

Terms and Conditions of Sale and Supply

1. Placement of Orders, Different Conditions

- 1.1 We will effect deliveries and services (all herein termed "deliveries") solely in accordance with the terms and conditions below. Individual agreements take precedence.
- 1.2 The General Terms and Conditions of the buyer shall apply only following express written confirmation. Neither a failure to object nor the execution of deliveries or services constitutes acceptance of the buyer's general terms and conditions of business.
- 1.3 The following terms apply to the General Terms and Conditions of Sale and Supply:
- Conditions = General Terms and Conditions of Sale and Supply
- "we", "us", "our" = mobilverde technologies GmbH
- Buyer = the customer, contractor or other contractual partner acting commercially or independently as a contractor as defined in Sections 14, 310 BGB (German Civil Code).

2. Offer, Quotation Documents

- 2.1 Unless otherwise stated in writing, our offer is subject to change.
- 2.2 Catalogues, diagrams, drawings, and other quotation documents are not binding. Where these are provided to the buyer, we retain the property rights and copyrights thereto; they may not be used for any other purposes other than those specified by us and may not be passed on to third parties. This applies in particular to written documents marked "confidential"; the buyer must obtain our express written approval before forwarding such documents to third parties.
- 2.3 Our written order confirmation shall be mandatory for defining the contents and scope of the supply contract. Sending data by remote data transfer shall satisfy the written form requirement.

3. Prices

- 3.1 Our prices are valid ex works/warehouse exclusive of packaging and exclusive of the statutory rate of value added tax applicable on the date of billing.
- 3.2 For deliveries or services provided more than four months following the conclusion of the contract, we reserve the right to adjust our prices accordingly if costs fall or rise following the conclusion of the contract owing in particular to collective bargaining agreements or changes in material prices. We will supply proof of these changes to the buyer on request.

4. Delivery

- 4.1 In order to meet the specified delivery date, the buyer must submit all documents, required authorizations, and approvals (in particular of plans) on time, and comply with the agreed terms of payment and various other obligations. If these prerequisites are not met on time, the deadlines shall be extended accordingly; this is not the case if we are responsible for the delay.
- 4.2 Forces majeures, strikes, civil unrest, official actions, non-delivery of supplies from our suppliers and other unforeseeable, unavoidable, and serious events will release the contractual partners from their performance obligations for the duration and scope of the disruption. This also applies if such events occur at a time in which the affected contractual partner is in default. The contractual partners agree to modify their obligations in good faith to reflect the new conditions, and to inform the other contractual partner of the new obligations without delay.

- 4.3 Claims on the part of the buyer for damages arising from delayed delivery are excluded even after a period of grace has elapsed. This does not apply in so far as there is mandatory liability in cases of willful intent or of gross negligence or of injury to life and limb or damage to health; any change in the burden of proof to the disadvantage of the buyer is excluded. The statutory right of the buyer to withdraw is not affected. The statutory right of the buyer to withdraw is not affected if we are responsible for the delay in delivery.
- 4.4 Partial deliveries are permitted. If a partial delivery is delayed, the buyer may not assert any claims in respect of the full order unless partial delivery is of no use.
- 4.5 Our deliveries are delivered ex works/warehouse unless otherwise agreed in individual situations. The risk shall transfer to the buyer once the goods have been declared ready for shipping, and no later than the date on which the goods leave the plant/warehouse. This also applies if we transport the goods. Transportation insurance shall be taken out only following special agreement, and at the cost of the buyer. We do not accept any guarantee for ensuring that the fastest and safest method of transportation will be used. If we transport the goods, we will be liable for transportation damage in accordance with the latest version of the General German Conditions of Haulage (ADSp).
- 4.6 If disposable packaging is used, its return will not be accepted. The buyer must dispose of this at his own cost.

5. Liability for Defects

- 5.1 The buyer must examine the goods immediately on receipt and notify us of any defects in writing without delay. Complaints with regard to hidden defects must be made in writing as soon as they are discovered.
- 5.2 Rejected goods may not be processed further until the complaint has been resolved. We must be given the opportunity to inspect the rejected goods on-site. We are also entitled to request that the rejected goods be sent to us.
- 5.3 Sample goods provided to the buyer are guide or reference samples. Delivery of such samples shall not affect our right to supply goods in accordance with standard tolerances.
- 5.4 If defects are identified in goods or services that have been produced or provided as new, we will either fix the defect or provide a non-defective product or service at our discretion providing that the defect was present at the time of the transfer of risk. If the subsequent performance fails, the buyer may reduce the payment or withdraw from the contract without prejudice to any claims for compensation under Section 9. Withdrawal from the contract owing to defects that only marginally impair use of the delivered goods or services is excluded. The buyer shall have no claim in respect of expenses incurred in the course of subsequent performance requiring transport, route, labor, and material costs insofar as expenses are increased because the delivered goods were subsequently brought to a location other than that of the buyer, unless doing so complies with the intended use of the delivered goods.
- 5.5. Warranty claims for the delivery of used goods are excluded.
- 5.6 Any claims of the buyer under a statutory right of recourse pursuant to Sections 478, 479 German Civil Code (BGB) shall only apply in as much as the buyer did not conclude agreements with his customer exceeding the statutory warranty claims. Rights of recourse of the buyer against us shall also only apply to the value of the purchase price.
- 5.7 Claims for defects shall not arise if the defect is attributable to non-compliance with operating, maintenance and installation instructions, to unsuitable or improper use, to incorrect or negligent handling, to natural wear and tear or to tampering with the delivered item by buyer or by third parties.
- 5.8 The limitation period governing claims for defects is 12 months calculated from the transfer of risk.
- 5.9 If so requested, the defective parts must be returned to us immediately at our cost.

