

General terms and conditions Business and Education

1. Scope of application

These General Terms and Conditions of Business and Education («GTC B2B&E») regulate, in addition to the respective service description, order confirmation, offer and/or invoice of Data Quest AG («DQ»), the framework conditions for the customer's purchase of products from DQ. The aforementioned documents form integral parts of the contractual relationship between the customer and DQ. Unless otherwise specified in the offer, all offers made by DQ are subject to change.

«Products» according to these GTC B2B&E are

- a) Third-party hardware products that DQ sells to the customer and
- b) standard software licenses of third parties which DQ procures for the customer.

In addition, DQ offers IT services to the customer, such as installations, implementations, consulting and support services, and training.

The GTC (General Terms and Conditions), GPC (General Terms and Conditions of Purchase) and other documents (guidelines, instructions, regulations, policies, orders, etc.) of the customer are not applicable.

2. Scope and content of deliveries

The specific scope and content of DQ's delivery obligation is conclusively contained in the respective service descriptions, offer, order confirmation or invoice of DQ. In the event of discrepancies regarding the same subject matter between these GTC B2B&E and other documents of DQ, the provisions of these GTC B2B&E shall take precedence.

Details, data and information in specifications, technical documents, product or service descriptions, functional descriptions, etc. of the respective manufacturers of hardware and/or software are of an informative nature and are not binding on DQ. Guarantees or warranties exist only and insofar as DQ has expressly declared them as such and fixed them in writing.

By placing an order or using all or part of the Deliverables (whichever comes first), the Customer accepts the provisions of these GTC B2B&E and all other parts of the contract without limitation. The Customer acknowledges that the deliveries pursuant to Sections 3 and 4 below each relate to products of third parties and do not constitute DQ's own services. This does not apply to IT services, which DQ generally provides with its own staff.

3. Hardware sale

DQ undertakes to transfer ownership of the hardware sold to the customer against payment of the agreed remuneration.

Agreements between the parties on rental and leasing remain reserved.

The customer receives the documentation and documents supplied by the respective manufacturer (if necessary via a link announced by DQ) transferred for use in accordance with the contract. The customer accepts that he does not receive ownership of the pre-installed software (operating system, firmware, applications, etc.), but rather a right of use in accordance with the provisions of the respective manufacturer. Any installation or commissioning of the hardware shall be carried out by the customer himself (or by third parties commissioned by him).

The purchase contract for transactions pursuant to this Clause 3 is concluded between DQ and the Customer.

The relevant manufacturer's provisions shall apply on a subsidiary basis to questions which are not addressed in these GTC, in DQ's offer or in any other document of DQ and which, in this case, apply equally and exclusively to the purchase contract relationship between the customer and DQ.

4. Procurement of standard software licences

DQ acts as a reseller of standard software licences from various manufacturers. It mediates the conclusion of the contract, which in this case is concluded directly between the customer and the relevant software manufacturer. The customer acknowledges that the respective software manufacturers are not subcontractors of DQ.

DQ only conveys the right to use the standard software in accordance with the specifications and provisions of the respective manufacturer, which are contained directly or indirectly in the relevant service description, the offer or the order confirmation. If the references to the respective manufacturer's provisions are missing, the customer must actively inquire with DQ.

The relevant manufacturer, licensing and data protection provisions must be read by the customer and complied with throughout the duration of use. These provisions contain, among other things, important information about, for example, the manufacturer's liability, restrictions on use, warranty period and scope, as well as provisions under data protection law. A transfer of ownership does not take place in the licensing of standard software. The customer shall ensure at his own expense that he is correctly licensed at all times.

Any installation or commissioning of the software shall be carried out by the customer himself (or by third parties commissioned by him) or by commissioning the DQ. [Manufacturer GTC and data protection](#)

5. Maintenance and care

The existence, scope and content of the maintenance of hardware and the maintenance of standard software shall be governed exclusively by the respective manufacturer's provisions. It is at the discretion of each manufacturer to determine in particular the life cycle of its products, to decide on the provision of spare parts and to provide further developments of the standard software, e.g. in the form of patches, updates, upgrades, releases or versions. The Customer accepts that DQ does not provide any independent maintenance, care and support services.

