



## General terms and conditions

### 1 Validity of the terms and conditions

**1.1** Our deliveries, services and offers are solely based on these terms and conditions. Therefore, they also apply to all future business relationships, even if they are not expressly agreed again. These terms and conditions are considered to have been accepted at the latest when goods and/or services are received. Counter-confirmations made by the customer with reference to their business or purchasing conditions are hereby expressly refuted. In the case of "WebFox" offers, deliveries and services, the "WebFox Licensing Conditions" apply with regard to right of use, scope of use, protection of licensed material, warranty and liability conditions and also to applicable law.

**1.2** Any deviation from these terms and conditions is only effective when written confirmation thereof has been provided by us.

**1.3** Entrusting software products Bodo Peters TK-Management GmbH grants to the customer unlimited and non-exclusive right to use its software products, in unmodified form, on devices which the customer operates in the operating systems indicated by Bodo Peters TK-Management GmbH. Use is made possible by an add-on connector (Dongle) or system key to be supplied by Bodo Peters TK-Management GmbH. No software is allowed to be resold.

**1.4** Bodo Peters TK-Management GmbH provides the customer with one (1) copy of the documentation corresponding to each software product at no charge, while other copies may be purchased for a fee.

**1.5** The customer may produce up to two (2) copies of each software product for data backup. (Section 17.3 Intellectual Property Rights)

**1.6** The source program is stored with Notary Reinhard Esche, Schulstraße 5, 24568 Kaltenkirchen.

### 2 Quote

**2.1** The validity period mentioned therein shall be applicable for our quote. Orders are considered to be accepted only if written confirmation has been provided by us, with the quote to be exclusively based on the wording thereof.

**2.2** We are only bound by verbal offers or commitments if either written or faxed confirmation thereof has been provided on the same day.

**2.3** A quote only includes the functionalities and performance features of either the attached product specification or the detailed positions specified in the quote or specification. A separate quote is required for components not described therein.

**2.4** Any technical and design deviations from descriptions and information found in brochures, descriptions and written documents, as well as any model, construction and material changes made in the course of technical progress are reserved, without any rights against us able to be derived therefrom.

### 3 Prices

All prices are quoted ex works Kropp plus postage, packing and statutory value added tax (VAT).

### 4 Period of delivery and performance

**4.1** Verbal statements regarding deadlines and grace periods are not binding, unless they have been expressly agreed in writing.

**4.2** All delivery dates are subject to proper and timely self-delivery. They commence on the day when the order has been confirmed by us, although not before having clarified all implementation details, and, in the event of breach, extend accordingly to the customer's obligation to cooperate. In the case of large orders, we are also entitled to carry out partial deliveries and to charge accordingly.

**4.3** We are not responsible for delivery and service delays caused by force majeure and by events and conditions making delivery considerably more difficult or partly impossible, such as difficulties in material procurement, breakdowns, strikes, official orders, etc., even if they occur at our suppliers or their subcontractors, nor shall binding deadlines be agreed by us. We are thereby entitled to rearrange the delivery or service for the duration of the disturbance plus a reasonable start-up period or to withdraw from the contract in whole or in part as a result of having failed to complete part of the contract. The customer has a right to terminate the contract for partial deliveries that have not been provided if the deadline for these deliveries has been extended.

**4.4** In the event that Bodo Peters TK-Management GmbH culpably fails to meet an expressly agreed deadline or falls behind for other reasons, the customer has a reasonable grace period - starting from the day of the written notice of default at Bodo Peters TK-Management GmbH (or in the case of the calendar-fixed period after expiration thereof). Following the fruitless expiration of said grace period, the customer is entitled to withdraw from the contract.

**4.5** Bodo Peters TK-Management GmbH shall be liable to the customer for late delivery in accordance with statutory provisions, if the delay in delivery is based on any intentional or grossly negligent breach of duty for which Bodo Peters TK-Management GmbH is responsible.

**4.6** If the delay in delivery, for which Bodo Peters TK-Management GmbH is responsible, results in the culpable breach of a material contractual obligation, the seller shall be liable in accordance with the statutory provisions, whereby their liability is limited to typical, foreseeable damage.

## **5 Scope of delivery and service**

**5.1** The systems of Bodo Peters TK-Management GmbH have been developed for customary network conditions.

**5.2** The program can be sent to the customer for the system to be installed by the customer themselves. A description of installation is included, if a checklist sent to the customer has been returned duly completed.

