

## **I. Scope of application**

1. The goods and services of ADN – Advanced Digital Network Distribution GmbH (hereinafter known as ADN) shall be rendered solely on the basis of the following General Terms and Conditions of Business.
2. These terms and conditions of sale shall only apply for businesses. Legal entities established under public law or public law special funds within the meaning of Section 310 Paragraph 1 of the German Civil Code [BGB].
3. Amendments or supplements when the contract is signed must be made in writing. In particular an amendment to the requirement for written form must be made in writing.
4. ADN shall not recognise the Customer's terms and conditions of business if they are contrary to, or differ from, the General Terms and Conditions of Business of ADN, unless ADN has expressly granted its consent in writing. The General Terms and Conditions of Business of ADN (hereinafter known as T&Cs) shall also apply even in those cases in which ADN renders its goods and services to the Buyer without reservation in the knowledge that the latter's terms and conditions are contrary to, or differ from, his own T&Cs.

## **II. Conclusion of the contract**

1. Offers submitted by ADN shall be subject to change without notice, unless the offer has been designated in writing as being binding. A legal commitment shall only be established if a contract has been signed by both Parties or if ADN confirms an order in writing, and in addition to this, if ADN begins to render a service in accordance with a contract or if the Customer takes delivery of the goods supplied.
2. The Customer shall be bound for a period of four weeks to his declarations that he intends to enter into contracts (offer to enter into a contract).
3. If the Customer is granted special or project-related terms in offers to enter into a contract, these shall be subject to confirmation by the Manufacturer. In the event that the special or project-related terms are not confirmed or that they are subsequently rejected by the Manufacturer, the price in the price list in force at the point in time at which the terms are granted shall be regarded as having been agreed. In this case the Customer shall be entitled to withdraw from the contract within 14 days from the receipt of the information that the special terms have lapsed. Withdrawal from the contract is to be stated in writing. The Customer shall not be entitled to a right of withdrawal if the special terms no longer apply as a result of a breach of a duty by the Customer. This clause shall only apply for the lapse of special terms which have been announced within two months from the contract being concluded. Prices shall otherwise be adjusted in accordance with these T&Cs.

## **III. The Manufacturer's contractual terms shall also apply as a supplement to these T&Cs**

1. The Manufacturer's contractual terms and terms of use shall apply accordingly in addition to ADN's contractual terms and conditions. These have extensive terms of use (also known as including licensing terms and conditions, general terms and conditions of business or similar) associated with its copyright for the products. The Customer shall undertake to take these terms of use into account not only in his relationship with ADN and the Manufacturer. As a rule these terms and conditions shall be

passed over to the Customer together with the product. At the Customer's request the respective terms of use of the Manufacturer shall be provided by ADN.

2. If the terms contradict the terms and conditions of ADN, the terms and conditions of ADN shall prevail over the Manufacturer's terms.
3. The Customer shall take the Manufacturer's copyrights and patent rights into account and shall refrain from every act which could affect these rights adversely.

#### **IV. Subject-matter of the contract**

1. The Customer shall reserve the right to make reasonable technical and design amendments to the information in leaflets, catalogues and written documents as well as to modify models, designs and materials in the course of technical progress and the further development, provided that the agreed performance data are achieved. The Customer has reviewed the conclusion of the contract, that the software specifications satisfy his wishes and requirements. He is aware of the important functional characteristics and conditions of the software.
2. The contract or ADN's order confirmation or otherwise ADN's offer shall be crucial for determining the scope, type and quality of the goods and services. Other information or specifications shall only become an integral part of the contract if the Parties to the contract agree this in writing or if ADN has confirmed this in writing.
3. Product descriptions, presentations, test programmes etc. are specifications but not, however, Manufacturer's product warranties. A product warranty shall be subject to a declaration to that effect in writing from ADN.
4. The Customer shall undertake to comply with the respective Manufacturer's terms if special or project-related terms are granted. The Customer is aware that the legal validity of the special or project-related terms granted shall depend upon compliance with the respective Manufacturer's terms. ADN may demand compliance with the Manufacturer's terms itself, in particular it may ask to see proof from the customer of end customer verification. In the event of a breach against the Manufacturer's terms, ADN shall reserve the right to revoke the special prices incorrectly granted and demand the difference between them and the price list or, given this, assign this claim to the Manufacturer.

