

General terms and conditions

digiCOM IT-Solutions GmbH & Co. KG

1. Validity

These general terms and conditions shall apply to all current and future contracts, deliveries, repair and other services, including consulting services. Any deviation shall require written form. Differing customer GTC shall not affect our GTC, unless otherwise specified in writing in individual cases.

2. Offers

All offers are non-binding and subject to change without notice, daily prices effective on the date of acceptance of an offer shall apply. Therefore, if prices change due to price fluctuations of digiCOM suppliers, digiCOM's offer shall be adjusted accordingly.

3. Conclusion of contract / formal or constructional changes

- 3.1. A contract shall only be deemed concluded if we have confirmed the order or started with its execution.
- 3.2. In addition, digiCOM reserves the right, in the case of **entrepreneur businesses**, to **specify** the contents of the contract by a written order confirmation. This confirmation shall bindingly lay down the details of the contract, unless its contents are immediately contested in whole or in part.
- 3.3. We reserve the right to make formal or constructional changes until delivery, unless such changes considerably modify the function of the purchased item and such change would be **unreasonable or not to the benefit of the buyer**.

4. Preparation of installation, installation, maintenance and attachment of equipment of other manufacturers

- 4.1. The buyer shall be responsible for due and proper preparation of the installation, including the necessary power supply, at his own expense and shall perform this in good time before delivery of the hardware and software.
- 4.2. digiCOM's maintenance services shall commence immediately after installation has been completed, unless otherwise specified in the maintenance contract. Moreover, the contractual terms and conditions of hardware and software maintenance shall apply.
- 4.3. digiCOM shall not be liable for making the attachment of equipment by other manufacturers to hardware and software delivered by digiCOM technically and/or legally possible.

5. Prices and payment conditions

- 5.1. All prices quoted in the offer or contract do not include VAT effective at the time of delivery or shipping costs.
- 5.2. If accessories and equipment are dispatched at the same time, prices shall be from the place of dispatch plus VAT, postage and packaging.
- 5.3. All invoices shall be payable **to digiCOM within 14 days from the invoice date without deductions**. This shall also apply if digiCOM is ready for dispatch, yet the delivery has not been effected due to a reason for which the buyer is responsible. In this case the buyer may retain no more than 10% of the invoice amount including VAT until actual delivery.
- 5.4. Apart from this, the buyer shall have no rights of retention.

6. Passage of risk

- 6.1. If digiCOM installs the delivered item, the risk shall pass to the buyer after installation has been completed, even in the case of partial installation.
- 6.2. If the delivered item is dispatched to the buyer, the risk shall pass on dispatch, even if carriage-paid delivery has been agreed.

7. Terms of delivery, default, impossibility

- 7.1. Compliance with terms and due and proper completion by digiCOM shall always be subject to the condition that the buyer meets his contractual obligations, including but not limited to that of due preparation of installation and of payment and that he completes the preceding services necessary for the rendering of services by other entrepreneurs or works duly and completely. Otherwise **any agreed deadlines shall be extended** automatically at least by the period of the delay, unless we are at fault for delayed and improper completion.
- 7.2. If digiCOM defaults on delivery dates or terms, the buyer may demand delivery in writing with a grace period of at least 1 month. This

demand shall put digiCOM in default. After unsuccessful expiry the buyer shall be entitled to withdraw from the contract.

