

## **1. Applicability**

Offers, orders, deliveries and services shall be based exclusively on the following terms and conditions. Such terms and conditions shall therefore also apply to all future business relationships with the customer, even if not expressly agreed on again. Any deviating, additional or opposing terms of the customer shall not become part of the contract, even if ADVANTECH-DLoG does not expressly object to them. Deviations from these terms and conditions must be made in writing in order to be valid.

## **2. Offers**

1) All offers of ADVANTECH-DLoG shall be subject to change and non-binding. A contract shall come about only upon written order confirmation by ADVANTECH-DLoG or upon execution - also partly - of a customer's order. Field staff and sales representatives are not authorized to accept customer orders with binding effect.

2) All information referring to dimensions, weight, quality, construction and material has been determined to our best knowledge, but is approximate only and not binding on ADVANTECH-DLoG. This also applies to information provided by the supplier.

## **3. Condition of the products**

1) The products shall be delivered in the quality and execution customary in the trade, taking into account production-related tolerances for dimensions, weights and quality conditions. ADVANTECH-DLoG reserves the right to make technical or optical changes to the products that serve to improve such products and do not impair their functionality.

2) Qualities of the products stated in publications of ADVANTECH-DLoG or its sales representatives, in particular in advertising, in drawings, brochures or other documents or on packaging and labeling of the Products, or which fall under trade usages, shall only be deemed to be covered by the contractual condition of the products if such qualities are expressly contained in an offer or an order confirmation.

3) Guarantees, in particular guarantees as to condition [*Beschaffheitsgarantie*], shall be binding on ADVANTECH-DLoG only to the extent to which they (i) are contained in an offer or an order confirmation, (ii) are expressly designated as a "guarantee" or "guarantee as to condition", and (iii) expressly stipulate the obligations for ADVANTECH-DLoG resulting from such guarantee.

## **4. Prices and terms of payment**

1) Prices are ex warehouse or ex works, excluding packaging, freight and other ancillary costs, plus VAT at the rate applicable at the date of delivery. Prices are subject to acceptance of the quantity ordered.

2) Unless agreed otherwise with the customer, invoices shall be due immediately and payable without deduction at the latest within 14 calendar days from the invoice date. In case of default of payment, ADVANTECH-DLoG is authorized to estimate interest and dunning fees from maturity date. The rate of interest amounts 8 per cent above the base lending rate. The customer bears the full costs that arise by late payment and any other expenses in line with a debt collection routine. Irrespective of

any other provisions by the customer payments shall be applied first to the earliest debt, and here first to any costs, then to the interest and then to the principal debt.

3) If the customer fails to comply with its payment obligations in accordance with contractual provisions or if other circumstances become known that call into question the customer's creditworthiness, and ADVANTECH-DLoG's claims therefore seem to be jeopardized, ADVANTECH-DLoG shall be entitled to perform further deliveries only if paid in advance or to make further performance conditional on the provision of security and/or to suspend performance until all due claims have been settled in full.

4) The customer shall be entitled to effect a set-off against counterclaims and to exercise a right of retention based on counterclaims only if such claims are recognized or have become *res judicata*. Moreover, the exercise of a retention right is conditional on such counterclaims being based on the same legal relationship.

## **5. Delivery and performance period**

1) Delivery dates are binding only if expressly referred to in writing as fixed dates by ADVANTECH-DLoG and if all documents to be submitted by the customer for execution of the order have been made available. All delivery dates including fixed dates are subject to ADVANTECH-DLoG itself being supplied correctly and on time. The point in time at which the risk passes to the customer according to clause 6 shall be decisive for compliance with the delivery dates.

2) Delays in delivery and performance due to force majeure or other unforeseeable circumstances not attributable to ADVANTECH-DLoG which make performance significantly more difficult or impossible, in particular difficulties in procuring materials, strikes, lawful lock-outs, disruptions in operations, official orders, etc., also if they arise at suppliers or sub-suppliers, shall entitle ADVANTECH-DLoG to postpone the delivery or performance by the duration of the hindrance plus a reasonable start-up period. ADVANTECH-DLoG shall not be responsible for the foregoing circumstances even where such circumstances occur during an already existing default. ADVANTECH-DLoG shall notify the customer of the circumstances of the hindrance as well as the probable duration of the delay.

