

analytiq consulting gmbh
Standard Contract Terms
for the Purchase of Licensed Software
of 8 September 2008

1. General

(1) The following standard contract terms shall apply to all deliveries and offers of *analytiq consulting gmbh*, hereinafter "*analytiq*" for short. Counter-confirmations of the customer with reference to its own standard or sales terms and conditions are hereby objected to. Any deviations to these standard terms shall only be effective if *analytiq consulting gmbh* has confirmed such deviations in writing.

(2) **Consumer** in terms of these standard contract terms is any natural person who enters into a legal transaction for a purpose which can be attributed neither to his/her commercial or independent professional activities. **Merchant** is every natural person, legal entity or partnership capable of holding rights, which enters into a legal transaction for a purpose which can be attributed to its commercial or independent professional activities.

2. Conclusion of the Contract

The purchaser's order, whether by electronic transmission, telephone, telefax or post, constitutes a binding offer. *analytiq* may accept this order within two weeks by sending a confirmation of the order or send the purchaser the ordered item within such period. The latter case shall be deemed an implied acceptance of the offer by *analytiq*; the agreement shall be effected without requiring a separate confirmation by *analytiq*. Whereas a confirmation of the receipt of the order or any following status reports are no acceptance of the offer.

3. Prices and Costs for Postage

(1) In the absence of any express agreement in writing to the contrary, our prices shall be effective from the distribution centre excluding packaging, freight or possible cash on delivery charges. All prices are exclusive of the statutory VAT. Errors excepted.

(2) Costs for postage and packaging are to be borne by the customer. They will depend on the form of shipment, form of payment, weight and shipping destination. They will be calculated and displayed in the product basket prior to any online order or, in the event of an order by telephone, they shall be quoted and shown separately on the invoice. The mode of shipment shall be chosen by the customer or, in the absence thereof, by *analytiq* according to the most feasible arrangement.

(3) When importing products into third countries, the purchaser shall bear all costs such as taxes, duties and processing fees.

4. Delivery Period and Partial Delivery

(1) If no other delivery period is agreed, delivery takes place within 2 weeks. In the event that a delay of the estimated date of dispatch occurs after an order has been made, the customer shall be informed. The customer is entitled to cancel his/her order, unless otherwise agreed.

(2) *analytiq* reserves the right to deliver and render service partly and to charge

correspondingly, if considering the interest of the supplier acceptable for the customer.

(3) Where *analytiq* offers the download of software, this involves a liability to be discharged at the domicile of the debtor (Holschuld), since the purchaser alone decides whether and if he will download the software from *analytiq*.

5. Passage of risk and warranties

(1) If *analytiq* ships the goods to the customer the risk shall pass to the customer which is a merchant as soon as the goods are handed over to the carrier. If the customer is a consumer the risk shall pass as soon as the carrier has delivered the goods to the consumer.

(2) The warranty period shall begin at the time when the goods are delivered. The statutory warranty provisions shall apply.

(3) Provided that the customer is a consumer, the periods of limitation for statutory claims for defects shall be two years.

(4) If the customer is a merchant the limitation period for warranty claims is one year. *analytiq* is authorised to choose between curing the defect and delivering a defect-free good as subsequent performance. Obvious defects in the products or the performance rendered by *analytiq* must be notified in writing immediately, at the latest within fourteen days after receipt of the goods. If such defects are not notified in time, the goods are deemed to have been approved and accepted, with all inherent warranty rights expiring.

(5) *analytiq* shall not be liable for normal wear and tear of the good or defects which are a result of incorrect or negligent handling or treatment or which are caused by unusual conditions of use.

6. Restrictions on Liability

(1) The following restrictions on liability shall not apply to damage which occurs as a result of intentional acts or gross negligence or damage to life, body or health.

(2) Irrespective of their legal basis claims for damages which are directed either against *analytiq* or its agents shall be limited to the amount which *analytiq* reasonably expected to receive at the conclusion of the contract. Where the damage does not result from the violation of an essential contractual obligation, the amount of damages shall be limited to a maximum amount of ten times the contractual value. In particular, *analytiq* is not liable for the loss of data, lost profits or other financial losses suffered by the customer.

(3) Where *analytiq's* liability is excluded or limited, this will also apply to the personal liability of *analytiq's* employees, representatives and vicarious agents.

(4) Contributory negligence on the customer's part will be set off against his damages (e.g. inadequate data protection).

7. Payment

(1) Unless otherwise agreed, all invoices by *analytiq* shall be payable immediately without any deductions.

(2) The customer shall be entitled to choose among several different payment options which shall be offered depending on the order amount, the mode of delivery, the shipment address, and the preferences specified in the customer's account.

(3) *analytiq* hereby reserves the right to fill the order only against cash on delivery or payment in advance in individual cases or in the event that a bank or an offeror of the respective payment mode has rejected payment. In such cases, the customer shall be entitled to accept or revoke his/her order.

(4) Costs which arise as a result of reversing a payment transaction for lack of funds or as a result of data transmitted incorrectly by the customer shall be charged to the customer.

(5) Cheques shall only be accepted as payment and can be refused at any time.

