

## 1. Scope of application

- 1.1. These General Terms of Business ("GTB") apply to product deliveries and services by blu Eye GmbH ("blu Eye") for clients each of them a "Party" and both jointly the "Parties", pursuant to a written agreement (e.g. offers and orders) incorporating these GTB.
- 1.2. The term "Client" means the contracting party entering into the agreement with blu Eye. Except as otherwise provided in the agreement, the term Client means any subsidiary and member companies of the Client contracting party.
- 1.3. The Client's General Terms and Conditions do not apply even if the Client refers thereto in connection with its order and blu Eye does not object it. If, individual agreements are entered into between blu Eye and the Client (e.g., commitments, side agreements as well as changes and additions to the GTC), these always take precedence over these GTC. A written contract or confirmation from blu Eye is authoritative for the content of such agreements.

## 2. Deliveries and services

- 2.1. Offers from blu Eye are subject to change and are non-binding. An agreement comes into effect only with written confirmation of the order sent by blu Eye, by fax or e-mail, at the latest with the acceptance of the delivery by the Client or provision of the service. Reasonable partial deliveries and corresponding invoicing are always possible if and to the extent that it concerns commercially available quantities and quality tolerances.
- 2.2. Unless otherwise agreed in writing by the Parties, the content and scope of the deliveries and services owed by blu Eye result from blu Eye's order confirmation.
- 2.3. blu Eye reserves the right to make changes to the contractual product, in particular in the course of further developments, provided the agreed performance data are reached and changes to the contractual product are reasonable for the Client.
- 2.4. Delivery and service dates are non-binding. blu Eye will only fall into arrears if the service is due, the Client has unsuccessfully set blu Eye a reasonable, written grace period (at least 14 days) and blu Eye is responsible for the delay.
- 2.5. In case of minor negligence, the Client is not entitled to compensation for damages due to delivery and performance delay. Clause 8.4 applies accordingly.
- 2.6. Delivery and service dates are extended appropriately for blu Eye in the event of disruptions due to force majeure and other obstacles for which blu Eye is not responsible, such as disruptions in the context of self-supply by suppliers, strikes, lockouts, operational disruptions, etc., by a maximum of 6 weeks. The statutory rights of the Client remain unaffected. Clauses 2.4 and 2.5 apply accordingly.

- 2.7. blu Eye reserves the right to withdraw from the agreement - in whole or in part - for reasons according to Clause 2.6 if the agreement has not yet been fulfilled.
- 2.8. If the Client defaults in accepting the deliveries or services offered by blu Eye or fails to cooperate in a way that is incumbent on him, Client is obliged to compensate blu Eye for the additional expenses or damage incurred as a result of the delay or failure to cooperate.

## 3. Review and transfer of risk

- 3.1. The risk of damage to or loss of the contractual product or of a delay passes to the Client upon delivery to the transport company of blu Eye.
- 3.2. If the delivered goods show visible damage or shortages upon delivery, the Client must note this in writing on the transport company's receipt. The note must identify the damage or the shortage with sufficient clarity. (Damage Report according to § 438 HGB<sup>1</sup>).
- 3.3. The Client must check the goods immediately after receipt for completeness, compliance with the delivery documents and defectiveness (§ 377 HGB). If a written complaint is not received within four days of the date of the delivery note, the goods are deemed to have been delivered properly and completely, unless the defect was not recognizable during the inspection.

## 4. Prices and payment terms

- 4.1. Prices stated in blu Eye's order confirmation are decisive. All prices shown are exclusive of all taxes. Each Party is responsible for its own taxes in connection with transactions under this agreement and must report and pay all relevant taxes to the relevant tax authorities. Client packaging of the delivered contractual products is included in the prices.
- 4.2. blu Eye reserves the right to increase the price appropriately if after the conclusion of the agreement there are cost increases, in particular as a result of price increases by suppliers or from exchange rate fluctuations. Upon request by the Client, blu Eye shall explain the reasons for the price adjustment, name the relevant cost elements and show their pricing weighting in detail. The statutory rights of the Client remain unaffected.
- 4.3. Unless other payment agreements have been made, payments are due 14 days after the invoice date without any deductions (e.g., withholding tax, security deposits for warranty). Invoicing takes place with delivery. If the agreed payment period is exceeded, statutory default interest of 9 percentage points above the applicable base interest rate will be charged as of the due date.

