

General Terms and Conditions of Business for AMPEG GmbH

1. Validity

- 1.1. These General Terms and Conditions of Business shall apply for all goods and services (hereinafter known collectively as "Consignments") by AMPEG GmbH (hereinafter known as "AMPEG") to businesses, legal entities created under public law as well as public-law special assets (hereinafter known as "Customer"); a customer's terms and conditions of business which are contrary to, or differ from, these terms and conditions shall not be recognised by AMPEG unless an express agreement has been made to the contrary.
- 1.2. AMPEG's terms and conditions shall also apply for all future transactions even in those cases in which no express reference has been made to them once more.
- 1.3. The receipt of consignments or part consignments shall in any case be regarded as acceptance of AMPEG's terms and conditions of business.

2. Offer and Acceptance

- 2.1. An order placed by a customer constitutes a binding offer to buy. AMPEG is entitled to accept the offer to buy within three weeks.
- 2.2. Offers to sell made by AMPEG are subject to change without notice. A contract shall only materialise once a statement of acceptance has been made in writing. An order confirmation, the making available of ordered goods plus notification that they are ready for dispatch as well as the commencement of carrying out work, customer services and work shall be the equivalent of making a statement of acceptance.
- 2.3. Agreements made between AMPEG and the customer must be committed to writing.

3. Prices and scope of delivery

- 3.1. Prices are net prices, quoted in EURO (€) ex Works plus the statutory rate of value added tax in force at that time. If costs are incurred for packing, transport and insurance for consignments of delivered goods, plus costs for travelling time, labour and waiting time, plus travelling expenses and separation allowances for other services, these shall be invoiced separately.
- 3.2. Prices for goods do not include setting up and assembly on-site, or installation and start-up. Repair work and other services are to be remunerated separately, unless repairs are covered by warranty.
- 3.3. If an agreement materialises on price, AMPEG shall be entitled to adjust its prices if the cost of wages, treatment and procurement have increased by a significant amount. If the agreed price is increased by more than 5%, the customer may withdraw from the contract by making a written statement to that effect within 2 weeks from the receipt of notification of the price increase.
- 3.4. The information on performances, dimensions, weights, prices and such like contained in catalogues, leaflets, circulars, advertisements, photocopies and comparable public sales talk, including information transmitted by means of electronic media are not binding, unless they are expressly included in a contract.
- 3.5. The documents forming part of an offer such as photocopies, drawings, stated weights and measures only count as being approximate, unless they have been expressly designated as being binding.
- 3.6. Verbal and written information about suitability and potential applications of the goods supplied by AMPEG and their installation as well as advice and recommendations by AMPEG shall be given to the best of their knowledge. They are non-binding and shall substantiate neither a contractual legal relationship nor a secondary obligation under the contract of purchase. In particular the customer shall not be exempted from his obligation to conduct a check in order to convince himself that the goods are suitable for his intended use.

4. Delivery period, Partial delivery, Disruptions in delivery

- 4.1. Stated delivery periods and delivery dates for consignments are not binding. Sales will not be fixed date transactions unless an express agreement has been made to this effect. Unless an express agreement is made to the contrary, periods for delivery shall begin on the date of the order confirmation.
- 4.2. AMPEG shall be entitled to deliver and to make partial deliveries at any time. Partial deliveries may be invoiced immediately.
- 4.3. AMPEG shall be entitled to raise interim invoices at fortnightly intervals if installation or customer service work is carried out over a period exceeding 6 weeks.
- 4.4. Compliance with delivery periods and delivery dates assumes the receipt on time of all the documents, licences and clearances required, in particular plans which are to be furnished by the customer, as well as compliance with the agreed terms and conditions of payment and other pre-performance obligations by the customer. If these preconditions are not fulfilled on time, the delivery periods and / or dates shall be extended accordingly. This shall not apply if AMPEG is to blame for the delay.
- 4.5. AMPEG shall not be to blame for delays in delivery as a result of force majeure or as a result of other events making it much more difficult or impossible for AMPEG to deliver (These include in particular natural catastrophes, strike, lock-out, official instructions etc.), also if they occur at the suppliers of AMPEG or their suppliers, even if delivery periods and dates have been agreed on a binding basis. Such delays in delivery or service shall entitle AMPEG to postpone the delivery or service by the duration of the hindrance plus a reasonable start-up time.
- 4.6. In the event of a delay in performance within the meaning of Number 4.5 above, lasting more than 3 months, both sides shall only be entitled to withdraw from the agreement with regard to the outstanding goods.
- 4.7. If the delivery period is extended in accordance with Number 4.5, or if AMPEG is exempted from the obligation in Number 4.6, the customer shall not be able to derive

any compensation claims for damages there from. AMPEG may only rely on this if he has notified the customer immediately.

