

I Contract

- (1) Our offers are non-binding. The documents belonging to the offer such as illustrations, drawings, weights and measurements, are only approximations unless they are explicitly designated as binding.
- (2) A contract shall only be concluded through our order confirmation, which may be in written or electronic form. It is based solely on the following conditions. Verbal agreements are binding only with our written confirmation. This requirement cannot be waived.
- (3) Deviating or supplementary terms and conditions of the buyer shall only become an integral part of the contract if and to the extent that we have expressly agreed to their validity.

II Delivery

- (1) Delivery times are stated in writing, starting with the conclusion of the contract. If additional contract modifications are agreed, the date of delivery shall be agreed again. In case of force majeure or other unforeseen events (strikes, lockouts, delay or failure to receive supplies, etc.) there shall be no default in delivery. If a delivery date or a delivery period has been agreed upon with binding effect and the agreed upon delivery date or the agreed upon delivery period is exceeded, the Customer is entitled to cancel the agreement following the expiration of a reasonable grace period. In cases of creation of custom specific software, the period of grace may not be less than four weeks.
- (2) If the buyer demands delivery after a delay has occurred he can only claim compensation for the damages caused by the delay if it can be proved that the seller acted with intent or gross negligence.
- (3) Observance of the delivery time is subject to the timeliness of the incoming shipment.
- (4) The time of delivery is respected if the goods leave our house at the date of delivery or if we announce readiness for shipment. If an acceptance has to take place, the date of acceptance, or alternatively the notification of readiness for acceptance, shall be decisive except in the case of justified refusal to accept.
- (5) Partial deliveries shall be permissible, as far as reasonable for the customer

III Prices and Terms of Payment

- (1) The prices are net prices without value added tax. All shipping costs, in particular packaging, transport costs and transport insurance, as well as statutory value added tax shall be borne by the buyer. Unless agreed otherwise in the contract, the goods will be delivered FCA (Free Carrier) in accordance with INCOTERMS 2010.
- (2) Mercantile customers are not entitled to any right of retention against our claims. Setoff shall only be allowed against counterclaims that are not disputed by KBS or that have been legally binding adjudicated by a court.

IV Reservation of title

- (1) We retain title to the delivered goods until the receipt of all payments under the business relation with the customer. The reservation of proprietary rights is also applicable to any admitted account balance, insofar as we include any outstanding accounts into our invoice (reservation of current account).
- (2) Accepting the return of goods that have been already been delivered does, in case the stipulations for the consumer credit law are not applied, not indicate that the respective contract in question has been cancelled unless we have expressly stated this in writing. Any third party seizure of the goods always means a withdrawal from the contract. In the case of distraints or other actions by third parties, the ordering party shall immediately notify us thereof in writing so that we can contest such actions as per § 771 ZPO. Unless third parties are incapable of reimbursing us judicial and extrajudicial costs for an action as per § 771 ZPO, the customer shall be liable for any expenses defrayed by our company.
- (3) The customer is entitled to resell the delivery item in the ordinary course of business; however, he assigns to us all claims amounting to the final invoice amount including VAT from that accrue to him from the resale against his customers or third parties, regardless of whether the delivery item has been resold without or after processing. The customer is authorized to collect the transferred claim notwithstanding our authority to collect the claim ourselves. Our authority to collect claims ourselves shall remain unaffected hereby. However, we shall be obliged not to collect the claims as long as the Customer properly fulfils its payment obligations, is not in default of payment, no petition has been filed for the opening of bankruptcy proceedings with regards to the Customer's assets and the Customer has not discontinued its payments. In this case, we can demand that the customer informs us of the assigned claims and their debtors, provides all information necessary for collection, hand over the relevant documents and informs the debtors (third parties) of the assignment.
- (4) In the event of the processing, combining or alteration of the delivery item KBS acquires co-ownership to the new item proportionate to the value of the delivery item (the final invoice amount including Value Added Tax) in relation to the other combined or processed items. The same provisions apply to the processed item as to the item delivered subject to the reservation of property rights.
- (5) If the goods delivered are inextricably mixed or combined with other goods not belonging to us, we shall acquire co-ownership rights in the ratio the value of the goods belonging to us (final invoice amount including value added tax) bears to the value of all of the mixed or combined goods. If the mixing is such that the customer's item is to be regarded as the main item, it is agreed that the customer transfers proportional joint ownership to us. The customer shall keep the sole ownership or co-ownership for us.
- (6) We agree, on demand by the buyer, to release the securities to which we are entitled insofar as the realisable value of our securities exceeds the claims that are to be secured by more than 20%.

