

General Terms and Conditions for Merchandise

of K&P Computer Service- und Vertriebs-GmbH, Berta-Cramer-Ring 10, 65205 Wiesbaden for the sale of hardware and/or software to entrepreneurs and other parties who are not to be regarded as consumers.

§ 1 General

1. These General Terms and Conditions (GTC) apply to the sale and delivery of movable goods (hardware, if applicable, including associated operating software as well as software) in accordance with the contract concluded between K&P Computer Service- und Vertriebs-GmbH (K&P Computer) and the customer as well as to all statements made in connection therewith in advertisements, brochures and price lists etc., irrespective of whether these have been made verbally, in writing or via the Internet.
2. Our GTC apply exclusively. It follows that conflicting terms and conditions of the customer or terms and conditions of the customer that deviate from our GTC are not recognised unless we have expressly agreed to their validity in writing. Our GTC shall also apply if we carry out the delivery without reservation in the knowledge that the customer's terms and conditions conflict with or deviate from our GTC.
3. These GTC apply to entrepreneurs and other contracting parties who are not to be regarded as consumers (customer).
4. These terms and conditions shall also apply to all future transactions between the contracting parties.
5. Other services, such as the set-up, installation, making the software technically ready for operation, adapting the software used to the Licensee's needs, creating interfaces or other programming services, training, instructing and advising users, consulting or the care and maintenance of the computer program or hardware are not the subject of this contract. However, they may be contractually agreed separately.
6. The customer acquires from K&P Computer the devices/components (hardware) specified in the order confirmation (§ 2 No. 1), including the specified operating software and, if applicable, other software. The operating software and the other software shall not be installed in executable form on the devices - unless separately agreed or communicated by K&P Computer. Source codes shall not be supplied. The order confirmation shall be part of the contract.
7. For hardware and operating system as well as other software, the customer shall receive the documentation (operating instructions / user manual) provided by the manufacturer. For the purchase of used hardware and software, the customer shall not be entitled to the transmission of the documentation. However, K&P Computer shall send them, as far as K&P Computer is in possession of them.
8. The customer receives the simple (non-exclusive) right to use the operating software installed or sent on the hardware and the other software in perpetuity. Furthermore, the respective terms of use and licence conditions of the manufacturer shall apply, which the customer has to accept. K&P Computer encloses the relevant provisions with the products.
9. Hardware and software may be subject to (re-)export restrictions of the USA and the U.K. or other countries. In this regard, the export restrictions notified by the respective manufacturer must be observed by the customer.

§ 2 Offer and conclusion of contract

1. The customer's order constitutes a binding offer which K&P Computer can accept within 3 weeks by sending an order confirmation or by delivering the goods and/or services.
2. Previously submitted offers by K&P Computer - in particular with regard to technical description, quantity, price and delivery time - are subject to change.
3. K&P Computer shall check the customer's order and send him a written order confirmation for acceptance. The customer shall check this immediately and inform K&P Computer immediately in writing of any deviations from the order. Otherwise, K&P shall immediately start with the service/purchase and the content of the order confirmation shall be considered as determining the contract.

