

Sugar Bytes GmbH
Robert Fehse, Rico Baade
Greifswalder Str. 29
10405 Berlin
Tel.+49 30 60920395
info@sugar-bytes.de
www.sugar-bytes.de
Str-Nr. 37/207/21266
HR-Nr. HRB 124199 B

Terms and conditions.

General Terms and Conditions of Sugar Bytes.

§ 1 General

1. Our General Terms and Conditions shall exclusively apply. We do not accept any terms and conditions of the other contracting party contrary to or deviating from our own unless we have expressly agreed this in writing.
2. These Terms and Conditions shall even apply in the event that we effect a delivery without reservation despite being aware of conditions of the ordering party that are contrary to or deviating from our Terms and Conditions.
3. All agreements made with other contracting parties for the purpose of performing this contract shall be laid down in writing as part of the contractual instrument.
4. Our sales conditions shall also apply to all future business deals with the other contracting party.

§ 2 Offer, Order, Related Records

1. As a matter of principle, our offers, prospectuses and price lists are subject to change and do not represent binding offers. Where we provide on our information pages details concerning technical data, features and the condition of the goods on offer we do not assume any warranty therefor. By these details we do not warrant for any quality of our products. If reasonably acceptable, technical changes shall be reserved.
2. By ordering our products the customer declares in a binding manner that it wishes to acquire the merchandise ordered.
3. Where we have made an offer expressly designated as binding to the other contracting party, we shall feel bound by such offer for a period of two weeks.
4. We may accept the order from the other contracting party within a two-week period. The offer shall be deemed accepted if we fail to reject it within such period.
5. Unless otherwise specified in our order confirmation, the detail underling the offer shall become an integral part of the order. Subsequent changes require mutual consent. The other contracting party shall bear any additional costs incurred thereby.
6. A license transfer is not allowed within 10 weeks after the purchase and is available for a fee.

§ 3 Prices / Terms of Payment

1. If the other contracting party is a company rather than a private end user, we quote our prices as net prices, i.e., without value added tax. Value added tax at the applicable rate will be shown separately in the invoice.
2. If orders are placed from abroad and the merchandise is to be delivered there, our prices apply exclusive of turnover tax.
3. Should our costs increase after the order has been placed and the contract been finalised due to changes of negotiated standard wage rates and/or of prices charged by our suppliers, we shall be entitled to change the agreed price by the same amount. If requested to do so, we will furnish relevant proof to the other contracting party.
4. Payments shall be due without any deductions immediately on invoicing. They will always be set off against the oldest outstanding invoice. The deduction of cash discounts shall require a separate

written agreement.

5. In the event that the other contracting party is in default of its payment obligation or a part thereof, it shall, notwithstanding any additional rights on our part, pay interest on the amounts due for payment at a level of 5% p.a. above the base interest rate of the European Central Bank pursuant to § 247 BGB (German Civil Code).

6. The other contracting party shall not be entitled to setoff, except if its counterclaims are established by a court of law, are undisputed or accepted by us. The other contracting party shall have no right of retention on account of disputed counterclaims.

§ 4 Customs

After a shipment reaches your country it might be subject to import duties and taxes. Additional charges for customs clearance must be borne by you; we have no control over these charges and cannot predict what they might be. For further information you should contact your local customs office since customs policies vary widely from country to country. Please be aware that that crossborder

shipments are subject to opening and inspection by customs authorities.

§ 5 Right of Revocation

Software which has been purchased via download is excluded from revocation.

§ 6 Period of Delivery

1. The commencement of our period of delivery presupposes clarification of all technical details with the ordering party. Delivery deadlines and services shall only be deemed to be agreed with the customer on a binding basis, if they have been expressly confirmed by us as binding in writing or by e-mail.

2. Compliance with our duty to perform presupposes the timely and proper fulfilment of obligations by the other contracting party.

3. Should we be in default of delivery, we shall only be liable for damages caused by gross negligence or wilful intent on our part.

