

Terms and Conditions

For questions regarding our terms and conditions, please contact our customer support:

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General Terms

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A. General Terms

1. Surplex:

Surplex. Surplex ("Surplex") offers an Internet marketplace ("online") consisting primarily of a database, a website and various data processing systems (hereinafter referred to as the "Surplex Platform") through which used machinery, equipment and other surplus assets and remaining stock (hereinafter referred to as "Objects") can be marketed. Furthermore, Surplex offers its customers support in marketing Objects by traditional auction and other brokerage and procurement services outside the Surplex Platform ("offline").

2. Scope:

These Surplex-Conditions shall apply for the supply of all products and services of any kind provided by Surplex to its customers ("Customers") online (summarily referred to as "Online Services") and offline (summarily referred to as "Offline Services"; Online Services and Offline Services summarily also referred to as "Surplex Services"). If Surplex and the Customer have entered into one or several contracts (hereafter referred to as "Contract"), these Surplex-Conditions shall be an integral part of such Contract and apply except if and to the extent that the Contract provides otherwise. With respect to offline auctions and certain services (counseling services, evaluations, inspections, delivery services), separate conditions further apply which may refer to these Surplex-Conditions.

3. These Surplex-Conditions shall only apply for businesses within the meaning of § 14 of the German Civil Code and for legal entities and special funds established

under administrative law (hereinafter referred to as "Customers"). Other customers shall require Surplex' explicit consent in order to claim the services offered by Surplex.

4. Dual Brokerage:

Surplex will usually render Surplex-Services simultaneously for both contractual partners of a transaction. The Surplex-Services are usually to be remunerated by both contractual partners of a transaction.

5. Surplex-Compensation, Surplex Pricelist, Reimbursement of Expenses:

Surplex shall be entitled to compensation ("Surplex-Compensation") for the Surplex-Services in accordance with the Contract. For certain Online Services the [pricelist](#) published on the Surplex Platform at the time the Contract is made ("[Surplex Pricelist](#)") shall apply. Surplex shall retain the right to change the [Surplex Pricelist](#) at any time. Existing Contracts (in as far as these are binding) shall remain unaffected. The relevant [Surplex Pricelist](#) shall be an integral part of these Surplex-Conditions. Surplex shall have a right to reimbursement of its expenses if the Customer terminates a Contract prematurely or withdraws Objects from a Contract. Clause 9 and further claims of Surplex to reimbursement of expenses shall remain unaffected.

6. Terms of Payments:

All invoices shall be paid by the Customer immediately upon receipt without any deduction. In the event that the Customer fails to make the payment within thirty days from the date of receipt of the invoice, it shall be deemed to be in default whether or not Surplex has reminded the Customer of its payment obligation.

7. Value Added Tax shall not be deemed included in the prices quoted by Surplex. If applicable, it will be shown separately in the invoice at the rate prevailing on the date of the invoice.

8. The Customer shall not be entitled to set off any of its claims against claims of Surplex, or to avail itself of a right of retention under civil or commercial law, except where the Customer's claims are undisputed or have been confirmed by a non-appealable court judgement.

9. Term, Termination:

Both parties shall be entitled to terminate the Contract observing a notice period of six months, unless a minimum term or longer notice period has been agreed in the individual case. Declarations of intent made as well as existing claims to Surplex-Compensation shall remain unaffected. A notice of termination shall only be valid if it is in writing.

10. Confidentiality:

The Customer shall keep strictly confidential all business and technical information it receives from Surplex, in particular other customer's personal data and all information regarding Objects insofar and as long as these are not generally known (without the Customer having been responsible for their becoming known), also beyond the term of the Contract, and shall refrain from using such information, copying it or making it accessible to third parties for any purpose other than under the Contract. This shall apply also with respect to information received by the

Customer during on-site visits, as well as all technical documentation, cost estimates, drawings and calculations given to the Customer within the bounds of negotiations and the fulfillment of the Contract. All property, ownership, copyright and other rights to such documentation are reserved. In the event that the Customer uses such documentation without authorization, Surplex shall (in its own name or, as the case may be, in the name of the owner) be entitled to demand that the documentation concerned be delivered to it immediately.

