

General Terms and Conditions of ViDOFON AG

§1 Scope and amendments in the general terms and conditions

(1) These general terms and conditions form the contractual relationship for goods and services offered by ViDOFON between customers and ViDOFON AG, Ahornallee 3, 22529 Hamburg, Germany (hereinafter called "ViDOFON"). Additionally the Service Conditions and the Special Conditions for Lease Services are applied, if they have been effectively incorporated into the contractual relationship.

(2) Oral agreements do not exist. Amendments to these general terms and conditions, the descriptions of services, the Service Conditions or the Special Conditions on Lease Services shall be notified as an offer to the customer in writing. In the case of a continuing obligation the customer does not react to an offer of ViDOFON or / and does not reject to it by the end of one month after receipt of the notice about the amendment, this is considered to be an approval of the offer and the changes will come into effect, if ViDOFON has informed explicitly about these consequences in its request for amendment.

(3) Differing terms from the customer shall not apply. They shall not apply even if ViDOFON does not disagree explicitly or furnishes goods and services implicitly.

§2 Adoption of the agreement

All offers from ViDOFON are non-binding and conditional. An agreement materializes through a telephone, written or electronic order from the customer (through telephone, post, E-mail) and the final order confirmation from ViDOFON and complies exclusively with the content of the order confirmation and the Terms and Conditions. ViDOFON reserves the right to make small, technical deviations, reasonable to the customer even after order confirmation.

§3 Prices and payment

(1) The prices, which are confirmed by ViDOFON on the customers offer, shall be applied. In case ViDOFON does not stipulate any prices, the relevant price-list shall be applied. All payments must include the applicable VAT in the invoices and shall be paid accordingly. The customer pays costs for transport and insurance.

(2) The payment for deliveries and services shall always be payable on receipt of the invoice. The place of fulfilment for all payments shall be the place of business of ViDOFON.

(3) Moreover, ViDOFON can claim reimbursement of the expenses, in particular travel costs and unsubstantial expenses that might arise from the provision of the stipulated services. They shall be itemized separately in the relevant invoice.

(4) ViDOFON shall preferably send invoices for the furnished services on a monthly basis. If invoicing is based on expenses, the invoices shall include the number of ViDOFON employees that were involved in furnishing the stipulated services, the number of days worked, the daily rate per employee, and a description of the invoiced and compensated expenses. For the kind of settlement for all remaining services, the modalities in the relevant agreement shall apply.

(5) ViDOFON reserves the right to refuse payment by cheque or bank draft. In any case cheques or bank drafts will only be accepted in lieu of fulfilment. Costs related to their realization are to be paid by the customer. The title of payment shall not be relieved before realization of the cheque or bank draft.

(6) In case several claims against the customer are payable and a single payment is not sufficient to fulfil all claims, payment shall be realized under the provisions of § 366 para. 2 BGB (Code of German Civil Law), even if the customer explicitly pays on a certain claim.

§4 Scope of delivery and services

(1) The services to be furnished and the items to be delivered by ViDOFON to the customer are stipulated in the order confirmation.

(2) The stipulated delivery dates or not binding except agreed otherwise in written form. They are applied only under the precondition of the timely fulfilment of all obligations of the customer required for the punctual delivery.

(3) If third party services are required for the installation of the delivery item, they may prolong the delivery dates. The obligation of ViDOFON for performance shall be subject to correct and punctual supply by the required third party service.

(4) The customer can only claim his right to withdraw from the contract due to non-compliance of a delivery date after sending a reminder in written form and setting an appropriate deadline. Customer cannot claim damages due to delay of delivery unless ViDOFON has caused the delay in gross negligence or intentionally.

(5) ViDOFON is entitled to partial delivery except agreed otherwise.

§5 Installation

(1) ViDOFON shall assure the installation of the video conferencing system based on a special written agreement against remuneration of expenses according to the current ViDOFON price list.

(2) In case of a free test-installation ViDOFON is entitled to demand delivery of the free test-hardware at any time. The hardware shall be returned in the same condition as provided. If the customer refuses to deliver on demand of ViDOFON, ViDOFON is entitled to claim a compensation fee for usage according to the current pricelist. The customer is liable for any intentional or negligent damages on the test equipment in case of usage that is contrary to contract. ViDOFON is only liable for damages based on intention or gross negligence. Customer must pay costs for management and operation during the test-period.

