

## **HIRSCHMANN CAR COMMUNICATION GMBH GENERAL TERMS AND CONDITIONS OF DELIVERY**

### **1 Area of Application, Form**

- 1.1 These General Terms and Conditions of Delivery (hereinafter referred to as “*Terms and Conditions*”) shall apply to all sales, deliveries, and other services (collectively also referred to as “*Deliveries*”) provided by Hirschmann Car Communication GmbH (hereinafter referred to as “*we*,” “*us*,” or “*our*”). Terms and conditions of business of the business partner (hereinafter referred to as “*Customer*”) deviating from or contradicting to our Terms and Conditions are not binding on us, unless we have expressly agreed to their validity in writing. Our Terms and Conditions will also be applicable if we perform delivery to the Customer unconditionally, having knowledge of terms and conditions of the Customer that conflict with or deviate from our Terms and Conditions.
- 1.2 These Terms and Conditions shall also apply in their currently valid version for future business with the Customer, even if no further reference is made to them at the time when concluding such business transactions.
- 1.3 They apply only to Customers who are entrepreneurs (§ 14 Bürgerliches Gesetzbuch (*BGB*-German Civil Code) , legal persons under public law and special funds under public law.
- 1.4 Subsidiary agreements, amendments and additions to the contract or these Terms and Conditions are valid only if they are agreed at least in text form with us.

### **2 Offers, Offer Documentation**

- 2.1 Our offers are always subject to change, in particular with regard to quantity, price and delivery time, unless they are expressly designated as binding.
- 2.2 The Customer's order is deemed to be a legally binding offer to conclude a contract. Orders include both delivery call-offs by remote data transmission or Electronic Data Interchange (“*EDI*”) and individual orders placed by other means, regardless of their form. The Customer shall be bound to his orders for at least six (6) weeks (“*Binding Period*”). Quantities and deadlines specified in the order are binding for the Customer. Sections 2.13 et. seq. shall apply to any subsequent changes to the quantities and dates specified in the order. Section 2.3 shall apply to delivery call-offs.
- 2.3. In the case of orders by means of delivery call-offs, the Customer undertakes to provide us with a rolling delivery plan (“*Forecast*”) over a period of at least twelve (12) months. This Forecast is updated monthly (or more frequently) and serves the purpose of long-term planning and ensuring the ability to deliver. An unchangeable period (“*Frozen Period*”) of six (6) weeks applies within the Forecast period. Orders with delivery times within this Frozen Period are binding orders for which there is an obligation to take delivery. They cannot be cancelled or changed by the Customer. Orders with delivery times outside the Frozen Period can be adjusted within the framework of the Forecast. We will react flexibly to changes within the scope of our possibilities in order to ensure a continuous supply. If the Customer cancels or changes orders within the Frozen Period, he shall bear the resulting costs and shall be liable for any damages incurred by us.

2.4 The contract is concluded by

- a. our confirmation of an order placed by the Customer (hereinafter: "*Order Confirmation*"),
- b. our notification of dispatch (hereinafter: "*Shipping Confirmation*"),
- c. the execution or production of the order in the case of a purchase of work or contract for work and services,
- d. invoicing the Customer or a person designated by the Customer or
- e. the dispatch of the order to the customer or a person designated by the Customer.

The content of the Order Confirmation is decisive for the content of the contract. If the Order Confirmation deviates from the Customer's order, it shall nevertheless be authoritative if the Customer accepts our Deliveries without reservation or performs without reservation.

2.5 Our Order and Shipping Confirmations must at least be in text form, including transmission or confirmation by e-mail or remote data transmission or EDI. In case of doubt, if we do not reply to an order, the order can be considered to be rejected.

2.6. Delivery, execution or production dates or deadlines are non-binding and do not become part of the contract or the basis of the contract, unless they are expressly defined as binding in our Order Confirmation or a framework supply agreement.

2.7 The nature and, in particular, the scope and quality of the Deliveries, are governed by the mutual declarations of the parties in accordance with Sections 2.1 to 2.4 (hereinafter: "*Agreed Nature*"). Other information (e.g. in brochures), characteristics or statements shall only become part of the contract if we confirm them in the Order or Shipping Confirmation. Objective quality or usage requirements shall not become part of the contract.

