

§ 1 Goods & Services; Agreements

1. All goods and services, including those provided in the future, are subject to our General Terms & Conditions (as amended). They shall be deemed acknowledged when an order is placed or when goods are accepted. The legal relationship is governed by our General Terms & Conditions solely; other provisions are not part of the agreement, even if we do not explicitly contradict them.
2. These General Terms & Conditions only apply to merchants as defined in § 14 of Germany's Civil Code [BGB], legal entities under public law, and special funds under public law as defined in § 310, Paragraph 1, Civil Code.
3. Offers are non-binding. Agreements do not arise until they are confirmed in writing by one of our authorized representatives.
4. To be valid, promises, supplementary agreements, changes or additions to an agreement must be confirmed in writing by one of our authorized representatives.
5. All documents supplied to the contracting party in connection with placing of orders (e.g. documents on which an agreement is based, proposals, test programs, calculations, drawings) are our (intellectual) property. Third parties must not be allowed access to these documents. If an agreement is not set up, the documents/information must be returned or deleted and must not be used.

§ 2 Purchase on a Trial Basis

If goods are sold to the contracting party on a trial basis or for inspection and are supplied on that basis, the purchase agreement shall be deemed signed if the goods are not returned to us within 14 days. To meet this deadline for returning the goods, sending them back in a timely manner will suffice. When we deliver the goods, we will indicate this deadline in writing, as well as the legal consequences if the goods are not returned in a timely manner.

§ 3 Prices; Payment Terms; Late Payment

1. Our stated prices are net prices and are subject to shipping costs, and if applicable cash on delivery charges, installation costs, training costs etc. Depending on the shipping method, shipping costs will be based on size, weight and number of packages. We are entitled to charge an appropriate flat rate for shipping etc. instead of the actual shipping costs.
2. Discounts are only permitted if agreed separately in writing.
3. Price increases and increases in statutory value-added tax shall be borne by the contracting party if, by agreement, the goods are delivered more than 6 months after signing of an agreement. The same applies if, for reasons for which the contracting party is responsible, goods are supplied more than 6 months after the signing of an agreement.
4. Unless agreed otherwise, our invoices are due for payment immediately. Payment terms will depend on a credit check performed by us in advance. If necessary we are entitled to demand a down-payment, or advance payment in full. Orders will not be processed until funds have been received in our account conclusively and without objections. If the down-payment or advance payment has not been received in our specified account within one week of invoicing, we will no longer be bound to the order. The following payment terms apply to software development orders: 33% of the total price is payable when the order is confirmed; 33% is payable upon delivery; and 34% is payable upon acceptance.
5. The contracting party shall be considered in arrears on the date when it receives our warning letter, and at the latest 30 days after receiving the invoice if no additional warning letter is received. If the contracting party is in arrears, we are entitled to charge arrears interest of 8 percentage points above the base rate (see § 288, Paragraph 2 Civil Code) until payment has been made in full. Furthermore, if the contracting party is in arrears, or there are concrete grounds for suspecting imminent insolvency, we are entitled to refuse to fulfill the agreement, e.g. by suspending delivery of goods and/or software and by suspending provision of services. In such cases we are entitled to invoice separately for parts of the order.
6. If the contracting party is in arrears, we are entitled to withdraw from the agreement if we have given the contracting party an appropriate payment deadline and this has proved fruitless. Setting of such a deadline can be waived if the contracting party genuinely and conclusively refuses the goods/services and there are special circumstances which justify immediate withdrawal in light of both parties' interests. We are entitled to withdraw before the payment due date if it is obvious that the prerequisites for withdrawal will be met. The right to claim damages shall remain unaffected by withdrawal.
7. The provisions in Section 6 also apply if a credit limit agreed with the contracting party is exceeded.
8. The contracting party may only assert offsetting or retention rights insofar as the counterclaims have been acknowledged or are res judicata.

