

## General Terms and Conditions (GTC) of the Bundesamt für Eich- und Vermessungswesen (BEV) [Federal Office of Metrology and Surveying]

25 May 2018

### Legal Information pursuant to Section 5 of the Austrian E-Commerce Act [ECG]

BEV - Federal Office of Metrology and Surveying  
Marketing and Distribution  
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Supervisory authority:  
Federal Ministry for Digital und Economic Affairs

### 1. Applicability of the General Terms and Conditions

- 1.1. The following terms and conditions shall apply to delivery of analogue and digital data (hereinafter referred to as "products") which the BEV makes available to customers in accordance with section 48 of the Austrian Surveying Act [*Vermessungsgesetz*] in the course of business transactions (at customer service points or in the BEV webshop).
- 1.2. The Standard Charges and Terms and Conditions of Use of the BEV applicable at the time of conclusion of the contract shall constitute an integral part of these GTC.
- 1.3. Deviations from these General Terms and Conditions shall only be effective if they have been confirmed by the BEV in writing.
- 1.4. Applicability of general terms and conditions of the customer to the entire business relation shall expressly be excluded. In particular, if the BEV merely omits to object to other general terms and conditions this shall not be deemed to have been agreed.
- 1.5. In the case of continuing obligations the BEV shall be entitled to modify the GTC. The customer shall be notified of the modifications. If the customer objects thereto within 2 weeks, the BEV shall be entitled to terminate the contract as of the date on which the modified or amended GTC are intended to enter into force. If prices are changed during the term of contract, the changed prices shall be paid as of effectiveness of the price changes.
- 1.6. If individual provisions of these GTC are ineffective in whole or in part due to statutory provisions, the remaining provisions of these GTC shall continue to be effective without change.
- 1.7. The products offered in the present General Terms and Conditions also refer to business cases in line with the Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE).

## 2. Products offered by the BEV

- 2.1. For the essential characteristics of BEV's products please see the product information at [www.bev.gv.at](http://www.bev.gv.at) or the product information available at the customer service points.
- 2.2. The descriptions, drawings or illustrations which are included in the product information, as well as price lists, printed matter, catalogues or separate data carriers have been produced according to best knowledge. However, the BEV shall not assume any liability for possible printing errors, technical changes to the products, properties of the products or up-to-dateness, correctness, completeness or quality of the information provided. In this connection the BEV shall not be liable either for direct or indirect damage or consequential damage, including lost profit or lost savings, unless the customer is expressly and bindingly promised specific product properties in writing.
- 2.3. In principle, the BEV shall not provide the customer with software for reading or processing digital data, unless the customer is expressly offered such software in the product information.
- 2.4. The BEV shall endeavour to provide products in the BEV webshop without failures. Due to maintenance work or failures the possibilities of use may be limited and/or interrupted temporarily. No claims for compensation may be deduced therefrom.
- 2.5. All of BEV's product offers and product information shall always be subject to change unless the BEV has expressly made a binding written declaration to the customer.

## 3. Terms of supply and payment

- 3.1. BEV products may be purchased by customers whose names are known and by anonymous customers at customer service points as well as by registered and unregistered customers at the BEV webshop.
- 3.2. Only a limited product range is available for anonymous and unregistered customers and payment shall, in principle, be effected immediately upon delivery of the product(s) ordered.
- 3.3. Customers whose names are known and registered customers may purchase products beyond the limited range of products. These customers shall have the options of payment immediately upon delivery or periodical payment under a subscriber agreement.
  - 3.3.1. If the payment method immediately upon delivery option is chosen, the customer shall effect payment immediately upon delivery of the product(s). At the BEV webshop this payment option is available in the CASH service package.
  - 3.3.2. The option of periodical payment shall require a separate written subscriber agreement between the customer and the BEV. The customer shall send signed subscriber agreements to the BEV by postal service or fax. Upon receipt and acceptance of the subscriber agreement the registered customer's password for the BEV webshop (SUBSCRIBER service package) shall be enabled. The registered customer shall be notified thereof by e-mail. In the case of subscriber agreements which are not handled via the BEV webshop, the customer whose name is known shall be notified in writing of acceptance. Payment shall be effected periodically in arrears at the agreed dates.

- 3.3.3. The following shall be enclosed with the subscriber agreement
1. proof of identity (copy of the driving licence, passport, ID card)
  2. if applicable: proof of entrepreneurship (by means of an excerpt from the Business Register, special power of attorney).

