

General Terms and Conditions of Purchase of Genius Bytes Software Solutions GmbH

As of April 2011

§ 1 General

The Terms and Conditions of Purchase of Genius Bytes Software Solutions GmbH (hereinafter referred to as “Genius Bytes”) apply to all orders arising from dealings with companies and also to other contracts, for example contracts for work and materials. Any conditions of the Supplier diverging from these conditions shall not be acknowledged – even if Genius Bytes has not expressly contradicted them - unless Genius Bytes has acknowledged their validity explicitly in writing at the time of conclusion of the contract. The acceptance of objects of the agreement does not imply agreement with the General Terms and Conditions of the Supplier. Unless otherwise agreed, these General Terms and Conditions of Purchase shall also apply to all future transactions and contracts with the Supplier.

§ 2 Orders

Only orders issued in writing shall be deemed binding (exclusively by e-mail or fax). This also applies to any additions and amendments to agreements concluded, including these Terms and Conditions of Purchase.

§ 3 Conclusion of Contract

Orders shall only be binding for Genius Bytes, if such are confirmed in writing by the Supplier within 8 days of sending of the order and specify a binding delivery date, unless otherwise agreed in individual cases. Deviations in terms of quantity and quality from the text and content of the purchase order and subsequent amendments of contract shall only be deemed to have been agreed if Genius Bytes provides express written confirmation. Genius Bytes can demand reasonable changes in the delivery object even after contract conclusion. In the event of such amendments to the contract, the impact on both parties in particular with respect to any additional or lower costs as well as delivery dates is to be given adequate consideration.

§ 4 Prices, Pricing, Terms of payment

4.1 The prices stated in the orders are fixed prices.

4.2 Delivery shall be performed at the expense of the Supplier and free of charge to the receiving location specified by Genius Bytes. If Genius Bytes bears the transport charges, the Supplier shall use the mode of transport specified by Genius Bytes, and otherwise the most economical method of transport and delivery for Genius Bytes.

4.3 Packaging is included in the price. If otherwise agreed in exceptional cases, packaging will be charged at cost price. The Supplier shall select the packaging stipulated by Genius Bytes and shall ensure that the packaging protects the goods from damage.

4.4 The risk transfers to Genius Bytes at the time of acceptance of the goods by the receiving location.

4.5 Unless otherwise agreed in writing, payment of the purchase price is due 30 days after transfer of the goods, receipt of a verifiable invoice and receipt of all contractually required documents. The Supplier shall allow 2 % early payment discount if payment is made within 14 days of receipt of a verifiable invoice, however calculated at the earliest from the date of handover and transfer of ownership by the Supplier. In the case of partial deliveries, payment is not due until the final delivery has been made. This shall not apply to apportioned contracts (= call orders from blanket purchase orders). In the event of advance payments, Genius Bytes is entitled to demand a bank guarantee.

4.6 Claims against Genius Bytes can only be assigned with the written consent of Genius Bytes – which shall not be unreasonably withheld. In the event of extended retention of title, this consent is deemed to be given in accordance with § 10.

4.7 Genius Bytes is entitled to offsetting and retention rights in the scope provided by legal statutes.

§ 5 Delivery Dates

5.1 The delivery date or delivery periods specified in the purchase order are binding. Delivery periods shall commence on the date of order. If delivery is made before the agreed delivery date, Genius Bytes reserves the right not to accept the delivery and to return this to the Supplier at the Supplier's expense.

5.2 The Supplier is obliged to notify Genius Bytes immediately in writing if circumstances occur or become known to him, which indicate that it will not be possible to comply with the agreed delivery period.

5.3 If the agreed delivery date or period is not met owing to circumstances for which the Supplier is responsible, Genius Bytes is entitled to demand a contractual penalty of 0.25% up to a maximum of 5% of the net total order value for every working day or part thereof of delay. In deviation from § 341 Section 3 BGB (German Civil Code), it suffices if Genius Bytes enforces the contractual penalty upon payment of the final payment. The right to assert more extensive claims shall remain reserved.

§ 6 Exemptions from the Obligation to Perform

Force majeure shall release the contracting partners from their obligation to perform for the duration of the disturbance and to the extent of their impact. The contracting parties shall be obliged to provide the necessary information without delay as far as can be reasonably expected and to adapt their obligations to the changed situation in good faith.

§ 7 Quality, Acceptance, Notification of Defects

7.1 In its deliveries, the Supplier is obliged to abide by the technical data stipulated by Genius Bytes, the applicable accident prevention and VDE requirements, the applicable statutory provisions and also the latest recognised rules of technology. In order to ensure the quality of its deliveries, the Supplier shall carry out quality tests, the nature and scope of which must be suitable.

7.2 The values established during the incoming goods inspection carried out by Genius Bytes are decisive with respect to dimensions, volumes and quality.

7.3 Obligations to inspect and notify of defects do not exist until full delivery has been made. The Supplier acknowledges that Genius Bytes conducts an incoming goods inspection properly by doing a reasonable amount of spot checks with respect to the identity, weight, dimensions and appearance of the supplied goods without delay after the goods have been delivered to Genius Bytes, at the latest within 14 days. Genius Bytes is not obliged to conduct technical, functional tests and other inspections. Genius Bytes shall notify the Supplier without delay of defects in the delivery that become evident during the course of the above-mentioned examinations, at the latest within 14 days of delivery, or in the case of hidden defects from the time of discovery.

§ 8 Warranty

Warranty claims by Genius Bytes are determined by the legal provisions and Genius Bytes shall be entitled to the full statutory rights. Genius Bytes is entitled to undertake rectification of defects, at the Supplier's expense, when there is a risk of delay or in cases of special urgency. The period of limitation for warranty claims is 36 months after the risk has been transferred, calculated from the time of risk transfer. For parts that are restored or repaired within the warranty period, the period of limitation shall start to run anew from the point in time when supplementary performance is completed. The Supplier shall be obliged to reimburse costs incurred due to defective delivery or other defective performance, in particular transport, material and labour costs.

