Standard Terms of Business
of
YACOUB Automation GmbH, Gustav-Meyer-Allee 25, 13355 Berlin, („Yacoub")

I.   Scope

1.1   These Standard Terms of Business apply to all declarations of intent, contracts and contractual acts or acts similar to contracts of Yacoub with its customers (hereinafter referred to as "customer"), even if not referenced explicitly in each case.

1.2   Counter-confirmations by the customer with reference to his own standard terms and conditions and/or purchase terms are explicitly objected to.

1.3   Yacoub does not offer its products to consumers within the meaning of section 13 of the German Civil Code.

II.   Payments

2.1   Prices are net prices in € exclusive value added tax. VAT will be added at applicable rate at the date of the invoice. All invoices have to be paid immediately.

2.2   The customer is not entitled to set-off. The exclusion of set-off shall not apply, if the counter-claims are not disputed by Yacoub, if they are declared final and absolute or are ready for a court decision.

III.   Delivery

3.1   Expected delivery times announced by Yacoub shall not be binding unless explicitly agreed otherwise.

3.2   If dispatch or delivery, due to customer's request, is delayed by more than one month after notification of the readiness for dispatch was given, the customer may be charged, for every additional month commenced, storage costs of 0.5 % of the price of the items purchased, but in no case more than a total of 5 %. The parties to the contract may prove that higher or, as the case may be, lower storage costs have been incurred.

3.3   All deliveries are ex works.

IV.   Non-delivery by pre-suppliers

4.1   Yacoub does not assume any supply risk. If a purchased item cannot be delivered or is temporarily not available despite the prior conclusion of a corresponding purchase contract, Yacoub shall immediately inform the customer thereof after the order has been placed as well as subsequently at regular intervals. Until delivery by the pre-sup-plier, Yacoub is released from the obligation to perform and may cancel the contract in case on non-availability. This shall not apply, if Yacoub is responsible for non-delivery by the pre-supplier. If Yacoub intends to cancel the contract, it shall immediately exercise such right of cancellation.

4.2   In the event of cancellation due to a non-delivery by pre-suppliers, amounts already paid against the purchase price shall be reimbursed by Yacoub. Claims for damages by the customer are excluded.

4.3   This section IV shall not apply, if Yacoub is responsible for the non-delivery by the pre-supplier.

V.   Passing of Risk

5.1   The risk shall be passed to the customer, at the time when the purchased items are shipped or picked up by the carrier. Upon customer's request, Yacoub shall insure the purchased items against the usual risks of transport at the customer's expense;

5.2   Notwithstanding the above, the risk shall pass to the customer if dispatch, delivery, the start or performance of assembly or erection, the taking over in the customer's own premises, or the trial run is delayed for reasons for which the customer is responsible or if the customer has otherwise failed to accept the purchased items.

VI.   Retention of title

6.1   Delivered items shall remain the property of Yacoub until full payment of the purchase price and settlement of all claims under the supply contract.

6.2   The customer hereby assigns all claims that he acquires against his buyer from a resale of the goods in full to Yacoub as security. The customer is revocably authorised to collect these claims. Yacoub shall only revoke the collection authority and personally collect the claims, if the customer does not duly comply with his payment obligations.

6.3   The customer shall immediately notify to Yacoub access of third parties to goods that are owned or co-owned by Yacoub. Any costs for an out-of-court release incurred through such intervention shall be borne by the customer.

VII.   Warranty

7.1   Statutory warranty rights are in force. The warranty depends on the statutory provisions, as well as the following regulations.

7.2   In the event of a defect the customer shall request subsequent performance from Yacoub. If the customer sets a time limit for this, it must be reasonable. Defects must be claimed in writing. Sections 373 ff. of the German Commercial Code apply.

7.3   Claims based on defects of quality shall expire at the end of a period of one year from delivery of the object. This shall not affect the statutory periods for claims under a right of recourse (§ 479 BGB).

7.4   The limitation periods stated section 7.3 do not apply in the case of wilful misconduct or fraudulent concealment of a defect or if Yacoub has assumed a guarantee for the quality of the delivery item. In addition, they do not apply to claims based on defects of quality in the cases of injury to health and safety, to claims under the Product Liability Act, in case of a grossly negligent breach of duty or with culpable breach of material contractual obligations.

