

## Bartsch Software Conditions of Sale and Delivery (VuL 11/1999)

These Conditions of Sale and Delivery have been translated from German. In the case of any discrepancies, the original German text shall be solely binding.

### I. General

1. These Conditions of Sale and Delivery are valid to all present and future contracts, supplies of goods and other services including consultation and providing information and so forth. All conflicting statements on the part of the customer, drawing attention to his general trading or purchasing conditions, are herewith expressly contended.
2. For Computer Software the „Bartsch Software License Agreement“ are valid as supplement.
3. The contract does not come into effect until we have given our confirmation of order in writing. Collateral agreements, reservations, alterations or supplements to the contract are not valid unless they are confirmed by us in writing.
4. We reserve full and unrestricted title and copyright to estimates, drawings, photographs and other documents; the same shall not be disclosed to third parties without our consent and shall be returned to us without delay if we so require.
5. We store data within the framework of our mutual business relationship in compliance with the Federal German Law for the Protection of Data (BDSG).

### II. Prices

1. Prices are to be understood in Deutschmarks or from 01.01.2001 in Euro respectively, excluding installation and commissioning, without packing, ex works, and without value added tax
2. Costs of approval, expert opinions or certificates from public authorities or testing bodies demanded by the customer will be charged separately.

### III. Retention of Title

1. We retain title to goods supplied and/or installed by us (goods subject to retention of title) until all claims on any legal grounds whatsoever arising out of the contract or out of our business relationship with the customer, which came into existence on signing the contract, or which were already in existence at that time, have been settled in full.
2. The customer is entitled to resell, process, blend, compound or combine the goods and to alienate the same subsequently, within the framework of extended rights of retention of title, inasmuch as this is effected in the normal course of business. The customer shall not be entitled to pledge goods subject to retention of title.
3. If the customer processes, blends, compounds or combines the goods subject to retention of title with other goods, we shall acquire co-ownership of the goods thus resulting to the extent of the invoiced value of the goods subject to retention of title; the goods thus resulting shall also be subject to retention of title in the sense of these Conditions of Sale and Delivery.
4. The customer shall herewith assign to us in advance, as security, all claims and subsidiary rights to which he is entitled in conjunction with the resale, and all claims he might have against his insurer. Furthermore, in the case of the goods subject to retention of title being exported, the customer shall herewith assign to us all claims which he has, or which he will have in the future, against any national or foreign banks in conjunction with the export of the said goods. If the goods subject to retention of title are sold together with goods to which we have no title, be they processed or unprocessed, the claims and rights shall be assigned to us to the extent of the invoiced value of the goods subject to retention of title.
5. The customer is entitled and obligated to collect claims arising out of the resale of the goods subject to retention of title despite the assignment, inasmuch as we do not revoke this authorization.
6. If the customer defaults in his obligations for payment, or if he infringes any obligation incumbent upon him derived from the agreed retention of title, any balance outstanding shall become due in full immediately.
7. If the customer so requires, we shall be obliged to reassign to him out proper title to the goods subject to retention of title and the claims assigned to us in this respect, inasmuch as the value of the goods subject to retention of title exceeds the total value of our claims against the customer by more than 20 %. In the event of default of payment, and upon our express demand, the customer shall grant us access to the goods subject to retention of title or to surrender the same to us. Withdrawal and pledging of the goods subject to retention of title on our part is not tantamount to canceling the contract - except inasmuch as the Hire Purchase Act applies.

### IV. Conditions of Payment

1. All payments shall be settled within a fortnight of the date of invoice without any deductions.
2. We are entitled to supply goods cash on delivery or against advance cash,
3. Bank and discount charges shall be borne by the customer. In the case of default of payment, we shall be entitled to charge interest at an annual rate of 3 % above the discount rate of the German Central Bank (Bundesbank). We reserve the right to lodge claims for further losses due to default of payment.
4. The customer is entitled to setoff and lodging of claims for rights of retainer only inasmuch as the counterclaims are recognized by us in writing, or inasmuch as they are not contested by us, or inasmuch as they have been established finally and conclusively by a Court of Law.
5. Bills of exchange will be accepted only with our prior written consent and under reserve of their discountability.

