

DataVision Deutschland GmbH's General Sales Conditions

§1 Validity

1. Our general terms and conditions of sale shall apply, unless expressly agreed otherwise, to all deliveries, services and offers which DataVision Germany GmbH (hereinafter referred to as "Contractor" or "Seller") provides to the customer (hereinafter also referred to as "Purchaser"). They shall also apply to future deals with the customer, even if they are not expressly agreed upon again.
2. Deviating general terms and conditions of the customer or third parties will not be recognized, even if we do not expressly object to them separately.

§2 Offer and conclusion of contract

1. Our offers are non-binding, unless the binding nature of the offer is expressly referred to in the offer. Unless otherwise stated, we shall be bound by a binding offer for a period of four weeks.
2. An order placed by the client in text form (e.g. e-mail, fax) is a binding offer. We are entitled to accept this offer within two weeks by sending an order confirmation or by commencing the provision of services.
3. All agreements are to be made in writing, this also applies to subsequent changes and to collateral agreements. To comply with the written form, telecommunication transmission, in particular by fax or e-mail, is sufficient, as long as a copy of the signed declaration is transmitted.
4. Our office and field staff have no authority to make deviating or supplementary agreements or to grant special conditions.

§3 Prices and terms of payment

1. All prices are net prices in Euro, without value added tax, which the client must pay additionally at the respective legal rate.
2. Unless otherwise agreed, our prices are ex warehouse of the contractor. Freight costs and packaging costs, fees and, if applicable, public charges over and above the customary packaging shall be borne by the purchaser.
3. Unless otherwise expressly agreed, the purchase price is due for payment within 14 days of the invoice date. Decisive is the receipt of payment by the seller. After the due date, interest on arrears shall be charged at a rate of 9% points above the respective base interest rate p.a. We reserve the right to assert further damage caused by delay.

4. Offsetting against counterclaims of the customer or withholding of payments due to such claims is only permissible if the counterclaims are undisputed or have been legally established or result from the same order under which the relevant delivery was made.
5. The Contractor shall be entitled to execute or render outstanding deliveries or services only against advance payment or provision of security if, after conclusion of the contract, he becomes aware of circumstances which are likely to substantially reduce the creditworthiness of the Customer and as a result of which the payment of the Seller's outstanding claims by the Customer under the respective contractual relationship is endangered.

§4 Delivery, transfer of risk, acceptance and delay

1. Delivery periods (dates) shall commence on the date of our order confirmation and shall be deemed to have been complied with upon timely notification of readiness for dispatch.
2. We are entitled to partial deliveries and partial services, if
 - a. the partial delivery can be used by the customer within the scope of the contractual purpose,
 - b. the delivery of the remaining ordered goods is ensured and
 - c. the client does not incur any significant additional work or additional costs as a result (unless the seller agrees to bear these costs)
3. In the event of force majeure and other unforeseeable, extraordinary circumstances for which the Seller is not responsible, in particular strikes, lock-outs, official orders, even if they occur at our suppliers or sub-suppliers and result in the non-delivery, incorrect or untimely delivery by our suppliers, the delivery period shall be extended by a reasonable period of time if this results in an impediment to punctual delivery.
4. If the buyer is in default of acceptance, if he fails to cooperate or if our delivery is delayed for other reasons for which the buyer is responsible, we are entitled to charge 0.5% of the gross order amount as compensation per calendar week of delay. We reserve the right to compensation for any further damage, including any additional expenses incurred (e.g. storage costs). In this case, the risk of accidental loss or accidental deterioration of the goods shall pass to the Buyer at the time of default of acceptance or other breach of duties to cooperate.
5. The Seller may - without prejudice to his rights arising from default on the part of the Customer - demand from the Customer an appropriate extension of delivery and performance periods or a postponement of delivery and performance dates by the period during which the Customer does not properly fulfil his contractual obligations to the Seller.

