

1. Scope of application

- 1.1. The supply of products and the offers made by TASCAN Systems GmbH are made exclusively subject to these terms and conditions ("Terms"), where the contracting party is an undertaking (as set out in section 14 German Civil Code (BGB)), a legal person under public law or it relates to public law property. All previous Terms shall be deemed invalid. TASCAN Systems GmbH hereby expressly rejects any general terms and conditions of business or purchase of the contracting party ("Customer").
- 1.2. These Terms shall apply to all future business dealings, even where there is no further express agreement.
- 1.3. Variations and additions to the Terms and oral understandings, which differ from the content of these Terms, shall become valid only upon written confirmation by TASCAN Systems GmbH.
- 1.4. The manufacturer's licence conditions that accompany the products shall also apply.

2. Offer and goods supplied

- 2.1. The offers made by TASCAN Systems GmbH are made subject to confirmation. A contract shall only come into existence upon written order confirmation by TASCAN Systems GmbH. In the absence of written order confirmation a contract shall come into existence upon despatch of the delivery by TASCAN Systems GmbH following the order by the Customer, or, at the latest, upon acceptance of the delivery by the Customer.
- 2.2. TASCAN Systems GmbH is entitled, contrary to the Customer's order, to deliver amended products, to the extent that the amendment is not unreasonable for the Customer and the functionality of the products is not thereby affected.

3. Deliveries and obligations

- 3.1. Delivery dates and deadlines are not binding.
- 3.2. Part deliveries and part obligations and their factoring are reserved to TASCAN Systems GmbH.
- 3.3. Agreed delivery dates are deemed met when the product is handed over on the delivery date to the freight driver who has been commissioned to transport the products. If the despatch of despatchready products is delayed for reasons out of the control of TASCAN Systems GmbH, these may be stored at the cost and risk of the Customer.
- 3.4. TASCAN Systems GmbH shall not be responsible for delays in delivery due to circumstances which could not be prevented by the due care of a proper businessman (Acts of God), in particular government measures, the failure to issue official approvals, employment disputes or delayed material deliveries beyond the control of TASCAN Systems GmbH. For the duration of the disruption and to the extent of its effect the obligation by TASCAN Systems GmbH to deliver shall be suspended, even in the event of a delay in delivery that has already begun. If deliveries by TASCAN Systems GmbH are delayed by more than four weeks, the Customer may terminate the contract excluding all further claims by giving in writing a reasonable deadline for corrective measures. To the extent the delays in delivery last for longer than six weeks, TASCAN Systems GmbH shall also be entitled to withdraw from the contract either in whole or in part.
- 3.5. Orders placed by the Customer can only be cancelled with the written consent of TASCAN Systems GmbH. A cancellation is no longer possible where there is a transfer of risk as defined in clause 5.1. In the event of a full or partial cancellation clause 6.4 shall apply.

4. Prices and payment terms

- 4.1. TASCAN Systems GmbH reserves the right to increase the agreed price for those obligations, which are to be performed no earlier than four months following termination of the contract, if following termination of the contract there are cost increases at TASCAN Systems GmbH. These shall be proved to the Customer upon request.
- 4.2. Payments shall be due and made within 14 days following invoice without any deduction.
- 4.3. Payments by the Customer shall first be applied to costs and interest, then to amounts due which are older, and finally to the main amount due.
- 4.4. In the event of a delay in payment all open amounts of the Customer shall become due.
- 4.5. The Customer shall only be entitled to rights of set off when the Customer's counter claims are judicially determined, undisputed or accepted in writing by TASCAN Systems GmbH. The same shall apply to the exercise by the Customer of any rights to withhold payment.

5. Transfer of risk

- 5.1. The risk shall transfer to the Customer upon hand over of the product to the Customer or the freight driver, his representative or other persons who are involved in the transport. This shall also apply if freight free delivery has been agreed. Where the despatch is delayed or becomes impossible at no fault of TASCAN Systems GmbH, the risk shall transfer to the Customer upon notice of readiness to despatch.
- 5.2. All shipments, including any returns, shall be at the risk of the Customer.

