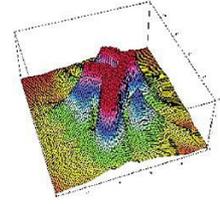


Ingenieurbüro Berg GmbH · EMC Services



General Terms and Conditions of the Ingenieurbüro Berg GmbH

I. Relevant Area of Applicability

1. The following General Terms and Conditions shall apply for all offers and contracts of the Ingenieurbüro Berg GmbH, especially for contracts regarding the development, sale, supply and adaptation of software products, sale and supply of hardware products, accessory articles and other services. For these kinds of contracts only the following terms and conditions shall apply. Any adverse or deviating terms and conditions will not be accepted. This shall also hold true in case we execute a contract without having expressly objected to the other terms and conditions.
2. The terms and conditions shall also be the basis of all future services and supplies, even if their inclusion has not been agreed upon expressly.

II. Formation of Contracts

1. Information in brochures, advertisements, in the Internet or in another form is intended for descriptive purposes only and do not entail any warranty with regard to the nature of products. The warranty with regard to the nature of products requires an explicit agreement in writing. This shall also hold true for all information on prices, implementation periods or information regarding the release of complements and extensions to the product range.
2. Our written offers shall be binding for 14 days, unless otherwise agreed in writing. For the calculation of this deadline the date of the offer shall be decisive.
3. A contract shall take effect either by acceptance in due time of a written offer by the Ingenieurbüro Berg GmbH or by written confirmation of an order or another offer of the client by the Ingenieurbüro Berg GmbH. If we execute the business transaction, this shall have the same function as a written order confirmation. Offers and order confirmations transmitted by mail shall also be considered as being in writing.

III. Prices

1. The prices and royalties are those stated in the price and product list of the Ingenieurbüro Berg GmbH. All prices are in Euros and excluding packaging and shipping costs as well as exclusive of the statutory value-added tax.
2. The costs for the installation as well as the introduction in the use of the software, the supply of accessory components and other services shall only be included in the prices, if and as far as this has expressly been agreed upon.

IV. Terms of Payment

1. Invoices of the Ingenieurbüro Berg GmbH shall be paid within 10 days after receipt of the invoice to the bank account named by the Ingenieurbüro Berg GmbH. 10 days after receipt of the invoice the customer automatically defaults on timely settlement of the invoice, without the necessity of a reminder.
 2. Payments by bills of exchange or cheques require our consent and will only be accepted on account of payment. Discount and bill charges are for the customer's account and are immediately payable.
 3. The Ingenieurbüro Berg GmbH shall be entitled to ask for an adequate instalment payment for each completed part of the order.
 4. The customer shall only be allowed to set claims against our claims, if there are no objections to these claims and if these claims have been deemed legally enforceable.
 5. If the customer defaults on timely settlement of a payment obligation, there may be charged interest amounting to the credit costs of the Ingenieurbüro Berg GmbH, at the minimum, however, 8 % above the base interest rate p. a.. This shall not apply, if the purchaser proves that no or lesser loss occurred due to the default in payment.
 6. We will charge a processing fee of 2.50 € for reminders.
- If the customer gets into arrears completely or partially with the settlement of a payment, we shall be entitled to demand collateral or payment in advance for outstanding supplies. Furthermore, we shall be entitled in this case to rescind from all contracts and to require compensation because of non-payment.

V. Delivery

1. We supply at customer's risk and expense. The risk is transferred to the customer with the handing over of the delivery item to the customer or to the forwarder. In the absence of any agreement to the contrary, the route of dispatch, transport and insurance shall be at our choice.
2. Partial services and deliveries are authorised and can be charged to the customer separately, provided they are economically useful to the customer.
3. In the case of new customers the Ingenieurbüro Berg GmbH only carries out the delivery of items on the basis of payment against delivery.
4. Our delivery obligation is subject to the reservation of proper and timely self-delivery, unless the improper or delayed self-delivery is the result of our own fault.
5. Periods for delivery and performance are only binding for us, if they were laid down by us in writing. After expiry of a binding delivery period, the customer shall at first set a reasonable extension of the deadline with the declaration that he will reject performance after expiry of this deadline. In case the extension of the deadline ineffectively elapses, the customer shall – subject to any rights according to clause 12 – have the right to withdraw from the contract, any other rights being excluded.
6. Events of force majeure, even if occurring during an already existing delay, give us the right to postpone delivery for the period of the obstruction and an adequate processing period. If the implementation of the contract becomes intolerable for one of the parties, the party concerned shall have the right to withdraw from the contract. The withdrawal shall be declared in writing. All circumstances which significantly impede delivery or make it impossible shall be regarded in the same light as force majeure, no matter if they are caused by company or extra-company circumstances.
7. In the interest of a practice-oriented testing phase, indicated delivery dates with regard to the completion or delivery of non-finished parts or released parts of software are not binding, unless we expressly take a responsibility for meeting the deadline.

