



# **General Terms and Conditions of BRAVIS International GmbH for enterprises**

Version 2012-02-07

## **1. Scope of the General Terms and Conditions for enterprises**

1.1. The General Terms and Conditions of BRAVIS International GmbH (BRAVIS) applies for all legal transactions of BRAVIS with enterprises. All offers, deliveries, and services (including consulting) of BRAVIS provided to enterprises take place on the basis of these General Terms and Conditions for the Consumers of BRAVIS in the version valid at the point in time the contract was concluded. These GTC shall also apply to all future business relationships between BRAVIS and the Customer as amended.

1.2. As required, BRAVIS provides the contracting partner with a copy of the General Terms and Conditions for Consumers. In addition, the General Terms and Conditions for Consumers can be viewed, downloaded, and printed online under [www.BRAVIS.eu](http://www.BRAVIS.eu). Conflicting General Terms and Conditions of the other Contracting Party shall not apply even if BRAVIS does not expressly object to them.

## **2. Conclusion of the Contract**

Ancillary agreements, assurances, and other agreements made before or with the filing of the request or before or at the conclusion of a written contract must be made in writing to be effective. All changes and amendments of the contract entered into in writing, in particular changes and decisions made in the course project discussions, must be made in writing for them to be valid. Written confirmation of changes or amendments may only be given by authorized representatives of BRAVIS. The contract entered into in writing constitutes the complete agreement regarding BRAVIS's performance obligations.

## **3. Third Party Participation in Contract Conclusion**

3.1. Commercial representatives, other distribution partners or external sales agents acting on our behalf are only authorized to facilitate contracts but not to enter into such themselves. They are not authorized to make verbal declarations or to accept verbal declarations from the Customer which deviate from BRAVIS's written contractual offers or these General Terms and Conditions or written contractual offers by the Customer. For the purpose of contract conclusion, in such cases, only the agreements entered into in writing between BRAVIS and the Customer shall apply.

3.2. After 14 days have elapsed as of the due date of our claims and receipt of invoice, the Customer shall be automatically considered delinquent. BRAVIS charges the statutory rate of interest on late payments of 8 percentage points above the prime rate.



#### **4. Prices and Payment Conditions, Default, and Setoff Prohibition**

4.1. If the contracting parties have not agreed upon a certain price, the price is determined according to the price list of BRAVIS valid at the time of the conclusion of the contract plus packing, transportation and transport insurance costs. The amount of hourly rates, travel and other expenses are determined according to BRAVIS's current price list.

4.2. If nothing else is agreed upon in individual cases, all prices apply plus the statutory value-added tax in force at the time of performance.

4.3. All invoices of BRAVIS are due immediately without deductions and payable immediately unless BRAVIS indicates another due date in the invoice. After 14 days have elapsed as of the due date of our claims and receipt of invoice, the Customer shall be automatically considered delinquent. BRAVIS charges the statutory rate of interest on late payments of 8 percentage points above the prime rate.

4.4. The customer has a right of retention only insofar as it is based on the same contractual relationship. The customer can declare a setoff with counterclaims only with undisputed and legally determined outstanding debts.

#### **5. Service Provision Deadlines, Changes in Service Provision, Partial Deliveries**

5.1. Service provision dates and deadlines are only binding if the Customer has, in a timely manner, provided BRAVIS with or made available to it all information and documentation necessary for provision of the services, paid any agreed upon deposits, granted any authorizations and releases and provided any other necessary assistance. Agreed upon service provision deadlines shall begin on the date on which the contract is signed. If additional or extended orders are placed at a later date, the deadlines shall be extended accordingly.

5.2. The Customer undertakes to notify BRAVIS of any deadline postponements in a timely manner so as to enable the latter to plan accordingly. BRAVIS undertakes to notify the Customer without delay if the provision of services incurs a delay or becomes impossible.

