

# Standard Terms and Conditions of idem telematics GmbH

Last updated: May 2019

## A. APPLICATION AND ADAPTATION OF THESE T&C, GOVERNING LANGUAGE

- These Standard Terms and Conditions („T&C“) shall apply to all items delivered and services performed (also referred to as „Deliverables“) by idem telematics GmbH, Lazarettstrasse 4, 80636 Munich, Germany („idem“). They shall also apply to all future transactions with the customer to the extent that they concern similar legal transactions. Unless confirmed in writing by idem, the validity of standard terms and conditions of the customer deviating from these T&C are not recognized by idem. The unconditional delivery of goods, the performance of services, or the acceptance of payments by idem shall not be deemed acceptance of standard terms and conditions of the customer deviating from these T&C or supplementing them, even in cases where idem has not explicitly objected thereto.
- These T&C consist, first, of general provisions in Section B. that are applicable to the entire business relationship between idem and the customer regardless of the various types of contract. Second, they consist of special provisions in Section C. governing the sale of goods, and special provisions in Section D. governing services, all of which supplement the general provisions set forth in Section B. In the event of conflicts between the general provisions in Section B. and the special provisions in Sections C. or D., the relevant special provisions shall have priority. In the event that these T&C are inconsistent with other agreements, the other agreements (with the exception of standard terms and conditions of the customer; cf. no. 1 above) shall apply.
- These T&C shall apply in their current version, as valid from time to time. idem reserves the right to adapt these T&C at any time or to redraft them to the extent that the amendment or new version of the T&C remedies interferences with the equilibrium of the contract due to substantial changes in circumstances (*Äquivalenzstörung*) or closes gaps, if this is reasonably acceptable to the customer.
- These T&C exist in various languages. The German version alone shall be the authoritative version. Versions in other languages merely serve the purpose of translation. Upon request, idem shall provide each customer with the German version.

## B GENERAL PART

### § 1 Binding contracts

- Quotations submitted by idem are non-binding. A contract shall come about through acceptance of the order of the customer by idem. Acceptance may also be declared implicitly by idem through performance or the acceptance of the performance.
- A contract shall also come about by an expression of intent by the customer (e. g. by e-mail, telephone or a click in the Internet) thereby ordering or initiating the activation of all or part of the Deliverables by idem.

### § 2 Commencement and term of the contractual relationship with regard to contracts for the performance of a continuing obligation

- The contractual relationship for contracts for the performance of a continuing obligation shall commence upon a contract having come about pursuant to Section B. § 1 or in accordance with agreements between the parties and shall run for the period specified in the contract („Basic Term“). Unless terminated within the notice period, the contract shall be renewed by one year at a time („Renewal Period“).
- The period of notice of termination is three (3) months effective at the end of the Basic Term or the Renewal Period. The notice of termination must be given in writing. The right of notice effective immediately for cause shall remain unaffected thereby.

### § 3 Customer's obligation to cooperate, toleration of interruptions

- The customer may use the Deliverables exclusively in conformity with the contract and in compliance with the law. The customer must take all appropriate measures to ensure that third parties are not using the items and services provided by idem in a non-conforming manner or in breach of the law.
- The customer is responsible for its equipment being in perfect technical condition, serviceable and compatible with idem's Deliverables as well as for the proper power supply and the connection. This shall apply in particular to the serviceableness and compatibility of data processing devices and communication equipment of the customer. The customer must provide – where required – adequate Internet access.
- The customer shall notify idem without delay of all changes of its data relevant to the contract, including, but not limited to, the name, legal form, registered office, banking information, name of contact person, and fundamental changes of its financial situation (insolvency proceedings, debt enforcement, etc.).
- The customer shall support idem in the performance and management of the contract and, where applicable, in the Cure (rectification of defects or replacement) if necessary. This shall include, but is not limited to, the permission and facilitation of access to the customer's equipment or its premises if necessary (e. g. in the event of installing or importing updates, etc.) or access to the customer's systems in the event of remote maintenance. During any of these interventions, e. g. in the event of remote maintenance, the customer has no access to the system and must tolerate these interruptions. The customer must also tolerate interruptions if idem performs maintenance services or other technically required actions at a portal provided to the customer. idem shall use its best efforts to organize and schedule these interventions such that the interruption of the customer's operations is kept to a minimum. idem shall notify the customer in advance in a timely fashion of any necessary service calls or interventions.

