

General Terms and Conditions of Sale and Supply of GfK System GmbH

1. General

1.1 The following General Terms and Conditions of Sale and Supply shall apply to all offers, sales, shipments and other services of GfK System GmbH (called "GfK" in the following). Terms and conditions of the buyer that differ from these shall apply neither in part nor whole, even if this is not expressly so specified by GfK.

1.2 These General Terms and Conditions of Sale and Supply shall also apply to all future transactions even if this is not expressly so specified. Additional agreements or other supplements to agreements shall require the written authorization of GfK or shall otherwise be considered invalid.

2. Contract creation

2.1 All offers submitted by GfK are non-binding. A formal contract shall be considered to have come into being only when GfK has supplied written confirmation of acceptance of an order. Before an order can be accepted, the creditworthiness of the customer shall be subject to review. GfK reserves the right to refuse to accept orders placed by customers for whom the result of this review is negative.

3. Supply and installation

3.1 GfK shall supply the system/system components and install these to a ready-to-operate status at the premises of the customer, assuming this is stipulated in the contract. The services to be supplied by GfK and the configuration of the system/system components shall be detailed in the appendix to the contract.

3.2 GfK shall supply only within the Federal Republic of Germany.

3.3 Freight and packaging costs shall be separately charged.

3.4 Unless otherwise agreed, costs for assembly, installation and start-up shall be charged on the basis of actual outlay in terms of materials, hours of work, travel time and travel costs at the standard rates charged by GfK (plus any VAT payable on these services).

3.5 If a fixed price for assembly, installation and start-up has been agreed in the contract, this fixed price shall apply only for assembly, installation and start-up where there is already an existing and operational terminal connection to a network. The fixed price shall not include costs of the supply and installation of network connection elements, including sockets and distributors, which services will be charged at the valid list prices of GfK. Also not included is the cost of any work required to meter and test an existing network.

3.6 The programme systems ordered – PC-based solutions/applications, such as Call Center, CTI, Unified Messaging, Cost Management etc – will be preinstalled in accordance with the agreed order on a suitable PC and their functioning will be tested. Costs for the installation of customized systems, customer-specific configurations and the related support shall be additionally charged on the basis of actual outlay in terms of materials, hours of work, travel time and travel costs at the standard rates charged by GfK (plus any VAT payable on these services).

3.7 In the case of prestored programmes, should the customer require modifications to the ordered prestored programmes and changes to user data, these services shall be charged at the valid list prices of GfK.

3.8 Unless otherwise agreed, systems ordered shall be delivered to and installed in the normal business premises of the customer.

3.9 The customer herewith undertakes to provide GfK with the support required for the purposes of installation, to allow GfK access to its business premises and relevant systems and to treat all property of GfK with the necessary care. The customer shall provide, at own expense and in good time, all technical aids required in terms of power supply, water, heating, air conditioning, lighting and network connections together with dry and lockable rooms that are suitable for the storage and installation of the systems. Other equipment that may be required, such as ladders, scaffolding, hydraulic ramps etc., are also to be supplied at the cost of the customer.

3.10 The customer shall be responsible for obtaining the necessary authorization from the network operator and other permits required. GfK can advise the customer on request on the authorization application procedures and permits required from landline operators and others.

3.11 If installation is delayed for reasons that are the responsibility of the customer, the customer shall bear all reasonable costs arising in connection with the standby wait time and additional travel costs of the installation team.

3.12 GfK reserves the right to commission an outside contractor to install the system.

3.13 The customer agrees to take delivery of the system/system components and other materials and services supplied by GfK on the date on which installation to operational status has been completed.

4. Supply period

4.1 All agreements regarding supply periods and deadlines must be made in written form. An agreed period for supply, which shall commence only when the contractual partners have reached full accord or on receipt of the confirmation of order acceptance by GfK at the earliest, shall be appropriately extended should unforeseen circumstances intervene, assuming that these significantly interfere with the preparation and supply of the system.

4.2 GfK shall be released from its obligation to supply in accordance with agreed deadlines for the duration of any period in which this is impossible due to the occurrence of unforeseeable events, such as conflict, natural disasters, embargos or other officially imposed restrictions, labor disputes and other events beyond the control of GfK that interfere with production processes. Deadlines and periods shall be appropriately extended. Should the intervening events have a duration of more than six months, both parties shall have the right to terminate the contract. In this case, the customer shall have no right to compensation.

