

General terms of business of GROUP Business Software AG (hereinafter referred to as "GBS")

§ 1 General

For agreements for the delivery of goods and services between GBS and its customers, insofar as no additional terms are included in the agreement, exclusively these general terms of business apply. These terms of business apply for all future business, also if they are not agreed upon again explicitly. At the latest upon acceptance of the goods or services, the conditions are considered as accepted. Deviating conditions of the customer, which are not accepted by GBS expressly in writing, are in any case not binding. In order to be binding, all agreements require GBS confirmation in writing of GBS.

§ 2 Orders, placing of orders

GBS accepts verbal and written orders. The risk for transmission errors within the framework of verbal orders is borne by the customer. However, a contract is only established with the written confirmation of the order, which follows as a rule within two weeks. All offers drawn up by GBS are without engagement and not binding. Services or goods put together in an offer are only regarded as connected if this is agreed expressly.

§ 3 Risk bearing and delivery

GBS delivers exclusively at the risk of the customer, also in case of an expressly granted acceptance of the transport costs; with the handing over of the goods to the customer or a person performing the transport, the risk is transferred to the customer. Also in case of the accidental destruction, the accidental damage or loss of the goods, the customer must pay the full purchase price. The place of performance is Karlsruhe. The taking out of transport insurance is left to the customer. The transport risk for the arrival of goods returned to GBS also lies with the customer.

§ 4 Part performances, partial payments

GBS is entitled to part performances, which can be charged for at any one time after their execution. GBS reserves expressly the right to ask for partial payments. This applies in particular in cases in which the agreement also comprises the adaptation of the software to the system of the customer or the development of special software.

§ 5 Term of delivery

The term of delivery for ordered goods is approx. 3 weeks, subject to timely availability of supplies. At the request of the customer, a longer term of delivery can also be agreed upon. If this term of delivery is exceeded by more than 2 weeks, the customer must grant GBS an additional period of time of 2 weeks, which commences with the notification to GBS. After expiry of the additional period of time, the customer can withdraw from the contract by registered letter. In this case, claims for damages of the customer only exist if GBS has caused damage to the customer deliberately or due to gross negligence; further claims for damages of the customer are – insofar as legally admissible – excluded.

§ 6 Prices and payment

All prices indicated by GBS are net prices without value added tax; the value added tax is added at the legally valid rate, unless the prices are indicated expressly as gross prices inclusive of value added tax at the respective legally valid rate. Costs for special packaging and transport are, unless otherwise agreed, to be borne by the customer. Software prices do not include installation and training, nor any software adaptations; likewise prices for software do not include the installation, the training and any necessary adaptation to other hardware and/or other software. Such services must be ordered separately by the customer and are then charged for separately; separately intended instructions provide information about the most important service characteristics of a delivery item, without being able to take the place of comprehensive training. GBS offers separate service, care and training agreements to the customer for such services. If the customer falls into arrears with a payment, GBS is entitled to charge interest at the interest rate generally charged by commercial banks for open overdrafts, at least however –insofar as a consumer is not involved in a legal transaction - 8 percentage points above the base rate. In case of a proven higher interest level, GBS is entitled to charge the proven percentage. The proof of further damage remains unaffected by this. If cheques or drafts of the customer are not cashed, GBS is entitled to fix a due date for the total balance of debt immediately, also if further cheques or drafts have been accepted.

In this case, GBS can also demand payments in advance or guarantees for all other services contractually due to the customer as well as withdraw from these agreements after an appropriate additional period of time and/or insofar as legally admissible, demand payment of damages due to non-performance.

§ 7 Reservation of ownership

All goods delivered by GBS to the customers remain the property of GBS until full payment of all claims from the entire business relationship. The customer may neither pawn nor give otherwise as security the goods subject to the reservation of ownership of GBS, nor resell or pass them on in some other way. The customer may only dispose of the articles under reservation of ownership insofar as they are to be processed, built in or resold in the proper course of business. The handling or processing of goods under reservation of ownership is effected for us, without placing us under an obligation. The claims of the purchaser originating against his buyers in case of a resale are herewith transferred to GBS already now. If the ownership of GBS is dissolved by combination, mixing, processing or in some other way, it is already agreed now that the ownership of the customer in the same new goods is transferred to GBS proportionally (in relation to the invoice value of the goods). The customer keeps this (co-) ownership free of charge for GBS. The customer transfers the claims resulting from the resale, including the insurance benefit, already now in advance commensurately to the seller. If the value of the goods or claims of the customer resulting from ordinary or extended reservation of ownership exceeds the claims of GBS against the customer by more than 20 per cent, the seller shall, at the request of the purchaser, reduce the excess security insofar as the security rights exceed the claims of GBS by more than 20 per cent. The purchaser is obliged to communicate any seizures or other recourse of third parties to the goods delivered under reservation of ownership of in writing without delay. He is obliged to make all required information available to GBS, which is necessary for the vindication of the rights from § 771 of the ZPO¹. He is furthermore obliged to immediately inform third parties, who have recourse to the goods delivered under reservation of ownership, of the ownership of GBS. The customer must store the goods delivered to him under reservation of ownership carefully and insure them against all risks at his own expense. The customer hereby transfers his possible future claims from the insurance contracts with regard to the goods delivered under reservation of ownership to GBS.