5.3. Should the customer fail to suitably fulfill its obligations to provide assistance with such resulting in a delay in BRAVIS's performance of its contractual obligation to provide services, then the agreed upon deadlines shall be automatically extended accordingly, but by no less than the duration of the delay. Moreover, BRAVIS shall be entitled to a reimbursement of the additional expenses incurred.

5.4. BRAVIS may make changes to the structure and form of the subject of the contract insofar as these modifications are not drastic in nature and if such modifications only limit the customary purpose or that stipulated in the contract to a negligible degree.



5.5. Partial deliveries are permitted within the delivery deadlines indicated by BRAVIS as long as they are reasonable for the Customer.

## **6. Force Majeure, Performance Impediments**

6.1. Unpredictable and unavoidable events that do not lie within the area of influence of BRAVIS for which BRAVIS is not responsible, such as force majeure, war, natural catastrophes, or strikes relieve BRAVIS of the obligation to perform for the duration of these events. Agreed-upon performance periods extend by the duration of the disturbance; the customer will be adequately informed at the beginning of the disturbance. If the end of the disturbance cannot be seen or lasts longer than a month, each party may rescind the contract. This applies accordingly if the abovementioned circumstances happen to a supplier or subcontractor of BRAVIS.

6.2. Insofar as BRAVIS depends on delivered goods for the rendering of its services that it does not manufacture itself and does not have on stock at the time the commission is granted, BRAVIS may rescind the contract if BRAVIS's supplier does not deliver the goods insofar as BRAVIS is not responsible for the non-delivery, cannot obtain the sold goods despite reasonable efforts, or can acquire the sold goods only at a considerably inflated price. BRAVIS will inform the customer immediately about the non-availability of the services and reimburse the customer for any reciprocal services as well. If BRAVIS receives only a part of the delivery from its supplier, BRAVIS can rescind the contract only to the amount that was not delivered. If the customer has no interest in a partial delivery, it may rescind the rest of the contract.

## **7. Transfer of Material Risk, Shipping Insurance**

7.1. The risk of a random deterioration or worsening of the products being delivered is transferred to the customer as soon as they are handed over to the customer. This transfer applies even if the customer has defaulted in the acceptance of the delivery.

7.2. The risk of a random deterioration or worsening of the products being shipped already transfers to the customer at the point in time the shipment is transferred to the person performing the transport or the point at which the products leave the warehouse for shipping. This also applies in case of a freight-free delivery and when the customer desires a shipment of the goods expressly or implicitly especially with the specification of a delivery address. If, in the process, the shipment is delayed upon the desire of the customer, the risk of random deterioration transfers to the customer with the notification of the readiness to ship.

7.3. BRAVIS insures the delivery in the name of and on the account of the customer.

## **8. Retention of Title**

8.1. BRAVIS retains the title to the delivered products until all claims that BRAVIS has against the customer now or in the future in connection with the delivered products are paid. In case of an open invoice, the retained title acts as a guarantee for the balance owed to BRAVIS.



8.2. The customer may sell the products subject to a retention of title, especially in connection to objects belonging to third parties, only within the course of ordinary business. The customer is not authorized to mortgage the products subject to retention of title elsewhere, to transfer the title as a security, or to make provisions that endanger the property of BRAVIS.

8.3. The customer hereby assigns the claim from the further sale to BRAVIS; BRAVIS hereby accepts this assignment. If the customer sells the products subject to the retention of title in connection with or together with other goods, the assignment of the claim is agreed only to the partial amount that corresponds to the price agreed upon by BRAVIS and the customer plus a security margin of 10% of this price.

8.4. The customer is revocably authorized to collect the debts owed to BRAVIS in trust under its own name. BRAVIS can revoke this authorization and the right to further sale if the customer does not meet its essential obligations such as payment. If the customer does not meet its essential obligations, it must tell BRAVIS the necessary information, especially the name, address, and telephone number of the buyer and the goods sold to the buyer so that BRAVIS can inform the buyer of the transfer of the debt and collect the debt itself.

