

# IDTRONIC General Terms and Conditions for the Sale of Products and Services

Date: May 2009

## A.

### General Terms and Conditions for the Sale of IDTRONIC Products and Services

#### I. Scope of Application

1. The General Terms and Conditions of IDTRONIC GmbH, Donnersbergweg 1 D-67059 Ludwigshafen/ Rhein (hereinafter referred to as "IDTRONIC"), shall apply exclusively to the sale of products and services and the Customer agrees to these Terms and Conditions when placing an order. Deviations from the IDTRONIC General Terms and Conditions shall only apply if they have been acknowledged in writing by IDTRONIC.
2. Conflicting conditions or conditions deviating from the IDTRONIC General Terms and Conditions or conditions by the Customer which change the contract are herewith rejected; they shall only be valid vis-à-vis IDTRONIC if IDTRONIC agrees to such changes in writing. This shall also apply in particular in the event that an order is placed with reference to the Customer's general terms and conditions.
3. The IDTRONIC General Terms and Conditions for the Sale of Products and Services shall also be the basis for all future transactions between the Customer and IDTRONIC.

#### II. Scope of Deliveries or Services

1. If the order has to be qualified as an offer pursuant to § 145 German Civil Code (*Bürgerliches Gesetzbuch*), IDTRONIC may accept such an order within four (4) weeks. Oral ancillary agreements shall only be binding on IDTRONIC to the extent that IDTRONIC confirms such agreements in writing. Orders sent by E-mail shall only be executed by IDTRONIC if this has been expressly agreed with IDTRONIC.
2. IDTRONIC unrestrictedly reserves all intellectual property rights and copyrights to cost estimates, drawings and other documents; they may only be furnished to third parties with the prior consent of IDTRONIC. All of the documents referred to in Section II Paragraph No. 1) as well as the cost estimates, drawings and other documents pertaining to offers, which were handed or transmitted to the Customer, are to be returned promptly to IDTRONIC without waiting to be asked to do so once the order has been processed or has not been placed with IDTRONIC. The Customer's documents may be provided to such third parties to whom IDTRONIC has permissibly transferred deliveries or services.
1. With regard to deliveries of products, including but not limited to cards, chips, modules, IDTRONIC reserves the right to make customary and reasonable changes to or divergences from the quantities delivered by up to plus or minus 10 % of the total quantity ordered. Such changes and deviations shall be considered in the agreed calculation of the remuneration.
4. Insofar as IDTRONIC agrees to the cancellation of an order in writing in individual cases – without any other legal obligation being incurred hereby - compensation in the amount of 20 % of the agreed price, plus any value-added tax, shall be due and payable. This shall not apply, if IDTRONIC proves that its loss was higher or the Customer proves that the loss was lower in individual cases.
5. IDTRONIC is entitled to use the services of subsidiaries and other third parties as subcontractors to perform IDTRONIC's obligations by virtue of this contract.

#### III. Customer's Duties to Cooperate

1. The Customer shall provide IDTRONIC with access to the information required for IDTRONIC's activities at any time, and in particular, furnish documents and instruct the Customer's own employees to provide information. The Customer will inform IDTRONIC of all circumstances relevant to the effective provision of deliveries or services without waiting to be asked to do so.
2. At IDTRONIC's request, the Customer shall confirm in writing the correctness and completeness of the documents submitted and the information provided by the Customer.
3. If the Customer does not comply with its duty to cooperate despite a written warning notice and a deadline or if the Customer repeatedly and seriously infringes its contractual obligations, IDTRONIC shall be entitled to terminate the contract without notice. Apart from the assertion of this right of termination, IDTRONIC shall have a claim to compensation for any damage or loss incurred by the initiation of the reason for the termination or additional expenditure caused hereby. In any case, IDTRONIC shall have a claim to the total remuneration minus any expenditures not incurred.
4. All of the duties of cooperation listed herein are essential primary duties of the Customer and are agreed as such.