- 3.3.4. Notwithstanding the provisions of point 3.3.3 public bodies need no enclosures to the subscriber agreement. They just have to put an official stamp on the subscriber agreement and sign it.

#### **4. Contracting party (customer) of the BEV**

- 4.1. Purchase orders exceeding the limited product range shall be subject to provision of customer data (customers known by name) by completing the relevant form at the BEV customer service points. At the BEV webshop complete entry of master data, a user name and a password shall be required for registration (registered customers).
- 4.2. The customer shall be liable for accuracy and completeness of the data provided to the BEV in the course of business transactions.
- 4.3. Customers known by name shall notify a customer service point of their data changes, and registered customers shall do so at the BEV webshop.
- 4.4. The registered customer shall be solely responsible for confidential treatment of his user name and password. The customer shall be liable for all actions handled via his access to the BEV webshop. By entering the correct user name and the password the relevant customer shall be deemed legitimized vis-à-vis the BEV. The BEV shall not be obliged to verify the customer's identity in any other way. The BEV shall not be liable for loss or damage resulting from a violation of this provision by the registered customer.

#### **5. General provisions regarding the contractual relationship**

- 5.1. All purchase orders placed by the customer shall always be considered an offer to conclude a contract.
- 5.2. The customer shall be bound by his statement that he is willing to enter into a contract for a period of two weeks as of the date of receipt of the purchase order. The period shall commence upon receipt of the offer (purchase order) by the BEV. The customer shall expressly be informed about the time limit and about the significance of the customer's statement.
- 5.3. Usability of the data for specific purposes of the customer shall not be part of the contract unless expressly agreed in writing.
- 5.4. The customer shall not transfer his rights or obligations to third parties without BEV's express written consent.
- 5.5. The language of the contract, purchase order and business transactions shall be German.
- 5.6. The place of payment and fulfilment for all products and services shall be the Bundesamt für Eich- und Vermessungswesen, Schiffamtsgasse 1-3, 1020 Vienna. However, this shall not apply to purchase orders of the customer placed and fulfilled at BEV's customer service points, which are immediately paid for by the customer. In these cases the relevant customer service point shall be the place of payment and fulfilment.
- 5.7. Central Customer Service [*Zentrales Kundenservice*], Schiffamtsgasse 1-3, in 1020 Vienna shall exclusively be in charge of complaints.

## 6. Special provisions regarding the contractual relationship at customer service points

- 6.1. Purchase orders shall exclusively be placed by means of BEV's purchase order forms, which are available at the customer service points or may be downloaded from the website [www.bev.gv.at](http://www.bev.gv.at).
- 6.2. Only a purchase order form that has been fully completed as specified and signed shall be considered a valid purchase order.
- 6.3. Purchase orders shall be submitted by postal service, fax or personally at any of BEV's customer service points.
- 6.4. The BEV shall be entitled to accept the offer expressly or conclusively (implicitly); dispatch of the goods ordered shall constitute conclusive acceptance of the offer.

## 7. Special provisions regarding the contractual relationship at the BEV webshop

- 7.1. The prerequisite for electronic commerce with the BEV is use of an appropriate browser (see [www.bev.gv.at](http://www.bev.gv.at)).
- 7.2. Purchase orders shall exclusively be possible via the purchase order form of the BEV webshop or the BEV Product-Webservice system interface.
- 7.3. Completed purchase order forms or the shopping cart shall be confirmed by mouse click after having been checked by the customer and thereby transmitted to the BEV. The BEV shall not be obliged to reconstruct mutilated messages transmitted in the course of electronic commerce.
- 7.4. The customer shall receive an automatic confirmation e-mail upon receipt of the purchase order by the BEV.
- 7.5. After the purchase order has been checked, in the course of the order process (BEV webshop) the customer shall be sent an order confirmation under section 5d of the Austrian Consumer Protection Act [*Konsumentenschutzgesetz/KSchG*] to the e-mail address provided by the customer.
- 7.6. As far as the BEV is able to send an order confirmation immediately after the purchase order has been placed, the customer shall be sent a combined acknowledgement of receipt and order.
- 7.7. A valid contractual relationship in the BEV webshop shall only be concluded by BEV's express statement (acknowledgment of order) to the customer by e-mail. For that purpose and for transmission of other legal notifications the customer shall provide an e-mail address in the BEV webshop.
- 7.8. Registered customers may retrieve valid purchase orders via the purchase order history and/or invoice history. Unregistered customers can only be sent an acknowledgment of order as described in Clause 7.5.