11. Customers Warranties, Indemnification:

The Customer represents, warrants and guarantees that it will fully comply with all laws and regulations which may apply to its business, in particular with the terms of all regulatory, competition and data protection laws, and that the offers for sales and purchases submitted by it will not violate any laws or third party rights, in particular title, pledge or other property rights or patents, trademarks, copyrights or other intellectual property rights. In particular, the Customer shall refrain from offering any Objects which violate the criminal laws of Germany or other countries, which are not permitted to be sold or which require official approval, especially weapons of any kind. The Customer shall hold Surplex harmless from any third party claims which may be based on a violation of this Clause.

12. Liability:

Surplex shall be liable in damages only to the extent that the damage was caused by gross negligence or willful misconduct imputable to Surplex. In the event of bodily injury or damage to the health of a person, Surplex shall be liable also for slight negligence. In the event of a violation of a fundamental duty under the Contract, Surplex shall be liable also for slight negligence but its liability shall be limited to such damage as Surplex could have reasonably foreseen at the time of signing of the Contract.

13. No Party:

Declarations of intent and other legally relevant statements or acts which Surplex publishes at the Customers request or which are delivered to another customer or are received from another customer shall be deemed to be declarations, statements or acts of the Customer (or other customer) concerned itself, which are delivered by Surplex as messenger. Surplex itself shall be neither entitled nor obliged by such declarations, statements or acts and shall also not be representative in another's name. Surplex shall assume no responsibility for deliveries or acceptance of Objects or other articles or for payment of considerations.

14. No liability for misuse or creditworthiness:

Surplex cannot ensure that the person which may be named as Seller or Buyer in a declaration of intent received or delivered by Surplex actually exists. The Customer submitting or accepting an offer therefore acts at its own risk with regard to the existence of the contract partner and with regard to the creditworthiness of the respective other party. In addition, Surplex will not be able to prevent that a Membership Number, a password or a URL is obtained by a person not entitled to submit declarations of intent. This risk shall also be borne by the Customer. Any statutory liability which Surplex might otherwise incur as a messenger without messenger authorization shall be excluded. Clause 12 shall remain unaffected.

15. No Hire:

The Customer shall refrain from actively hiring away Surplex employees and/or other customers.

16. No Other Conditions:

Surplex hereby objects to the Customers general conditions except if and to the extent that they have been explicitly accepted in writing. Any such acceptance shall apply only to the transaction at issue, and in particular not to any past or future Online or Offline Services.

17. Amendments of these Surplex-Conditions:

Surplex shall be entitled to amend these Surplex-Conditions with proactive effect observing a notice period of one month.

18. Changes to Services:

Surplex shall be entitled to change the Online or Offline Services offered by it at any time. Claims due under existing Contracts shall remain unaffected.

19. Reference:

Surplex shall be entitled to refer to the cooperation with the Customer for marketing purposes, as long as the individual materials naming the Customer are first presented to the Customer for review.

20. Subcontractors:

Surplex shall be entitled to employ subcontractors for all Online or Offline Services; Surplex liability vis-à-vis the Customer pursuant to clause 12 shall remain unaffected. If and to the extent that the choice of the subcontractor is relevant for the Customer under regulatory or data protection law, its prior approval shall be required, but may be denied for cause only.

21. Declarations:

All declarations and notifications pursuant to these Surplex-Conditions shall be valid only if they are in writing. This written form requirement shall also be deemed fulfilled if the declaration is given on the Surplex platform using the masks offered or by email.

22. Assignment:

The Customer shall only be entitled to assign rights out of or in connection with the Contract except for payment claims - with Surplex prior approval.

23. Severability:

Should any individual provision of the Contract be or become wholly or partially invalid, or should there prove to be an omission, this shall not affect the validity of the remaining provisions of the Contract. In the place of the invalid provision, a valid provision shall be deemed agreed which corresponds to the purpose and meaning of the invalid one. In the event of an omission, a provision shall be deemed agreed which corresponds, on the basis of the purpose and meaning of the Contract, to what the parties would have agreed, had the parties considered the matter at the outset. This shall also apply if the invalidity of the provision results from a measure of performance or time set as a standard in the Contract; in such cases, a legally valid

measure of performance or time which comes as close as possible to that originally agreed shall be deemed agreed instead.

24. Governing Law:

The contractual relations between Surplex and the Customer shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the rules on conflicts of law and to the exclusion of the United Nations Convention on the International Sale of Goods .

25. Jurisdiction:

All disputes arising under or in connection with the Contract or these Surplex-Conditions shall be submitted exclusively to the courts of Duesseldorf. Surplex shall also be entitled, at its discretion, to take legal action against the Customer in the courts having jurisdiction over the Customer.