### § 4 Terms of payment, payment under contracts for the performance of a continuing obligation, set-off

- Invoices from idem are due and payable without delay, no deductions allowed. A cash discount shall be granted only on the basis of an express agreement, which will be effective and remain effective only for as long as the customer is not in default with any other payment.
- Unless objected to by the customer within one month of receipt of the invoice, all invoices shall be deemed approved with regard to their contents (in particular with regard to the Deliverables ordered). Claims of the customer according to the law, in particular in the event of defects, shall remain unaffected thereby.
- If the customer has provided for a SEPA Direct Debit Scheme, the direct debit shall be effected no later than within eight (8) calendar days of the billing date. If the SEPA Direct Debit Scheme has been set up, the amount of the invoice will be debited by idem stating the mandate reference and the creditor ID. A pre-notification is provided together with the invoice and the period applicable to this pre-notification shall be reduced to one (1) day. The customer shall guarantee that the account has sufficient funds. Any costs incurred due to non-payment or chargeback of the debit shall be at the customer's expense unless such non-payment or chargeback is beyond the customer's control.
- Unless specifically stated otherwise or agreed separately, the prices specified or agreed do not include the statutory VAT, shipping costs and costs of packaging, additional accessories, installation, training and other ancillary services, which shall be charged separately.
- The customer is in default, without specific reminder, upon its failure to pay the invoice submitted to it within ten (10) days of the date of the invoice, unless the invoice submitted is incorrect, has not fallen due, or is not enforceable. Default may also occur in accordance with the statutory requirements. If the customer is in default, idem is entitled to charge interest in the amount of nine (9) percentage points above the base interest rate. Claims for higher damages on the grounds of default shall remain unaffected thereby.

- The remuneration under contracts for the performance of a continuing obligation must generally be paid in advance on a monthly basis. If the customer is in default of payment of remuneration or a substantial part thereof at two (2) subsequent payment dates, or if the customer is in default for a period extended over more than two (2) payment dates regarding the payment of remuneration in an amount equal to the remuneration for two (2) months, idem is entitled to terminate the contractual relationship for cause with immediate effect.
- idem may set off its own claims against any claims for refund, damages or other payment claims of the customer. A set-off by the customer of any of its own claims against payment claims of idem or the exercise of a right of retention shall be neither permissible nor possible unless the customer's claim or counterclaim is uncontested, established as final and absolute or at least ready for judgment. A set-off or the exercise of a right of retention shall similarly be possible if both the customer's claim and idem's claim have a reciprocal basis in law.

### § 5 Charge of costs in cases of unjustified complaints

To the extent that a complaint of the customer regarding the serviceability of the items delivered and services performed by idem, e. g. due to an alleged defect, is unfounded under the law, the customer is not entitled to any claims, including, but not limited to, any warranty claims and rights. idem may charge the customer with any work performed by idem on the basis of such complaint upon the customer's request or demand, as well as expenses incurred by idem (including, but not limited to, costs for analyses, repairs, transportation and travel).

### § 6 Delivery periods

All delivery dates or delivery periods agreed shall be understood to be approximate dates/periods unless specifically designated as binding.

### § 7 Refusal of acceptance of items delivered and services performed by idem in the event of minor defects

The customer is not entitled to refuse to take receipt of, or accept, items delivered and services performed by idem in the event of minor defects.

### § 8 Limitation of idem's liability for damages

- Where idem, its authorized representatives, employees or agents willfully or with gross negligence commit a violation of obligations of any kind or for any cause in law, especially obligations under the contractual relationship or on the commission of a tortious act willfully or with gross negligence, idem shall be liable for the resultant loss or damage to the customer in accordance with statute.
- Where idem, its authorized representatives, employees or agents commit a violation of obligations of any kind or for any cause in law due to ordinary negligence, especially obligations under the contractual relationship or on the commission of a tortious act due to ordinary negligence, any claim in damages by the customer against idem shall be excluded except in the case of a violation of essential contractual obligations due to ordinary negligence. In that case idem's liability shall be limited to foreseeable damage typical of this type of contract. An essential contractual obligation within this meaning is one the fulfillment of which provides for a proper performance of the contract in the first place and on compliance with which the customer generally relies and has a right to rely.
- The above exclusions or limitation of liability, as the case may be, shall not apply in the event of culpable wrongful death, personal injury or harmful health effects, nor in the event of fraudulent concealment of a defect, where a guarantee of quality fails to be met, or in the event of liability under the Product Liability Act.
- The statutory rules on burden of proof shall not be prejudiced by the above provisions.

