

## **STANDARD CONDITIONS OF SALE**

OF:

### **DB2 vision**

Registered and with its offices at

Loopkantstraat 25

5405 AC Uden

Chamber of Commerce file number 74940678

Further referred to as: DB2

### **Article 1. Applicability of these conditions**

1. These standard conditions are applicable to all offers, tenders and acceptances of them made by DB2 and to contracts concluded by DB2 in which it undertakes to supply goods to the other party trading in the exercise of a profession or business, further referred to as: "the Buyer".

2. Any purchase or other conditions referred to by the Buyer in accepting an offer or tender or in concluding a contract shall not apply unless DB2 has accepted them without reserve and in writing.

3. Departures from and/or additions to these standard conditions shall bind DB2 only insofar as these have been expressly agreed in writing between DB2 and the Buyer.

4. If any provision of these standard conditions is found to be null and void, or is nullified, only that provision shall be treated as inapplicable. All the remaining provisions shall retain their applicability unimpaired.

5. By the term "goods" in these standard purchase conditions is also understood: software and services.

### **Article 2. Offers and tenders**

1. DB2 is bound to its offer and/or tender only if the Buyer confirms its acceptance in writing within 30 days.

2. The prices stated in the offer or tender are exclusive of VAT and/or other levies that fall due on the execution of the contract, unless otherwise stated.

3. The offers and tenders made by DB2 do not apply to repeat orders unless otherwise agreed in writing.

4. In the case of a composite quotation DB2 is not obliged to supply a part of the goods included in the offer at a corresponding part of the quoted price.

### **Article 3. Delivery**

1. Unless agreed otherwise, delivery is made "ex-works".

2. Besides these standard conditions, DB2 can also declare the international delivery conditions, "Incoterms", applicable to the contract, tender or offer.

3. The Buyer is obliged to accept the goods at the time that they are delivered to it or at the time when they are made available to it under the contract.

4. If the Buyer refuses to accept the goods or is negligent in supplying the information or instructions needed for their delivery, these goods shall be stored at the Buyer's risk. In that event the Buyer shall be liable to pay DB2 all the additional costs, including in any event the storage costs.

### **Article 4. Delivery date**

1. The delivery dates quoted by DB2 are always approximate and are never firm dates. Interim delivery dates quoted by DB2 or agreed between the parties shall always count as target dates, are not binding on DB2 and are always only indicative. DB2 will make every reasonable effort to observe as far as possible delivery periods or delivery dates involving deadlines.

DB2 is not bound to a delivery period or delivery date whether or not involving a deadline that can no longer be achieved due to circumstances outside its control that have arisen since the conclusion of the contract. Nor is DB2 bound to a delivery date whether or not involving a deadline if the parties have agreed an amendment of the content or the magnitude of the contract or an amendment of the method of the execution of the contract. If any period threatens to be exceeded, DB2 shall discuss with the Buyer the consequences of exceeding the delivery period for the further execution of the order.

2. The mere exceeding of a delivery period or delivery date quoted by DB2 or agreed between the parties, whether or not involving a deadline, shall not put DB2 in default. In all instances, DB2 shall not be in default for deadline overshoot until the Buyer has given it notice of default in writing. The notice of default must contain as complete and detailed as possible a description of the shortcoming in order to allow DB2 to make an adequate response.

3. The delivery date quoted by DB2 shall not begin until all the necessary data are in its possession.

### **Article 5. Part deliveries**

1. DB2 is permitted to deliver purchased goods in parts unless the part-delivery does not constitute an independent asset.

2. If the goods are delivered in parts, DB2 is entitled to invoice each part separately.

### **Article 6. Technical requirements**

1. DB2 does not guarantee that the goods to be delivered by it satisfy the statutory technical requirements, standards and/or regulations in force in countries outside the Netherlands.

2. The provisions in paragraph 1 of this article shall not apply if the Buyer has mentioned in concluding the contract the desired use abroad

and has handed over to DB2 all the necessary statutory and other data and specifications.

3. All the technical requirements that are imposed by the Buyer on the goods to be supplied and that depart from the normally applicable requirements must be expressly mentioned by the Buyer on concluding the purchase agreement.

#### **Article 7. Intellectual property rights**

1. All intellectual property rights, in particular the copyright, on all the software, programs, equipment, accompanying documentation or other materials that have been developed or made available, reside exclusively with DB2, its licensors or its suppliers. The Buyer acquires only the normal use rights and powers that are assigned to these conditions or otherwise expressly granted. It is otherwise prohibited from copying or altering the programs or other materials or making them accessible or transferring them to unauthorized third parties.

2. Every other far-reaching right of the Buyer to reproduce, disclose to third parties and/or exploit software, programs, equipment, accompanying documentation or other materials is excluded. A use right accruing to the Buyer is non-exclusive and non-transferable to third parties.

