasonable deadline for completion of the acceptance procedure.

16.4 Defects that prevent acceptance shall be rectified free of charge; the deadline for acceptance shall be extended for the period required to rectify the defect. Acceptance shall be deemed given if the customer has not reported any qualifying defects that preclude acceptance by the end of the acceptance deadline.

## 17. Warranty

17.1 Unless otherwise specified below, the customer's rights in the event of defects (claims for defects) shall be governed by statutory provisions.

17.2 Only the information that is expressly contained in ituma's quotation and in the customer's purchase order shall be deemed an agreement regarding the properties of the goods.

17.3 Where a property has not been agreed, ituma shall have no liability as regards public statements (e.g. advertising statements and labelling) by third parties, especially not those issued by the manufacturer, unless ituma expressly incorporates these as its own statements. Moreover, liability for incorrect assembly instructions is also excluded.

17.4 If the item that is delivered is defective, then ituma may choose whether to rectify the defect by subsequent improvement or by replacement delivery in accordance with statutory provisions. This shall not affect the right to refuse subsequent performance in accordance with statutory provisions.

17.5 If subsequent performance has failed or is unreasonable for the customer or if it is impossible or if ituma has - either rightly or wrongly - refused subsequent performance, or if a deadline set for subsequent performance has passed without result or if subsequent performance is not required under statutory provisions, then the customer may withdraw from the purchase contract or reduce the purchase price; in the event of a contract for works the customer may itself rectify the defect and demand that ituma reimburse the costs of such rectification, or the customer may withdraw from the contract or reduce the price. However, the customer shall not be entitled to withdraw from the contract if the defect is not significant. When the customer declares withdrawal from the contract or a reduction



in the price the customer's claim to delivery of an item that is free from defects shall be forfeited.

17.6 Any claims by the customer in respect of compensation for damages or reimbursement of wasted expenses shall only be granted in accordance with the provisions of No. 18 below and shall be excluded in all other cases.

17.7 The warranty shall cease to apply if and to the extent that the customer uses unauthorised additional devices or carries out modifications or repairs to the products supplied or the related software without prior express permission or arranges for such modifications or repairs to be carried out by personnel who have not been authorised by ituma for this purpose, unless the customer proves that the defects were not caused by such work or are not attributable to the aforementioned measures.

## 18. Limitations of liability

18.1 In the event of breaches of duty that do not involve a defect or that have caused a loss in excess of the liability for defects, ituma shall be liable in accordance with statutory provisions, provided nothing to the contrary is specified below.

18.2 ituma shall be liable for malice, intent and gross negligence. ituma shall also be liable for simple negligence in the following cases: (i) for damages arising from death, physical injury or harm to health, (ii) in the event of breach of a material contractual obligation whose fulfilment is essential to proper execution of the contract and on whose fulfilment the customer ordinarily relies and may rely (cardinal obligation); in such case, however, liability shall be limited to reimbursement of the foreseeable, typically occurring loss. In all cases, this shall not affect claims by the customer in respect of warranties or claims under the German Product Liability Act [Produkthaftungsgesetz].

18.3 The customer may only withdraw from the contract on account of a breach of duty that does not involve a defect if ituma is responsible for said breach of duty and if the additional statutory requirements are met. Withdrawal shall not be permitted if the breach of duty is not significant.

18.4 With regard to any loss of data and the restoration of such data, ituma shall only be liable in accordance with the above provisions to the extent that such loss could not have been avoided by the customer taking appropriate data security measures. Moreover, liability shall be limited to the typical costs of restoring such data that would have been incurred had back-up copies been produced commensurate with the risks involved.

18.5 ituma shall not be liable for losses of the customer that are based on ituma receiving late, incorrect or incomplete deliveries from its upstream suppliers, unless ituma was responsible for this situation.

