

# Terms and Conditions 2011

## PLAN PRO Datacenter GmbH Terms and Conditions

### Definitions

- (1) "Business Customer" means a customer who is not a Consumer.
- (2) "Consumer" means an individual who is not acting for the purposes of his or her business or profession.
- (3) "PLAN PRO Datacenter GmbH " means PLAN PRO also referred to as "we" or "us" in these terms and conditions.
- (4) "Catalogue" means the catalogue of products and services offered by PLAN PRO .
- (5) "Force Majeure" means any cause affecting the performance by PLAN PRO of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but not limited to) governmental regulations, fire, flood or any disaster or industrial dispute affecting a third party.
- (6) "Normal Working Hours" means 9 am to 5 pm on a Working Day.
- (7) "Working days" means Monday to Friday, excluding Bank or other Public holidays.

Please note that special terms apply to Consumers, which prevail over the other provisions of these terms and conditions. Customers who are Consumers are referred to Clause 13.

### Orders

- (1) All contracts of sale made by PLAN PRO shall be deemed to incorporate these terms and conditions, which shall prevail over any other terms from the party ("the Customer") with whom PLAN PRO is dealing. Cancellation of orders by business to business customers is not accepted as many orders are despatched on the same day the order is placed. Cancellation of orders by Consumers will be accepted in accordance with the Consumer Protection (Distance Selling) Regulations 2000. Nothing in these terms and conditions is intended to impinge upon a Consumer's statutory or contractual rights to reject faulty goods.
- (2) All orders are subject to acceptance and to availability of the goods ordered: PLAN PRO is entitled to refuse any order placed by you.
- (3) You undertake that:
  - (a) all details you provide to us for the purpose of purchasing goods or services offered on our web site are correct, and
  - (b) the credit or debit card you use to make a purchase from us is your own card or your company's card, that you are authorised to use it, and that there are sufficient funds or credit facilities to cover the cost of any goods or services you order from us. We reserve the right to obtain validation of your credit or debit card details before providing you with any goods or services.
- (4) Please note, PLAN PRO may record and / or monitor inbound and outbound calls and electronic traffic for training purposes.

### Prices

- (1) Goods and services, together with VAT, are invoiced at the price prevailing at time of order.
- (2) PLAN PRO reserves the right to modify the prices from time to time.
- (3) Due to the transaction costs imposed upon PLAN PRO, a surcharge of 1.5% of the total invoice value will be applied to all AMEX transactions with effect from 1st January 2011.

### Delivery, Title and Risk

- (1) PLAN PRO shall use reasonable endeavours to despatch goods by the date agreed with the customer, but does not accept liability for failure to deliver within the stated time where this is caused by circumstances beyond our reasonable control, such as delays caused by delivery companies or manufacturer lead times. If a delay is likely, we shall contact the customer and advise of the delay.

A customer who is a Consumer shall be entitled to cancel an order when advised of a delay if the revised delivery date is not acceptable.

(2) In the case of a Business Customer, if PLAN PRO is unable to deliver the goods within 30 days of the agreed delivery date, the Customer will, as its sole remedy, be entitled to cancel the order and require any monies paid to PLAN PRO in respect of that order to be refunded. In order to cancel, the Customer must send written notice of cancellation to PLAN PRO after the above date but before delivery of the goods or notification from PLAN PRO that the goods are ready for delivery. This Clause does not apply to Consumers.

(3) In the case of Business Customers, PLAN PRO does not accept liability for shortages or damage to deliveries unless the Customer notifies PLAN PRO of the shortage or damage in writing within 48 hours of receipt of the delivery. Consumers should notify shortages or damage within a reasonable period of becoming aware.

(4) Business Customers are required to be able to accept the goods when they are ready for delivery within Normal Working Hours.

(5) Delivery is deemed to take place when the goods are delivered to the Customer's nominated address, whereupon the risks of loss, breakage and all damage and all other risks shall pass to the Customer.

(6) Title in the goods does not pass to the Customer until payment is received in full by PLAN PRO .