## 8. Prices

- 8.1. BEV's Standard Charges and Terms and Conditions of Use applicable at the time the purchase order is placed shall be taken as the basis of calculation, bearing in mind Clause 1.5.

8.2. For the production of products, a media flat rate of EUR 3,00 per purchase order including handling shall be charged. In the case of physical products, a packaging flat rate of EUR 1,50 per purchase order including handling shall be charged for packaging material. For standard shipments within Austria, a postage flat rate of EUR 3,00 will be charged. For deliveries abroad, the postage flat rate amounts to EUR 7,00. If products are delivered COD, EUR 9,00 shall be paid for shipments within Austria and EUR 11,50 for shipments abroad where such mode of shipping is possible. In this case the COD flat rate shall replace the postage flat rate.

## **9. Delivery**

- 9.1. The BEV undertakes to send or deliver the products ordered which are on stock to the customer within the delivery periods stated in the customer information but not later than within 20 days of purchase order receipt.
- 9.2. Products which are manufactured according to customer specifications or clearly tailored to meet personal requirements shall be delivered within a delivery period to be agreed with the customer or, for lack of a separate delivery agreement, within 20 days.
- 9.3. If the BEV is unable to fulfil the customer's order due to important or unforeseeable reasons, the BEV shall notify the customer thereof immediately and not later than within two weeks of purchase order receipt.
- 9.4. If the BEV is unable to meet the delivery time for cause or unforeseeable reasons, the BEV shall in any case contact the customer directly in order to reach an agreement on the delivery period.
- 9.5. If the BEV is in delay of delivery, the customer shall be entitled to withdraw from the contract after a reasonable period.
- 9.6. If products cannot be delivered online, they shall be shipped by customary modes of transport (postal service, courier services, etc.).
- 9.7. In the case of online delivery the products shall be transmitted to the customer via a download area on the internet. The customer shall be informed of the download area by e-mail. The download area shall be kept up for 90 days.
- 9.8. Risk and accident shall pass to the customer upon delivery of the products to the carrier (postal service, courier services, forwarding agents, carriers, etc.). As of that time the customer shall bear the risk of loss and accident, the risk of loss without fault and the risk of destruction of or damage to the products.
- 9.9. If digital data delivered online are lost or received in a mutilated form only, the BEV shall make available such digital data to the customer again via the download area upon notification by the customer if the reasons for loss or mutilation are in BEV's control.
- 9.10. If the customer is in default of acceptance, the BEV shall be entitled to claim the suffered damages, with the customer being obliged to prove that the damage was smaller.
- 9.11. If partial deliveries are possible, they shall also be legal. Every partial delivery shall be considered a separate transaction and may be invoiced separately by the BEV.

## 10. Right of withdrawal

- 10.1. If the customer is a consumer as defined by the Austrian Consumer Protection Act, he may withdraw from a contract that was concluded without the simultaneous physical presence of the parties, subject to the following conditions (10.2 to 10.6).
- 10.2. The period for withdrawal shall be 14 working days, with Saturdays not being considered working days. In the case of contracts for delivery of products the period shall commence on the day on which they are received by the consumer. It will be sufficient to post the letter of withdrawal within such period.
- 10.3. The right of withdrawal shall not apply to the following products ordered:
  - 10.3.1. Products manufactured according to customer specifications or clearly tailored to meet personal requirements.
  - 10.3.2. Purchase orders for digital data if the digital data supplied has been unsealed by the consumer. Unsealing shall mean physical separation of the digital data from customary packaging, removal of shrink wrap, if any, from the product itself, installing of digital data or other actions equal to unsealing as described in this paragraph.
  - 10.3.3. Products transmitted online (downloads).
- 10.4. If the customer withdraws from the contract he shall be obliged to immediately return the received product in its original packaging. The product shall be returned within three working days after the withdrawal notice was sent.
- 10.5. The notice of withdrawal shall be sent to and the product shall be returned to the BEV, Customer Service [*Kundenservice*], Schiffamtsgasse 1-3, 1020 Vienna.
- 10.6. The customer shall be obliged to bear any and all costs incurred in connection with returning the products. In the case of damage to the product the BEV shall be entitled to deduct an amount equal to the damage from the sum to be refunded and to only transfer the balance.
- 10.7. The BEV undertakes to immediately credit the payment effected by the customer or, upon request, to refund the amount to the account provided by the customer.