18.6 All limitations of liability shall also apply in favour of ituma's management organs and vicarious agents.

## 19. Limitation period

19.1 For building structures and items that have been used for a building structure in accordance with their normal usage, the period of limitation for claims in respect of defects shall be 5 years from the date of delivery. In all other cases, the period of limitation for claims in respect of defects shall be one year from the date of delivery or, if applicable, one year from the date of acceptance. If no delivery was effected, the period of limitation shall commence at the end of the year in which the claim arose. The above periods of limitation shall also apply to competing claims in respect of tort.

19.2 In derogation of No. 19.1, the statutory period of limitation shall apply in the following cases: (i) for claims in respect of defects, where ituma has maliciously concealed the defect or has assumed a warranty for the property; (ii) for claims for compensation in respect of death, physical injury or harm to health; (iii) for other claims for compensation based on an intentional or grossly negligent breach of duties; (iv) for claims based on the German Product Liability Act [Produkthaftungsgesetz]; (v) for claims for compensation based on the infringement of other material contractual obligations (cardinal obligations) that are essential to proper execution of the contract and on whose fulfilment ituma's contracting partner may ordinarily rely.

19.3 Irrespective of their legal basis, all other claims and rights of the customer that are not mentioned in Nos. 1 and 2 above shall expire one year after the provision of performance. If no performance has been provided, the period of limitation shall commence at the end of the year in which the claim arose. Shorter, statutory periods of limitation shall take precedence.

## 20. Financial circumstances

If, based on ituma's discretionary assessment, the customer's financial circumstances do not justify the payment terms granted, then ituma shall be authorised to withhold purchase orders that have not yet been executed until the customer has provided appropriate collateral. This shall not apply if, following a written request, the customer immediately effects payment for all products that have already been delivered and/or pays in advance for all products that have been ordered but not yet delivered.

## 21. Assignment, set-off, retention

21.1 The customer shall only have a right of set-off if his counter-claims have been established by a court of law or have been acknowledged by ituma or are based on a claim that gives entitlement to refuse performance. The customer may only exercise a right of retention if said right of retention is based on the same contractual relationship.

21.2 Any assignment by the customer of rights under the business relationship shall require ituma's prior written consent.

21.3 ituma shall be entitled to assign the claims resulting from the business relationship with the customer within the framework of refinancing (including factoring) which is customary for the sector, and also to assign such claims to affiliated companies.

## 22. Secrecy

Each party to the contract shall be obliged to maintain secrecy in respect of all information and documents that originate from the sphere of the respective other party to the contract and that are marked as confidential or that are for other reasons clearly identifiable as business or operating secrets. The parties to the contract shall not be authorised to record or turn to account such information or documents or to forward them to third parties, unless this is necessary to achieve the object of the contract. The parties to the contract must impose corresponding obligations on their employees and representatives. The obligation to maintain secrecy shall end if the information requiring secrecy becomes generally known or if, during the period when a party is obliged to maintain secrecy, the information becomes known to the user through a third party without any infringement of an obligation in respect of secrecy.

## 23. Export regulations

The customer shall be obliged to comply with all provisions valid at the respective time concerning the export of products from the European Economic Area and from Germany. The customer shall have sole responsibility for obtaining any necessary export permits and ensuring strict compliance with their provisions.

## 24. Place of performance, place of jurisdiction and applicable law

24.1 These General Terms and Conditions of Business and all legal relationships between ituma and the customer shall be governed by the substantive laws of the Federal Republic of Germany to the exclusion of all international and supranational legal systems and legal systems in respect of contracts, including in particular the UN Convention on Contracts for the International Sale of Goods. By contrast, the requirements and effects of the reservation of ownership pursuant to No. 11 shall be subject to the laws at the relevant location where the item is warehoused, if under said laws the choice of law in favour of German law is not permitted or is invalid.

24.2 The place of performance and the place of jurisdiction for all disputes arising either directly or indirectly under the contractual relationship shall be ituma's registered office in Hilden. The same shall apply if the customer does not have a place of general jurisdiction in Germany or if his residence or habitual abode is unknown when the legal action is filed.