

# General Terms and Conditions of Business – Support Services – Arrow ECS AG

## § 1. Scope of validity

Deliveries made and services provided by Arrow ECS AG shall be governed exclusively by the following General Terms and Conditions. In addition, reference shall be made to the manufacturer's conditions enclosed with the contractual products. Arrow ECS AG does not recognise Buyer terms and conditions that are contrary to or deviate from our General Terms and Conditions, unless we have explicitly agreed to the validity hereof in writing. Our Terms and Conditions of Sale and Delivery shall also apply in the event that Arrow ECS AG performs services or deliveries without reservation having knowledge of contrary or deviating terms and conditions. All agreements concluded between Arrow ECS AG and the Buyer for the purpose of executing

## § 2. Conclusion of contract/quality of goods

Unless expressly indicated otherwise, all offers made by Arrow ECS AG shall be non-binding. Arrow ECS AG may accept a customer's purchase order/order within two weeks. Arrow ECS AG shall accept orders either in writing or through delivery. Our offers and confirmations of orders are always subject to a positive credit rating for the customer and to a timely and properly self-delivery. The information stated in the offer and in Arrow ECS AG's confirmation of order shall always be appropriate to the nature of the goods.

## § 3 Delivery and delivery agreement

The delivery dates notified to the Buyer shall be subject to clarification of all technical questions and proper and timely delivery by Arrow ECS AG. Arrow ECS AG cannot be held responsible in the event of force majeure or owing to changed situations regarding approvals by official authorities or legal conditions, operational breakdowns or industrial disputes, also insofar as these originate from our subcontractors, even in the case of delivery dates agreed as binding. In the event of any temporary or other impediment to performance that Arrow ECS AG is not responsible for, the delivery period shall be extended by the period in which performance was impeded. Compensation claims on the part of the Buyer on account of delay in performance shall be excluded in all cases, unless the delay is due to wilful intent or gross negligence on the part of Arrow ECS AG.

## § 4. Shipping/transfer of risk

Goods are shipped from the warehouse of Arrow ECS AG or, in the case of direct delivery, from the manufacturers' warehouse. The risk of accidental loss or damage in the case of all deliveries shall be transferred to the Buyer once the goods are handed over to the carrier, also if carriage paid deliveries has been agreed. If shipping is delayed due to circumstances for which the Buyer is responsible, the risk shall transfer to the Buyer as soon as notification that the goods are ready for shipment has been sent.

## § 5. Payment terms

All deliveries and services shall be invoiced at the Arrow ECS AG prices valid on the date of conclusion of the contract. All prices quoted by Arrow ECS AG are ex warehouse. Packaging and shipping costs plus statutory VAT shall be added to the invoice. Arrow ECS AG reserves the right to increase customer prices in the event our prices rise after the conclusion of a contract, including in the event of wage settlements, increase in our suppliers' prices or currency exchange rate fluctuations. We will evidence this to the customer upon request and customer's further legal rights remain unaffected. Unless otherwise agreed in writing, the purchase price shall be due and payable immediately without deductions of any kind. In the event of delays in payment on the part of the Buyer, Arrow ECS AG shall be entitled to charge interest on outstanding payments of at least five per cent above the respective base interest rate. If the Buyer defaults on payment, all claims Arrow ECS AG has against the Buyer shall become due and payable immediately. Cheques and bills of exchange shall only be accepted as conditional payment at the discretion of Arrow ECS AG. Expenses shall be borne by the Buyer. Arrow ECS AG shall be entitled to request payment for deliveries in advance.

## § 6. Reservation of ownership

Arrow ECS AG shall reserve ownership of goods delivered until all outstanding debts arising from the business relationship, including any future debts, have been paid in full. If and insofar as the value of securities exceeds the value of outstanding debts by more than 20%, reservation of ownership shall be released at the Buyer's request in written form which is to be determined by both parties. The Buyer shall be entitled to resell the reserved goods in the context of a proper business transaction. However, the Buyer may neither pledge the reserved goods nor assign them as security. Arrow ECS AG must be notified immediately of any disposals by third parties, particularly pledges or assignments, and provided with the documents necessary for intervention. Exercising the rights arising from the reservation of ownership or a request for return shall not constitute withdrawal from the contract. The Buyer assigns all outstanding debts arising from the resale of reserved goods to Arrow ECS AG forthwith. The Buyer shall be revocably entitled to recover these outstanding debts. The Buyer shall provide Arrow ECS AG with details of the assigned claims and their debtors upon request. Arrow ECS AG shall be entitled to disclose the assignment to the Buyer's debtors if the Buyer falls into arrears with payments to Arrow ECS AG. Any adaptation or subsequent processing of the goods delivered by Arrow ECS AG by the Buyer shall be on Arrow ECS AG's behalf. Arrow ECS AG shall acquire ownership rights hereto amounting to the market value of the reserved goods at the time of adaptation or further processing. In the event that reserved goods are combined with other items, Arrow ECS AG shall acquire co-ownership to the respective new item proportionate to the value of the reserved goods and the other items at the time of processing.