#### **V. Delivery dates and periods, Dispatch, Passing of risk**

1. Information about points in time at which goods are to be delivered and services rendered shall not be binding, unless they have been expressly designated by ADN in writing as being binding. ADN may render part performances, provided that the parts supplied for the Customer can be used in a worthwhile manner. Justified part consignments may be invoiced by ADN.
2. Periods of time allowed for goods to be supplied and services to be rendered shall be extended by that length of time in which the Customer is in default with payment under the contract and by that length of time in which ADN is prevented from supplying goods or rendering services as a result of circumstances for which it is not to blame, plus a reasonable amount of start-up time when the hindrance no longer applies. These circumstances also include force majeure and labour disputes. Agreed periods of time shall also be regarded as being extended by the period of time in which the Customer fails to render assistance in contravention of the contract, e.g. fails to provide information, fails to provide access, fails to supply materials or equipment or fails to provide employees.

3. Periods of time allowed for goods to be supplied and services rendered shall likewise be extended if there is a delay in goods being delivered by the Manufacturer, provided that the delay has not been caused by a culpable delay in the order being placed for the products. ADN shall have to submit proof of the delay being caused by the Manufacturer.
4. If the Parties to the contract subsequently agree other or additional services having an impact upon the periods of time agreed, these periods of time shall consequently be extended by a reasonable period of time.
5. Payment reminders to, and periods of time set for, the customer must be in writing to be legally valid. A subsequent period of time must be of reasonable length. A period of less than two weeks in length shall only be reasonable if there is a specific urgency.
6. The place of performance for training shall be that place where training is to be provided. Moreover, all performances arising from, and in connection with, this contract shall be rendered at the headquarters of ADN.
7. In so far as the Customer should so wish, ADN shall cover the delivery with a transport insurance policy: the costs for such a policy shall be borne by the Customer.
8. Risk shall pass over to the Customer when the goods are handed over for dispatch. This shall also apply in those cases in which it has been agreed that the goods are to be delivered carriage-free. If the goods are to be collected by the Customer, the risk of accidental loss shall pass over to the Customer at the point in time at which the Customer receives notification that the goods are ready for collection.
9. The Customer shall have to inspect the goods upon receipt to confirm that they are complete, and that they comply with the statements on the shipping documents, and for any defects there may be. The duties of inspection and notification of defects in accordance with Section 377 of the German Commercial Code [HGB] shall apply. If the Customer fails to notify defects within five days from delivery, the goods shall consequently be regarded as having been supplied in order and complete, unless the defect could not have been identified with a normal goods-inward inspection.
10. If the goods are damaged in transit, the Customer shall be responsible for arranging for an assessment of damages to be conducted straight away by the responsible body (Haulier / Parcel service), since otherwise any claims there may be against the party contracted to transport the consignment as well as against an insurance company may lapse.

## **VI. Prices and Terms and Conditions of Payment**

1. In the absence of an agreement otherwise, ADN's respective price list and terms and conditions shall apply. These may be inspected at [www.adn.de](http://www.adn.de). Unless stated otherwise, prices are net prices to which the rate of VAT in force at that time must be added.
2. Unless stated otherwise in our offer or our order confirmation, our prices are straight net ex ADN supply depot in Bochum excluding packing, transport costs, and transport insurance, if there is any, plus the rate of value added tax in force on the date on which the invoice is presented.
3. ADN shall reserve the right to increase its prices as appropriate if, after the contract has been concluded, ADN's costs increase as a result of price increases or if the Manufacturer's special or project-related terms no longer apply. The price increase shall be limited to the actual increase in costs incurred by ADN. At the Customer's request, ADN shall have to submit proof that its costs have increased. This sliding price clause shall only apply for increases occurring later than six months after

the contract is signed. Increases may only be claimed if the total amount of cost increases accounts for more than 5% of the sales price.

4. The agreed remuneration shall be due for payment and payable in full within 14 days from delivery and receipt of invoice by the Customer.
5. The Customer may only offset claims or exercise a right of retention if such claims are not contested by ADN or if such claims have been adjudicated. With the exception of the scope of Section 354a of the German Commercial Code [HGB], the Customer may only assign his claims under this contract with the prior written consent of ADN. The Customer shall only be entitled to a right of retention or to raise the objection of the contract not being fulfilled within this contractual relationship.
6. ADN is entitled, in spite of the Customer having terms and conditions of payment stating otherwise, to initially count payments towards his older debts. If costs and interest have been incurred as a result of default in payment, the payment shall first of all be counted towards such costs, then interest and finally against the main performances.
7. The terms and conditions of payment granted apply with regard to the credit limits granted by ADN for each individual contract. If the credit limit set in a specific instance is exceeded, ADN shall reserve the right to call in the rest of the contract price as cash in advance. In the event of a subsequent change in the Customer's credit rating ADN shall be entitled to demand payment concurrently with delivery or the furnishing of appropriate securities and to withdraw from the contract in the event of non-fulfilment.