3) If according to clause 5.2 a hindrance lasts for three months or more, ADVANTECH-DLoG is entitled to withdraw from the contract in respect of the unperformed portion.

4) With the exception of fixed dates, ADVANTECH-DLoG shall be in default only if the customer on expiry of the non-binding delivery date has set a grace period of at least one month in writing and this deadline has not been met either.

5) If ADVANTECH-DLoG is in default, its damage compensation obligation in cases of slight negligence shall be restricted to an amount of 0.5% for each full week of default, up to a maximum total amount of 50% of the invoice value of the delivery affected by the default. Any further-reaching claims exist only in cases of intent or gross negligence according to clause 10. Should the hindrance continue for more than three months, the customer shall - after setting a reasonable grace period - be entitled to withdraw from the contract in respect of the unperformed part.

6) Partial deliveries and partial performances are permissible to the extent the customer can reasonably be expected to accept such partial deliveries or performances.

7) Deviations from the quantities ordered are admissible up to a margin of plus/minus 10% in which cases the actually delivered quantity is to be invoiced.

## **6. Transfer of risk and receipt of the products**

1) Any delivery, also carriage paid deliveries, shall be at the customer's risk. The risk shall pass as soon as the consignment has been handed over to the person transporting the products or, in the

case of transportation by the employees of ADVANTECH-DLoG, has left the warehouse for shipping. This shall also apply if the products are delivered by a third manufacturer on behalf of ADVANTECH-DLoG directly to the customer. If shipping of the products is delayed or has become impossible due to circumstances for which ADVANTECH-DLoG is not responsible, the risk shall pass to the customer upon notification of readiness for shipment.

2) Insurance against damage or loss in transit shall be taken out only at the request and for the account of the customer.

3) Objections due to damage in transit and shortfalls in volume shall be made in writing immediately upon receipt of the products and be documented in the accompanying documents. Any corresponding evidence shall be preserved.

4) In terms of accessory items, which are sent-in by customer, related to any device service or repair order, but not mentioned on the delivery papers, there will be assumed no liability therefor except ADVANTECH-DLoG.

## **7. Liability for defects**

1) The pre-requisite for the customer's warranty rights (claims for defects) is that the customer inspects the products and effects proper notification of defects pursuant to Sec. 377 of the German Commercial Code [*Handelsgesetzbuch, HGB*]. Notifications of defects shall be made in writing and provide specific details of the defect. Obvious defects shall be notified to ADVANTECH-DLoG in writing within one week of delivery, hidden defects within one week of being discovered. The periods specified are preclusion periods.

2) In the event of a defect, ADVANTECH-DLoG may remove the same through its choice of rectification or replacement delivery. If the rectification or replacement delivery fails finally, the customer shall be entitled to its choice of rescission of the contract [*Rücktritt*] or a reasonable reduction in the purchase price [*Minderung*]. Rectification or replacement delivery shall be made without acknowledgement of a legal obligation and shall not suspend the limitation period for the claims for defects relating to the products.

3) The limitation period for claims for defects is twenty-four (24) months from delivery.

4) No claims for defects shall exist for non-material deviations from the agreed condition which do not impair use to an unreasonable extent, for ordinary wear and tear, faulty or negligent treatment, unsuitable or improper use, chemical, electrochemical or electronic influences, improper installation, operation, use or maintenance, or non-reproducible software errors, to the extent the damage is not attributable to fault on the part of ADVANTECH-DLoG. Also excluded are claims for defects attributable to inappropriate modifications, repairs, the breaking of seals or opening of sealed parts or the use of consumable materials (chemicals, operating materials) which do not correspond to ADVANTECH-DLoG's original specifications, by the customer or its appointee. Furthermore, no claims for defects shall exist for products where the serial number is missing, has been changed or obscured, unless the customer furnishes evidence that this was the case already at the time of delivery.

5) If the customer wrongly asserts claims for defects, ADVANTECH-DLoG shall be entitled to charge to the customer the reasonable expenses incurred to it for removing or determining the defect.

6) Claims of the customer for expenditure required for the purpose of subsequent performance [*Nacherfüllung*], notably the costs of transport, journeys, labor and material, are excluded to the extent that the expenditure is increased as a result of the products being brought to a place other than the agreed place of delivery. ADVANTECH-DLoG is entitled to invoice such increased costs to the customer.