6. Rights of TASCAN Systems GmbH

- 6.1. Any right reserved to TASCAN Systems GmbH under these Terms does not exclude existing rights and claims under law.
- 6.2. If the Customer delays acceptance of the product ("Acceptance Delay") TASCAN Systems GmbH shall be entitled to demand fixed costs of 12 % p.a. of the gross contractual amount. The right to demand higher costs is reserved. The right is not lost merely because a later delivery date is agreed with the Customer following Acceptance Delay. The Customer is entitled to prove lower costs of TASCAN Systems GmbH.
- 6.3. Notwithstanding clause 6.2 TASCAN Systems GmbH is entitled to terminate the contract in the event of Acceptance Delay.
- 6.4. In the event of cancellation under clause 3.5, TASCAN Systems GmbH is entitled to demand 25 % of the gross contractual amount as damages. The right to prove higher damages is reserved.

The Customer is entitled to prove lower damages.

- 6.5. TASCAN Systems GmbH is entitled to terminate contracts where the Customer has breached his duties of care in relation to products delivered subject to retention of title under clause 7 ("Retained Product") or where he gives false details in relation to his creditworthiness or circumstances arise after the event which indicate the Customer's current or pre-existing inability to pay.

7. Retention of title and assignment

- 7.1. The product remains the property of TASCAN Systems GmbH until all existing and future demands including payment balance claims arising from the entire commercial relationship with the Customer are satisfied ("Retention of Title").
- 7.2. The Retention of Title extends to goods arising from the processing, connection and mixing of the products to their full value and to the extent third parties property rights exist remain in proportion to the invoiced products. Adaptation and processing of the Retained Products takes place for TASCAN Systems GmbH as manufacturer pursuant to section 950 German Civil

Code (BGB), without TASCAN Systems GmbH becoming contractually bound by the process.