**5.3** Additional services and idle times, such as waiting times during commissioning, etc., are documented and invoiced at the applicable hourly rates.

**5.4** If acceptance has been agreed, it is deemed to have been granted if the ordered functionalities have essentially been demonstrated to be error-free. Acceptance shall also be deemed to have been granted, if no notice of defects has been issued within 2 weeks of delivery.

**5.5** In the event that incompatibilities with existing customer hardware/software occur during the installation of the Bodo Peters TK-Management GmbH software, it may be necessary to upgrade the customer hardware. Such an upgrade is not included in the scope of delivery by Bodo Peters TK-Management GmbH.

## **6 Transfer of risk - shipping/packaging**

**6.1** Loading and shipping are uninsured at the risk of the customer. Bodo Peters TK-Management GmbH will endeavor to take into account the wishes and interests of the customer with regard to the type of shipment and the dispatch route; however any additional costs resulting from the shipment - even with agreed freight-free delivery - shall be borne by the customer.

**6.2** If the shipment is delayed at the request or fault of the customer, Bodo Peters TK-Management GmbH shall then store the goods at the customer's expense and risk. In this case, the advice of readiness of dispatch and advice of dispatch shall be one and the same.

## **7 Warranty/liability/limitation**

**7.1** The customer has examined the goods for completeness, damage in transit, obvious defects, correct condition and properties.

**7.2** The customer's warranty rights shall be subject to compliance with their obligations under Sections 377 and 378 of the Commercial Code (HGB) to inspect and provide notification of the delivery thereof immediately thereafter and without delay, although no later than two weeks of having received the product, even in the case of subsequent software versions, or, in the event of defects not identifiable with proper inspection, to provide notification thereof immediately after delivery.

**7.3** The warranty shall become null and void if operating or maintenance instructions are not followed, changes are made to the products by the customer or others, parts are replaced, or consumables are used that do not conform to the original specifications.

**7.4** Bodo Peters TK-Management GmbH is not obliged to comply with the warranty, unless the customer has filed a written complaint about an obvious defect. Insofar as there is a defect in the goods for which Bodo Peters TK-Management GmbH is responsible and the buyer has provided a written report thereof in a timely manner, Bodo Peters TK-Management GmbH shall either withdraw from the contract or reduce the purchase price, without prejudice to the rights of the customer, and shall be obliged to remedy the defect, unless statutory provisions allow Bodo Peters TK-Management GmbH to refuse to remedy the defect. The customer shall grant Bodo Peters TK-Management GmbH a reasonable period of time to remedy each individual defect.

**7.5** If the customer indicates a defect in one of our products and, upon examination either by us or the manufacturer, it can be verified that the product is free from defects under warranty, the customer shall then reimburse us for the test or test costs incurred by having been notified of an unfounded defect, including any freight costs incurred.

**7.6** Bodo Peters TK-Management GmbH is fully liable for damage to life, body and health caused by negligent or intentional breach of duty on its behalf, by its legal representatives or their vicarious agents, as well as for damage covered by liability under the Product Liability Law, as well as for all damage caused by intentional or grossly negligent breaches of contract as well as fraudulent intent on behalf of Bodo Peters TK-Management GmbH, their legal representatives or their vicarious agents. Insofar as Bodo Peters TK-Management GmbH has granted a quality and/or durability warranty with regard to the goods or parts thereof, it is also liable under this warranty. However, Bodo Peters TK-Management GmbH is only liable for damage resulting from the lack of guaranteed quality or durability, but not directly affecting the goods, if the risk of such damage is clearly covered by the quality and durability warranty.

Bodo Peters TK-Management GmbH is also liable for damage caused by simple negligence, insofar as such negligence relates to the breach of these contractual obligations, the observance of which is of particular importance for the achievement of the purpose of the contract (cardinal obligations).

However, Bodo Peters TK-Management GmbH is only liable insofar as the damage is foreseeable and typically associated with the contract. Otherwise, Bodo Peters TK-Management GmbH is not liable for simple negligent breaches of secondary contractual obligations. The limitations of liability included in Section 7.6 shall also apply insofar as the liability for the legal representatives, executive employees and other vicarious agents is affected by Bodo Peters TK-Management GmbH.