¹ ZPO = Zivilprozeßordnung: [German] Code of Civil Procedure

The customer must bear the costs of all measures, which serve to the maintaining or safeguarding of the ownership of GBS. This also applies if such a measure fails, appears objective yet necessary. In case of behaviour of the customer contrary to the terms of the agreement, in particular if he falls in arrears with payments, GBS is entitled to claim back the goods delivered under reservation of ownership without setting an additional period of time or declaration of withdrawal. The customer must then return the goods immediately. A withdrawal from the contract by GBS only exists if GBS has announced the withdrawal expressly in writing.

§ 8 Warranty and liability

GBS guarantees within the framework of the following stipulations, for the duration of the warranty period, that goods and services delivered are free of faults in terms of warranty legislation. The parties agree that software cannot be free of defects under all conditions of use. Obvious faults must be reported in writing at the latest 14 days after receipt of the delivery. In commercial business it is necessary that the commercial customer has complied properly with his obligations with regard to the investigation and notification of defects stipulated according to §§ 377, 378 of the HGB² and reports the faults immediately in writing at the latest within 8 days after delivery or detection of the fault of GBS. The warranty period amounts to one year from the transfer of the goods to the customer or, in case of shipping, from the transfer to the transport company. The warranty takes place, depending on the choice of the customer, by subsequent improvement or replacement delivery. If the attempt at subsequent improvement or replacement delivery has failed twice, the purchaser is entitled to a commensurate reduction of the purchase price or alternatively to the cancellation of the purchase agreement. Prerequisite for this is that the customer has granted an appropriate additional period to GBS by registered letter. Further claims due to faulty delivery or infringement of contractual secondary obligations by GBS are, insofar as legally admissible, excluded; this applies for damages as well as for damage caused by defects.

In case of injury to persons and an infringement of a principal (cardinal) duty, GBS is liable within the framework of the legal provisions. Incidentally, a liability only exists in case of a deliberate action and gross negligence. If and insofar as the liability of GBS is excluded, this also applies for the personal liability of the workers, employees, staff members, representatives and agents of GBS. The regulations of the product liability act remain unaffected. A guarantee that the article of purchase functions fault-free in connection with other products, is not given. The raising of the warranty claim is excluded if operating or maintenance instructions are not followed, changes are made to the delivered goods, parts are exchanged or consumables are used, which do not comply with the original specifications.

At the request of GBS, the customer must send the rejected goods to GBS in case they are under warranty, with an exact indication of the complaint and the invoice number.

The costs incurred in this respect are reimbursed commensurately by GBS. The customer and GBS agree that software programmes cannot be fault-free under all conditions of use. Additional services rendered on the spot must also be reimbursed in case of warranty. "Additional" in this sense means: all services rendered that are not covered by the warranty.

² HGB = Handelsgesetzbuch: [German] Commercial Code

§ 9 Standard software

GBS sells software (standard software) in principle as commercial goods. The customer is obliged to accept the terms of delivery and contractual terms of the software manufacturer and/or software supplier as well as the copyrights of the software manufacturer and/or licence holder. This applies accordingly if the software was adapted to the system of the customer or developed.

§ 10 Patent- and copyrights

GBS reserves the property right and copyright on software manufactured by it, connection diagrams, drawings, designs, descriptions, plans, conceptions and similar documentation. Without written consent by GBS, they may not be made available to third parties. Copying is prohibited without the explicit consent of GBS. Upon request, it/they must be returned immediately to GBS, provided that this does not contradict other use agreements. In case of a contravention, GBS is entitled to claim damages. GBS cannot be held liable for the infringement of any patent or other industrial rights by the customer. The customer releases GBS from any claims of third parties in this respect.

§ 11 Returning of goods/exchange

The returning of goods is only allowed with the explicit prior consent of GBS. In case it is agreed to take back the goods, a flat rate is charged in principle. Returned goods which reach "not prepaid", are not accepted. In case of an erroneous order by the customer, the goods must be sent back to "free domicile", the transport risk is borne by the customer.

§ 12 Court of jurisdiction, place of performance and application of the law

The Law of the Federal Republic of Germany is to be applied to all disputes resulting from this agreement. For any possible disputes with GBS from a business relation or its initiation, the registered place of business of GBS is, insofar as legally admissible, agreed upon as court of jurisdiction. The place of performance is Karlsruhe.

§ 13 Partial nullity

If any provision of this general terms shall be held illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, the validity of the remaining portions or provisions hereof shall not be affected thereby.