VIII.   Software

8.1   Should the customer purchase software or firmware from Yacoub, he is granted the irrevocable, non-exclusive, non-transferrable worldwide right to use the software and firmware according to the contractual purpose, provided that it remains unchanged, is used within the agreed performance parameters, and on the agreed equipment. Further, sections 69c ff. of the German Copyright Act apply. The Software contains third party components, which are identified as such.

8.2   The customer is not entitled to the source code or any rights in the source code. This does not apply to third party components covered by open source licenses. If applicable, Yacoub will provide the customer a list of such components and the applicable licenses and will comply with all license obligations.

8.3   Yacoub warrants that the software is free from third party rights and fit for the contractual purpose. In the event that the software or any part thereof is in a suit held to constitute an infringement and/or its further use, sale, distribution or other disposal is enjoined, Yacoub will, at its own expense and at its option, either:
a)   replace the infringing software with non-infringing software programs and documentation of equivalent function and performance; or
b)   modify the software so that it becomes non-infringing without detracting from function or performance.
Further claims for damages of the customer are subject to section IX below. Section VII remains unaffected.

8.4   From time to time, Yacoub will provide updates and upgrades to the customer. The customer is obligated to install such updates and/or upgrades upon provision. Otherwise, Yacoub will not take over any liability due to the fact that updates and/or upgrades were not installed in due time by the customer.

IX.   Liability

9.1   Yacoub shall be liable in accordance with statutory regulations for losses sustained by the customer for whatsoever legal cause, provided and insofar as (i) the losses have been caused by a deliberate or grossly negligent breach of duty by Yacoub or by any of Yacoub's statutory representatives or vicarious agents; (ii) the losses are owing to the non-existence of a guaranteed feature; (iii) the claims relate to health damage, physical harm or mortal injury caused as a result of culpable negligence; or (iv) product liability claims are involved which are covered by the provisions of the German Product Liability Act.

9.2   In cases of merely slight negligence, Yacoub shall only bear liability for those losses caused by a breach of contractual cardinal duty; this limitation of liability shall not apply for losses that relate to health damage, physical harm or mortal injury, or that are owing to the non-existence of a guaranteed feature. Cardinal duties shall mean those duties, performance of which is prerequisite for due implementation of the contract in the first place and may always be relied upon by the contractual partner, and which conversely may jeopardise attainment of the contractual purpose if breached.

9.3   Even if a cardinal duty is breached, liability – provided the losses are based merely on slight negligence, do not involve health damage, physical harm or mortal injury, and do not result from the non-existence of a guaranteed feature – shall be limited to those losses occurrence of which may be anticipated in connection with a contractual relation-ship of this kind.

9.4   Yacoub shall not be liable for indirect or consequential damage.

9.5   Moreover, liability in cases involving a merely negligent breach of cardinal duty shall be limited in terms of amount to EUR 25,000 per claim and EUR 50,000 in total.

9.6   All and any liability on Yacoub's part beyond that specified in this section IX shall be excluded.

9.7   The customer shall be responsible for regularly saving its own data. If any loss of data causes damage to the customer, Yacoub shall only be liable for such damage – even if an incident incurring liability applies – insofar as the damage would not have been avoided even if all the relevant data had been regularly saved by the customer.

X.   Data protection

Yacoub uses the data provided by the customer, such as name, address, telephone number, fax number and email address, solely for processing the order and for other contractual relations with the customer. Data will not be forwarded to third parties. The data protection practice of Yacoub is in line with the Federal Data Protection Act (BDSG) as well as the Teleservice Data Protection Act (TMG).

XI.   Final provisions, dispute resolution procedure

11.1   The laws of the Federal Republic of Germany shall apply exclusively to the contract. The applicability of the UN Sales Convention is excluded.

11.2   Customer is responsible for obtaining and maintaining any export licenses required, if any.

11.3   The exclusive judicial venue for all claims arising from the contractual relationship is Berlin.

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