(7) If the Customer cannot accept delivery, PLAN PRO may at its option: (a) store and insure the goods at the Customer's expense and risk or (b) sell the goods at the best price reasonably obtainable and (after deducting reasonable storage insurance and selling costs) pay to the Customer any excess over the sale price or charge the Customer for any shortfall or (c) re-arrange delivery provided that PLAN PRO may charge the Customer for the additional delivery costs incurred.

(8) The Customer may request a Proof of Delivery, provided that this request is made in writing within 3 months of the date of delivery and PLAN PRO shall use reasonable endeavours to provide such proof. Thereafter, delivery shall be deemed to have been successfully completed.

(9) Upon delivery of the goods, the Customer will be asked to sign a Proof of Delivery to acknowledge safe receipt. It is the responsibility of the Customer to ensure that the number of packages delivered corresponds with the number stated on the delivery note. Where a discrepancy occurs or where there is evident damage to the packaging, this should be noted on the Proof of Delivery. PLAN PRO shall not be liable for discrepancies or damage evident on delivery where the Customer accepts delivery and signs the Proof of Delivery without amendment.

## Payment

(1) Payment is due on shipment unless a Customer has been approved for credit. PLAN PRO's standard credit terms require payment within 30 days from the date of the invoice, except in the case of transactions where different terms are agreed in writing.

(2) If payment is not made on the due date, PLAN PRO will be entitled to charge interest daily on the outstanding balance at the rate of 3% above Barclays Bank PLC base lending rate from time to time.

## Product specifications

(1) PLAN PRO makes every effort to supply the goods as advertised but reserves the right to supply the goods subject to minor variations in actual dimensions and specifications where these are changed by the manufacturer.

(2) If PLAN PRO cannot supply the goods ordered by the Customer, PLAN PRO reserves the right to offer goods of equal or superior quality at no extra cost. In such a case, if the Customer does not wish to accept the alternative goods offered, he or she may cancel the order and require the refund of any money paid to PLAN PRO in respect of that order, including carriage charges. This shall be the sole remedy of the Customer in these circumstances.

(3) Due to the current manufacturing methods of active matrix display panels, a small percentage of sub-pixel anomalies (i.e. a pixel stuck on or off) are accepted by the industry as unavoidable. Accordingly, because the manufacturing yield of perfect active matrix panels is low, displays may have some sub-pixels that are either always on or off. The cost of accepting only theoretically perfect displays would almost double the price of a portable computer using an LCD screen. Please be aware of this before purchasing a TFT screen.

PLAN PRO has to adhere to the manufacturer's guidelines stipulating that a given number of pixel failures are deemed acceptable before the TFT screen is accepted for replacement on grounds of fault.

#### Trade names and Trade Marks

(1) Trade names and marks (other than PLAN PRO 's) are not always indications of the actual manufacturer of a particular product and may rather be indicative of general use systems and machines associated with such products.

(2) In the case of component purchases, Customers requiring a particular brand of product should, before placing an order, check with PLAN PRO the identity of the manufacturer of component it is proposed to purchase.

#### Warranties and Returns

Please note that special terms apply to Consumers who wish to return goods, which prevail over the provisions of this Clause 8. Customers who are Consumers are referred to Clause 13.

(1) PLAN PRO is committed to providing our customers with the highest quality products and service. However, on rare occasions, products may be found to be faulty or defective. In such cases we offer the returns facilities described below.

(2) Unless otherwise stated in the manufacturer's documentation, all goods delivered to a UK mainland address carry a 12-month manufacturer's warranty.

(3) If you purchase goods in the course of your business, the following provisions of this Clause shall apply. Other than the express provisions set out in these terms and conditions, all other terms and the implied terms or warranties relating to the supply of goods are excluded to the fullest extent permitted by law. Goods are not tested or sold as being fit for any particular application or for use under specific conditions, unless expressly agreed in writing.