B. The following conditions shall be valid for Brokerage Agreements. In addition, they shall be supplemented by the terms of Part A:

B.1 General Conditions for Brokerage Agreements (Online and Offline)

26. Surplex-Compensation, Successive Transactions:

In consideration for procuring the sale of an Object, Surplex shall have a claim to Surplex-Compensation as agreed in the Contract, in the case of Online Services mentioned in the [Surplex Pricelist](#) as per the [Surplex Pricelist](#). Surplex shall have a corresponding claim to Surplex-Compensation also for every further sale that the Customer concludes with the contractual partner whose contact data were given to the Customer by Surplex (successive transactions). Clause 10 shall remain unaffected. Surplex shall have a right to reimbursement of its expenses if the Customer terminates a Contract prematurely or withdraws Objects from a Contract. Clause 9 and further claims of Surplex to reimbursement of expenses shall remain unaffected.

27. Exclusivity:

The Customer shall sell or buy the Objects which are subject to the Brokerage Agreement with Surplex exclusively through Surplex and refrain from commissioning third parties with the brokerage of such Object; it shall prohibit any such action of third parties except when using the " Treaty Sale " business model described below. Should an interested party contact the Customer directly with the intention of negotiating the purchase or sale of an Object, the Customer shall inform such party that it (as Seller) has commissioned the sale through Surplex or that it (as Buyer) became aware of the Object through Surplex. The Customer shall inform Surplex of any such contact.

28. No liability, descriptions, inspection:

The Objects are, in most cases, used or not newly produced. Descriptions in a catalogue or on the Surplex Platform, in particular details regarding source, condition, age and authenticity of an individual Object, shall be provided according to best knowledge. However, no liability for their correctness shall be assumed. The descriptions shall in particular not be deemed to constitute specifications or guaranteed characteristics. Pictures may deviate from the original. Additional

information not contained in the catalogue or the Surplex Platform may be available at the location of the Object. Every Customer shall be required to inspect the Objects, to the extent possible. Appointments for inspections shall be arranged with Surplex. Surplex shall be entitled to exclude an Object at any time, if in Surplex' discretion the Seller's declarations appear incorrect, in particular if they do not correspond to the actual condition of the Object; Surplex shall, however, not be obliged to examine the Object.

29. Transfer of risk:

Upon the conclusion of a contract of sale, all risks, in particular with regard to the accidental destruction and the accidental deterioration of the Object, shall pass to the Buyer. The Buyer shall, from this moment, also bear all public charges of the Object.

30. Payment of Surplex-Compensation:

The Surplex-Compensation shall be paid to Surplex immediately after the conclusion of a contract of sale. The Surplex-Compensation shall be also paid if a contract of sale is concluded with a third party to whom the Customer has passed on the information. Clause 10 shall remain unaffected. The Surplex-Compensation shall be subject to interest at the rate of 8 % above the relevant base rate (Basiszinssatz) from the time of default (§ 288 (2) of the German Civil Code).

31. Guarantee:

A business within the meaning of § 14 of the German Civil Code bidding for or purchasing an Object on behalf and on account of a principal shall be liable as absolute guarantor for the obligations of its principal.

32. Payment of purchase price:

The purchase price shall be paid immediately after the conclusion of contract of sale. Should a Buyer be in default of the purchase price, the amount due shall be subject to interest at the rate of 8 % above the relevant base rate (Basiszinssatz) from the time of default (§ 288 (2) of the German Civil Code). Furthermore, the Seller shall be entitled to set the Buyer a reasonable grace period for performance. Should this grace period expire without payment having been made, the Seller may withdraw from the contract of sale and/or demand damages in lieu of payment. The Seller may then market the Object anew. The Buyer shall not be entitled to bid in the second marketing. If the Seller demands damages, the Buyer shall be liable for the cost of a renewed sales effort of the Object as well as any resulting loss. The Buyer shall not be entitled to share in any resulting profit. Surplex' claims to Surplex-Commission against the Buyer and/or against the Seller shall remain unaffected by any withdrawal and/or demand of damages by the Seller.

33. Delivery/Pick up of Objects, Costs, Risk, Transfer of Title:

33.1 Unless pick up times have been set, the Buyer shall pick up the purchased objects immediately after the conclusion of the contract of sale, at the latest by the end of one week after the conclusion of the contract of sale, at the location of the Object. Objects shall be delivered upon complete payment only. The Buyer shall bear any export customs and taxes. Shipping shall be at the expense and the risk of the Buyer. In particular, the Buyer shall bear all transport, insurance, packaging and

dispatching costs. Title to the purchased objects shall not pass to the Buyer until receipt of full payment.