#### **7.7 Further liability**

is without prejudice to the legal nature of the asserted claim. Insofar as the liability of Bodo Peters TK-Management GmbH is excluded or limited, this shall also apply to the personal liability of its staff, workers, employees, representatives and vicarious agents.

**7.8** Warranty claims against us are only available to immediate customers and are not assignable without our consent.

**7.9** Warranty claims by a customer against Bodo Peters TK-Management GmbH are limited to one (1) year after delivery.

### **8 Maintenance/service/duration/termination**

**8.1** A maintenance contract is an integral part of every order for a software product. It includes maintenance and necessary services.

**8.2** Upon expiry of the warranty, maintenance also includes eliminating defects within the scope of the warranty (Section 7).

**8.3** Maintenance prices are to be paid in advance with the delivery of the program and the modules pro rata for the following months during the year.

**8.4** Maintenance shall commence upon conclusion of a maintenance contract.

**8.5** The maintenance contract is concluded for an indefinite period. The minimum term of the maintenance contract is the period remaining until 31 December of the year of installment, calculated from the month thereof. The maintenance contract may be terminated in writing with a notice period of three months to the end of the calendar year, although at the earliest upon the expiry of the minimum contract term.

**8.6** Maintenance services can only be provided on behalf of Bodo Peters TK-Management GmbH if the software is being used on the network constellation stipulated at the conclusion of the contract. Changes in this regard require a separate agreement.

**8.7** The program includes databases that only Bodo Peters TK-Management GmbH can update in the scope of its services. The maintenance of these services is included in the scope of the maintenance contract and an integral part thereof. Unless this service is provided, maintenance is not possible.

### **9 Exclusion of services - maintenance and provision of services**

The following services are not included and will be invoiced separately:

- a) Maintenance services for software modified by the customer or third parties.
- b) Maintenance of program parts not part of the original version of the software.
- c) Maintenance services for program parts whose function depends on other programs not supplied by Bodo Peters TK-Management GmbH.
- d) Necessary software customization when operating systems change.
- e) Services to eliminate damage caused by third-product defects, hardware failure, force majeure or improper handling of the software.
- f) Advice, support and software engineering services requested by the customer.

### **10 Rights**

**10.1** Any results from contractual maintenance services, as well as the software versions and data provided, may be used by the customer in exactly the same way as they may be maintained according to the software purchase contract.

**10.2** Further use on behalf of the customer is not permitted. Bodo Peters TK-Management GmbH reserves all other rights of use, in particular the right to make equal work results available to third parties.

### **11 Obligation to cooperate**

**11.1** The customer is obliged to regularly secure the software and data provided to them in a suitable manner. Where necessary, the seller can only restore backed-up data.

**11.2** Upon request, the customer shall provide Bodo Peters TK Management GmbH with documents and other information necessary for maintenance and service by it. This includes a written defect report, as well as the provision of input and output data and other documents suitable for illustrating the defects, in particular

- a) Description of the defect,
- b) Intermediate results in the case of erroneous results and the correct results in the opinion of the customer, correct results,
- c) If the program terminates, the constellation preceding said termination.

**11.3** If necessary, the customer authorizes employees of Bodo Peters TK-Management GmbH responsible for maintenance and services to access the data processing systems on which the provided software is installed. The customer shall provide the required technical facilities ready for use, in particular power supply, data line, network components and other parts in order for the services to be carried out on site, and shall provide them to a reasonable extent free of charge.

## **12 Secondary obligations**

**12.1** The Contracting Parties are obliged to only use all knowledge of trade secrets and information designated as confidential within the framework of the contract for the execution hereof and to treat the same as confidential on an indefinite basis. The Contracting Parties are also obliged to ensure preservation by their employees of the confidentiality of said information.

**12.2** The Contracting Parties shall have all persons, entrusted with the processing and fulfilment of this contract, comply with legal regulations with regard to data protection. The data secrecy obligation required under data protection must be proven upon request by either Contracting Party.

## **13 Trainin**

**13.1** Training includes information about the respective software and the modules to be used by the customer and any customization by an employee of Bodo Peters TK-Management GmbH.

**13.2** The price for training, including expenses, is due once training has been provided and the invoice received by the customer.

## **14 Returns**

**14.1** Freight for any returns shall be prepaid by the customer. Error messages require written communication with the appropriate documents, such as an error description etc.

## **15 Retention of title**

**15.1** Bodo Peters TK-Management GmbH retains ownership of the goods (goods subject to retention of title) until all payments stipulated in the purchase contract have been received.

