

# GENERAL CONDITIONS OF SALE (GCS) CHG-MERIDIAN



As of March 2007

## Part A General Conditions

### I. Definitions

In these Conditions:

**"Buyer"**: the business person(s), firm, company or other legal entity who purchases the equipment from the Seller;

**"Seller"**: the company accepting the Buyer's offer to purchase equipment as provided in Part B below;

**"Sales Contract"**: any written sales contract signed by the Seller confirming acceptance of the Buyer's offer to purchase equipment on these general conditions of sale.

### 1 Scope

- 1.1 The following terms will apply to all sales of used IT equipment by the Seller to the exclusion of all other terms and conditions. Each sale of used IT equipment by the Seller shall be on these terms and conditions even if these terms have not expressly been agreed by the Buyer. The Seller will not sell equipment to consumers and these terms apply exclusively to sales to firms, companies or other legal entities and individuals purchasing for business purposes. Terms and conditions endorsed upon or delivered with or contained in the Buyer's purchase order or any other documentation will not form part of these terms unless the Seller expressly agrees in writing. If the Seller delivers the equipment to the Buyer without signing a Sales Contract then these terms shall apply to the sale to the exclusion of any terms and conditions which the Buyer purports to apply under any purchase order or other document.
- 1.2 These terms shall be incorporated by reference into every Sales Contract which shall be the entire agreement between the parties relating to the sale of the equipment. Any representations, or verbal agreements or undertakings are superseded and shall have no effect. No order placed by the Buyer shall be accepted until the Seller signs the written Sales Contract with the Buyer or if earlier, the Buyer collects the Equipment from the Seller.

### 2 Conclusion of contract

- 2.1 By signing a Sales Contract the Seller agrees to sell and the Buyer agrees to purchase the used IT equipment described in the Sales Contract which incorporates and is subject to these terms.
- 2.2 The description of the Equipment shall be as set out in the Sales Contract. All drawings, descriptive matter, specifications and advertising issued by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Equipment described in them. They will not form part of the Sales Contract.

### 3 Prices

- 3.1 Unless otherwise agreed in the Sales Contract, the price for the equipment set out in the Sales Contract is ex Works (EXW) as defined in Incoterm 2000.
- 3.2 VAT is not included in the prices, but will be separately indicated on the invoice at the applicable rate on the day on which the invoice is tendered. VAT is due and payable to the Seller unless the Buyer supplies the Seller with an export voucher prior to issue of the invoice.

### 4 Payment terms, consignment conditions, default by Buyer

- 4.1 The sales price and all EXW costs or charges for loading, unloading, carriage and insurance are due in full on or before supply of the equipment and must be paid in cleared funds before delivery, by bank transfer or by bank-guaranteed cheque without any set off, counterclaim or deductions. Time shall be the essence of payment.

4.2 Delivery of the equipment described in the Sales Contract takes place ex Works (EXW) as defined in Incoterm 2000 from Seller's address set out in the Sales Contract. The Seller will make the equipment available in packaging suitable for transportation.

4.3 Delivery of the equipment will only take place after payment in full of the total sales price and when the cleared funds have appeared in the Seller's account. If the Buyer defaults, the Seller is entitled to claim default interest at the then applicable statutory rate. If greater losses can be proven the Seller is entitled to claim further damages. This is without prejudice to the Seller's rights set out in clause 7 which are in addition to the rights set out in this clause 4.3.

4.4 The Seller will notify the Buyer in the Sales Contract of the date on which the equipment will be ready for collection (collection date). If the Buyer does not collect the equipment on the collection date without prejudice to the Seller's other rights the provisions of Article 7 below shall apply. Any dates given are an estimate only and time for delivery shall not be made of the essence by notice. The Buyer will inspect the equipment before accepting delivery.

4.5 The Seller will consider requests from the Buyer to arrange for the delivery of equipment to an address specified by the Buyer at the Buyer's expense and risk.

### 5 Partial deliveries

The Seller is entitled to make partial deliveries, but these will only take place after payment in full of the total sales price in cleared funds.

