

## General Terms and Delivery Conditions

### 1. Scope

We shall accept all orders at the following terms and conditions. The purchaser's general terms and delivery conditions shall not bind us even in the event that we do not expressly disagree with you again at or after the conclusion of the contract.

### 2. Offer and Conclusion of the Contract

**2.1** Our offers are subject to confirmation. Orders as well as any changes and additions shall only be binding by means of a written confirmation from us.

**2.2** All verbal supplementary agreements on conclusion of contract shall require a written confirmation from us in order to be effective.

**2.3** Only our written order confirmation shall be appropriate for determining our delivery commitment. We shall implement all technical details and specifications as best as possible; their design can deviate from the specifications under this condition.

### 3. Price and Payment

**3.1** In the absence of a special agreement, all prices shall be applicable only without transport and packaging costs, plus VAT as applicable on the date of delivery.

**3.2** In the absence of a special agreement, all payments shall be made in cash without deductions free domicile. A late interest of 3 % above the Deutsche Bundesbank's prime rate shall be charged in the event that the payment term was exceeded. We reserve the right to claim further damages. Drafts and checks shall only be accepted for payment purposes subject to whether they can be discounted or not; the purchaser shall pay any associated costs and charges.

**3.3** The purchaser shall not be entitled to a right of retention with respect to claims regarding Brain Products, unless (1) the purchaser has already paid the part of the compensation upon receipt of a defective delivery, which corresponds to the value of the performance, or (2) the purchaser's counterclaim upon which the right to refuse performance is based, is indisputable, has been established as final and absolute, or is ready for decision. The same shall apply to setoffs made by the purchaser.

**3.4** If Brain Products is burdened with costs as a result of credits in favor of the dealer/customer, such costs shall be borne by the dealer/customer. The same shall apply to bank charges for the account of Brain Products as a result of transactions conducted with the dealer/customer.

**3.5** If Brain Products is required to pay additional taxes due to the fact that the purchaser has stated an incorrect VAT ID number (this only applies within the EU), Brain Products shall be entitled to charge the back taxes to the purchaser.

### 4. Delivery Period

**4.1** The agreed delivery period shall commence on the date on which the order confirmation is received. The delivery period shall be deemed to be complied with, if the shipment has been dispatched within the period with the purchaser having been notified about this dispatch.

**4.2** The delivery period shall be reasonably extended in the event of measures resulting from industrial disputes, in particular strikes and lockouts, as well as of unforeseen impediments, which are beyond our control as long as such impediments demonstrably affect the delivery of the delivery item. The same shall apply if upstream suppliers experience such circumstances. In addition, we shall not be responsible for any of the aforementioned circumstances if they occur during an existing delay. We shall inform the purchaser about the beginning and end of such impediments if they affect compliance with the delivery period or the extension of the delay.

**4.3** In the event of a delay by Brain Products, the damage caused by the delay for each full week of delay shall be 0.5 % in the aggregate, but not exceeding 5 % of the value of that part of the total delivery, which cannot be used in due time or not according to contract due to the delay.

**4.4** In the event that the delivery is delayed at the purchaser's request, the purchaser shall be charged for the warehousing costs incurred and no less than 1 % of the invoice amount for each month beginning one month after notification of our readiness to deliver. However, after the expiration of an appropriate deadline, we shall be entitled to dispose of the delivery item and to deliver it to the purchaser with a reasonable time limit.

**4.5** The compliance with the delivery term shall be subject to the purchaser's compliance with its contractual obligations.

## **5. Passing of Risk and Acceptance**

**5.1** The risk shall pass to the purchaser at the latest upon the dispatch of the delivery items even in case of partial shipments.

**5.2** In the event that the shipment is delayed due to circumstances for which the purchaser is responsible, the risk shall pass to the purchaser on the day on which we are ready to dispatch; however, we agree to take out the insurance and at the purchaser's expense as requested by the purchaser.

**5.3** Partial shipments shall be acceptable.

## **6. Reservation of Title**

**6.1** We shall reserve the title to the delivery item until receipt of all payments as stipulated in the supply agreement.