§ 9 Liability

9.1 The Supplier shall be liable within the framework of the statutory provisions. Limitations of liability by the Supplier are not valid. If third party customers claim for damages against Genius Bytes arising from product liability, regardless of the legal grounds or whether these are domestic or foreign customers, the Supplier shall exempt Genius Bytes from such claims – including the associated costs of legal defence – insofar as the Supplier caused the damages and – in cases of liability based on fault – is responsible for the event giving rise to liability.

9.2 In the context of liability as defined in § 9.1, the Supplier is also obliged to reimburse any expenses that result from the fact the object of delivery is not secure, in particular expenses relating to a recall. As far as is possible and reasonable, Genius Bytes shall agree the content or scope of the measures to be taken with the Supplier.

9.3 The Supplier undertakes to maintain product liability insurance with a lump-sum cover of at least Euro 3 million for each instance of personal injury/property damage. The right of Genius Bytes to claim for damages exceeding the sum insured remains unaffected. The Supplier shall provide verification of this insurance if so requested by Genius Bytes.

§ 10 Retention of Title

10.1 The Supplier is entitled to the requested extended retention of title, so long as this expires with payment of the agreed remuneration for the object of delivery (goods subject to retention of title) and Genius Bytes is entitled to resell in the ordinary course of business.

10.2 In the event of processing or resale where retention of title has been validly agreed in accordance with § 10.1, as security Genius Bytes hereby assigns to the Supplier the receivables due to Genius Bytes from buyers in the amount of the invoiced value of the goods subject to retention of title delivered by the Supplier. If assigned receivables against buyers are included in a current account, the assignment relates to that part of the balance which is equivalent to the amount of such receivables, including the final balance from current account operations.

10.3 The Supplier hereby reassigns the assigned claims back to Genius Bytes in accordance with § 10.2, under the condition precedent that Genius Bytes makes the respective payments for the invoiced goods subject to retention of title. Genius Bytes accepts this assignment.

10.4 Genius Bytes is authorised to collect claims assigned to the Supplier. This authorisation can only be validly revoked if Genius Bytes violates payment obligations from the underlying business with respect to the delivery of the respective goods that are subject to retention of title. With respect to this, the Supplier can also demand that Genius Bytes disclose the assigned claims and the debtor, and notify the debtor of the assignment or the Supplier can undertake this notification.

§ 11 Trade Mark Rights

The Supplier guarantees that no third-party rights are breached in connection with its deliveries. Should action be taken against Genius Bytes by a third party in this regard, the Supplier undertakes to indemnify Genius Bytes from such third-party claims upon first written request. Genius Bytes is at its own discretion entitled to reach agreements with such third parties – without the Supplier's consent – in particular to make a settlement. The Supplier's duty of indemnification relates to all expenses that Genius Bytes may necessarily incur arising from or in connection with such claims being brought by a third party. The period of limitation for these claims is 10 years, beginning with the delivery of the asset purchased from the Supplier.

§ 12 Confidentiality

The Supplier is obliged to treat the purchase orders and all related commercial and technical details as trade secrets. The Supplier shall obligate its own suppliers accordingly. This confidentiality obligation continues to apply even after completion or failure of the contract. It expires if and to the extent that the knowledge provided in the documentation has become public knowledge.

§ 13 Place of Performance, Place of Jurisdiction, Applicable law

13.1 The place of performance for all contractual obligations shall be the location of the place of business of Genius Bytes. The place of jurisdiction for all disputes is the court of jurisdiction located at the place of business of Genius Bytes. Genius Bytes shall however also be entitled to bring proceedings against the Supplier before the court at the Supplier's place of business.

13.2 All legal relations between the Supplier and Genius Bytes shall be subject to the laws of the Federal Republic of Germany.

13.3 If the place of business of the Supplier is located outside the Federal Republic of Germany, the United Nations Convention on Contracts for the International Sale of Goods (CISG) applies with the following special provisions:

- (a) Amendment to the contract or cancellation of contract must be in the written form. This also applies to any agreements with respect to this written form requirement.
- (b) In the event of culpable breach of contract, the Supplier is also liable for damages that were unforeseeable at the time of conclusion of the contract.
- (c) In the event of delivery of goods that are in breach of contract, Genius Bytes can demand a replacement delivery from the Supplier, if the breach of contract represents a material breach of contract. A breach of contract is deemed to be material among other things when the goods are only manufactured or sold by the Supplier or if it is unreasonable for any other reason for Genius Bytes to purchase the goods from a third party.
- (d) In the event of delivery of goods that are in breach of contract, Genius Bytes can declare cancellation of the contract, if the breach of contract represents a material breach. A breach of contract is deemed to be material among other things when it is not possible to estimate the damages at a later stage or at all, if immaterial damages have been incurred and the right to claim for damages is excluded on account of Article 78 V CISG, in the event of confidence in the reliability of the Supplier being badly damaged or when the lack of conformity of the goods reaches a level whereby the sale of goods in the normal course of business is no longer possible.

§ 14 Final Provisions

14.1 Ancillary agreements must be in the written form to be valid. This shall include any amendment to or cancellation of this requirement of written form.

14.2 If any one of these provisions should be or become invalid, the validity of the remaining regulations shall not be affected. In such a case, the parties are obliged to replace the invalid or unenforceable provision by one which comes closest to the commercial purpose of the invalid or unenforceable provision.

14.3 The English version of these General Terms and Conditions of Purchase is only made available for support purposes, and the German version shall always prevail and be exclusively binding for the interpretation.