6. If the Seller is in default with a delivery or service or if a delivery or service becomes impossible for him, for whatever reason, the Seller's liability for damages shall be limited in accordance with § 7 of these General Terms of Delivery.
7. The risk of accidental loss and accidental deterioration of the goods shall pass to the buyer at the latest upon delivery. In the case of mail-order purchases, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass upon delivery of the goods to the carrier, the freight forwarder or any other person or institution designated to carry out the shipment. If acceptance has been agreed, this is decisive for the transfer of risk. The statutory provisions of the law on contracts for work and services shall also apply accordingly to an agreed acceptance. If the buyer is in default of acceptance, this shall be deemed equivalent to handover or acceptance.

§ 5 Reservation of Proprietary Rights

1. Until payment has been made on account of all of our current and future account receivables from the purchase contract as well as our ongoing business relationship (secured claims), we reserve ownership of the goods sold.
2. The goods subject to proprietary rights may neither be mortgaged to third parties, nor assigned as a security before full payment of the account receivables has been completed. The customer must immediately notify us in writing, if an application to open bankruptcy proceedings has been filed, or if any attachments in respect to the goods sold by our company occur (e.g. the pledging of the goods that is the object of the reservation of proprietary rights described).
3. In the event of infringement of the contract caused by the buyer, especially in the case of non-payment of the purchase price due, we are entitled to withdraw from the contract in accordance with legal regulations, and/or to demand back the goods on account of the reservation of proprietary rights. If we assert the reservation of proprietary rights, then it only counts as withdrawal from the contract if we explicitly declare it as such.
4. The buyer is authorized, apart from revocation of the contract according to (c) below, to resell and/or process the goods subject to the reservation of proprietary rights. In this case, the following supplementary policies take effect.
 - a. The reservation of proprietary rights extends to the resulting end-product of our goods that has been subject to processing, mixing or combining, to their respective full value. Whereby we are considered the manufacturer on all accounts. Should the reservation proprietary rights of a third party still exist when processing, mixing, or combining our goods with said party, then we acquire co-ownership in ratio to the invoice values of the processed, mixed or combined goods. Incidentally, the same counts for the resulting end-product as for the goods delivered under the reservation of proprietary rights.

- b. The buyer resigns claims on third parties that result from the resale of the goods or of the final product as security over to us, in the amount of our share of ownership according to the previous paragraph. We consent the assignment. The buyer's obligations mentioned in paragraph 2. also apply in view of the assigned claims.
- c. In addition to us, the buyer remains authorized to collect the claim. We obligate ourselves not to collect the claims, as long as the buyer meets his payment obligations towards us, no shortcoming in his performance exists and we do not enforce the reservation of proprietary rights by exercising our right pursuant to paragraph 3. If this is the case, however, we can request that the buyer gives us the assigned claims, announces his debtors, provides all the information necessary for collection, hand over the associated documents and notifies the debtors (third parties) of the assignment. Furthermore, should this event occur, we are also entitled to revoke the authorization of the buyer to resell and process the goods subject to the reservation of proprietary rights.
- d. If the feasible value of the collateral exceeds our claims by more than 10%, we will on request of the buyer, release collateral at our choice.

§ 6 Warranty and Defect

1. Prerequisite for any warranty rights of the buyer is the proper fulfilment of all owed inspection and complaint obligations according to §377 HGB. If there is any sign of defect throughout the goods' delivery, examination or at any later point, we must be notified in writing immediately. If the buyer fails to notify the proper inspection and/or defects, then our liability for the non-timely or improperly reported defect is excluded according to the statutory provisions.
2. The warranty period is one year from delivery, or, if acceptance is required, from acceptance. This period does not apply to claims for damages on behalf of the buyer resulting from injury to life, body, health, or due to willful or grossly negligent breaches of duty by the seller or his vicarious agents, which expire according to the statutory regulations.
3. The delivered goods are to be examined immediately after delivery to the buyer or to the buyer's chosen third party. They are deemed approved by the buyer with regard to obvious deficiencies or other defects that would have been identified by an immediate, careful inspection, if the seller does not receive a written notice of defect. within seven working days after delivery. Regarding other deficiencies, the delivered goods are deemed to have been approved by the buyer if the notice of defect is not received by the seller, seven working days after the point at which the deficiency first appeared. If however, the deficiency was already obvious at an earlier point in time due to normal use of the good, then this earlier point in time is decisive for the start of the notice period. At the request of the seller, a rejected delivery item must be returned to the seller with its carriage paid. With a justified notice of defect, the seller reimburses the costs of the cheapest dispatch route. This does not apply if

