

Special Conditions of Contract (SCC) - Purchase

to the General Terms and Conditions of EnBITCon GmbH Status: 25

October 2021

1 Scope

These Special Terms and Conditions of Contract (hereinafter referred to as "GTC") shall apply to all contracts of EnBITCon GmbH for the sale of goods, in particular hardware and standard software together with accessories. In addition, the General Terms and Conditions ("GTC") of EnBITCon GmbH shall apply. These BVB as well as the GTC are each available online at <https://www.enbitcon.de/rechtliche-informationen/agb/>. In the event of contradictions, these GTC shall take precedence over the GTC.

2 Scope of services

2.1 Sold goods within the meaning of these BVB may be:

2.1.1 Hardware, and/or

2.1.2 Standard software.

2.2 The quality (e.g. functionality / scope of delivery/service) of the hardware and/or standard software in detail as well as any supplementary services provided by EnBITCon are described in more detail in the offer (including product descriptions / operating instructions). Unless otherwise agreed, the safety of the hardware shall be governed by the rules of technology tested on the market at the time of the passing of risk.

2.3 The installation and commissioning of the hardware and/or standard software shall be the responsibility of the customer, unless otherwise stipulated in the offer. All further services provided by EnBITCon at the customer's request shall be remunerated separately on a time and material basis.

2.4 The customer has no right of withdrawal after conclusion of the contract.

2.5 In the event of a non-binding delivery date being exceeded, the customer shall only be entitled to withdraw from the contract if it has previously granted EnBITCon a reasonable grace period in writing and if the other statutory requirements for a right of withdrawal have been met. Insofar as partial deliveries have been made by EnBITCon, the customer's right of withdrawal shall be excluded, unless the partial performance of the contract is of no interest to the customer.

3 Reservation of self-delivery

3.1 Since EnBITCon procures hardware and standard software from suppliers, EnBITCon's obligation to deliver is subject to timely and correct self-delivery.

3.2 Obstacles to performance for which EnBITCon is not responsible shall lead to a corresponding extension of the performance period. This shall apply in particular to lack or absence of self-supply (see clause 9.1), force majeure, war, natural disasters, traffic or operational disruptions, power failures, disruptions of network access, impeded import, shortage of energy and raw materials, official measures and labour disputes as well as the violation of duties or obligations of the customer to cooperate. EnBITCon shall be entitled to withdraw from the contract if the impediment to performance continues for an unknown period of time and the purpose of the contract is endangered. If the impediment lasts longer than two (2) months, the customer shall be entitled to withdraw from the contract with regard to the part not yet fulfilled, unless the customer is entitled to withdraw from the contract as a whole.

3.3 An extension of the performance period shall also occur as long as the parties negotiate a change in the performance or EnBITCon submits a supplementary offer after assumptions in the offer that have become part of the contract turn out to be incorrect.

3.4 EnBITCon's compliance with its delivery obligation shall require the timely and proper fulfilment of the customer's obligations.

4 Provision of hardware

4.1 Hardware is provided to the customer pre-installed with configuration and installation documentation in digital form, the operating system software, standard drivers and the application software in accordance with the offer.

4.2 The risk shall pass to the customer directly from the delivery warehouse. Unless otherwise agreed, the customer shall transport the hardware entirely at his own expense.

4.3 Unless otherwise agreed in the offer, the customer shall be responsible for connecting the hardware to the power and data network at the place of installation. It is also the customer's responsibility to ensure that the hardware is ready for operation and to establish the necessary operating and usage conditions (e.g. space, energy, climate).

4.4 The instruction and training of the customer and its users by EnBITCon is not owed.

4.5 The customer shall check the general operational readiness and completeness of the hardware supplied and confirm its provision.

5 Provision of standard software

5.1 Unless expressly agreed otherwise, software provided by EnBITCon shall be standard software that has not been individually produced for the needs of the customer. Contracts for the provision of software are therefore contracts of sale. The parties agree that it is impossible, given the state of the art, to develop standard software error-free for all application conditions.

5.2 In the case of standard software from third-party manufacturers, EnBITCon shall supply the customer with the original user documentation of the manufacturer. EnBITCon shall not be obliged to deliver any additional documentation. Upon request, the customer shall be given access to the original user documentation to be delivered prior to the conclusion of the contract. Apart from that, the documentation shall be delivered as online help within the scope of the software. If the customer wishes further written documentation, he may inform EnBITCon prior to the conclusion of the contract. EnBITCon shall then provide him with an offer for such documentation.