### V. Delivery Periods

1. The delivery period begins on the date of confirmation of order, but not before presentation of any licenses, documents or clearances to be procured or produced, and not before the conditions of payment agreed upon and any other obligations have been complied with. If a down payment, a bank guarantee or a letter of credit have been agreed upon, the delivery period begins upon receipt of payment or the appropriate documents.
2. The delivery period shall be considered to have been observed, if the customer is notified that the goods are ready for shipment within the stipulated delivery period. Any delays for which the customer is responsible, e. g. because of alterations to the order for the goods to be supplied, cause the delivery period to be interrupted and extended accordingly.
3. Partial deliveries and services are permitted within reasonable limits.
4. In the case of force majeure or other unforeseeable events, such as acts of war, measures of monetary or economic policy or other jurisdictional measures, disruptions in the power supply, internal unrest, acts of God, fire, strikes, lockout, non-supply of materials for reasons beyond our control, disruptions to transport or shutdowns etc., the delivery period shall be extended by a reasonable period if we or our sub-suppliers are hindered from fulfilling our obligations in good time. If, due to the aforesaid circumstances, delivery or services become impossible or unreasonable, we shall be discharged from our obligation to deliver. Inasmuch as the delivery is delayed for more than 3 months, the customer shall be entitled to cancel the contract. If the delivery period is extended, or if we are discharged from our obligation to deliver, the customer shall not be entitled to derive any claim for compensation therefrom. We are only entitled to plead the aforesaid circumstances if we have notified the customer without delay.
5. If delivery is delayed for other reasons, the customer shall extend the delivery period in writing by a reasonable period.
6. If shipment or delivery is delayed at the request of the customer, we shall be entitled to charge the customer storage charges amounting to 0.5 % of the invoiced sum for every month or part of a month, beginning one month from notification that the goods are ready for shipment, unless the customer can prove a lesser loss.

### VI. Transfer of Risk

1. Shipment of goods to be supplied is effected for the account and risk of the customer. Risk is transferred to the customer on acceptance or approval, on delivery, or when the goods leave our premises at the latest, irrespective of whether or not shipment is effected from the place of fulfillment of the contract, and irrespective of who shall bear the freight costs. In the case of the goods being ready for shipment and acceptance being delayed for reasons beyond our control, the risk shall be transferred to the customer upon receipt of notification that the goods are ready for shipment.
2. If the customer so desires, we shall insure the goods to be shipped on the customer's account against transport risks of all kinds.

### VII. Warranty

We provide warranty for our products for 6 months after delivery and transfer of risk against defects and the absence of features undertaken to be provided by us under the following conditions and to the following extent:

1. The customer shall give notice in writing of warranty claims on the grounds of incomplete or incorrect supply of goods or on the grounds of recognizable defects of the same without delay, or 10 days after receipt of the goods at the latest.
2. Where we are obligated to implement a warranty repair we have the right of choice between repair or replacement of the faulted item. Should we not be in the position or not be willing to implement a warranty repair or replacement, or if repair or replacement is delayed for more than a reasonable period of time because of reasons within our control, or if the implementation of the warranty repair is repeatedly unsuccessful the customer is entitled either to cancel the order/contract or to demand a reduction in price.
3. If the customer requests that a representative of our company be sent to his premises in conjunction with the repair, although there is no objective need for this, the costs thereby incurred shall be borne by the customer. The customer shall grant us a period of time and opportunity to remedy the defects as shall be deemed reasonable. If the customer refuses to do so, we shall be discharged from the warranty obligation.
4. Our warranty does not apply in cases of natural wear and tear, damage due to improper or careless handling, overstraining, atomic radiation, the use of unsuitable materials and such environmental influences as are not foreseen in the contract. Proper handling includes inter alia the observance of our installation, operating and maintenance instructions, proof of which the customer shall be required to furnish.
5. Warranty claims will be recognized within our normal working hours. Second-hand equipment are excluded from warranty. For reconditioned exchange equipment we provide 3 months warranty.
6. We undertake liability for delivered equipment manufactured by other suppliers in accordance with the manufacturer's conditions of warranty.

### VIII. Liability

1. All claims not expressly covered by these "Conditions of Sale and Delivery" for any reasons whatsoever are inadmissible. We are therefore liable only for damage occurring to the delivered item. We are especially not liable for loss of profit or other forms of capital or financial damages of the customer. The aforementioned liability limitations are invalid in the case of premeditated malicious damage or due to gross negligence by our legal deputies or employees.
2. All claims against us expire by limitation after one year at the latest, unless a shorter period of limitation is provided by statute or agreed upon.

### IX. Place of Fulfillment of Contract and Legal Domicile

1. Place of fulfillment of contract and legal domicile for all disputes between the contractual parties arising out of the said contract is Kiel, inasmuch as the customer is a trader, a body corporate or a public corporation. Notwithstanding this, we shall also be entitled to take legal action at the domicile of the customer.
2. The law of the Federal German Republic is binding for all legal relations between ourselves and the customer, as would be the case between two German contracting parties.