## **VII. Data Protection and Credit Check**

1. ADN shall comply with the data protection regulations when processing personal data. Further information about the processing of personal data by ADN are available at any time under [www.adn.de/de/datenschutz](http://www.adn.de/de/datenschutz).
2. For the purposes of checking the Customer's credit rating from credit reference agencies or credit insurance companies, ADN shall be entitled to obtain information with regard to the Customer's creditworthiness and to report data - restricted to the event that the contract has not been handled in accordance with the contract e.g. an application has been submitted for a court order if an account has not been disputed, if an enforcement order has been issued, or if enforcement measures have been taken. Data shall only be forwarded provided that this is necessary to protect the legitimate interests of ADN and the interests of the Customer meriting protection are not adversely affected. In doing so ADN shall comply with the relevant data protection regulations.

## **VIII. Beginning and End of the Customer's Rights, Reservation of Title**

1. The contractual product shall remain the property of ADN until all its claims under this contract, including future ones, have been fulfilled and moreover those claims from the entire business relationship with the Customer. The Customer shall receive a revocable right of use until all ADN's claims from the business relationship with the Customer have been fulfilled in full.
2. The Customer shall be entitled on a revocable basis, to pass on the goods subject to reservation of title in a proper commercial transaction provided that he resells them subject to reservation of title. The Customer shall assign his claims created from passing on the goods subject to reservation of title up to the invoiced value of the aforesaid goods in advance to ADN as early as the point in time at which he places an order for them. ADN accepts this assignment. The Customer shall still be entitled to collect the goods subject to reservation of title even after they have been assigned. Notwithstanding that,

ADN shall be entitled to collect the goods subject to reservation of title in the normal course of business, but it shall only make use of this right in the event that the Customer is in default with payment or if an application has been made to open insolvency proceedings on the Customer's assets. At ADN's request the Customer shall name the assigned accounts and pass over the necessary information, hand over the documents and notify the debtors of the assignment. ADN may disclose this assignment at any time to secure its claims for payment.

3. If the Customer sells the goods subject to reservation of title to third parties, the Customer shall assign here and now his contractual claims against the third party as a security for ADN's accounts against the Customer for the future. ADN accepts this assignment. If the Customer falls into arrears with his payments to ADN, ADN shall be entitled to disclose this assignment of a security to the third party. In the event of default, the Customer shall be obliged to provide ADN with all the information and documents required for ADN to assert its assigned claims.
4. If the goods subject to reservation of title are combined, processed together or mixed with goods not belonging to ADN, ADN shall acquire co-ownership in proportion to the sum invoiced for the goods subject to reservation of title to the other goods.
5. ADN is entitled to assert its rights under the reservation of title and assignment by way of security if the Customer falls into arrears. The assertion of these rights shall not at the same time constitute a declaration of withdrawal from the contract to the Customer, provided that this is not expressly stated by ADN.
6. Items supplied for test and demonstration purposes shall remain the property of ADN. They may only be used for purposes other than testing and demonstration on the basis of a separate agreement with ADN.

## **IX. Warranty**

1. The software shall have the agreed functions and shall be suitable for the contractually assumed use, and in the absence of an agreement thereto, for normal use. It shall satisfy the criterion of being fit for practical use and has the quality normal for this type of software. It is however not perfect. An impairment of the function of the programme resulting from hardware defects, ambient conditions, incorrect operation or similar shall not constitute a defect. A minor reduction in quality shall not be taken into account.
2. ADN shall initially be entitled to effect a cure for quality defects. A cure is to be effected as ADN chooses either by rectifying the defect or by supplying software not having the defect or by ADN demonstrating options for avoiding the effects of the defect. At least three attempts to remedy a defect are to be tolerated. An equivalent new version of the programme or the equivalent preceding version of the programme not containing the defect is to be taken over by the Customer if it is reasonable to expect him to do so.
3. The Customer shall support ADN with defect analysis and rectifying the defect by in particular describing arising problems in detail, providing ADN with in depth information and allowing ADN sufficient time and opportunity to remedy the defect. ADN may rectify the defect as it chooses on site or in its business premises. ADN may also render its services by means of tele-maintenance. The Customer shall have to ensure that the necessary technical preconditions have been satisfied at his own expense and allow ADN access to his computer system after the latter has given him reasonable advance notice.
4. ADN shall guarantee that the contractual products are in general correctly described in the product information and that are basically fit for use within such limits. The technical data and descriptions in

the product information alone do not constitute any promise of a guarantee for specific properties. In a juristic sense a guarantee promise for properties shall only be extant if the respective information has been confirmed by ADN in writing.

