

ExpertControl GmbH, General Terms and Conditions

§ 1 General

All quotes, deliveries and services of ExpertControl (in short: VENDOR) are based on these Terms & Conditions. Sections of the CLIENT's (short for: buyer, customer, client) terms & conditions which differ or add to the VENDOR's Terms & Conditions are invalid unless they are confirmed in writing by the VENDOR to be effective.

§ 2 Dates of Delivery, Shipment

1. Delivery dates stated in quotes and contracts of the VENDOR are approximate specifications. The VENDOR will make best effort to meet these delivery dates if feasible. If a delivery date has been agreed upon and the VENDOR needs to delay delivery, the CLIENT shall allow a grace period of 6 weeks. Unless the VENDOR delivers the purchased goods within this grace period, the CLIENT may cancel the purchase in writing. Any compensation caused by delayed delivery or non-fulfillment is expressly excluded.
2. For delayed deliveries lying outside the VENDOR's operational sphere, in particular – but not restricted to – at strike, lockouts, material failure, fire, transport lock, embargoes acts of war or force majeure, the VENDOR shall not be liable.
3. The VENDOR is free to choose the means of transport and the transport route. Transport type includes electronic delivery as well.
4. Partial deliveries are permissible.
5. Costs for transport, packing and insurance are charged to the CLIENT, unless in the VENDOR's quotation or order confirmation explicitly confirms something different.

§ 3 Prices

All prices are stated in EURO. VAT, further taxes or fees will be added if applicable and required by law.

§ 4 Payment

1. Invoices are payable NET 14 days after invoice date. Cheques are accepted as preliminary payment, bills of exchange or drafts are not accepted.
2. For payment delays of more than 30 days, the VENDOR is entitled to charge default interest at a rate of 1% per month or part thereof.

§ 5 Reservation of Proprietary Rights

Until payment of all debts owned by the VENDOR against the CLIENT, the VENDOR retains proprietary rights to the goods supplied.

§ 6 Transfer of Perils

The transfer of perils shall pass from the VENDOR to the CLIENT upon transfer of the goods to the corresponding carrier.

§ 7 Use of Software Products

The right of use of software products is governed by the license agreements of the respective manufacturer.

§ 8 Warranty

1. Duration of Warranty:
 - For software, the duration of the respective manufacturer's warranty shall apply.
 - For hardware supplies, unless otherwise agreed, warranty period shall expire 6 months after delivery.
2. If the delivered goods are defective or promised features are missing or they will become defective within the warranty period due to manufacturing defects or material defects, the VENDOR shall be allowed to deliver alternative goods at its choice or repairs. This procedure excludes further warranties for the CLIENT – in particular, warranties for any consequential damages at the CLIENT's shall be excluded. Multiple repairs shall be accepted by the CLIENT. If repairs or replacements fail after an appropriate grace period, the CLIENT may elect for purchase price reduction or cancellation of the purchase order.
3. In case an error occurs during product and contractually compliant usage, the CLIENT shall report this error in writing, immediately. This report shall describe the reproducible error, stating the relevant information for error detection. The CLIENT shall support the VENDOR by reasonable efforts in the VENDOR's attempt to eliminate the error.
4. The CLIENT agrees to inspect the delivered goods immediately. If there are any defects the CLIENT shall notify the VENDOR in writing within two weeks. If not notified timely the VENDOR shall have no warranty obligations, unless the defect was not apparent on examination of the delivered goods within the above mentioned deadline.
5. For deliveries of software: On VENDOR's request, the CLIENT shall provide the corresponding defective software product on standard storage media and allow for hardware (computer, etc) usage. For problems which occur in connection with the CLIENT's hardware only and are generally not verifiable, the CLIENT shall make available the corresponding hardware to the VENDOR for diagnosis purposes, free of charge.

§ 9 Advertising Statements

Commendations and promotions of the VENDOR and his agents do not constitute commitments.

§ 10 Liability

1. The VENDOR is not liable for damages resulting from the use of its product, unless the damage is caused by an intentional or grossly negligent failure of the VENDOR.
2. In the Federal Republic of Germany the VENDOR takes the responsibility that the products are free of third-party rights that restrict the use of the products. The VENDOR indemnifies the CLIENT from third party claims for infringement of intellectual property rights. In case third-party raises claims against the CLIENT in this respect, the CLIENT shall notify the VENDOR immediately. The CLIENT leaves it to the VENDOR to defend the claims to the degree reasonable and permitted.
3. Indemnity claims against the VENDOR (including its agents), in addition to §10.2 – whatever legal reason (in particular violation of obligations in contract negotiations, delay of delivery, warranty, breach of error correction, breach of contract, impossibility, tort) are excluded, unless the damage was caused deliberately or through gross negligence. In any case, indemnity claims are restricted to the efforts a reasonable third-party would need to undertake to eliminate the damage, however limited to 5,000.00 Euros.

§ 11 Confidentiality

The VENDOR agrees to keep confidential not publicly known commercial and technical details which VENDOR may become aware of as part of the business relationship with the CLIENT.

§ 12 Limitation

All claims of the CLIENT to the VENDOR expire one year after delivery.

§ 13 Jurisdiction

Place of performance and jurisdiction is Munich, Germany.

§ 14 Partial Effectiveness

Should one or more of the above provisions be or become invalid, the validity of the remaining shall be unaffected. The ineffective provision shall be replaced by an effective one pursuing the economic aim to the maximum degree possible.