#### IV. Offer, Price

Offers by IDTRONIC are subject to change and are not binding, as a matter of principle, unless there is a concrete, customized and written application for the conclusion of a contract. To the extent that nothing else has been stipulated, IDTRONIC shall be considered itself bound by a concrete, customized and written offer and by the prices contained therein for seven (7) days as of the date of its preparation. With deliveries, prices shall apply ex works, or as of the distribution warehouse designated in our order confirmation for the respective goods, including packing, plus the statutory value-added tax.

#### V. Organizational Guidelines

1. IDTRONIC and the Customer shall each designate one contact person responsible for the project, who shall be able to give and accept binding declarations on behalf of that party. This contact person shall only be replaced by another person for good cause. At the same time, a deputy having the same powers is to be designated.
2. IDTRONIC personnel who will be providing services are subject solely to IDTRONIC's instructions and supervision. IDTRONIC itself or the person designated by IDTRONIC shall be the sole point of contact for the Customer with regard to all questions and demands.

#### VI. Retention of Title

1. IDTRONIC retains title and ownership to the goods until all of IDTRONIC's claims against the Customer arising from the business relationship, including any future receivables from any contracts concluded simultaneously or subsequently, have been paid.

This shall also apply even if individual or all of IDTRONIC's receivables have been incorporated into a current account and a balance has been struck and accepted.

2. In the event that the Customer is in breach of contract, in particular, if the Customer is in default of payment, IDTRONIC shall be entitled to take back the goods. IDTRONIC's action of taking back the goods does not mean a withdrawal from the contract, unless IDTRONIC had expressly declared this in writing. Seizure of the goods by IDTRONIC shall always mean a withdrawal from the contract. After taking back the goods, IDTRONIC shall be entitled to realize the goods; the proceeds of such realization is to be credited to the Customer's liabilities –after deducting reasonable realization costs.
3. The Customer is obliged to handle the goods with care; in particular, the Customer is obliged to insure the goods at the Customer's expense against damage or loss due to fire, water or theft at the value of the goods when new. Insofar as maintenance or care is required, the Customer must perform such work promptly at the Customer's own expense.
4. In the event of seizures or other third-party encroachments, the Customer must inform IDTRONIC hereof in writing immediately, so that IDTRONIC will be able to bring an action pursuant to § 771 German Code of Civil Procedure (*Zivilprozessordnung/ZPO*). To the extent that the third party is unable to reimburse IDTRONIC for the court and out-of-court costs of a lawsuit pursuant to § 771 ZPO, the Customer shall be liable for the loss incurred by IDTRONIC.
5. The Customer is entitled to resell the goods during the ordinary course of business; however, the Customer shall already assign to IDTRONIC all of the receivables in the amount of the final amount of the bill (including the value-added tax), which accrue to the Customer from such resale against the Customer's buyers or third-parties independently of whether the goods have been sold prior to or after processing. The Customer continues to be authorized to collect this receivable even after the foregoing assignment. IDTRONIC's authority to collect the receivable itself shall remain unaffected hereby. However, IDTRONIC undertakes not to collect the receivable for as long as the Customer meets its payment obligations from the proceeds received, is not in arrears of payment, and in particular, has not filed for the institution of insolvency or settlement proceedings and has not discontinued making payments. If this should prove to be the case, IDTRONIC may demand that the Customer discloses to IDTRONIC the receivables assigned and their debtors, provides all of the information necessary for the collection of the receivables, hands over the pertinent documents and notifies the debtors (third parties) of the assignment.
6. The processing or reworking of the goods by the Customer shall always be undertaken on behalf of IDTRONIC. If the goods are processed together with other items belonging to IDTRONIC, IDTRONIC shall acquire co-ownership to the new goods at a ratio of the value of the goods (final amount of the bill, including the value-added tax) to the other intermixed items at the time of such intermixture. In other respects, the same shall apply to the item created through processing as for the goods delivered subject to retention of title.  
If the goods are intermixed with other items not belonging to IDTRONIC, IDTRONIC shall acquire ownership to the new item at a ratio of the value of the good (final amount of the bill including value-added tax) to the other items intermixed at the time of the intermixture. If the intermixture is done in such a way so that the Customer's item is to be regarded as the primary item, it is herewith agreed that the Customer shall transfer co-ownership to IDTRONIC proportionately. The Customer shall preserve IDTRONIC's sole ownership or co-ownership created in this manner.
7. IDTRONIC agrees to release the collateral due IDTRONIC on the Customer's demand to the extent that the realizable value of the collateral exceeds the receivables to be secured by more than 20 %; the selection of collateral to be released shall be incumbent upon IDTRONIC.

