

TIXEL GmbH - General Terms & Conditions for Business Customers

Non legally binding translation of German AGB (www.tixeltec.com/agb)

§ 1 Applicability / General Scope

- (1) These Terms & Conditions are applicable to all present and future business relations between TIXEL GmbH (hereafter: TIXEL) and its business customers as defined in § 14 BGB (hereafter: Customers; together: the Parties).
- (2) These Terms & Conditions are applicable to all quotations, deliveries and services (hereafter: deliveries) supplied by TIXEL.
- (3) Any conflicting or deviating terms are rejected by TIXEL unless TIXEL has explicitly agreed to in writing.
- (4) All subsidiary or other agreements as well as amendments and modifications to these Terms & Conditions are subject to written confirmation by TIXEL.

§ 2 Quotations & Orders

- (1) By placing an order the Customer submits a binding offer to conclude a contract with TIXEL. The Customer hereby confirms that it understands and agrees to be bound with respect to all use and handling of the ordered goods or services by the then-current TIXEL Terms & Conditions which may be reviewed on the TIXEL website (www.tixeltec.com/tac).
- (2) All orders are subject to approval and acceptance by TIXEL, which will be made either by written declaration or by delivery and invoicing of the ordered goods or services. A confirmation of receipt does not constitute a binding acceptance of an order.
- (3) Quotations, calculations, drawings, sketches, cost estimates, and other documents attached to proposals or order confirmations remain the exclusive property of TIXEL. The Customer shall use these documents only for the agreed purpose and shall not duplicate them without TIXEL's agreement. These documents and all copies made thereof may not be disclosed to any third party and shall be returned to TIXEL or destroyed on request.
- (4) TIXEL is constantly improving and refining its products and services to provide new features to its Customers and to ensure its Customers always get the top-of-the-line products. Deviations of the supplied product from the ordered product are therefore admissible, as far as they are reasonable in relation to the Customer.

§ 3 Shipping Policy

- (1) TIXEL products shall be delivered in accordance with what is stated in the order form unless it conflicts with these Terms & Conditions. TIXEL products may be delivered as software package, virtual appliance or hardware appliance (hereafter: products). Partial deliveries shall be permitted, if this is reasonable for the Customer and nothing else was expressly agreed upon.
- (2) Software packages as well as virtual appliances usually are made available to download from TIXEL servers or will be delivered on removable media such as CD, DVD or USB flash drive.
- (3) Hardware appliances (TIXEL Software including operating system and hardware) will be physically delivered subject to the shipping conditions as described hereafter.
- (4) Whilst TIXEL makes every effort to deliver ordered products within the quoted timescale, delivery dates are only estimations. The Customer shall be entitled to claim liquidated damages for delayed delivery only after written request within a reasonable time and in so far as it can be proved that the delay has been caused through the fault of TIXEL and that the Customer has suffered a loss as a result of such delay.
- (5) Damages for delayed delivery shall not exceed ½ per cent of the net contract price of the part of the supplies in delay for every full week's delay and shall in no case whatsoever altogether exceed 10.000 EUR. No damages at all shall be due for the first two weeks of delay. Liability due to intent or gross negligence remains unaffected hereby.
- (6) The delivery time shall be reasonably extended if hindrances occur which TIXEL cannot prevent despite using the required care, regardless of whether they affect TIXEL or the Customer or a third party. Such hindrances include, but shall not be limited to, epidemics, mobilization, war, revolution, serious breakdown in the works, accidents, labor conflicts, late or deficient delivery by subcontractors of raw materials, semi-finished or finished products, the need to scrap important work pieces, official actions or omissions by any state authorities or public bodies, natural catastrophes, acts of God.
- (7) In so far as such adaptation exceeds 2 months or is economically not justifiable, both parties shall be entitled to terminate the contract or the parts affected thereby. If a party wishes to terminate the contract it shall - after having recognized the consequences of the event - immediately inform the other party.
- (8) All deliveries will be made ex works. Subject to TIXEL's right of stoppage in transit, delivery of the products to the carrier shall constitute delivery to Customer and title and risk of loss shall thereupon pass to Customer.
- (9) Selection of the carrier and delivery route shall be made by TIXEL unless specified by Buyer. TIXEL's liability with regard to packaging and dispatch is limited to premeditation and gross negligence.
- (10) On the Customer's request TIXEL will cover the delivery with transport insurance; the costs accrued thereby shall be at the Customer's expense.
- (11) All delivered products shall remain the property of TIXEL until the sales price has been paid in full, including related costs and charges
- (12) During the period of the reservation of title, the Customer shall, at its own cost, maintain the supplies and insure them for the benefit of TIXEL against theft, break-down, fire, water and other risks. It shall further take all measures to ensure that TIXEL's title is in no way prejudiced.