### § 9 Force majeure, no claims of customer in the event of interruptions not related to idem's performance

- For as long and to the extent that the delivery of items and performance of services by idem are hindered due to force majeure (e. g. legal strikes or lockouts, interruptions of operations, lack of labor, energy or raw materials, acts or omissions of governments, all through no fault of idem, obstacles of idem's suppliers to perform beyond idem's and the supplier's control), the mutual contractual performance obligations shall be suspended.
- If the hindrance due to force majeure is not only temporary in nature, both parties to the contract are entitled to rescind the contract or terminate it with immediate effect with regard to the performance affected by such hindrance.
- The beginning and the end of force majeure shall be communicated by the party affected thereby without delay to the other party.
- Where the interruptions do not prevent idem from making deliveries and performing services but result only in a limitation of the usefulness or quality thereof, there is no force majeure. This could in particular be the case if reception and transmission areas are restricted geographically to the radio station of the individual network provider, or if radio technology-related, atmospheric, weather-related or geographic circumstances, or topographic facts, or natural or architectural obstacles (bridges, tunnels, buildings, etc.) affect the reception and transmission areas or trigger radio interferences or radio communication failure. The use of the Internet too may be restricted by additional interferences (such as network overload).

The customer is hereby expressly notified of these potential interruptions the causes of which are not related to the items delivered or services performed by idem. To the extent that these interruptions have not been intentionally or negligently caused by idem, they shall not create a claim for damages, warranty, reduction of the price, rescission or termination of the contract with immediate effect by the customer. In these cases too, the customer is fully obligated to pay the agreed remuneration.

### § 10 Data protection

- idem shall be entitled to collect, treat, and use in accordance with the statutory provisions any personal data that are required to create or amend the contractual relationship and its contents, as well as personal data for the provision of services.
- The customer is aware and expressly agrees that the performance of services requested on the part of the customer may require the recording of the whereabouts of a vehicle, the driver's data and communication data and the storage of such records and data by idem. The customer shall inform the drivers, the works council or the staff or employee representation, as applicable, in accordance with the law on the proposed use of the services and, where required, involve them in the organization of such use and reach an agreement where necessary.

### § 11 Intellectual property rights

- Any and all copyrights, industrial design rights, trademark rights, patents, utility model rights, or any other proprietary rights to the concepts, texts, drafts and comparable deliverables developed by idem shall remain exclusively with idem. The customer agrees and undertakes that it will not use the records, knowledge and information delivered to the customer by idem to assert any rights with respect to industrial property rights applications, prior use, or licensing, nor disclose any such knowledge and information to third parties.

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- Any and all objects, records and documents of idem provided by idem to the customer in the course of the implementation of the contract shall remain the property of idem, unless idem has contractually transferred title to such objects, records and documents to the customer.

## § 12 Retention of title

- All goods delivered to the customer the ownership of which is intended under this contract to devolve upon the customer shall remain idem's property until full payment of all claims under this business relationship ("Conditional Goods"). The customer must treat the Conditional Goods with care. The customer must also sufficiently insure the Conditional Goods at replacement value against theft, fire and water damage at its expense.
- The customer may sell, process or install the Conditional Goods only in consideration of the provisions set out below:
  - The customer's authorization to sell, process or install Conditional Goods in the ordinary course of business shall end upon a revocation of such authorization by idem due to an essential violation of an obligation by the customer, including, but not limited to, the suspension of payments;
  - The processing or installation of the Conditional Goods by the Customer shall always be performed on behalf of idem without binding idem. In the event of processing or installation, idem shall acquire co-ownership in the goods into which the Conditional Goods are processed or installed at the ratio of the invoiced value of the Conditional Goods to that of other materials at the time of processing or installation. This shall apply *mutatis mutandis* in the event of blending the Conditional Goods with other materials.
- If the value of the collateral in favor of idem exceeds idem's claims by a total amount of more than 10%, idem is obligated, upon the customer's request, to release collateral to this extent at idem's discretion.

