

## 1. Coverage and Validity

1.1. These general terms and conditions of trade are applicable to all services and consignments which are executed by 3GSM GmbH, herein after called 3GSM. It is explicitly agreed upon to also apply these terms and conditions of trade for all additional-and follow-up transactions as well as further deals.

1.2. Opposing terms or terms deviating the terms and conditions of trade of 3GSM by the customer are not accepted except they had been explicitly approved by 3GSM in writing. The general terms and conditions of trade of 3GSM are also applicable if the delivery has been executed to the customer unconditionally having knowledge of opposing or deviating terms of the customer. Assurances and subsidiary agreements require a written confirmation by 3GSM.

## 2. Tenders

2.1. All tenders submitted by 3GSM are not binding and subject to confirmations. Contracts are only materialized by confirmation of order or delivery.

2.2. 3GSM are not liable for the correctness of technical data and other details published in brochures of any manufacturer.

2.3. 3GSM reserves any deviation as regards origin, manufacturer, material or construction.

## 3. Prices, Taxes and Charges

3.1. All prices are in Euro without turnover tax which has to be paid separately by the customer. They are only effective for the available order. The quoted prices are ex registered office Graz. Should any relevant element for the calculation or necessary expenses for the evaluation like for example those for materials, energy, financing etc. increase, 3GSM are entitled to raise the prices respectively. Furthermore the price on the day of delivery will be charged.

3.2. Deviations of the contract price base on the billing of the time spent which are beyond the responsibility of 3GSM will be calculated according to the factual time incurred.

## 4. Deliveries and Services

4.1. Delivery times and deadlines are not binding. Partial consignments and services are permissible.

4.2. The delivery is sent to the indicated address by the customer on his costs and risk.

4.3. Force majeure, labour dispute, natural disaster, transit blockages as well as other circumstances which are beyond the spheres of influence of 3GSM, this also includes difficulties in obtaining material, interruption of operation, strike, lockout, staff shortage, shortage in means of transportation, orders of the authorities etc. discharges 3GSM of its delivery obligation or rather allows 3GSM to re-determine the agreed delivery time.

4.4. When creating individual software the buyer has to grant a respite of at least 4 weeks in case of delay.

4.5. To maintain the delivery time requires the buyer of individual software to cooperate obligatorily.

4.6. A claim of the customer for compensation because of a delay in delivery is precluded in case of slight negligence, the liability is furthermore limited to the amount of the foreseeable damage and the maximum amount of compensation will be 5 % of the value of the delivery.

4.7. Deviation of technical and creative details which are reasonable for the customer are reserved without deriving any rights against 3GSM.

4.8. 3GSM guarantee that the products of contract are not flawed with serious defects. It is after all conscious to the parties that according to the level of technological development it is not possible to preclude defects in the software under all conditions of application.

4.9. For individually designed software specifications, special functions, hard- and software requirements and the handling exclusively result from the duties agreed upon between the two contract parties in writing. The information necessary to produce individual software has to be provided by the customer before completion of the contract.

## 5. Devolution of Risk

5.1. The risk devolves to the customer as soon as the consignment is handed over to the person who executes the transportation or the place of storage is left.

5.2. In case the dispatch is delayed because of an instruction of the customer, the risk devolves to the customer as soon as it is ready for dispatch.

5.3. Designing individual software the risk devolves at acceptance or also at partial acceptance.

## 6. Terms of Payment

6.1. Value added tax and other statutory levies in the country of delivery as well as packaging, transportation costs, transportation insurance, environmental- and handling lump sum fees are charged to the customer accordingly.

6.2. The charged checks (turnover tax included) by 3GSM are payable without deductions and expenses. For part payments the terms of payment for the total order apply analogously.

6.3. 3GSM is entitled to charge payments to former debts despite contrary terms of the customer. In case costs and interests have already been accumulated 3GSM are entitled to charge the payment initially to the costs, then to the interest and finally to the main performance.

6.4. For orders which contain several units 3GSM are entitled to invoice each separate unit or performance.

6.5. Adherence of the agreed date for payment is an essential condition for the execution of the delivery or rather the performance of contract by 3GSM. Not adhering to the agreed payments entitles 3GSM to stop the current work and to cancel the contract. All costs incurred as well as loss of profit have to be paid by the customer.

6.6. In case of delay of payment 3GSM are entitled after the settlement date to charge penal interest in the amount of 8 % additionally to the base lending rate stipulated by the "Österreichische Nationalbank" (Austrian National Bank) at the precedent 30.6 or rather 31.12. Further damage claim is reserved any further damage claim.

6.7. The customer is not entitled to withhold any payments because of incomplete delivery, guarantee- and warranty claims or other complaints.

6.8. 3GSM explicitly reserves the right to send goods only being paid in advance or rather release pick-up even if contrary delivery contracts have been concluded.

## 7. Copyright and Use

7.1. All copyrights on the agreed services (programs, documentations etc.) are entitled to 3GSM or rather their licensors. The customer exclusively has the right to use the software after payment of the agreed compensation only for his own purposes and only for the hardware specified in the contract and in the amount of the acquired licenses.