6. Obligations of the customer

The Customer undertakes in particular (i) to be familiar with the respective manufacturer's provisions and to comply with them unconditionally, (ii) to comply with all applicable statutory provisions and regulatory requirements, (iii) to use the products for their intended purpose and in accordance with the contract, (iv) to refrain from all actions that could endanger or infringe the existence or content of the rights of DQ or third parties, (v) to accept the deliveries of DQ or the manufacturer, to check them immediately for quantity and quality and to report any defects in a timely and proper manner (in accordance with the requirements of the relevant manufacturer's provisions), (vi) to comply with the relevant import and export provisions. (vi) to observe the relevant import and export regulations of the respective manufacturer, (vii) to ensure regular data backups, (viii) to check and protect its data, information and content, information and content, (ix) to perform all acts of cooperation, preparation and support free of charge and without delay which are necessary for a smooth and contractual delivery for DQ, (x) to make all payments in due time and in full (irrespective of a possible default in performance or a disagreement).

7. Place of performance

Unless otherwise agreed, the place of performance shall be at the registered office of the respective manufacturer.

8. Delivery dates

All delivery dates for products are indicative and not binding. Partial deliveries are to be accepted by the customer. The performance dates for services shall be mutually agreed by the parties.

9. Deadlines not met by the customer

If an agreed appointment for DQ services (e.g. installations, implementations, training etc.) is not attended by the customer, cancelled at short notice or postponed (short notice means notifications that do not reach DQ at least 48 hours before the assignment), DQ is entitled to charge 50% of all costs of this assignment (in particular the time reserved for it, plus travel times and expenses).

The reasons for missing, cancelling or postponing an appointment are irrelevant. Force majeure on the part of the client remains reserved and must be proven by the client.

10. Force majeure

If the agreed delivery becomes permanently or temporarily impossible or unreasonably difficult for DQ due to an event beyond DQ's control («force majeure»), DQ shall be released from the obligation to deliver. In particular, events such as war, civil war, natural disasters, terrorist attacks, riots, revolutions, epidemics, pandemics, lockdowns, supply and market bottlenecks, shortages of raw materials or components, failure of supply systems (such as energy supply, transport links, internet or telephony) or official orders, even if they affect the respective manufacturers (or their suppliers) at home and abroad, shall be deemed to be force majeure.

11. Warranty

The Customer is aware and accepts that all warranty rights with regard to the products are exclusively governed by the applicable manufacturer's provisions. DQ can - insofar as this is expressly agreed - support the Customer in the handling of its claims against the respective manufacturer against separate remuneration. Any warranty claims of the customer against DQ are excluded to the extent permitted by law.

12. Liability

A party shall be liable for damage caused by it or by a third party involved by it arising from the contractual relationship if it does not prove that neither it nor the third party involved is at fault. Liability is unlimited in terms of amount for personal injury and damage caused intentionally or through gross negligence by a party (or its third parties).

The following applies to slight negligence on the part of DQ: DQ's liability for all direct and indirect damages arising from or in connection with the product transaction or the purchase or brokerage contract is completely excluded. The exclusion of liability includes in particular all damages, costs, expenses, fees and costs such as, for example, loss of use, loss of profit and turnover, unrealised savings, additional costs and additional expenses, restrictions or interruption of services or restrictions in the use of services or delivery objects, damage, restriction and disruption of applications, systems and infrastructures of the customer (or third parties), loss of and damage to data, business interruptions and all other direct damages.

13. Remuneration and invoicing

The remuneration is in Swiss francs, excluding VAT.

The type and amount of the remuneration as well as the payment deadline are specified in the offer, order confirmation or invoice of DQ.

Deductions or retentions from invoice amounts or offsetting against the client's own claims are not permitted.

