

GENERAL TERMS AND CONDITIONS OF TRADE



GENERAL

All our deliveries are exclusively subject to these conditions of sale. Client accepts these conditions when he accepts our offer, even if they contradict his own terms and conditions completely or in part. If Client does not wish to accept our conditions, he must reject our offer. If Client purchases software from BAB Distribution GmbH (operating systems or similar programs), then the object of this agreement shall be the computer program recorded on the data storage medium, the description of the program, the handbook and any other written material belonging to the software. All these are referred to below as software.

§1 ORDER PLACEMENT

Our offers are subject to change without notice. We can accept Client's orders and material orders by means of notifications expressly in writing, by facsimile, verbally, by phone or by the direct dispatch of the goods within a period of eight days. We are entitled to withdraw from the contract if there is a significant deterioration in Purchaser's economic position, if he has applied for bankruptcy or composition proceedings or if the contractual partner defaults on the payment of a delivery.

§2 SHIPMENT

Receiver shall bear the transport risks, even in the case of carriage-paid deliveries. We reserve the right to decide on the type of shipment (transport route). Unless Client expressly declares otherwise in writing, we will compulsorily insure the goods for purposes of transportation. We must be notified immediately of any damage occurring during transport or of any losses. Buyer is obliged to accept partial shipments without his having given his express consent beforehand.

§3A WARRANTY CONDITIONS FOR ALL COMPUTERS, MONITORS & PRINTERS

The warranty period is 24 months from the time the goods leave our warehouse. Any repairs which are to be made by BAB Distribution GmbH for the trade outside the guarantee period shall be invoiced in accordance with the currently-valid computer price list for repair flat rates. When claiming under warranty, it is essential to enclose, with the defective part, a description of the fault together with details of the model and serial number and a copy of the delivery note or the invoice relating to the part. No new warranty periods shall come into force as a result of a performance under warranty. Wear and tear and the consequences of incorrect storage or use of the products by Client are excluded from the warranty. Our obligation under the warranty expires if Client does not notify us in writing of obvious defects within one week of his receipt of the goods. It is not possible to request a replacement item in advance. Goods must be returned free of charge to us. The obligations of BAB Distribution GmbH under the warranty shall be limited to the improvement of the corresponding product. If the improvement work fails, then a replacement part will be dispatched. Afterwards, Buyer is entitled to an unrestricted right to a price reduction or to convert his order. If Client purchases hardware, operating systems and other software simultaneously, then these shall be considered as having been bought separately.

§3B OTHER WARRANTY CONDITIONS

BAB Distribution GmbH hereby assign their warranty claims towards their supplier to the BAB Distribution GmbH Client. Any warranty claims asserted by Client against BAB Distribution GmbH depend on the prior legal claims of the suppliers of BAB Distribution GmbH. BAB Distribution GmbH are only obliged to satisfy claims under warranty if their claims against their supplier have been unsuccessful.

§3C LIABILITY

Excepted from the above shall be Client's claims for compensation due to culpability when concluding a contract, the violation of secondary contractual obligations arising from a positive contractual infringement, in particular for follow-on damage incurred as a result of a defect unless this is caused deliberately or by gross negligence on our part or on the part of our vicarious agents. Inasmuch as the products concerned are produced by BAB Distribution GmbH, then any claims relating to manufacturer liability shall be excluded if a direct Buyer is affected.

§3D WARRANTY PAYMENT IN LIEU

Any guarantee obligation shall cease to apply if a warranty price markdown has been agreed on the purchase price.

§4 DELIVERY TERM

The delivery term shall commence as soon as agreement has been reached on all contractual conditions and all contractual arrangements have been resolved. Any claims in respect of the failure to keep a delivery deadline shall only be valid if a deadline extension of at least two weeks has been fixed by registered letter and if this extension has not been kept. Any disruptions to operations –irrespective of the area affected and the cause– shall release us from keeping certain agreed delivery deadlines. They represent an entitlement to withdraw from the contract, either completely or in part. Claims for compensation shall be excluded.

§5 PRICES

Prices are subject to change without notice. The basis for the calculation of a particular delivery shall be the latest price list with the proviso that we are entitled, without previous notification, to pass on any price increases which we incur (e.g., as a result of changes in the exchange rate, increases in freight charges etc.). In the case of single orders with a goods value of less than 150 €, a minimum quantity surcharge of 10 € shall apply. All prices are ex-works Löhne plus V.A.T. at the current rate.

§6 PAYMENT

Deliveries shall be either Cash on Delivery or pre-payment without a cash discount. Unless agreed otherwise, the maximum payment term shall be seven days of the invoice date, net, without discount. After this deadline Buyer undertakes, without being reminded, to pay interest on our demand of 5% above the base rate of the German Bundesbank. We reserve the right to claim for further damages as a result of any payment default. Any other agreements must be in writing. If no other payment arrangements are expressly agreed, Seller shall be entitled to collect the purchase price from Buyer by direct debit. Buyer agrees, as of now, to his account being debited by direct debit. Any different agreements must be in writing.