7) Further claims for defects of any kind whatsoever are excluded, without prejudice to any claims for damages restricted according to clause 10.

## **8. Software license**

- 1) Unless a special license agreement exists, the following provisions shall apply for the software provided by ADVANTECH-DLoG.
- 2) ADVANTECH-DLoG grants to the customer a non-exclusive license to install and use the software, such license not being subject to sub-licensing and being limited to the purposes of use of those products for which the software is provided.
- 3) The customer is not entitled to perform the following acts:
  - a) modification, adaptation, translation, processing, arrangement or other reworking of the software as well as the reproduction of results achieved from the same, unless these acts are necessary for the rectification of defects and ADVANTECH-DLoG has not offered rectification within a reasonable time period and carried out the rectification within such a time period if commissioned to do so;
  - b) disassembly, decompilation, reverse engineering or use of any other process to obtain the source code, unless such processes are required to achieve interoperability of an independently created computer program with other programs and ADVANTECH-DLoG has not made available the information required for this within a reasonable period;
  - c) reproduction of the software with the exception of the installation of the software, the running of the software and the creation of a back-up copy which is to be designated as such;
  - d) removal or modification of trademarks, copyright or other notices with reference to intellectual property rights in respect of the software;
  - e) loaning, renting, leasing or other temporary supply of the software to third parties for use by the same.
- 4) The customer is only entitled to resell the software if it does not retain any copies of the software after such resale and if the buyer undertakes to comply with the license terms contained in this clause 8.

## **9. Intellectual property rights**

- 1) ADVANTECH-DLoG is obliged to deliver the products free of copyrights and other intellectual property rights (hereinafter: "Intellectual Property Rights") with reference to the country in which the products are to be used according to the contractual agreement (in cases of doubt: in the country of the place of delivery). In the event of a breach of the foregoing obligation, ADVANTECH-DLoG's liability towards the customer shall be subject to the following provisions, with the proviso that the products were used by the customer in accordance with this agreement, the infringement of Intellectual Property Rights is attributable to ADVANTECH-DLoG and the limitation period for claims for defects pursuant to clause 7.3 has not yet expired.
  - a) ADVANTECH-DLoG may at its choice either obtain at its own expense a right of use in respect of the Intellectual Property Right infringed which is sufficient for the agreed or presumed use, or modify the products in such a way that the Intellectual Property Right is no longer infringed, or exchange the products to the extent that the agreed or presumed use by the customer is not hereby impaired. If this is not possible or is unreasonable for ADVANTECH-DLoG, the customer may withdraw from the agreement in respect of the products concerned.
  - b) ADVANTECH-DLoG's liability for damages is subject to the provisions of clause 10.
  - c) The foregoing obligations of ADVANTECH-DLoG apply only to the extent that the customer (I) informs ADVANTECH-DLoG in writing and without undue delay of the assertion of claims by third parties, (II) does not concede the existence of an infringement vis-à-vis third parties, and

(III) leaves all measures of defense and actions for the resolution of disputes to be undertaken by ADVANTECH-DLoG at the latter's discretion. If the customer discontinues use of the products to mitigate damages or for another justified reason, it is obliged to make clear to the third party that such discontinuation of use does not constitute any acknowledgement of the alleged infringement.

2) All claims of the customer are excluded if the infringement of an Intellectual Property Right has been caused by a type of use which is not provided for by ADVANTECH-DLoG, or a modification of the products by the customer or his appointee or use of the same together with products not provided by ADVANTECH-DLoG or which ADVANTECH-DLoG has not recommended to be used together.

3) Any claims of the customer against ADVANTECH-DLoG or its vicarious agents that exceed the rights set forth in this clause 9 and are based on an infringement of an Intellectual Property Right are excluded.

## **10. Liability**

1) ADVANTECH-DLoG shall be liable for any damage, regardless of the legal cause, only if (I) such damage is attributable to the culpable (i.e. at least negligent) material breach of obligations by ADVANTECH-DLoG thus jeopardizing the contractual purpose, or to the culpable breach of duties the fulfillment of which is a pre-requisite for proper performance of the contract, or (II) such damage has been caused by gross negligence or willful misconduct by ADVANTECH-DLoG, or (III) ADVANTECH-DLoG has assumed a guarantee.