7.3. Any additional claims, including but not limited to claims for damages of any kind shall be ruled out.

8. Warranty / liability restrictions

- 8.1. The warranty period for **consumers** shall be **2 years for new products**.
- 8.2. The warranty period for **used products** shall be **1 year**.
- 8.3. The warranty period for **companies** shall always be **1 year**.
- 8.4. Claims based on manufacturers' guarantee statements shall be reported directly to the manufacturer on expiry of the warranty.
- 8.5. In the **non-commercial segment** obvious defects shall be reported in writing within **four weeks** from delivery/installation.
- 8.6. **Entrepreneurs** shall report visible defects in writing **immediately** on acceptance of delivery within **two weeks**, and in the case of hidden defects immediately on detection, otherwise we refer to s. 377 of the German Commercial Code (HGB). The entrepreneur shall bear the full burden of proof for all claim requirements, in particular for the defect, the date of detection of the defect, and due notification of the defect.
- 8.7. digiCOM shall meet the warranty at its discretion by **repair or replacement** of the defective parts within a reasonable period. If these measures are unsuccessful, the buyer may enforce his legal rights to **withdrawal or abatement**. If the defect is minor or insignificant, any withdrawal shall be ruled out.
- 8.8. If the buyer seeks to enforce warranty claims, this shall not affect other contracts between digiCOM and the buyer.
- 8.9. The warranty shall not apply to defects caused by incorrect use, defective or negligent treatment, excessive use, unsuitable equipment, attachment of additional equipment not authorised by digiCOM, performance of repairs or modifications by third parties not authorised by digiCOM or transport of the equipment to a place of installation not authorised by digiCOM. Additionally, all equipment and accessories that are subject to natural wear and tear and consequences of chemical, electro technical and electrical impacts that are not assumed in the contract and on condition that they are related to the disruption.
- 8.10. The warranty shall only apply for the benefit of the first buyer. The warranty shall expire if the goods are modified by another party and the damage is causally connected with such modification. In the case of modifications, the burden of proof that the modification is not causally connected with the disruption shall be on the buyer, otherwise this shall not affect statutory regulations on the burden of proof.
- 8.11. Warranty claims shall not be assignable. If the buyer has transferred the purchased item to another place than the original place of installation, he shall replace the extra costs of remedying the defect incurred to digiCOM.
- 8.12. digiCOM shall be liable in the case of violation of major contractual obligations required for achieving the purpose of the contract (so-called **cardinal obligations**). Apart from in cases of intent or gross negligence this liability shall be limited to foreseeable damages. Any additional claims, including but not limited to claims for damages of any kind shall be ruled out.
- 8.13. Liability exclusions and restrictions shall also apply to employees, workers, staff members, representatives and vicarious agents.
- 8.14. The above liability restriction shall not apply to customer claims based on **product liability**.
- 8.15. Neither shall the liability restriction apply to damages due to attributable **physical and health damages or loss of life of the customer**.
- 8.16. If digiCOM is liable for the foreseeable damage, **contributory negligence** shall be attributed to the customer, e.g. in the case of **insufficient data back-up** or insufficient protection against computer viruses and sabotage programs. digiCOM shall only be liable for the replacement of data if the customer has taken standard and appropriate data back-up measures, ensuring that data and programs available in a machine-readable format can be reconstructed at a reasonable cost and effort.
- 8.17. The installation of new components in a computer system, the attachment of new components to a computer system, the repair of a computer system and installation of new software should be immediately preceded by a complete data back-up.
- 8.18. Any further compensation claims for consequential damages and pecuniary damages, non-achieved savings, loss of interest and damages from third-party claims, irrespective of the legal grounds, shall be ruled out. However, this shall only apply if we have no mandatory liability in the case of intent or gross negligence.

8.19. Any liability of digiCOM shall be ruled out in cases of force majeure or other unforeseeable events such as riots, breakdowns, strikes, lock-outs or delayed delivery by the manufacturer.

9. Non-warranty repairs

9.1. If the submission of a cost estimate is required before the performance of repairs, this shall be expressly mentioned. The expenses of a cost estimate shall only be payable if no order is placed. In the context of making a cost estimate operations on the machine will already be necessary. Frequently, these operations cannot be reversed even if the buyer does not place a repair order after submission of the cost estimate. The customer shall only be entitled to having the machine restored to its original condition if this is expressly requested against consideration. If an order is placed subsequent to a cost estimate digiCOM shall reserve the right to actual repair costs exceeding the value of the cost estimate by up to 10%.