## 11. Termination of a subscriber agreement and of continuing obligations

- 11.1. A subscriber agreement (as defined in Clause 3.3.3) and/or a continuing obligation may be terminated by the customer as of the end of any quarter by giving one month's written notice. Special regulations in contracts concluded shall prevail over this provision.
- 11.2. The customer and the BEV shall have the right to terminate the contract for cause. Good cause exists, in particular, if the customer continues to violate material provisions of these General Terms and Conditions and the Terms and Conditions of Use despite a warning.
- 11.3. Upon the effectiveness of termination the registered customer's access to the webshop shall be blocked and business transactions under subscriber agreements at customer service points with customers whose names are known shall be terminated.
- 11.4. If the access code of the registered customer has not been used for a period of 12 months, the subscriber agreement shall automatically be terminated by the BEV.



## 12. Warranty and liability

- 12.1. The ordering party acknowledges that in the event that the statutory prerequisites for a warranty claim have been fulfilled, the BEV shall, at first, be entitled to improvement by replacement or supplementing of that which is missing. Improvement by the customer or third parties shall only be possible with the express consent of the BEV.
- 12.2. The customer shall be entitled to demand price reduction only upon fruitless expiration of a reasonable period for improvement to be fixed on a case-by-case basis.
- 12.3. The customer shall immediately return the defective product to the BEV. In order to ensure that the complaint will be processed as soon as possible, a copy of the invoice/delivery note and a detailed description of the defect shall be enclosed with the returned product.
- 12.4. The product shall not be improved if an examination of the returned product shows that the defect was caused by the customer's negligence (improper handling and operation or use, improper packaging of products complained about by the customer, etc.). The BEV shall immediately notify the customer thereof by e-mail.
- 12.5. If the customer is an entrepreneur as defined by the Austrian Consumer Protection Act (KSchG), the warranty period shall only be 6 months; otherwise it shall be 2 years.
- 12.6. The BEV shall assume no liability for defects of the products, in particular for consequential damage, indirect damage, losses or lost profit, except in the case of wilful intent or gross negligence. The BEV shall not be liable either for defects caused by faulty handling by the customer or by external impact. No claim for damages whatsoever may be deduced from a termination of a continuing obligation by the BEV.
- 12.7. Likewise, the BEV shall not be liable for defective or incompatible software of the customer or third parties in connection with reading or processing of digital data of the BEV.
- 12.8. The parties mutually and expressly agree on exclusion of liability for property damage in case of ordinary negligence on the part of the BEV.
- 12.9. For the rest, warranty and liability shall be subject to the statutory provisions.

## 13. Payments and default

- 13.1. To the extent technically provided for, payments may be effected by means of payment slip, direct debiting, credit card, COD, debit card or in cash.
- 13.2. No agreements on payment by instalments have been provided for.
- 13.3. Invoice amounts shall be transferred to an account specified by the BEV without any deductions, free of cash discounts and bank charges, within a period of 30 days of the invoice date. The customer shall be obliged to bear the bank charges related to the payment, if any.
- 13.4. The customer shall not be entitled to withhold or set off payments.
- 13.5. If the customer is in default of payment, the BEV shall be entitled to charge default interest at a rate of 8% above the base interest rate published by Austrian central bank [*Oesterreichische Nationalbank*].

- 13.6. In the event of default the customer shall be obliged to bear any and all expenses incurred in connection with collection of the account receivable as well as necessary costs of appropriate legal action, if any.
- 13.7. If the BEV incurs additional expenses due to e.g. an uncovered account in case of a direct debit, the BEV is entitled to charge these expenses and costs.

#### **14. Retention of title and reservation of the right to use the data**

- 14.1. The BEV shall retain title to analogue data supplied by it until full payment.
- 14.2. The customer shall be prohibited from exercising the rights to use the data until payment of the total invoice amount.
- 14.3. The customer shall only be entitled to resell, pledge, transfer by way of security, let or take abroad products subject to retention of title upon BEV's prior written consent.
- 14.4. To the extent that third parties have access to the products subject to retention of title, the customer shall indicate BEV's title and rights to use the products and immediately notify those third parties thereof in writing.
- 14.5. The customer shall be liable to the BEV for any damage resulting therefrom.