2.8 We reserve ownership rights and copyright to all documents supplied to the Customer in connection with the contract, such as such as cost estimates, illustrations, drawings, calculations, etc. (hereinafter: "*Documents*"). The Documents may be disclosed to third parties only with our prior consent and are to be returned to us immediately upon request or if the contract is not concluded.

2.9 The Customer will have a non-exclusive right to use of software and proprietary firmware with the agreed performance parameters in an unaltered form and on the agreed devices. Without express agreement, the Customer may not create backup or other copies of the software or firmware, pass the software or firmware on to third parties, grant sublicenses or use the software or firmware in any way other than that provided for in the contract. This shall also apply if the Customer bears all or part of the costs for the development of the software or firmware.

2.10. For goods with digital elements or other digital content, we shall only be obliged to provide and, if applicable, update the digital content (hereinafter referred to as "*Update Obligation*") for software and firmware created by us insofar and to the extent that this has been expressly agreed. In this respect, we assume no liability for public statements made by the manufacturer, Customer and other third parties. In addition, the application of § 445a BGB is excluded after the expiry of five years from delivery if the Customer has an Update Obligation in accordance with § 475 b (4) No. 2 BGB, unless this exclusion results in a restriction of use of the goods delivered by us (in the following "*Delivery Item*") that is not only insignificant in accordance with § 475 b (4) No. 2 BGB.

- 2.11. When installing the Delivery Item in its own products or when reselling the Delivery Item, the Customer is obliged to limit its Update Obligation its customer to the legally permissible minimum. If the Customer fails to set such a limit, the application of § 445a BGB is excluded in its entirety after five years from delivery if the Customer has an Update Obligation in accordance with § 475 b para. 4 no. 2 BGB.
- 2.12. The assumption of research or development costs by the Customer shall not result in the Customer acquiring ownership or rights to the research or development results or to documents relating to them or to know-how or other knowledge relating to them, unless the parties expressly agree that the Customer should acquire ownership or certain, specifically named rights.
- 2.13. Any changes requested by the Customer after placing an order during the Binding Period pursuant to Section 2.2, the Frozen Period pursuant to clause 2.3 or after the contract has been concluded pursuant to Section 2.4 are subject to a charge and require our express confirmation, at least in text form. This applies in particular, but not exclusively, to changes to quantities, quality, specifications, the manner and time of delivery, the delivery route, or materials and components used in the Deliveries. Upon confirmation if the Customer's change requests, we are entitled to increase the price for the Deliveries. If the Customer considers the price increase to be unreasonable, he shall substantiate this and provide evidence of the unreasonableness.
- 2.14. Any change as defined in Section 2.13 is excluded if (i) we have already purchased materials or components for the Deliveries, or (ii) orders for such items can no longer be cancelled, or (iii) the Deliveries or parts thereof have already been shipped or provided.
- 2.15. We reserve the right to make changes in the delivery, design or production, as well as in the intended materials or components - including those that have become part of the contract - insofar as these are technically or economically expedient or necessary or are based on official requirements. However, such changes may not have a negative effect on the value or use of the Deliveries and must be reasonable for the Customer. In the event of effects on the price, changes must be agreed with the Customer. Objective quality or usage requirements shall not become part of the contract as a result.
- 2.16. Standard products that are not customized for the Customer or manufactured based on the Customer's specifications (hereinafter "*Off-the-Shelf Products*") may be changed or discontinued at any time. A manufacturing or delivery obligation beyond the end of a delivery or production period stipulated in a framework supply agreement (hereinafter "*End of Production*") is explicitly excluded. Customers who regularly purchase Off-the-Shelf Products from us will be informed before these products are modified or discontinued. The Customer cannot assert any rights due to failure to provide such information.

### **3 Prices and Terms and Conditions of Payment**

- 3.1 Unless stated otherwise in the Order Confirmation, our prices will be ex works (EXW in accordance with Incoterms 2020) excluding packing costs. The applicable statutory value-added or sales tax is not included in the price and will be shown separately in the invoice.
- 3.2 Payments are to be made free of transaction charges to our designated accounts. Discounts can be deducted only upon special written agreement.