§ 3 Prices / Payments / Default

1. Our prices are in euros plus the value added tax valid on the invoice date. They do not include packaging, freight, insurance and shipping.
2. The amount to be paid results from the order confirmation and/or invoice from K & P Computer and is due for payment immediately after receipt of the goods without deduction.
3. From an order value of EUR 100,000.00, the customer shall be obliged to make advance payment in accordance with the following scale:
 - a. 50 % of the order sum shall be paid after conclusion of the contract.
 - b. 50 % of the order sum shall be paid after delivery.
 - c. Insofar as further services pursuant to § 1 No. 5 have been separately contractually agreed - with the exception of training, instruction and advice, care and maintenance services - the percentage figure of 50% stated under b. shall be reduced to 30% of the order value. The remaining 20% shall then be paid after these service(s) have been rendered.
4. the customer shall be obliged to make an advance payment from an order value of EUR 300,000.00 in accordance with the following scale:
 - a. 50% of the order sum is to be paid after conclusion of the contract.
 - b. 50% of the order sum is to be paid after delivery.
5. Insofar as further services pursuant to § 1 No. 5 have been separately contractually agreed - with the exception of training, instruction and advice, care and maintenance services - the percentage figure stated under b. shall be reduced from 50% to 40% of the order value. The remaining 10% shall then be paid after these service(s) have been rendered.
6. Payment by instalments shall only be accepted on the basis of a special written agreement. Payments by bill of exchange and cheque are not accepted.
7. If the price at the time of the provision of the service has increased due to a change in the market price or due to an increase in the fees charged by third parties involved in the provision of the service, the higher price shall apply. If this is 20% or more above the agreed price, the customer has the right to withdraw from the contract. This right must be asserted immediately after notification of the increased price. The same applies to unforeseeable changes in customs duties, exchange rates, taxes and import and export charges.

8. In case of call-off orders, the agreed price at the time of conclusion of the contract shall serve as a basis. Price changes during the term of the call-off contract shall entitle K&P Computer to adjust the price.
9. The total remuneration shall be paid immediately after receipt of the goods and without discount, unless otherwise agreed. The receipt of payment at K&P Computer shall be decisive. After expiry of the aforementioned period, the customer shall be in default of payment.
10. The customer shall only be entitled to set-off rights if his counterclaims have been legally established, are undisputed or have been recognised by us.
11. The customer is only entitled to exercise the right of retention if his counterclaim is based on the same contractual relationship.
12. In case of default of payment, K&P Computer reserves the right to withhold deliveries until full payment, to demand statutory default interest as well as compensation for damages caused by default.
13. Other delivery and payment conditions can be agreed in writing between K&P Computer and the customer.

§ 4 Time of performance/passing of risk/rescission/ duty to examine

1. K&P Computer shall state an approximate delivery date or an approximate delivery period on the order confirmation, which K&P Computer shall try to comply with. Insofar as a duty of the customer to cooperate is necessary, a possibly agreed delivery period/date shall not start to run for K&P Computer before the customer has fulfilled this duty.
2. Stated delivery periods/delivery dates which have been made the basis for placing the order shall be extended in the event of strikes and cases of force majeure, namely for the duration of the delay. Statutory rights of withdrawal, the provisions on the disturbance of the basis of the business, etc. shall remain unaffected by this.
3. The indication of delivery periods/delivery dates is subject to the correct and timely delivery of the suppliers and manufacturers. K&P Computer shall not be liable for delays in delivery due to force majeure, strikes and the like. K&P Computer shall also not be liable for the consequences of such delays. Furthermore, K&P Computer shall be entitled to withdraw from concluded contracts if, as a result of catastrophes, war events or similar circumstances, the procurement of goods is considerably more difficult than at the time of conclusion of the contract. In any case, it shall be considered as substantially aggravating if the market price of the object of purchase has increased by more than 25% between the conclusion of the respective sales contract and the scheduled delivery date. The customer's right of withdrawal regulated under § 3 No. 7 remains unaffected.
4. Insofar as the assertion of the customer's rights requires the setting of a reasonable grace period, this shall be at least two weeks.
5. K&P Computer is entitled to withdraw from the contract in case of missing, incorrect or untimely self-delivery.
6. The same shall apply if the customer has filed an application for the opening of insolvency proceedings against its assets, has made an affidavit in accordance with § 807 of the German Code of Civil Procedure (ZPO) or if insolvency proceedings have been opened against its assets or the opening of such proceedings has been rejected for lack of assets as well as if the customer seriously and finally refuses to perform.

7. The customer is obliged to inspect the goods immediately after delivery for proper function and completeness (also with regard to the documentation) (obligation to inspect). In the event of a breach of the duty to inspect, the goods shall be deemed approved with regard to the corresponding defect.
8. Unless otherwise stated in the order confirmation or in a separate agreement (e.g. delivery of a complete EDP system including set-up, installation, etc.), delivery is agreed to be "ex warehouse".
9. In the event of default in acceptance, the customer shall bear the costs associated therewith, in particular storage costs.