(3) Presentations and other counselling services of ViDOFON are not binding except agreed otherwise. ViDOFON reserves the right to invoice counselling and presentations adequately. Ordered trainings on products are always liable to costs.

(4) For the lease of ViDOFON videoconference-systems the Special Terms and Conditions for Lease and the current price-list shall be applied. The rent of rooms shall be subject to a special agreement in written form.

§6 Transfer of danger

(1) The shipment is made from the business premises or the warehouse of ViDOFON to the account of the customer, even if freight paid shipment has been agreed upon or ViDOFON has taken over the installation. The danger of damage or loss shall be transferred to the customer at the time of handover to the shipping person. ViDOFON can select the shipper and choose the route of transport. ViDOFON is allowed to assign employees of ViDOFON with shipment. The customer must cover transport insurance.

(2) If the shipment is delayed owing to the customer, the customer shall accept all risks on the day of shipment.

§7 Acceptance of delivery-services (newly created goods)

(1) As long as services by ViDOFON involve delivery-services (newly created goods such as software), such services would require acceptance in accordance under this regulation. This does not apply for services to be provided by ViDOFON, particularly consulting and other support services, unless the need for acceptance is expressly stipulated in the order confirmation.

(2) ViDOFON will notify the customer in writing of the readiness to accept the delivery of service.

(3) If acceptance is impossible depending on the kind of goods or services, its completion shall be deemed as an indication of acceptance.

(4) ViDOFON can present part-deliveries or part-services for acceptance (part-acceptances). A part-acceptance can be carried out as follows:

- On conclusion of a self-contained phase in the supply or
- On provision of functioning self-contained service parts.

(5) For part-acceptances, the terms for acceptance shall apply accordingly. As long as part-acceptances are provided, ViDOFON is authorized to hold back other part-deliveries or part-services if the customer delays acceptance of part-deliveries or part-services and or in the payment of accepted part-deliveries or part-services.

§8 Retention of title

(1) ViDOFON shall retain the ownership of items delivered by ViDOFON (conditional goods) until all receivables of the business association with the customer are satisfied. A transfer of the conditional goods to third parties is only permitted as long as it arises as part of proper business transactions of the customer and the customer reserves the ownership of the provisional goods until payment of all its receivables from the business association with the third party. The customer is not authorized to transfer property, pledge or to place the provisional goods in escrow. The customer shall handle the provisional goods carefully. ViDOFON shall be notified immediately if the provisional goods are pledged or damaged or lost and also if the business offices of the customer are relocated. If the customer infringes the aforementioned obligations, ViDOFON can revoke the agreement. In case of payment delay by the customer, ViDOFON is also authorized to take back the provisional goods, to sell them and to compensate the gain from the sale up to the outstanding amount; the same applies in case of deterioration in the financial position of the customer that becomes evident only after conclusion of the agreement, which can endanger the return service of the customer.

(2) The customer hereby assigns to ViDOFON its receivables from the resale with all additional rights up to the amount of the receivables due to ViDOFON vis-à-vis the customer. ViDOFON hereby accepts this transfer. Until withdrawal, the customer is authorized to collect the transferred receivables in its own name; withdrawal is only permitted if the customer is delayed in its payment.

(3) Until complete payment of the agreed amount, ViDOFON is authorized to insure the provisional goods against theft and damage

at the expense of the customer unless the customer proves to ViDOFON that it has taken out similar insurance at its own cost.

§ 9 Distance Contracts

ViDOFON generally enters into contractual relationship only with business customers. ViDOFON will grant access to the ViDOFON-Online-Shop or other sales activities only to companies, businessmen or free-lancers after presenting a permission of business. Consequently legal regulations on distance contracts - i.e. the right to withdraw from the contract within two weeks time - shall not be applied respectively.

§10 Right of rescission

(1) ViDOFON has the right to withdraw from the agreement in each of the following cases:

- a) If failure to deliver by ViDOFON is due to a ViDOFON supplier;
- b) In case events resulting from force majeure, labour strikes, natural catastrophes and comparable occurrences prevent ViDOFON or make it difficult to render the stipulated services;
- c) If ViDOFON becomes aware of the financial position and credit standing of the customer under unfavourable circumstances;
- d) If the customer provides incorrect information concerning its financial position and credit standing that could considerably affect the purpose of the agreement;
- e) If the customer and its businesses act contrary to the terms of the agreement, which violate good practices or represent not permitted deals.

