

# GBC

## 1. Subject of the contract

- a. These General Business Conditions (GBC) are valid for all sales and delivery business carried out by Enclustra GmbH.
- b. In addition, there are the terms concerning the utilization of software and the IP cores stated in the related licensing contracts.
- c. The service business provided by Enclustra GmbH has been regulated separately and those conditions are not directly subordinate to the conditions included in these GBC.

## 2. Area of validity

- a. Enclustra GmbH will process the order relating to the conditions which were valid at the point in time at which the order was received. In a situation of doubt, the GBC used at the time of order will have validity. The acceptance of the GBC for the client will be implied at the latest on acceptance of the goods.
- b. Alternative, contradictory, or supplementary GBC, even if recognized, will not be considered as components of the contract unless their validity has been explicitly confirmed in writing.

## 3. Conclusion of contract

- a. The contract between the client and Enclustra GmbH is only valid upon receipt of the order by the client and its acceptance by Enclustra GmbH. The client's order can be submitted by telephone, fax, letter, email or internet/webshop. Enclustra GmbH accepts the order by the sending of an order confirmation to the client (by fax, email, letter or internet/webshop), or by delivering the material ordered.
- b. Enclustra GmbH is only bound to the terms of the written offer during the period of validity stated in the offer.
- c. Information received by telephone only has validity when it has been confirmed in writing.

## 4. Price, delivery and shipping costs

- a. The prices stated in the price list only have validity until the publication of a new price list.
- b. All of the prices published in the currently valid price list in Swiss francs (CHF) are binding list prices.
- c. For all other price information, also that lying outside the valid price list, but in particular relating to valid published price lists in US dollars (USD) and Euros (EUR) these are to be considered merely as non-binding indication prices.
- d. All binding list prices are to be understood as being in Swiss francs (CHF), exclusive of VAT, unpacked, without postage from the headquarters of Enclustra GmbH.
- e. Transport and packaging costs will be separated and also listed separately in the order confirmation.
- f. In individual cases concerning cross border deliveries, further taxes and/or duties (i.e customs duties) may occur. These taxes and/or duties must be carried by the client.
- g. Deliveries for which no explicitly stated fixed prices have been agreed will be charged according to the valid list prices at the time of the provision of services.
- h. Enclustra GmbH. is, unless otherwise explicitly stated in a written agreement not bound to the price when a delivery date of more than 4 months following confirmation of order has been proposed. In this case the calculations will be made relating to the valid price list at the time of service provision.

## 5. Terms of delivery

- a. The delivery of the goods occurs at the cost and risk of the client this is also the case for partial deliveries. The insurance of the goods must be covered by the client.
- b. All statements concerning delivery deadlines are not binding, as long as they are not explicitly stated and agreed in a binding and written form. Changes to orders unless another arrangement has been made will result in the lifting of the previously agreed delivery and deadline periods.
- c. In the case of an act of God or other ulterior events not under the control of Enclustra GmbH a related extension of delivery periods will occur.
- d. In the case that the client is in arrears of the payment of the purchase price, Enclustra GmbH is entitled to withdraw from the contract (resignation) and to hold the goods in their possession.
- e. Damage claims from the client in relation to failure to meet a deadline are excluded, except in the case that this has occurred deliberately or due to gross negligence. If the delivery is delayed as a result of situation originating from the clients side there will then be the inclusion of a calculation of related conditional costs, in particular relating to storage.
- f. Enclustra GmbH. reserves the right to make changes to both product and documentation without advance notice, as long as these serve to provide specific improvements to the article and they do not endanger the contract purpose and they are justifiable.

## 6. Payment Terms

- a. Client orders within Switzerland with an order value of less than CHF 10'000.- will be submitted concurrently with the delivery.
- b. Client orders from outside Switzerland with an order value of less than CHF 10'000.- are only possible against advance payment.
- c. For orders with a value over CHF 10'000.- for clients both within and outside Switzerland, Enclustra GmbH will demand the same terms, a payment of 50% of the order value in advance. The second 50% will be invoiced concurrently with the delivery.
- d. As long as no alternative agreement has been made, payment must be carried out 15 days following presentation of invoice without any discounts. Should these terms not be adhered to, the client will be considered in arrears with no requirement for reminder of payment.
- e. Should invoices not be paid on the due date then defaulted interest to the amount of the cost of overdraft at the major Swiss banks is due, nevertheless this will be at least 6%.
- f. Any reminders submitted do not provide extension to the period of non-payment. Any reminders issued by Enclustra GmbH will be charged at a nominal CHF/EUR/USD 20.00 per reminder.
- g. Enclustra GmbH reserves the right, due to delay of payment and without reminder in advance to induce enforcement procedures.
- h. Should a client be in arrears of payment of an invoice, then Enclustra GmbH has no responsibility to carry out further deliveries in relation to any open contract.
- i. Offsetting and withholding are only permitted when counter claims from the client will be recognized by Enclustra GmbH or are recognized as legally binding. Should multiple client invoices be open for payment then as long as no other arrangement has been made the oldest under the multiple debts will be amortized.
- j. Enclustra GmbH reserves the right to carry out deliveries or services only against advance payment by the client. Enclustra GmbH furthermore reserves the right, without advance notice to deliver to clients only through credit card payment, cash on delivery or carry out a delivery stop.