33.2 If the pick up deadline is not respected, the Buyer shall be liable for any costs incurred, in particular for storing and preserving the Object. Any storage and shipping shall be performed at the Buyer's expense and risk. If the pick up deadline is not respected, the Seller may set the Buyer a reasonable grace period for picking up the Object. Should this grace period expire without the Object having been picked up, the Seller may, at its choice, either store, market or scrap the Object, in each case at the Buyer's expense.

34. No Seller's liability for material defects of used or not newly produced

Objects:

The Objects are, in most cases, used or not newly produced. The Seller shall not be liable for any material defect of such Objects, unless individually agreed otherwise or required by mandatory law.

35. Seller's liability vis-à-vis the Buyer.

35.1 For Objects used or not newly produced: The Seller shall be deemed to have guaranteed to the Buyer that the Seller is entitled to sell the Object and that the Object is not subject to any third party rights (Rechtsmängel). The Seller shall not be deemed to have assumed any other liability vis-à-vis the Buyer, except as otherwise agreed individually or provided by mandatory law.

35.2 For newly produced Objects: The Customer's statutory remedies ("warranty claims") for defects of an Object, including material defects and/or any violation of rights of third parties (collectively "Defects") shall be limited as set forth herein after. Whether or not the contract is a commercial transaction, the Customer shall be responsible to inspect the Objects and to notify the Seller of any Defects thereof without delay, as provided under commercial law, failing which the Defect concerned shall be deemed accepted. The warranty claims for Defects shall be limited to performance (Nacherfüllung). However, the Buyer's right to request a reduction of the purchase price or to withdraw from the contract of sale in the case of failure of performance shall remain unaffected. The Seller shall retain its right to choose the type of performance; such right shall pass to the Buyer only if the Seller is in default of performance. The Seller shall not be deemed to have guaranteed certain specifications or other properties of the Objects except if it has expressly confirmed such guarantee. A manufacturer's warranty issued with any Object shall not be deemed a guarantee of certain specifications or properties unless expressly agreed otherwise.

35.3 Any warranty claim shall be excluded if (a) the Object deviates from the agreed specifications or the Defect in question limits the suitability of the Object for the agreed purpose to a negligible degree only or (b) the Defect in question is due (i) to use of the Object for any purpose other than the contractual purpose or in violation of the relevant statutory requirements and/or any guidelines issued by the manufacturer or (ii) to modification of the Object without the prior written approval of the Seller or to use of the Object in conjunction with other product not specifically approved by the Seller in writing. Any warranty claims for violation of third party

rights shall be excluded unless such third party rights are valid within the European Union or Switzerland and the Customer enables the Seller to conduct the defense alone without any restriction and grants the Seller the necessary powers. If the Customer resells Objects, any right to take recourse shall be excluded except if and to the extent the Customer proves that the Object delivered by the Seller for retail and giving rise to such recourse shall have been shipped to the Customers clients in the order in which they shall have been received by the Customer (FIFO).

B.2 Online Brokerage

The following additional conditions shall apply to online brokerage:

36. Registration: Customers wanting to take advantage of Surplex' Online Brokerage Services must register in order to do so. For registration, the Customer shall completely fill out, date and, if appropriate, sign the forms provided online or offline with the following information: (a) the Customer's name, postal address, telephone number, email address, a password having 5 to 16 digits, bank account and credit card information and (b) other data which Surplex may request in its discretion. Official identification shall be provided upon Surplex' request. The Customer represents that the information provided by it will be complete and correct. It shall immediately notify Surplex of any changes in the data provided. The Customer shall not have a claim to registration. The provisions of the first sentence no. 1, no. 2 (together with the Civil Code Regulation on Information Duties - BGB Informationspflichten-Verordnung) and no. 3 and of the second sentence of § 312e (1) of the German Civil Code (BGB) (in particular the provisions on information about the individual steps leading to a Contract, about storage of and access to the text of a Contract, about the recognition and correction of input errors, about the languages in which a Contract may be made and about relevant codes of conduct and as well as the provisions dealing with immediate electronic confirmation of receipt of an order and deemed receipt of an order and/or confirmation of receipt shall not apply (as per the second sentence of § 312e (2) of the German Civil Code).

37. Agent: Should the Customer be registered by an agent, Surplex shall be entitled to demand proof of authorization. The details of such proof of authorization shall be determined by Surplex.