<sup>1</sup> HGB Handelsgesetzbuch [German Commercial Code]

- 4.4. A payment term granted to the Client requires a sufficiently available credit limit for each individual order. If the order exceeds the available credit limit, blu Eye reserves the right to request the remaining order value in advance. In the event of a subsequent change in creditworthiness, blu Eye is entitled to deviate from the terms of payment granted, to demand payment in advance or securities and to withdraw from the agreement in the event of non-performance.
- 4.5. blu Eye is entitled, despite the Client's provisions to the contrary, to first offset payments against his older debts. If costs and interest have already arisen as a result of default, blu Eye is entitled to offset the payment first against the costs, then against the interest and finally against the main deliveries and services.
- 4.6. The Client is only entitled to set-off or retention rights insofar as his claim has been legally established, is ready for a decision or is undisputed.
- 4.7. In principle, the contractual products are paid for by bank transfer; The Client can only pay by SEPA company direct debit with the prior written consent of blu Eye. blu Eye can either demand payment in advance or a security deposit, especially if the Client deviates from the payment obligations without a justifiable reason. If there is such a justifying reason, blu Eye can also make all outstanding claims for immediate payment due. For claims for which payment in instalments has been agreed, the Client's right to payment in instalments shall lapse if the Client is in arrears with the payment of the instalment or a not inconsiderable part of the instalment for two consecutive dates or in a period that extends over more than two dates, is in arrears with the payment of the instalment in an amount equal to the instalments for two months.
- 5. Retention of title**
- 5.1. The contractual products delivered remain the property of blu Eye until the purchase price has been paid in full.
- 5.2. The Client is entitled to resell the reserved goods in the ordinary course of business under retention of title. Client assigns his claims from the transfer of the reserved goods in the respective invoice value of the reserved goods to blu Eye in advance at the time of the order. The Client is authorized to collect the claim himself as long as he meets his payment obligations, does not default on payment and, in particular, no suspension of payments has occurred. If this is the case, however, the Client is obliged, at blu Eye's request, to provide the names and addresses of its customers as well as the type and scope of its claims against them. All related documents are to be handed over to blu Eye; the customers are to be informed of the assignment.
- 5.3. Combining, mixing, processing, or transforming of reserved goods is exclusive to blu Eye. In this case, blu Eye acquires a co-ownership share in the

finished goods or the new item, which corresponds to the ratio of the value of the reserved goods to the value of the finished goods or the new item.

- 5.4. The Client is not permitted to pledge or transfer ownership of goods subject to retention of title. In the event of third-party access to the reserved goods or in the event of an application for the opening of insolvency proceedings against the Client's assets, the Client will point out the ownership of blu Eye and immediately notify blu Eye in writing.
- 5.5. In the event of breach of contract, in particular default in payment, including from other and future blu Eye deliveries or services to the Client or if there are indications of a deterioration in the Client's financial situation, blu Eye is entitled to demand the return of the delivered goods. Exercising the rights from the retention of title or a demand for return shall be deemed withdrawal from the agreement. Irrespective thereof, blu Eye reserves the right to assert claims for damages. The Client bears all costs of returning and recycling of goods. In order to enforce these rights, blu Eye may enter the Client's business premises and take possession of the reserved goods or demand the assignment of the Client's claims for return against his customers.
- 5.6. The Client is obliged to treat the goods subject to retention of title with care, in particular Client is obliged to insure the reserved goods adequately at his own expense against fire, water and theft damage at new replacement value.
- 5.7. Contractual products delivered for test and demonstration purposes remain the property of blu Eye. The Client is obliged to ensure proper storage and may only use these products within the framework of the agreements made.
- 5.8. If third parties access the goods subject to retention of title or claims assigned in advance, in particular through enforcement measures, the Client must inform blu Eye immediately and provide blu Eye with all documents necessary to enforce its property rights. If the third party is not able to reimburse blu Eye for the judicial or extrajudicial costs incurred, the Client shall assume liability.
- 6. Claims for defects**
- 6.1. With regard to the products delivered to the Client, the provisions regarding liability for material defects under the statutory provisions<sup>2</sup> shall apply, unless otherwise stated in the following provisions.
- 6.2. blu Eye does not guarantee that the software functions meet the Client's requirements and that the contractual products work together in the selection made by the Client. Installation / configuration services are generally not owed by blu Eye, consulting services by blu Eye are free of charge and non-binding, unless otherwise agreed in writing.