**6.2** The purchaser shall only be allowed to resell the goods subject to reservation of title in the ordinary course of business and under the condition that the purchaser also agrees with its customers upon the reservation of title in accordance with Clause 6.1. The purchaser shall not be entitled to any other disposals of the goods subject to reservation of title, in particular hypothecations and transfers by way of security. Furthermore, the entitlement to resell shall not apply in the event of a delay, a draft or check protest and suspension of payment, and if insolvency proceedings have been initiated. Before any resale, the purchaser agrees to obtain an express written consent from Brain Products in all of the aforementioned cases, which consent can be made contingent on the pecuniary claim being secured otherwise.

**6.3** For the event of resale, the purchaser hereby assigns to us all claims including all ancillary rights, resulting from the resale, for the purpose of meeting our claims; Brain Products hereby accepts this assignment. In the event that the purchaser fails to fulfill its obligations to Brain Products or if the purchaser breaches its contractual obligations, in particular as provided in Clause 6.2, or if the buyer fails to fulfill its obligations to the purchaser, or if the buyer breaches the contract resulting in substantial impacts on the contractual relationship, the purchaser shall immediately provide Brain Products with the information required for collection of the assigned claims, in particular regarding the buyer's (garnishee's) name and address; in addition, the purchaser shall inform the buyers about the assignment, in the event that this has not happened yet. Brain Products shall then be entitled to inform the buyers about the assignment of claim and to collect the assigned claim or take back the goods subject to reservation of title.

**6.4** We shall be informed immediately about any attachments and confiscations of the goods subject to reservation of title, and the purchaser shall bear any resulting investment costs.

**6.5** In the event that the purchaser acts contrary to contract, particularly in the event of late payments, we shall be entitled to take the goods back after having sent a reminder, whereas the purchaser shall be obliged to release the goods. The enforcement of the reservation of title as well as our attachment of the delivery item shall not be deemed as a withdrawal from the contract.

## **7. Guarantee**

**7.1** The purchaser shall immediately examine the goods upon receipt. We shall only be bound by any defects that can be detected upon thorough examination if such defects have been notified to us within three business days upon receipt of the goods. In the event of hidden defects, the period within which complaints may be made shall commence on the date of the discovery and shall end no later than the expiration of the guarantee period as provided in Clause 7.2. These provisions shall also apply to complaints regarding quantities. The claims for defects shall not apply in the event of insignificant deviations from the agreed quality or only insignificant impairments with respect to the serviceability. In the event that the purchaser uses own products or accessories in combination with the products from Brain Products (hardware, software) and such own products or accessories are not in a technically perfect condition or are not compatible, the guarantee shall be deemed to be excluded.

**7.2** The liability for defects shall come under a statute of limitations of twelve months. This shall not apply in view of the right of recourse as provided in Section 479 (1) BGB (German Civil Code) as well as in cases where life, body and health have been injured, and in cases of deliberate or grossly negligent breaches of duty and fraudulent concealment of a defect.

**7.3** Defects for which we provide a guarantee shall only bind us to repair the defective parts or to replace them at our option; the defective parts shall be made available to us upon our request. In the event that the repairs or the replacement fails (two attempts per defect, not exceeding a total of six attempts) within a reasonable grace period, the purchaser may request a reduction of the consideration or, at its discretion, the cancellation of this contract.

**7.4** Characteristics of the products shall be warranted only if warranted by us expressly in writing. Brain Products shall not be liable for damage that was not caused to the delivery item itself, for lost profits or any other pecuniary losses of the purchaser, unless fraudulent intent or a warranty existed.

**7.5** Complaints regarding partial shipments shall not entitle the purchaser to refuse the remaining shipment unless the partial shipment and remaining shipment are functionally associated and the removal of the defects fails or has failed.

**7.6** Further details regarding the guarantee follow from the current price list or the product manuals.

## **8. Rescission and Liability**

**8.1** The purchaser may rescind the contract if the entire delivery becomes impossible for us before the transfer of risks; the same shall apply in the event of inability and if, upon ordering similar items, the design of a part of the shipment becomes impossible with respect to the quantity and the purchaser has a legitimate interest in refusing a partial shipment; if this not the case, the purchaser may reduce the consideration accordingly.

**8.2** If Brain Products neither acted deliberately nor with gross negligence, Brain Products shall be liable – both in contract and in tort – only if it has negligently breached a major contractual obligation or a cardinal obligation, in which case the liability shall be limited to the foreseeable damage typical to the contract.