- 3.3 The Customer may only offset against receivables that are undisputed or recognized by us, or that have been legally established.
- 3.4 The Customer can assert a right of retention only on the basis of counterclaims resulting from the same contract. A right of retention of personal data received from us is excluded.
- 3.5 Unless the parties have agreed differently, the net price (without deductions) will be due for payment within 30 days of the invoice date. In case of delayed payment, all legal consequences of default shall apply without the necessity of a specific reminder.
- 3.6 We may reasonably adjust the price if and to the extent that our costs change (in particular in the event of changes in wages, materials, energy, and transport costs) for supplies, which take place in whole or in part 3 months or later after conclusion of the contract.
- 3.7 If the Customer does not make any payments at maturity, we can suspend ongoing Deliveries request immediate advance payments for all Deliveries, including those not yet completed, or demand a corresponding security. If the Customer does not comply with our request for advance payment or for payment of a security deposit within a reasonable time, we will be entitled to withdraw from the contract and to invoice the Customer for the costs incurred until that point.
- 3.8 Payments can only be made to representatives or agents with the effect of discharging the obligation if they have written authorization to collect.

#### **4 Deliveries, Delivery Times**

- 4.1 Partial deliveries are permissible. The Customer can only reject partial deliveries, if, in exceptional cases, they are unreasonable.
- 4.2 Observance of binding delivery, execution or production dates or deadlines is subject to the clarification of all commercial and technical issues between the contractual parties and the timely and proper fulfilment of the obligations of the Customer, in particular the timely receipt of documentation to be provided by the Customer, necessary permits and approvals, especially plans, and adherence to the agreed payment terms. If these conditions are not met in a timely manner, the deadlines or dates will be extended accordingly. This will not apply if we are responsible for the delay. We reserve the right to assert the defence of non-performance of the contract.
- 4.3 Observance of binding delivery, execution or production deadlines or periods is subject to correct and punctual supply to us. We will inform the Customer as soon as possible of any foreseeable delays.
- 4.4 If required, a delivery may only be made with a valid export license. The absence of an export license and/or the presence of other export barriers, which are not due to circumstances for which we are responsible, will not result in a delayed delivery.
- 4.5 If the non-observance of dates or deadlines is due to force majeure, such as natural disasters, epidemics, mobilization, war, riots, or similar events, such as strikes, lockouts, seizure or embargoes, the dates or deadlines will be extended accordingly.

- 4.6 If the Customer delays acceptance or culpably violates other cooperation obligations, we will be entitled to claim compensation for the damage incurred by us as a result, including any additional expenses. The right to assert further claims or rights is reserved.
- 4.7 If the conditions given under Section 4.6 are in place, the risk of accidental loss or accidental deterioration to the item will be transferred to the Customer at the time when his delay of acceptance or payment began.
- 4.8 If we are in delay, the Customer may - provided he can prove that he suffered damage as a result - demand compensation for every completed week of delay in the amount of 0.5%, however not in excess of 5% of the price of that portion of the Deliveries, which could not be put into useful operation as a result of the delay. If we are able to prove that the damage caused to the Customer by delay is less than the stated compensation for the delay, we will only be obliged to pay the damages that were actually incurred.
- 4.9 The possibility of claims for compensation on the part of the Customer as a result of the delay in delivery and of claims for damages instead of performance, which exceed the limits stated in Section 4.8 is excluded, even after the expiry of any deadline set for delivery - subject to Section 11.
- 4.10 The Customer may withdraw from the contract as part of the statutory provisions only if we are responsible for the delay in delivery. A change in the burden of proof to the detriment of the Customer is not associated with the aforementioned regulations.
- 4.11 At our request, the Customer will be obliged to state within an appropriate period whether he will withdraw from the contract as a result of the delay in the delivery or insist on performance.
- 4.12 If dispatch or delivery is delayed at the Customer's request for more than one month after notification of readiness for shipment, the Customer may be charged, for every month commenced, storage costs of 0.5% of the price of delivery items, up to a maximum, however, of 5%. The contractual parties will remain free to provide proof of higher or lower storage costs.
- 4.13 If, in accordance with Section 2.13, the Customer requests a delivery method other than the one we have specified or the one that has been agreed (e.g. alternative means of transport, different delivery location) or delivery to other third parties specified by the Customer, the Customer shall bear all costs incurred as a result. This also includes actual expenses incurred by us as a result of or in connection with the change. The Customer is obliged to explain and prove that the costs claimed by us have not been incurred as a result of or in connection with the change.