**15.2** The customer must immediately provide Bodo Peters TK-Management GmbH with written information about any third party access, in particular of enforcement measures taken, as well as any other impairment of their property. The customer shall reimburse Bodo Peters TK-Management GmbH for any and all damage caused by having breached this obligation and by necessary intervention taken to prevent third party access.

**15.3** If the customer defaults in any payment, despite Bodo Peters TK-Management GmbH having issued a reminder thereof, then Bodo Peters TK-Management GmbH may demand restitution of the retained goods still in the customer's possession without having established a deadline. The customer pays for the transport costs deriving therefrom. Bodo Peters TK-Management GmbH will withdraw from the contract anytime it seizes goods subject to retention of title. Bodo Peters TK-Management GmbH is entitled to use goods subject to retention of title after it has seized them. Any proceeds earned therefrom shall be set off against the customer's liabilities to Bodo Peters TK-Management GmbH, less reasonable disposal costs.

## **16 Payment terms**

**16.1** The purchase price is due upon receipt of the invoice by the customer.

**16.2** The customer shall be also in default of payment, with no warning from the seller, if they fail to pay the purchase price within 30 days of the due date and of receipt of the invoice or an equivalent payment schedule. If the customer defaults on payment, Bodo Peters TK-Management GmbH shall be entitled to demand interest at the rate of 5% above the base interest rate of the European Central Bank (ECB) for the relevant date. Bodo Peters TK-Management GmbH reserves the right to submit evidence of greater damage.

**16.3** The customer is only entitled to compensation, even if complaints or counterclaims have been asserted, if counterclaims have been legally established and recognized by Bodo Peters TK-Management GmbH, or are undisputed. The customer is only authorized to exercise the right of retention if their counterclaim is based on the same purchase contract.

## **17 Industrial and intellectual property rights/use of the software contrary to the contract**

**17.1** The customer shall inform us immediately and in writing of any infringement of industrial and intellectual property rights by the use of any product supplied by us. We are solely entitled and obliged to defend the customer against claims of the holder of such rights and to regulate these claims at their own expense, insofar as they are based on direct infringement by a product we have supplied. Then we will grant the customer the right to use the product. If we are unable to do so under commercially reasonable conditions we will, at our discretion, modify or replace this product in such a way for the proprietary right not be breached, or take back the product and reimburse the fee less any amount to cover the option of being granted right of use.

**17.2** Conversely, the customer will ensure our defense and indemnification for all claims by the holder of such rights arising from us having followed instructions issued by the customer or the customer changing the product or integrating it into a system.

**17.3** Programs and related documentation that we provide are for the sole use of the customer under a single, non-transferable license. The customer may not make these programs and documentation available to third parties without our written consent, not even for the resale of our hardware. Copies may only be made for archiving purposes, as replacement or for troubleshooting purposes - without the assumption of costs or liability on our behalf. If originals bear a copyright protection notice, the customer shall also attach copies of this.

**17.4** For each culpable breach of contract to enable the use of software and the user manual by third parties, the creation of an unauthorized copy or the use of software on other computers, the customer must pay compensation in the amount of the purchase price. Compensation shall be set higher or lower if Bodo Peters TK-Management GmbH can prove the damages to have been greater or the customer can prove the damages to have been less. Bodo Peters TK-Management GmbH reserves the right to assertion regarding further claims.

#### **18 Export**

The export of our goods to non-EU countries requires our written consent, regardless of whether the customer is responsible for obtaining any official import and export licenses.

#### **19 Fulfilment and jurisdiction**

**19.1** Place of fulfilment is Kropp.

**19.2** The courts in Schleswig shall have jurisdiction over any the judicial default action and local court matters is Schleswig, while the court in Flensburg shall have jurisdiction in district matters. Notwithstanding, we are entitled to file suit at the customer's headquarters.

**19.3** Governing law is the applicable laws of the Federal Republic of Germany. The application of the Uniform Law on the International Sale of Goods and the Convention on the International Sale of Goods is expressly excluded.

#### **20 Partial invalidity**

Should individual provisions be or become void, ineffective or disputable, the remaining provisions shall remain unaffected and shall then be interpreted or supplemented in such a way for the intended economic purpose to be achieved as precisely as possible in a legally permissible manner. The same applies to any gaps to be filled herein.