6. Payment Conditions

- 6.1 Unless otherwise agreed, our invoices are payable immediately on receipt without deduc-

- tion.
- 6.2 If the buyer is in default of payment, we are entitled to charge default interest of 8% above the base lending rate.
 - 6.3 The buyer is only entitled to offset claims if his counterclaims are confirmed by court decision or are recognized by us. In addition, the buyer may only exercise the right of retention to the extent that the counterclaim is based on the same contractual relationship.
 - 6.4 If several invoices or receivables are outstanding, we are entitled to determine the order of repayments.
 - 6.5 If, as a result of the application of general banking standards after conclusion of the contract, we become aware of circumstances that give rise to concern regarding the buyer's creditworthiness or if the buyer is in default with the agreed payment deadlines, we are entitled, once an appropriate grace period has elapsed without payment, to make outstanding deliveries only in return for advance payment or to request a security before delivery.

7. Retention of Title

- 7.1 Delivered goods remain our property until all current claims from the business relationships between the buyer and us have been fulfilled (goods subject to retention of title). Should insolvency proceedings be initiated in respect of the assets of the buyer, we reserve the right to withdraw. If the buyer is in violation of any contractual obligations, including default of payment, we are entitled to withdrawal and to reclaim the goods and services; the buyer is obliged to return the goods. If the retention of title is rescinded, this does not require a withdrawal on our part; cases such as this or the seizure by us of the goods subject to retention of title do not constitute a termination of the contract unless we explicitly declared that this is the case.
- 7.2 The buyer must store and label goods subject to retention of title separately. The buyer is obliged to handle the goods which are the subject of retention of title with care; in particular, he shall insure the goods which are the subject of retention of title at his own cost against damage by fire, water and theft at their replacement value. If maintenance and inspection work is required, the buyer must complete this at his own cost.
- 7.3 The buyer shall neither pledge the conditional goods nor transfer them as security. The buyer must point out the retention of title and must inform us without delay of any seizure, confiscation, or other court orders or claims of third parties regarding our property.
- 7.4 The buyer is entitled to resell the goods subject to retention of title in the normal course of business dealings; however the buyer assigns to us all receivables from the resale in the amount of our invoice that arise from onward disposal to his customer or any third party regardless of whether the goods subject to retention of title have been sold with or without further processing. The buyer shall remain authorized to collect this account receivable even after assignment. This does not affect our right to collect this account receivable ourselves. We agree not to claim the account receivable providing that the buyer meets his payment obligations in respect of the collected revenues, that he is not in default of payment, he does not institute any insolvency proceedings, and that no payments have been stopped. In all of these cases, we may demand that the customer informs us of the assigned accounts receivable and the names of the debtors, that he gives us all the information and relevant documents necessary to collect the account receivable, and that he informs the debtors (third parties) of the assignment.
- 7.5 The buyer may process or convert the goods subject to retention of title on our behalf without giving rise to any commitment on our part. If the buyer combines, mixes, blends or processes our goods subject to retention of title, we shall acquire co-ownership in the new product in accordance with the ratio of the value of the goods subject to retention of title (final invoice amount) to the other processed, blended, mixed or combined items at the moment when the processing, blending, mixing or combining takes place. In all other respects, the provisions applicable to goods supplied subject to a retention of title shall likewise apply to the item created through processing or combination. Should such mixing or blending be effected in such a way that the buyer's item is regarded as the main prod-

uct, it is hereby agreed that the customer assigns co-ownership to us on a pro-rata basis. The buyer shall safeguard the sole ownership or co-ownership produced in this way on our behalf.

7.6 If the value of the securities provided to us exceeds our accounts receivable by more than 20%, then we shall be obliged at the request of the buyer to release the excess securities in the manner of our choosing.