VI. Support and Maintenance

1. Upon agreement we perform support and maintenance. This involves consulting, instructions and other forms of support regarding concrete problems which occur in the framework of the maintenance of the serviceability of the EDP systems on the computer system. To the extent technically feasible, the customer may choose whether he carries out the data entries and changes necessary in the framework of this procedure himself with the instructions of the Ingenieurbüro Berg GmbH (support) or whether he entrusts the Ingenieurbüro Berg GmbH with this task (maintenance).
2. The customer is aware of the fact that no software is free of errors and that despite all efforts in the framework of the economically sensible measures the Ingenieurbüro Berg GmbH may possibly not be in the position to respond to each support and maintenance request. We, therefore, do not give any guarantees with regard to the solvability of a request.
3. For services according to clause VI.1 the prices for hourly rates agreed upon will be invoiced. Journey time is deemed to be working time.

VII. Reservation of Title

1. Until the full payment of all claims the Ingenieurbüro Berg GmbH has against the customer with whom we have the business relationship, we reserve title of delivered products (hereinafter: „goods subject to retention of title“). This shall also hold true, if the claims are included in a current account (open account).
2. The customer shall be allowed to implement or reshape the goods subject to retention in the framework of his proper course of business. A connection, mixture, processing or change shall, however, exclusively take place on behalf of the Ingenieurbüro Berg GmbH which shall receive a co-ownership share of the finished goods created due to this procedure or of the new object. The value of the co-ownership share shall correspond with the ratio applying between the value of the goods subject to retention of title and the value of the finished goods or the new object.
3. The customer shall be permitted to resell the goods subject to retention of title in the normal course of the business. The customer shall cede to us already now the claim of the purchaser resulting from the resale of the goods subject to retention of title. If the customer makes use of the goods in his own company, a resale shall only be permitted, if we have given our written consent before. A resale shall not be permitted, if the purchaser of the goods subject to retention of title has excluded the cession of the claim, unless the purchaser gives his consent to the cession. The provision of collateral or pledging of the goods subject to retention of title shall not be permissible and will not be allowed by us. The customer may collect at our risk in his own name the claim arising as a result of the resale, if the goods subject to retention of title have been sold with our consent.

VIII. Warranty for Hardware Products

1. In accordance with the following provisions the Ingenieurbüro Berg GmbH warrants that the supplied hardware is free of materials and manufacturing defects considerably reducing the value or the suitability of this hardware product at the time of transfer of risk. Furthermore, the Ingenieurbüro Berg GmbH warrants that the supplied goods have the characteristics expressly assured by us in writing. We principally do not give a warranty for the suitability of the products for the purpose of a specific use.
2. Technical data specifications or quality descriptions published by us do not represent any warranties, unless they have expressly been confirmed as such by us.
3. In case of a purchase including forwarding transactions, the customer shall immediately inform the forwarder on any damages of packaging and shall have the matter of fact confirmed. Furthermore, the customer's warranty rights require that the customer has properly fulfilled his inspection and notification duties according to § 377 of the German Commercial Code. In order to fulfil these duties, the customer shall inform us without any delay, within a deadline of two weeks from the reception of the goods at the latest.
4. Within the bounds of what is reasonable, the customer shall be obliged to take the measures for detection, notification, limitation and documentation of the faults and other defects.
5. In case of a defect to goods delivered already existing at the time of transfer of risk, notwithstanding all exercised care, we shall upon our choice repair or replace goods, subject to duly notice of defects. If we fail to rectify the defect, the customer shall have the right to demand either a rescission of the contract or a reasonable reduction of the purchase price.
6. Further claims, immaterial of what kind, going beyond those of clause 5 shall be excluded, unless there are arising claims due to liability.
 - b) in case of gross negligence of organs or executives of the Ingenieurbüro Berg GmbH,
 - c) in case of culpable injury to life, body, health,
 - d) in case of the fraudulent concealment of defects by us,
 - e) in the framework of a guarantee assurance,
 - f) as far as there is stipulated a liability for personal injuries and property damage of privately used objects by the German Law on Products Liability. In case of a culpable fundamental breach of contract we shall also be liable for gross negligence by our non-managerial staff and for slight negligence; in case of slight negligence, liability shall be limited to the contractually relevant, foreseeable damage or loss.