(4) If you purchase services in the course of your business, the following provisions of this Clause shall apply. PLAN PRO shall use its skill and expertise to carry out any contracted works (the "Service(s)") to a standard equivalent to that of a competent computer professional, and shall warrant our work as free from defects, for a period of 30 days after completion. In particular, we cannot be held responsible for any fault or damage not caused by PLAN PRO services' engineers or its contracted agents. In the event of a claim arising relating to the level of skill and judgement applied in the course of providing Services, PLAN PRO reserves at its sole discretion the right to appoint an independent expert in the field to appraise the work carried out in the execution of the Service(s). Additionally, PLAN PRO cannot be held responsible for equipment installed or configured when the equipment has subsequently been altered or configured by persons other than PLAN PRO . Except as set out here, all other express or implied terms or warranties relating to the Services are excluded to the fullest extent permitted by law.

(5) Subject to the right of Consumers to return goods for refund under The Consumer Protection (Distance Selling) Regulations 2000 (see Clause 13), PLAN PRO does not sell products on a trial basis. Customers are strongly advised to check suitability and specifications of products before ordering. In some instances, Customers may benefit from special price discounts issued by a manufacturer specifically for their benefit. Such goods are not returnable to the manufacturer and may not be sold to other customers. Accordingly, orders for such goods can not be cancelled and PLAN PRO can only accept a return of such Goods where they prove to be defective and the Goods are returned for repair or replacement.

(6) In the event that PLAN PRO , at its discretion (unless the Consumer Protection (Distance Selling) Regulations 2000 apply, see Clause 13), agrees to accept the return for credit of unwanted products, the goods must be returned with PLAN PRO 's prior written agreement within 14 days of delivery. The goods must be unopened and in perfect re-saleable condition. All goods returned in these circumstances (except where the Consumer Protection (Distance Selling) Regulations 2000 apply, see Clause 13) will be subject to a handling fee of 15% of PLAN PRO 's sale price for the goods, or £20, whichever is the greater.

(7) Subject to testing to verify any alleged fault, we will accept the return of defective goods for full refund or replacement at our option, if, but only if, the goods are returned within 14 days of delivery. Consumers who wish to return defective products are not obliged to follow the processes set out below, but are recommended to do so as this helps us to provide a more efficient returns service.

- a) PLAN PRO's technical support staff or Customer Support staff, as appropriate, will advise you of which method of delivery to use to return the products. Depending on the nature of the product purchased, we will either arrange a courier collection, or request that you return the product directly to us. If the goods are found on inspection to be defective, the cost of returning the item will be refunded to you. Authorised product returns must be sent to: Customer Returns, PLAN PRO, Rosenweg 5, 24245 Kirchbarkau, Germany.
- (b) PLAN PRO offers a "no charge" collection, repair and delivery service for hardware which is shown to be faulty provided that the fault is reported within 14 days of delivery. If we have arranged for a courier collection of your product, we are unable to specify the collection time, and it is your responsibility to ensure that someone will be present at the collection address when the courier arrives.
- (c) All returned goods (except those returned under Clause 13) must be accompanied by PLAN PRO's Returns Authorisation number ('RA Number') which can be obtained by contacting Customer Support. Returned goods will not be accepted without an RA Number. Do not write directly on the manufacturer's packaging. Please write the RA number on the address label provided with the Returns Authorisation and attach it to the returned package. Any defacement of the manufacturer's packaging or damage caused by inadequate packaging may result in the rejection of the return or an additional restocking fee, at PLAN PRO's sole discretion.
- (d) PLAN PRO cannot accept liability for packages damaged during transit. It is the Customer's responsibility to wrap the product adequately to prevent damage.
- (e) Proof of postage is not proof of delivery and you are therefore strongly advised to send your package by recorded delivery, registered post or courier, and to insure the goods for their full value.
- (f) On receipt of the returned product, we will test it to identify the fault you have notified to us.
- (g) If following the testing process, the product is found to be in good working order without defect, we will return the product to you, and the carriage costs of this return will be your responsibility. Please note that if you have, in the meantime, required us to provide you with a replacement product before completion of the testing process, you will have to pay for this product also. This Clause does not apply to Consumers returning goods pursuant to Clause 13.
- (h) Unless otherwise stated in the manufacturer's documentation, all goods delivered to a UK mainland address carry a 12-month manufacturer's warranty. Customers who wish to make a warranty claim must comply with the manufacturer's instructions and warranty procedure. In order to resolve your problem as quickly as possible, we may refer you to the product manufacturer who will deal directly with the return. In these instances, we will provide you with the contact information for the relevant manufacturer. If you are a consumer, this does not affect your statutory rights.
- (i) This warranty shall not apply if the goods have been worked upon, altered or damaged in any way by the Customer or its employees or agents, or to goods not used in accordance with the manufacturer's instructions.
- (j) No software on which seals have been broken can be returned for credit. If any software discs are faulty, the manufacturer will replace them. If you are a consumer this does not affect your statutory rights. Please note Software Licences are non returnable unless the software is materially non-compliant with its specification or the physical media on which it is supplied is defective.
- (k) Some manufacturers require goods to be returned within 14 days or less in order to secure refund. In such instances the manufacturer's time limit will apply and therefore PLAN PRO will only accept a return within 14 days of purchase or the manufacturer's time limit, if that limit is less than 14 days. This is clearly indicated on the catalogue page for the particular product. We can only accept the return of a defective product that does not meet the description, if they are returned to us within 14 days. Beyond that period you will be deemed to have accepted the goods and you must therefore check the goods promptly on receipt. Please note that this period is reduced to 7 days for clearance bargains and 'NCCR, products as set out in condition 12.

