

General Terms and Conditions of becos GmbH

§ 1

General

(1)

All deliveries and services are based on these "General Terms and Conditions". In the event of deviating or supplementary agreements, especially contradictory terms and conditions, an explicit written consent from becos is required.

(2)

The following conditions also apply if becos performs the service without reservation in knowledge of the customer's conflicting or deviating conditions.

(3)

These Terms and Conditions also apply to all future contractual relationships, even if they are not expressly referred to again.

cooperation obligations to be carried out by the customer.

(4)

The delivery period shall be extended appropriately in the case of industrial disputes, in particular strikes and lockouts, and in the case of unforeseeable events for which becos is not responsible and insofar as such events can be shown to affect completion or delivery of the item supplied. The same applies if such circumstances affect our suppliers. This also applies if those circumstances arise during an existing delay. becos shall inform the customer of the beginning and end of obstacles of the kind described above as soon as possible.

(5)

In the event of a delay in delivery for which becos is responsible, the customer is entitled to demand compensation for the delay to the exclusion of further claims, limited to a maximum of 5% of the net order value.

This is without prejudice to the unlimited liability of becos in the case of a guarantee and for intentional and grossly negligent behaviour.

§ 2

Prices

All prices quoted apply exclusively to companies and are net prices (excluding VAT). Unless otherwise agreed, payments are due net on the invoice date without any discount. Services of all kinds are generally excluded from discounts. These are due for payment immediately on receipt of invoice without any deduction.

§ 4

Transfer of risk

Delivery times

(1)

A delivery period is only valid with express confirmation.

(2)

Delivery dates in quotations and order confirmations are always guides determined at the time the quotation is drawn up.

(3)

Observance of the delivery period assumes fulfilment of all contractual and

The risk shall be transferred to the customer on dispatch of the goods or on transfer of the goods to the freight forwarder or another transport agent. becos is entitled but not obliged to insure deliveries in the interest and on the account of the customer.

If the shipment is delayed as a result of circumstances for which the customer is responsible, the risk shall pass to the customer from the day on which becos is ready to ship.

§ 5

Retention of title

(1)

becos reserves title to the delivered goods until full payment of the purchase price and all ancillary claims.

(2)

If the customer is an entrepreneur, becos reserves the title to the delivered goods until all claims against the customer arising from the business relationship have been settled.

(3)

Processing or transformation of the goods by the customer is always carried out on behalf of becos. If the goods are processed with other items not belonging to becos, becos shall acquire co-ownership of the new item in the proportion of the value of the purchased item to the other processed items at the time of processing.

(4)

becos undertakes to release the customer's securities to which it is entitled if their realisable value exceeds the claims to be secured by more than 20%.

(5)

The customer may neither pledge the item supplied nor transfer it as security. In case of seizure or other access to the goods by third parties, the customer shall draw attention to the ownership of becos and inform becos immediately.

(6)

In the event of a breach of contract by the customer, in particular default on payment, the entire remaining debt shall become due immediately. In these cases, becos is entitled to demand return of the goods and to collect them from the customer. A right to ownership by the customer does not exist in this respect.

§ 6

Acceptance

(1)

Unless otherwise stipulated in individual contracts, no acceptance test for the products is intended.

(2)

Insofar as becos installs the products at the customer's request, the functional test shall be carried out after delivery and installation of the products at the agreed place of installation. The customer is entitled to participate in the functional test. After the functional test, becos shall inform the customer of readiness for operation.

(3)

Acceptance shall be deemed to have been given if the customer does not expressly object in writing within seven working days of delivery of the products or notification of readiness for operation, with an exact description of the defect.

§ 7

Warranty

(1)

becos guarantees that the products have the agreed quality at the time of the transfer of risk and that the customer may use the contract software without breaching the rights of third parties. The material defect warranty does not apply to those defects that arise because the contract software is used in a hardware and/or software environment which does not meet the contractually agreed requirements or those specified on the licence certificate.

(2)

If the customer is an entrepreneur, he must check the contract software immediately on receipt for obvious defects and inform becos immediately in writing if any are found; otherwise a warranty for these defects is excluded. The same applies if such a defect becomes apparent subsequently. § 377 of the German Commercial Code (HGB) applies.

In case of delayed notification, the warranty rights of the customer expire.