#### VII. Terms of Payment

1. Payments are to be made to IDTRONIC's pay office within the agreed time allowed for payment (stated on Proforma Invoices and Order Confirmations) and without any deductions, or if nothing else has been agreed, payments are to be made cash in advance and net and without any deductions. The date on which IDTRONIC is unconditionally credited with the payment shall determine compliance with the period for payment as well as with any other agreed terms of payment.
2. If the Customer does not comply with a notice to pay from IDTRONIC which is sent after the expiration of any agreed time allowed for payment, the Customer shall be in default by virtue of the notice. If a calendar day has been contractually stipulated for the payment, the Customer shall be in default without having received a notice to pay, if the Customer does not pay on time. In the event of default, IDTRONIC may insist on interest in the amount of 8 % over the base (lending) rate per annum. If IDTRONIC is able to prove higher losses as a result of the default, IDTRONIC shall be entitled to assert such higher losses. However, the Customer is entitled to prove to IDTRONIC that no losses or much lower losses were incurred by IDTRONIC as a consequence of the default in payment. IDTRONIC's statutory rights remain unaffected hereby.
3. The Customer may only offset such receivables which are uncontested or have been finally adjudged and may only assert rights of retention, insofar as they are based on the same contractual relationship.
4. If at any time the Customer seems to be unable or unwilling to meet the terms of payment, IDTRONIC may require satisfactory assurance of full or partial payment as a condition to commencing or continuing delivery, and may, if shipment has been made, recover the goods from the carrier, pending receipt of such assurances. Upon default in payment the contract price shall be increased by all costs related to collection and by reasonable attorney fees.

#### VIII. Deadline for Deliveries or Services

1. Any binding or non-binding delivery dates agreed must be put in writing. Compliance with delivery deadlines and delivery dates presupposes the timely receipt of all of the documents to be furnished by the Customer, the required approvals, releases, timely clarification and approval of plans, and compliance with the agreed terms of payment and other obligations. If these prerequisites are not complied within time, the deadline shall be extended accordingly, or new delivery dates shall be agreed. Furthermore, IDTRONIC is entitled to demand compensation for any damage or loss incurred hereby.

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- For deliveries, a deadline shall be deemed complied with, if the ready-to-use shipment is dispatched within the agreed delivery or service period or has been fetched by a common carrier. In the event that the dispatch is delayed for reasons for which the Customer is responsible, the period shall be deemed complied with upon notification that the shipment is ready for dispatch within the agreed period. § 294 German Civil Code is contracted out, therefore. The remaining statutory prerequisites pertaining to a default in taking delivery shall remain unaffected hereby.
- Delays in delivery and service due to Acts of God - i.e. circumstances or incidents which can not be prevented despite due care by the management - shall suspend IDTRONIC's contractual obligations for the duration of the disruption and the scope of its impact. Such circumstances or incidents entitle IDTRONIC to postpone the delivery or the service by the duration of the impediment plus a suitable start-up period or to withdraw from the contract either wholly or partly with regard to the not yet performed part of the contract. If such circumstances or incidents exceed the period of two (2) months, the Customer is entitled, after setting a suitable grace period, to withdraw from the contract regarding the not yet performed portion of the contract. The Customer shall not have any other claims.
- If IDTRONIC is in default with deliveries and/or services or if IDTRONIC is responsible for not meeting an agreed delivery deadline, the Customer shall have a claim to compensation for delayed performance in the amount of 0.5 % for every full week of the default, but no more than 5 % of the value of the invoice for the deliveries and services affected by the default. Other claims on the part of the Customer are excluded, unless IDTRONIC can be accused of deliberate intent or gross negligence.
- Insofar as the Customer is in arrears with a liability vis-à-vis IDTRONIC, IDTRONIC's delivery obligation shall rest.
- If the Customer is in default in taking delivery, IDTRONIC may store the goods at the Customer's risk and expense. As of the beginning of such storage, IDTRONIC may charge a storage fee in the amount of 0.5 % of the invoice amount for every month of storage commenced, unless the actual additional costs to IDTRONIC are lower.
- IDTRONIC is entitled to make partial deliveries and render partial services at any time.