38. Upon registering the Customer chooses a Username and Password. The Username shall not contain an email- or internet addresses, shall not violate third party rights, especially no name- and brand rights, and shall not violate morality. The user shall keep his Password confidential. Surplex shall not give the Password to any third parties. Should the Customer become aware, or have reason to believe, that third parties have obtained knowledge of confidential information stored on the Surplex Platform or otherwise, such as its access data or payment information, it shall notify Surplex immediately.

39. Framework Contract: Surplex' acceptance of the registration shall bring about a Framework Contract between Surplex and the Customer on the conclusion and performance of Contracts regarding Online Brokerage Services according to these Surplex-Conditions.

40. Contract: For each order, the Customer has to state the Object, the product

group, any minimum price. Surplex' acceptance of the order shall bring about a contract ("Contract") between Surplex and the Customer regarding Online Brokerage Services pursuant to the conditions of the accepted order and these Surplex-Conditions, unless otherwise agreed in individual cases. The Customer shall not have a claim to acceptance of an order.

41. Surplex-Compensation; no Customer's claim to the placing of Objects:

For placing an Object on the Surplex Platform and admitting potential buyers to the Surplex Platform, Surplex shall be entitled to Surplex-Compensation and reimbursement of expenses as per these Surplex-Conditions and the [Surplex Pricelist](#). Surplex retains the right to object to the placing of an Object on the Surplex Platform. The Customer shall not have a claim to the placing of Objects.

42. The Management of the Surplex Platform shall be the sole responsibility of Surplex. In particular:

42.1 The Customer shall observe the instructions given online for describing the Object and implementing the transaction concerned.

42.2 The Customers' right to use the Surplex Platform shall be limited to the Customers' internal business purposes and shall be determined solely by the Contract including these Surplex-Conditions. All other rights regarding the Surplex Platform are reserved.

42.3 Surplex reserves its right to deny the brokerage of a given Object, a purchase request, an offer or an acceptance without providing reasons or to allocate an Object to another product group than that requested by the Seller. Surplex shall be entitled to change the user surface of the Surplex Platform. The time on the Surplex system clock shall control any deadlines specifying date and time.

42.4 Only the price given by the Customer in the currency specified by the Customer shall be effective. The calculations of the prices in other currencies provided on the Surplex Platform shall be for the Customers' non-binding information only.

42.5 The Customers' identification data shall be hidden to other users in all declarations made by the Customer. Surplex shall only be entitled to disclose Customer contact data to other customers where a contract has been made and for on-site inspection of Objects only. The Customers' identification data as well as the data supplied to Surplex in connection with the conclusion of a Contract shall be stored by Surplex in machine-readable form. Such data shall be used by Surplex solely for the operation of the Surplex Platform and performance of Surplex Services; Surplex shall be entitled to store customer data regarding a past transaction rather than having to delete such data immediately; the Customer shall be deemed to have consented thereto by submitting its registration. The Customer may revoke such consent at any time.

43. Customer Obligations:

If not otherwise agreed, the Customer shall be responsible for creating the environment necessary for using the Surplex Platform and providing Surplex with all the information necessary for carrying out a transaction. The Customer shall

furthermore immediately inform Surplex of any visible or threatening disturbances to the Surplex services and support Surplex in determining their cause as well as in their removal.

44. Sales Models:

The Customer may choose between the following business models (Online auctions and Treaty Sale). An online auction can only be listed after consulting Surplex.

45. Online Auction:

45.1 The Seller shall indicate online a starting price and a minimum price (optional) which it hopes to achieve for the Object and specify a date and time for expiry of the tender period (duration of the online-auction). These declarations shall constitute the Sellers' binding offer to sell the Object. The Offer is directed at the bidder who submits the highest bid during the duration of the online-auction and who possibly exceeds the stated minimum price.

45.2 The Buyer shall make a binding offer for the acceptance of the offer online, by submitting a bid. The acceptance must quote a purchase price which is higher than the present bid by one or more of the bid steps determined in the online mask. The bid expires if another bidder submits a higher bid during the duration of the online-auction. The official Surplex Time is applicable for the measuring of the duration of the online-auction. With respect to such acceptance Surplex shall be deemed to act as messenger (Erklärungsbote) for the Buyer and as receiver (Empfangsbote) for the Seller. The Seller shall refrain from making offers for its own Objects or causing offers to be made by agents or representatives.