7.7 Insofar and inasmuch as the registration and/or fulfillment of other requirements are a precondition for the effectiveness of the retention of title, the buyer is obliged to undertake without delay and at his own expense all relevant measures required and to notify all necessary parties. If and to the extent that the relevant legal system does not permit an agreement on a retention of title, the buyer must provide us with other appropriate securities if commercial credit is drawn on.

8. Other Claims for Damages

8.1 Claims for damages by the buyer, whatever their legal foundation, including claims based on a breach of duties arising from the contractual obligation or a tort are excluded.

8.2 Section 8.1. does not apply in cases of statutory liability, for example under the product liability act, in cases of intent, gross negligence, or of injury to life, limb or damage to health resulting from a violation of essential contractual obligations. Claims for damages specific to violations of essential contractual obligations are, however, limited to foreseeable damages typical for such contracts except in cases of intent or gross negligence or owing to injury to life, limb or damage to health. The above provisions do not permit a change in the burden of proof to the disadvantage of the buyer.

8.3 Insofar as this section entitles the buyer to file claims for damages, these lapse with the expiry of the limitation period applicable to material defect claims pursuant to 6.7 insofar as no conflicting compulsory statutory regulations exist.

8.4 If claims for damages against us are excluded or limited, this shall also apply with respect to the personal liability for damages of our employees, workers, collaborators, representatives, and agents.

9. Rights of Third Parties

9.1 Insofar as a third party makes a justified claim for damages from the buyer on account of the infringement of commercial protection law or copyright law (property rights) in relation to products supplied and used contractually by us, our liability towards the buyer is as follows:

9.1.1 At our own cost, we shall, at our discretion, either acquire the right to use the product, modify the product in such a way that property rights are no longer infringed, or replace the product. If none of these measures is feasible within reason, we shall take back the product in return for reimbursement of the purchase price.

9.1.2 The obligations listed above will only apply if the buyer immediately notifies us in writing of the claims brought by third parties, the buyer has not admitted to an infringement, and we are granted the right to all defensive measures and settlement negotiations. To this end, the buyer must provide us with all necessary information and documents. If the buyer ceases using the product in order to minimize damage or for any other important reason, he is obliged to inform the third party that ceasing to use the product does not constitute an admission that that property rights have been infringed.

9.2 Claims of the buyer are excluded if he is liable for the breach of property rights or if the breaches of property rights are caused as a result of specific instructions of the buyer, through use of the product or service not intended or foreseen by us, or if the product is changed by the buyer or used in combination with products not delivered by us.

9.3 In the cases described under Section 10.2, the buyer shall indemnify us against claims from third parties, and will reimburse us for any legal defense costs incurred by us including the costs of our legal representation.

9.4 Other claims against us are excluded; Section 8 (Other Claims for Damages), however, remains unaffected as does the right of the buyer to withdraw from the contract providing that this is legally or contractually permissible in cases of a violation of commercial industrial property rights or copyright.

9.5 In the event of other defects of title, the conditions defined in Section 6 shall apply accordingly.

10. Production Equipment, Tools, Molding Equipment

10.1 If the buyer provides us with production equipment (e.g. tools, chill molds, casts, or dies), these must be sent free of charge. We will accept liability for their loss, degradation, or incomplete return including any subsequent damages only in the event of gross negligence or intent. This does not apply in the case of statutory liability.

10.2 If production equipment is assembled or procured by us on behalf of the buyer, we will invoice the costs incurred separately on a pro-rata basis; in the case of cast parts, this also applies to follow-up equipment. If a tool is not used, the buyer shall pay the costs that have not been covered and also those relating to other type-specific equipment. Costs for models will always be borne in full by the buyer. Production equipment shall remain our property, and we shall retain the exclusive right of use and copyright thereto. We are not obliged to return such equipment to the buyer. This also applies to follow-up equipment.

10.3 Drawings and documents that we supply to the buyer as well as our proposals for the efficient design and manufacture of the parts may not be passed on to third parties, and we may request their return at any time.

11. Place of Performance, Legal Venue, Applicable Law

11.1 The place of performance for payment obligations on the part of the buyer is our head office.

11.2 The sole legal venue for all disputes arising from this contractual relationship and its fulfillment is our head office. We also reserve the right to take legal action against the buyer at the buyer's general legal venue.

11.3 The law of the Federal Republic of Germany applies to all legal relations between us and the buyer under the exclusion of conflict of laws provisions; the United Nations Convention on Contracts for the International Sale of Goods (UN CISG) does not apply. The most up-to-date versions of the INCOTERMS shall apply to the interpretation of delivery clauses.

12. Partial Ineffectiveness

The legal ineffectiveness of individual provisions of these conditions does not affect the effectiveness of the remaining provisions.

13. Data Storage

The data required to process business transactions shall be stored and where necessary passed on to third parties while the purchase order is being processed. All personal data will of course be treated in confidence in accordance with the provisions of the German Federal Data Protection Act.