(2) In the case of a claim for compensation by ViDOFON because of the customers inability to fulfil his obligations or due to cancellation of the agreement owing to legal or contraction rights to rescission, ViDOFON is entitled to lump sum compensatory damages of 25% of the respective contractual amount, unless the customer proves the damages to be less. The assertion of other claims for compensation remains unaffected.

§11 Delay, deterioration in the financial position of the customer

(1) If the payment due date is passed, ViDOFON is authorized to demand interest of 8% per annum above the basic rate of interest. ViDOFON reserves the right to claim for further damage.

(2) If the customer delays paying an invoice or if its financial position has deteriorated considerably since the conclusion of the agreement, all its debts vis-à-vis ViDOFON shall become payable immediately. In this case ViDOFON is authorized to complete outstanding deliveries only against security or advance payment.

(3) If the customer delays paying a considerable amount for two successive months, ViDOFON can terminate the agreement during which the delay occurred without notice.

§12 Warranty, test and complaint obligations on purchase

(1) The customer must test the goods immediately on receipt and must mark any visible damages; faults caused during transportation or wrong deliveries immediately on the shipping documents and must report the same to ViDOFON immediately. All delivered goods must be examined to ensure they are complete, even with regard to individual components of the goods. If they exist, quantitative variations, defects and damages or obvious deviations and defects must be reported to ViDOFON in writing within three days after receipt of goods. Defects or damages not visible externally must be reported in writing within twelve months after receipt of goods as part of the legal warranty period. The defective object must be preserved unchanged and ViDOFON must be contacted for further instructions. If the good is sent back to ViDOFON it must be securely packed for transport.

(2) If the delivered goods are defective ViDOFON is obliged to rectification. In case of brand new goods the customers has the right either to discount on the purchase price or to cancel the purchase, if the rectification fails. The customer must allow ViDOFON an adequate period of time and space for rectification. In case the customer is not a consumer, he can only ask for the delivery of a damage-free good after two attempts of rectification on the damaged good have failed. Above all ViDOFON can refuse the rectification as demanded by customer if this would mean inadequately high costs.

(3) The ViDOFON warranty does not cover faults that resulted from external influences or through non-compliance of the terms of use stipulated by ViDOFON or the manufacturer for the use of the service item. The warranty shall not apply as long as the customer uses materials that are not compliant with the original specifications of the product or has altered the service item independently or with the help of a third party without approval from ViDOFON, unless the customer proves that the defect has not resulted from such alterations and that the fault repair is not made difficult by such an alteration.

(4) In case ViDOFON has given a guarantee for the delivered good, the period of guarantee begins with the reception of the respective bill.

§13 Warranty for delivery-services

(1) If a delivery-service (§ 7) from ViDOFON is defective, the customer can demand the repair of the defect within an adequate period. ViDOFON can choose to rectify the fault by repairing or by replacing the damaged goods. ViDOFON can choose to rectify software errors that affect its utilization considerably, either by delivering an improved software version or by providing instructions to rectify or to bypass the error, depending on the importance of the error.

(2) The customer shall undertake to point out identifiable defects or faults to ViDOFON immediately. Liability for delayed repair or rectification shall be permitted only as long as the customer pointed out the fault or error on time. Complaints to ViDOFON must be submitted with a complete description of the error symptoms in writing, and as far as possible by providing written records, hard copies or other documents highlighting the fault, immediately after discovery of the fault.

(3) If the customer is responsible for the damage or fault or if the customer fails to report a fault, ViDOFON is authorized to demand compensation for the costs accrued for repairing the fault from the customer.

(4) ViDOFON can refuse to repair or replace the delivery-service until the customer has paid the agreed remuneration, minus the cost of the defect or the property under warranty.

(5) The customer has the right to cancel the contract or to decrease the remuneration on failure to rectify the fault. It shall be deemed to be a failure to rectify the fault maximum after two failed repair attempts. Moreover, the following liability provision is applied accordingly to § 12 para. 3.

§14 Liability

(1) ViDOFON is liable without limitations for damages caused intentionally or through gross negligence.

(2) ViDOFON is liable for damages resulting from a lack of certain assured properties in the scope of the property interest of the customer that was covered for assurance purposes and was cognizable by ViDOFON on assurance of the properties.

(3) ViDOFON is liable for damages caused by negligent violation of the so-called cardinal obligations in accordance with the law to an extent of € 5.000, if they were foreseeable at the time of contract. Cardinal obligations are such basic obligations essential for the contract that were decisive for the conclusion of the agreement for the customer and the compliance of which he must rely on.