## **5 Transfer of Risk**

- 5.1 The risk will be transferred to the Customer even in the case of deliveries with freight paid if the Deliveries have been dispatched or picked up. At the request and expense of the Customer, Deliveries are insured against the usual transport risks.
- 5.2 If the shipment or delivery is delayed for reasons that are the fault of the Customer or if the Customer delays acceptance for other reasons, the risk is transferred to the Customer.

## **6 Reservation of Title**

- 6.1 We will make deliveries only on the basis of the reservation of title described in the following. This also applies to all future deliveries, even if we do not expressly refer to it again.
- 6.2 The Delivery Items (goods subject to retention of title – “*Reserved Goods*”) will remain our property until the fulfilment of all claims to which we are entitled against the Customer within the business relationship. If the realizable value of all security rights, to which we are entitled, exceeds the level of all secured claims by more than 10%, at the request of the Customer, we will release a corresponding part of the security rights; we will have the right to choose between different security rights with regard to the release.
- 6.3 The Customer will be obliged to treat the Reserved Goods with care until ownership is transferred to him; in particular with regard to high-value goods, the Customer will be obliged to insure them at his own expense against fire, water damage, and theft. If maintenance and inspection work is required, the Customer must perform this in a timely manner at his own expense.
- 6.4 During the period of retention of title, the Customer may not perform a pledge or assignment as security and resale will only be permitted for resellers during the normal course of business. The Customer hereby assigns to us all claims in the amount of the final invoice agreed with us (including sales tax/VAT), which he incurs against his consumers or third parties, irrespective of whether the Reserved Goods was resold without processing or after processing. The Customer is revocably authorized to collect these receivables. The Customer will be obliged, upon request from us, to notify us of the name of the third-party debtor and to provide us with all other information and documentation in order to enable us to realise the assigned receivables.
- 6.5 The processing or transformation or reorganization of the Reserved Goods is always performed for us (§ 950 BGB). In case of processing, installation and mixing with other items that do not belong to us, we will acquire joint ownership of the new item in line with the ratio between the value of our items (total invoice amount including sales tax/VAT) and these other mixed items at the time when the processing, installation, or mixing occurred. Otherwise, the same will apply to the item created through processing as for the goods delivered with reservation of title. If the mixing is performed in such a way that the Customer's item is to be regarded as the main item, it is considered agreed that the Customer has transferred proportional joint ownership to us. The Customer holds the sole or joint ownership created in this way on our behalf. The Customer also assigns to us the claims to securing our claims against him that arise against a third party as a result of the connecting of the Reserved Goods with a piece of real estate property.
- 6.6 As long as ownership has not yet been transferred, the Customer must notify us immediately in writing if the Delivery Item is pledged or is exposed to other third party interventions. If the third party is unable to reimburse us for the judicial and extrajudicial costs of a claim in accordance with §771 Zivilprozessordnung (ZPO- German Code of Civil Procedure), the Customer will be liable for the loss we have incurred.
- 6.7 In case of breach of contract, especially default of payment, we will be entitled to repossess the goods, the Customer will be obliged to surrender them. This will also apply if the Delivery Item is already installed on the Customer's premises. After the withdrawal of the goods, we are authorized to exploit them; the proceeds of the exploitation are to be credited against the Customer's liabilities. All costs of repossession and of the exploitation of the goods, including

reasonable exploitation costs will be borne by the Customer. In the case of repossession or enforcement of the reservation of title, or the pledging of the Reserved Goods by us, there will be no withdrawal from the contract unless we have stated this expressly.

- 6.8 In case of goods deliveries in other legal jurisdictions in which the retention of ownership clause in accordance with Sections 6.2 to 6.7 does not have the same effect of providing security as in the Federal Republic of Germany, the Customer hereby grants a corresponding security interest. If further declarations or actions are necessary for this purpose, the Customer will submit these declarations and take these actions. The Customer will participate in all measures that are necessary and beneficial with regard to the validity and enforceability of security rights of this kind.

## **7 Receipt / Acceptance**

The Customer may not refuse to receive deliveries or to accept services due to minor defects.

