

Standard Terms and Conditions for Business Dealings and Supply of BDE Engineering GmbH (STC 01/2003)

1. Area of application of the Standard Terms and Conditions of BDE Engineering GmbH¹

These Standard Terms and Conditions for Business Dealings and Supply apply to all contracts concluded between BDE Engineering GmbH and the Purchaser including all other agreements which are made in the context of the business relationship. The Standard Terms and Conditions of the Customer are expressly not the content of contract, even where they are not explicitly contradicted by BDE Engineering GmbH. In the event that the Customer does not agree to the following Standard Terms and Conditions for Business Dealings and Supply, he should indicate this to BDE Engineering GmbH in writing before entering into the Contract.

2. Terms of payment and prices

All accounts for payment presented by BDE Engineering GmbH are payable immediately without deductions insofar as no other written arrangement has been made with BDE Engineering GmbH. The authoritative date is that on which payment is received by BDE Engineering GmbH. Withholding of payments or offsetting against counter claims not recognised by BDE Engineering GmbH is not allowable. In the event of default on payments, BDE Engineering GmbH has the right to withhold deliveries and services. All prices are quoted in euros and do not include any respective statutory value-added taxes. Prices always apply ex works, and do not include packaging or insurance. In the event of default of payment on the part of the Customer, BDE Engineering GmbH has the right to charge interest of 2.5 % p.a. over and above the current reference interest rate of the European Central Bank. All prices always apply only to an individual contract, that is, they are neither retrospective nor applicable to future contracts. BDE Engineering GmbH has the right to make partial deliveries of orders.

3. Delivery and consignment

All quotations are unbinding. Delivery is guaranteed only as long as stocks are available. All delivery dates named by BDE Engineering GmbH are unbinding unless a delivery date has been expressly agreed on in writing. Should the Purchaser, after placing an order, undertake alterations or supplementation to the order, or where other circumstances arise which would make it impossible for BDE Engineering GmbH to adhere to the delivery date, although the circumstances have not been caused by BDE Engineering GmbH, the delivery date will be then postponed by a reasonable period of time. Should BDE Engineering GmbH, itself or through a subcontractor, be hindered from fulfilling the terms of the Contract, for example because of disruptions in purchasing, manufacturing, or delivery, the common principle of law applies, with the proviso that the Customer, after a period of one month, may set a period of grace of 6 weeks. If the failure to meet a binding delivery date can be proved to have been caused by mobilisation, war, riot, strike or lockout, or through other circumstances for which BDE Engineering GmbH cannot be held responsible according to the common principle of law, the delivery time shall be reasonably extended. The Customer may revoke the Contract after the extended delivery time has expired if he gives reasonable notice to BDE Engineering GmbH. Revocation of the Contract must be made in writing if BDE Engineering GmbH does not deliver within the period of extension. If BDE Engineering GmbH cannot meet the terms of the Contract wholly or in part on the aforementioned grounds, it is exempted from the obligation to make delivery.

Shipping costs and transportation insurance are in principle to be borne by the Customer, whereby the choice of mode and route of transport remain wholly at the discretion of BDE Engineering GmbH. The Customer is obliged to examine the Goods immediately on arrival and to notify BDE Engineering GmbH promptly in writing of any damage caused in transit or of any damage to packing. The same applies to concealed damage. If BDE Engineering GmbH, as a result of a neglect of this obligation, suffers loss on making claims against insurance or subcontractors, the Customer is liable for the entire costs which result from this breach of obligation. The risk is transferred to the Customer as soon as the Goods leave the works or the warehouse of BDE Engineering GmbH.

4. Retention of title

The delivered Goods remain the property of BDE Engineering GmbH until full payment of all accounts arising from the business dealings, major and minor, with the Customer. The Customer is obliged to properly insure Goods over which BDE Engineering GmbH retains title (i.e. insurance against loss or damage through theft, fire, water, or electronic equipment insurance) and to provide evidence of this to BDE Engineering GmbH on demand. In the event of damage, the Customer's title to insurance benefits is to be transferred to BDE Engineering GmbH. The Customer is not authorised to dispose of Goods under retention of title. In the event of distraint of property or sequestration, the Customer shall inform BDE Engineering GmbH in writing without delay and shall refer Third Parties to the retention of title immediately and in an appropriate manner. In the event that the Customer sells the delivered Goods, however, and BDE Engineering GmbH authorises this, the Customer cedes all claims against BDE Engineering GmbH to its purchaser at contract conclusion. The Customer is bound to reveal all information to BDE Engineering GmbH in the assertion of these rights and to provide the necessary cooperation.