4. In case of default, the other contracting party shall be entitled to withdraw from the contract provided that it has unsuccessfully fixed a time limit for us to render the performance along with a warning of refusal in the event that such time limit is not met.

5. In case of default in acceptance, we may claim from the other contracting party compensation for damages incurred by us, including extra expenses. Should the ordering party be in default of acceptance it shall bear the risk of accidental destruction and accidental deterioration of the object purchased.

6. We shall be entitled to render part performances or make part deliveries at any time.

§ 7 Risk Transfer

If the buyer is a company, the risk of accidental destruction and accidental deterioration of the merchandise shall pass to the buyer as soon as the merchandise is handed over.

If the merchandise purchased is shipped, the risk of accidental destruction and accidental deterioration shall pass to the buyer as soon as the merchandise is delivered to the forwarding agent, carrier or any person appointed for shipping the merchandise, provided that the buyer is a company.

§ 8 Warranty

1. The other contracting party may assert warranty claims provided that it has duly complied with its obligation to examine and complain according to § 377 HGB (Commercial Code). The ordering party shall be obligated to complain in writing about apparent defects within eight days of receipt of the merchandise (the date of receipt of the written complaint by us shall be decisive). Any complaint received later will only be accepted if the ordering party furnishes proof to the effect that it was impossible or unacceptable in the due course of business to make the complaint earlier. The full onus of proof concerning any and all requirements to be met for asserting the claim, notably the defect itself, the date of identifying the defect and the timeliness of the complaint shall be on the ordering company.

2. Where we are answerable for a defect of the merchandise delivered, the other contracting party's right shall be confined to subsequent performance. At our election such subsequent performance

shall either consist of rectifying the defect or delivery of a substitute item.

3. In the event that subsequent performance fails, the other contracting party shall be reserved the right either to reduce the purchase price or withdraw from the contract. Subsequent performance shall be deemed to have failed if we are unwilling or unable to rectify the defect/make substitute delivery or if rectification/substitute delivery is delayed beyond adequate time limits for reasons which we are answerable for or if attempts at rectification have failed twice. More extensive claims of the other contracting party, no matter on which legal grounds, shall be excluded.

4. If we have negligently breached a cardinal or material contractual duty, the obligation to provide compensation is limited to the damage typically foreseeable under the contract.

5. Unless provided for otherwise below, more extensive claims on the part of the ordering party – no matter on which legal grounds – shall be ruled out. Therefore, we shall not be liable for damages other than those occurring on the item delivered itself; in particular we shall not be liable for profits lost or any other pecuniary losses of the ordering party.

6. The above release from liability shall not apply where the damage is based on intent or gross negligence. However, the obligation to compensate shall be limited to the foreseeable damage.

7. If the buyer is a company, it shall, as a matter of principle, only be the product specification that is deemed to have been agreed with regard to the quality of the merchandise. Any additional public statements, praises or advertising shall not represent a contractual warranty of quality.

§ 9 Total Liability

1. To the extent that our liability for compensation of damages is excluded or limited pursuant to § 7, the same shall apply to any and all claims on account of culpa in contrahendo, infringement of collateral duties (positive violation of contractual duty), in particular to claims under manufacturer's liability as defined in § 823 BGB.

2. Claims specified in §§ 1, 4 Product Liability Law shall remain unaffected by the provision of paragraph 1 above.

3. If we breach duties by ordinary negligence, our liability shall be limited to the direct average damage typically foreseeable under the contract for the type of merchandise concerned.

4. Vis-à-vis companies we shall not be liable for violating immaterial contractual duties by ordinary negligence.

5. Wherever our liability is excluded or limited, this shall also be true for the personal liability of our employees, staff members, associates, representatives and vicarious agents.

§ 10 Reservation of Title

1. If the other contracting party is a company, the merchandise shall remain our property until full payment of all outstanding claims or claims still arising from the business relationship with the ordering party no matter of which type or on which legal basis. In case of a current account, the title so reserved shall be deemed to secure the account balance receivable.