### IX. Passing of Risks

- The risk of accidental loss and accidental worsening of the goods shall pass to the Customer - even with partial deliveries - once the goods are handed over, and in the event of a sales shipment, once the goods are delivered to the forwarding agent, the carrier or other persons or institution designated to execute the shipment. Packing will be done with the customary care. Goods will be shipped at IDTRONIC's best discretion. At the Customer's written request and expense, the shipment will be insured by IDTRONIC against damage due to breakage, transport and fire.
- If the delivery or service is delayed for reasons for which the Customer is responsible, the risk shall pass to the Customer with the notification that the goods are ready to be shipped.

### X. Warranty

- The Customer undertakes to examine the goods delivered immediately for visible defects, and in particular, for obvious errors in quantity or obvious damage, and to report such to IDTRONIC in writing by no later than within two (2) weeks of receiving the goods; the assertion of warranty claims will be excluded otherwise. The timely dispatch of the notice of defects shall suffice to comply with this deadline. For invisible defects, the Customer undertakes to notify IDTRONIC in writing after their discovery, but by no later than within the period of limitation referred to pursuant to Section X.5 below. The full burden of proof for all of the prerequisites for claims, in particular for the defects themselves, the time when the defects are ascertained and the timeliness of the report shall rest with the Customer.
- If the goods are defective, IDTRONIC reserves the right to first attempt to rectify the defect, either by subsequent delivery or by reworking (subsequent performance), as IDTRONIC chooses. In the event of subsequent performance, IDTRONIC is obliged to bear all of the expenses for this purpose, in particular, transport, labor and material costs, to the extent that such costs are not increased because the goods have been brought to a place that is different from the original destination.
- If subsequent performance is impossible or is seriously and finally rejected by IDTRONIC overall, or if it would be unreasonable to expect the Customer to accept such remedy, the Customer shall be entitled to reduce the purchase price or to withdraw from the contract (rescission) at the Customer's option.
- If the Customer chooses to withdraw from the contract due to a defect after a failed subsequent performance, the Customer shall not have any claim for damages apart from such withdrawal.
- The period of limitation for claims based on defective goods shall be one (1) year as of the delivery of the goods.
- With regard to the quality of the goods, the manufacturer's product description only shall be deemed agreed. Public statements, praises or advertising of the manufacturer do not represent any contractual indication of the quality of the goods.
- If IDTRONIC's statements pertaining to suitability, processing and application of its products are not complied with by the Customer, if changes are made to the products, if parts are replaced or modules are used, which do not correspond to the original specifications, IDTRONIC shall not be liable for defects, unless the Customer proves that the defects were not caused by or based on the aforementioned measures.
- If the Customer receives defective assembly instructions, IDTRONIC shall merely be obliged to deliver assembly instructions that are free from defects and this only in the event that the defect of the assembly instructions prevents proper assembly.
- The Customer is not receiving any guarantees from IDTRONIC in the legal meaning.

### XI. Restrictions on Liability and Statutes of Limitation

- In the event of slightly negligent breaches of duties, any liability on the part of IDTRONIC that goes beyond the liability for defects pursuant to Section X. above shall be excluded without regard for the legal nature of the claim asserted. This shall apply even if and to the extent that there are slightly negligent breaches of duties on the part of IDTRONIC's statutory representatives, vicarious agents or employees.