## **8 Material Defects**

- 8.1. The Delivery Item is free of material defects if it correspond to the Agreed Nature within the meaning of Section 2.7 upon delivery.
- 8.2 Insofar as the nature has not been agreed, the statutory regulation shall be used to assess whether or not a defect is present. In this case, our public statements take precedence over the public statements of our supplier or the manufacturer of a (partial) item or public statements on their behalf. Public statements by our supplier or the manufacturer of a (partial) item or public statements on their behalf in turn take precedence over public statements by other third parties.
- 8.3. We are liable for material defects of the Deliveries or a partial delivery, to the exclusion of further claims - subject to Section 11 – according to Sections 8.4. to 8.11.
- 8.4 Customer's claims based on material defects require that he has properly complied with his inspection and notification obligations in accordance with § 377 Handelsgesetzbuch (HGB-German Commercial Code).
- 8.5 If, despite all of the care taken, there is a defect in the Deliveries, which was already there at the time of the transfer of risk, the Customer can request subsequent performance within an appropriate period of time, subject to a timely complaint.
- 8.6 We may choose the type of subsequent performance (delivery of a new item free of defects (hereinafter: "*Replacement Delivery*") or rectification of defects). We may refuse to rectify the defect if this involves a disproportionate effort.
- 8.7 If the rectification of defects fails or if we refuse to do so, the Customer may demand a Replacement Delivery.
- 8.8. Claims to recourse will remain unaffected without limitation by the aforementioned provision.
- 8.9 In the case of subsequent performance, claims by the Customer as a result of expenses necessary for the purposes of subsequent performance, in particular transportation, travel, labour, and material costs are excluded, if these increase as a result of the fact that the



Delivery Item was delivered to a place other than the place of performance unless the performance corresponds to its intended use.

- 8.10 There will be no claims for defects in case of only minor deviations from the Agreed Nature, in case of only minor impairment of usefulness, of natural wear and tear or damage arising after the transfer of risk as a result of the breach of operation, maintenance, and installation instructions, improper or incorrect use, faulty or negligent treatment, excessive strain, unsuitable equipment, defective workmanship, inappropriate foundation soil, or from particular external influences which are not provided for under the contract, as well as non-reproducible software errors. If the Customer or third party made inappropriate changes or performed improper maintenance work on the Deliveries, there will also be no claims for defects for these and the consequences either. The Customer shall be obliged to demonstrate and prove that deviations are not insignificant.
- 8.11 Claims to recourse by the Customer against us in accordance with § 478 BGB will exist only insofar as the Customer has not entered into agreements with his Customer beyond the legally required claims for defects. In addition, Section 8.9 will apply accordingly with regard to the scope of the claim to recourse against us in accordance with § 478 para. 2 BGB.

## **9 Intellectual Property Rights and Defects of Title**

- 9.1 For legal defects in the Deliveries, we will be liable to the exclusion of further claims - subject to Section 11 - as follows:
- 9.2 Unless otherwise agreed, we will be obliged to perform the Deliveries only in the country of the place of delivery free from third party intellectual property rights and copyrights (hereinafter: "*Property Rights*").
- 9.3 If the use of the Delivery Item in accordance with the contract leads to the infringement of Property Rights, we will in principle grant the Customer the right to continued use at our expense or modify the Deliveries in a manner that is reasonable for the Customer so that the Property Rights infringement no longer exists. If this is not possible under suitable economic conditions or within a reasonable period of time, the Customer will be entitled to withdraw from the contract or to decrease the price. Under these conditions, we will also have a right to withdraw from the contract. In addition, we will release the Customer from uncontested or legally established claims by the holders of the Property Rights in question.
- 9.4 Our obligations stated in Section 9.3 are - subject to Section 11 - exhaustive for the case of breach of Property Rights. They will exist only if:
- a) The Customer immediately informs us in writing of breaches of Property Rights asserted against us;
  - b) The Customer supports us to an appropriate extent in the defence of the asserted claims or enables us to perform the modification measures in accordance with Section 9.3;
  - c) The Customer does not acknowledge the breach and reserves the right to all defence measures including out-of-court settlements. If the Customer cancels the use of the Deliveries for reasons of decreasing damage or on other important grounds, he is obliged to notify the third party that the cancellation of use is not associated with a recognition of an infringement of Property Rights.