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<sup>2</sup> Kaufvertragliche Sachmängelhaftung

blu Eye assumes no liability, in particular for the functionality of the individual products with each other.

- 6.3. Claims for material defects are excluded,
- a) in case of only insignificant deviations from the agreed quality,
  - b) in case of only insignificant impairment of usability,
  - c) in the event of functional wear and tear,
  - d) if the serial number, type designation or similar markings are removed or made illegible or
  - e) if the product is modified, improperly installed, maintained, repaired, used or exposed to environmental conditions that do not meet the manufacturer's installation requirements by the Client or third parties, unless the Client can prove that these circumstances were not the cause of the reported defects.
- 6.4. blu Eye assumes no liability for public statements, in particular advertising statements by the manufacturer.
- 6.5. If there is a material defect and after receipt of a written notification of defects by blu Eye, blu Eye will initially choose to rectify the defect or provide a replacement. If blu Eye is unable to rectify the defect or deliver a replacement, if this involves disproportionate costs, or if blu Eye does not remedy the defect within a reasonable grace period set in writing (at least 14 days), the Client is entitled to a reduction of the purchase price or to withdraw from the purchase agreement. If blu Eye delivers a replacement product for the purpose of supplementary performance, the Client must return the defective product and pay compensation for the benefits of use. In the event of withdrawal, the Client will be credited with an amount that results from the purchase price less the value of the usage benefits. To determine the benefits of use, the relationship between the use of the product by the buyer and the expected total product life will be evaluated.
- 6.6. The warranty provisions of the aforementioned Clauses 6.1 to 6.5 apply accordingly to the provision of work performance.
- 6.7. The content and scope of the work to be performed are usually agreed by the Parties in individual agreements that describe the agreed work, the contractual functions or characteristic performance features. In the event of contradictions, the respective individual agreement takes precedence over these GTB.
- 6.8. If the agreed work does not have the contractual functions or characteristic performance features and after receipt of a written notification of defects by blu Eye, blu Eye will, at its own discretion, remedy the defect or provide a new service.

6.9. Claims for defects in quality and title become time-barred 12 months after the transfer of risk. This limitation of liability does not apply in the cases of Clause 8.5.

6.10. Client rights deriving from § 445 (a) BGB<sup>3</sup> only apply to the extent the goods are subject to a consumable goods purchase. The Client must prove to blu Eye in case of doubt, that a consumable goods purchase was conducted ("Verbrauchsgüterkauf").

6.11. Clauses 6.1 - 6.6 do not apply to additional guarantee and warranty commitments by the manufacturer. blu Eye passes manufacturer guarantees and warranty commitments on to the Client without bearing any responsibility.

6.12. Claims for material defects are only transferrable with the consent of blu Eye.

6.13. If blu Eye is not liable for material defects, in particular because the goods were not purchased from blu Eye, because claims for material defects have already expired or because there is no material defect, blu Eye is entitled to return the goods at the Client's expense and risk and to charge a lump sum for expenses of 60 Euros for processing and verification. It is Client's liberty to prove lower expenses. Repairs outside of the limited warranty are chargeable. A cost estimate is to be paid for by the Client.

## 7. Industrial property rights / copyrights

7.1. Regarding its use, each software is subject to the respective license terms of the manufacturer. The Client undertakes to comply with these license terms and will oblige its users accordingly. Client must immediately report any breach of contract by a user to blu Eye.

7.2. blu Eye does not guarantee that the delivered products do not infringe any industrial property rights or copyrights of third parties. The Client must inform blu Eye immediately of all claims made against him for this reason.

7.3. The Client may not remove, change, cover or otherwise make unrecognizable any references to copyrights, trademarks, or other property rights on the products. The Client is only entitled to translate provided documentation material for commercial purposes with the prior consent of blu Eye.

7.4. Insofar as the delivered products were manufactured according to the Client's specifications or instructions, the Client will indemnify blu Eye from all claims asserted by third parties due to the infringement of industrial property rights and copyrights.

7.5. The Client is not authorized to change or copy software (with the exception of backup copies), to adapt it for use on incompatible hardware or to process it in any other way.

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<sup>3</sup> BGB [German Civil Code]

7.6. Lease agreements for software require the prior written consent of blu Eye. Leasing contracts for software can only be concluded within the framework of the respective manufacturer terms and conditions or in compliance with the legal regulations.