§7 RESERVATION OF TITLE

a) Seller shall retain ownership of the goods until all payment demands of Seller in respect of Buyer from the business transaction have been settled, including any demands arising in the future, even from contracts finalised at the same time or later. The reservation of title shall also apply to the balance agreed inasmuch as any demands towards the contractual partner have been booked on a current account basis (current account retention).

b) In the case of some significant behaviour in violation of the contract, in particular default of payment, BAB Distribution GmbH shall be entitled to take back the item supplied. Buyer is obliged to release the item. Taking back an item delivered does not imply a withdrawal from the contract unless BAB Distribution GmbH have stated this expressly in writing. If the item supplied by BAB Distribution GmbH is impounded, BAB Distribution GmbH must be informed immediately and the person impounding must be told of this so that a court action can be brought in accordance with §771 Code of Civil Procedure (ZPO).

c) The reserved goods must be kept by Client for BAB Distribution GmbH with the diligence of a prudent businessman. The goods must be adequately insured at Buyer's cost against fire, water damage, theft and other liability risks. Client hereby assigns his claims from the insurance contracts to BAB Distribution GmbH. BAB Distribution GmbH accept the assignment.

d) If the purchase price is paid by Buyer by draft or cheque, then this merely represents a payment demand of Seller on the grounds of a draft or cheque. Any reservation of title and any claims from the delivery of the goods or any claims from a prolonged retention of title shall only expire when the draft or cheque has been drawn on Buyer.

e) Buyer shall be entitled to re-sell the reserved goods in the ordinary course of business. Buyer herewith, as of now, assigns to BAB Distribution GmbH all claims which he has against his buyer or a third party from the further sale, irrespective of whether the item supplied has been re-sold with or without a contract. BAB Distribution GmbH hereby accepts the assignment.

f) If reserved goods, either in process or processed, are sold together with items which are the exclusive property of Buyer, then Buyer as of now assigns to Seller his claims for payment in full arising from the re-sale. If a reserved item of Buyer is sold after processing/combining with an item which does not belong to Seller, then Buyer as of now assigns the demands arising from this re-sale to the value of the reserved item along with all subsidiary rights and with priority over all other debts. Seller hereby accepts the assignment.

g) Buyer is empowered to collect this demand even after assignment. The authority of Seller to collect the demand himself shall remain unaffected by this. However, Seller undertakes not to collect the demand as long as Buyer continues to fulfil his obligations to pay and other obligations. Seller can demand that Buyer informs him of the assigned claims and their debtors, that he provides all details necessary for collecting the claim and hands over the relevant documentation, in particular Client materials orders, copies of order confirmations, copies of invoices, and that Buyer informs his debtors of the assignment to BAB Distribution GmbH.

h) Any processing or modifications of reserved goods is always undertaken by Buyer on behalf of Seller. If the reserved item is processed together with items exclusively owned by Buyer or with items in respect of which no prolonged retention of title exists, then Seller shall be entitled to the sole ownership of the new item. If the reserved item is processed with other items not belonging to Seller, then Seller is entitled to part-ownership of the new item in a ratio of the value of the reserved item to the other processed item(s) at the time of processing.

i) If the value of the existing securities exceeds the demands to be secured by more than 15%, Seller is obliged to release the item on demand of Buyer.

j) When you acquire the product, you acquire ownership of the data storage medium together with the program thereon. The software and any descriptions, documentation or other accompanying materials are protected by copyright. Your right of ownership is therefore limited. When you acquire the software, you have the simple and personal right to use the enclosed copy of the software on one single computer (in other words with only one single CPU). You are only permitted to make a back-up copy.

§8 DAMAGES FOR VIOLATION OF CONTRACT

BAB Distribution GmbH would like to make it clear that Buyer is liable for all damage caused by any copyright infringements which Licensor incurs because of Buyer as a result of the violation of these contractual conditions. We would also like to point out that any copying or distribution of the software or the production of a processed or modified version can make you liable to a custodial sentence of one year or a fine.

§9 SOFTWARE WARRANTY

BAB Distribution GmbH warrants that, at the time of handover, the data storage media containing the software is free of defects under normal operating conditions from the point of view of the material used. If the data storage medium should prove faulty, the person acquiring it can demand a replacement during the warranty time of 24 months from the date of delivery. If the replacement is faulty, you can choose between a reduction in the payment or withdrawal from the contract. If any faults occur in the software itself, the person acquiring only has the right of conversion. This right of exclusion shall not extend to any hardware supplied with the software. Claims for damages and replacement for faults, consequential damage and collateral damage can only be granted if the feature itself has been guaranteed and this is fixed in a special written agreement.

§10 EXPORT

Unless we have given our prior written consent, the export of contractual items to countries outside the European Community or the import of contractual items from countries outside the European Union is not permitted. European and/or US export bans must be observed with respect to all exports.

§11 PLACE OF FULFILMENT AND PLACE OF JURISDICTION

The place of fulfilment for all payments and deliveries for both contractual partners is Hüllhorst. The place of jurisdiction is Bad Oeynhausen. If different terms and conditions of trade contain different places of jurisdiction, then Bad Oeynhausen shall be the place of jurisdiction, provided Buyer is a registered trader.

§12 CONCLUDING PROVISION

If any of the above conditions should be legally ineffective, then the contract as a whole shall remain binding. The ineffective condition shall be replaced by an effective condition which comes closest to the ineffective one. With the publication of these terms of trade, all previous conditions become invalid.