§ 4 Terms of payment, payment under contracts for the performance of a continuing obligation, etc.

1. 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 enforceable only for as long as the conditions or defects or delays are not related to the items delivered or services performed by idem.

2. 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.

3. 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 to the bank account of the customer 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 his bank account has been credited. Any costs incurred due to the non-availability of the bank account or lack of funds shall be charged to the customer's expense unless such non-payment or chargeback is beyond the customer's control.

4. Unless specifically stated otherwise or agreed separately, the prices specified or agreed shall include VAT, shipping costs and costs of packaging, additional accessories, installation, training and other ancillary services, which shall be charged separately.

5. The customer is in default, without specific remonster, upon its failure to pay the invoice submitted to it according to Section 7 (10) days after the end of the time of payment stated in the invoice, unless the invoice 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.

6. The remuneration under contracts for the performance of a continuing obligation shall generally be paid in advance on a monthly basis. If the customer is in default of payment or a substantial part thereof at two (2) subsequent payment dates, or if the customer is in default of remunerating 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.

7. idem may set off its own claims against any claims for refund, damages or other payment claims of the customer. A set-off of claims by idem shall not be deemed acceptance of status quo. idem may also set off any counterclaims of idem or the exercise of a right of retention shall be neither permissible not possible unless the customer's claim or counterclaim is uncontested, established as final and absolute or at least regarded as such by a court. A set-off of a right of retention shall only 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 costs is not entitled to demand items, 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 approximate dates/persists 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

1. Where idem, its representatives, employees or agents willfully or with gross negligence commit a violation 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.

2. Where idem, its representatives, employees or agents commit a violation of any kind or for any cause in law, 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 the violation of an essential contractual obligation or in the case of willful or gross negligence. In these cases, idem's liability shall be limited to foreseeable damage typical of this type of contract. An essential contractual obligation is an obligation the existence of which 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.

3. The above exclusions or limitations of liability, as the case may be, shall not apply in the event of injury to life, health, personal injury or for any cause in law, 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.

4. 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, interruption in performance with justification

1. 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. pandemics, 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 obligations), idem shall be released from its obligations.

2. 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 thereby.

3. The beginning and the end of force majeure shall be communicated by the party affected thereby without delay to the other party.

4. Where the interruptions do not prevent idem from making deliveries and performing services, the interruption is only in a belligerent state of war, war damage, natural disaster, breakdown, intervention, etc. in a particular if the case if reconnection and transmission areas are restricted geographically to the radio station of the individual network provider, or if radio technology-related, atmospheric, weather-related or geographical 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. idem also points out that the quality of mobile telecommunication networks and networks can sometimes vary considerably from country to country and even regionally. It is therefore for the customer itself to check the usability of mobile telecommunication networks and networks provided by idem with its device or technique in the event of interruptions. Duration of interruptions, included the event of force majeure, is not included in the service warranty. idem does not guarantee any warranty of such usability. No changes in such usability during the term of the contract or during normal operation, e. g. network changes, fall within idem's area of control. To the extent that such interruptions or lack of usability 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.

5. Due to the possibility of a sudden hampering of performance of services, e.g. due to a pandemic, it is agreed by the parties that a situation might always suddenly arise in which, although idem diligently and contractually proper efforts were taken, performance 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.

6. The remuneration under contracts for the performance of a continuing obligation shall generally be paid in advance on a monthly basis. If the customer is in default of payment or a substantial part thereof at two (2) subsequent payment dates, or if the customer is in default of remunerating 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.

7. idem may set off its own claims against any claims for refund, damages or other payment claims of the customer. A set-off of claims by idem shall not be deemed acceptance of status quo. idem may also set off any counterclaims of idem or the exercise of a right of retention shall be neither permissible not possible unless the customer's claim or counterclaim is uncontested, established as final and absolute or at least regarded as such by a court. A set-off of a right of retention shall only be possible if both the customer's claim and idem's claim have a reciprocal basis in law.

§ 10 Data protection

1. Information 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.
2. The customer is aware and expressly agrees that the performance of services requested on the date specified in the contract includes the recording of the whereabouts of a vehicle, the driver and 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, of the recording of such data and of the purpose for which the data will be stored and processed. In the event of blending the Conditional Goods with other materials at the time of processing or installation, processed or installed at the ratio of the invoiced value of the Conditional Goods with other materials, idem shall acquire co-ownership in the goods into which the Conditional Goods are processed or installed at the time or processing or installation. This shall apply mutatis mutandis in the case of blending Additional Goods with other materials.

§ 12 Retention of title

1. All goods delivered to the customer the ownership of which is intended under this contract to devolve upon the customer upon the conclusion of the contract and the payment of the purchase price, unless the contract to the contrary provides, are the property of idem, unless idem has severed the title to the goods.

2. Any and all objects, records and documents of idem provided 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.

§ 13 Records and materials provided by the customer

1. 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.

2. idem shall return the Customer’s Supplies as soon as they are no longer needed by idem to fulfill a contract. For as long as the customer has not paid the remuneration owed, idem shall have a right of retention of 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 the installation partner 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 – e.g. the connection to it by idem’s Goods 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 third party, the customer may assign rights and claims against idem only with idem’s consent.

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

1. 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 premises of the customer’s premises, the place of performance shall be the place where the equipment is, or the premises are, located according to the agreement between the parties.

2. 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 legal place of jurisdiction of the customer if the customer is a natural person (as defined in the law) 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.

3. 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

1. 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 of shipment. If idem has not prepaid the shipping costs, risk shall pass to the customer upon delivery to a forwarding agent or carrier but no later than upon the Goods leaving the warehouse, even if the customer has not taken possession of the Goods.

2. 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 so defined, including, but not limited to, the warranty for a specific application or a specific service of the Goods. Service life or durability of the said Goods is not warranted.

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 benchmarks 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 (Beschaffenheitsvereinbarung). 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 the delivery or application of the Goods and constitutes 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 use, which is not guaranteed by idem.

§ 20 Notice of defects, warranty and warranty period

1. idem shall be notified of defects without delay but no later than eight (8) business days after detection of the defect if the defect is such that, after discovery of the defect, in text form (email or teletex are sufficient). Notice of defect must specify the defect in detail. In all other respects, the provisions set forth in Sec. 377 HGB shall apply.

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

3. To the extent that the Goods are defective, idem shall, at its option, remedy the defect or deliver new 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 withheld its consent.

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

4. idem is to be provided with two opportunities to effect a Cure. If the Cure fails or is unnecessary (because idem refuses it unwilling, 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 rescind the contract if it is not possible to deliver the Goods in time or without damage under the law only if the requirements of the provisions set forth under Section B. § 8 are met.

5. Limitation begins one year after delivery of the goods or – if illegally 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), following but not limited to, telecommunications 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

1. The customer is obligated to protect all objects belonging to and provided by idem 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 return thereof. It is prohibited to pass idem Objects on to third parties without express written consent by idem.

2. 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 teletex 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 shall inform idem within ten calendar days after 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.

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