

General Terms and Conditions of Imagic Bildverarbeitung AG, Glattbrugg, Switzerland

§1 Scope of the General Terms and Conditions

These General Terms and Conditions (hereinafter: "GTC") apply to all current and future deliveries of goods and services carried out by Imagic Bildverarbeitung AG, Glattbrugg, Switzerland (hereinafter: "Imagic"). They replace any existing agreements and apply to all contracts between Imagic and the Customer (hereinafter: "Customer") unless agreed otherwise in writing in the individual case. Stipulations deviating from or supplementing these GTC – particularly any conflicting purchasing conditions of the Customer – shall only apply if they have been expressly acknowledged in writing by Imagic with reference to the fact that they represent an amendment or supplement to these GTC. The application of such purchasing conditions is excluded even if Imagic does not expressly object to them.

§2 Contractual Conditions

The offers of Imagic are non-binding as regards quantity, price, delivery date, delivery possibilities, technical data, specifications and indications of quality. The Customer confirms by way of its order that it has read these GTC and agrees to them without reservation. The Contract between the Customer and Imagic comes into effect by way of the order confirmation/confirmation email from Imagic. Even where no offer has been made, the contractual relationship shall commence no later than the time at which the product/service is put to use. Delivery of the order confirmation or other documents by fax or email shall be binding on the parties and shall be equivalent to delivery by post. The transmission report of the sender's fax machine shall constitute confirmation of receipt by the addressee. Imagic reserves the right to refuse to conclude the contract without indicating reasons.

§3 Prices and Reservation of Title

1. All agreed prices are net ex works Glattbrugg, excluding the statutory value added tax applicable, at the time of concluding the Contract, in the respective country where the Customer's invoice address is located, and excluding transport costs. Unless agreed otherwise in writing, the costs of packaging, insurance, freight, installation and training are not included in the price.
2. Until payment in full, all goods delivered are subject to a reservation of title by Imagic which may be entered into the Reservations of Title Register at any time.

§4 Payment Period, Default and Rescission of the Contract

1. Unless agreed otherwise in writing, invoices are payable within 30 days of the invoice date without deduction.
2. On expiry of the payment period, the Customer will be in default of payment without reminder. Interest at a rate of 5% per annum will be payable from that date.
3. Where the purchaser defaults on payment, Imagic shall be entitled to rescind the contract with the Customer and/or claim damages for non-performance and recover the goods.
4. Only claims which are subject to a final court order or are undisputed can be set off by the Customer against Imagic's claims.

§5 Delivery Date and Delay in Delivery

The delivery periods specified by Imagic shall not commence until all technical questions have been clarified and the Customer's obligations have been discharged in full and on time. Imagic endeavours to comply with the carefully calculated delivery dates but does not give any guarantee in this respect. Where Imagic exceeds the delivery date, the Customer shall grant Imagic an extension of time amounting to at least 2 weeks. Where delivery does not take place and, as a result, the Customer wishes to rescind the contract, Imagic must be issued with a written warning of this and granted an additional reasonable extension of time.

§6 Software Licence

1. Where the contractual goods are made up entirely or partly of software and its documentation (hereinafter: "Contractual Software"), Imagic grants the Customer an open-ended, non-exclusive and non-transferable licence for internal use. All other rights to the Contractual Software shall remain with Imagic.
2. The Customer shall not be entitled to make the Contractual Software available to third parties without the prior written consent of Imagic, and the same applies to any accompanying documentation and other information supplied to the Customer under the scope of this agreement.
3. The Customer shall be entitled to make a copy of the Contractual Software, for the sole purpose of filing and back-up, or for replacement or trouble-shooting purposes. The Licensee undertakes, however, to attach to it at least the following copyright notice: On the Contractual Software: "Copyright Imagic Bildverarbeitung AG, Switzerland. All rights reserved".
4. The Contractual Software is protected by copyright. In particular, the Customer may not: a) modify, translate, reverse engineer, decompile or disassemble the Contractual Software in whole or in part; b) create any works derived from the Contractual Software, or reproduce the accompanying written material; c) copy or otherwise duplicate the Contractual Software in whole or in part, in original or modified form or in a form which is mixed with or embedded in other software (this does not include the creation of copies of the computer programs for normal use or for back-up purposes as referred to above); d) modify or remove labels and copyright notices attached to the Contractual Software and data carriers.

§7 Product Details

1. The properties of all Imagic products are determined according to the details contained in the offer.
2. Irrespective of this, during the decision-making phase and following delivery, the Customer is obliged to carry out its own examination of the Imagic goods and services as to their fitness for the intended purpose. The deployment of the products and their use for a specific purpose is exclusively a matter for the Customer for which the Customer shall take responsibility.
3. Where the contractual products consist of software, the purchaser must ensure, at its own expense, that the computer hardware required for the proper functioning of the Contractual Software and other associated operating systems and software, are available in accordance with Imagic's recommendations and binding specifications. The same also applies to hardware components e.g. cameras and microscopes and their drivers.