- 4.8. In the event of non-compliance with delivery periods or delivery dates for reasons other than those named in Number 4.5 the customer shall be entitled to set AMPEG a reasonable subsequent period for performance in writing. If the consignment has not been delivered by AMPEG by the end of the subsequent period, the customer shall consequently be entitled to withdraw from the agreement with regard to the outstanding consignment, unless the customer is not interested in the partial delivery.
 - 4.9. If AMPEG is in default in delivery within the meaning of Number 4.8, compensation claims for damages shall be limited to the amount of foreseeable damage. This shall not apply if AMPEG has caused the default in delivery through gross negligence or intent or if a fixed date transaction was agreed.
 - 4.10. In the event that the goods in the promised delivery are not available, and this non-availability was not foreseen at the point in time at which the contract was signed, AMPEG shall be entitled to withdraw from the contract. AMPEG shall undertake to notify the customer immediately that the goods are not available and shall reimburse the customer's performance.
- ## 5. Passing of risk, Transport
- 5.1. It shall be agreed that the terms of delivery shall be "ex Works"; the latest version of the Incoterm "EXW" shall apply.
 - 5.2. Should, at the customer's request, AMPEG assume responsibility for the transport of the goods, this shall be done in the name and for the account of the customer. In so far as a method of dispatch is not agreed, the selection of method of dispatch shall be left to the discretion of AMPEG. AMPEG shall not furnish a guarantee that it will select the cheapest method of transportation.
 - 5.3. AMPEG shall be entitled to demand a lump sum amounting to 5% of the value of the goods, up to a maximum however of € 20.00 per consignment plus the statutory rate of value added tax in force at that time instead of the freight charges actually incurred.
 - 5.4. At the customer's request and at his expense the goods shall be insured during transportation against the risk of breakage, fire, water or transport.

6. Terms and conditions of payment

- 6.1. Payments are payable immediately net cash. Payment shall be in default no later than 14 days from the date of invoice and the date on which it becomes payable irrespective of whether a payment reminder has been sent out beforehand.
- 6.2. Claims may only be offset against AMPEG if such counterclaims are uncontested or have been declared final and absolute in a court of law. The same shall apply if a right of retention is asserted.
- 6.3. The acceptance of means of payment (Drafts, cheques) shall not constitute the fulfilment or deferment of an account receivable. The costs of protests and cashing, in particular discount fees, shall be for the customer's account.
- 6.4. If the deferment or acceptance of drafts is agreed, all AMPEG's accounts receivable shall consequently become payable regardless of this agreement and the term of the draft, if the customer is in default with the agreed payments or there is a hitch when means of payment are cashed for reasons attributable to the customer, there is a significant deterioration in the customer's financial status, the customer contests AMPEG's account receivable or jeopardises it otherwise.
- 6.5. In the event of a deterioration in the customer's financial status, AMPEG shall be entitled to make performances not yet rendered dependent upon the payment of the purchase price in advance or the furnishing of securities. If the customer fails to fulfil his obligation to render performance in advance as a result of a deterioration in his financial status, AMPEG may, having set a reasonable subsequent period for performance in advance by the customer, consequently withdraw from the contract or demand compensation for damages as a result of non-fulfilment.

7. Ownership rights / Rights of use

- 7.1. Ownership of the programme is not acquired, but just the right to use the programme is acquired once the software programmes have been supplied and paid for. The manufacturer shall retain the title to the software programmes.
- 7.2. In so far as serial numbers have been allocated to products, the customer is to make a note of them on the relevant documents.
- 7.3. The customer shall undertake to comply with the manufacturer's terms and conditions of licence.
- 7.4. The customer is not allowed to reproduce either completely or parts thereof, goods and products sold by AMPEG. This shall also apply for handbooks and other goods or product documents.