7. As far as we are liable for slight negligence according to these provisions, the liability shall be limited to the extent of damage which the contracting parties could typically expect to occur or arise at the time of conclusion of the agreement based on the circumstances which were known to them at that time. We shall not be liable for indirect damage, consequential harms caused by a defect or lost profits.
 8. We shall only be liable for the loss of data and programmes and their re-establishment in the cases arising according to chapter VIII clause 1 and also only insofar as this loss has not been avoidable by adequate precautionary measures of the customer.
 9. If, at the request of the customer, a system is not installed by the Ingenieurbüro Berg GmbH, the customer shall prove in the warranty case that the error or fault is not based on incorrect installation.
 10. In case the product is installed, maintained, repaired, used, changed improperly by the customer or third parties or the product is exposed to environment conditions which do not correspond with the installation requirements of the Ingenieurbüro Berg GmbH or those of the producer or in case a defect is in causal connection with the customer's failure to notify the defect in due time or that the customer has not given in due time opportunity to rectify the defect, then the warranty will no longer apply, unless the customer is able to prove that these circumstances are not causal for the notified defect. Defects which are based on operational wear and usual wear and tear, operating errors, an operation with false power or false voltage, fire, lightning, explosion or net-dependent over-voltages or humidity shall be excluded from warranty.
 11. If the result of the examination of a notification of defects is that a warranty is not given, the costs for examination and repair will be charged.
- In case of warranty the Ingenieurbüro Berg GmbH is not obliged to save the customer's data and/or to re-establish them.

IX. Warranty for Software Products

1. Software products, such as operating systems of third companies which are labelled as such (third-party software) are principally passed on by the Ingenieurbüro Berg GmbH on the basis of the conditions of a software delivery contract and licence contract to be concluded separately between the third company and the customer.
2. In the cases of sale of standard software the provisions under chapter VIII. shall apply correspondingly.
3. The Ingenieurbüro Berg GmbH warrants that the software products developed and licensed by it (own software of the Ingenieurbüro Berg GmbH) meet the contractually assured functions and capability characteristics and do not contain defects which nullify or materially diminish the value or the suitability for the use foreseen by the contract. Furthermore, we warrant that, at the time of granting the licence, the own software of the Ingenieurbüro Berg GmbH relinquished for use is free from third-party rights nullifying or diminishing the use foreseen by the contract.
4. It is well-known to the customer that on the basis of the state of the art errors in the software and other accessory material cannot be excluded.
5. In case that certain functions or capability characteristics of the software description are not met or that errors are notified by the customer in writing and in a comprehensible way, we shall upon our choice rework the product, the rework may also consist in supplying a new programme version to the customer.
6. In case two attempts of the Ingenieurbüro Berg GmbH to rework the product fail or in case we are not able to offer a flawless new programme version, the customer shall be entitled to demand either the rescission of the contract or a reasonable reduction of the purchase price.
7. Warranty claims shall be null and void with regard to such programmes or parts of programmes which were changed by the customer himself or by third parties or which were extended, unless the customer proves that such changes or extensions have not caused the defect. Furthermore, warranty claims shall be null and void in case of defects, faults or damages that are based on improper operation, defects of hardware, defects of operating systems, non-observance of backup requirements or other occurrences that are beyond the sphere of the Ingenieurbüro Berg GmbH. Moreover, warranty claims shall be null and void, if the customer refuses to give us the opportunity to examine the cause of the notified defect.
8. Apart from that, the provisions of section VIII. above shall apply correspondingly.
9. The warranty period for software products is 12 months.

X. Warranty for EDP Projects

1. The Ingenieurbüro Berg GmbH warrants that programmes and concepts which are developed and implemented individually for the customer are free from defects which are nullifying or reducing the value or suitability for the usual or contractually foreseen use. An insignificant reduction of the value or the suitability remains out of consideration. It is well-known to the customer that according to the state of the art it is not possible to produce a programme that is completely free from faults.
2. The warranty period is six months and begins with the acceptance.
3. Apart from that, the provisions of section VIII. above shall apply correspondingly.

XI. Data Protection

The customer gives us his explicit consent for the saving and processing of the data which have become known in the framework of the contractual relationship and which are necessary for contract processing on the basis of the legal regulations concerning data protection. The collection, use, processing and forwarding of customer data to authorised partners is only made as far as this is required for establishing, performing and executing the contract.

XII. Place of Performance and Jurisdiction

1. For both parties to the contract the place of performance and jurisdiction shall be Grünberg.
2. The exclusive place of jurisdiction for all disputes arising from the contracts covered by these General Terms and Conditions shall be our headquarters.
3. This contract and the entire legal relationship of the parties shall underlie the Law of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods.

Ingenieurbüro Berg GmbH

Date: 28th March 2011

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