5. The warranty shall become invalid if serial numbers, model designation or similar marks are removed or are made illegible.
6. Warranty claims shall become time-barred after one year. This period of time shall also apply for the restitution of consequential harm caused by a defect provided that no claims are made based upon an unlawful act. Warranty claims are not transferrable. Regardless of this, ADN shall pass on any manufacturer's guarantee or warranty promises in excess of this to the Customer in full without vouching for them himself.
7. If the review of a notified defect shows that it is not covered by a warranty, ADN shall be entitled to pass on all the charges to the Customer. The costs of the review and repair shall be invoiced at ADN's customer service prices in force at that time.
8. Return deliveries made to claim under warranty / guarantee or for repairs as well as returns of all types shall only be accepted if an agreement has been made for this in advance and an RMA number has been allocated. In this case the Customer shall have to bear the transport costs. The credit for the returned goods shall be raised by making a deduction from the costs incurred by ADN. Return consignments received without ADN's consent shall be returned to the Customer at his expense.

## **X. Industrial property rights and Copyrights**

1. In so far as software is included in the scope of delivery, it shall be handed over to the corporate customer alone for resale on a single occasion and handed over to the end customer for his sole use, i.e. he must not copy or modify it or hand it over to others for use. A multiple right of use shall be subject to a separate written agreement. The software shall be supplied in accordance with the Manufacturer's licence agreements; the Customer confirms here and now that he shall comply with them. He shall place his buyers under a corresponding obligation. He shall have to report every breach of contract committed by a buyer to ADN straight away.
2. References on the contractual products to copyrights, trade mark rights or other property rights must not be removed, covered up or made unrecognisable by other means by the Customer. The Customer shall only be entitled to translate documentation supplied together with the goods for commercial purposes with the prior consent of ADN.
3. ADN shall not accept any liability if the contractual products are in breach of any third party industrial property rights or copyrights. The Customer shall have to notify ADN straight away of all claims asserted against him for this reason.
4. In so far as the products supplied have been manufactured to the Customer's drafts or instructions, the Customer shall have to exempt ADN from all claims asserted by third parties on the basis of a breach of industrial property rights and copyrights.

## **XI. Liability**

1. ADN shall only pay compensation for damages or make good wasted expenditure, regardless of whatever reason (e.g. from contractual obligations and quasi contractual relations, quality and legal defects, breaches of duty and unlawful acts) to the following extent:
  - a) Liability in cases of intent and under guarantee is unlimited;
  - b) In cases of gross negligence ADN shall be liable for the amount of the typical damages and damage foreseeable when the contract was concluded;
  - c) In cases of a breach not attributable to gross negligence of a duty of such importance so that the achievement of the contractual objective is jeopardised (cardinal duty; in particular default) ADN shall be liable for the amount of the typical damages and damage foreseeable when the contract was concluded.
2. ADN shall be able to raise the objection of joint guilt. The Customer shall be obliged, in particular, to make data safe and to protect it from malicious software in accordance with state-of-the-art technology.
3. In the event of death, personal injury or physical harm, and if claims are asserted under the Product Liability Act, the statutory regulations shall apply without limitation.

## **XII. International Dispatch**

1. In the event that goods are dispatched from Germany to other countries, ADN is not obliged to clear the goods for export and / or import, to pay customs duty on imports or to settle customs formalities.
2. The formalities and costs necessary to export and import goods shall be borne by the Customer.
3. The Customer is, moreover, responsible for ensuring that the law in force of the country to which a consignment is to be sent and of the supplying country is not breached.

## **XIII. General Provisions**

1. The customer is not entitled to assign his claims under the contract.
2. The place of fulfilment and the place of jurisdiction for all disputes, also in so far as they concern the validity of the contract or these General Terms and Conditions of Business, is Bochum.
3. The law of the Federal Republic of Germany shall apply with the exception of the UN Convention on the Contracts for the International Sale of Goods [CISG].
4. Should one or more of the provisions of these General Terms and Conditions of Business be or become invalid, or should they have a gap, the Parties to the contract shall consequently replace the invalid or incomplete provision with an appropriate provision is, or add an appropriate provision to fill a gap. Such new provisions shall, as far as possible, have the same economic objective of the intended provision. The validity of the remaining provisions shall not be affected by the foregoing.