8. Retention of title

- 8.1. AMPEG shall retain the title to the delivered goods until all accounts receivable under the current business relationship have been paid for in full. In the current account the retention of title shall be regarded as the security for the balance of net accounts receivable at that time.
- 8.2. If the goods are combined with or mixed with other objects and if, as a result of this, AMPEG's title to the goods subject to the retention of title (§ 947, § 948 of the (German) Civil Code [BGB]), it shall consequently be agreed here and now that AMPEG shall acquire co-ownership to the unitary thing to the extent of the value of the goods delivered by AMPEG in proportion to the combined or mixed objects. If the goods de-

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- livered by AMPEG are processed together with goods not belonging to AMPEG, it shall be agreed that AMPEG shall acquire co-ownership to the new thing in accordance with the above. The things created as a result of combining, mixing or the treatment of existing things shall be goods subject to the retention of title for the purposes of these terms and conditions.
- 8.3. If the resale of such goods subject to the retention of title is part of the customer's normal business operations, he shall be entitled to sell on the goods delivered by AMPEG in the normal course of his business. Above and beyond this, the customer shall be entitled to resell, pledge, transfer of ownership by way of security, hire out or to transport the goods subject to the retention of title to a country outside Germany only with the prior written consent of AMPEG. The customer shall be obliged to treat the goods subject to the retention of title with care and to keep them in safekeeping for AMPEG in a proper manner.
- 8.4. The customer shall assign to AMPEG here and now all the accounts receivable and claims for compensation to which he is entitled with regard to the goods subject to the retention of title in the event of a resale for the invoiced amount of the goods subject to the retention of title. If the goods subject to the retention of title are sold after having been combined, mixed or processed with other goods not belonging to AMPEG, the assignment shall only be for the amount of AMPEG's co-ownership part of the sold thing or the sold inventory. If the customer has used the goods subject to the retention of title to fulfill a contract for services or for a contract for work done and materials supplied, the account receivable from this contract shall consequently be assigned to AMPEG for the same amount as specified above for an account receivable created by a purchase price. AMPEG accepts the assignment. The customer is authorised to collect the assignment, as long as he fulfils his payment obligations properly and does not fall into default with payment.
- 8.5. In the event that a third party seizes the goods subject to the retention of title, the customer is to point out to the third party immediately that the title of the goods is held by AMPEG and to notify AMPEG in writing of the attempts made to levy execution or other seizures so that countermeasures can be taken.
- 8.6. In the event that the conduct of the customer is in breach of the contract, in particular in the event of default in payment. AMPEG shall be entitled to withdraw from the contract – even without setting a reasonable period of time for performance. The following shall apply with regard to the sale of the goods subject to the retention of title:
- AMPEG shall be entitled to sell the goods subject to the retention of title at its best judgement, in particular in the open market, after having withdrawn from the contract.
 - AMPEG may collect assigned accounts receivable from the third party directly. To this end the customer shall be obliged, at the request of AMPEG to announce the assignment to third party debtors and creditors and hand over to AMPEG the necessary information and documents necessary for collection.
- 8.7. AMPEG shall undertake to release the securities to which it is entitled in accordance with the above at its own judgement to the extent that the value of the other securities to which AMPEG is entitled exceeds the accounts receivable to be secured by 20%. The title to the delivered goods and to all assigned accounts receivable shall pass over to the customer in full without more ado once the customer has paid all AMPEG's accounts receivable under the business relationship with AMPEG.
- 9. Warranty**
- 9.1. The customer has to inspect the consignment of delivered goods or service rendered immediately after taking receipt of them, provided that this is convenient in his normal course of business. If a defect is manifest, AMPEG is to be notified of it without delay and in specific terms. The period allowed for the notification of defects is no more than 7 days; the receipt of a written notification of defect (it may also be sent by fax machine) by AMPEG shall determine whether a notification of defect has been made on time. If the defect only becomes apparent at a later date, it must be notified immediately upon discovery. The customer's rights under warranty shall lapse if he fails to comply with the above obligations.
- 9.2. Minor modifications or discrepancies in the delivered goods which are normal within the trade which do not impair the intended use are allowed and shall not constitute a defect, provided that the customer can be expected to tolerate them taking AMPEG's interests into consideration.