2) ADVANTECH-DLoG's liability shall be limited to the typical, foreseeable damage if ADVANTECH-DLoG (I) has culpably, but not by gross negligence or willful misconduct, materially breached obligations so that the contractual purpose is jeopardized, or has breached duties the fulfillment of which is a pre-requisite for proper contract performance, or (II) if employees or agents of ADVANTECH-DLoG who are not officers or executive staff have breached other obligations by gross negligence, or (III) if ADVANTECH-DLoG has assumed a guarantee, unless such guarantee is expressly designated as a guarantee as to condition.

3) In the cases of clause 10.2 no liability shall exist for indirect damage, consequential damage or loss of profit.

4) The limitation period for customer's claims for damages in the events as specified in clause 10.2 shall be two years from the point of time the customer obtains knowledge of the damage or, irrespective of this knowledge, three years from the damaging event. For claims based on defects of the products, the limitation period pursuant to clause 7.3 shall apply.

5) This shall not affect ADVANTECH-DLoG's liability pursuant to the German Product Liability Act [*Produkthaftungsgesetz*], for injury to life and limb, for fraudulent concealment of a defect or for the assumption of a guarantee as to condition.

6) Clauses 10.1 to 10.5 shall also apply in the case of any claims for damages of the customer against employees or agents of ADVANTECH-DLoG.

## **11. Reservation of title**

1) ADVANTECH-DLoG reserves title in the delivered products until full payment of all claims from the entire current business relationship with the customer ("Reserved Products").

2) The customer is entitled to resell the Reserved Products within the scope of ordinary business operations subject to reservation of title, provided it is not in default of payment towards ADVANTECH-DLoG. It is inadmissible to pledge the Reserved Products or use them as security.

3) As security for the claims of ADVANTECH-DLoG the customer hereby assigns already now its future receivables from the resale of the Reserved Products under clause 11.2 in the amount of the invoice value (including VAT) of the Reserved Products until full payment of all claims of ADVANTECH-DLoG under clause 11.1. ADVANTECH-DLoG accepts this assignment. If the Reserved Products have been reprocessed together with other items not belonging to the customer, the assignment shall be effected only in the proportion of the co-title shares in the Products reprocessed pursuant to Section 11.6. The customer shall retain the right to collect the receivables also after the assignment as long as the customer fulfills its payment obligations from the proceeds taken in, is not in default of payment and notably has not filed an application for the opening of insolvency proceedings nor suspended its payments. ADVANTECH-DLoG's power to collect the receivables itself shall not be affected thereby. At ADVANTECH-DLoG's request, the customer shall inform ADVANTECH-DLoG of the names and addresses of the buyers concerned as well as the type and scope of its claims existing against such buyers. ADVANTECH-DLoG may at all times disclose the assignment in order to secure its claims for payment.

4) In the event of attachments or other interferences of third parties with the Reserved Products, the customer shall inform the third party that such goods are the property of ADVANTECH-DLoG and shall immediately notify ADVANTECH-DLoG. The customer shall bear all costs of any intervention proceeding and other defense measures in connection with such interference by third parties.

5) In the event of behavior of the customer in breach of contract, in particular in the case of payment arrears, insolvency or deterioration of assets, ADVANTECH-DLoG may take possession of the Reserved Products at the customer's expense, even without rescinding the contract, and enter the customer's premises for that purpose. The customer's restitution claims against its own customers are thereby already assigned. Recovery or attachment of the Reserved Products by ADVANTECH-DLoG do not constitute a rescission of the contract. The contract may only be rescinded by means of an express declaration, and in the event of behavior of the customer in breach of contract the setting of a time limit is not required. ADVANTECH-DLoG shall be entitled to realize the Reserved Products and to satisfy its claims by setting off the proceeds therefrom against the outstanding receivables from the customer.

6) Any processing [*Verarbeitung*] or reworking [*Umbildung*] by the customer of the Reserved Products shall always be performed for ADVANTECH-DLoG. If the Reserved Products are processed or reworked with other items not belonging to ADVANTECH-DLoG, ADVANTECH-DLoG shall acquire co-title in the new thing in the proportion of the value of the Reserved Products to the other items that are processed or reworked at the time of such processing or reworking; in all other respects, the same provisions shall apply for the new thing thus created as for the Products delivered subject to reservation of title.