4.3 GfK reserves the right to place the system in storage at the cost and risk of the customer if supply and installation are delayed for reasons that are the responsibility of the customer.

4.4 GfK reserves the right to supply in the form of appropriate partial shipments.

4.5 If the customer refuses to take delivery in whole or part or if the order cannot be finalised for reasons that are the responsibility of the customer, GfK shall have the right to charge for its outlay and costs in connection with any work already completed and shall, in addition, have the right to claim compensation equivalent to 30% of the order value for the removal of any already installed equipment. It shall be the responsibility of the customer to demonstrate that the related expenses for GfK are lower. GfK may, at own discretion, demand payment of the full order price.

5. Prices

5.1 All prices are quoted exclusive of any value added tax.

5.2 In the case of contracts in which a supply period exceeding 4 months has been agreed, GfK reserves the right to adjust prices in line with any cost increases occurring as a result of wage settlements or material cost increases. If any such increase is equivalent to more than 5% of the agreed price, the customer shall have the right to withdraw from the contract.

6. Payments

6.1 Unless otherwise contractually agreed, all payments are to be made in full within 10 days of date of invoice.

6.2 Of the full purchase price, including any installation charges, GfK shall have the right to require payment of

- 1/3 on confirmation of order acceptance
- 1/3 on commencement of installation work/on preparation of materials for shipment
- The remainder must be paid immediately on receipt of invoice.

6.3 Other than specified in 6.1, GfK may require that the full purchase price is paid immediately if the customer is, for reasons that are its own responsibility, already in arrears of payment to GfK in connection with other

transactions or if GfK becomes aware that the creditworthiness of the customer is in doubt in view of information that an application for the initiation of bankruptcy, settlement, bill-enforcement or related judicial proceedings etc. against the customer has been made. If there is significant deterioration of the financial standing of the customer, GfK shall supply outstanding consignments or services only against prepayment or the provision of securities. Should the customer fail to provide the required prepayments or securities within a reasonable period of grace, GfK shall have the right to terminate the contract. In such cases, GfK specifically reserves the right to claim for further entitlements.

6.4 GfK shall have the right to charge interest at a rate 5% above the valid base rate per Art. 247 of the German Civil Code (BGB) on any outstanding payments owed by the customer that are in arrears, unless the customer can demonstrate that the actual loss suffered by GfK is less. GfK specifically reserves the right to claim for further entitlements.

6.5 GfK must agree in writing to accept payment in the form of a draft or letter of credit. Drafts and cheques shall be accepted in payment only for the purposes of completion of the contract. Discount charges and other bank charges shall be borne by the customer. It shall be assumed that the customer has met its payment obligations only when the agreed amount is actually at the disposal of GfK.

6.6 The customer shall have no right to retain payments due in connection with other contractual transactions and shall have no right of set-off, unless the right has been established under law or has been recognised by GfK.

7. Guarantees and complaints

7.1 GfK guarantees that the system shall be free of defects.

7.2 Claims under guarantee must be made within 12 months of the date of installation of the system. The legally specified guarantee period shall apply in the case of components subject to wear and tear and major components supplied by outside manufacturers.

7.3 Where defects to a system are reported, GfK shall be obligated only to undertake repair or to supply a replacement. GfK shall decide which of these options is appropriate at its own discretion. The customer must provide GfK with adequate time and opportunity. The customer shall bear the costs of shipment of the system to GfK. GfK shall be responsible for all other transport costs and the material and labour costs associated with repair or supply of a replacement, assuming that the complaint made by the customer proves to be justified. The provisions of Article 476 a, Subsection 2 BGB shall apply. Replaced components shall remain the property of GfK. The original guarantee period specified in the contract shall apply to repaired systems and replacement systems. However, a minimum guarantee period of 6 months from the date of transfer of risk shall apply to replacement systems supplied.

7.4 In the case of failure of major components supplied by outside manufacturers, GfK shall be required only to assign the guarantees provided by these manufacturers to the customer. This shall not apply if the guarantee cannot be judicially enforced against the supplier or the initiation of judicially procedures is unreasonable.

7.5 GfK shall not be required to fulfil its guarantee obligations if the defect to the system has been caused by inappropriate installation measures or inappropriate attempts to rectify the defect undertaken by the customer or unauthorised third parties. GfK shall also not be required to fulfil its guarantee obligations if the customer fails to notify GfK in writing of obvious defects within 8 days of acceptance or of concealed defects within 8 days of their identification.

