



General Terms and Conditions

DILAX Intelcom GmbH

1 Scope

These General Terms and Conditions apply to all contractual relationships between DILAX Intelcom GmbH, Alt-Moabit 96b, 10559 Berlin, Germany (hereinafter referred to as "DILAX"), and its customers – regardless of the type and scope of service – within the context of current and future business relationships.

2 Exclusivity

- 2.1 Our General Terms and Conditions apply exclusively. Separate terms and conditions from DILAX, particularly for hardware, software and services – if a corresponding agreement with the customer exists – remain unaffected hereby.
- 2.2 The customer's general terms and conditions do not apply unless DILAX has previously and expressly agreed to their validity in writing. This also applies if general terms and conditions of the customer are attached to the contractual documents or referred to therein and also if DILAX acts with the knowledge of contrary or deviating conditions on the part of the customer.

3 Drawing up contracts

- 3.1 Unless expressly indicated otherwise, offers from DILAX are subject to revision and are non-binding. In these cases, the customer's order is deemed to be the binding contractual offer. This also applies when DILAX has provided the customer with descriptions of services, catalogs, other product descriptions, drawings, photographs, illustrations, service specifications, technical specifications, dimensions, weights or documents – in electronic form as well.

- 3.2 Orders must be in text form (e.g., letter, fax or e-mail). The contractual commitment for DILAX takes force with acceptance of the order in text form (order confirmation).

- 3.3 An offer loses any binding effect it may have 30 days after being sent out at the latest if it has neither been accepted nor refused by that time.

4 Contents of offers and services

- 4.1 The content of our services is determined by the latest version of the contract including the accompanying appendices and documents and/or agreed alterations to services. General rules of industry apply thereby. Descriptions of services contained in previously created offers, drafts or other documents have no affect on the latest offer.
- 4.2 The contractual obligation entered into by DILAX is subject to national and international legal restrictions, primarily any applicable export restrictions. If, after conclusion of the contract, DILAX is unable to fulfill the contract due to official or judicial order or to legal provisions, or is only able to fulfill the contract under significantly altered conditions, particularly economically unreasonable conditions, DILAX is entitled to withdraw from the contract with a notice period of 14 days. The legal provisions are unaffected hereby.

5 Delivery conditions

- 5.1 Delivery is ex work DILAX Intelcom GmbH, Berlin, Germany, in accordance with Incoterms, including packing.

5.2 The period of delivery begins on the date of order confirmation by DILAX (generally upon receipt of the order confirmation by DILAX) and the clarification of all technical and commercial details with the appropriate departments, e.g. drawing up a technical specification (to the extent agreed), submission of the customer confirmation for special design features and/or reception of the agreed deposit. If it is not possible to fulfill the contract on time due to missing information, plans, specifications, data, etc., or alterations to these, and this shortcoming is attributable to the customer, the period set in the contract is extended corresponding to the delay in fulfillment. Additional costs accruing to DILAX thereby are borne by the customer.

5.3 If DILAX cannot fulfill the binding period of delivery due to reasons that are not DILAX's responsibility (non-availability of service), DILAX will inform the customer thereof and at the same time report the expected new period of delivery. If the service is not made available within the new period of delivery either, for reasons not attributable to DILAX, DILAX is entitled to withdraw from the contract in whole or in part, whereby DILAX will inform the customer of the further non-availability and, when called for, of the withdrawal. DILAX will reimburse any consideration rendered by the customer. In this sense, failure of DILAX's suppliers to provide prompt self-delivery in particular constitutes non-availability, if DILAX has concluded a congruent cover transaction (binding, prompt and sufficient order of goods) and DILAX is not otherwise responsible for the non-delivery of goods. The legal right of withdrawal and cancellation and the legal regulations governing performance of the contract in the event of exclusion of obligation to perform (e.g., impossibility or unreasonableness of the performance and/or supplementary performance) remain unaffected.

5.4 The delivery is insured against transport risks only if explicitly agreed with the customer and only to the usual market level. DILAX will inform the customer of the amount and extent of insurance coverage at any time upon request.