## § 7. Warranty

Arrow ECS AG guarantees that goods delivered shall be free from manufacturing and material defects and shall be suitable for use as described in the user manuals. It shall be the sole responsibility of each Buyer or reseller to decide whether goods purchased from Arrow ECS AG can be run on a computer system intended for use with these goods. The warranty period shall be one year commencing on transfer of risk. This period shall be a statutory period of limitation and shall apply to all potential claims on the part of the Buyer owing to defects in goods for which we are responsible, unless claims are made on account of fraudulent concealment of a defect, unauthorised actions or wilful intent or the goods are the subject of a consumer goods sale in accordance with Section 474 of the German Civil Code [BGB]. Arrow ECS AG draws attention to the fact that current technology does not allow computer software to be created in such a manner that it is can run without errors in all possible applications and combinations. The Buyer must check goods delivered for defects

and quality immediately. Defects and faults must be reported to Arrow ECS AG in writing within 4 days of delivery or, in the case of hidden defects or faults, upon detection. Any claims on the part of the Buyer, with the exception of those relating to software defects, shall not be possible if such defects and faults are not reported. Arrow ECS AG may, at its own discretion, ensure subsequent performance by remedying defects or providing replacement goods in the case of a justified claim. If subsequent performance fails, the Buyer shall grant Arrow ECS AG an appropriate extension of time. If Arrow ECS AG is not prepared or in a position to ensure subsequent performance or if this is unreasonably delayed due to reasons for which Arrow ECS AG is responsible or if the subsequent performance is unacceptable to the Buyer, the Buyer shall be entitled, at its discretion, to withdraw from the contract or to request an appropriate reduction in the purchase price. The warranty shall not cover instances where there is interference with delivery items on the part of the Buyer or third parties. The Buyer shall bear the costs of an unjustified or incomplete return consignment. Arrow ECS AG shall be entitled to charge a lump sum of €100 or the exact cost for returns of this nature.

## § 8. Liability

Any further claims on the part of the Buyer other than those specified in Section 7, irrespective of the legal basis, shall not be possible. This shall also apply in particular to indirect or consequential damages. Arrow ECS AG shall not be liable for damages beyond direct damages to goods delivered; in particular not for loss of profit or other financial losses on the part of the Buyer. This exclusion shall not apply insofar as the cause of damage is the result of wilful intent or gross negligence on the part of Arrow ECS AG or Arrow ECS AG has negligently breached an essential contractual obligation that was intended to safeguard the Buyer against the damage claimed. It shall also not apply if Arrow ECS AG has fraudulently concealed a defect or has undertaken a guarantee in respect of the quality of goods and the purpose of this guarantee was to safeguard the customer against the respective damage. In cases of simple negligence, liability for damages shall be limited to the order value of the respective goods.

All software products are subject to the relevant licensing terms of the manufacturer with respect to their use. The Customer is obliged to comply with these licensing terms and to instruct its buyers accordingly. Arrow ECS AG accepts no liability for the infringement of third party industrial property rights or copyright by the contractual products. The customer shall notify Arrow ECS AG immediately of any claims of this nature made against it.

Claims on the part of the Buyer owing to impossibility of performance for which Arrow ECS AG is responsible and in accordance with the German Product Liability Act as well as any claims in accordance with Sections 478 and 479 of the German Civil Code shall remain unaffected.

## § 9. Export/import regulations

The Buyer acknowledges that goods delivered by Arrow ECS AG may be subject to export and/or import regulations and undertakes to comply with these regulations.

**9.1** All products and technical know-how supplied by Arrow ECS AG are supplied in compliance with the provisions of the German Act on Foreign Trade and Payments (AWG) / the German Foreign Trade and Payments Regulation (AWV) / the EC Dual Use Regulation and the US export provisions currently in force and effect, and are intended for use and to remain in the country of destination agreed with the Buyer. If the Buyer intends to re-export products, the Buyer is obliged to comply with US, EU and national export regulations. The re-export of products - whether individually or integrated into a system - in violation of applicable export regulations is prohibited.

**9.2** The Buyer is obliged to obtain details of the provisions and regulations currently in force on its own initiative (Bundesausfuhramt [German Federal Export Office], 65760 Eschborn/Taunus or US-Department of Commerce, Office of Export Administration, Washington D.C. 20230). Irrespective of whether the Buyer indicates the final destination for the products supplied, the Buyer shall be obliged, on its own responsibility, to obtain any license or permit which may be necessary from the relevant foreign trade authority responsible prior to exporting such products. Arrow ECS AG has no duty to provide information.

**9.3** Any onward supply of products to third parties by the Buyer with or without the knowledge of Arrow ECS AG may require the simultaneous transfer of the export license conditions. The Buyer shall be fully liable in case of noncompliance with the relevant regulations.

**9.4** Without the prior consent of the authorities, the Buyer may not deliver products directly or indirectly to countries that are subject to a US embargo or to natural or legal persons of these countries as well as to natural or legal persons that are registered on US, EU or national prohibition lists (e.g. Entity List, Denied Persons List, Specifically Designated Nationals and Blocked Persons). Furthermore, the Buyer is not permitted to deliver products to natural or legal persons that are in any way connected with the support, development, production or use of chemical, biological or nuclear weapons of mass destruction. The Buyer is made aware that certain products are not intended for use in nuclear plants, medical, life-saving or life-sustaining systems, and agrees to bear the risk of such unintended use.

## §10. Offsetting

The Buyer shall only be entitled to rights of set-off if its counterclaims are established as legally valid, are undisputed, ready for decision or recognised by Arrow ECS AG. The Buyer shall not be authorised to exercise a right of retention or right to withhold performance.

## § 11. Invalidity of a clause

In the event that any clauses in these General Terms and Conditions shall be or shall become invalid, this shall not affect the validity of the other clauses. An invalid clause shall be replaced by a valid clause which most closely reflects the financial purpose of the invalid clause.

## § 12. Place of performance, place of jurisdiction, applicable law

The place of performance for all obligations on the part of Arrow ECS AG and the Buyer arising from agreements reached between these parties shall be Munich, Germany. The place of jurisdiction for any disputes arising from such agreements shall be Munich, if the Buyer is a businessman, a legal entity under public law or a trust under public law. The law of the Federal Republic of Germany shall apply exclusively. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be expressly excluded.

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