### 6 Export

- 6.1 The Buyer is responsible for collecting any export permits required for the equipment.
- 6.2 The Buyer confirms its undertaking not to export or re-export, directly or indirectly, any products or technical data to any countries for which the US Government or any other official body requires valid US Government permission or the permission of any other official body for export or re-export at that time, without obtaining the prior written permission of the US Department of Commerce and/or any other US official body.

### 7 Buyer's default, Seller's withdrawal, damages

- 7.1 Reserving all the Seller's other rights, the Seller is entitled to withdraw from the Sales Contract if any of the following events occur:
- If the sales price has not been paid in cleared funds by the Buyer within three days of the collection date for the equipment specified on the Sales Contract.
  - The equipment is not collected by the Buyer, within seven days of the collection date specified in the Sales Contract.
- 7.2 The Buyer will compensate the Seller for any contingent losses, which shall include loss of profits following sale of the equipment at a lower price. In addition the Buyer must pay the costs of storing the equipment up to the date of resale and removal, at a rate of € 8,50 per pallet per day, as well as a one-off handling charge of € 75,00 being a genuine pre-estimate of the Seller's costs.

### 8 Transfer of risk, customs duties, levies and expenses

Risk in the equipment is transferred to the Buyer on collection of the purchased equipment, or in the case of clause 4.5, on collection by the carrier. If the Buyer does not collect the equipment on the collection date the risk of loss or damage to the equipment is transferred to the Buyer. Following the transfer of risk, the Buyer assumes all costs and risks of the transportation of the equipment including without prejudice to the generality of the foregoing: transport costs, customs duties, taxes and other official levies, the costs of customs formalities, for imports and exports, insurances, losses, damages, and delays.

## 9 Warranties and guarantee

- 9.1 The equipment sold is used equipment that is sold without any guarantee whether express or implied by law. The Seller does not offer any implied or express guarantee of the condition or durability of the equipment, except as expressly provided in the Sales Contract. The Seller assumes no liability for the compatibility of the various items of equipment and components with one another or the compatibility of delivered equipment with IT equipment already being used by the Buyer.
- 9.2 If the equipment is identified in the Sales Contract as having the benefit of a warranty then the following provisions apply. The Seller warrants that the equipment specifically identified as Type A or Type B in the Sales Contract under Section 1 of the Sales Contract complies with one of other of the following descriptions. Equipment identified as Type A used equipment is warranted to be visually and technically fault-free, subject to the normal wear and tear for the warranty period set out in Section 1 of Sales Contract. Equipment identified as Type B used equipment is warranted to be technically fault-free with some visual faults that will not affect the functioning of the equipment during the warranty period set out in Section 1 of the Sales Contract. If the equipment should not satisfy its warranty, the Buyer can return the equipment during the relevant warranty period specified under Section 1. The warranty period starts on the day on which the equipment is collected by the Buyer or the date the equipment is dispatched if earlier.
- 9.3 Warranty claims must be submitted in writing by fully completing and returning the warranty claim form which shall be at the Buyer's expense. The warranty claim form will be posted on request or may be downloaded from the Seller's website ([www.chg-meridian.com](http://www.chg-meridian.com)).
- 9.4 Rechargeable batteries and consumables are expressly excluded from any warranty given by the Seller under clause 9.2.
- 9.5 Unless expressly mentioned in the Sales Contract, software, handbooks and technical support services are not sold with the equipment. If any freely transferable OEM software forms part of the equipment consignment it will be supplied to the Buyer on the terms of the relevant OEM licence. The Buyer is responsible for checking the terms of any OEM licence and the Buyer assumes full liability for any damages resulting from any violation of these licence rights.
- 9.6 The Seller assumes no liability towards the Buyer for force majeure or delays due to natural catastrophes, fire, flood, war, strike, industrial disputes, non- or late delivery of components, state or official intervention or prescriptions.

## 10 Retention of ownership

The Seller retains ownership of the equipment sold until all payments due to the Seller by the Buyer whether for the price of this equipment or other equipment sold to the Buyer have been made.

## Part B Additional Conditions

### The Seller

When equipment is made available for collection or is delivered to the Buyer from any location in the Federal Republic of Germany the Seller is CHG-MERIDIAN Deutsche Computer Leasing AG.