#### **15. General**

- 15.1. The UN Convention on Contracts for the International Sale of Goods (UN Sales Law) and any and all provisions referring to UN Sales Law shall expressly be excluded. Unless mandatory statutory provisions to the contrary exist, the parties agree that Austrian law shall apply.
- 15.2. Save for legal transactions subject to the Austrian Consumer Protection Act (KSchG), the parties agree that the court in Vienna having jurisdiction over the subject-matter shall decide on all disputes over the issue of conclusion of the contract or which arise out of the contract.
- 15.3. If the customer is a consumer as defined by the Austrian Consumer Protection Act (KSchG), the court having jurisdiction over the judicial district in which the customer has his domicile, habitual residence or place of work shall be the competent authority.
- 15.4. If individual provisions of this contract are ineffective, void or cancelled, the remaining provisions shall not be affected. The ineffective cancelled provision or void provision of the contract shall be replaced by a provision which comes as close as possible to the economic intentions of the same.

#### **16. Special regulations for business cases in line with the INSPIRE Directive** (Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007)

- 16.1. The term "third parties" within the meaning of the present General Terms and Conditions also includes public authorities according to section 3 para 9 of the INSPIRE Directive.
- 16.2. If the customer is a Community institution or body, section 2.3.8 of the Standard Charges and Licensing Conditions of the BEV concerning data editing and processing by a contractor on behalf of the customer is not applicable. According to section 4 para 2 of the Regulation 268/2010 of the European Commission, however, the Community institution or body (customer) has to take every possible measure in order to prevent any unauthorised use of spatial data and services. Furthermore, in this



case the customer shall be allowed to pass on BEV's data to a contractor for the purpose of editing the data. Any use by the contractor going beyond that order shall not be permitted. The legal liability in case of unauthorised use by the contractor lies with the Community institution or body.

16.3. Clauses 14.2 and 14.3 of the present General Terms and Conditions are not applicable.

## **17. Special regulations for the electronic delivery of invoices**

17.1. Validity: the special regulations for the electronic delivery of invoices are only valid for ABO-customers in accordance with point 3.3.2 of the GTC of the BEV.

17.2. Delivery of invoice: the BEV delivers the monthly pdf-invoice as an attachment to an e-mail to all ABO-customers. The BEV uses the e-mail address given by the customer in the course of the customer registration. The customer waives his right to postal delivery. The BEV does not have to accept the order for the electronic delivery of an invoice by e-mail. The customer has to see to it that he is able to receive the electronic invoice and thus has to adjust any filters or firewalls accordingly. Any automatic electronic answers to the BEV (e.g. absence message) can not be taken into account and do not preclude a valid delivery.

17.3. E-mail address: the customer has to immediately and duly inform the BEV about any change of the e-mail address for the invoice. There are two possibilities: either the customer changes his e-mail address himself in "Kunden- und Benutzerverwaltung" of the BEV or he sends the new e-mail address in writing to: BEV, Kundenservice, Schiffamtsgasse 1-3, 1020 Vienna. Delivery of invoices of the BEV to the latest known address of the customer is considered delivered, if the customer has not informed the BEV about the change of the e-mail address.

17.4. Termination / Withdrawal: the customer can at any time withdraw his permission for the electronic delivery of the invoice by e-mail. New customers can refuse electronic delivery already in the course of the registration process. For the existing ABO-customer there are two possibilities to legally withdraw permission. Either the customer deactivates "Elektronische Rechnungslegung" in the "Kunden- und Benutzerverwaltung" himself and thus will receive a paper invoice by post or he sends the termination in writing to the following address: BEV, Kundenservice, Schiffamtsgasse 1-3, 1020 Vienna. After delivery to the BEV and processing of the written termination the customer will receive the invoice by post to the last known postal address. The BEV reserves the right to change the delivery from electronic delivery to the last known postal address due to important reasons.

17.5. Security: the BEV is not liable for any damages resulting from the greater risk of electronic deliver as compared to postal delivery. The costumer carries the greater risk of 3<sup>rd</sup> parties' unauthorized access incurred by the storage of the electronic invoice.

Vienna, 25 May 2018  
Dipl.-Ing. Wernher Hoffmann  
Head of the BEV

GZ [file reference] BEV-11.719/0001-R1/2018, General Terms and Conditions of the BEV