5.5 If the delivery exhibits recognizable damage or shortages, the customer is to state these in writing on the carrier's receipt voucher upon delivery. This notation must indicate the damage or shortage in accordance with Sect. 438 of the German Commercial Code (HGB) with sufficient clarity.

6 Prices and payment conditions

6.1 If nothing to the contrary has been stipulated by the contract, the following prices, hourly rates and subsistence/travel costs apply. All prices are net excluding VAT in EU-ROS.

6.2 Not included in the offer or contract price and to be borne by the customer are any transport costs, taxes, fees, customs dues, compulsory payments, etc., in the customer's own country; this applies as well to bank charges or costs of official approvals needed by the customer.

6.3 DILAX provides evidence of time rendered from notes made by our employees, which the customer is to check and countersign at least once a week. If the customer refuses to approve a submitted time sheet, DILAX is entitled to demand that the accuracy of the time sheet be checked within ten workdays. If no substantiated objections are raised within this period, the time sheet is considered as approved. Travel time is counted as working time and is charged by a reduced hourly rate of 55.00 EURO up to a maximum 12 hours per day. Any other arrangements are to be agreed by both parties in writing. Hourly rates:

- Consultation, development and engineering activities 105.00 EURO
- Installation, repair and service work 74.00 EURO
- Travel time 55.00 EURO

Other additional payments:

Normal working time consists of 8 hours per day (MD=Man/Day) between 9:00 a.m. and 5:00 p.m., at 5 workdays week (Monday– Friday).

If DILAX is active outside these working times at the customer's request, an additional cost of 50% is added to the standard hourly rate. For night work between 7:00 p.m. and 7:00 a.m. on workdays, an additional payment of 50% is added to the standard hourly rate. For work performed on Saturdays, Sundays and public holidays (of the Federal Land of Berlin), an additional 100% is added to the standard hourly rate. These additional payments are cumulative.

Cash expenditure, travel and subsistence costs:

Cash expenditures and travel and subsistence costs of all kinds, and also material costs, are not included in the standard hourly rates or additional payments. The actual expenditure is charged for all travel and subsistence costs incurred within Germany and abroad, subject to the following minimum rates:

- Travel by car 0.51 €/km
- Train 2nd-class ticket
- Subsistence costs away from home 65.00 €/day
- Nightly fee away from home 120.00 €/day

All flat rates are annually adapted to the cost of living. Travel costs are charged according to expenditure. All costs and additional and special requests are charged according to expenditure.

- 6.4 If nothing to the contrary has been agreed in the offer, the following payment conditions apply.
- 6.5 Payment for the entire service is to be remitted as follows:
- 20% of the total remuneration: within one week after signing the contract at the latest.
 - 80% of the total remuneration: within one week after delivery at the latest.

6.6 Other services are charged immediately after they are performed in correspondence with the contractually agreed remuneration or according to expenditure and are to be paid within 14 calendar days of their performance. DILAX is entitled to claim a down payment or advance payment.

6.7 In cases of delayed payment by the customer, interest on delayed payments is charged to the extent permitted by law, at least however 10% per annum. Further claims by DILAX remain unaffected.

7 Reservation of ownership

7.1 All items delivered by DILAX remain the property of DILAX until the entire main and subsidiary demands for payment – including future payments or payments on condition – arising from the delivery have been remitted to DILAX in their entirety. The customer undertakes to treat the purchased item with care for as long as the property has not been transferred to him. Until that time, the customer must inform DILAX in writing without delay if the delivery is pledged or exposed to any encroachment by a third party. To the extent that the third party is unable to compensate DILAX for the judicial and extra-judicial costs of a lawsuit in accordance with Sect. 771 of the German Code of Civil Procedure (ZPO), the customer is liable for the loss incurred by DILAX unless he has done everything conceivably possible to hinder seizure of the delivery and has promptly informed DILAX thereof or is not responsible for the lack of promptness in conveying this information.

7.2 The customer has no right to pledge the reserved goods to third parties or to offer them as security. At the customer's request, DILAX will release the security it has been given once its value has exceeded that of the receivables to be secured by more than 20%.