7.2. The customer only acquires the permission of beneficial use. Without the previous written approval of 3GSM the customer –otherwise all claims are expired- is not entitled to duplicate, to change, to make it accessible to third parties or to use it for other than explicitly agreed purposes. Through cooperation of the customer in creating the software he does not acquire any more rights of user. Any violation of

the copyright of the contractor will cause a claim of compensation for full satisfaction.

7.3. To make copies for archives and purposes of data back-ups is granted to the customer provided the software does not contain an implicit prohibition to the licensor or third parties and provided that all reservations of copyright and title are transferred in these copies unchanged.

## 8. Reservation of Title

8.1. The delivered goods and the created software programs remain property of 3GSM until entirely paid.

## 9. Warranty

9.1. Warranty claims of the customer are met by 3GSM after detecting a defect optionally either by exchange, repair within due period or by reducing the price. Rescission (cancellation of contract) can only be requested by the customer if a defect is essential, cannot be removed by exchange or repair and a reduction of the price is not reasonable for the customer. Damage claims which aim to remove the defect can only be made if 3GSM have fallen behind in meeting the warranty claims.

9.2. The customer has to reprimand defect of which there have not been complaints about at their acceptance immediately, at latest within one week after delivery in writing. Hidden defects have to be reprimanded immediately in writing at latest 3 weeks after their discovery. In case the notice defect is not made on time, the delivery of 3GSM is considered to be approved and all claims of the customer –for whatever legal basis- are excluded. Being on time for the notice of defect in writing is directed towards the receipt with 3GSM.

9.3. 3GSM are unable to guarantee for defects, malfunctions or damages which are caused by improper use, exchanged system components, interfaces and parameters, use of unsuitable organizing means and data carriers, as far as they are required, abnormal operating conditions (especially deviations of installation- and storage conditions) as well as transportation damages.

9.4. No guarantee at all can be granted by 3GSM for programs which were subsequently altered by programmers of the customer or rather third parties.

9.5. Warranty claims are not transferable. Regardless of that any further warranties and guarantees of the manufacturer are handed on the customer entirely without vouching for themselves.

9.6. In case the article delivered is produced on the basis of pictures or reference material of the customer, the customer is liable that these pictures or reference material meet the necessary requirements according to the guidelines of 3GSM. There is no obligation to test, warn or inform as far as pictures or reference material which was provided by the customer is concerned and any liability in this connection by 3GSM is precluded.

9.7. Furthermore there are no warranty claims of the article delivered has been produced on the basis of pictures or reference material of the customer and the defect is caused by these pictures or reference material.

## 10. Intellectual property and Copyrights of Third Parties

10.1. 3GSM are unable to guarantee that product of the contract do not violate trade protective right or copyrights of third parties

10.2. It is the obligation of the customer to inform 3GSM about all claims filed against him for that reason.

## 11. Liability

11.1. Claims for compensation against 3GSM for whatever legal basis, especially also for indirect and consequential damage is precluded unless because of a proved conscious or gross negligence or lacking of an assured quality, there is binding liability. There is no liability for slight negligence. However this does not go for personal injury. 3GSM are not liable for the loss of data.

11.2. This exemption from liability is also valid for employees, co-workers, representatives and vicarious agents of 3GSM.

## 12. Export- and Import Permits

12.1. Delivered products and technical know-how by 3GSM are determined to be used and kept in the country of delivery which has been agreed upon with the customer. The re-export of contract products requires a license for the customer and is basically subject to the foreign trade regulations of the Republic of Austria or rather the country of delivery agreed upon with the customer. It is duty of the customer to inquire with the competent public agency.

12.2. The customer is liable to 3GSM to follow the export regulations.

## 13. Right of Cancellation

13.1. Beside the general legal reasons 3GSM are entitled to cancel the contract also at a default in acceptance or other important reasons like especially at the opening of bankruptcy proceedings on the property of a customer or at a rejection of a bankruptcy petition due to no funds, at the interruption of performance for more than 3 months by the customer –and at the prevention of performance by the customer. In case of cancellation the total amount of compensation is due to 3GSM for all services rendered till the cancellation. For services not yet rendered to the day of cancellation 3GSM are entitled to the agreed professional charge minus 40 % lump sum reduction charge.

13.2. In case the customer –without being authorized- cancels the contract or requests the cancellation without authorization, 3GSM have the option either to insist on execution the contract or agree to the cancellation of the contract, in the latter case the customer has to pay the total reward for the services rendered by 3GSM to the day of cancellation. For services not yet rendered to the day of cancellation 3GSM are entitled to the agreed professional charge minus 40 % inclusive charge.

13.3. In case the customer is authorized to cancellation, 3GSM are only entitled the reward for services rendered to the effectiveness of the cancellation.

## 14. Miscellaneous

14.1. Should some regulations of these terms and conditions of trade be or become completely or partly inoperative or impracticable, the legal force remains untouched as for the rest. Changes and supplements to these terms and conditions of trade need to be in writing to become effective.

14.2. The contract, -order, -complaint, - and legal language is German.

## 15. Data Protection

15.1. The customer consents that personal data necessary for the transaction can be used by 3GSM electronically especially in the respect of storage and processing.

## 16. Place of Performance and Legal Venue

16.1. Place of performance and legal venue is Graz. For the legal relations of both parties the Austrian law becomes effective, precluding the CISG (United Nations Convention on the International Sales of Goods).