

General Terms and Conditions of BECONEX GmbH for license, consulting, and services

1 Validity of the conditions

- 1.1 The following terms and conditions of license, delivery and payment shall apply to all our deliveries and services, including those arising from future business transactions. Deviating conditions and ancillary agreements shall only apply if they are expressly acknowledged by us in writing.
- 1.2 If a contract is executed via a leasing company, our General Terms and Conditions of Business shall apply exclusively in the relationship with the leasing company as well as to the legal relationship between us and the customer. If the General Terms and Conditions of the customer or the financing leasing company differ from our General Terms and Conditions, the latter shall apply exclusively. Clause 1.1 shall apply accordingly.
- 1.3 The connection of third-party hardware or third-party software to the hardware and software supplied by us requires our express approval. If such approval is granted, this contract shall nevertheless apply only to the components supplied by us. In the case of programs for which a service price has been agreed, we shall assume the software service until the service agreement is terminated.
- 1.4 Should individual provisions of these General Terms and Conditions be invalid, this shall not affect the validity of the remaining provisions. The customer is aware that the products have not been designed for use in high security areas such as nuclear technology, air traffic control, weapons security systems, life support systems or systems of any other kind in which malfunctions may lead to personal injury, death, environmental damage, or mass destruction. Any liability of BECONEX GmbH for damages resulting from product use in these areas is excluded.

2 Offer and conclusion of contract

- 2.1 Our offers are subject to change and non-binding. In response to offers, all contracts shall be concluded upon receipt of our written order confirmation; at the latest, our General Terms and Conditions shall be deemed accepted upon delivery of the goods or performance of the service. These and the order confirmation are authoritative for the content of the contract. Agreements deviating from this always require our express written confirmation.
- 2.2 The information on weights, quantities, freight, delivery times, etc. are also only binding if they are expressly designated as such.

3 Delivery time, delivery, use of the software and installation

- 3.1 The delivery period shall commence with the dispatch of the order confirmation, but not before the provision of the documents, approvals, and releases to be procured by the customer and before receipt of an agreed down payment.
- 3.2 The delivery period or a delivery date shall be deemed to have been complied with if, by the time it expires or on the delivery date, the delivery item has left the supplying plant, or our warehouse or notification has been given that it is ready for dispatch.
- 3.3 If the delivery or service owed by us is delayed due to unforeseeable circumstances for which we are not responsible (e.g. due to labour disputes, operational disruptions, transport obstacles, official measures - in each case also at our upstream suppliers - as well as untimely self-delivery), we shall be entitled to withdraw from the contract in whole or in part or, at our discretion, to reasonably postpone the delivery for the duration of the obstacle. We shall inform the customer immediately of the beginning and end of such hindrances. In the event of withdrawal, any consideration already paid by the customer shall be refunded without delay. Claims for damages by the customer are excluded. If we have claimed an extension of the delivery period and the original delivery date has been exceeded by at least 3 months, the customer may give us notice of withdrawal from the contract by setting a reasonable grace period and may withdraw from the contract after the grace period has expired. We may also withdraw from the contract if we have already claimed an extension of the delivery period. If partial deliveries have been agreed, we shall be entitled to assert our rights separately for each individual partial delivery.
- 3.4 Compliance with our delivery and performance obligation requires the timely and proper fulfilment of the obligation of the customer.
- 3.5 Insurance against transport risks must generally be taken out by the customer. We insure only at the express request of the customer.
- 3.6 Partial deliveries as well as deliveries before the stated delivery time are permissible.
- 3.7 In the event of a delay in delivery, the customer is obliged, at our request, to declare within a reasonable period of time whether he continues to insist on delivery or withdraws from the contract due to the delay and/or demands compensation for damages instead of performance. Should the customer incur damage due to a delay for which we are responsible, he shall only be entitled to claim compensation for the delay if the delay is due at least to gross negligence. The right to assert claims shall also be subject to the condition that we have not complied with a reasonable grace period set by the customer in writing. We are not responsible for the fault of our suppliers, because they are not our vicarious agents. However, we are obliged to assign to the customer on request any claims to which we are entitled against our suppliers.
- 3.8 If the shipment is delayed at the request of the customer, the customer may be charged for the resulting damage.
- 3.9 No complaint can be made in the case of deviations that are customary in the trade or are due to technical reasons.
- 3.10 The programmes shall be provided to the customer by means of a data carrier for non-exclusive use in Germany; outside Germany the customer must acquire any necessary third-party rights to the programmes, which must be observed and complied with by the customer. The programmes may be used within the scope of the number of licences. The customer is prohibited from editing or modifying the programmes without our prior written consent; in particular, the customer has no rights to the source codes. When programmes are delivered, the terms and conditions enclosed with or on the data carrier shall also apply. The customer accepts these by opening the sealed data carrier.
- 3.11 Installations and delivery of software programmes and/or the delivered goods and/or services shall be carried out upon request and invoiced according to expenditure. The customer is obliged to make a backup of his data on a regular basis.
- 3.12 If a BECONEX GmbH consultant is present at the agreed place at an agreed time in order to deliver an agreed service, the associated fee shall also be paid by the client if the service cannot be provided for a reason that is causally attributable to the client. The fee shall not be payable if a failure is on the part of BECONEX GmbH or one of its consultants. The fee shall also not be payable if the non-performance is causally attributable to force majeure, war or terrorist events or natural disasters.