8 Warranty

- 8.1 The defect warranty is based on the contractually agreed specifications (quality agreement). All product descriptions that are an explicit object of the respective contract constitute agreement on quality. DILAX assumes no responsibility for public announcements of other manufacturers or third parties (e.g., advertising statements).
- 8.2 Customer defect claims presume the customer has fulfilled his obligations pursuant to any existing legal obligation of examination and reporting of defects (Sect. 377 and 381, German Commercial Code [HGB]), if he is a merchant. If a defect becomes apparent during the examination or later, DILAX is to be notified in writing without delay. This notification is deemed "without delay" when it reaches DILAX within two weeks.
- 8.3 Regardless of this obligation of examination and reporting of defects, the customer, even when he is a merchant, must report apparent defects (including incorrect or short deliveries) in writing within two weeks of the delivery.
- 8.4 A warranty guarantee is excluded for defects due to (i) negligence, improper use, deficient care, incorrect storage, or accidents; (ii) opened housings, attempted repairs, repairs, maintenance or transformation of the delivery not carried out by DILAX or their expressly authorized thirds; (iii) installation of foreign products not authorized by DILAX; (iv) use of replacement parts or consumables not manufactured or authorized by DILAX; (v) use of the delivered product by untrained personnel and (vi) non-compliance with the maintenance intervals prescribed in the manual or the operating instructions. This exclusion is void if the customer provides evidence that the existing defect was not caused in whole or in part by the above actions.

- 8.5 The duration of the warranty period is 18 months after initial commissioning of the system, yet a maximum of 24 months after transfer of the delivery.
- 8.6 At DILAX's discretion, the warranty is fulfilled by either delivery of replacement parts at no cost or repair of the defective part of the service. Any required disassembly or reassembly of replaced/repaired parts on site is not a component of the subsequent performance.
- 8.7 If either redelivery or repair of the respective defect fail, the customer is entitled to resort to legal claims. Damage claims may only be asserted within the limits of Clause 11. Usually a failure of repair is only established when several repair attempts regarding one defect have not resulted in its remedy despite expiration of the respective appropriate period set by the customer.

9 Liability

- 9.1 DILAX assumes unlimited liability in accordance with the legal provisions for a customer's damages caused by malice aforethought or gross negligence by DILAX or its agents and for personal injury and material damage according to the product liability law.
- 9.2 Moreover, DILAX's liability for damage compensation claims – regardless of their legal basis – is limited according to the following provisions, to the extent that nothing to the contrary arises from a warranty assumed by DILAX:
DILAX assumes liability for damage caused by slight negligence only to the extent that infringement of obligations essential to the contract (cardinal obligations) are involved. Cardinal obligations are those contractual obligations the fulfillment of which enables proper execution of the contract in the first place and observation of which the customer could reasonably rely on. Insofar as DILAX is therefore liable for slight negligence, DILAX's liability is limited to the typically foreseeable damage.
DILAX's liability for loss of data and/or programs caused by slight negligence is limited

to the typical costs of recovery which would have accrued to the customer through regular data backups appropriate for the circumstances.

For damage due to delay caused by slight negligence, DILAX's liability is limited to the typically foreseeable damage.

- 9.3 The provisions of the preceding paragraphs also correspondingly apply to limitation of the replacement obligation for futile expenditure (Sect. 284, German Civil Code [BGB]).
- 9.4 The above limitations of liability also apply for the benefit of DILAX's agents.

10 Limitation

- 10.1 The time limitation for claims resulting from material and legal deficiencies is one year.
- 10.2 Where applicable, special legal regulations for deficiencies associated with construction (Sect. 438, Para. 1, No. 2; 634a, Para. 1, No. 2, German Civil Code), restitution of property of third parties (Sect. 438, Para. 1, No. 1, German Civil Code), fraud (Sect. 438, 634a, Para. 3, German Civil Code) and supplier's recourse on final delivery to a user (Sect. 479, German Civil Code) remain unaffected.
- 10.3 These limitation periods also apply to the customer's contractual and non-contractual damage compensation claims involving a deficiency of the product, unless the application of a regular legal limitation (Sect. 195, 199, German Civil Code) would result in a shorter limitation period in individual cases or if an event described by Clause 11.1 exists.