2. When entering into contracts with consumers, we shall reserve title to the merchandise pending full payment of the purchase price.

3. In the event of the other contracting party's default in payment or any other conduct in breach of the contract, we shall additionally be entitled to take the merchandise back. If we take the merchandise back in such cases, we shall not withdraw from the sales contract by so doing.

Withdrawal requires an explicit written declaration.

4. After taking back the merchandise, we shall be authorised to exploit it; the proceeds from such exploitation – deducting reasonable related costs – shall be credited against the ordering party's liabilities.

5. In case of attachment or any other type of third-party intervention, the ordering party shall draw attention to our title and notify us without delay to give us the opportunity to file a claim according to § 771 ZPO (Code of Civil Procedure). If the third party is not in a position to reimburse us for the judicial and extra-judicial costs incurred by an action pursuant to § 771 ZPO, the ordering party shall be liable for the loss suffered by us.

6. The other contracting party shall be entitled to resell the object purchased in the proper course of business. However, to secure our purchase price claim, it already now assigns to us in an amount

equalling that of the final invoice all claims arising in its favour from such resale against the purchaser or third parties. Even after such assignment, the ordering party shall continue to be entitled to collect the amount receivable. We may collect the amount receivable if the ordering party is in default with regard to its payment obligations towards us or if the ordering party is insolvent or has applied for the opening of bankruptcy proceedings. In such a case, the ordering party shall be obligated to notify us of the claims assigned and their debtors, to furnish all particulars required for collection, to hand over pertinent records and to advise the debtors (third parties) of the assignment.

7. We undertake to release the security owed to us at the ordering party's request to the extent that the value of our security exceeds the claims to be secured by more than 20%; the selection of the type of security to be released shall be incumbent upon us.

§ 11 Licensing Rights if Software is Purchased

In respect of software produced by Sugar Bytes itself, Copyright Law and the provisions of the respective license agreement shall apply which is located on the installer of the software. You have to agree to the license agreement before you can use the software. No copies of software or documentations must be made unless this is expressly permitted.

In particular the following terms shall apply: Updates / Upgrades - If you are owner of Sugar Bytes software products, which qualify you to update or to upgrade to another product or a product bundle, the qualifying licence of your software product will expire by accepting the following contractual conditions. You are no longer allowed to sell or to transfer the qualifying licenses separately. Any qualifying product can be used once only to contract an update or an upgrade offer. Products are only allowed to be resold / transferred combined under the terms of this Agreement. Bundles - Product Bundles are only allowed to be resold / transferred combined under the terms of this Agreement.

NFR (Not For Resale) products - Any products by Sugar Bytes, labelled or otherwise provided to you as a NFR (Not For Resale) copy, may only be used for demonstration, testing and evaluation purposes and may neither be resold or transferred, nor used as a product which qualifies you to update or upgrade offers.

EDU (Educational) products - Any products by Sugar Bytes, labelled or otherwise provided to you as a EDU (Educational) version, may only be used by eligible educational end users (students, faculty, staff and administration attending and/or working at an educational institutional facility (private/public schools, colleges, universities etc.) EDU versions are not allowed to be resold or transferred.

§ 12 Venue / Place of Fullfillment

1. If our customer is a merchant within the meaning of the Commercial Code, venue and place of fulfilment shall be deemed to be Berlin. However, we shall also be entitled to bring an action against the ordering party at its place of residence or business seat

2. German law shall exclusively apply.

§ 13 Data Protection

The order is handled by means of automatic data processing. By placing an order, you expressly consent to the processing of the data made known to us within the scope of contractual relations and necessary for handling the order.

§ 14 Applicable Law

All contracts made with us are governed by the law of the Federal Republic of Germany to the exclusion of the Uniform Law on the International Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods. Unless agreed otherwise, the language of the contract shall be German.