5. Limitation of liability disclaimer

BDE Engineering GmbH is liable for gross negligence and intent according to statutory regulations. BDE Engineering GmbH is liable for slight negligence only when a material contractual obligation (cardinal obligation) is violated or in a case of arrears or unenforceability. In the event of liability for slight negligence, this liability is limited to such damage which is foreseeable or typical. This limitation of liability applies to liability for slight negligence also in the case of initial incapacity on the part of BDE Engineering GmbH. Liability for lack of a promised capacity due to bad faith, for personal injury or defects of title according to the German product liability statute (Produkthaftungsgesetz), remain unaffected. In the event of a guarantee or liability claim against BDE Engineering GmbH being made, it is reasonable to take contributory negligence on the part of the Customer into account, in particular where there has been insufficient notification of defects or insufficient backup of data, insufficient backup of data is particularly to be taken into account when the Customer has neglected to take reasonable, and appropriately up-to-date safety precautions against external detrimental effects, in particular those caused by computer viruses or other phenomena which can pose danger to individual data or to a collection of data.

6. Warranty for Hardware

BDE Engineering GmbH guarantees that the Goods possess the qualities promised in the Contract and do not possess defects which would cause the worth or suitability to the normal purpose, or that which is provided for in the Contract, to be nullified or diminished. An insignificant abatement of the value or suitability is not to be taken into account.

BDE Engineering GmbH and the Customer agree that the explanations and descriptions which appear in the service manual and/or in the price list do not represent a guarantee of particular qualities for either hardware or Software. The term of the warranty is 12 months and begins on the day of delivery. Defects which arise during the term of the warranty should be reported by the Customer without delay to BDE Engineering GmbH. The warranty does not include the rectification of defects which occur through normal use, external influences or handling errors. The validity of the warranty is nullified if the Customer, without the agreement of BDE Engineering GmbH, has altered, or engaged a third party to alter, devices, components or accessories, unless the Customer can fully prove that the defects in question were neither wholly nor in part caused by such alterations and that the rectification of the defects is not made more difficult by the alterations. BDE Engineering GmbH may, within the framework of its warranty obligations, repair or replace defective devices, components or accessories or parts. The Customer should, before such replacements, remove to the extent required, all programmes (including applications, data, data carriers, modifications and attachments). The Customer is obliged to allow BDE Engineering GmbH the time and opportunity required to rectify defects. BDE Engineering GmbH will bear only the direct costs of labour and materials. All other costs, in particular shipping and travel costs, are borne by the Customer. If a notice of defect should prove to be unjustified, the Customer is obliged to reimburse BDE Engineering GmbH for any expenses which have been thus incurred by BDE Engineering GmbH. BDE Engineering GmbH accepts no liability for consequential harm caused by a defect.

The sale of used hardware takes place in the exclusion of any warranty on the hardware with confirmation of function. Checking of Goods for completeness and correct functioning must take place immediately on take-over of the Goods. Statements in manuals/documentation and/or advertising material which relate to upgrade possibilities of a product or to available accessories, are unbinding, in particular since the products are constantly under modification, and also as the statements may refer to future developments. Supply of a English-language service manual is allowable when the subject matter of the Contract has not yet been fully adapted for the respective local market. The same applies when the subject matter of the Contract is only available in the English language.

7. Warranty for Software

The Customer shall examine the standard Software immediately following delivery and inform the Seller of any obvious defects without delay.

BDE Engineering GmbH guarantees for a period of 6 months from the day of delivery that the Software supplied by BDE Engineering GmbH is substantially free of material and manufacturing defects and, in essentials, functions as described in the accompanying manual. The Customer is aware that in the present state of technological development, defects cannot be completely ruled out.

In the event of a justified notice of defect, BDE Engineering GmbH undertakes to take remedial action. After a second unsuccessful attempt to rectify the same defect or for defects which occur as a direct result of the remedial action, the Customer may demand, according to his choice, rescission or abatement. The same applies, if, due to a particularly serious circumstance, it is not reasonable to expect the Customer to allow a second attempt to rectify the same defect or a defect resulting directly from the remedial action or a further defect. All further warranties, in particular those that guarantee that the Software is suitable for the purposes of the Customer are expressly excluded.

Statements in the manual/documentation and/or advertising material which relate to possibilities for upgrading a product or to available accessories are unbinding, in particular since the products are constantly under modification and also as the statements may refer to future developments.

Supply of a user manual in English is permissible when the subject matter of the Contract has not yet been fully adapted for the respective local market. The same applies when the subject matter of the Contract is only available in the English language.

8. Software upgrades and adaptation

Handling:

BDE Engineering GmbH will upgrade and adapt the Software which has been supplied. The Customer, insofar as the Parties have not explicitly agreed otherwise, will inform the Contractor in good time and with an appropriate description of his requirements regarding the Software. The Customer will provide BDE Engineering GmbH with all necessary information for the creation of the Software in a clear, written form and will explain these to BDE Engineering GmbH verbally on request. Should the Customer discover that the needs analysis, system specifications, or specification of services does not conform to his actual requirements, he will inform BDE Engineering GmbH of this without delay and in writing, and make alternative suggestions. The Parties shall then decide in consultation with each other on a supplementation or an alteration of the requirements. The Customer shall fulfil his obligation to cooperate free of any charge. Should BDE Engineering GmbH realise that the statements or information of the Customer are in error, incomplete, or not suited to the performance of the designated task, BDE Engineering GmbH shall inform the Customer in writing without delay. The Customer shall make an immediate decision with regard to any changes to be made as a result of such a communication, insofar as the Software is affected. Each Party shall name, immediately on Contract conclusion, a person with specialist knowledge who is authorised to make the requisite decisions regarding the creation of the Software.