#### PLAN PRO 's liability

(1) In its dealings with Business Customers, PLAN PRO shall under no circumstances be liable for any consequential or indirect damage or loss, however caused, including (but not restricted to) loss of business or profits, loss of goodwill, damage to trading relationships loss of data and other financial loss. ("Financial loss" in this sense does not refer to the price you have paid for the goods, which we may be liable to refund to you, in whole or in part, if the goods are faulty or do not comply with their description).

PLAN PRO 's liability in respect of all other losses shall be limited to the invoiced amount of the relevant order.

(2) Nothing in this agreement shall limit PLAN PRO's liability for death or personal injury caused by its negligence.

#### Health and Safety

(1) PLAN PRO confirms that the goods it supplies as a distributor do not present a hazard to health and safety

- (a) when properly used for the purpose for which they are designed; and
- (b) if the Customer takes reasonable and normal precautions in their use.

#### Force Majeure

(1) Where, in spite of its reasonable efforts, PLAN PRO is unable to perform an obligation due to circumstances beyond its reasonable control, it shall not be deemed to be in breach of its contract with the Customer.

#### Special Rules for Clearance Bargains & Non-Current Catalogue Requests ('NCCR') Products

Please note that special terms apply to Consumers who wish to return goods, which prevail over the provisions of this Clause 12. Customers who are Consumers are referred to Clause 13.

(1) Goods sold as 'Clearance Bargains' or "Stock Blowout" are downgraded goods that PLAN PRO is able to offer at a discount on the normal catalogue price. Stocks of goods offered as Clearance Bargains are limited and such goods are sold subject to the following special rules. These special rules apply in addition to, and in the event of any conflict override, all of PLAN PRO's other terms and conditions, except those terms and conditions specifically covering Consumers.

(2) Clearance Bargains are graded according to the condition of the goods, which is described at the point of sale. The length of the guarantee (if any), with the benefit of which the goods are sold, is specified in the description of the relevant grade.

(3) Clearance Bargains, by their very nature, have limited availability. Upon receipt of an order for Clearance Bargains, PLAN PRO will check stock availability. Until stock availability is confirmed to the customer, a contract for sale will not be created and no payment will be debited from the customer.

(4) All goods sold by PLAN PRO as 'Non-current catalogue requests' ('NCCR') or 'Specials' are sold subject to the following special rules that apply in addition to PLAN PRO 's other terms and conditions.

- (a) Products are non-returnable unless we have made an error or the goods are faulty;
- (b) quoted prices are valid for 14 days only, and
- (c) quoted prices are not subject to value, cash or volume discounts.