**8.3** Claims resulting from the manufacturer's liability shall be limited to the indemnification paid by the insurance carrier. Brain Products' own liability shall only apply, if the insurer refuses indemnification or the amount insured does not provide adequate compensation for damages. In the event of Brain Products' own liability, Brain Products

shall assume those costs that the creditor incurred due to the insurer's additional claim of Brain Products. The liability according to Sections 1, 4 ProdukthaftG (German Product Liability Act) remains unaffected; Section 275 BGB shall apply in the event of impossibility. As long as Brain Product's liability remains excluded or is limited, this shall also apply to the personal liability of Brain Product's employees, associates, representatives and vicarious agents.

## **9. Intellectual Property Rights remains with Brain Products**

Where Brain Products delivers to the purchaser tangible products or programs (Products) in performing the contract and where intellectual property rights in favor of Brain Products exist or arise in these Products, such rights shall remain the exclusive property of Brain Products. The same shall apply, if Products from Brain Products otherwise become available to the purchaser.

## **10. Claims in the case of Infringement of Intellectual Property Rights**

**10.1** If the purchaser provides documents for the purpose of the further development of existing Products or the production of new Products in which a third party has intellectual property rights or if the further development of existing Products or the production of new Products results in the infringement of intellectual property rights of third parties due to the contribution of the purchaser, the purchaser shall indemnify Brain Products against all claims asserted by third parties (intellectual property right owners and/or authorized licensees), provided that the purchaser is at fault (including ordinary negligence). The indemnification shall also provide that Brain Products is fully assisted in its defense against justified or unjustified allegations of an infringement. Any contributory negligence of Brain Products shall be taken into account in this respect.

**10.2** If a third party asserts claims against the purchaser on the grounds of an alleged or actual infringement of intellectual property rights with respect to Products from Brain Products, the purchaser may take recourse to Brain Products in cases of intent, gross negligence or ordinary negligence on the part of Brain Products, on the grounds that the infringement of intellectual property rights constitutes a material breach of contract on the part of Brain Products. Any contributory negligence of the purchaser shall be taken into account in this respect.

## **11. Business and Trade Secrets**

All facts in connection with the business operations of Brain Products that are not obvious, but only known to a limited group of persons, and in the secrecy of which Brain Products has a legitimate economic interest shall constitute business and trade secrets which fall under the protection of Section 17 UWG (German Law Against Unfair Competition).

## **12. Software**

**12.1** If the contract provides for the supply of own software by Brain Products, Brain Products shall grant to the purchaser a non-exclusive and non-transferable license for the term of years. The number of installed software packages must correspond to the number of acquired licenses.

**12.2** In the event that Brain Products removes bugs – in the form of a patch or an update – Brain Products shall provide to the users the relevant part of the Product or the update free of charge. Support (assistance) is only provided for the current version of the software which has been improved by means of patches and/or updates. In the event of the further development of the software with the option to purchase a paid upgrade, support shall be provided for the previous version for the term of one year following the release of the new version.

### **13. Place of Jurisdiction, Governing Law**

**13.1** The Munich courts (for district courts: LG München I) shall have exclusive jurisdiction in the event of disputes where the purchaser is a dealer, a public corporation or a public separate estate. In addition, we shall be entitled to sue at the purchaser's headquarters. The right of both Parties to have recourse to a court of competent jurisdiction for obtaining interim relief shall remain unaffected.

**13.2** The parties' privity of contract shall be subject to German law. The application of standard laws regarding the international purchase of movable property as well as the conclusion of international purchase agreements for movable property shall be expressly excluded as well as the UN Convention on Contracts for the International Sale of Goods.

**13.3** The private law provisions of the laws on the protection of intellectual property applicable in Germany and the private law regulations on the enforcement of the protection of business and trade secrets as provided in Section 17 UWG shall apply, even if the infringement occurs abroad.

### **14. Final Provisions**

A gap or an invalid provision in the contract shall not affect the validity of the contract as a whole. The invalid provision shall be replaced with a statutory provision. In the event of gaps that cannot be filled by statutory provisions, the contract shall be construed by way of a supplementary interpretation of what the Parties would have agreed after appropriate consideration of their interests in good faith, if they had considered the case not envisaged.