

# General Terms and Conditions of Delivery and Service of ABBYY Europe GmbH

Date: July 2005

## 1. General, Scope

- 1.1 These General Terms and Conditions (GTC) of ABBYY Europe GmbH (ABBYY) form the basis of all trading relations between ABBYY and the customer (CUSTOMER).
- 1.2 In addition to these GTC, the licence conditions pertaining to the products always apply, unless otherwise agreed by individual contracts.
- 1.3 ABBYY does not recognise any conditions stipulated by CUSTOMER unless ABBYY expressly accepts these. Otherwise, in the event of contradictory clauses, the common minimum shall apply. If this cannot be established, these clauses shall not form part of the contract. The contents of the contract shall then be based on the individual items agreed or on legal provisions.
- 1.4 All other agreements for deliveries and services reached between ABBYY and the Customer shall be laid down in writing in the relevant contract and any supplementary agreements. This applies in particular to contracts for work and labour or other services.

## 2. Conclusion of agreement

- 2.1 All information provided by ABBYY about its products and services in brochures, advertisements, catalogues, and on Internet websites, etc. is non-binding; prices are also subject to change as the result of changes in duties, import and export taxes, exchange rates and VAT.
- 2.2 The CUSTOMER is obliged to check ABBYY's quotation for goods and services carefully for correctness before conclusion of the agreement. This shall apply in particular to project quotations and tenders whose calculations and service descriptions are based on assumptions which have been clearly stated as such. Should these assumptions not apply, the CUSTOMER shall inform ABBYY of this immediately after issuing the order, so that ABBYY has the opportunity to check the order before it is completed. All liability for unserviceable or incorrect orders is excluded.
- 2.3 By ordering the goods or service the CUSTOMER makes a binding purchase offer. The offer can be accepted by ABBYY within 5 working days from receipt of the order by ABBYY.
- 2.4 The contract shall come into existence with the acceptance of the purchase request by ABBYY by telephone, fax, e-mail or by delivery of the order.
- 2.5 ABBYY is the licensee of ABBYY Software House and is allowed to sub-license within the scope of licensing contracts. The copyright, patent rights, trademark rights and all other ancillary copyrights to the software and to other articles which ABBYY may make available and accessible to the CUSTOMER within the context of the contract's initiation and execution, reside exclusively with ABBYY Software House. Software and the other above mentioned articles may not be made available to third parties or exploited by the CUSTOMER on its own behalf, or on the behalf of third parties, without the prior written agreement of ABBYY. Notwithstanding other rights, ABBYY reserves the right to ask for damages.

## 3. Right of cancellation/return for customers who are not consumers.

- 3.1 Unless the CUSTOMER is a consumer under the terms of §13 BGB [German Civil Code], no fundamental right of cancellation or return exists. Agreements to the contrary shall only apply in cases in which ABBYY expressly grants a right of return in writing in a contract. No entitlement to a right of return exists. Goods returned without previous agreement of a right of return shall be refused without exception.
- 3.2 If CUSTOMER is granted a right of return, this shall only apply to goods already paid for.
- 3.3 Excluded from any right of return are goods that have been individually produced, configured, customised, or processed, as are promotional and sale goods or goods designated as expiring or expired or which otherwise differ from the current series standard.
- 3.4 The right of return shall expire two weeks, at the latest, from receipt of the goods by CUSTOMER and can only be effectively exercised by returning the goods within this time. The deadline is calculated from the time of the goods' arrival at ABBYY.
- 3.5 For software: in its original and unopened packaging, including the media and documentation.
- 3.6 The cost and risk entailed in returning the goods shall be borne by the purchaser.
- 3.7 Partial returns of deliveries require a separate agreement.
- 3.8 Statutory provision shall apply for consumers.

## 4. Delivery

- 4.1 Unless otherwise agreed, delivery shall be from the ABBYY warehouse to the delivery address specified by the CUSTOMER.
- 4.2 Packaging and shipping costs shall be invoiced to the CUSTOMER. This excludes products which can be downloaded electronically.
- 4.3 Partial deliveries and partial services and their associated partial invoices are permitted if they are reasonable for the CUSTOMER.
- 4.4 The transportation risk is transferred to the CUSTOMER as soon as the contractual article is handed over to the person responsible for carrying out the transport.

## 5. Prices, Terms of payment

- 5.1 All prices are in EUROS from the ABBYY Warehouse plus shipping, insurance and packing costs and the VAT applying at the place of delivery including original packaging.
- 5.2 Only the prices stated in the order confirmation apply.
- 5.3 Unless otherwise specified by the contract, the price for deliveries and services is due for payment without discount two weeks from receipt of the delivery or service and arrival of the invoice. After these two weeks have elapsed, the CUSTOMER is automatically in default, without the need for a reminder. ABBYY reserves the right to present an immediate demand for payment and to ask for an advance payment.
- 5.4 Should the CUSTOMER default on payment, ABBYY shall be entitled to charge interest of 5% above the basic interest rate set per annum as published by the European Central Bank.
- 5.5 If ABBYY is in a position to prove that additional damage has been caused by the delay, it shall be entitled to assert a claim.