11 Securing of payment and of licenses

- 11.1 In order to secure our claims for payment for our goods and services, we are entitled to employ technical security measures on our customers' hardware and apply software programs, both of which enable us to document the type and extent of the services rendered.
- 11.2 DILAX is entitled to take technical measures in order to ensure software usage rights we have granted are used in accordance with the contract. This includes the use of hardlocks, time-limited security codes or other security measures which can be used according to the current level of technology to limit misuse of licensing.

12 Confidentiality

- 12.1 The contractual partners undertake to treat confidential information of the respective other partner as highly sensitive and to ensure that unauthorized third parties do not obtain any knowledge of this information.
- 12.2 Furthermore, the contractual partners undertake not to use confidential information in any way without the express prior agreement of the other contractual partner, especially for own purposes or those of a company associated with him.

- 12.3 As intended by this agreement, confidential information especially applies to all circumstances or information concerning the respective other contractual partner, the business processes, business results, expertise or other personal data communicated or otherwise conveyed, that is, especially but not limited to business or operative secrets of a technical, commercial, organizational or any other nature.
- 12.4 This includes, but is not limited to, technical information, information concerning developments, business concepts and strategies, purchasing, marketing, management, personnel, planning, financial and accounting practices, internal calculations, intentions, experiences, knowledge, processes, designs, documents, and all other data to be viewed as confidential or as internal expertise, regardless of the form (material/immaterial) of this information. In case of doubt, communicated information is deemed confidential.
- 12.5 Information is not confidential when and to the extent that it can be proven the contractual partner receiving the respective confidential information was aware of it before this contract was concluded, or if it was or became generally known through no fault of the receiving contractual partner before this contract was concluded, or was developed or elaborated independently by the contractual partner without resort to the confidential information or that said information was or would be expressly released for disclosure or other use by the disclosing contractual partner in writing.
- 12.6 Other confidentially agreements concluded by the contractual partners remain unaffected thereby.
- 12.7 This obligation remains in force for a period of five (5) years after complete fulfillment of the contract or the most recent receipt of the information deemed confidential, depending on whichever condition is the later.

13 Written documents

- 13.1 If a contractual partner receives written documents containing confidential information or if confidential information is furnished in any other physical form, making reproductions exclusively for the purpose of carrying out the intended and/or existing collaboration is permitted.
- 13.2 All furnished confidential information received by one contractual partner from the other is to be immediately returned or, with the permission of the respective contractual partner, destroyed, if (a) one contractual partner is no longer conducting the collaboration, (b) one contractual partner submits an offer that ultimately is not accepted by the other contractual partner, or (c) one contractual partner is called upon to do so by the other contractual partner, unless the documents are needed for the purpose of carrying out the ongoing contract.

14 Applicable law, place of fulfillment, court of jurisdiction

- 14.1 The contractual relationship between DILAX and the customer, including all claims arising from or on the occasion of this contract, are subject to German law under exclusion of the UN Convention on Contracts for the International Sale of Goods. Place of fulfillment is DILAX headquarters.
- 14.2 For all present and future claims arising from the business relationship with business persons, legal persons under public law or special funds under public law, the court of jurisdiction is DILAX headquarters unless another exclusive court of jurisdiction has been specified. The same applies if the customer does not have any general national court of jurisdiction, has moved his place of residence or usual abode to a foreign country after concluding the contract, or whose place of residence or usual abode is not known at the time that an action is filed. However, DILAX is also entitled to file suit against the customer from his general court of jurisdiction.

15 Final provisions

- 15.1 Verbal collateral agreements do not exist. Changes and addendums must be made in writing to be effective. This also applies to a waiver of the written form clause.
- 15.2 Should individual provisions of this agreement be or become invalid, particularly due to changes in law/jurisdiction, then they shall be replaced by effective provisions which most closely approximate the economic purpose derived from all the provisions of this contractual relationship. This also applies to any appending, amending and supplementary declarations. The same applies should the concluded contract have an omission. This does not apply when the provision pertains to a general business condition.