3. The provisions of paragraph 1 and paragraph 2 of this article may be departed from only in writing.

#### **Article 8. Cancellation of the contract**

1. A contract between DB2 and the Buyer can be cancelled immediately by DB2 by means of a written declaration without judicial intervention, in the following cases:

- a. if circumstances come to the knowledge of DB2 after the conclusion of the contract that give DB2 good grounds to fear that the Buyer will not be able to meet its obligations, e.g. if an application has been made for the bankruptcy of the Buyer, if the Buyer applies for a provisional payment moratorium, if the Buyer requests a debt rescheduling arrangement to be declared applicable, or if it loses the power to dispose of its capital or parts of it through attachment, being placed under curatorship or otherwise;
- b. if DB2 has asked the Buyer on entering into the contract to provide security for the performance and this security has not been provided, or is insufficient;
- c. if the Buyer fails to perform its payment obligations promptly and does not comply with a notice of default with a time limit of one week.

2. Moreover, if circumstances arise in relation to persons and/or materials of which DB2

makes use or is accustomed to make use in the execution of the contract, which are of such a kind that the execution of the contract becomes impossible or so problematic and/or expensive that performance of the contract can no longer reasonably be demanded, DB2 shall be entitled to cancel the contract.

3. The cancellation releases the parties from the obligations affected by it. Where these have already been performed, the legal ground for this performance shall continue to exist, but the parties remain obliged to cancel the performance already enjoyed by them. The Buyer must pay for the goods already delivered.

4. The Buyer is liable for the loss suffered by DB2 as a result of the cancellation, consisting, inter alia, of loss of profit and dispatch and/or transport costs.

#### **Article 9. Complaints and guarantee**

1. The Buyer must inspect the goods or have them inspected on delivery or as soon as possible thereafter. In making the inspection the Buyer must ascertain whether the delivered goods conform with the contract, whether the correct goods have been delivered, whether the quantity of the delivered goods corresponds with what has been agreed, whether the delivered goods meet the agreed quality requirements and any requirements that may be imposed for the normal use of the goods and/or for trading purposes.

2. The Buyer must report visible defects to DB2 in writing within 14 days of delivery. Invisible defects must be reported to DB2 in writing within 14 days of the discovery of the defect, or of the time in which the defect could reasonably have been discovered, but not later than six months after delivery.

3. After a period of six months has elapsed, the Buyer can no longer complain and DB2's liability for any loss that the Buyer may suffer as a consequence of a defect shall lapse.

4. Moreover, even if the Buyer does complain promptly, its obligation to pay and to accept any orders made shall remain.

5. If the goods show a design, material or manufacturing fault and the Buyer has reported it to DB2 within the set period, the Buyer shall be entitled to rectification of the goods. DB2 can elect to replace the goods. The Buyer is entitled to replacement of the goods only if they cannot be repaired.

6. The guarantee referred to in paragraph 5 shall not apply if the damage is the result of incorrect treatment of the sold goods by the Buyer or third parties, or the incorrect following of instructions, or the carrying out of

modifications by the Buyer itself or by a firm and/or persons engaged by the Buyer.

7. Where goods have been manufactured by a third party, the guarantee is limited to the guarantee issued for the goods by the manufacturer concerned.

#### **Article 10. Retention of title**

1. All the goods supplied by DB2 shall remain the property of DB2 until the Buyer has performed all the obligations arising from all the purchase agreements concluded between the Buyer and DB2, including, besides the payment of the full amount of the purchase sum, claims for failures to perform the above contracts, those for compensation and reimbursement of extrajudicial and judicial costs, contractual and statutory interest, fines and penalties.

2. The ownership of the goods supplied by DB2 passes to the Buyer as soon as the Buyer has performed all its obligations towards DB2. If DB2 has any reasonable doubt about the Buyer's ability to pay, DB2 shall be entitled to postpone delivery of the goods until the Buyer has provided security for the payment. The Buyer shall then be liable for the loss suffered by DB2 through this delayed delivery.

3. The goods supplied by DB2, which are covered by the retention of title under paragraph 1, may be sold on only as part of normal business operations and never be used as a means of payment.

4. The Buyer is not entitled to pledge the goods covered by the retention of title, nor to encumber them in any other way.

5. The Buyer gives immediate unconditional and irrevocable consent to DB2, or to a third party to be nominated by DB2, in all instances in which the user wishes to exercise its proprietary rights, to enter all those places where the goods owned by DB2 are then to be found and to take away those goods.

6. If third parties lay attachment on the goods supplied under retention of title or wish to establish or assert rights on them, the Buyer undertakes to inform DB2 of the fact as soon as may reasonably be expected.

7. The Buyer undertakes to insure the goods supplied under retention of title, and to keep them insured, against fire, explosion and water damage, as well as against theft, and to allow DB2 to inspect the insurance policy on first demand.

