

1. Scope

1.1 Nos. 2 to 14 of these Terms shall apply to
All deliveries and services rendered by IT Dr. Gambert GmbH with the exception of construction services.

2. Terms of Payment, Set-Off, Right of Retention

2.1 For deliveries and services rendered abroad by IT Dr. Gambert GmbH, payment shall be effected exclusively by way of an irrevocable letter of credit issued or confirmed by a major bank in the Federal Republic of Germany and payable in favour of IT Dr. Gambert GmbH upon presentation of documents at this bank.
2.2 Bills of exchange, checks and other means of payment shall only be accepted as conditional payment. With regard to these means of payment, the date of payment shall be considered the date on which the amount is actually available to IT Dr. Gambert GmbH.
2.3 Discount, collection and other charges connected with payment shall in any event be carried by the Customer.
2.4 Set-Off may only be asserted with respect to a claim that is undisputed or that has been finally and conclusively established by a court of law.
2.5 Rights of retention may only be asserted insofar as they are based on the same contractual relationship.
2.6 In the event of delivery of repair exchange parts, 10% of the price of the repair exchange part shall, in addition to the price of the repair exchange part, be taxed pursuant to the Value - Added Tax (Umsatzsteuergesetz).

3. Consignment, Packing, Assignment of Risk

3.1 In the absence of an agreement to the contrary, the costs associated with consignment and transportation shall be carried by the Customer. The same shall apply to packing, which will be performed to the best of IT- Dr. Gambert GmbH experiences.
3.2 The risk shall pass to the Customer, including in the case of freight-paid deliveries, at the latest upon dispatch of the parts to be delivered, even when partial deliveries are made or when IT Dr. Gambert GmbH has committed itself to render other services, such as carriage and assembly. Should consignment become impossible at no fault of IT Dr. Gambert GmbH, the risk shall pass to the Customer upon notification that the delivery is ready for consignment. Should IT-Dr. Gambert GmbH, pursuant to the contract of delivery, install the article delivered and put it into operation, the risk shall pass to the Customer when the article has been put into operation. Should the article, for reason not attributable to IT Dr. Gambert GmbH, fail to be put into operation within twelve (12) days following written notice of completion of installation, the risk shall pass to the Customer following expiration of this deadline. Should installation be delayed for reasons attributable to the Customer, the risk shall pass to the Customer for the duration of this delay.

4. Delivery and Time of Delivery

4.1 Weights and dimensions listed in leaflets and bids are approximate only. IT Dr. Gambert GmbH reserves the right to undertake reasonable modifications from these specifications, as well as changes with regard to design and construction.
4.2 Any reference to technical standards shall merely represent a description of performance. A certain feature shall only be considered assured when IT Dr. Gambert GmbH has issued a written confirmation thereof.
4.3 The deadline for deliveries and services shall not begin to run until the Customer has supplied all documents, licenses or clearances that he is required to procure. Observance of the deadline for deliveries and services presupposes the fulfilment of the Customer's duties under the Contract.
4.4 The delivery deadline shall be deemed observed when the article of delivery has left the factory prior to its expiration.
4.5 The deadline for deliveries and services shall be duly extended in the case of events connected with trade disputes, in particular strikes, lock-outs and the occurrence of unforeseeable obstacles beyond the control of IT Dr. Gambert GmbH, unless this makes delivery or performance of a service impossible. In such a case of impossibility of delivery or performance, IT Dr. Gambert GmbH shall be released from its obligation to fulfil the Contract. In cases in which the delivery deadline is extended or IT Dr. Gambert GmbH is released from its obligation to fulfil the Contract, the Customer may not claim compensation for damages arising as a result of this.

5. Revocation of Contract

5.1 The Customer may revoke the Contract when all services thereunder become permanently impossible for IT Dr. Gambert GmbH prior to the passage of the risk. The same shall apply in the event of incapability on the part of IT Dr. Gambert GmbH. The Customer may also revoke the Contract when, with respect to an order for analogous articles, it becomes impossible to supply the requisite number of a part of the delivery and the Customer has a justified interest in rejecting a partial delivery; if this is not the case, the Customer may reduce his counter - performance accordingly.
5.2 Should IT Dr. Gambert GmbH be in default in performance, the Customer may revoke the Contract after having granted IT Dr. Gambert GmbH in writing a reasonable grace period, together with the express declaration that he will refuse to accept the service following expiration of this grace period, and the grace period is not observed.
5.3 With respect to farther-reaching claims, No. 9 of these Terms shall be applicable.