- 7.3. Where distraint and other third party actions occur relating to the Retained Product the Customer must draw attention to the property rights of TASCAN Systems GmbH, notify TASCAN Systems GmbH immediately and provide TASCAN Systems GmbH with all information and documentation required to support any legal measures taken by TASCAN Systems GmbH.
- 7.4. The Customer is entitled to sell the supplied products in the ordinary course of business to the extent that this is not in default of his obligations to TASCAN Systems GmbH and that the property rights are retained under the conditions as set out here. There is no right to dispose where a valid prohibition on assignment exists between the Customer and his recipient. The Customer is not entitled to make any other transfers or disposals.
- 7.5. Any rights that the Customer has from the onward sale or for replacement following loss or damage to the Retained Products shall be assigned to TASCAN Systems GmbH today by way of security. If the Customer applies a claim described above in an open account relationship, the open account claim is assigned to the extent of the recognised balance; the same shall apply to the causal balance upon insolvency of the debtor of the Customer. The Customer is authorised to collect the assigned claims. TASCAN Systems GmbH may withdraw the authorisation if the Customer fails to fulfil its payment obligations to TASCAN Systems GmbH or it becomes aware of circumstances which mean that the Customer's creditworthiness is substantially reduced. If withdrawn the Customer shall notify TASCAN Systems GmbH all assigned claims and debtors, provide all details required for collection, hand over the relevant documentation and notify the third party debtors of the assignment accordingly.
- 7.7. Where the Customer is in breach, in particular in relation to late payment, within the existing and future contractual relationship with TASCAN Systems GmbH or there is a forfeiture of goods, TASCAN Systems GmbH is permitted to repossess the Retained Products into its direct control and to access the Customer's premises without obstruction. TASCAN Systems GmbH may elect to assign the claims for repossession from the Customer to a third party. The Customer shall cooperate fully to assist TASCAN Systems GmbH in exercising the right of retention to return the Retained Products to its direct control.
- 7.8. Upon request from the Customer TASCAN Systems GmbH shall release from the security granted to it to the extent that its value exceeds the claims being secured by more than 20 %. The choice of security to be released rests with TASCAN Systems GmbH.
- 7.9. Goods supplied for test and demonstration purposes remain the property of TASCAN Systems GmbH. They may only be used by the Customer with the express agreement of TASCAN Systems GmbH.
- 8. Warranty**
- 8.1. The Customer shall check the delivered products immediately following receipt for completeness and consistency with the order. Obvious deficiencies must be notified in writing immediately following receipt, deficiencies apparent from a standard inspection within 8 days of receipt of the product and any other deficiencies within one week of their discovery. In the absence of such notification acceptance shall be deemed to have taken place. Immaterial deficiencies that do not affect the functionality of the product shall not entitle the Customer to refuse acceptance. Where the notification process has taken place correctly the warranty shall apply as described in the following provisions.
- 8.2. TASCAN Systems GmbH warrants that the products are free of deficiencies and that they meet the agreed guarantees. The parties are aware that it is not possible with the current status of technology to eliminate software faults under all operating conditions. The warranty for software deficiencies therefore only extends to such deficiencies that would make its operation for the agreed purpose unusable or unreasonably difficult for the Customer.
- 8.3. Technical data given in product information does not amount to a guarantee. A guarantee is only made if this is expressly described as such in writing by TASCAN Systems GmbH. TASCAN Systems GmbH does not warrant that the programme functions as selected by the Customer will work together.
- 8.4. The guarantee does not extend to those deficiencies that relate to inappropriate use or failure to follow the operating or maintenance instructions or wrong or faulty programme and/or processing data. Nor does the warranty apply where the serial number, type description or similar identification has been removed or made illegible.
- 8.5. Claims for deficient products for newly manufactured goods expire 12 months following transfer of risk in the product as set out in clause 5.1 above. The sale of used goods takes place with no warranties of any kind.
- 8.6. Claims for deficient products are not transferable. Notwithstanding this TASCAN Systems GmbH shall assign to the Customer to the fullest extent any guarantee and warranty claims against manufacturers and suppliers of TASCAN Systems GmbH without substitution.
- 8.7. In the event of a warranty claim TASCAN Systems GmbH may elect to rectify or supply a substitute, and in the event of rectification TASCAN Systems GmbH may elect the manner and method. In the event of a substituted delivery the property in the part substituted transfers to TASCAN Systems GmbH. If TASCAN Systems GmbH fails to remove deficiencies within a reasonable time period set in writing, or the rectification or substitution falls short, the Customer may enforce the statutory termination and abatement rights.
- 8.8. Where a return to TASCAN Systems GmbH is required in the course of a warranty, the Customer shall bear the risk for appropriate packing and despatch. The Customer shall meet additional costs arising as a result of unusual despatch. All other costs of rectification and substitution shall be met by TASCAN Systems GmbH. If following inspection of the product subject to warranty it is apparent that no warranty claim exists, TASCAN Systems GmbH may demand the costs incurred under these provisions in accordance with the current service pricing of TASCAN Systems GmbH.
- 8.9. Software adjustments commissioned by the Customer are subject to a separate agreement.
- 8.10. TASCAN Systems GmbH is not liable to the Customer for losses resulting from deficiencies or for any other legal reason in accordance with clause 9.
- 9. Liability**
- 9.1. TASCAN Systems GmbH shall be liable for losses arising from the loss of life, physical injury or health resulting from the intentional or negligent breach of duty by TASCAN Systems GmbH. TASCAN Systems GmbH shall only be liable for other losses, to the extent that TASCAN Systems GmbH or its legal representative or agent has breached a duty intentionally or with gross negligence.
- 9.2. In addition, TASCAN Systems GmbH shall only be liable for typical

and foreseeable losses, i.e. those which TASCAN Systems GmbH could reasonably foresee, taking into account the circumstances it was aware of at the time of entering into the contract or which relate to the negligent breach of material contractual obligations by TASCAN Systems GmbH or its legal representative or agent. TASCAN Systems GmbH is not liable for the profit forfeited by the Customer as a result of the delay in delivery of the product or the inability to use the product in relation to revenue which could be generated by using the product. Also TASCAN Systems GmbH shall not be liable for other lost profit and consequential losses nor for those losses for which the Customer could obtain insurance cover or which are within the Customer's control.