- In cases involving breaches of the duties of protection and care of relationships under the law of obligations, i.e., breach of IDTRONIC's obligation to be considerate of the Customer's rights, legal assets and interests, the statute of limitations shall be one (1) year as of the delivery of the goods to the Customer. If the goods have not been delivered, the statute of limitations shall begin with the end of the year in which the claim was incurred. Shorter statutes of limitations shall take precedence.
- The exclusion of liability referred to in Paragraph 1 above and the reduction in the statute of limitations in Paragraph 2 above do not apply in the event of a breach of a guaranty or of an essential contractual obligation. In the event of a breach of a major contractual obligation, IDTRONIC's liability is, however, limited to the replacement of the typical foreseeable damage or loss.
- The provisions in the foregoing Paragraphs 1 to 3 do not apply to the Customer's claims related to product liability, and they do not apply in any case of loss of life, physical injury or health damage attributable to IDTRONIC or for grossly negligent or deliberate breaches of duty by IDTRONIC's statutory representatives, vicarious agents or employees.

### XII. Exclusion of Subsequent Performance and Withdrawal from the Contract

- If a deadline for performance set by the Customer has passed fruitlessly and if the Customer does not comply with the subsequent request by IDTRONIC to inform IDTRONIC as to whether the Customer wishes to retain its claims to performance or demands compensation for damages instead of performance within another period set by the IDTRONIC for this purpose, the claim to performance will be excluded after the expiration of the suitable period associated with foregoing request for information.
- Due to a breach of duty which is not based on a defect of the goods, the Customer may only withdraw from the contract if the circumstance justifying the withdrawal is based on a fault or negligence for which IDTRONIC is responsible. In the event of an insignificant breach of duty, withdrawal from the contract is excluded.
- Furthermore, withdrawal from the contract is excluded in cases in which the Customer would only be statutorily obliged to receive compensation instead of a refund for the goods.

### XIII. Rights of Use

- IDTRONIC shall grant the Customer the non-exclusive, non-transferable right not limited in time or place to the contract territory to the results of the deliveries and services provided by IDTRONIC allowing the Customer to use such results for the contractually stipulated purpose. The Customer alone shall be liable to the proprietors of industrial property rights for any usage going beyond what was contractually stipulated and for any resulting breaches of industrial property rights.
- The use of deliveries and services provided by IDTRONIC for enterprises not affiliated with the Customer shall require an explicit written agreement.
- The Customer is obliged to notify IDTRONIC immediately of any infringements of industrial property rights by third parties and to provide the requisite documents and knowledge to take actions to prevent unlawful encroachments.

### XIV. Third-Party Industrial Property Rights

- IDTRONIC shall defend the Customer at IDTRONIC's own expense against all claims asserted against the Customer deriving from an alleged breach of German industrial property rights and copyrights due to the results from the deliveries or services provided by IDTRONIC and shall reimburse the Customer for all costs and amounts of damages finally adjudicated, insofar as the Customer notifies IDTRONIC without undue delay of such claims in writing, furnishes all of the requisite information and provides other reasonable support, and IDTRONIC shall retain its sole right to decide whether or not to take action against the claim or to make a settlement.
- In the event of a breach of industrial property rights or copyrights, IDTRONIC shall, to the exclusion of further claims, but subject to the provisions in Section X. and Section XI. above, and at its own discretion and its own expense, modify or replace the results of its respective deliveries and services in such a way so that third-party industrial property rights or copyrights are no longer infringed.
- IDTRONIC is not liable for any breach of industrial property rights or copyrights, if such breaches are based on a modification of the results of the deliveries or services which were not executed or authorized by IDTRONIC, either wholly or in part. Furthermore, IDTRONIC is not liable for breaches of industrial property rights resulting from a use of the respective results of the services that was not contractually provided for.

### XV. Secrecy and Data Protection

- The Customer is obligated to keep all sales documents, specifications and price lists received, as well as other documents and information ("confidential information") secret and to impose this obligation on its vicarious agents and employees accordingly. Items owned by IDTRONIC are to be stored so that they can not be made accessible to unauthorized third parties. Confidential information and items owned by IDTRONIC may only be disclosed to third parties with IDTRONIC's express consent. This duty of secrecy shall also apply after this contract has been completed for a period of two (2) years.
- Unless otherwise expressly agreed in writing, the information submitted to IDTRONIC in connection with orders shall not be deemed to be confidential.
- IDTRONIC is authorized, as part of the intended purpose of this business relationship, to process the personal data entrusted to IDTRONIC or to have such data processed by third parties in compliance with the data protection provisions.
- IDTRONIC may include the Customer's name in its own list of references.