6. Retention of Title

6.1 The articles delivered and/or installed (Retained Goods) shall remain the property of IT Dr. Gambert GmbH until complete settlement of all claims, including future claims, stemming from the business relationship with the Customer, regardless of which legal basis, even when payments are rendered for specifically designated claims. For running accounts, the retained title shall serve as security for the balance due to IT Dr. Gambert GmbH. Treatment or processing of the Retained Goods shall be made on behalf of IT Dr. Gambert GmbH, which shall be considered a manufacturer pursuant to § 950 of the German Civil Code (BGB). This means that IT Dr. Gambert GmbH retains title at any time and any stage of treatment or processing. Such treatment or processing shall be rendered without compensation and without obligation on the part of IT Dr. Gambert GmbH.
Should the Customer process, join or mix the Retained Goods with other movable objects not the property of IT Dr. Gambert GmbH, the latter shall be entitled to joint title in the new object in the proportion of the invoice value of the Retained Goods to the value of the other objects used by Customer at the time these were processed, joined or mixed. With regard to the new object resulting from processing, joining or mixture, the same shall apply as with the Retained Goods. It also shall be considered a Retained Good in the sense of these Terms.
6.2 The Customer's claims resulting from a resale of Retained Goods are hereby assigned to IT Dr. Gambert GmbH as security for all the latter's claims, including future claims, stemming from the business relationship with the Customer, regardless of whether the Retained Goods are resold without or after processing or whether they are resold to one or more buyers. Even after assignment the Customer is entitled to collect these claims, unless, he discontinues his payments or IT Dr. Gambert GmbH retracts this authority to collect. This shall not affect the right of IT Dr. Gambert GmbH to collect the assigned claims itself. The Customer shall upon request provide IT Dr. Gambert GmbH with prompt written notice of the names of those to whom he has sold delivered articles and the claims to which he is entitled from the sale and shall surrender the documents necessary for collection.
6.3 The Customer shall only be authorised and entitled to resell Retained Goods pursuant to a purchase, manufacturing contract or any other contract when he reserves against other third party to such a contract the rights of title of IT Dr. Gambert GmbH until complete payment of the delivered articles by this party. The Customer shall not be entitled to dispose of Retained Goods in any other manner, in particular, by pledging or assigning them as security. The Customer shall upon request notify his purchase of the assignment to IT Dr. Gambert GmbH for the purposes of payment to the latter.

6.4 Should the value of the securities existing in favour of IT Dr. Gambert GmbH exceed the total amount of the latter's claims by more than 20%, then upon request by the Customer or by a third party adversely affected as a result of the excess security of IT Dr. Gambert GmbH, the latter shall be obligated to release security of its choice.

6.5 The Customer shall notify IT Dr. Gambert GmbH without delay of any levies of execution, seizures and other attachments by third parties.

7. Notification of Defects and Acceptance of Delivery

7.1 The Customer shall unpack all deliveries immediately upon receipt in order to ascertain possible shortages or damages caused during transport. In the event of transport damages, a protocol of damages shall be prepared at once carrier (postal authority, railway company, forwarding agent, etc.). A defect in the article must be claimed within one week of receipt of the articles, unless such defect is not obvious. Once ascertained, deficient performance of services must be notified to IT Dr. Gambert GmbH without delay in order to avoid losing the right of free repair.
7.2 In the event that the Customer is prevented from accepting the delivery due to strike or lock-out, the deadline for acceptance as well as the deadline for notification of defects as described in the preceding paragraph shall be reasonably extended.