- (13) The Customer is not permitted to provide reserved products as security or lien or to create any other charge on them. He is also obliged to notify TIXEL immediately of any attachment of the products by a third party, or of any damage to the products or loss of products suffered.

§ 4 Payment Terms

- (1) All deliveries and services from TIXEL are subject to the terms of payment as stated on the invoice. Invoices will be deemed to have been accepted by the Customer unless no objection had been made within 14 days.
- (2) If nothing to the contrary has been expressly agreed in writing, all TIXEL prices are ex works, excluding packaging, plus the statutory rate of value added tax.
- (3) Unless otherwise stated all invoices issued by TIXEL are due and payable without deduction within fourteen (14) days of the date of the invoice via direct bank transfer on the account of TIXEL stated on the invoice.
- (4) Unless prices have not been expressly agreed as fixed prices they are subject to adjustments due to changes in wages, materials and sales costs for deliveries that take place three months or more after conclusion of the contract.
- (5) With respect to amounts that are not paid on time TIXEL reserves the right to charge dunning costs as well as default interests at a value of five percent (5 %) over the respective rate of discount of the European Central Bank or, if less, the maximum amount allowed by applicable law.
- (6) Customer has no right to charge amounts with counterclaims, unless it is determined that the claim is undisputed or has been validated by a court. Customer does not have the right to a lien and plea for the unfulfilled contract unless the counterclaims are based on the same contractual relationship.

§ 5 Software License Terms

- (1) TIXEL retains all right, title and interest, including all copyright and Intellectual Property rights, in and to, the delivered Software and all copies thereof.
- (2) TIXEL grants to the Customer a limited, non-sublicensable, non-transferable, nonexclusive License to use the Software in accordance with the terms of the correspondent License Agreement and subject to the TIXEL Terms & Conditions set forth herein.
- (3) Unless otherwise explicitly agreed upon in writing the Customer initially receives a provisional License on a temporary basis, which will be replaced by a full and permanent License after full payment of the sales price according to the valid Licensing Terms.
- (4) Software usually is activated by delivery of a license key or entitlement system, which may be designed to allow use of the Software in compliance with the scope of the License granted and termination of the License for non-compliance with the applicable License. Further, licensed Software may contain a metering or instrumentation capable of verifying license entitlement and transmitting reports or statistics on the Software usage to TIXEL or a third party engaged by TIXEL to collect any such reports or statistics.
- (5) Documentation pertaining to the Software (written information whether contained maintenance policies, user or technical manuals, training materials, support policies, specifications, copyright attributions or otherwise) will be made available by TIXEL with the Software in any manner (including on CD, via email, on the website or other on-line format) and contain software functionality and service descriptions according to the valid Licensing Terms. It will be updated or amended by TIXEL from time to time. Any public statements or advertisements do not represent an indication of quality and do not imply any form of guarantee.
- (6) Modifications to the Software as well as new releases which are not free updates as determined in TIXEL's sole discretion such as those providing enhanced functionality or performance, or that otherwise improve or add to, delete or otherwise modify any aspect of the Software are only available, if the Customer purchases additional Maintenance Services to the Software by signing a Software Maintenance Agreement.
- (7) These Terms & Conditions remain applicable to the Software including all modifications (e. g. patches), updates and upgrades hereto.
- (8) With licensing of Software TIXEL provides no other rights to Customer not expressly set forth herein (including any rights to maintenance and support, training, or other development services relating to the Software). Any rights of Customer to any such services shall be solely as provided separately in a Service, Support and Maintenance, or other Agreement between TIXEL and Customer and subject to the conditions therein.

§ 6 License Restrictions

- (1) Customers are not entitled to grant any sublicenses, lease, lend or in any way (including „Application Service Providing“ (ASP)) let anyone else, whether directly or indirectly or against compensation or free of charge, use or in any way dispose of the Software; provided, however, that nothing herein shall prevent the Customer from using the Software in its ordinary course of its business. Exemptions are provided only for distribution partner on the basis of an Original Equipment Manufacturer Agreement or a Software Reseller Agreement.
- (2) Customer are not entitled to use, copy or in any other way transfer or use the Software in any manner except as stated in the License Agreement as well as these Terms & Conditions.
- (3) Copies of the Software may be made for purposes expressly permitted by the License Agreement as well as for safety or archival purposes only, and for no other purpose whatsoever. These Terms & Conditions shall apply also to such copies. All copies on removable media such as CD have to be marked with copyright notices and to be made inaccessible for third parties.
- (4) Customers may not modify, reverse engineer, decompile, or disassemble the Software or information or material connected to the Software, except to the extent expressly permitted by mandatory law.