If the customer does not meet the agreed payment deadlines, he/she must pay interest on arrears of 8% p.a. from the first day of arrears, irrespective of any reminder.

The prices for the product business are set by the respective manufacturers. DQ can therefore not guarantee that the prices will remain unchanged (also not for prices already confirmed). Changes may occur in particular as a result of exchange rate fluctuations, governmental or official taxes, levies, fees, customs duties, shortages of raw materials, supply bottlenecks (also from third parties and subcontractors of the manufacturers), etc.. In such cases in particular, DQ is entitled to adjust prices and conditions to the changed conditions at any time.

14. Retention of title for hardware

DQ remains the owner of the delivered hardware (incl. accessories) until the agreed payments have been credited to DQ in full. The customer hereby expressly and irrevocably authorises DQ to have the retention of title entered in the official registers in accordance with the relevant laws. The customer shall maintain the delivered items at its own expense for the duration of the retention of title and insure them in favour of DQ against theft, breakage, fire, water and other risks. Furthermore, the customer shall take all measures to ensure that DQ's title is not diminished or cancelled.

15. Secrecy and data protection

The contractual partners undertake to maintain secrecy with regard to facts, information and data that are neither public knowledge nor generally accessible, irrespective of the form in which they are transmitted or made accessible. Information, data and content contained in or made accessible through the service descriptions, offers, order confirmations, invoices or other documents or records of DQ (in particular also the information, data and content of the respective manufacturers) constitute information to be kept secret in any case and regardless of its form.

Both parties guarantee to comply with the relevant data protection provisions, in particular the respective current Swiss Data Protection Act (SR 235.1), the ordinances to the Data Protection Act (VDSG, SR 235.11) and the EU Data Protection Regulation, insofar as they are subject to the scope of application of the EU Data Protection Regulation. The Customer shall inform DQ in good time of any additional or other specific data protection and data security requirements that DQ must comply with.

Detailed information on data protection can be found in our [data protection declaration \(DSE\)](#).

[Manufacturer GTC and data protection](#)

16. Transfer of benefit and risk

The benefit and risk of the products shall pass to the customer upon (partial) delivery, unless expressly agreed otherwise.

17. Acceptance

Any provisions regarding the acceptance or approval of the products by the customer shall be governed exclusively by the provisions of the relevant manufacturer.

18. Default of acceptance

If the Customer does not accept the duly offered delivery, DQ may, after setting a reasonable grace period, either:

- continue to adhere to the contract and demand the agreed remuneration for this, but definitely waive the further provision of deliveries, or
- withdraw from the relevant contract, demand the return of all delivered products and claim damages.

Furthermore, in both cases DQ may additionally demand liquidated damages. This amounts to 50% of the contract value of the relevant contract. DQ reserves the right to claim further damages upon corresponding proof.

19. Common provisions

Amendments and supplements to these GTC B2B&E must be made in writing. This written requirement can only be waived in writing. This does not apply to documents and records which can be unilaterally adapted by DQ (or the relevant manufacturers) at any time, e.g. performance descriptions, specifications, functional descriptions, etc.

Should individual provisions of these GTC B2B&E or their appendices prove to be legally invalid or unenforceable, the invalid or unenforceable provisions shall be replaced by a valid or enforceable provision that comes as close as possible to the intention of the contracting parties existing at the time the respective provision was agreed. The validity of the remaining provisions shall remain unaffected.

Rights and obligations under these GTC B2B&E or its appendices may not be transferred or assigned by the Customer, in whole or in part, without the prior written consent of DQ.

These GTC B2B&E and the contractual components designated or referenced in Section 1 constitute all existing agreements. There are no ancillary agreements.



20. Applicable law and place of jurisdiction

The contractual relationship shall be governed exclusively by Swiss law. The provisions of the Vienna Sales Convention (United Nations Convention on Contracts for the International Sale of Goods) and the Conflict of Laws Act (IPRG) are not applicable.

For all questions and disagreements arising from or in connection with these GTC B2B&E, the ordinary courts at the registered office of DQ shall have exclusive jurisdiction.

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