4 a Delivery abroad

1. All deliveries of K&P Computer are subject to the export licence according to the Federal German Foreign Trade and Payments Law, the knowledge of which is incumbent on the customer.
2. Deliveries abroad are exclusively processed by advance payment. In this case, all costs incurred for shipping and payment of the ordered items will be charged to the customer. This includes the costs for bank charges, fees for foreign currency exchange, etc.
3. Unless otherwise agreed in writing, no warranty claims shall apply to exports.

§ 5 Default

1. If the customer is in default with the payment of the remuneration (§ 3 No. 9), K&P Computer shall be entitled to charge default interest according to the statutory provisions.
2. Two weeks after exceeding a non-binding delivery date or a non-binding delivery period, the customer may request K&P Computer in writing to perform within a reasonable period of time.
3. Upon receipt of the request for performance - after expiry of the aforementioned two weeks - K&P Computer shall be in default of delivery.
4. The customer shall be obliged, after unsuccessful setting of a deadline, to declare in writing within a reasonable period of time at the request of K&P Computer whether he wants to withdraw from the contract due to the delay in delivery and/or demand damages instead of performance or insist on the delivery. The customer shall only be entitled to withdraw from the contract within the scope of the statutory provisions, if K&P Computer is responsible for the delay in delivery.
5. In addition to the delivery, the customer may claim compensation for any damage caused by the delay; this claim shall be limited to a maximum of 5% of the agreed purchase price in case of slight negligence on the part of the seller (K&P Computer).

6 Liability for Defects (Warranty)/Guarantee/Limitation of Actions/ Duty to Give Notice of Defects/Used Goods

1. A material defect exists if the contractual items do not have the quality described in § 1 or are not suitable for the contractually agreed use. The third party shall be entitled to copyrights to the operating software and other software. Claims for defects shall not exist in the case of only insignificant deviation from the agreed quality or in the case of only insignificant impairment of usability. A defect of title exists if the customer has not been effectively granted the rights required for the contractual use.
2. In case of a defect, K&P Computer reserves the right to choose the type of subsequent performance, unless the

respective type of subsequent performance is unreasonable for the customer. The customer shall inform K&P Computer of this immediately in writing. Insofar as third party rights are infringed, K&P Computer may, at its own discretion, remedy the infringement by acquiring a right of use in favour of the customer which is sufficient for the purposes of this contract or by removing the infringing software without or only with effects acceptable to the customer. The customer may choose to remedy the defect by K&P Computer acquiring a right of use sufficient for the purposes of this contract or by changing the infringing software without or only with acceptable effects on its function or by exchanging the infringing software without or only with acceptable effects on its function for a software whose contractual use does not infringe any property rights or by delivering a new program version whose contractual use does not infringe any property rights of third parties.

3. In case of removal of defects/replacement delivery, K&P Computer shall acquire ownership of the removed/replaced components/devices with the removal/replacement. Within the scope of the performance and for the removal of defects/replacement delivery, K&P Computer shall use spare parts or components which are new or as good as new according to the respective usual industry standard. The further legal claims of the buyer shall remain unaffected.
4. The customer is not entitled to rental equipment for the duration of the repair.
5. If the replacement service or repair is carried out at the request of the customer at the customer's premises or at another location, the customer shall pay the transport costs or the travel time and kilometre flat rate incurred.
6. If the inspection shows that there is no defect, K&P Computer shall be entitled to demand reimbursement of expenses at the hourly rates valid on the day of the notice of defect according to the price list for services on the basis of "time and material" (plus necessary travel expenses, travel times, costs for data carriers, copying costs and other expenses plus VAT).
7. The warranty period shall be 1 year - unless K&P Computer has fraudulently concealed a defect - and shall commence with the delivery of the goods or in case of partial delivery with the delivery of the partial performance. The limitation period in case of a delivery recourse according to §§ 478, 479 BGB shall remain unaffected. This shall not apply insofar as claims for damages due to defects are concerned. Section 7 shall apply to claims for damages due to a defect.
8. The customer does not receive any guarantees in the legal sense from us.
A warranty provided by the manufacturer shall be passed on to the customer by K&P Computer. The scope of the warranty results from the order confirmation and/or the warranty conditions of the manufacturer.
9. In order to safeguard warranty claims, the customer shall contact the manufacturer directly in the event of the occurrence of faults/defects covered by the warranty, observing the manufacturer's warranty provisions, in particular the intactness of the hardware, the type of notification, and the like.
10. In case of no. 9, the customer shall in any case also inform K&P Computer with regard to possible assertion of claims and report on the handling of the warranty by the manufacturer.
11. K&P Computer allows the warranty conditions of the manufacturer to apply against it insofar as, on the one hand, the limitation period for liability due to material defects and/or defects of title only begins with knowledge under the