- 9.3. All other claims by the Customer for damages are excluded. Where the liability of TASCAN Systems GmbH is excluded or limited, this shall also apply to the personal liability of employees, staff, representatives and agents of TASCAN Systems GmbH.
- 9.4. The above provisions shall not apply to the extent that TASCAN Systems GmbH is liable under the [German] product liability law.
- 9.5. The Customer's claims for damages under the above provisions shall expire in 12 months. In relation to damages under the [German] product liability law the statutory time limits shall apply.
- 10. Intellectual property rights and copyright**
- 10.1. Usage rights for the software covered by this contract lie with TASCAN Systems GmbH. The Customer is permitted to use the software only within the context of the relevant contract and these Terms. A use by third parties or a transfer to a third party is only permitted with the consent of TASCAN Systems GmbH.
- 10.2. To the extent that products supplied are finished in accordance with specific instructions of the Customer the Customer shall indemnify TASCAN Systems GmbH from claims made by third parties as a result of breach of intellectual property and copyrights. All process costs shall be met reasonably in advance.
- 11. Export and import approvals**
- 11.1. Products and technical know-how supplied by TASCAN Systems GmbH are intended for use by and to remain in the country of delivery agreed with the Customer. Regardless of whether the Customer gives a final destination for the products supplied, the Customer is itself under a duty to obtain any approval required from the respective trade authorities, if he takes out or exports such products.
- 11.2. Each further supply of products to third parties by the Customer, with or without the knowledge of TASCAN Systems GmbH, also requires the simultaneous transfer of the export approval conditions. The Customer is liable to TASCAN Systems GmbH for meeting these conditions in the ordinary course.
- 12. Supplementary Regulations for the Disposal of Electrical and Electronic Goods**
- 12.1. For sales to businesses (B2B supply), pursuant to section 2, schedule I of the German Act governing the Sale, Return and Environmentally Sound Disposal of Electrical and Electronic Equipment (the German ElektroG), the Customer is responsible for the disposal of the goods after use in an environmentally friendly manner pursuant to the legislation and at the Customer's expense. The Customer indemnifies TASCAN Systems GmbH from its obligations pursuant to section 10, paragraph 2 ElektroG (manufacturer's obligation to take back used goods for disposal) and any related third-party claims.
- 12.2. Should the Customer pass on the supplied electronic and electrical goods to a third-party, the Customer shall ensure that the third-party is contractually obliged to ensure that it disposes of the goods after use in a legal and environmentally-friendly manner and at its own cost, and to ensure that a similar obligation is entered into with any additional party to whom the products are supplied. If the Customer fails to impose such obligations, the Customer shall be obliged to take back the product supplied after use at its cost and to dispose of such product according to the regulations; or the Customer shall arrange to fund TASCAN GmbH's expenses for providing the same service.
- 13. Import sales tax; intra-community trade**
- 13.1. The Customer is required upon request to provide to TASCAN Systems GmbH his VAT identification number and the necessary information about his trading identity, the use and the transport of the delivered products and any information required to satisfy the statistical notification duties. If he breaches this obligation he shall indemnify TASCAN Systems GmbH for the resulting claims and the latter's costs in dealing with the breach of duty.
- 14. Final provisions**
- 14.1. Place of performance and jurisdiction is Cologne, Germany. This shall not apply to jurisdiction for recovery of money. TASCAN Systems GmbH reserves the right to call upon a court with legal jurisdiction.
- 14.2. The laws of the Federal Republic of Germany shall apply. The Uniform Law on the International Sale of Goods, the Uniform Law on the Formation of Contracts for the International Sale of Goods and the United Nations Convention on Contracts for the International Sale of Goods are excluded.
- 14.3. Should one or more provisions of these Terms be or become invalid, or if the Terms fail to address a point, the parties shall replace or supplement the invalid or incomplete provision with appropriate rules, which address the commercial purpose of the desired rule to the widest extent possible. The validity of the remaining provisions shall remain unaffected.
- 14.4. *These Terms have been translated from the German original. In the event of conflict, the original German language version of these Terms shall take priority over this English language version. A copy of the German language version is available upon request to TASCAN Systems GmbH.*