

## General Terms and Conditions of Business (GBT)

– These GBTs apply to traders –

### I. Conclusion of a Contract

1. Our offers are without obligation. A contract first comes into existence through a confirmation of the order (in writing or in text format) or through our delivery. The contractual relationship is based solely on these conditions and on our individual licensing conditions, which are acknowledged through the awarding of a contract or by acceptance of ordered merchandise or by performance by the customer. This also applies when we do not expressly contradict conditions of a customer which do not conform with our conditions.

2. Subsidiary agreements and changes require confirmation in writing from the Avira GmbH.

### II. Rights and Obligations of the Customer

1. All software programmes shall only be transferred on the condition that the customer acknowledges these General Terms and Conditions of Business to be legally binding. Delivery and payment of the software programmes does not mean that ownership has been purchased; only the right to use the programme has been purchased. The programmes shall remain the property of the manufacturer. An individual programme may be used on one computer system (one installation) in accordance with the number of PC's licensed. An authorised user is not permitted to reproduce programmes, either wholly or in part, on the same or on other disks/carrier medium. Exceptions to this are reproductions which the authorised user creates for himself/herself as backup disks, provided that the manufacturer of the programme expressly permits this in his licensing conditions. These reproductions may not be passed on to third parties. They may only be used by the authorised user if the original can no longer be used due to damage or destruction.

2. The authorised user shall neither pass on to third parties the programmes of the Avira GmbH, the original system disk and/or any backup copies, nor shall he/she make these available for third parties in any other form. Also excluded is the reproduction of the programme, eit-

her wholly or in part, for the purpose of simultaneous multiple use on several computer systems. Any infringement of these provisions shall authorise the Avira GmbH to demand from the purchaser a contractual penalty of 5,000 Euro for each case of infringement. All other claims against the purchaser, in particular copyright claims and claims for damages, shall remain unaffected. The aforesaid actions may result in criminal liability and this fact is explicitly indicated.

3. For the programme manuals and other documentation, the provisions of Section 2 regarding reproduction and transfer, and including contractual penalty, shall apply accordingly.

### III. Special Provisions for Resellers

1. If delivery to a customer has taken place solely for the purpose of resale, that customer shall have the right to transfer right of use to a third party. In the case of resale, the serial numbers issued by the software manufacturer shall be itemised on the invoice, provided that they are noted on the accompanying documentation of the Avira GmbH.

2. The reseller is not authorised to reproduce the programme, neither wholly nor in part, nor may he/she reproduce said programme for purposes of data backup.

3. Any infringement of these provisions shall authorise the Avira GmbH to demand from the resellers a contractual penalty of 50,000 Euro for each case of infringement.

### IV. Delivery

1. For the content of the delivery obligation, the confirmation of the order issued by the Avira GmbH, these General Terms and Conditions of Business and the pertinent licensing conditions are exclusively definitive. The Avira GmbH has the right to make partial deliveries.

2. Deviations from the offer documentation in the delivered merchandise and services are permissible, provi-

ded that they are deemed reasonable for the customer and insofar as the essential and contractually-stipulated performances of the ordered programme are fulfilled to their maximum extent. Subject to technical amendments.

3. If the ordered merchandise in the manufacturer's delivery programme is replaced by new merchandise, which possesses all of the contractually-stipulated properties and performs as well or better as the originally ordered merchandise, the Avira GmbH has the right to deliver the new merchandise in lieu of the ordered merchandise. In this case, the Avira GmbH may match the percentage price, i.e. the company may increase the price by the difference between the manufacturer's price for the new merchandise and the manufacturer's price for the ordered merchandise. In the case of a price increase of more than 10 percent, the customer has the right to cancel the contractual relationship resulting from the order. This shall take place within a time limit of two weeks after receipt of the invoice. Actual cancelling shall take place at the point in time from which the price increase applies.

4. Risk passes to the customer when the merchandise is delivered for shipment. This also applies if carriage paid delivery has been agreed upon. If the merchandise is to be collected from the customer, risk passes to the customer with the notification of provision to the customer.

5. If performance is delayed beyond a point in time specified by the Avira GmbH, any rights resulting from this delay can only be claimed after a reasonable time limit (set by the customer) of at least three weeks, unless the customer can prove that his/her interest has ceased to exist due to the failure to observe said time limit on the part of the Avira GmbH. If the Avira GmbH is behind schedule with the delivery, or delivery proves impossible for the Avira GmbH, indirect indemnification shall be excluded, provided that such delay or impossibility is neither based on grossly negligent or deliberate contractual infringement, nor is based on the infringement of major contractual duties on the part of the Avira GmbH. In the case of disruptions in delivery, which do not lie within the sphere of influence of the Avira GmbH, particularly in the case of lockout, material loss, force majeure, or the prohibition of transport and/or business operations, the Avira GmbH has the right to rescind the contract, without the accrual of damages through liability of any form whatsoever.