warranty conditions and, on the other hand, this period is inhibited by the investigation, rectification and replacement handling on the part of the manufacturer until the final conclusion of these efforts.

12. If operating or maintenance recommendations of K&P Computer or the manufacturer are not followed, changes are made to the devices or the operating software/software, parts are exchanged or consumables are used which do not correspond to the original specifications, or if defects appear which have arisen due to external influences, unusual events or during transport, any warranty shall lapse. This does not apply if the customer proves that the material defect already existed at the time of handover.
13. Incomplete or incorrect deliveries as well as obviously recognisable defects of the delivery item shall be notified to K&P Computer immediately, however no later than 5 (five) days after delivery, if possible in writing - if reasonable in a form comprehensible to K&P Computer. Defects, which cannot be discovered within this period even after careful inspection, shall be reported to K&P Computer in writing immediately after discovery with a precise description of the type of defect as well as the type of device and the device number (obligation to give notice of defects). In case of a violation of the aforementioned obligation to give notice of defects in case of obvious and hidden defects, the goods shall be deemed approved with regard to the respective defect.
14. For the sale of used goods, warranty claims - subject to sentence five (5) - are excluded. This does not apply in the cases of § 438 para. 1 no. 1 BGB (defects of title in immovable property) or § 438 para. 1 no. 2 BGB (buildings, property for buildings). In the case of the preceding sentence 2, a limitation period of one year shall apply. The customer shall be aware of the fact that it is a used device or a used component. In this case, K&P Computer shall assume a switch-on/acceptance guarantee of 30 days from the day of delivery. Excluded from this are wearing parts such as inks, toners or batteries. Especially with regard to the fact that the goods are used, the customer is responsible for saving all data to be uploaded against a possible loss already before the first uploading of data. In order to avoid a loss of data during the transfer of data, the customer is also responsible for backing up data that is not to be transferred from the data carrier.
15. The buyer's right of recourse against the seller pursuant to § 478 of the German Civil Code (recourse of the entrepreneur) shall only exist insofar as the buyer has not entered into any agreements with its customer that go beyond the statutory claims for defects.

§ 7 Liability for damages

1. The liability of K&P Computer for contractual breaches of duty as well as from tort shall be limited to intent and gross negligence. This shall not apply in case of injury to life, body and health of the customer, claims due to breach of cardinal obligations and compensation for damages caused by delay (§ 286 BGB). In this respect, K&P Computer shall be liable for any degree of fault. However, as far as damages are concerned which do not result from the violation of life, body and health of the customer, K&P Computer shall only be liable for the typically occurring damage.
2. The aforementioned exclusion of liability also applies to slightly negligent breaches of duty by our vicarious agents.
3. Insofar as liability for damages not based on injury to life, body or health of the customer is not excluded for slight

negligence, such claims shall become statute-barred within one year beginning with the accrual of the claim or, in the case of claims for damages due to a defect, from the handover of the item.