7.6 The customer is obligated to compensate GfK for all its corresponding outlay if any complaint submitted proves to be groundless.

8. Liability

8.1 GfK shall be fully liable for any personal injury for which it is accountable. GfK shall also be liable for repair and replacement costs up to a value of EURO 1 million per claim for all damage to property for which it is accountable

8.2 GfK accepts no other liability irrespective of the legal basis for the claim, specifically for claims relating to failure to meet specific obligations, or relating to unauthorised activities, pecuniary losses, interruption of business operations, loss of information, loss of profit, provision of poor advice or poor preparatory work, loss of data and software failure.

8.3 This shall not apply in cases in which GfK is obligated to assume liability; for example, if this is required under German product liability legislation, if gross negligence or malice on the part of GfK is demonstrated, if GfK has provided a guarantee for specific properties or if GfK fails to meet major contractual obligations. However, GfK shall be liable only to the value of the foreseeable losses characteristic of such contracts, unless gross negligence or malice on the part of GfK can be demonstrated. This provision shall have no negative bearing on the statutory requirement to provide supportive evidence on the part of the customer.

8.4 GfK shall not be held accountable for the choice of network operator and the associated charges.

9. Intellectual property rights and copyrights

9.1 Intellectual property rights and copyrights, as these apply to the system and specifically its software, shall remain the property of GfK. GfK herewith grants the customer the non-exclusive right to operate the software on the system with which it is supplied. The customer may only transfer the software together with the whole system as supplied by GfK to third parties. In this case, the customer undertakes to make available the text of section 10 and to instruct the acquirer to observe the same obligations that have been assumed by the customer. The customer's right to use the software expires when the customer transfers the software to a third party. The customer does not have the right to reproduce, distribute, modify or to otherwise employ the software except as authorised.

10. Intellectual property rights of third parties

10.1 GfK herewith confirms that it is the owner of all relevant intellectual property rights and copyrights that apply to the use of the system in accordance with the contractual provisions.

10.2 Should claims be lodged against the customer in connection with the rights specified in 10.1 or there be the risk of such claims, GfK retains the right to acquire at own cost and to an extent appropriate for the purposes of the customer the right to continue to use the system, to make appropriate modifications to the system or to replace the system.

10.3 GfK shall assume on behalf of the customer all costs, settlements, and legally authorised compensation payments which the customer is ordered to pay to third parties as a result of infringement of intellectual property rights, with the provision that the customer has used the system solely in accordance with the contractual provisions. GfK shall assume such obligations only if the customer informs GfK in writing without delay of the enforcement of such claims, permits GfK to conduct all judicial proceedings and settlement negotiations itself and provides for this purpose all appropriate support to GfK.

10.4 Data on the customer, which may include personal information, shall be stored by GfK and used for the purposes of manual or automatic processing of the order/contract. The customer agrees to permit GfK to transfer this data to credit institutions, banks and other financial institutions for refinancing purposes. GfK will treat the information provided by the customer as strictly confidential.

11. Retention of title

11.1 GfK shall retain the title to all items supplied until all entitlements arising for GfK from the contractual arrangements with the customer have been met. If the security rights held by GfK exceed the value of outstanding entitlements by more than 20%, GfK shall relinquish an appropriate proportion of its security rights at the request of the customer.

11.2 For the period in which GfK retains the title to items supplied, the customer may not pawn these or use these as securities, and they may only be sold as part of a normal commercial transaction if the customer receives in return payment from the buyer or specifies that the items shall only become the property of the buyer once the relevant payment obligations have been met.

11.3. The customer herewith assigns to GfK, without the need for a corresponding demand on the part of GfK, all its entitlements and ancillary claims (including claims to outstanding payments) arising from the sale of

items to which GfK retains the title. If the items to which GfK retains the title are sold in combination with other goods and no individual price is agreed for the items subject to retention of title, the customer shall assign the priority right to that proportion of the total sales price to GfK that is equivalent to the price invoiced by GfK for the items subject to retention of title.

11.3.1 Where prima facie evidence of justified outside interests is provided, the customer must supply GfK with the necessary information and documentation required by GfK to assert its claims with the buyer.