45.3 A Contract of Sale regarding the Object shall be deemed made between the Seller and that Buyer who submitted the highest bid at the end of the duration of the online-auction and has at least reached a possible minimum price. Surplex shall notify the Seller of the Buyers' contact data. Surplex shall also inform the Buyer and provide it with the Sellers' contact data.

46. Fixed Price Sale: - cancelled -

47. Treaty Sale:

47.1 The Seller shall indicate its starting price. The Sellers' indication shall be deemed an invitation for offers. Upon listing the Object the Seller states the duration of the listing of the Object on the Surplex-Platform. The Seller shall have the possibility to rescind its invitation at any time without liability.

47.2 The offer (bid) declared online by the Buyer shall be binding. With the bid, the Buyer shall indicate a date and time until which it intends to be bound to its offer. Especially if the bid is below the starting price. If the Buyer's bid is below the starting price, the Buyer will be notified about the starting price. If price expectations between Buyer and Seller differ, a Surplex-Employee may try to negotiate a sales contract via contacting Buyer and Seller. In that case Surplex shall be entitled to demand an additional commission (buyer's commission) from the buyer. With respect to such offer Surplex shall be deemed to act as messenger for the Buyer and receiver for the

Seller.

47.3 The Contract of Sale shall be deemed made if the Seller accepts the offer of a Buyer online within the acceptance period. With respect to such acceptance Surplex shall be deemed to act as messenger for the Seller and receiver for the Buyer. The Seller shall decide at its own discretion which offer it shall accept; the offer chosen must not necessarily be the highest. If the Seller has declared its acceptance, Surplex shall provide the Buyers contact data. Surplex shall inform such Buyer of the delivery of its contact data. Surplex shall notify the Buyer of the Seller's contact data. Upon the Seller's acceptance, the commitment of other users having made offers shall lapse. Surplex shall inform such other users of the lapse of their commitment.

48. Want Ads: - cancelled -

C. The following special conditions shall apply to Commission Agreements. In addition, the terms of Parts B and A shall apply as supplementary provisions:

C.1 Sales Commission Agreement

49. Sales Commission Agreement:

Upon acceptance of the order of a Customer wanting to commission Surplex to sell (also by way of an auction) an Object in its own name but on the Customer's account, a sales commission agreement shall be deemed made between the Customer as the Principal and Surplex as Commission Agent subject to the following conditions.

50. Property, Insurance, Confidentiality:

Until its sale, the Object shall remain the property of the Customer. The Customer shall insure the Object against fire, other damage and theft. If specifically agreed, Surplex shall keep the Customer's identity confidential vis-à-vis interested Buyers.

51. Inspection.

The Customer shall permit the inspection of the Object by Surplex and by interested Buyers named by Surplex. Interested Buyers shall agree with the Customer on the time and the modalities of the inspection and, if applicable, on the disassembly of the Object and observe any security regulations which may prevail on the Customer's premises. This shall apply also to inspections by Surplex employees.

52. Additional Offers:

The Customer shall refrain from offering the Object for sale elsewhere for the duration of the Contract..

53. Right to Purchase:

Surplex shall be entitled to purchase the Object itself (see § 400 of the German Commercial Code), even if the Object has no stock exchange or market value, provided Surplex proves the justification of the purchase price paid by it, unless the Seller waives such proof.

54. Delivery:

Surplex will agree with the Buyer that the Buyer shall pick up and disassemble the Object at its own expense and risk.

55. Defects:

Surplex will not grant the Buyer any rights regarding possible Defects which go beyond the Buyers' statutory rights, unless the Customer has specifically agreed so. The Customer shall hold Surplex harmless upon its first demand from all claims of the Buyer which are based on alleged Defects.

56. Purchase Price:

Surplex shall be entitled to agree to payment terms of up to three months. Surplex shall not be permitted to agree on a purchase price below the minimum price, if any, without the Customer's approval. Surplex shall assume no liability for the creditworthiness of the Buyer (no del credere).

57. Collection, Set-off:

Surplex shall be entitled to collect the claim to the purchase price and set it off against its commission claim.

58. Commission:

Surplex shall receive a commission at the percentage rate set out in the Contract. The basis for calculation of the commission shall be the net purchase price, i.e. the purchase price excluding disassembly, transport, insurance and other costs and value added tax. The commission shall be subject to the statutory value added tax. Surplex' claims to reimbursement of expenses shall be determined by the statutory rules (sec. 670, 675 of the German Civil Code and sec. 393 subsec. 2 of the German Commercial Code).