§8 Warranties

1. Immediately upon receipt, all delivered goods and services must be comprehensively examined to ensure that they are correct and in good working order. Where, in relation to obvious and easily remedied defects, no substantiated written complaint, including a detailed description of the defects, is received from the Customer within two weeks of handover or readiness for acceptance, the (partial) delivery shall be deemed to have been approved and/or accepted. In the case of a justified complaint, Imagic may choose either to provide a replacement or remedy the defect. In this respect, Imagic must be given a reasonable time limit but, in any case, no less than 2 weeks.
 2. Where the contractual goods consist entirely or partially of Contractual Software, not only but particularly of the main software product of Imagic called IMS (hereinafter: "IMS"), Imagic and the Customer agree that the Contractual Software represents, in each case, a specific stage of development and by its nature cannot be defect-free. A defect in the Contractual Software only exists where it fails to correspond to the technical specifications as defined in Clause 7 Product Details. The Customer must prove that the defect in the Contractual Software is a deviation from the technical specifications under Clause 7 and report it to Imagic in writing by means of a record of type and occurrence. It is also a requirement that Imagic be able to reproduce the defect at any time.
 3. The contractual warranty is limited to a period of 12 months from handover and/or acceptance. Only the direct Customer is entitled to bring claims under warranty and they are not assignable.
 4. Where subsequent performance fails, the Customer may reduce the price or rescind the contract. Rescission is, however, only permitted where the Customer previously gave Imagic a written warning thereof as well as an additional reasonable extension of time. Second-hand goods are not covered by warranty.
 5. In order to make a claim under warranty, the Customer must ensure that a) the product has been used (stored, transported, connected) properly at all times (according to the operating instructions, directions attached to the device, other accompanying documents); b) the product has not been opened without authorisation or by an unauthorised third party, modified in its configuration (software, firmware and hardware), extended, repaired or been subject to improper interference; c) no intervention into the file documents and databases managed by the IMS system – bypassing the IMS server application – has occurred; d) in the case of hardware, the product is sent together with the delivery note, signed by the seller of the hardware and indicating the date of sale, at the Customer's expense, to the hardware manufacturer's representative office in the Customer's respective country of domicile.
- In the event of a failure to meet all warranty conditions, Imagic reserves the right not to provide a warranty or to do so only in return for full compensation of the costs.
6. IMS provides a programming interface ("API") for the customer to create applications himself or have them created by third-party companies that allow to create, modify and/or delete data in IMS image databases. When using such applications, Customer assumes full responsibility for any new creation, modification and/or deletion of data in IMS image databases.

§9 Liability

1. The liability of Imagic, its employees and agents, irrespective of the legal basis - including pre-contractual liability, positive breach of contract, default, impossibility and tort - is limited, subject to the provisions set out below, to the following cases: a) loss due to intent or gross negligence; b) breach of a material contractual condition due to slight negligence, in which case liability is limited to half the net price according to § 3 clause 1.
2. In the event that the products are not intended for private use, in addition to the foregoing limitations, any claims in damages are limited to the extent that Imagic is not liable, in the event of slight negligence, for consequential loss, loss caused by a defect, pecuniary loss or loss of earnings/savings as well as claims for compensation by third parties.
3. Imagic shall only be liable for the loss or modification of data caused by product defects in accordance with the aforementioned provisions if the Customer has produced back-ups of this data in time intervals (at least once a day) that are compatible with their use and has made sure that the data can be reproduced with an acceptable expenditure.
4. The limitations of liability of this §9 shall not apply to losses or claims for damages caused by deliberate or grossly negligent behaviour of Imagic or if they contradict applicable law.

§10 Statutory Period of Limitation

The statutory period of limitation for claims in respect of defects in deliveries of goods and services or claims for compensation shall be one year since delivery or provision of services.

§11 Force Majeure

In the case of force majeure, the contractual duties of Imagic shall be suspended; where there is a material change in the circumstances existing at the time of conclusion of the contract, Imagic shall be entitled to rescind the contract. The same applies to shortages of raw materials or power, industrial disputes, official decisions, transport or operational disruption or in the event of a sub-supplier failing, for the foregoing reasons, to deliver to Imagic, or failing to deliver on time or in due form.

§12 Miscellaneous Contractual Provisions

1. The minimum order value is CHF 200.00 per order.
2. The Customer consents to be named as a reference customer.
3. All contracts, subsequent additions and agreements or amendments must be in writing or electronic form. The provision requiring the written or electronic form can be waived only by written agreement.
4. Where individual provisions of these GTC, or of a contract with the Customer, are or become wholly or partially invalid, they shall be replaced by valid provisions whose purpose comes closest to the original purpose. The same applies mutatis mutandis where there is an omission in the GTC or a contract.
5. This agreement is subject to Swiss law, to the exclusion of international provisions on the conflict of laws and the UN Convention on the International Sale of Goods. For all conflicts arising directly and indirectly from a contractual relationship between Imagic and the Customer, the city of Zurich, Switzerland shall be the place of exclusive jurisdiction - including for international matters.