(4) Apart from this any liability by ViDOFON is ruled out regardless of the reason.

(5) The aforementioned restrictions on liability shall not be applied, if ViDOFON is liable in cases of a liability through a committed guarantee or in cases of product liability in compliance with the product liability act as long as it is applicable to the respective service, or if damages are caused to life, health or body intentionally or in negligence.

(6) ViDOFON is not liable vis-à-vis the customer for the legality and the perfect condition of objects provided by the customer. If ViDOFON suffers disrepute from third parties, including authorities, due to the illegality or defectiveness of such objects, the customer shall exempt ViDOFON from these obligations.

§15 Rights of use of IT-Services

(1) Unless stipulated otherwise, ViDOFON transfers to the customer software in machine-readable object code in addition to user documentation in compliance with the appropriate agreement with the customer according to the order confirmation ("License object").

(2) ViDOFON grants the customer the non-exclusive right to utilize the license object. The right to use includes the right to use

- the computer or video communication programs transferred to its IT system or - if it breaks down - on a backup system,
- copies for storage purposes as substitution or for fault detection. If the original should carry a note of property right, the customer must post this note on the copy.

- the documentation to support the customer in the use of the transferred computer or video communication programs,

- the computer or video communication programs by external companies (e.g. system integrators) to install, integrate and implement on the customers side.

(3) The customer may translate, edit or reformulate the license object only on express written approval from ViDOFON. The customer is not authorized to generate the source code of the transferred computer or video communication programs through decompiling, disassembling, reverse engineering or in any other manner.

(4) These rights of use are supplemented by the rights of use of the manufacturer supplied to the customer with the software.

§16 Intellectual Property Rights

(1) The customer is obliged to inform ViDOFON immediately of any violation of intellectual property rights with regard to products pur-

chased from ViDOFON. In case of any claim or dispute directed against ViDOFON due to a possible violation of these rights the customer will support ViDOFON in an adequate manner.

(2) Vice versa the customer will defend ViDOFON adequately and indemnify ViDOFON from any claims of the right-holder, that result from a violation of these rights, because ViDOFON has followed instructions of the customer due to a violation.

§ 17 Cooperation obligations of the customer

(1) The customer shall ensure that all necessary cooperation itself or by collaborators, as long as this not expressed otherwise in the order confirmation, shall be furnished to ViDOFON free of cost and on time.

(2) The customer shall immediately provide ViDOFON with all information that ViDOFON requires for providing the agreed services. In addition, the customer shall notify ViDOFON about any essential changes for the duration of this agreement.

(3) The customer guarantees all necessary support to the ViDOFON staff for their work and shall provide them with the required entry permit for the important objects and premises immediately.

(4) The customer shall appoint a contact person for ViDOFON who shall be of assistance to the ViDOFON staff during the implementation of the agreement and who is also authorized to deliver necessary explanations on the provision of services and to make necessary decisions.

(5) Data carriers that the customer provides shall be in good conditions and antivirus-protected. Failing which, the customer shall compensate ViDOFON for all damages resulting from negligence and shall release ViDOFON from all third party claims.

(6) The customer shall preserve copies of all documents and data carriers handed over to ViDOFON, which ViDOFON can access anytime free of cost.

(7) The customer shall provide ViDOFON with the right to utilize and to change external systems of third parties if it is deemed necessary for the provision of services as stipulated in the agreement.

§18 Change Request

(1) Changes and additions to the content and scope of the services to be provided by ViDOFON according to the agreement can be suggested by either contracting party. The suggestion must contain the following details:

- Concrete specification of the change or addition,
- Technical and IT-specific reasons for the expected effects on the operational flow and schedule,
- Estimate of costs including those that might occur for testing the change and addition request and the implementation of the change request procedure.

(2) The opposite contracting party shall examine the request and give its opinion to the contracting party that made the suggestion. The customer shall make the decision to implement the change or addition request. However, ViDOFON is authorized to reject the implementation of the change or addition if it is deemed technically unfeasible or is disproportionately time and cost intensive.

(3) For the excess costs that ViDOFON accrues through implementation of the change or addition request, ViDOFON can claim additional remuneration for the expenses based on the current ViDOFON price list.

§19 Redemption of Hardware

(1) In case of recovery of Hardware the customer must use the provided form sheet. Every single recovery of Hardware is subject to an individual contract, on which these terms and conditions are applied respectively. A recovery of Hardware is only allowed in case of simultaneous purchase of a new good that must be stipulated on the provided form sheet.