59. Invoicing:

Surplex shall account to the Customer within one month of receipt of the purchase price and shall pay the purchase price less the commission to the Customer.

C.2 Purchase Commission Agreement

60. Purchase Commission Agreement:

Upon acceptance of the order of a Customer (Principal) wanting to commission Surplex (commission agent) to purchase an Object in its own name, but on the Customer's account, a Purchase Commission Agreement shall be deemed made which is subject to the following conditions. In addition, Parts B and A of these Surplex-Conditions shall apply.

61. Performance:

61.1 Surplex shall attempt to locate an Object for purchase corresponding to the specifications contained in the Commission Agreement and shall buy such Object in its own name, but on the Customer's account. If a maximum price has been specifically agreed, Surplex shall not be permitted to purchase the Object for a higher price without the Customer's authorization.

61.2 Surplex shall inspect the Object for purchase and shall, if requested, arrange

for the disassembly and transport of the Object to the Customer at the Customer's costs. The assembly of the Object on the Customer's premises as well as the assertion of claims based on Defects shall be the Customer's responsibility.

61.3 For the duration of the Contract, the Customer shall refrain from making it known elsewhere that it desires to buy the Object concerned.

61.4 Surplex shall be entitled to supply the Object for purchase from its own inventory (see § 400 of the German Commercial Code) even if it has no stock exchange or market price, provided Surplex proves the justification of the purchase price for the Object delivered by it to the Customer unless the Customer waives such proof.

61.5 Surplex shall receive a commission at the percentage rate set in the Contract. The basis for calculation of the commission is the net purchase price, i.e. the purchase price not including disassembly, transport, insurance and other costs and without value added tax. The commission shall be subject to the statutory value added tax. Surplex' claims to reimbursement of expenses shall be determined by the statutory rules (sec. 670, 675 of the German Civil Code and sec. 393 subsec. 2 of the German Commercial Code).

D. The following special conditions shall be valid for Purchase Agreements.

In addition, the terms of Parts C, B and A shall apply as supplementary provisions.

D.1 Surplex as Seller

62. Purchase Agreement:

When Surplex accepts the order of a Customer who wants to purchase an Object from Surplex, a Purchase Agreement is concluded between the Customer and Surplex pursuant to these Surplex-Conditions. Surplex shall reserve itself a period of two weeks for acceptance of the order.

63. Cost Estimates shall be non-binding and shall contain only requests for orders by the Customer.

64. Delivery Terms:

All deliveries of Objects shall be made ex works from the relevant location. The prices quoted by Surplex shall be understood accordingly.

65. Delivery dates shall only be binding if they are confirmed in writing. Their observance shall require the fulfillment of all delivery terms by the Customer. Fixed date transactions shall require explicit confirmation.

66. Partial deliveries shall be permitted.

67. Every delivery shall be made subject to correct and timely self-supply of Surplex by its suppliers. If the Customer knows or if it is apparent to the Customer from the circumstances that Surplex, in order to deliver the Object to the Customer, has to purchase such Object itself, Surplex shall have a right to withdraw from the Purchase Agreement if Surplex does not, not timely or not correctly receive the

Object from its supplier.

68. Defects:

68.1 Surplex shall assume no liability for material defects (Sachmängel) of Objects which are used or not newly produced.

68.2 The Customer's statutory remedies ("Warranty Claims") for defects of an Object, including material defects and/or any violation of rights of third parties (collectively "Defects") shall be limited as set forth hereinafter:

Whether or not the Contract is a commercial transaction, the Customer shall be responsible to inspect the Objects and to notify Surplex of any defects thereof without delay, as provided under commercial law, failing which the Defect concerned shall be deemed accepted. Warranty Claims shall be limited to performance (Nacherfüllung). However, the Customer reserves the right to request a reduction of the purchase price or to withdraw from the purchase agreement if the performance fails. Surplex reserves the right to choose the type of performance; such right shall pass to the Customer only if Surplex is in default of performance. Surplex shall not be deemed to have guaranteed certain specifications or other properties of the Objects except if it has expressly confirmed such guarantee. A manufactured warranty issued with any Object shall not be deemed a guarantee of certain properties unless expressly stated otherwise.