4 Acceptance and transfer of risk

- 4.1 Delivery shall be made either ex works/intermediate supplier or warehouse by acceptance by the customer or by dispatch.
- 4.2 If the delivery item is taken over by the customer, the risk of loss or damage to the delivery item shall pass to the customer upon takeover. In the case of shipment, including partial shipments, the risk shall pass to the customer upon handover to the shipper.
- 4.3 If the object of purchase is ready for dispatch and the dispatch or acceptance is delayed for reasons for which we are not responsible, the risk shall pass to the customer upon receipt of the notification of readiness for dispatch.
- 4.4 Delivered goods, even if they are defective, must be accepted and properly stored by the customer without prejudice to the rights under section 5.
- 4.5 With the exception of deliveries, services, and performances, we shall present the performance result to the customer for acceptance/partial acceptance after the contractual performance/partial performance has been rendered. The customer must inspect within 15 calendar days and either declare acceptance to us in writing or notify us in writing of the defects. If no declaration is made within the acceptance period, the service result/partial result shall be deemed accepted. Defects that only insignificantly reduce use do not entitle the customer to refuse acceptance.
- 4.6 Seminar evaluations by the employees of BECONEX GmbH can be carried out either on site, in writing or by means of online forms on the Internet and the corresponding participation can be requested from the participants. There shall only be an obligation to conduct the seminar if this has been agreed in writing.