The Consumer Protection (Distance Selling) Regulations 2000

(1) Contracts for the purchase of goods by a Customer not acting in the course of a business and made over the telephone or through the PLAN PRO website, or by mail order, are, with the exception of certain excepted contracts, subject to The Consumer Protection (Distance Selling) Regulations 2000 ('the Regulations').

2) If the Regulations apply, Customers may cancel goods purchased from PLAN PRO by sending a written notice of cancellation by post or hand delivery addressed to Customer Services at PLAN PRO.

(3) The notice of cancellation must be delivered within 7 working days of the day after date of delivery of the goods.

(4) The Customer will be responsible for the cost of returning the goods if he or she exercises this right of cancellation under the Regulations. If the Customer does not actually return the goods to PLAN PRO, the Customer is under a duty to make the goods available for collection at the Customer's expense from the address to which they were delivered.

(5) The Customer is under a duty to retain possession of the goods whilst awaiting return to PLAN PRO and to take reasonable care of them during this period. The Customer will be liable for any loss of or damage to the goods if he or she fails to comply with this obligation.

## Errors and Omissions

(1) PLAN PRO makes every effort to ensure that all prices and descriptions quoted in its catalogue and on its website are correct and accurate. However, the frenetic tempo of e-commerce makes it inevitable that mistakes will occasionally occur. In the case of a manifest error or omission, PLAN PRO will be entitled to rescind the contract, notwithstanding that it has already accepted the Customer's order and/or received payment from the Customer. PLAN PRO's liability in that event will be limited to the return of any money the Customer has paid in respect of the order. In the case of a manifest error in relation to price, the Customer will be entitled to purchase the goods by paying the difference between the quoted price and the correct price, as confirmed in writing by PLAN PRO after the manifest error has been discovered.

(2) A 'manifest error', as the term is used in sub-paragraph (1) above, means, in relation to an incorrect price, a price quoted in error by PLAN PRO which is more than 10% less than the price that would have been quoted had the mistake not been made.

## WEEE Regulations

For all Goods sold in the UK which fall under the WEEE Regulations, the Business Customer shall ensure they follow the Producer (manufacturer) directions for disposal and recycling thereof. PLAN PRO shall not be responsible for any costs thereof. Such directions can be found either accompanying the Goods or on the manufacturers' website. The household user (Consumer) is required to log on to <http://www.recycle-more.co.uk> for details of their nearest disposal and recycle operation in the UK and agrees to return all Goods as directed on the site and in accordance with the Regulations.

Selling products directly to an end-user in another Member State is known as 'distance selling'. The WEEE Directive and Member State WEEE Regulations state that PLAN PRO is not responsible for WEEE arising from distance sales of business products directly to the business customer in other Member States. Instead, it is the business customers' responsibility to ensure that products which they buy through distance selling arrangements are managed in an environmentally responsible manner at the end of life and in accordance with the WEEE Regulations. In purchasing such products from PLAN PRO the Business Customer agrees to comply with these Regulations and, in so doing, the Business Customer agrees to register with the WEEE Registry in Ireland.

## General

- (1) Nothing in these terms and conditions affects your statutory rights as a Consumer.
- (2) If any provision in this Agreement is held to be invalid or unenforceable, it shall be deemed severed from the Agreement and this shall not affect the validity or enforceability of the remaining provisions.
- (3) Any waiver of a breach of this Agreement must be in writing.
- (4) Any variation of this Agreement must be in writing and signed by a duly authorised PLAN PRO official.
- (5) The headings are for convenience only and shall not affect the interpretation of this Agreement.
- (6) Any notices given under this Agreement shall be in writing and sent (a) by first class pre-paid post to the last known address of the party; or (b) by fax to their last known fax number; or (c) by e-mail to the last notified e-mail address of the party.
- (7) These terms and conditions shall be governed by and construed in accordance with the laws of Germany and the parties submit to the non-exclusive jurisdiction of the German courts.
- (8) PLAN PRO may at its discretion record telephone transactions for staff training and quality control purposes.