If the Reserved Products are inseparably commingled [*vermisch*] or combined [*verbunden*] with other items not belonging to ADVANTECH-DLoG, ADVANTECH-DLoG shall acquire co-title in the new thing in the proportion of the value of the Reserved Products to the other commingled or combined items at the time of commingling or combining. If the commingling or combining takes place in such a way that the thing of the customer is considered to be the principal thing, the customer shall transfer co-title to ADVANTECH-DLoG on a pro rata basis. The customer shall keep the sole title or co-title thus created free of charge in safe custody for ADVANTECH-DLoG. As security for the claims of ADVANTECH-DLoG against the customer, the latter shall also assign to ADVANTECH-DLoG the claims accruing against third parties by the combining of the Reserved Products with a real estate property.

## **12. Disposal duties under ElektroG**

1) To the extent the products are electrical or electronic equipment within the meaning of the German Electrical and Electronic Equipment Act [*Elektro- und Elektronikgerätegesetz, ElektroG*] the customer shall assume at its costs the orderly disposal of the products after termination of use of such products.

2) The customer shall indemnify ADVANTECH-DLoG against any obligations under Sec. 10 para. 2 ElektroG and any third-party claims related thereto.

3) The customer shall by written contract impose an obligation on business third parties to whom it resells the delivered products to properly dispose of such products after their use is terminated, in accordance with statutory provisions and at the expense of such business third parties, and in the event of a further resale to impose such an obligation also on their customers. If the customer fails to impose a contractual obligation on third parties to whom it resells the products to assume the disposal duty and to impose such duty in turn, and to document this, the customer shall be obliged to take back the products at its own expense and to orderly dispose of them in compliance with statutory provisions.

4) ADVANTECH-DLoG's claim to assumption and indemnification by the customer shall not become statute-barred before two years have elapsed from the final termination of the use of the products (suspension of expiration). The two-year suspension period shall start at the earliest upon receipt of written notification by the customer on the termination of use.

### **13. Additional services for software deliveries**

1) Software shall be delivered ready for installation. Further services, in particular installation, configuration or maintenance, shall be rendered on the basis of separate agreements and according to ADVANTECH-DLoG's rates valid at the time. The customer shall then provide free of charge the required machine time, the staff operating the equipment as well as suitable rooms and all required technical facilities for the duration of such service.

2) Any training or introductory class for employees of the customer is not included in the scope of delivery and has to be agreed separately with ADVANTECH-DLoG.

### **14. Additional services for hardware deliveries**

1) Hardware shall be delivered ready for installation. Further services, in particular installation and maintenance, shall be rendered on the basis of separate agreements and according to ADVANTECH-DLoG's rates valid at the time. The customer shall then provide free of charge the required machine time, the staff operating the equipment as well as suitable rooms and all required technical facilities for the duration of such service.

2) Separate orders must be placed for planning or other consulting services.

### **15. Export**

The export of ADVANTECH-DLoG's products to non-EU countries is subject to written consent by ADVANTECH-DLoG, regardless of the fact that the customer itself is responsible for obtaining all official import and export licenses.

### **16. Miscellaneous**

1) Place of performance is ADVANTECH-DLoG's registered office in Germering, Germany.

2) Exclusive place of jurisdiction for all disputes arising from or in connection with the contractual relationship is Munich, District Court Munich I. However ADVANTECH-DLoG is also entitled to bring an action before the court having jurisdiction for the customer's registered office.

3) This agreement shall be governed by the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

4) To the extent that correspondence is conducted not in German but in a foreign language or installation instructions, documentations or notes are drawn up in a foreign language, in the event of contradictions between the German and the English version the German version shall prevail. This

shall apply respectively to these General Terms and Condition which are provided as a convenience translation of „Allgemeine Geschäftsbedingungen der Firma DLoG Gesellschaft für elektronische Datentechnik mbH“.

5) Should one or more provisions of these General Terms and Conditions or a provision within the framework of other agreements be or become invalid, the validity of all other provisions or agreements shall not be affected thereby. Invalid or missing provisions shall be replaced by valid clauses which come as close as possible to the intended purpose.

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