5 Notification of defects and warranty

- 5.1 Warranty claims require that the inspection and complaint obligations of § 377 HGB (German Commercial Code) have been observed. Complaints must be made immediately, at the latest within 3 days after receipt of the goods, by written notification to us.
- 5.2 Until the complaint has been settled, the defective goods may not be changed, processed, or handled, without our written consent.
- 5.3 Insofar as there is a defect in the goods for which we are responsible, we are entitled to determine the type of subsequent performance (replacement delivery, rectification), considering the type of defect and the justified interests of the customer. In the event of subsequent improvement, we are obliged to bear all expenses necessary for the purpose of subsequent improvement, in particular transport, travel, labour, and material costs, insofar as these are not increased by the fact that the goods have been taken to a place other than the place of performance.
- 5.4 If we are not prepared or not in a position to make a repair/replacement delivery, if this is delayed in particular beyond a reasonable period for reasons for which we are responsible, or if the repair/replacement delivery fails in any other way, the customer shall be entitled, at his discretion, to withdraw from the contract or to demand a corresponding change in the purchase price.
- 5.5 Unless otherwise stated below, further claims of the customer - irrespective of the legal grounds - are excluded. We are therefore not liable for damage that has not occurred to the delivery item itself. In particular, we shall not be liable for loss of profit, indirect damages, consequential damages or other financial losses of the customer. Furthermore, our warranty obligation shall not apply in the event of breaches by the customer of his obligation under clause 5.2 in the event of other modifications, repairs, cleaning, changes to the delivery item or other interventions in the delivery item by the customer or third parties without our written consent, in the event of faulty, improper or negligent use or handling of the goods by the customer; this applies in particular if the customer damages or destroys a seal affixed to the delivery item, as a result of excessive stress or insufficient maintenance of the delivery item or as a result of the use of accessories purchased from third parties, if the customer requires us to carry out if the customer has not given us reasonable time and opportunity to carry out rectification work or replacement deliveries or has not properly backed up his data, if the customer returns the goods without packing them properly and professionally, in the event of natural wear and tear or other circumstances for which we are not responsible.
- 5.6 The above exemption from liability shall not apply if the cause of the damage is based on intent or gross negligence. Furthermore, it shall not apply if we have fraudulently concealed the defect or have assumed a guarantee for the quality of the delivery item or a procurement risk.
- 5.7 The exemption from liability shall nevertheless apply if the damage was caused by gross negligence on the part of a vicarious agent or employee unless the damage is based on the breach of a main contractual obligation. In addition, the obligation to pay compensation is limited to the foreseeable, not atypical damage and, in the case of a loss of data, is limited to compensation only for the damage that would have occurred if the data had been properly backed up.
- 5.8 The customer is aware that hardware and software errors cannot be excluded here according to the state of the art. We shall remedy any defects within the scope of the warranty, which ends 12 months after the programme has been handed over. Instead of eliminating errors, we can also offer the use of a new programme version, whereby the customer may not reject a reasonable acceptance. The warranty shall not apply in the event of causal programme changes made by the customer. If repeated attempts to remedy the defect are unsuccessful, the customer's statutory rights shall be revived. Further claims of the customer for compensation of consequential damages and for loss of data are excluded.
- 5.9 In the event of an infringement of third-party property rights, BECONEX GmbH may first enable the customer to use the product in a legally flawless manner. The customer shall immediately notify BECONEX GmbH in writing of any claims arising from the infringement of property rights. Only then shall BECONEX GmbH reimburse legally imposed costs and damages. The customer shall indemnify BECONEX GmbH against all claims for damages arising from the use of the products by the customer outside Germany. The export from Germany shall be subject to the foreign trade regulations of Germany. The customer shall inform itself about these relevant regulations and shall be liable to BECONEX GmbH for the proper observance of these regulations.
- 5.10 BECONEX GmbH assumes no liability for damages resulting from the application of the contents imparted in training courses and workshops by the training participants.

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6 Total liability

- 6.1 Insofar as our liability for damages is excluded or limited in accordance with clause 5, this shall also apply to all claims due to culpa in contrahendo, breach of ancillary obligations, in particular to claims arising from producer's liability in accordance with § 823 BGB.
- 6.2 The provision under clause 6.1 shall not apply to claims under §§ 1-4 of the Product Liability Act or in the event of damage resulting from injury to life, body or health caused by a negligent breach of duty by us or by an intentional or grossly negligent breach of duty by a legal representative or vicarious agent, or insofar as we are subject to mandatory liability.
- 6.3 Insofar as our liability is excluded or limited, this shall also apply to the personal liability of our employees, workers, staff, representatives, and vicarious agents.