6. If the Licensor is no longer willing to maintain, or is no longer in a position to maintain his/her update service, he/she shall acquaint the customer of the situation. In this case, he/she shall grant a pro rata temporis refund to the customer, consisting of that portion of the update fee not yet used. Any further claims of the customer do not and shall not exist.

## **V. Sales Prices and Terms of Payment**

1. Our prices are strictly net and free to shipping point, provided that no other prices are specified. All shipping and handling costs, in particular packing, transport costs, transport insurance, and legal VAT shall be borne by the customer.

2. Payments shall be effected immediately, without deductions of any kind. Bills of exchange, drafts and cheques shall be accepted only by special agreement, provided that such payment methods neither involve costs nor expenses of any kind whatsoever for us.

3. If the customer falls behind with payment, the Avira GmbH shall have the right to claim interest on arrears to the statutory amount.

4. The customer can only offset with counterclaims if such claims are determined to be indisputable and/or legally valid.

5. If in the case of delay of payment on the part of the customer a debt collection agency is commissioned to collect the outstanding debt, the customer shall bear all costs of the commissioning of such agency.

6. For each written reminder, a flat-rate fee charge of 5 Euro will be imposed, with the exception of the first reminder.

## **VI. Performance pursuant to the Guarantee**

1. The customer shall undertake to inspect the merchandise delivered by the Avira GmbH immediately after receipt and to notify the Avira GmbH of any damages, defects and complaints within fourteen days. If notification is not given in a timely manner, the guarantee claim of the customer shall expire, unless the defect could not

be identified during the inspection – or – in the case of delivery to non-commercial persons – the defect was not self-evident.

2. The Avira GmbH shall undertake to remedy carrier (disk) material errors through replacement at its own expense, within the first year after delivery.

3. Liability of the Avira GmbH for damages and loss of property arising from the use of a programme shall be excluded, unless the damage is attributed to a grossly negligent or deliberate breach of contract or the infringement of major contractual duties on the part of the Avira GmbH. The customer alone shall be responsible for the correct use of the programme in his/her IT system and for data backup.

4. The Avira GmbH's obligation under warranty is limited to subsequent performance. If subsequent performance fails, the customer, at his/her option, may either demand a reduction of the purchase price or rescind the contract. Any further claim of the customer for compensation for direct or indirect damages is excluded, unless the damage is attributed to a grossly negligent or deliberate breach of contract or the infringement of major contractual duties on the part of the Avira GmbH.

#### **VII. Reservation of Ownership, Assignment by way of Security**

1. Delivered merchandise shall remain the property of the Avira GmbH until full payment has been made. (The provisions of these General Terms and Conditions of Business, in accordance with which the customer does not purchase property, remain unaffected hereof.) The customer has the right to process and sell the merchandise, provided that this is in accord with the licence regulations which are valid for said customer. The customer is not permitted to pawn, assign as security, or transfer the merchandise by way of exchange. The Avira GmbH and the customer are agreed that title to processed products, which, in accordance with § 950 BGB (German Civil Code) accrues to the new objects for the customer, shall pass to the Avira GmbH upon its accrual. The transfer shall be replaced by the agreement that the customer, at no cost, shall retain the new objects in safekeeping for the Avira GmbH.

2. If the customer sells merchandise purchased from the Avira GmbH before he himself/she herself has paid for the merchandise, the customer and the Avira GmbH agree that any receivables arising from such further transfer, when incurred, shall be assigned to the Avira GmbH in order to secure payment. If the merchandise is transferred together with other objects, the assignment of the price demand is limited to the amount of the value originating from the Avira GmbH. The customer is revocably authorised to collect in his/her own name receivables assigned to the Avira GmbH on that company's account. The Avira GmbH has the right to disclose such assignment or to demand notification of assignment to the debtor from the customer.

#### **VIII. Miscellaneous Provisions**

1. Place of performance for both parties' performance and place of jurisdiction is Tettngang, provided that this is lawful.

2. The privity of contract between the Avira GmbH and the customer is exclusively subject to the laws of the German Federal Republic under the explicit exclusion of the UN law on sales.

3. If a contractual provision ceases to be wholly or to some extent effective, the validity of the remaining provisions of the contract shall remain unaffected by this. The provision which is ineffective shall be replaced by a provision which comes closest to the economic sense and purpose of the ineffective provision.

4. All merchandise delivered shall remain in the intended country and may not be exported from such intended country, provided that the prevailing export regulations of the individual manufacturing countries impose limitations on this.

#### **Avira GmbH**

Lindauer Str. 21 | D-88069 Tettngang | Germany

Telephone: +49 (0) 7542-500 0

Fax: +49 (0) 7542-525 10

Email: [info@avira.com](mailto:info@avira.com)

Internet: <http://www.avira.com>