68.3 Any Warranty Claims shall be excluded if (a) the Object deviates from the agreed specifications or the Defect in question limits the suitability of the Object for the agreed purpose to a negligible degree only or (b) the Defect in question is due (i) to use of the Object for any purpose other than the contractual purpose or in violation of the relevant statutory requirements and/or any guidelines issued by the manufacturer or (ii) to modification of the Object without the prior approval of Surplex or to use of the Object in conjunction with other product not specifically approved by Surplex. Any Warranty Claims for violation of third-party rights shall be excluded unless such third-party rights are valid within the European Union or Switzerland and the Customer enables Surplex to conduct the defense alone without any restriction and grants to Surplex the necessary powers. If the Customer resells the Objects, any rights to take recourse shall be excluded except if and to the extent that the Customer proves that the Objects supplied by Surplex for resale and giving rise to such recourse shall have been shipped to the Customer's clients in the order in which they shall have been received by the Customer (FIFO).

69. Limitation Period:

Any claims based on Defects shall be subject to a limitation period of twelve months for newly produced Objects. Any claims based on a violation of rights of third parties (Rechtsmängel) shall be subject to a limitation period of six months for used or not newly produced Objects. Any claims which are based either on gross negligence or willful misconduct or on bodily injury or damage to the health of a person caused by negligence or willful misconduct shall be subject to the applicable statutory limitation periods. The limitation periods shall begin on the date specified by the statute.

70. Retention of Title:

Until payment in full of all outstanding amounts by the Customer, Surplex shall retain

title to the Objects. The Customer shall advise Surplex without any delay of any attachments of any such Objects, in particular of any judicial execution measures or any other seizures, as well as of any damage suffered by such Objects. In the event that any Object is located in or shipped to a country where this Retention of Title Clause is not fully valid and enforceable, the Customer shall provide Surplex with equivalent security.

71. Export: The Customer shall refrain from exporting any Object and technical information received from Surplex to the extent this is prohibited by the relevant laws or regulations of its country of residence and/or of the United States of America, and shall impose such obligation also on its customers, without prejudice to the other provisions of the Contract or these Surplex-Conditions.

72. The terms of this section D.1 shall apply mutatis mutandis to Contract of Sales between a Seller named by Surplex and the Customer.

D.2 Surplex as Buyer

73. Sales Agreement: When Surplex accepts the order of a Customer intending to sell an Object to Surplex, a Sales Agreement shall be deemed made between the Customer and Surplex pursuant to these Surplex-Conditions. Surplex reserves two weeks for acceptance of the order.

74. The payment of the purchase price by Surplex shall be subject to the condition of full and timely payment of the resale price to Surplex from its resale purchaser. If the Customer knows or if it is apparent to the Customer that the Object is to be resold by Surplex to a resale purchaser, Surplex shall have a right to withdraw from the Purchase Agreement if Surplex does not, not timely or not fully receive the purchase price from the resale purchaser.

75. The liability of the Seller shall be subject to the statutory regulations.

76. Surplex shall be entitled to deal with the Object as it sees fit in its discretion, in particular it shall be entitled to resell the Object.

77. The deadline for a notice of defects which may be required under commercial law shall be two weeks from discovery of the defect. In the case of an apparent defect, the deadline for the notice of defect shall be two weeks from delivery.

Duesseldorf, Februar 2006.



Surplex Price List

For completed services for Online Brokerage Agreements (Terms & Conditions Section B2) the following conditions apply. For all other services the separately agreed to conditions for each service shall apply.

B.2 Online Brokerage

(1) The services offered by Surplex are free of charge for the purchase. This is not the case, if for sales specific terms and conditions are listed. The terms and conditions would be shown together with the sale.

(2) If the seller chooses one of the sale models defined in Articles 45 or 47, he must pay a remuneration to Surplex of an amount determined by the sum of the selling price agreed between the seller and the buyer (exclusive value added tax). The remuneration amounts to

- 10% of a selling price up to EUR 50,000;
- 9% of a selling price from EUR 50,001 to EUR 100,000;
- 8% of a selling price from EUR 100,001 to EUR 250,000;
- 7% of a selling price from EUR 250,001 to EUR 500,000;
- 6% of a selling price from EUR 500,001 upwards

plus the statutory VAT applicable at the time of invoicing. This remuneration applies for exclusive use of the online marketplace only (without additional services from Surplex).

(3) The duty to pay remuneration arises when Surplex has successfully sent a declaration of acceptance by the seller/purchaser to the other party and the contract of sale has thereby come into being. The duty to pay remuneration also arises if the seller concludes an agreement with a user of Surplex regarding the item for sale outside the platform.

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