## 8. Liability

8.1. For damages for which blu Eye is responsible, blu Eye is liable in accordance with the statutory provisions, unless otherwise stated in the following section.

8.2. blu Eye is not liable for damage that has not occurred to the delivered contractual product itself, in particular blu Eye is not liable for the loss of data and the resulting damage, lost profit or other financial losses (indirect damage and consequential damage) of the Client.

8.3. In the event of damage to property and other damages, the obligation to compensate for damage for which blu Eye is responsible is limited to the coverage amount of the business and product liability insurance taken out by blu Eye.

8.4. If blu Eye's liability is excluded or limited, this also applies to the personal liability of employees, contractors, representatives, and vicarious agents.

8.5. The liability exemption of the aforementioned Clause 8.1 to 8.4 does not apply,

- a) if claims are asserted in accordance with the Product Liability Act or impossibility for which blu Eye is responsible;
- b) guarantees granted by blu Eye;
- c) for bodily damages that are based on a breach of duty, and which are represented by blu Eye, their legal representatives or vicarious agents;
- d) if the cause of the damage is based on intent or gross negligence on the part of blu Eye or if blu Eye violates essential contractual obligations (obligations whose fulfilment is essential for the proper execution of the agreement and on the observance of which the contractual partner regularly relies on and may rely).

In the event of a breach of an essential contractual obligation, blu Eye's liability is in any case limited to compensation for the foreseeable, typically occurring damage.

## 9. Export and import

9.1. All contractual products and technical know-how are delivered by blu Eye in compliance with the currently valid AWG/AWV/ EC Dual-Use Regulation and the US export regulations and are intended for use and remain in the delivery country agreed with the Client. If the Client intends to reexport contractual products, Client is obligated to comply with US, European and national export provisions. The re-export of contractual products – individually

or in system-integrated form – contrary to these provisions is prohibited.

9.2. The Client must inform himself independently about the currently valid provisions and regulations. Irrespective of whether the Client specifies the final destination of the delivered contractual products, it is the Client's own responsibility to obtain any necessary approval from the relevant foreign trade authorities before exporting such products. blu Eye has no obligation to provide information.

9.3. Any further delivery of contractual products by the Client to third parties, with or without the knowledge of blu Eye, requires the simultaneous transfer of the export license terms. The Client is fully liable for non-compliance with the relevant provisions.

9.4. Without prior official approval, the Client is not permitted to sell contractual products directly or indirectly to countries that are subject to a US embargo or to natural or legal persons in these countries or to natural or legal persons who are on US, European or national prohibited lists. Furthermore, it is prohibited to deliver contractual products to natural or legal persons who are in any way connected with the support, development, production, or use of chemical, biological or nuclear weapons of mass destruction.

## 10. Income tax / Import sales tax / Withholding tax / Acknowledgement

10.1. blu Eye will invoice Client for all taxes applicable to the sale of the products, broken down by type and jurisdiction that blu Eye is required by law to collect from the Client. Upon Client 's request, blu Eye will provide Client with sufficient documentation to enable Client to complete required tax returns or claim applicable tax credits for amounts paid to blu Eye. If Client is required by applicable law to deduct any amount from the amounts payable to blu Eye pursuant to this agreement as a result of withholding or other taxes or duties of any kind, Client shall first be required to pay such additional amounts as shown on the invoice to blu Eye. To the extent any withholding tax is payable, blu Eye and Client will cooperate and provide all reasonable assistance to obtain the benefits of any applicable tax treaty between the country where the blu Eye entity that accepted the Client 's order is located, and the applicable jurisdiction where the withholding tax was applied.

10.2. A Client based outside of Germany must observe the purchase tax / import sales tax regulations of the relevant economic area when purchasing the products, in particular and without request, disclose the sales tax identification number and willingly provide the necessary information. In the event of non-compliance, the Client must as a result, compensate for the expenses / damages incurred.

10.3. The Client is obliged to cooperate in the preparation of the evidence required under tax law and must issue and make available the relevant evidence immediately to blu Eye. This applies in particular to the confirmation of arrival within the meaning of § 17a paragraph 2, sentence 1, no 2 UStDV<sup>4</sup>.