Terms and Conditions

V Defects of title

- (1) If the use of the product supplied causes a breach of commercial proprietary right or domestic copyright in the Federal Republic of Germany, the Supplier shall at his own expense in all cases either provide the Purchaser with the right to continue use or modify the delivery item in such a way that is reasonable to the purchaser and ensures that the proprietary right is no longer breached. If this is not feasible on commercially reasonable terms or within a reasonable period of time, the customer shall be entitled to rescind the contract. KBS shall also be entitled to rescind the contract subject to the same requirements.
- (2) KBS will, in addition, release the customer from undisputed claims or claims which have been ascertained by court in a non-appealable manner of the holder of the proprietary right concerned.

VI Warranty (Hardware)

- (1) In case of component sales we do not guarantee for compatibility with the system as a whole, unless specifically noted.
- (2) Our warranty obligation is limited to subsequent fulfillment - which can also be done through the exchange of equipment, parts or accessories - during the warranty period of one year after delivery.
- (3) The warranty does not cover additional expenses, nor the correction of deficiencies caused by external influences, operating errors, changes or attachments not carried out by us. KBS provides no warranty for wear and tear due to normal usage.
- (4) Should we fail to eliminate a defect within an appropriate time, the customer shall be entitled to either cancel the contract to that extent or to demand an appropriate reduction in price with respect to the product.

VII Warranty (KBS software)

- (1) Licence / Standard Software:
Our guarantee is limited to the compliance with the published and - on date of delivery - valid program specification. In addition, sentences 3 and 4 of paragraph 2 do apply.
- (2) Custom specific software:
The transfer of the data carrier is deemed acceptance, unless the customer declares explicitly that he acknowledges the performance for substantial defects as non-conforming within 10 days from handing. We commit ourselves to inform the customer of the importance of the transfer of the data carrier. Occurring significant errors we will try to eliminate within a period of one year after acceptance by way of remedy. Furthermore paragraph VI (4) applies with the restriction that only a period of at least four weeks is adequate within the meaning of the provision, since the elimination of software defects can be an extremely complex and intricate process.

VIII Caveat emptor

- (1) The warranty does not apply if an intervention or a change was made to the supplied hardware or software, or if the supplied hardware or software was damaged by improper use or a defective or unsuitable computer.

IX Software licence (KBS software)

- (1) The customer has the non-exclusive, non-transferable and perpetual right to use the software in accordance with the provisions of the Treaty. The license fee entitles to use the product for controlling a system or a system component defined at procurement. The granting of sublicenses is not permitted.
- (2) The right to make copies shall be granted only for the purpose of data protection. Further reproductions, for any reason and any kind are prohibited. All information obtained by the supplier from KBS with regard to the fulfilment of the contract shall be treated strictly confidentially as business and trade secrets and may be made accessible to third parties only in so far as this is necessary for use of the product by the customer.
- (3) If the customer acts in breach of one of the foregoing provisions, KBS can take him on injunctive relief and compensation for damages. Irrespective of this, in the interest of a proper compliance with the foregoing contractual obligations the customer obliges himself to pay a penalty equaling five times the license price in case of any infringement.

X Liability

- (1) Liability for damages based on defective contractual items, caused by use of these items is limited to intent and gross negligence, except for damages resulting from injury to life, limb or health.
- (2) In case of breach of contract or tortious acts by us or our vicarious agents we shall only be liable, as far as the breach of contract or tort was caused deliberately or through gross negligence or damages due to injury of life, body or health.

XI Miscellaneous

- (1) Foreign programs distributed by KBS may contain conditions of the third party manufacturer. As far as these conditions are obligating KBS, they are not effective.
- (2) The end customer shall be responsible for ensuring that the required number of usage-dependent device or user licenses (e. g. Microsoft CAL) is available.
- (3) Place of fulfilment and court of jurisdiction for all obligations arising from the contractual relationship is Freiburg im Breisgau. All disputes arising from this contract and on its effectiveness, as well as in connection with this agreement, which have a value of €200.000 or more, shall be decided - under exclusion of the ordinary courts - by an arbitration tribunal of the Chamber of Commerce Südlicher Oberrhein after its arbitration rules. Place of arbitration is Freiburg im Breisgau.
- (4) The laws of the Federal Republic of Germany shall apply with the exception of the UN Law on International Sales (CISG)

As of October 2017

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