8. Warranty

8.1 When new articles or repair exchange parts as delivered or services as performed are either defective or fail to evidence guaranteed features, IT Dr. Gambert GmbH hereby provides the following warranty:
8.2 The period of warranty shall amount to twelve (12) months: for services, from the date of performance, and for delivered articles, from the date of delivery ex-factory. Notwithstanding the foregoing the period of warranty for motors of all types, pumps, compressors, electro-chemical sensors, as well as for rubber, plastic, glass and ceramic parts shall amount to six (6) months from the date of delivery ex-factory.
The warranty for delivered articles shall apply exclusively to the absence of defects when the articles leave IT Dr. Gambert GmbH, and for the performance of services, to the absence of defects at the time these are completed or accepted.
8.3 The warranty shall consist of free repair or, if deems appropriate by IT Dr. Gambert GmbH, substitute delivery.
Should the repair or substitute delivery prove a failure, the Customer may either reduce payment or revoke the Contract, as he sees fit. With respect to farther-reaching claims, No. 9 of these Terms shall be applicable.
8.4 If the Customer claims remedy under the warranty within six (6) months from the date of performance of services or from the date of delivery ex-factory of delivered articles, IT Dr. Gambert GmbH shall be obligated to bear all expenses necessary for the purpose of repair, in particular transportation and labour costs. This shall not be the case insofar, as such expenses become greater as a result of the fact that the delivered article was, following delivery, transferred to a location other than the Customer's residence or place of business, insofar as such transfer does not conform to the intended use of the delivered articles.
8.5 The Customer shall be obligated to enable IT Dr. Gambert GmbH to undertake repair work for the purpose of fulfilling the warranty and to send the delivered article upon request to IT Dr. Gambert GmbH or to a workshop to be determined by IT Dr. Gambert GmbH on a case-by-case basis. In the event the Customer fails to comply with this obligation IT Dr. Gambert GmbH shall be released from any warranty.
8.6 The warranty shall not apply to defects caused by acts of the Customer or third parties. The warranty shall also become inapplicable when the delivered article has not been stored or maintained in accordance with the instructions for use accompanying it.
The warranty shall furthermore not extend to natural wear and tear.
8.7 In the event that IT Dr. Gambert GmbH performs any warranty services, the period of warranty shall cease to run for the duration in which the Customer is unable to use the delivered article on account of these activities by IT Dr. Gambert GmbH.
8.8 All warranty claims, including possible repair or substitute delivery claims, are hereby expressly excluded for second-hand articles except repair exchange parts.

9. Additional Liability

Contractual and non-contractual claims against IT Dr. Gambert GmbH and its agents for compensation of damages of any nature are hereby expressly excluded, including damages not incurred on the delivered article itself, especially indirect, consequential or incidental damages. This exclusion of liability shall not apply in the event of deliberate or grossly negligent action by IT Dr. Gambert GmbH or its agents, as well as in cases in which liability is prescribed under the Product Liability Act (Produkthaftungsgesetz) for personal or property damages on privately used objects due to defects in the delivered article. It shall also not apply in the absence of expressly assured features, when such assurance had the specific purpose of protecting the Customer against damages not resulting from the delivered article itself.

10. Copyright

IT Dr. Gambert GmbH hereby reserves without limitation all rights to exploit rights of title and copyrights in drawings, technical documents, software and other know-how; these must not be made available to third parties Data Protection.

11. Pursuant

With regard to § 26 of the Federal Data Protection Act (Bundesdatenschutzgesetz), IT Dr. Gambert GmbH hereby provides notice that customer data received in connection with the business relationship will be processed and stored for internal purposes of IT Dr. Gambert GmbH.

12. Safety Regulations

Reference is hereby made to the observance of the relevant safety provisions, such as the Medical Directive Device, MDD 93/42/EC or the Occupational Health and Safety Provisions (Unfallverhütungsvorschriften). If, with respect to deliveries abroad outside Europe, safety provisions are in place in the Customer's country, particularly for the licensing, maintenance and use of delivered articles, the Customer alone shall be obligated to fulfil these. The Customer shall be obligated to release IT Dr. Gambert GmbH from all claims arising under such provisions.

13. Place of Jurisdiction, Applicable Law

13.1 The place of jurisdiction is Schwerin if the Customer is either a merchant (Kaufmann) according to the Commercial Code (Handelsgesetzbuch), a juridical person under public law or a public trust. However, IT Dr. Gambert GmbH shall be entitled at its discretion to resort to the court of jurisdiction for the Customer's place of residence.
13.2 The law of the Federal Republic of Germany shall be the applicable law. The applicability of the United Nations Convention on the International Sale of Goods, is hereby excluded.

14. Final Provisions

Deviations from the above Terms shall require in every case a written and lawfully signed confirmation by IT Dr. Gambert GmbH in order to be valid. Conditions of the Customer that depart from the above Terms shall only be binding when IT Dr. Gambert GmbH has expressly accepted these in writing.