4. Insofar as our liability for damages is excluded or limited, this shall also apply with regard to the personal liability for damages of our employees, representatives and vicarious agents.
5. K&P Computer is not liable for damage caused by unsuitable or improper use, non-observance of application instructions or faulty or negligent handling.
6. The customer must allow contributory negligence to be imputed to him.
7. The customer shall be responsible - unless expressly agreed otherwise - that a suitable and complete data backup is carried out regularly and reliably. In case of a loss of data for which K&P Computer is responsible, K&P Computer's liability shall therefore be limited to the amount of the costs which would have been incurred in case of a proper backup of the data by the customer - in particular the costs for the duplication of the data from the backup copies to be created by the customer - and for the recovery of the data which would have been lost even in case of a proper backup of the data.

§ 8 Product Liability Act/Guaranteed Quality

Any claims under the Product Liability Act and claims caused by the absence of a guaranteed quality shall remain unaffected by the above limitations of liability.

§ 9 Retention of title

1. K&P Computer shall retain ownership of the delivered goods until all claims against the customer have been fulfilled. This shall also apply if the specific goods have already been paid for. The customer acquires the right to use the software in perpetuity for a one-time fee.
2. The customer shall be permitted to process the hardware or to combine or mix it with other objects. The processing, combination or mixing shall be carried out for K&P Computer. For software, the terms of use and licence conditions of the manufacturer shall apply.
3. If the goods subject to retention of title are combined, mixed or processed together with the customer's own goods or with third party goods subject to retention of title, K&P Computer shall acquire co-ownership of the new item or the mixed stock in the ratio of the value of the goods subject to retention of title to the other goods at the time of combination, mixing or processing. K&P Computer shall not be entitled to the increase in value caused thereby.
4. The customer hereby assigns his claim with all ancillary rights from the resale/rental of the goods subject to retention of title as well as the goods owned or co-owned according to the above statements to K&P Computer as security for all claims K&P Computer is entitled to against the customer at the time of the resale/rental. In case of resale of the goods which are co-owned by K&P Computer due to combination, mixing or processing, the claim shall be deemed assigned, however, only that part of the claim which corresponds to the value of the co-ownership share. If the customer has sold the claim from the resale within the scope of genuine factoring, he shall assign the claim against third parties taking its place to K&P Computer. K&P Computer hereby accepts the above assignments. If the value of the retained securities exceeds the claims against the customer by more than 20%, K&P

Computer shall, upon the customer's request, release securities to this extent at its discretion. The customer shall bear the burden of proof that the retained securities exceed 20%.

5. The customer shall be entitled to collect the assigned claims on behalf of K&P Computer. However, this authorisation shall expire if the customer is in default of payment towards K&P Computer. In this case, K&P Computer shall be authorised to inform its customers of the assignment on behalf of the customer. The customer shall be obliged to provide K&P Computer - in order to assert its rights against its customers - with the necessary information, in particular to name the customers and to hand over the necessary documents and records. The customer shall be entitled to resell the goods subject to retention of title as well as the goods owned or co-owned by K&P Computer only within the scope of his ordinary business transactions and only under the condition that the purchase price claim from the resale is transferred to K&P Computer.
6. The customer shall be obliged to sufficiently insure the goods subject to retention of title as well as the goods owned or co-owned by K&P Computer according to §§ 946 to 950 BGB against loss and damage due to fire, theft, water or similar dangers and to prove the insurance cover to K&P Computer upon request. The customer hereby assigns his claims for compensation to which he is entitled against insurance companies or other parties liable for compensation - if applicable, proportionally, i.e. according to the share in the co-ownership - to K&P Computer. K&P Computer hereby accepts the above assignment.
7. The customer shall inform K&P Computer immediately about enforcement measures of third parties against the goods subject to retention of title, handing over the documents necessary for an intervention; this shall also apply to impairments of any other kind. Irrespective of this, the customer shall already inform the third parties in advance of the rights existing in the goods. The customer shall bear the intervention costs of K&P Computer insofar as the third party is not in a position to reimburse them.
8. If the customer seriously and finally refuses performance, or if insolvency proceedings have been applied for, opened or rejected for lack of assets with respect to the customer's assets, or if a declaration in lieu of an oath has been made according to § 807 ZPO (see also § 4 No. 6), the customer shall no longer be entitled to dispose of the goods subject to retention of title. In these cases K&P Computer shall be entitled to reclaim already delivered goods from the reservation of title after exercising a right of withdrawal. Furthermore, K&P Computer shall be entitled to demand reimbursement of all costs causally connected with the withdrawal (e.g. return transport, reduction in value, etc.).