(3)

If the customer is an entrepreneur, the legal regulation shall apply with the following proviso: in the event of a material defect, becos shall remedy the defect at its discretion by rectifying the defect or providing a replacement. This is without prejudice to further rights of the customer in case of failure of supplementary performance. As part of a replacement, the customer may accept a new version of the software, unless this leads to unreasonable adverse effects. In the case of legal defects, becos shall, at its discretion, provide the customer with a legally correct option for using the contract software or modify it so that no third party rights are infringed.

(4)

If no consumer is involved in the business transaction in question, the warranty obligation is one year.

(5)

For claims for damages that result from defective delivery or services, § 8 applies accordingly.

§ 8

Claims for damages

(1)

becos is liable for damages and futile expenses within the meaning of § 284 of the German Civil Code (BGB) due to breach of obligation only:

- a) in the case of malicious intent or gross negligence;
- b) in the case of negligent or intentional loss of life, physical injury or damage to health;
- c) in the case of negligent or intentional violation of essential contractual obligations;
- d) on the basis of mandatory liability under the German Product Liability Act.

(2)

However, the claim for damages pursuant to (1) is limited to contractually typical, foreseeable damage and, in particular, does not include any loss of profit on the part of the customer. This does not apply

in cases of malicious intent or gross negligence, or to liability for loss of life, physical injury or damage to health if a guarantee of quality is provided.

(3)

becos is not liable for the recovery of data unless becos caused their destruction by gross negligence or malicious intent and the customer has ensured that said data can be reconstructed from data that is kept in machine-readable form with reasonable effort.

(4)

Claims for damages against becos shall expire twelve months from delivery or acceptance or, in the case of damage not caused to the subject of the contract, from the time the damage is caused and the customer becomes aware of it or remains unaware of it through gross negligence. Exceptions to this are damage caused by malicious intent or gross negligence or involving loss of life, physical injury or damage to health.

§ 9

Use

(1)

The customer is granted a non-exclusive right of use for becos software and the associated documentation for internal purposes.

(2)

The customer shall ensure that this software and documentation are not accessible to third parties. The software may not be altered, reverse engineered, developed or translated. The written material may not be duplicated or reproduced from the documentation.

(3)

The customer may make backup copies of the software to the extent necessary to use the software on a computer with only one CPU. In networks, the program may be used only on one computer in the network at any one time, unless the customer has a corresponding network licence.

(4)

The customer may not change the designations, copyright notices or property information of becos in the programs in any way.

(5)

The customer may transfer the rights and obligations arising from this contract to a third party only with the prior written consent of becos.

§ 10

Maintenance

At the customer's request, becos shall take responsibility for the maintenance work during the agreed term in return for a separate fee. The details of this shall be regulated in a separate service contract.

§ 11

Consumer dispute resolution

With regard to any obligation under §§ 36, 37 of the German Consumer Dispute Resolution Act (VSBG), we wish to inform our customers that our company is not obliged to participate in out-of-court dispute resolution proceedings before a consumer arbitration body and also shall not participate in any out-of-court dispute resolution proceedings before a consumer arbitration body.

§ 12

Choice of law and place of jurisdiction

(1)

For entrepreneurs, the place of jurisdiction for all disputes arising from or in connection with this contract is Stuttgart.

(2)

The contract is governed by the law of the Federal Republic of Germany, excluding the UN Convention on the International Sale of Goods (CISG).

(3)

The place of fulfilment is Stuttgart.

§ 13

Miscellaneous

(1)

Verbal ancillary agreements are invalid. Deviating or supplementary conditions and changes to these conditions, including this written form clause, are valid only if they are agreed in writing.

(2)

Offsetting is only permissible against legally established or undisputed claims.

(3)

If, after conclusion of the contract, circumstances emerge which are likely to give rise to doubts about the customer's solvency, in particular the filing of a petition for bankruptcy or foreclosure measures, becos is entitled to demand of the customer, at the latter's discretion, either payment of the contractual remuneration or provision of securities of the same value concurrently with performance of the service. If the customer is unable to fulfil the aforementioned conditions within 14 days of receipt of a corresponding request, becos is entitled to withdraw from the contract.

(4)

If individual provisions of these Terms and Conditions are invalid, the remaining provisions shall remain valid. The customer and becos undertake to replace invalid provisions with a legally permissible provision that comes as close as possible to their economic intent. The same applies in the case of loopholes in the contract.