5.3 If software is to be delivered, EnBITCon shall be obliged to provide the object code. There shall be no claim to surrender or disclosure of the source code.

5.4 If EnBITCon is obliged to install software, the customer shall ensure that the requirements communicated to him regarding hardware and the other environment, in particular the connection to the network including all cabling, are met prior to installation.

5.5 The installation of suitable computer workstations, in particular the compliance with occupational health and safety regulations, is neither owed nor checked by EnBITCon, but is the responsibility of the customer.

5.6 During test operations and during installation, the customer will ensure the presence of competent and trained staff and stop other work with the computer equipment if necessary. He will ensure backup of his data from each installation.

6 Rights of use to the hardware

6.1 EnBITCon warrants to have acquired sufficient rights of use to the operating system software pre-installed on the hardware as well as to the standard drivers and the application software. EnBITCon grants the customer simple, non-transferable, temporally and spatially unrestricted rights to these.

rights of use in connection with the respective hardware, unless otherwise agreed in the offer.

6.2 The customer undertakes to comply with the terms of use and licensing conditions of the operating system software and the application software installed on the hardware. The relevant terms and conditions of use and licensing with regard to hardware are described in more detail or referenced in the offer.

7 Rights of use to the standard software

7.1 The scope of the rights of use granted to the customer in respect of the standard software shall be determined in accordance with the relevant terms of use and licence conditions of the third-party supplier. These are described in more detail or referenced in the offer. The customer undertakes to comply with the terms of use and licence conditions. If no terms of use and licence conditions for the standard software are attached to the offer, EnBITCon shall grant the customer and the employees intended by the customer for the use of the standard software ("User"), upon payment of the agreed prices, the simple, non-sublicensable, non-transferable right, revocable at any time, unlimited in time and limited in content in accordance with the following provisions, to use the respective current version of the standard software and the functionalities associated with the standard software in accordance with this agreement, unless otherwise agreed in the offer. The customer shall not receive any further rights, in particular to the standard software.

7.2 If the customer is granted the right to use the standard software for test purposes, his rights of use shall be limited to such actions that serve to determine the condition of the standard software / cloud services and their suitability for operation at the customer's premises. In particular, productive operation of the standard software / cloud services or preparation for productive operation is not permitted.

8 Retention of title; default in payment

8.1 EnBITCon retains ownership and rights to be granted to the hardware / standard software delivered by EnBITCon until full payment of the remuneration owed.

8.2 EnBITCon may prohibit the customer from further use of the services for the duration of a delay in payment. This shall not constitute a withdrawal from the contract. § Section 449 para. 2 BGB shall remain unaffected. If the customer returns items, the acceptance shall not constitute a rescission of the contract by EnBITCon either, unless EnBITCon has expressly declared such rescission.

8.3 The customer is obliged to treat the object of sale with care until the remuneration owed has been paid in full. In particular, he is obliged to insure it at his own expense against damage caused by fire, water, theft and vandalism, as well as against damage caused by overvoltage and other damage covered by a standard electronics insurance policy at the replacement value. Insofar as maintenance and inspection work is required, he must carry this out in good time at his own expense.

8.4 In case of seizure or other interventions by third parties, the customer shall immediately notify EnBITCon in writing so that EnBITCon can file a suit pursuant to § 771 ZPO (German Code of Civil Procedure). Insofar as the third party is not in a position to reimburse EnBITCon for the judicial and extrajudicial costs of an action pursuant to § 771 ZPO, the customer shall be liable for the loss incurred by EnBITCon.

8.5 The customer shall be entitled to resell the delivery item in the ordinary course of business. However, he already now assigns to EnBITCon all claims in the amount of the final invoice amount including value added tax, which accrue to him from the resale against his customers or third parties. The customer shall remain entitled to collect this claim even after the assignment, provided that he has created the preconditions for passing on the collected amounts to EnBITCon and as long as the preconditions of the provision on endangerment of claims (§ 321 BGB) do not occur. The authority of EnBITCon to collect the claim itself shall remain unaffected. Upon EnBITCon's request, the customer shall be obliged to disclose the assignment and to hand over to EnBITCon all documents and information necessary for the assertion of the claim.