- (5) Marking and/or information regarding patent, copyright or copyright notices in Software or computer media through which the Software is accessible to the Customer may not be removed, changed or modified in any way. The same applies to corresponding marking of all documentation provided by TIXEL.
- (6) The Customer may use, access, display, run or otherwise interact with as many copies of the Software as corresponds to the number of user-licenses. The Customer may store or install a copy of the Software on a storage device, such as a network server, used solely to run the Software on the Customer's other computers over an internal network; however the Customer must acquire and dedicate a License for each separate computer that may access the Software from the storage device. The Customer shall introduce routines and control functions in order to ensure that the number of computers that may access the Software do not exceed the number of Licenses granted according to the Order Form. Customer is obligated to inform TIXEL about changes in the use of the Software and to acquire additional Licenses if necessary.
- (7) TIXEL retains the right to charge up to twice the license price for the time of improper use of licensed Software if the Customer missed to inform TIXEL about same. TIXEL furthermore reserves the right to terminate the License with immediate effect and to claim further damages in case of the knowingly improper use of licensed Software by the Customer. Upon any termination, the Customer must return or destroy the Software Materials in its possession, together with all copies, in the realistic manner stipulated by TIXEL.

§ 7 Customer's Responsibilities

- (1) At delivery, the Customer shall examine the functionality and quality of the Software. If the Customer concludes that the Software considerably deviates from the agreed specifications or requirements for the Software, the Customer shall notify TIXEL in writing within fourteen (14) days of delivery, with all available details regarding the alleged Defect.
- (2) If at any other time the Customer discovers such item was not as warranted as described herein it also shall notify TIXEL promptly (at least within 14 days) in writing.
- (3) In order to take advantage of the fully scope of service of TIXEL products as to reliability and performance commitments, the Customer has to maintain a proper and adequate environment such as specific hardware and software requirements, and use the TIXEL products in accordance with the instructions furnished. The Customer is solely responsible for setting up an appropriate technical infrastructure and shall properly train its personnel in the use and application of TIXEL Software or systems.
- (4) The Customer agrees to test all modules and applications of the Software thoroughly within the specified environment with regard to usability and reliability before starting any operative use. The Customer shall take adequate precautions to counter situations where the program does not operate properly in whole or in part.
- (5) In order to avoid data loss, the Customer is solely responsible for protecting and backing up the data and information stored on the computers on which the Software is used and should confirm that such data and information is protected and backed up before contacting TIXEL for technical support.

§ 8 Warranties & Limitation of Liability

- (1) TIXEL provides products "as is" to be used in accordance with the respective product description and user manual. It shall be emphasized that, given the present state-of-the-art, it is technically not feasible to produce software or hardware that meets all conceivable combinations of applications and that are fully protected against any external intentional manipulation. TIXEL disclaims all warranties and representations, express or implied, including the implied warranties of non-infringement, merchantability, and fitness for a particular purpose. TIXEL shall be liable solely for a breach of an essential contractual obligation, on whose fulfillment the Customer may reasonably rely on (cardinal obligation).
- (2) TIXEL's warranties shall be limited to typical contractual foreseeable damages, with regard to services on a monthly basis at the maximum up to the respective monthly fee. TIXEL shall not be liable for loss of Customer's data, content, or other information in connection with the use of the Software as a result of Customer's negligence to appropriately protect and backing up of data, content and other information. In no event TIXEL shall be responsible to, or liable to Customer, or any third party, whether in contract, warranty, tort (including negligence) or otherwise, for any damages, including, but not limited to, incidental, special, indirect or consequential damages that include, but are not limited to, damages for any loss of profit, revenue or business, as a direct or indirect result of Customer's access and use of TIXEL Software. Without limiting the foregoing, TIXEL shall be liable pursuant to legal provisions only in case of intent or gross negligence.
- (3) In case of a defect TIXEL will provide the Customer with appropriate support within reasonable time from the date Customer has notified TIXEL in writing of the defect. TIXEL shall repair or replace the product at the Customer's option and free of charge. If the Customer's choice is impossible or involves a disproportionate effort, the Customer is eligible only to the other option of supplementary performance. The foregoing warranties cover only reimbursement for expenses which may be incurred in connection with repair or replacement at the original contractual place of performance.
- (4) In case of a repair or replacement, TIXEL will be liable for the new or improved product according to the Terms & Conditions of the original product.
- (5) If attempts for repair or replacement by TIXEL fail within reasonable time, the Customer may cancel the contract or demand a price reduction. Upon termination the Customer must return all supplied products (including all copies) to TIXEL within 14 days, but not before a return authorization had been obtained from TIXEL.
- (6) The applicable warranty period shall be 12 months after delivery of Software unless the parties have otherwise mutually agreed to in writing. Warranty claims against TIXEL are not transferable and can be made valid only by the Customer.
- (7) These Warranties shall not apply
 - a. to TIXEL Evaluation Licenses provided under a Software Evaluation Agreement (SEA) to a Reseller or Customer for a defined evaluation period and made available for test purposes only,
 - b. to installed products which are not installed or used to TIXEL's specifications,
 - c. to products which have been repaired or altered by others than TIXEL without TIXEL's prior written consent,