(2) Any compensation will only be processed after enter and check of the used hardware at the ViDOFON premises. ViDOFON reserves the right to refuse the acceptance of used goods, if they are beyond repair or do not in accordance with the information on the form sheet or if this information is incomplete.

§ 20 Evaluation („Try & Buy“)

(1) If expressly agreed on the order confirmation as a deal under the terms of “Try&Buy”, the customer is entitled to return the “Try&Buy”-merchandise in a time period of 30 days after reception or – in case of installation by ViDOFON – after installation without naming any reason. To meet the deadline it shall be decisive the time of reception at ViDOFON. The merchandise must be sent to the ViDOFON headquarter at Ahornallee 3, D-22529 Hamburg and packed properly and as originally received. The sender bears the risk of loss and damage and the costs of shipment. ViDOFON will reimburse to customer the full price as agreed. However the costs for installation, services and shipment are the responsibility of the customer. Generally accessories do not fall under a “Try&Buy”-deal unless explicitly agreed.

(2) With the return of the merchandise all rights of usage in respect to Software and other property rights shall extinguish. It is strictly prohibited to make copies of the software during the evaluation period. Trademarks and other labels shall not be removed or obstructed.

(3) The right of withdrawal according to para 1 and the rights of usage according to para. 2 are not transferable to third parties. In case the customer sells or transfers the merchandise to third parties during the evaluation period, the right to withdraw extinguishes. ViDOFON reserves the right, to examine the merchandise and to claim any damages. In case the merchandise has significant damages or in case of theft or loss ViDOFON can claim the whole price.

§21 Compensation, assignment, retaining lien

(1) The customer can settle claims from ViDOFON only with undisputed or legally established counterclaims.

(2) The customer can transfer claims due to it to a third party only with prior written consent from ViDOFON.

(3) The customer is entitled to the enforcement of a retaining lien only resulting from counterclaims directly arising from the relevant agreement. Moreover, the customer can enforce a retaining lien because of counterclaims against ViDOFON only when these counterclaims are undisputed or have been legally established.

§22 Data protection

(1) The customer and ViDOFON mutually undertake to comply with the legal provisions on data protection for the duration of the agreement and to impose the observance of this provision on its employees. The contracting parties mutually undertake to ensure that persons entrusted with the data protection prove compliance with this stipulation on request in the required legally stipulated format.

(2) ViDOFON shall ascertain, process and use the person-related data and utilization and accounting data of the customer in the automated procedure as long as it is deemed necessary for the substantiation, content format or amendment of the agreement, in compliance with §§ 5 Para. 1, 6 Para. 1 TDDSG, §§ 18, 19 Para. 1 Media Services Treaty (MDSIV).

(3) ViDOFON will inform the customer on regular basis about all new products and services in relation to telecommunication and videoconferencing services. The customer can object the sending of such further information at any time.

§23 Final provisions

(1) Additions or amendments to this agreement require the written form. Failing this, they shall be deemed void. This also applies for amendments to this written form provision.

(2) Events resulting from force majeure, which make it difficult or impossible for a contracting partner to fulfil a service or obligation, authorize the concerned contracting partner to postpone the fulfilment of this obligation or service for the duration of the obstruction and for an adequate starting period. Force majeure is equal to labour strikes in the operations of the contracting partner or labour strikes in the third party operations and similar circumstances by which the contracting partner is directly or indirectly concerned.

(3) ViDOFON may use third parties, in particular affiliated companies, for assistance in the fulfilment of its delivery and service obligations. The contractual obligations of ViDOFON remain unaffected.

(4) All legal relations between ViDOFON and the customer shall be governed by the Law of the Federal Republic of Germany. In case the contractual relationship is across borders and the parties are merchants the Law of the United Nations Convention on Contracts for the International Sale of Goods (CISG) dated 11.04.1980 shall be applied.

(5) The exclusive jurisdiction shall be Hamburg, as long as the customer is a merchant in the sense of the Code of Commerce and the agreement is part of its business or if the customer has no head office or regular residence in the Federal Republic of Germany. ViDOFON is entitled to call on any other appropriate court as the aforementioned court.

(6) Should any of these Terms and Conditions become invalid, the remaining provisions shall continue to remain in force. In such a case, the contracting parties shall agree to replace the invalid provision by one whose economic effect corresponds as closely as possible to that of the original provision.

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