- 9.3. In the event that complaints are justified, AMPEG shall be entitled at its own choice to render subsequent fulfilment either by rectifying the defect (repair) or to supply new goods or to render the performance again (New performance). If AMPEG is not prepared to render subsequent fulfilment or is not in a position to do so, or delays beyond what is a reasonable period for reasons which AMPEG is to blame, or if the subsequent fulfilment goes wrong for other reasons or it is not possible to render subsequent fulfilment, the customer shall, as a matter of principle, be entitled to choose whether to reduce the remuneration (reduction) or to rescind the contract (withdrawal), or to demand compensation for damages instead of performance. In the event of a breach of contract only being minor, in particular if defects are just minor, the customer shall not however be entitled to withdraw from the contract. AMPEG shall be entitled to have three attempts at repair, unless it would be unreasonable for the customer to accept this.
- 9.4. In the event that assembly instructions are defective, the warranty shall initially be limited to the supply of defect-free assembly instructions, in so far as assembly has not been carried out properly. This shall not apply to the extent that extensive damage has already been incurred as a result of the defective assembly instructions.
- 9.5. AMPEG's liability shall be limited to the invoice value of the goods about which a complaint has been made. The foregoing limitation shall not apply to the extent that AMPEG is reproached with intent or gross negligence or loss of life, physical injury or impairment to health has been caused.
- 9.6. The warranty claims shall become time-barred one year from delivery of the goods or rendering of the performance or in so far as this is necessary – acceptance of the performance. This shall not apply in so far as § 438 Sub-section 1 No 2 BGB, § 479 Sub-section 1 BGB or § 634a Sub-section 1 No 2 BGB prescribe longer periods of time.
- 9.7. The above-named limitations on warranty shall not apply if AMPEG is reproached with malice, or if AMPEG has furnished a warranty for the quality of the goods.
- 9.8. Used goods shall be sold and supplied without any guarantee, except when sold under warranty, maliciously, or agreements are made to the contrary.
- 9.9. In so far as a customer for his part has to resort to making claims under warranty on account of goods purchased from AMPEG, he shall notwithstanding be entitled to the rights in accordance with § 478 BGB, in so far as AMPEG has to furnish a warranty in accordance with the (German) Civil Code. Number 9.5 shall apply accordingly for a compensation claim in for damages in excess of expenditure.
- 10. Warranties**
- 10.1. An express statement shall be required if AMPEG is to furnish a warranty.
- 10.2. In so far as a manufacturer furnishes a warranty for the quality of goods supplied by AMPEG, or for the goods retaining a specific quality for a specific period of time, the customer shall only be entitled to the rights under warranty at the terms and conditions stated in the statement of indemnity and relevant advertising against the manufacturer, irrespective of his statutory rights.
- 11. General warranty**
- 11.1. Other claims by the customer, in particular for the reimbursement of damages incurred by the delivered object itself, shall be excluded, unless the cause of the damage is attributable to intent or to gross negligence, or loss of life, physical injury or impairment to health is attributable to AMPEG or if AMPEG has breached an important contractual duty (cardinal duty).
- 11.2. In so far as AMPEG is liable for breaches of duty by virtue of the cause, its liability shall be limited – with the exception of gross negligence – to the foreseeable average direct damage typical for the same sort of contract. In cases of ordinary negligence, liability is limited to the value of the goods.
- 11.3. Liability for loss of data at the customer's premises is, in so far as AMPEG is liable by virtue of the cause, limited to the cost of data restoration if back up copies are available.
- 11.4. In general, the customer's compensation claims for damages shall become time-barred after one year, unless AMPEG is liable on account of intent.
- 11.5. The above limitations of liability shall not affect the customer's claims under product liability.
- 12. Data protection liability**
- The customer shall be responsible for securing data in accordance with state-of-the-art technology every day on data carriers changed over on a regular basis.
- 13. Rights of use / Licences**
- 13.1. In the absence of an express agreement, the customer shall be entitled to use software in the operating environment specified by the licensor to the extent specified in the programme schedule. In the absence of a programme schedule or an express arrangement, the right of use shall apply for an individual user on a single computer.
- 13.2. AMPEG shall only assign licences to third parties at its own terms and conditions of licensing.
- 14. Miscellaneous**
- 14.1. These terms and conditions of business shall be governed by the law of the Republic of Germany.
- 14.2. The place of fulfilment for reciprocal rights and duties and the sole place of jurisdiction is Bremen. AMPEG shall however be entitled to take legal action against the customer at the customer's general place of jurisdiction.
- 14.3. AMPEG shall reserve its proprietary and copyright rights of sale to the cost estimates, drafts, drawings and calculations (documents) prepared by AMPEG without reservation. The documents may only be used, reproduced or made accessible to third parties with the prior consent of AMPEG, and are to be returned to AMPEG immediately upon request, if the order is not placed with AMPEG. Sentences 1 and 2 shall apply correspondingly for the customer's documents. However, those third parties to whom AMPEG has been allowed to supply shall be allowed access to such documents.
- 14.4. AMPEG points out that the customer's data concerning the business transaction will be handled in accordance with the (German) Data Protection Act.
- 14.5. Should one or more provisions be or become completely or partially invalid, the validity of the remaining provisions shall not be affected as a result.