9.2. It shall be at digiCOM's discretion whether repairs are performed in its own or another workshop.

9.3. Shipment and packaging costs shall be at the buyer's cost.

10. Calculation of setting figures for ski bindings

10.1. We point out that the **calculation methods** for identifying the setting number for **ski bindings** integrated in our software are merely an **aid** for the preliminary setting of ski bindings. **On no account can they replace standardised setting and testing** of a ski binding by means of a binding inspection device. **We accept no liability for incorrect settings and their consequences, in particular effects of injuries.**

10.2. Unprofessional setting and resetting with a binding inspection device may lead to accidents with the danger of injuries!

11. Software

11.1. digiCOM grants the user a non-exclusive right to use the programs and associated documentation and later additions for internal purposes, which may not be assigned to third parties by the user without digiCOM's permission, so that the user shall be entitled to use these programs in combination with a hardware purchased from digiCOM or authorised by digiCOM. Hardware hereunder shall be all hardware devices listed with their serial number on the delivery note or replacing such devices as part of digiCOM's warranty obligations.

11.2. Any other rights to the programs, both in the original and as a copy, shall remain with digiCOM. The **source code** is expressly not part of the delivery. The user shall ensure that the programs and documentation are not accessible to third parties. He shall only make copies for his own use including but not limited to back-up and archive purposes.

11.3. The user shall not be entitled to use the programs on a network or multi-user-system, unless he has the necessary licences.

11.4. If the user passes on programs or copies of programs to third parties without authorisation, he shall be obliged to pay flat damages to digiCOM of up to 5 times the software price, unless he can prove that a damage worth this amount was not incurred.

11.5. We point out that making illegal copies is also a violation of criminal law.

11.6. In the event that hardware or software delivered by digiCOM is combined with software not originating from digiCOM, digiCOM shall accept no liability for the functioning of such third-party software with hardware delivered by digiCOM or for compatibility with software delivered by digiCOM itself.

11.7. The user understands that errors of the software and associated other material cannot be ruled out according to technological standards.

11.8. Modifications and additions to the software, software maintenance and other forms of support are not part of the scope of services, unless a software hotline and update contract has been expressly concluded in writing.

11.9. If software was created or implemented individually, the customer shall be obliged to **accept** it in writing. Section 640 of the German Civil Code (BGB) shall apply correspondingly. Acceptance shall be deemed granted if the customer reports no **errors** in writing within two weeks after delivery.

12. Reservation of title, provision of materials

12.1. Until full payment of the purchase price the purchased item shall remain the property of digiCOM. Even after full payment of the purchase price the purchased item shall remain digiCOM's property until claims against the buyer that are related to the purchased item due, for

example, to repairs or spare part deliveries or other services, have been paid in full.

12.2. In the case of a default of payment digiCOM shall be entitled to demand the return of the purchased item and the buyer shall be obliged to surrender it irrevocably to digiCOM.

12.3. We retain title to all materials provided by us to the supplier. Processing or alteration of such materials will be performed by the supplier on our behalf. If the materials subject to our retention of title are processed with other objects not belonging to us, then we shall acquire co-ownership of the new item in proportion of the value of our materials (purchase price plus VAT) to the other processed objects at the time of processing.

12.4. Should our security rights mentioned under section 12.3 exceed the purchase price of all our unpaid materials by more than 10%, we are required to release the security rights of our choice upon the request of the supplier.

13. Escape clause, governing law, place of performance and legal venue

13.1. If any provision hereof should be or become ineffective in whole or in part, the mandatory legal regulations shall apply. Otherwise these conditions shall continue to apply.

13.2. The parties' contractual agreements shall be governed exclusively by German law excluding the CISG (United Nations Convention on Contracts for the International Sale of Goods).

13.3. The sole place of performance for any disputes arising from the current and future business relations of the parties, irrespective of the legal grounds, shall be Sonthofen / Germany.

13.4. The legal venue for any disputes in the case of a mercantile sale of both parties shall be Kempten / Germany.

14. Final provisions

To be legally binding, any covenants, changes or additions hereto shall be in written form. This shall also apply to a waiver of the stipulation requiring written form.

digiCOM IT-Solutions GmbH & Co. KG

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