#### **Article 11. Price/Price increase**

1. Unless expressly stated otherwise, the prices quoted by DB2 are in Euros, excluding VAT, on the basis of minimum quantities observed by DB2, excluding transport costs, and ex-works.

2. After the purchase price has been agreed DB2 shall be entitled to increase this price if it can show that significant price changes have occurred between the dates of the offer and the delivery in respect of raw materials, tax regulations, foreign exchange and/or wages or other unforeseen circumstances. Where there has been a price increase, the Buyer is entitled to cancel the contract within 8 days of the notification of the price increase.

#### **Article 12. Payment**

1. Payment must be made within the payment term stated in the tender. If no payment term is stated in the tender payment must be made within 30 days of the invoice date in the manner indicated by DB2.

2. In the event of late payment the Buyer shall be in default without being issued with a warning or notice of default and shall be liable to pay contractual interest of 2% per month on the whole of the amount owed. The Buyer shall then also be liable to pay all the legal costs incurred by DB2 in collecting the debt. In addition, the Buyer shall be liable to pay the extrajudicial collection costs of 15% of the amount owed, subject to a minimum of € 40.00.

3. In the event of liquidation, bankruptcy or a payment moratorium on the part of the Buyer, DB2's claims on the Buyer and the Buyer's obligations to DB2 shall become immediately exigible.

4. Payments made by the Buyer serve first to pay the outstanding interest and costs and then the outstanding invoices that have been open the longest, even though the Buyer may indicate a different order of attribution.

#### **Article 13. Liability**

1. DB2's liability shall be limited to the loss suffered by the Buyer that is the consequence of an imputable shortcoming in the performance of an obligation or of an unlawful act committed by DB2 or by third parties engaged by DB2, if and insofar as this liability is covered by its insurance, and up to the amount of the payment made under the insurance policy.

2. If the insurer does not pay out for any reason, or if the loss is not covered by insurance, the liability shall be limited to a maximum of twice the amount of the invoice, or at least of that part of the transaction to which the liability relates.

3. Notwithstanding the provisions of the preceding paragraphs and with reference to Article 4 of these conditions, DB2 shall not be liable for loss suffered from the exceeding of delivery periods.

4. A condition for the creation of any right to compensation is always that the Buyer reports

the loss to DB2 in writing as soon as possible after it has arisen. Any compensation claim against DB2 shall expire by the mere lapse of one year after the claim has arisen.

5. DB2 shall not be liable if the shortcoming is the consequence of force majeure.

6. The limitations included in this article shall not apply if the loss is the consequence of gross negligence or intention on the part of DB2 or its management.

#### **Article 14. Calling in third parties**

1. DB2 can call in third parties (suppliers) to design or manufacture goods for the Buyer.

2. DB2 shall not be liable for the shortcomings of these third parties.

3. If a called-in third party limits its liability, DB2 shall be entitled to accept this limitation of liability, or at least to invoke it against the Buyer.

#### **Article 15. Force majeure**

1. By force majeure is meant in this article: circumstances that hamper the performance of the obligation and that are not imputable to DB2. This will include, inter alia: fire, strikes, staff sickness, transport delays, war, government measures, including export, import or transit prohibitions, equally whether these affect DB2 or its suppliers.

2. DB2's delivery and other obligations will be suspended during a period of force majeure. If the period in which DB2's performance of its obligations is not possible through force majeure lasts longer than 2 months, either party shall be entitled to cancel the contract without the intervention of the court, without there being an obligation in that event to pay compensation.

3. If DB2 has already performed part of its obligations at the commencement of the period of force majeure, or can only partly perform its obligations, it shall be entitled to invoice the already delivered goods or the deliverable part of them separately and the Buyer is bound to pay this invoice as if it related to a separate contract. This shall not apply if what has already been delivered or the deliverable part has no independent value.

4. DB2 is also entitled to invoke force majeure if the non-imputable circumstance that prevents the performance of its obligation begins after it should have performed its obligations.

#### **Article 16. Applicable law**

Dutch law is applicable to all contracts between DB2 and the Buyer. The court at 's-Hertogenbosch is competent to hear the disputes between the parties. The Vienna Sales Convention is expressly excluded from application.

#### **Article 17. Amendment and location of the conditions**

These conditions have been deposited at the office of the Chamber of Commerce and Industry in 's-Hertogenbosch.

DB2 is entitled to amend prematurely the content of these standard conditions unilaterally. If DB2 does amend the conditions prematurely, it shall inform the Buyer of the fact, sending it the amended conditions.

The Buyer is entitled to object to the application of the amended conditions within 30 days of the date on which it is informed of the amendments. The parties shall then enter into negotiation on the content of the applicable standard conditions. If the Buyer makes no objection to the amended content of the standard conditions, this shall govern the arrangements made between the parties from the date named by DB2.

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