## § 13 Records and material provided by the customer

- All records and material provided by the customer to idem ("Customer's Supplies") for the purpose of fulfillment of contract shall be handled with due care by idem. idem is not obligated to insure the Customer's Supplies.
- idem shall return the Customer's Supplies as soon as they are no longer needed by idem to fulfill the contract. For as long as the customer has not paid the remuneration owed, idem shall have a right of retention with regard to the Customer's Supplies. The customer must examine immediately the Customer's Supplies returned to it and notify idem without delay of any fault it found. Sec. 377 German Commercial Code ("HGB") shall apply in this respect.

## § 14 Suspension of performance under the contract in the case of alleged industrial property right infringement

If idem is prohibited from its full or partial performance under the contract by a third party invoking an industrial property right of that party, idem is entitled to suspend the performance of the contract in this respect until clarification of the legal situation. If the continuation of the business relationship due to the delay is no longer reasonably acceptable to the customer or idem, the party concerned is entitled to rescind or terminate the contract with immediate effect.

## § 15 Installation

In the event that the customer must install Deliverables provided by idem in order to use them, the customer is obligated to have the items professionally installed at its expense either by an idem installation partner or a workshop trained by idem. The installation is not included in the price agreed upon. Prior to the installation of the Deliverables provided by idem, the customer must ensure that the technical requirements – communicated to it by idem in good time in advance – have been fulfilled in order to install and get the Deliverable ready for operation.

## § 16 Assignment of rights and claims

idem may assign rights and claims against the customer to third parties, the customer may assign rights and claims against idem only with idem's consent.

## § 17 Place of performance, place of jurisdiction, and applicable law

- The place of performance for idem's and the customer's performance shall be the principal place of business of idem. In cases where the performance owed by idem under the contract is to be performed on equipment of the customer or at the customer's premises, the place of performance shall be the place where the equipment is, or the premises are, located according to an agreement between the parties.
- The Federal Republic of Germany shall be the exclusive international place of jurisdiction for all disputes arising under this business relationship. idem's principal place of business shall be the exclusive local place of jurisdiction if the customer is a merchant [as defined in the law], legal entity under public law or fund under public law. idem may sue the customer also in any other court that has local jurisdiction under the law.
- The business relationship between idem and the customer shall be governed exclusively by the law of the Federal Republic of Germany without giving effect to the UN Sales Convention.

## C. SALE OF GOODS (IN PARTICULAR HARDWARE WITH SOFTWARE)

To the extent that idem sells goods to the customer, in particular hardware with software ("Goods"), the following provisions shall apply in addition to the general provisions under Section B. above.

## § 18 Passing of risk, delivery, storage, and insurance

- Deliverables from idem shall generally be ex works (Incoterms 2010). The risk shall pass to the customer as soon as idem has made the Goods ready for pick-up as agreed and notified the customer of the readiness for dispatch. If idem has assumed the shipping costs, the risk shall pass to the customer upon delivery to a forwarding agent or carrier but no later than upon the Goods leaving the warehouse. The shipment is at the risk of the customer.
- To the extent that it has been agreed that idem is to deliver the Goods, the customer must ensure that the Goods can be delivered at the agreed delivery date.
- Agreed delivery periods shall start to run at the earliest upon the sending off of the confirmation order but not prior to the clarification of all technical and commercial details of the fulfillment of the order and receipt of any agreed down payment.
- If the pick-up or the dispatch is delayed at the customer's request or due to its fault, idem shall store the Goods at the expense and risk of the customer. idem charges the actually incurred costs for the storage on a weekly basis but no less than 0.5% of the net value of the Goods stored. The customer shall be free to pick up the delivered Goods at any time at its own risk and expense.

## § 19 Quality agreement

- The quality owed shall be governed exclusively by the performance characteristics and specifications expressly agreed upon. idem does not assume any warranty beyond the quality so defined, including, but not limited to, the warranty for a specific application or a specific suitability of the Goods, service life or durability of the Goods, unless this has been expressly agreed upon; in all other respects the risk of suitability or use shall reside exclusively with the customer.