### XVI. Legal Succession, Reorganization

- Insofar as IDTRONIC undergoes a reorganization through a change in its legal form while preserving its identity or through a change in its legal personality due to a merger, split-up or transfer of assets in accordance with the provisions of the German Reorganization Act (*Umwandlungsgesetz*), the contract concluded by and between IDTRONIC and the Customer, together with all of the rights and duties pertaining thereto, shall be continued with the newly formed or acquiring legal entity.

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2. Furthermore, IDTRONIC shall be entitled to transfer the contracts concluded by and between IDTRONIC and the Customer to a company affiliated with IDTRONIC within the meaning of § 15 German Stock Corporation Act (*Aktiengesetz/AktG*), together with all of the rights and duties pertaining thereto without the Customer's consent.
3. Moreover, IDTRONIC shall be entitled, to use the services of any company affiliated with IDTRONIC within the meaning of § 15 AktG and other third parties as sub-contractors to fulfill its obligations by virtue of this contract without the Customer's consent. In this case too, IDTRONIC is responsible for the contractually stipulated performance of the agreed obligations and vis-à-vis the Customer, IDTRONIC is also responsible for deploying enough qualified personnel to provide the services, to administer their claims to leave and to grant leave.

## **XVII. Forum and Venue, Applicable Law**

1. Insofar as the Customer is a (general) merchant within the meaning of the German Commercial Code (*Handelsgesetzbuch*), a legal entity under public law or a special trust or fund under public law, the sole forum and venue for any and all disputes arising from and in connection with this contract shall be the courts in Ludwigshafen / Rhein.
2. The laws of the Federal Republic of Germany shall apply exclusively to these General Terms and Conditions for the Sale of Products and Services and to all legal relationships between IDTRONIC and the Customer to the exclusion of all international and supranational treaties and legal regimes, in particular the UN Sales Convention (United Nations Convention on Contracts for the International Sale of Goods).

## **B.**

### **Special Supplementary Terms and Conditions for Services provided by IDTRONIC**

#### **I. Projects**

1. IDTRONIC shall provide its services at its own discretion through its bodies, employees or sub-contractors, i.e. the project team. IDTRONIC may replace the project team either wholly or partly.
2. IDTRONIC shall render its services at its respective branch office, as a matter of principle. As needed, the parties shall reach an agreement concerning the provision of services on the Customer's premises.

#### **II. Warranty**

1. Telephonic information provided by IDTRONIC shall only be binding to the extent that it is confirmed by IDTRONIC in writing.
2. If IDTRONIC has presented the results of its activities in writing, then only the written presentation shall prevail. Oral explanations and information by employees of IDTRONIC shall always be non-binding.

#### **III. Verification**

1. All the services will be properly rendered by suitably qualified personnel acting with reasonable care.
2. The Customer must support IDTRONIC in the elimination of shortcomings of the services. IDTRONIC will make every effort to eliminate such shortcomings within a suitable period of time.

#### **IV. Termination of the Contract**

1. The parties to this contract may terminate this contract even without the existence of good cause at any time with a notice period of three (3) months to the end of a month. In the event of a termination by the Customer, IDTRONIC's claim to remuneration in accordance with IDTRONIC's current price list will remain preserved to the full extent; the whole remuneration shall be due for payment once the termination takes effect, without any offsetting of expenditures not incurred or other income obtained or obtainable.
2. Either party may terminate this contract without notice, insofar as the other party has committed a serious breach of contract and such breach of contract is suitable for triggering considerable disadvantages when regarded from a reasonable commercial point of view. If IDTRONIC terminates the contract, then the provision in Section IV.1 above shall apply with respect to the remuneration.
3. These provisions shall not affect any claims for damages that the party terminating the contract might have.
4. Terminations must be made in writing to be valid.