## 7. Cancellation costs

- a. Should the client without justification or as a result of a situation of their own fault (in particular due to payment delay) rescind a submitted order relating to Enclustra GmbH. then the company can without prejudice demand claim damages which are actually higher than the actual damages, 10 % of the sale price. It is up to the client to prove that no or only a low-level of damages have actually taken place.

## 8. Reservation of proprietary rights

- a. The goods delivered belong until full payment solely the property of Enclustra GmbH. They have the right to carry out a related entry in the register for the reservation of proprietary rights.
- b. The client is responsible to treat the goods which stand under the reservation of proprietary rights with due care; the client is responsible for reduction or loss of value of the goods even when not of their own fault.
- c. The client is not permitted either to mortgage the goods standing under proprietary rights or to reassign them as security. In the case of seizure or confiscation by third parties or any other type of court order by third parties, the client must not only immediately inform Enclustra GmbH. but also make available all related information and documentation which are required for the protection of their rights. Enforcement officers and third parties are to be notified concerning the property which belongs to Enclustra GmbH.
- d. The client is responsible to immediately inform Enclustra GmbH of the access of third parties to goods standing under proprietary right as well as discrepancy damages or destruction of the goods. A change of owner of the goods as well as the change of their own address must be transmitted to Enclustra GmbH. without delay.
- e. The property rights of the software and the IP Cores are described further in the related licensing agreement and are so valid.

## 9. Warranty

- a. The sending of the goods must be checked immediately on delivery for any damages caused during transport and any transport damages must be immediately claimed and documented to the delivering company (complaint). Furthermore the transport damages must be claimed in writing at the latest one day after receipt of the goods and within a further deadline of 5 days following receipt of the goods with adequate postage paid and returned to Enclustra GmbH. In any other case attempts to endorse the validity of the warranty claim are excluded.
- b. Objections to recognizable faults must be submitted in writing a maximum of 5 working days following receipt of the goods. Objections against hidden faults will only be considered as being on time when they have been reported in writing within 5 days of recognition of the fault. In any other case attempts to endorse the validity of the warranty claim are excluded. To meet the deadline, timely mailing shall suffice.
- c. Enclustra GmbH is in relation to a fault falling under their responsibility allowed to choose either a suitable supplementary solution for the solving of the fault or to provide replacement delivery. The client carries the additional cost for the carrying out of the solution, these in relation to a situation where the goods delivered will be brought to a different location from the original place of delivery.
- d. Should the client decide due to a legal or material defect following a failed supplementary solution to resign from the contract, he is not entitled to additionally claim for damages due to the fault, the goods will remain with the client when that is reasonable for him. The compensation will be limited to the difference between the purchase price and the value of the faulty item. This is not applicable when the injury to contract has been unjustifiably caused.
- e. The warranty period amounts to one year after delivery of the goods.
- f. Unsuitable or unprofessional deployment, wear and tear, unsuitable storage and a lack of care during utilization, in particular unprofessional alterations to the goods, improvements made by the client or third parties lead as far as Enclustra GmbH is not responsible for this situation to the discontinuation of the rights of guarantee.

## 10. Limits of liability

- a. Enclustra GmbH is liable on whatever legal basis exclusively for damages which relate to the non-fulfilment of one of the incumbent contractual main responsibilities (cardinal responsibilities) respectively for damages which have been caused due to gross negligence or deliberately.
- b. Enclustra GmbH will in no case be responsible for atypical and unpredictable follow-on damages as well as for damages caused to the client by a declaration of resignation on the side of Enclustra GmbH.
- c. In the same manner Enclustra GmbH. is not responsible for damages which could have been avoided by measures of reasonable care being taken by the client.
- d. The warranty and liability regulations for software and IP cores will be exclusively and formally regulated within the related licensing contracts.
- e. The client is not permitted to surrender his requirements against Enclustra GmbH or rights and/or responsibilities out of the signed contracts with Enclustra GmbH either partially or wholly to third parties without the agreement of Enclustra GmbH. This is by the way also the case in relation to guarantee claims.

## 11. Data protection

- a. The data which is necessary for business processes will be saved under strict adherence to the currently valid regulations and during the order handling where applicable given on to involved connected companies as well as third parties for the processing of the order.
- b. All personal data will be handled confidentially.
- c. Enclustra GmbH is entitled to use personal data for the purposes of credit checks and credit assessments.
- d. The client declares that he is agreement with this use of his data. In addition he has at all times the right of access to any data held about him.

## 12. Intellectual property

- a. Enclustra GmbH reserves the rights to every design, every text and every graphic on their website, their publications and their documentation, etc.
- b. The utilization and right of distribution of the client for software and IP cores after launch resp. the usage of the same will be regulated exclusively and finally by the related licensing contract.

## 13. Court of jurisdiction and applicable law

- a. The attached GBC and the contract signed as a result of these GBC, fall under Swiss law with the exception of the United Nations agreement concerning contracts relating to the international purchase of goods of 11th April 1980.
- b. The Court of Jurisdiction will be located exclusively at the headquarters of Enclustra GmbH.

## 14. Final provisions

- a. Should individual provisions of the contract be or become invalid, this will not have an impact on the validity of the remaining provisions. A provision which fulfils the economic purpose shall as accurately as possible take the place of the no longer valid or unenforceable provision.
- b. The place of execution for all deliveries from Enclustra GmbH will, without exception, be the headquarters of Enclustra GmbH.
- c. Enclustra GmbH reserves the right at any time and without advance notice to alter these GBC.
- d. These GBC are valid from the 1st of January 2009.