- d. to consequential damages caused by negligence, misuse, abuse, accident, or damage by circumstances beyond TIXEL's control, including, but not limited to, lightning, flood, electrical surge, tornado, earthquake, or any other catastrophic events beyond TIXEL's control,
 - e. to consequential damages that may result from improper operation, connected equipment failure or malfunction, inadequate packing or shipping damage, maintenance or storage, or to other than normal use of service.
- (8) TIXEL assumes no liability for services or performances offered by third party suppliers as well as for technical malfunctions for which TIXEL may not be held responsible. TIXEL explicitly assumes no liability for:
- a. external DNS- and routing problems, interferences of telecommunication connectivity, temporary server failure or overload as well as external attacks (DDoS/viruses) on TIXEL's or a third party's network or mail infrastructure
 - b. Failures on the part of the Customer, e. g. by incoming/outgoing hacker attacks (DDoS) due to incorrect or insufficient maintenance of Customer systems
 - c. Failures caused by improper use or repair of Customer hardware or software or that result from improper operation of Customer systems
- (9) Neither party shall be liable to the other in any manner whatsoever for any decisions, obligations, costs or expenses incurred, changes in business practices, plans, organization, products, services, or otherwise, based on either party's decision to use or rely on any information exchanged between the parties.
- (10) TIXEL shall have the right to terminate the License with immediate effect and claim damages in case of a seriously breach of contractual obligations by the Customer, e. g. if payments are overdue for at least 4 weeks or if the Customer fails to fulfill its major material obligations under § 6 (License Restrictions) or § 7 (Customer's Responsibilities) of these Terms & Conditions. The Customer then shall not be entitled to any refund of the license fee irrespective of the reason for termination of the License. Upon any termination, the Customer must return or destroy the Software Materials in its possession, together with all copies, in the realistic manner stipulated by TIXEL.

§ 9 Software Maintenance

- (1) Customer may purchase additional Maintenance Services to licensed TIXEL Software. TIXEL provides support services in response to specific Customer inquiries as well as by way of general patches, updates, and upgrades as applicable. Maintenance scope and contents will be defined in a separate document and be annexed to the correspondent invoice.
- (2) Customer is entitled to receive Maintenance Services only on Software for which it has purchased Maintenance Services; Services commence upon sale of the applicable Software by TIXEL. New Maintenance Service Agreements are offered only for the most current, generally available releases of the Software.
- (3) Subject matter of the contract is the last to Customer delivered and generally available release of the respective Software. The acquisition of upgrades will automatically extend the scope of a Maintenance Agreement, which may require adjustments of the corresponding Maintenance Fees. TIXEL reserves the right to discontinue service of older releases where it deems it no longer necessary or commercially viable to continue such service.
- (4) The term of a respective Maintenance Agreement shall begin on delivery of Software (renewal date) and will continue for twelve (12) consecutive months. It may be terminated by either party upon written notice thirty (30) days prior to the end of the term identified herein. Otherwise it will automatically be extended by a further 12 months at the then-current fee.
- (5) TIXEL will invoice Customer for the respective Maintenance Fee annually and in advance on the first day of each Contract Year. Maintenance fees are nonrefundable. If Customer wishes to reinstate lapsed Maintenance, TIXEL reserves the right to charge a Reinstatement Fee of up to one annual Maintenance Fee additionally to the then-current Maintenance Fee.
- (6) Customer may not assign the rights granted by a TIXEL Maintenance Agreement, or any of them, without the prior written consent of TIXEL. It is in particular expressly agreed that Customer shall remain the sole contact of both TIXEL and the End User if different from Customer. TIXEL shall provide Maintenance Services exclusively to Customer.
- (7) TIXEL will use commercially reasonable efforts to provide corrections or workaround solutions for any problem or issue reported and determined to be in the Software or the documentation at no cost to Customer for the term of this Agreement. While it is TIXEL's goal to provide an acceptable resolution for incoming problems/issues and incidents, TIXEL cannot predict a resolution time and is unable to guarantee that all problems or issues can be resolved or addressed.
- (8) Customer acknowledges and agrees that TIXEL's ability to provide Maintenance Services is dependent on Customer timely providing accurate product installation location information, and any failure to do so may impact TIXEL's ability to provide the Service. Remote access to the Software on Customer's network may also be required to diagnose or resolve a Maintenance problem. Customer acknowledges that Customer's failure to provide such access may impact TIXEL's ability to resolve the problem.
- (9) Software updates are provided only for standard hardware platforms and operating systems supported by TIXEL in accordance with TIXEL's product specifications. Customer is responsible for making or arranging for updates to interfaces for nonstandard devices or Customer applications.
- (10) If TIXEL fails to fulfill its obligations under a Maintenance Agreement despite repeated reminders, Customer's sole and exclusive remedy is the right to terminate the Agreement immediately for the affected Software and to claim pro rata reimbursement of prepaid Maintenance Fees.
- (11) TIXEL will not be obligated to provide any Maintenance:
- a. on Software that (i) have been altered, modified, mishandled, or damaged, (ii) have not been installed, operated, repaired, or maintained in accordance with TIXEL's product specifications, documentation and instructions, or (iii) have been misused or operated outside of the environmental specifications for that Software;
 - b. where the problem relates to Customer's or a third party's network, systems, hardware, software, or other problem beyond the reasonable control of TIXEL.