(6) In the event of default of payment, *analytiq* shall be entitled to charge consumers interest of at least 5 percentage and merchants of at least 8 percentage points above the applicable base rate.

(7) Any set-off of counterclaim shall not be permitted unless proven at law or if undisputed. The retention of payments by the purchaser for counterclaims resulting from unrelated contracts shall be excluded.

(8) When paying by credit card, customers must give their full credit card details with their order and declare here and now their agreement to have *analytiq* bill the order to the respective credit card companies. The credit card account will be charged online when the order is made.

8. Reservation of Title

(1) All items delivered by *analytiq* remain its property until such items have been paid in full and all claims resulting from the transaction have been met. This shall also apply to conditional claims.

(2) If the customer is a business or merchant, the following provisions shall apply: seizures by third parties of items owned or co-owned by *analytiq* must be notified by the customer immediately. Any costs arising in relation to judicial proceedings or settlement out of court which *analytiq* undertakes to secure its rights shall be borne by the customer. The customer shall assign as a security all claims (including all claims for balances under the current account) which arise in connection with the items being sold on or on any other legal grounds to *analytiq*. The customer is hereby irrevocably entitled to collect on its behalf and for its account all claims assigned to *analytiq*. This direct debit authorisation may be revoked if the customer does not meet its payment obligations in an orderly manner.

9. Rescission

(1) Provided that the customer is consumer, he/she shall be entitled to rescind the contract at any time until the goods have been delivered, unless otherwise agreed. The customer is not required to give reasons for rescinding the contract.

10. Revocation and Obligation to return the Goods

(1) If the customer purchases products as a consumer, he shall have an unrestricted right of return within 14 days of receipt of the product; i.e. he may revoke his declaration of intent to place the order. The customer is not required to provide a reason for his revocation.

(2) The customer shall bear the cost of returning the product if the product received matches the order and the price of the item to be returned does not exceed 40 euros, or

if the customer has not provided the required consideration or an agreed partial payment at the time of the revocation. Otherwise, the return shall be free of charge. The customer must perform obligations with regard to the reimbursement of payments within 30 days of sending the revocation.

(3) The products or revocation must be sent to the address of *analytiq*.

(4) The product must be in flawless condition (complete and undamaged, including manuals and other accompanying documentation, etc.). If the consumer-purchaser is responsible for the deterioration or perishing of the product or other impossibility, he shall reimburse the seller for the partial or complete loss in value. The licensing of the product, its actual use, and other services up to the time the revocation is exercised shall be subject to remuneration; the reduction in value due to the use of the product according to the terms of the agreement or utilization of other services shall not be considered here. In such cases, the consumer-purchaser shall only be liable for intent and gross negligence. The costs for the shipment of products being returned to *analytiq* by consumer-purchasers due to the above-mentioned rights of revocation and return shall be borne by the purchaser.

(5) The right of return described above shall not apply to contracts for software products sold from a distance (Fernabsatzvertrag) if the seals of the supplied data media have been broken. The seal shall also be deemed broken if the cellophane wrapper has been opened. The right of return also does not apply to serial numbers to unlock software demo versions, nor to online software downloads, updates and plugins. The right of return shall not apply to products manufactured specifically for the consumer purchaser.

11. Assignment of Claims

The customer shall not be entitled to assign his/her claims under this contract.

12. Data Protection

(1) Our data protection procedures are in conformity with the Federal Data Protection Act (Bundesdatenschutzgesetz – BDSG) and the Teleservices Data Protection Act (Teledienstschutzgesetz – TDDSG).

(2) The customer hereby agrees that *analytiq* may process, store and evaluate, the customer data which it receives in connection with the business relationship.

(3) *analytiq* shall use the customer's E-Mail address only for information letters which accompany the orders, - if the customer does not disagree - for customer care purposes and, if desired by the customer, for its own newsletters.

(4) *analytiq* shall not forward any personal customer data to any third parties. An exemption hereto exists for such service partners which require the transfer of data to process its orders. In these cases, the scope of the transmitted data shall be restricted to the necessary minimum.

(5) The customer shall be informed about and be given the opportunity to correct, block and delete his/her personal data. If judicial or contractual keeping obligations exist or any other judicial reasons oppose to a deletion, the data will be blocked.

13. Miscellaneous

(1) These standard terms and conditions contain all rights and obligations of the contract parties.

(2) If the customer is a merchant or does not reside within the European Union, our company seat shall be the exclusive venue for all legal disputes between the contract parties, including all lawsuits in connection with bills of exchange and cheques.

(3) The laws of the Federal Republic of Germany shall exclusively apply. The provisions of the UN Convention on the International Sale of Goods shall not apply. Regarding commerce with end-consumers within the European Union, the relevant laws of that country may also be applicable, provided that it concerns obligatory consumer rights provisions.

(4) In the event that one or several of the above provisions is or becomes invalid, the validity of the remaining provisions shall not be affected. The parties will try to replace invalid provisions by such provisions which are valid and come closest to the commercial purpose intended by the parties.

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The current version of our General Terms and Conditions is available on and may be downloaded from our web site at http://download.nitrobit.com/agbs_en.pdf or upon request via the addresses specified above.