

# Terms and Conditions of Purchase

updated January 1<sup>st</sup>, 2002



## § 1 - Area of Application

1. Kithara Software only closes contracts concerning the delivery of software, manuals and other services based on these terms. Other conditions, agreements and changes as well as additions of guaranteed characteristics are only valid if that is confirmed by our company in writing.

2. These terms and conditions of purchase also apply to all conclusions of contracts in the future without being repeated explicitly. At the latest with the receiving of products these terms are classified as confirmed.

3. In brochures, documentations and manuals including descriptions like pricing are without engagement and remain if it not defined differently in these writing.

## § 2 – Conclusion of Contract

1. The order of a customer is an engaging offer.

2. We are free to confirm this offer within two weeks by sending out a confirmation of purchase or sending out the ordered product.

3. In the realisation of contract bonded custom made solutions, we are entitled in case of significant changes of specifications or in case of technical impossibility as well as unpredicted difficulties to make a rearrangement or a rescission of contract without the ability of the customer to claim for damages.

## §3 – Payment Terms

1. The payment amount is to be paid within 21 days after the billing date without any discount. If the payment is made within 10 days we accord a 2% discount in case of prepayment a discount of 3%.

2. If the date of payment is exceeded, all bills outstanding are to be paid, despite of other prearranged dates of payment. If the customer has a delay in paying a debt, we are entitled to insist default interests of 4% above the current bank rate of the German Bundesbank. The validity of a higher damage caused by delay is possible. Furthermore we are entitled to make further supplies to our customers dependant to bills outstanding.

3. The payment with bills of exchange is not possible. Payments with cheques are valid when the cheque is cashed.

4. Offset of the buyer against our interests is only possible if the counterclaims become res judicata, are indisputable and are confirmed by us.

## § 4 – Reservation of Proprietary Rights

1. Until the full payment of our interests the product is our property. In case of contrary action to contract by the customer we are entitled to reclaim the product. In reclaim or distraint of the product automatically means our rescission of the contract.

2. Agreements or changes in this commercial case by the customer are always done for us. When the product is processed/ mixed with other, non-belonging to us objects we acquire co-ownership of the new product proportional to the price of our product and to the other processed/ mixed product by the time of processing/ mixing.

3. We obligate ourselves to release the securities entitled to us by customers demand if the value of assuring interests is higher than 20%.

4. The customer has the duty to report about distraint or other engagements of third party on the bought product to us.

## § 5 – Delivery Period

1. Possible delivery dates are not binding

2. If a delivery date is prearranged and we default than compensation for loss suffered is regulated and limited by § 7, Ziff. 2. Further compensations are only possible if the default is grounded on intended or gross carelessness.

## § 6 – Warranty

1. Warranty deed is limited to 24 month beginning with hand-off of the product. Verification is the bill and the delivery note.

2. Is the product defect, we are legitimated to correct the defect or to replace the product. In case of correction we bear the costs for transport-, work- and material excepting the costs caused by transport of the product to a place other than its actual destination.

3. A rescission of the contract or a decrease of the price is only possible if the attempt to correct the product fails or we are not prepared or able to correction or replacement or correction or replacement is delayed for a disproportionate period and the delay is our fault.

4. Further pretensions of the customer especially compensation of losses are not permitted.

## § 7 – Responsibility

1. Kithara Software is responsible for damages if they are grounded on intended or gross carelessness. Furthermore Kithara Software is responsible for damages that are caused by absence of guaranteed characteristics as well as according to product responsibility law.

2. We are responsible in case of slight carelessness for direct damages in case of breach of significant contract duties up to the price of the product but not for indirect damages like loss of profit, loss of use or interests of a third party. In case of slight carelessness we are not responsible for damages caused by breach of other contractual duties.

## § 8 – Final Provisions

1. Assignment of laws or assignment of duties by the customers requires our written acceptance.

2. The place of execution is Berlin. For all privity of contract with the customer German law is effective excluding the UN Convention on Contracts for the International Sale of Goods. Place of jurisdiction of registered traders is Berlin-Mitte.

3. In case that terms and conditions or other agreements are or will become invalid the other terms in conditions are unaffected.