11.3.2 Until otherwise instructed, the customer is authorised to collect all entitlements assigned to GfK that arise from the sale of the items. Where there is a compelling reason, and specifically evidence of the insolvency or a risk of insolvency on the part of the client in the form of a delay in payment, failure to pay, opening of bankruptcy or bill enforcement proceedings, GfK shall have the right to withdraw the right of the customer to collect entitlements on its behalf. In addition, GfK retains the right, following the issue of an appropriate warning and the expiry of a suitable period of grace, to reveal the securities that have been assigned to it, to turn the assigned entitlements to its own account and reveal to the client that the customer has assigned its rights from the sale to GfK.

11.4. The customer has the right to process items that are subject to retention of title and to combine and merge these with other items. Any processing, combination and merging ("processing" in the following) shall be considered to be on behalf of GfK. The customer shall retain the results of processing for GfK with the due care expected of a registered trader. The results of processing shall be subject to retention of title.

11.4.1 Where items subject to retention of title are processed with items that are not the property of GfK, GfK shall retain title to the processed items in that proportion that the value of items that are subject to retention of title represents in comparison with the value of the other items at time of processing. If the customer acquires sole title to the processed items, the customer and GfK are agreed that the customer shall assign part title to the processed items to GfK in that proportion that the value of items that are subject to retention of title represents in comparison with the value of the other items at time of processing.

11.4.2 The customer herewith assigns to GfK by way of security, without the need for a corresponding demand on the part of GfK, all its entitlements and ancillary rights arising from the sale of the processed items. However, these entitlements shall only be assigned to a value equivalent to the value of the invoice issued by GfK for the processed items that are subject to retention of title. Priority must be given to meeting the entitlements assigned to GfK. The provisions of 11.3.2 shall apply accordingly to the authorization to collect entitlements and the right to withdraw this entitlement.

11.4.3 If the customer merges the items that are subject to retention of title with real estate or tangible assets, the customer shall also assign, by way of security and without the need for a corresponding demand on the part of GfK, its entitlements and ancillary claims that arise from this procedure to GfK to a proportion equivalent to the value that the items subject to retention of title represent of the value of the other property at the time of merging.

11.5. The customer must notify GfK if items subject to retention of title are given as security, seized or subject to injunction or other proceedings initiated by third parties.

11.6 GfK shall have the right to terminate the contract and repossess the items in question if the customer fails to meet contractual obligations and specifically is in default of payments owed to GfK and fails to remedy matters within an appropriate period of grace granted by GfK; however, this latter shall not be considered to override legal stipulations with regard to the dispensability of a period of grace. The customer shall be obligated to release the items in question.

11.7 The customer is obligated to treat the items that are subject to retention of title with all due care while these are still subject to retention of title.

11.8 If the customer fails to meet major obligations and, for example, is in default of payments owed to GfK, GfK shall have the right, irrespective of its other entitlements, to repossess the items that are subject to retention of title and to otherwise use these in order to offset the outstanding entitlements owed to GfK by the customer. In this case, the customer shall provide GfK or its authorised agents with immediate access to the items in question and release these. If GfK requires the release of items in accordance with the stipulations of this provision, this shall not represent termination of the contract unless this otherwise specified in these

circumstances in the German Consumer Credit Protection Act (Verbraucherkreditgesetz).

11.9 If GfK supplies goods and services to countries where the legal stipulations relating to retention of title do not provide GfK with the same level of security as those in Germany, the customer undertakes to do its utmost to ensure that GfK is assigned corresponding rights to security without delay. The customer will cooperate in all procedures, such as registration and publication etc., required to effect and implement such rights to security.

11.10 If so required by GfK, the customer shall be obligated to appropriately insure items that are subject to retention of title and to assign to GfK all entitlements arising from the insurance policy.

12. General provisions

12.1 The customer is not permitted to release information on production or business secrets and other confidential information revealed by GfK to unauthorised third parties or to otherwise exploit such information.

12.2 Alterations and additions to the contract and these General Terms and Conditions of Sale and Supply must be made in writing or shall otherwise be considered invalid.

12.3 If individual provisions of these General Terms and Conditions of Sale and Supply are invalid, this shall not influence the validity of the remaining provisions. In this case, the parties undertake to replace any invalid provision with a valid provision that expresses as closely as possible the original commercial intention of the invalid provision.

12.4 If the customer is a registered trader, legal person as defined by public law or a special fund under public law, the exclusive place of litigation for all disputes arising from the contractual relationship between GfK and the customer shall be Miesbach. However, GfK retains the right to initiate proceedings against the customer at any other recognised place of litigation.

12.5 The contractual relationship between GfK and the customer shall be exclusively subject to the laws of the Federal Republic of Germany. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.