## 11. Confidentiality

11.1. To the extent that, in connection with the agreement, each Party comes into possession of any proprietary or confidential information of the other Party ("Confidential Information"), each Party agrees to use the Confidential Information of the other Party solely for the purposes of the agreement and will not disclose such Confidential Information to any third party without the other Party's written consent, save where prohibited by law. The terms of the agreement shall also be considered Confidential Information, subject to the article relating to the use of the Client name. Each Party shall maintain the Confidential Information of the other Party in confidence using at least the same degree of care as it employs in maintaining in confidence its own Confidential Information, but in no event less than a reasonable degree of care.

11.2. Confidential Information shall not include information which:

- a.) shall have become publicly available other than as a result of disclosure by the receiving Party in breach hereof;
- b.) was disclosed to the receiving Party on a non-confidential basis from a source other than the disclosing Party, which the receiving Party believes it is not prohibited from disclosing as a result of an obligation in favour of the disclosing Party;
- c.) is developed by the receiving Party independently of, or was known by the receiving Party prior to, any disclosure of such information made by the disclosing Party;
- d.) is required to be disclosed by order of a court of competent jurisdiction, administrative agency or governmental body, or by any law, rule or regulation, or by subpoena, summons or any other administrative or legal process, or by applicable regulatory or professional standards; or
- e.) is disclosed with the written consent of the disclosing Party.

11.3. The Client hereby consents to blu Eye disclosing such Confidential Information to any blu Eye entity (including its subsidiaries, partners, principals, and employees) and to any subcontractors, or to its legal advisors, auditors, and insurers or as may be required for the due performance of the agreement.

11.4. The Client shall not disclose to any third-party Confidential Information of blu Eye provided hereunder without the express written consent of blu Eye, except where applicable laws, regulations, rules and professional obligations prohibit limitations on disclosure.

11.5. The obligations under this Clause 11 will survive termination or expiry of the agreement for an unlimited period.

## 12. Communication and data transmission

12.1. Unless otherwise instructed by a Client authorized person, blu Eye may communicate or exchange data with Client unencrypted via direct connection or remote access to its network infrastructure, e.g. via applications and protocols such as e-mail, FTP, Telnet and others, with data carriers such as Memory sticks, floppy disks, CDs, DVDs. In doing so, the Client accepts the associated risks (including risks of unauthorized access to data or access to network infrastructures, falsification, viruses, malicious code, or other damaging events).

12.2. For the purpose of providing the services, blu Eye may use software and servers that are operated under the control of blu Eye or by IT and infrastructure service providers.

## 13. Subcontractors

13.1. blu Eye is entitled to use subcontractors for the provision of deliveries and services. blu Eye will inform the Client in advance if such subcontractors are not blu Eye-Persons. The provisions of Clause 11 on Confidential Information apply to subcontractors.

## 14. Data protection

The definitions in accordance with the current version of the applicable laws on data protection apply to the terms in this section. To the extent necessary for the provision of services according to the agreement, blu Eye can process data provided by the Client. In this regard, blu Eye refers to the data protection declaration on its website.

## 15. Marketing

Except as otherwise provided in the agreement, blu Eye may disclose that it has performed work for the Client, except individuals, for marketing, publication, or reference purposes. blu Eye may mention the general nature of the services rendered alongside the Client's name. Further information may only be provided if it has lawfully become public knowledge or blu Eye has been authorized in writing by the Client.

## 16. Agreement duration

The terms of these GTB and the agreement, which, by their nature extend beyond its termination remain in effect until fulfilled and apply to respective successors and assignees.

<sup>4</sup> UStDV Umsatzsteuerdurchführungsverordnung [VAT Implementation Ordinance]

#### 17. **Transfer and assignment**

Irrespective of the provisions of § 354a HGB, the Client is not entitled to assign his contractual claims without the prior consent of blu Eye. This also applies to any material defect claims against blu Eye.

#### 18. **Written form**

Notices, ancillary contracts, assurances, and other agreements as well as changes or additions thereto, must be made in writing to be effective.

#### 19. **Terms and definitions**

Terms and definitions in the agreement are synonymous to the terms and definitions in these GTB.

#### 20. **Severability**

Should any provision of these GTB or the agreement be or become invalid, void or unenforceable, the validity and enforceability of the remaining provisions shall not be affected.

#### 21. **Applicable law and jurisdiction**

Applicable law and jurisdiction to which these GTB and the agreement are subject are governed by the relevant agreement.

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