- General information on the Goods published in the media or printed on labels is based on idem's general experience and knowledge and serves no other purpose but providing product information or bench marks without any commitment. Any description of the Goods that may be included in the customer's orders or idem's confirmations of orders shall serve the sole purpose of a general designation and description of the Goods but shall not represent a quality agreement (*Beschaffensvereinbarung*). Any such information or descriptions shall not release the customer from its obligation to examine the Goods.

- idem is generally not aware of the actual place of application or use of the Goods. The customer is responsible for verifying whether the delivery or application of the Goods constitute any industrial property right infringements or other violations of the law at the place of application or use.

- Furthermore, the customer is responsible for checking whether the Goods are properly certified at the actual place of application or of use, which is not guaranteed by idem.

## § 20 Notice of defects, warranty and warranty period

- idem must be notified of defects without delay but no later than eight (8) business days after receipt of the Goods, and in the case of latent defects, no later than three (3) business days after discovery of the defect, in text form (email or telefax are sufficient). Notices of defect must specify the defect in detail. In all other respects, the provisions set forth in Sec. 377 HGB shall apply.

- In warranty cases, the statutory provisions shall apply unless agreed otherwise below.

- To the extent that the Goods are defective, idem shall, at its option, remedy the defect or deliver Goods that are free from defects ("Cure"). idem must be granted a reasonable period for this purpose. If the customer consents, idem may replace the Goods or individual components thereof for the purpose of rectification of defects. The customer shall not unreasonably withhold its consent.

The Cure shall neither include the installation and disassembly of the Goods nor the costs thereof.

- idem is to be provided with two opportunities to effect a Cure. If the Cure fails or is unnecessary (because idem refuses it wrongly, for example) the customer may rescind the contract or reduce the purchase price provided that the legal requirements for this purpose are met. The customer may claim damages under the law only if the requirements of the provisions set forth under Section B. § 8 are met.

- Limitation begins one year after delivery of the goods or - if legally required - after acceptance. In the cases of §§ 438 para. 1 no. 2, 438 para. 3, 634a para. 1 no. 2, 634a para. 3 BGB (German Civil Code), the statute of limitation provided for therein applies. In the case of fraudulent concealment of a defect, the statute of limitations is governed by the statutory provisions. If idem owes damages according to the provisions set forth under Section B. § 8 above, the warranty period with respect to the compensation shall also be as provided in the statutory provisions.

## D. SERVICES

To the extent that idem provides other services to the customer (in addition to the sale of Goods, where applicable), including, but not limited to, telematics services, communications services, Internet services, and mobile communication services (jointly referred to as "Services"), the following provisions shall apply in addition to the general provisions under Section B. above.

## § 21 Customer's additional obligation to cooperate

- The customer is obligated to protect all objects belonging to idem and provided to the customer for its use as part of idem's Service, including, but not limited to, SIM cards ("idem Objects") from access by unauthorized third parties and to ensure the proper handling thereof. It is prohibited to pass idem Objects on to third parties without express written consent by idem.

- The customer is obligated to notify idem without delay if a loss of, or damage to, any of the idem Objects provided to the customer has occurred. The customer warrants a system-related use of the idem Objects at all times. The customer shall bear the risk for any idem Objects provided to it until the proper return thereof to idem.

## § 22 Change of performance

If a change of the Services becomes necessary due to changes of the scope of performance, in particular regarding the Internet, the mobile and fixed-line networks, idem shall inform the customer in due course of the nature and time of the change of performance by way of a notification (email or telefax are sufficient). The changes shall be binding upon receipt of the notification at the time when they become necessary. Should the changes not be acceptable to the customer, the customer may terminate the contractual relationship within one (1) month of receipt of the notification of change with effect at the time of the necessary change and without prior notice.

## § 23 Suspension of Services

idem is entitled to suspend the Services if the customer violates any contractual or legal obligation, including, but not limited to, any use by the customer in a non-conforming manner or in breach of the law, or if modifications or maintenance services are required, in particular if flaws occur that result in a major increase of use.