8.5. In case of mortgages or other impairments of the property subject to retention of title or a transferred payment claim by third-parties, the customer is obliged to point out the retention of title and that the property belongs to BRAVIS, as well as the transfer of debts. In addition, the customer is obliged to inform BRAVIS immediately by telephone while specifying the subject matter and to provide notification in writing as well if desired. The customer is also obliged to provide BRAVIS with the name of the third party or parties that have attachments on the products or debts or cause other impairments so that BRAVIS is able to protect its legal interest against the third party or parties. The customer bears the costs of a defense of such access to the products.

8.6 If the realizable value of the collateral exceeds BRAVIS's claims to be secured by more than 10 %, then the Customer is entitled to ask to be released.

## **9. Warranty**

9.1. The Customer shall report obvious defects within a week and non-obvious defects within two weeks of discovering such; otherwise any the Customer shall not be eligible to make any warranty claims. § 377 of the German Commercial Code applies to commercial transactions.

9.2. This warranty does not cover the correction of faults which arise as a result of external factors and improper operation or maintenance. This is determined by the information in the operating manuals. Furthermore, BRAVIS is not obligated to provide a warranty if changes were made to the software purchases without express written consent. The Customer is however entitled to argue and prove that the changes have no connection to the errors which arose and that these changes do not render it significantly more difficult to analyze and fix the errors. The warranty obligation shall also become void if the customer uses the software in an environment other than the one foreseen and on equipment other than that approved.



9.3. The warranty period for defect repair, replacement, withdrawal and reduction shall be one year, starting as of the date of transfer of risks. The warranty period for compensation claims resulting from the defect shall be, if the defect is a result of a premeditated or grossly negligent breach of obligations or causes damages leading to death, injury to body or health, two years, otherwise it shall be for one year as of the date of transfer of risks.

9.4. For the rest, BRAVIS provides a warranty pursuant to the statutory provisions. If the Customer grants us an extension to fix defects, this extension must be at least two weeks long.

## **10. Liability for Breach of Obligations**

10.1. BRAVIS shall only be liable for damages arising out of breach of contractual obligations (delay, impossibility, breach of contractual secondary obligations) if said breach involves premeditation or gross negligence unless the contractual breach is relevant to an obligation essential to the performance of the contract.

10.2. If BRAVIS is liable for damages arising from a culpable breach of an essential contractual obligation, its liability shall be limited to the damage foreseeable and typical for this type of contract.

10.3. The limitations on liability of the preceding paragraphs shall not apply to damages arising from death, injury to body or health.

10.4. If BRAVIS's liability is excluded or limited, this shall also apply to the personal liability of BRAVIS's employees, staff, workers, representatives and vicarious agents.

## **11. Burden of Proof**

These General Terms and Conditions shall not affect the statutory provisions governing burden of proof.

## **12. Place of Fulfillment, Jurisdiction and Legal System**

12.1. The business headquarters of BRAVIS is the place of fulfillment for all mutual rights and obligations arising from this contract. For contracts and merchants, legal entities under public law or special funds under public law, the corporate headquarters of BRAVIS shall be the place of jurisdiction. We are nonetheless entitled to take legal action against the Customer in the court holding jurisdiction over the place of residence or business headquarters of the Customer.

12.2. This contract is governed by the law of the Federal Republic of Germany. The provisions of the Uniform Act on the Sale of Goods [German: einheitliches Kaufgesetz] and the Uncitral Law on the Sale of Goods shall not apply between us and the Customer.



### **13. Other Provisions**

If one or more provisions of these General Terms and Conditions should become invalid, this does not lead to the invalidity of the entire contract. The relevant legal provision replaces the invalid provision. The place of business of BRAVIS, currently Cottbus, is the place of fulfillment for all mutual rights and obligations in this contract. German law applies.

Cottbus, 2012-02-07