- d) we are responsible for the defect;
- e) The legal infringement was not caused by special regulations on the part of the Customer, by an application that could not be foreseen by us, or as a result of the fact that the Deliveries were modified by the Customer, or were used together with products not supplied by us.

## **10 Impossibility, Adjustment of Contract**

- 10.1 If delivery is impossible, the Customer will be entitled to claim damages if we are responsible for the impossibility. However, the claim to compensation for damage by the Customer is limited - subject to Section 11 - to 10% of the value of the portion of the Deliveries, which cannot be put into useful operation as a result of the impossibility. The Customer's right to withdraw from the contract remains unaffected.
- 10.2 If unforeseeable events take place as defined in Section 4.5, the economic importance or the content of the Deliveries is significantly altered or have a significant effect on our operations, the contract will be adjusted appropriately in good faith. If this is not economically justifiable, we will have the right to withdraw from the contract. If we want to exercise this right of withdrawal, we must inform the Customer of this immediately after realizing the significance of the event even if an extension of the delivery time was initially agreed with the Customer. The Customer is obliged to demonstrate and prove that adjustments are not appropriate.

## **11 Liability, Limitation Period**

- 11.1 Unless otherwise agreed in the following, any liability in excess of Sections 4, and 8 to 10 is excluded. This also applies if the Customer requires the payment of useless expenses instead of a claim to compensation for damages in lieu of performance.
- 11.2 For damage, irrespective of the legal grounds, we will only be liable:
- a) In case of intent,
  - b) In case of gross negligence,
  - c) In case of culpable injury to life, body, or health,
  - d) In case of fraudulent concealment of defects,
  - e) As part of a guarantee commitment,
  - f) In case of defects in the Delivery Item insofar as liability is mandatory under the Product Liability Act for personal injury or property damage.
- 11.3 In case of culpable violation of fundamental contractual obligations and grossly negligent breach of contract our liability is limited to foreseeable, typically occurring damage.
- 11.4 As far as the liability to pay compensation for damages to us is excluded or limited, this will also apply to the liability of our employees, representatives, or vicarious agents.

- 11.5 All claims by the Customer - for whatever legal reason - become statute-barred 12 months after the transfer of risk. The same will apply to claims by the Customer in connection with measures for the prevention of damage (e.g. recall campaigns). For claims for compensation for damage in accordance with 11.2 a) to d) and f), the statutory limitation provisions will apply. Furthermore, the statutory limitation periods in accordance with § 438 Para. 1 No. 2 BGB (buildings and building items), § 479 Para. 1 BGB (claim to recourse) and § 634a Para. 1 BGB (building defects) will apply.
- 11.6 We are only obliged to provide Replacement Deliveries or spare parts in the absence of a defect if and insofar as this has been agreed in an individual contract.

## **12 Export Control Clause**

- 12.1 The Customer undertakes to comply with all applicable German, European, and international export control and sanctions regulations (including, but not limited to, the regulations of the European Union, the German Foreign Trade Act, as well as the regulations of the USA and the People's Republic of China, to the extent applicable) when exporting, re-exporting, re-transferring, or otherwise disposing of goods, services, technologies, or software delivered or made accessible under contractual agreements based on these Terms and Conditions.
- 12.2 The Customer is solely responsible for obtaining all necessary permits, licenses, or approvals for such transactions. The Customer shall indemnify and hold harmless us against all claims, losses, damages, fines, or other liabilities resulting from the Customer's or its agents' non-compliance with these export control obligations.

## **13 General Provisions**

- 12.1 In the event that individual provisions of these Terms and Conditions and further agreements entered into are or become invalid, the validity of the Terms and Conditions will otherwise remain unaffected. The contracting parties will be obliged to replace the ineffective provision with an effective provision that comes as close as possible to being equivalent with regard to economic success.
- 12.2 The exclusive place of jurisdiction for all disputes arising directly or indirectly out of contractual relationships based on these Terms and Conditions shall be the court with jurisdiction over our registered office ("Sitz"). We are also entitled to bring a action against the Customer in his place of general jurisdiction.
- 12.3 Unless the Order Confirmation states otherwise, our registered office will be the place of performance.
- 12.4 The law of the Federal Republic of Germany will apply exclusively to all legal relationships between the Customer and us; the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the conflict of laws (international private law) will not apply. INCOTERMS 2020 will apply with regard to the interpretation of delivery clauses.

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