- 5.6 In the event of the CUSTOMER being in default of payment, ABBYY can bring forward the maturity of all claims immediately from any ongoing business transaction with the CUSTOMER.
- 5.7 Any right of retention by the CUSTOMER is excluded, unless it is based on the same contractual relationship. The Customer shall only be entitled to set off a claim if its counter-claims are not contested by ABBYY or have been legally confirmed.
- 5.8 The transfer of claims by the CUSTOMER against ABBYY, including any warranty claims, is excluded.
- 5.9 The agreed delivery date shall be extended appropriately in the event of measures arising from time lost due to strikes/lockouts, statutory or official order (import/export restrictions), force majeure or in the event of necessary but inadequate (or absence) of cooperation by the CUSTOMER. The CUSTOMER has the right to withdraw from the order in the event of default by the seller after a reasonable deadline has been set. Further claims for compensation in this regard are excluded, assuming absence of malice or gross negligence on the part of ABBYY.

## 6. Retention of title

- 6.1 The goods supplied shall remain the property of ABBYY until all outstanding invoices have been settled in full.
- 6.2 In the event of seizure or other intervention by third parties, the CUSTOMER must inform ABBYY immediately in writing.
- 6.3 In the event of culpable behaviour by the CUSTOMER contrary to the terms of the contract, especially default of payment, ABBYY shall be entitled to withdraw from the contract and take back the contractual article and also to assert a claim for damages on the basis of default.

## 7. Usage Rights

- 7.1 The delivery includes the program package and if supplied documentation in electronic or printed form. Both documentation and program are protected by copyright.
- 7.2 Agreements on rights of use are provided for the supplied programs in the form of an EULA (End User Licence Agreement) or laid down in writing in a separate licence agreement.

## 8. Liability/Warranty

- 8.1 If a defect is found in the product purchased, the CUSTOMER can demand a remedy (removal of the defect or replacement delivery). If the remedy fails, the CUSTOMER can withdraw from the contract in the event of a non considerable defect, reduce the purchase price or assert a claim for damages.
- 8.2 All liability or warranty is excluded in the case of free downloads.
- 8.3 The CUSTOMER is aware that software developers regularly create updates, patches and hotfixes which remove known problems and are available for downloading free of charge. It is the sole responsibility of the CUSTOMER to install these updates on his own. ABBYY therefore accepts no liability or warranty for damage or defects that result from these already known and resolved problems.
- 8.4 Furthermore, ABBYY always uses the latest technologies for copy-protection mechanisms in their products. These include, for example, copy-protected CDs, product activation keys, anonymous online product activation, etc. The inability to use CDs and programs as a result of copy protection does not constitute a defect.
- 8.5 Unless otherwise specified below, all other claims by the CUSTOMER – for whatever reason – are excluded. ABBYY therefore accepts no liability for damage that has not occurred to the delivered article itself; in particular ABBYY accepts no liability for any loss of profit or other financial loss incurred by the CUSTOMER. Insofar as that liability on the part of ABBYY is excluded or restricted, this shall also apply to the personal liability of contractors, representatives and vicarious agents.
- 8.6 The forementioned limited liability shall not apply if the cause of the damage is due to malice or gross negligence or personal injury. Moreover, this shall not apply if the CUSTOMER asserts claims under §§ 1, 4 of the Product Liability Act.
- 8.7 In the event that ABBYY negligently breaches one of its material obligations under the contract, the liability to pay damages is limited to damage arising in typical cases.
- 8.8 If the remedy is made in the form of a replacement, the CUSTOMER shall be obliged to return the goods originally supplied to ABBYY within 7 days. If the goods are not returned to ABBYY within this period, ABBYY shall be entitled to invoice the purchase price of the replacement product and deduct the amount from the method of payment designated for payment.
- 8.9 The limitation period shall be twenty-four months, calculated from the date of delivery.

## 9. Processing personal data

- 9.1 ABBYY processes the personal data of its customers exclusively for the purpose of establishing the contractual relationship and its termination, for fulfilment of the order (carrying out delivery of goods and services and their invoicing, including the invoicing of the use of any chargeable services). Otherwise ABBYY only uses the personal data of its customers for the purposes allowed under the applicable law or for which the customer have given permission.

## 10. Final provisions

- 10.1 German law applies with exclusion of the UN purchasing convention.
- 10.2 The place of jurisdiction is Munich, provided the CUSTOMER is not a consumer as defined in §§ 3.1.