the costs increase because the delivery item is in a different location than the intended location use.

4. In the event of material defects of the delivered items, the seller is obligated to rectification or replacement delivery, within a reasonable period of time chosen by the seller. In the event of failure, which includes impossibility, unreasonableness, refusal or unreasonable delay in the rectification or replacement delivery, the buyer can withdraw from the contract or reduce the purchase price accordingly.
5. If a defect is accounted as the seller's fault, the client can claim compensation under the conditions specified in § 7.
6. In the event of defects in components from other manufacturers, which the seller cannot eliminate due to licensing or factual reasons, the seller will choose his warranty claims against the manufacturers and suppliers in the form of a client's invoice or assign to the client. Warranty claims against the seller exist for such defects under the other conditions and in accordance with the general delivery conditions, only if the judicial enforcement of the above claims against the manufacturer and supplier was unsuccessful or, for example due to the insolvency, is hopeless. For the duration of the legal dispute, the statute of limitations of the relevant warranty claims of the customer against the seller is inhibited.
7. The guarantee is to be inapplicable if the customer changes the delivery item without the seller's consent or through third parties, making the rectification of defects impossible or unreasonably difficult as a result. In any case the customer has to bear the additional costs arising from remedying the defect
8. A delivery of used items agreed in an individual case with the client takes places to the exclusion of any warranty for material defects.

§7 Other liability

1. Unless otherwise stated in these terms and conditions of sale including the following provisions, we shall be liable in accordance with the statutory provisions in the event of a breach of contractual and non-contractual obligations.
2. We shall be liable for damages - regardless of the legal grounds - within the scope of liability for culpability in the case of intent and gross negligence. In the case of simple negligence, we shall only be liable, subject to statutory limitations of liability (e.g. care in our own affairs; minor breach of duty), for
 - a. for damages resulting from injury to life, body or health,
 - b. for damages resulting from the breach of an essential contractual obligation (obligation the fulfilment of which makes the proper execution of the contract possible in the first place and on the observance of which the contractual partner regularly relies and may rely); in this case, however, our liability is limited to the compensation of the foreseeable, typically occurring damage.

3. The limitations of liability resulting from paragraph 2 shall also apply to breaches of duty by or in favour of persons whose fault we are responsible for according to statutory provisions. They shall not apply if we have fraudulently concealed a defect or have assumed a guarantee for the quality of the goods and for claims of the buyer under the Product Liability Act.
4. Due to a breach of duty which does not consist of a defect, the buyer may only withdraw or terminate the contract if we are responsible for the breach of duty. A free right of termination of the buyer (in particular according to §§ 650, 648 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

§8 Choice of law and place of jurisdiction

1. These Terms and Conditions of Sale and the contractual relationship between us and the Buyer shall be governed exclusively by the law of the Federal Republic of Germany, excluding international uniform law, in particular the UN Sales Convention.
2. For all disputes arising directly or indirectly from the contractual relationship with merchants, legal entities under public law and holders of special funds under public law, the exclusive - also international - place of jurisdiction is our registered office in Düsseldorf. The same place of jurisdiction shall apply if the customer does not have a general place of jurisdiction in Germany, moves his place of residence or usual place of abode out of Germany after conclusion of the contract or if his place of residence or usual place of abode is not known at the time the action is filed.

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