

The German Association for Information Technology, Telecommunications and New Media [Bundesverband Informationswirtschaft, Telekommunikation und Neue Medien e.V.] - BITKOM - recommends on a non-binding basis that its members use these General Terms and Conditions for transactions that do not involve consumers. It is left to the addressees' discretion to follow this recommendation or to use other General Terms and Conditions.

BITKOM Contractual Conditions for the Sale of Hardware - VH BITKOM -

1. Subject matter

- 1.1 The nature and the performance of the hardware and also the released deployment environment shall be determined by the pertinent product description, additionally by the operating instructions, unless otherwise agreed.
- 1.2 The hardware shall be supplied together with an installation guide. Operating instructions (user documentation or online help) shall only be supplied in so far as necessary for the pertinent use. The operating instructions and the installation guide can be provided to the customer electronically at the provider's choice unless this is unreasonable for the customer.
- 1.3 If the delivery of the hardware includes software that is absolutely necessary for its functioning, the customer shall have a right of use of the same solely with this hardware. Other software shall be governed by separate terms and conditions.
- 1.4 The hardware shall be installed and commissioned by the customer. The provider can carry out the installation instead of the customer. All support services rendered by the provider at the customer's request (in particular preparation for use, installation and demonstration of successful installation, familiarization, training and consulting) shall be remunerated as incurred, unless otherwise agreed.

2. Rendering of performance, price

- 2.1 The agreement to delivery on a certain date shall be subject to the condition that the provider itself is supplied by its suppliers in good time and as contractually agreed.
- 2.2 The prices shall be valid for one month from the calendar date of the offer. Thereafter the provider can pass to the customer any increase in the list price by its supplier up to one week before delivery at the latest. The customer can rescind the Agreement before delivery, however at the longest within one month after notification of the price increase, if the price increase exceeds 5%.
- 2.3 The risk passes to the customer directly ex delivery works. The customer shall transport the hardware entirely at its own cost and holds the provider free and harmless of all and any freight and handling costs.

3. Duties of the customer

- 3.1 The customer shall provide the necessary operating and deployment conditions (e.g. room, power supply, air conditioning) for the hardware. The necessary conditions arise from the Agreement contract, in so far as not governed therein by the product description or operating instructions.

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- 3.2** The customer shall within the scope of the necessary support in particular give the provider free access to the location of the hardware, the necessary tools and equipment on a suitable scale and provide useful information (e.g. about use conditions or changes to the hardware).
- 3.3** The customer shall be responsible for compliance with the statutory and contractual provisions for the exporting of the supplied hardware.

4. Customer's warranty rights (*Mängelansprüche des Kunden*)

- 4.1** The provider warrants that - subject to contractually compliant use - the hardware meets the agreements as per Clause 1.1.

The time period for warranty claims shall commence with the delivery or - if installed by the provider - with completion of installation.

Legal faults (*Rechtsmängel*) shall be governed in particular by Clause 5 BITKOM General Terms and Conditions (AV BITKOM).

Material faults (*Sachmängel*) shall be governed in particular by Clause 4 BITKOM General Terms and Conditions (AV BITKOM) accordant to the subsequent regulations in Clauses 4.2 to 4.4.

- 4.2** The customer shall have warranty claims only if reported faults are reproducible or otherwise demonstrable by the customer. The reporting of faults is governed in particular by Clause 2.3 BITKOM General Terms and Conditions (AV BITKOM).
- 4.3** If the customer is entitled to warranty claims, it shall initially have only the right to subsequent performance (*Nacherfüllung*) within a reasonable period of time. The subsequent performance includes either repair or replacement delivery at the provider's discretion. The provider shall pay due heed to the interests of the customer when making the choice. The ownership of parts replaced by dint of subsequent performance shall pass to the provider.
- 4.4** If the subsequent performance fails or cannot be carried out due to other reasons, subject to the statutory preconditions the customer can reduce the remuneration, rescind the Agreement and/or demand damages or compensation of expenses in the scope of Clause 6 BITKOM General Terms and Conditions (AV BITKOM).

If the customer rescinds the Agreement, the provider shall take back the hardware and repay the remuneration paid by the customer less the opportunities of use granted to the customer, but not more than the sale value of this hardware at the time of the return. These opportunities of use shall in principle be calculated on the basis of the declining-balance method of depreciation over a three-year period of use. Both contractual partners shall be entitled to prove that a longer or shorter period of use is to be applied.

Damages or compensation of expenses shall be governed in particular by Clause 6 BITKOM General Terms and Conditions (AV BITKOM).

The customer can exercise any choice it has with respect to warranty claims within a reasonable period of time, as a rule within 14 calendar days.

5. Validity of BITKOM General Terms and Conditions (AV BITKOM)

In addition, the BITKOM General Terms and Conditions (AV BITKOM) shall also apply.

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The contractual terms and conditions are based on non-binding terms recommended by BITKOM e.V. and approved by the Federal Cartel Office.

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