8.6 EnBITCon shall release the securities to which it is entitled upon the customer's request to the extent that the value of EnBITCon's securities exceeds the claims to be secured by more than 20%. The choice of the securities to be released shall be incumbent upon EnBITCon.

9 Warranty for material defects

9.1 The hardware / standard software shall be free from material defects if, at the time of transfer of risk, they essentially meet those objective, subjective and, if applicable, assembly requirements described in the offer.

9.2 If the customer is an entrepreneur, the following shall apply: Insofar as the hardware / standard software fulfils subjective requirements stated in the offer, it shall also be free of material defects if objective requirements are not fulfilled.

9.3 "Warranties" (esp. about condition and/or durability) are only those which are expressly designated as such in the offer. EnBITCon shall receive from the customer all information required for the elimination of software defects. The customer's claim for removal of defects shall be excluded if the defect is not reproducible or can be shown from handwritten or machine-recorded output.

9.4 The customer shall only be entitled to assert its statutory claims exceeding the supplementary performance after the final failure of the supplementary performance. A failure of the supplementary performance shall only be assumed if EnBITCon has confirmed this to the customer in writing.

9.5 The customer's claims for defects shall become statute-barred twelve (12) months after the statutory commencement of the limitation period. This period shall not apply if longer periods are prescribed by law. Legally required notifications of defects by the customer must be made immediately in writing with a precise description of the problem. Only the contact person (clause 2.2 of the GTC) is authorised to give notice of defects.

9.6 The customer shall have no right of retention if its claims for defects are time-barred. If the notification of defects is unjustified, EnBITCon shall be entitled to demand reimbursement from the customer for the expenses incurred by it. The support provided by EnBITCon shall be remunerated by the customer at the prices agreed with EnBITCon or, in the absence of an agreement, at the prices customary in the market.

9.7 Claims for defects on the part of the customer do not exist in the case of only insignificant deviation from the agreed quality, in the case of only insignificant impairment of usability or in the case of damage arising as a result of faulty or negligent handling or in the course of the breach of obligations to cooperate.

9.8 In deviation from clauses 9.1 to 9.7 of these GT&C, in case of delivery of hardware and standard software from third parties (manufacturers, suppliers or other third parties), EnBITCon may assign its corresponding claims against the third party supplier to the customer for the purpose of subsequent performance (repair or replacement). Before the customer can assert its warranty rights against EnBITCon in these cases, it must first take legal action against the third party provider, if necessary, unless this is unreasonable for the customer.

9.9 Clause 9.8 shall also apply if EnBITCon has adapted, configured or otherwise modified the hardware or software for the customer's needs, unless the material defect was caused by EnBITCon's performance.

10 Warranty for defects of title

10.1 EnBITCon warrants that the hardware and standard software provided shall not infringe any third party rights when used by the customer in accordance with the contract. This warranty requires that the customer immediately notifies EnBITCon in writing of any third party rights asserted against him and leaves the legal defence and settlement negotiations to EnBITCon. The customer shall support EnBITCon free of charge to a reasonable extent, in particular by providing EnBITCon with the necessary information. Legal obligations of the customer to give notice of defects shall remain unaffected. Rights in this sense are only

those to which the third party is entitled in the Federal Republic of Germany as well as in the states in which the customer uses the provided hardware and standard software as intended.

10.2 If the customer cannot use the provided hardware and standard software in accordance with the contract due to a conflicting right of a third party, EnBITCon may, at its own discretion, either (a) modify the services in such a way that the right of the third party is no longer violated, or (b) procure for the customer the required authority to use the services. Self-performance by the customer or by involving third parties shall be excluded. Clause 4 of the GTC shall apply to claims for damages by the customer.

10.3 The customer shall have no claims based on defects of title if the hardware and standard software provided have been modified by the customer or third parties after acceptance, unless the customer proves that the infringement of rights is not the result of the modifications. Claims of the customer shall also not exist in case of infringements of rights resulting from a combination of the hardware and standard software with such services or products of third parties who are not subcontractors of EnBITCon in this respect.

If the notification of defects is unjustified, EnBITCon shall be entitled to demand reimbursement of the expenses incurred by EnBITCon from the customer. The support provided by EnBITCon shall be remunerated by the customer at the prices agreed with EnBITCon or, in the absence of an agreement, at the prices customary in the market.