When equipment is made available for collection or is delivered to the Buyer from any location in the United Kingdom the Seller is CHG-MERIDIAN UK Limited.

### Additional Conditions that apply when the Seller is CHG-MERIDIAN Deutsche Computer Leasing AG

#### A APPLICABLE LAW AND JURISDICTION

- A.1 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by the law of the Federal Republic of Germany. The application of International Sales Law (EKG and EAG) as well as the UN Convention on Contracts for the International Sales of Goods (CISG) is explicitly excluded.
- A.2 The Seller and Buyer agree that Ravensburg shall have jurisdiction for all legal disputes whether or not the Buyer is resident or domiciled in Germany. This does not affect the Seller's right to bring proceedings in the Buyer's local jurisdiction.

- A.3 Place of performance is Mörfelden.

#### B PAYMENT AND INTEREST

- B.1 The Buyer will only be allowed to settle his account by means of setting off amount owing against the purchase price where these have been legally recognised, are not disputed or have been accepted by the Seller. The Buyer will only be entitled to retention rights in terms of undisputed or legally recognised claims deriving from this same legal relationship.

#### C. LIMITATION OF LIABILITY

- C.1 The Seller assumes legal liability for all claims for damages brought by the Buyer on the grounds of intent or gross negligence, which includes intent or gross negligence on the part of the Seller's representatives or agents. To the extent that the Seller is not accused of intentional breach of contract, compensation will be limited to foreseeable direct damages.
- C.2 The Seller assumes legal liability where he culpably breaches a material contractual obligation; in this case however compensation is limited to foreseeable direct damages.
- C.3 Liability for culpable damage to life, limb or health remains unaffected; this also applies to compulsory liability in terms of the German Product Liability Act.
- C.4 Any liability exceeding that foreseen in C.1 to C.3 is excluded without considering the legal nature of the claims being made. This applies in particular to claims for compensation due to *culpa in contrahendo*, due to any other dereliction's of duty or due to tortious claims for property damages in terms § 823 German Civil Code [BGB]. In so far as liability for damages towards the Seller is excluded or limited, this also applies with regard to personal liability for wage and salaried employees, staff, representatives and agents of the Seller.
- C.5 The Buyer shall have the right to provide evidence of minor damage to the Equipment.

#### D Profit and income tax, import turnover tax

- D.1 The Buyer must comply with applicable laws relating to VAT and other applicable taxes, where the Buyer's head office is located outside Germany. The Buyer must provide the Seller with his VAT registration number and if requested details confirming the Buyer's capacity as an entity purchasing in the course of its business, transportation details and confirmation that the Buyer has when required to do so reported the export of the equipment.
- D.2 If the Seller is provided with incomplete tax information or none at all, the Buyer will be liable for all contingent expenses and costs.
- D.3 Except for losses caused by the Seller's gross negligence or intent the Seller assumes no liability for any consequences which arise out of incomplete or absent information provided by the Buyer in respect of any taxes.

### Additional Conditions that apply when the Seller is CHG-MERIDIAN UK Limited

#### A APPLICABLE LAW AND JURISDICTION

- A.1 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the jurisdiction of the English courts which for the Buyer only shall be the exclusive jurisdiction. The application of International Sales Law (EKG and EAG) as well as the UN Convention on Contracts for the International Sales of Goods (CISG) is explicitly excluded.
- A.2 Any person who is not a party to the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term if the Contract but this does not affect any right or remedy of a third party which exists or is available apart from that act.

#### B LIMITATION OF LIABILITY

- B.1 The parties agree that the Equipment is not sold by description and that all warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- B.2 The Seller having taken all reasonable steps to fulfil its obligations hereunder including the use of accredited engineers accredited transport contractors and accredited insurers the following provisions set out the entire financial liability of the Seller to the Buyer for any breach of these conditions and any repre-

sentation, any statement or tortuous act or omission including negligence arising under or in connection with the Contract.

- B.2.1 The Seller shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract, and
- B.2.2 the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to lesser of £10,000 or the Contract price.
- B.3 Nothing in these Conditions excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence or fraudulent misrepresentation.