Requests for modification:

For as long as the Software has not been delivered by BDE Engineering GmbH, the Customer may at any time request in writing an alteration of the specifications, as long as the request for change is reasonable in the context of the whole project and is based on sound considerations. BDE Engineering GmbH shall comply with this request, unless by reason of its current operational situation, it cannot be reasonably expected to do so. Should such a request for alteration on the part of the Customer have consequences for the contractual equilibrium such that performance and counterperformance are more than slightly affected, the Contract Parties shall agree without delay on a written adjustment of the contractual obligations in respect of the material contents of contract (in particular remuneration, delivery time etc.). Should the Parties have not reached agreement within four weeks from receipt by BDE Engineering GmbH of the request for alteration, the Contract will be fulfilled without taking the request for alteration into account.

9. Delivery, deadlines and installation

Delivery dates and times are in principle unbinding, providing orientation aids as to timing, unless they are expressly agreed on in writing as being fixed. In principle, a standard version of the Software is to be supplied. An upgrade or adjustment of the standard Software will be made only if a specified change is requested in writing. The installation is to take place in coordination with the Customer. The Customer shall name, in writing, a contact person for his purpose immediately on Contract conclusion. The Customer will make available to BDE Engineering GmbH, immediately on Contract conclusion, all documents necessary for BDE Engineering GmbH to gather information on the current configuration of the existing hardware, operating system and platform of the Customer. Should BDE Engineering GmbH be of the opinion that the configuration needs to be altered, this alteration must be carried out by the Customer at his cost and at his own risk before installation of the Software. The Customer is obliged to provide all cooperation necessary during implementation of the Software. This includes, in particular, making access to the hardware possible and ensuring that both test data and are available to BDE Engineering GmbH, as required and without charge. In addition, the services of an employee competent to carry out the necessary tests or adjustments should be provided without charge. On Contract conclusion, BDE Engineering GmbH shall provide to the address as given in the delivery details, a copy of the latest version, on a suitable data carrier, of the standard Licensed Product offered by BDE Engineering GmbH, to be at the disposal of the Customer. BDE Engineering GmbH reserves the right to adjust the specifications of the Licensed Product, for example those pertaining to technological developments, legal changes, or future market requirements. A printed version of the service manual will be supplied. It serves both as instruction in the operation of programmes and provides answers to questions which arise in this context. The service manual remains the property of BDE Engineering GmbH and may only be used by the Customer for the agreed purpose. Should the Software or the manual be lost, BDE Engineering GmbH will provide a replacement at cost price. BDE Engineering GmbH guarantees a perfect functioning of the Software only on the hardware system authorised by it. The authorisation is considered to have taken place once BDE Engineering GmbH has installed the Programme on the Customer's hardware system.

10. Training

BDE Engineering GmbH will convey to the Customer by means of training, the necessary knowledge and information for use of the Software as End-user. If no other written arrangement has been agreed on, training is to take place in the training rooms on the Customer's premises. When training takes place on the Customer's premises, the Customer is obliged to provide adequate technical equipment at no charge. Training participants must possess basic knowledge of computers. The Customer undertakes to reimburse BDE Engineering GmbH, on presentation of the respective proofs, for any overnight accommodation costs or other expenses incurred by BDE Engineering GmbH in the course of such training. Travel expenses will be refunded by the Customer on receipt of proof.

11. Confidentiality

Both BDE Engineering GmbH and Customer promise to keep all business and company secrets of the other Party confidential for an unlimited period of time and not to reveal them to Third Parties or in any way whatsoever to use them to account. Documents, drawings and other information which the other Contract Partner holds as a result of the business relationship may only be used in accordance with the purpose of the respective contract.

12. Evidence clause

All electronically processed data registers stored in the EDP systems of BDE Engineering GmbH on permanent and unalterable data carriers are accepted as proof of data transfer, contracts and payments executed between the Parties.

13. International property rights

The Purchaser is not permitted to export Goods purchased from BDE Engineering GmbH to countries outside the EU without the express authorisation of BDE Engineering GmbH. In addition, the Purchaser must observe the relevant export regulations, in particular foreign trade regulations, and where required, US regulations.

14. Miscellaneous

Should any individual provisions of these standard terms and conditions become wholly or in part ineffective, this does not affect the validity of the remaining provisions. Rather, the provision which has become void is to be replaced by one which is closest to the original purpose of the provision. Subagreements are not affected. Supplements become effective only when they have been confirmed in writing.

The Customer can assign his rights from a business relationship with BDE Engineering GmbH only with the written consent of BDE Engineering GmbH. A set-off against the purchase price debt is only possible for the Customer in the case of an acknowledged or legally established counterclaim.

Place of jurisdiction is, insofar as it is legally allowed the registered office of BDE Engineering GmbH (Bad Vibel) in the Federal Republic of Germany. **German law applies exclusively**

¹ GmbH - Gesellschaft mit beschränkter Haftung Br. limited liability company, Am. Incorporated