7 Prices and payments

- 7.1 The prices quoted by us are decisive. Statutory VAT and shipping costs are not included in the price unless we have expressly confirmed this. All invoices, unless otherwise agreed, are payable immediately upon receipt. All prices are net prices plus the statutory value added tax applicable at the time of invoicing. Discounts and bonuses shall generally not be deemed to have been agreed unless they have been recorded in writing and sent to the customer in an offer. Verbal price agreements shall not be made as a matter of principle.
- 7.2 We reserve the right to increase the price up to the amount of the sales price valid on the day of delivery, in particular due to price increases of the suppliers.
- 7.3 If a licence fee increase occurs during a period in which the customer is in default of acceptance, the subsequent calculation of the licence fee increase which has occurred is possible.
- 7.4 Discount deduction is only permissible if it is expressly agreed.
- 7.5 An appointment booked by the customer with BECONEX GmbH can be cancelled by the customer. The following lead time and cancellation fees apply:
Cancellation at least 21 days before the appointment: free of charge.
Cancellation at least 14 days before the appointment: cancellation fee is 25 % of the agreed fee.
Cancellation at least 7 days before the appointment: cancellation fee is 50 % of the agreed fee.
Cancellation at least 3 days before the appointment: Cancellation fee is 75 % of the agreed fee.
Thereafter: cancellation fee amounts to 100 % of the agreed fee
- 7.6 Payment shall only be deemed to have been made when we can finally dispose of the amount. We only accept bills of exchange and cheques on the basis of an express agreement. Acceptance is only on account of performance and without obligation; any resulting costs shall be borne by the customer.
- 7.7 If the customer does not meet his payment obligations despite a reminder or if there are circumstances which indicate a significant deterioration in the customer's assets, we are entitled to call in the entire remaining debt, even if we have already accepted bills of exchange or cheques. In this case we shall also be entitled to demand advance payments or the provision of security and to refuse to fulfil our obligations until advance payment or the provision of security. If our demand is not met within a reasonable period of time set by us, we shall be entitled to withdraw from the contract and/or to claim damages instead of performance. In the event of cessation of payments or over-indebtedness on the part of the customer, the setting of a grace period shall not apply.
- 7.8 From the time of default, the customer shall pay interest on arrears at a rate of 8% above the applicable base rate. If we can prove higher damages, we can demand compensation. If the customer proves a lower damage, he must compensate it.
- 7.9 Complaints about the goods shall only cancel the customer's obligation to pay if the complaints are undisputed, established by arbitration or legally binding in court.
- 7.10 The customer shall only have the right of set-off if his counterclaims have been determined by arbitration or have been legally established, are undisputed or have been recognised by us. Furthermore, he is authorised to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.

8 Retention of title

- 8.1 Until full payment of all claims arising from the business relationship with the customer, we retain title to the delivered items or the subject matter of the contract.
- 8.2 The customer is obliged to treat the subject matter of the contract with care and to insure it against fire and theft. We have the right to have the insurance policy presented to us at any time.
- 8.3 In the event of seizure or other access by third parties to the goods subject to retention of title, the customer must notify us immediately in writing.
- 8.4 If the customer does not fulfil his obligation to perform despite due date and reminder, we are entitled to demand the return of the goods and to realise them. We are also entitled to commission a collection agency, the fees of which shall then be borne by the customer.

9 Prohibition of assignment, customer's duty to cooperate, secrecy.

- 9.1 The rights of the customer arising from the business relationship with us are not transferable.
- 9.2 The installation of software, the practical application of training contents by the customer must be carried out properly in accordance with the installation instructions provided by us during the installation meeting or the training event. The customer himself is responsible for backing up his data.
- 9.3 Both parties shall maintain secrecy about all business and operational matters that have become known to them and shall treat all information in connection with the performance of this contract as strictly confidential even after its expiry. The same applies to personal data covered by the provisions of the Data Protection Act.

10 Services

- 10.1 The agreed services are to be provided at the customer's premises or also at our premises. Unless otherwise agreed, travel costs and times as well as expenses shall be invoiced separately in accordance with the respective BECONEX GmbH price list. Additional services shall be charged separately in accordance with the respective BECONEX GmbH price list.

11 Applicable law, place of fulfilment

- 11.1 The business relationship and the entire legal relationship between the customer and us shall be governed exclusively by the law of the Federal Republic of Germany. The application of the UN Convention on Contracts for the International Sale of Goods is excluded by mutual agreement.

12 Final provisions

- 12.1 If any provision of these General Terms and Conditions lacks legal force or if there is a gap in the contract, this shall not affect the legal force of the remaining provisions. The invalid or missing provision shall rather be replaced by the dispositive law or by another provision which, as far as possible, does justice to the intention of the parties expressed in these terms and conditions.