- (12) TIXEL's obligations under any Maintenance Service Agreement with respect to any Software are subject to TIXEL's duly receipt of the applicable License Fee as well as the annual Maintenance Service fee.
- (13) TIXEL retains ownership of any Intellectual Property resulting from Support Services.

§ 10 Additional Support Services

- (1) Customer may purchase further services to TIXEL products not covered by a Maintenance Agreement. These may include
 - a. Priority response times
 - b. On-site support & training
 - c. On-site installation and configuration of TIXEL products; installation of operation systems and configuration of server dedicated for TIXEL Software
- (2) Standard terms and rates as well as individual quotations are available on request.

§ 11 Confidentiality

- (1) Data provided between TIXEL and its business partners such as quotations, calculations, drawings or any technical documents are only binding in so far as having been expressly stipulated as such. Each party retains all rights to such documents provided to the other. The party receiving such documents recognizes these rights and shall - without previous written consent of the other party - not make these documents available to any third party, either in whole or in part, nor use them for purposes other than those for which they were handed over.
- (2) The confidentiality obligation will remain in force after the expiry of the License and these Terms & Conditions for five years following disclosure of information.
- (3) Confidential Information shall not include information which is or becomes generally available to the public other than as a result of a disclosure by the receiving party, which was available to the receiving party on a non-confidential basis prior to its disclosure by the other party or which became available to the receiving party on a non-confidential basis from a third party
- (4) The Customer acknowledges that TIXEL stores and uses information relating to it for service and record keeping purposes only and based on German data protection rules.
- (5) TIXEL reserves the right to denote Customer's name and logo as reference in publications free of charge, unless Customer explicitly disagrees in writing.

§ 12 Miscellaneous

- (1) TIXEL may modify these Terms & Conditions at any time without notice. Thereafter, any new agreement will be made subject to the amended Terms & Conditions. Existing contracts will initially remain unaffected by the changes. They will become also an integral part of existing contracts upon renewal, extension or amendment of same, unless Customer explicitly disagrees in writing within 30 days after notification of such a change.
- (2) If any provision of these Terms & Conditions is unenforceable, the remaining provisions shall, to the extent possible, be carried into effect, taking into account the general purpose and spirit of this Agreement.
- (3) This Agreement shall be governed by and construed in accordance with the laws of Germany, and the parties hereto submit to the exclusive jurisdiction of the court of Hannover, Germany, to settle any disputes or claims which may arise out of or in conjunction with this Agreement. In each case this Agreement shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods.
- (4) TIXEL® and TIXstream® are registered trademarks, TIXway™, TIXpipe™, TIXcustom™ and RWTP™ are trademarks or trademarks of TIXEL in the United States, Germany and other countries. All such trademarks, trade names and service marks are proprietary to TIXEL, and may not be used in connection with any product or service that is not TIXEL's, in any manner that is likely to cause confusion among Customers or in any manner that disparages or discredits TIXEL, without TIXEL's written permission. All other trademarks, product names and company names and logos are the property of their respective owners.

TIXEL GmbH
Hannover, April 24, 2015