§ 10 Duty of the customer to cooperate and provide information

1. The customer shall ensure that the goods can be properly delivered at the agreed delivery time.
2. It is the customer's responsibility to install and configure the hardware and software upon receipt, unless otherwise agreed. It is the customer's responsibility to ensure that the hardware and software environment required and sufficiently dimensioned for this purpose in accordance with the guidelines of the manufacturer(s) is available (in particular the correct power supply, protection against moisture, protection against overvoltage, no use of incorrect or faulty program software, etc.). In the case of sentence 2, the

customer shall bear the burden of proof that these circumstances are not the cause of the defect/damage complained of.

3. The customer has informed himself about the essential functional features of the purchased software and bears the risk as to whether it meets his wishes and needs.
4. The customer shall thoroughly test the software for freedom from defects and for usability in the existing hardware and software configuration before using it. This shall also apply to software received under warranty.
5. The customer shall take reasonable precautions in the event that the software does not work properly in whole or in part (e.g. through data backup, fault diagnosis, regular checking of data processing results).
6. The customer is responsible for ensuring that a suitable and complete data backup is carried out regularly and reliably (see already § 7 no. 7 sentence 1). In case of a defect, the customer shall immediately inform K&P Computer about the defect and its circumstances. K&P Computer expressly points out to the customer at this point that within the scope of hardware and software installation or maintenance or supplementary performance, any intervention in an EDP system represents a danger to the data contained therein. In the event of a defect, the customer is responsible for ensuring that - as far as technically possible - a proper and complete data backup is carried out without delay. Unless expressly agreed otherwise, the customer is solely responsible for the proper, error-free and complete condition of the data backup, as well as for the proper, error-free and complete implementation of the data backup procedure. It is the Client's responsibility to deactivate all passwords in advance of the activity to be carried out and to reactivate them following this activity. It is also the responsibility of the customer to install the software and data after the repaired product or the replacement product has been handed over to him.

§ 11 Data protection

Customer data is subject to electronic data processing. K&P Computer will observe the relevant data protection regulations (in particular the DSGVO and the BDSG-neu) when using personal data.

§ 12 Limitation of own claims

Claims of K&P Computer for payment shall become statute-barred in deviation from § 195 BGB in 5 (five) years. With regard to the beginning of the limitation period, § 199 BGB shall apply.

§ 13 Form of declarations

1. Legally relevant declarations and notifications which the customer has to make towards K&P Computer or a third party must be made in writing.
2. Verbal commitments by our representatives or other auxiliary persons require written confirmation by us.

§ 14 Place of performance/court of jurisdiction

1. Unless otherwise stipulated in the contract, the place of performance and payment shall be our registered office.
2. The law of the Federal Republic of Germany shall apply. The UN Convention on Contracts for the International Sale of Goods shall not apply.

3. Insofar as the contracts were concluded with merchants, legal entities under public law or special funds under public law, the exclusive place of jurisdiction for all disputes in connection with the present business relationship shall be Wiesbaden.
4. 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 habitual abode out of Germany after conclusion of the contract or his place of residence or habitual abode is not known at the time the action is brought.
5. K&P Computer is also entitled to sue the customer at his general place of jurisdiction.

§ 15 Miscellaneous

1. Should any of these provisions be invalid, this shall not affect the validity of the remainder of the contract.
2. K&P Computer shall be entitled to have individual obligations performed by subcontractors.
3. The customer shall only be entitled to assign claims arising from this agreement with the prior written consent of K&P Computer.
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