§ 4 Delivery Period and Performance Period; Transfer of Risk

1. The delivery period does not begin until all questions have been resolved and the contracting party's obligations have been fulfilled. In all instances the delivery period which we indicate is non-binding unless contractually agreed otherwise.
2. If there are delivery delays due to force majeure or unforeseeable circumstances or events (e.g. war, terrorist attack, disruption of transport routes, official measures or orders, supply crises, or labor disputes) that make it significantly more difficult for us to fulfill our contractual obligations, or temporarily, permanently, completely, or in part make it impossible for us to fulfill our contractual obligations, regardless of whether they arise or occur at our premises or at a supplier's premises, we are entitled to postpone or limit delivery for the duration of the problem plus an appropriate start-up period or withdraw from the agreement with regard to the non-fulfilled part. In the event of such occurrences, the contracting party is not entitled to assert compensation claims of any kind.
3. If we are late in supplying the goods and an extended deadline set for us has already passed, the buyer is entitled to withdraw from the agreement. Asserting damages claims in lieu of performance is only permitted if we caused the delay deliberately or with gross negligence and infringed major obligations. In the event of ordinary negligence, our liability shall be capped at 5% of the net invoice value of the goods that were not supplied in a timely manner. In the event of negligence, our liability shall be capped at foreseeable damages in each individual instance.
4. Our obligation to provide goods and services is based on the assumption that the contracting party has unconditionally good credit. We are therefore entitled, even if we are subject to a contractual obligation, to demand guarantees of proper fulfillment of the contracting party's liabilities, particularly payment liabilities, in a form specified by us, and to refuse to supply goods and services until guarantees have been provided, or to withdraw from our performance obligation, without thereby entitling the contracting party to assert damages claims.
5. We are entitled to carry out partial performance unless this obviously conflicts with the contracting party's interests.
6. If the goods are sent to the contracting party at its request, risk of chance destruction or deterioration of the goods passes to the contracting party when the goods are dispatched and at the latest when they leave the plant/warehouse. If, for reasons for which we are not responsible, the goods cannot be handed over, risk passes to the contracting party after it has received notification that we are ready to carry out handover. Unless indicated otherwise in writing, we will not obtain shipping insurance to cover the goods.

§ 5 Retention of Ownership; Guarantees

1. We will retain ownership of the delivered items until all claims arising from the supply agreement have been paid in full. This also applies to all future deliveries, even if we do not always explicitly invoke these provisions. If the contracting party conducts itself in a manner that infringes an agreement, in particular if it is in payment arrears after an appropriate deadline has been set, we are entitled to withdraw the delivered goods. After taking back the delivered goods, we are entitled to utilize them; revenue from such utilization shall be offset against the contracting party's liabilities, minus appropriate utilization costs. Germany's Insolvency Code [InsO], insofar as it is applicable, shall continue to apply.
2. If ownership has not yet passed to the contracting party, it must nonetheless treat the purchased items with due care. At its own cost it shall obtain adequate insurance to cover the replacement value and if necessary damage due to fire, water or theft.
3. In the event of seizure or other intervention by a third party, the contracting party must immediately notify us in writing. The contracting party is liable to us for judicial and extrajudicial costs of any legal proceedings pursuant to § 771 of Germany's Code of Civil Procedure [ZPO].
4. Prior to passing of ownership, the contracting party is not entitled to pledge the goods subject to retention of title or transfer them as collateral. As part of ordinary business operations, the contracting party is entitled to resell the goods subject to retention of title; however, it hereby transfers to us all resulting claims and guarantees against the contracting party's buyer, as a guarantee for our payment claims in the amount owed (extended retention of title); it shall do this regardless of whether the delivered item has been resold before or after processing. We hereby accept this transfer. If the contracting party is partly or completely in arrears with one or more payments, if it ceases to make payments, or if insolvency proceedings are opened regarding its assets, the contracting party is no longer entitled to exercise disposal over the goods subject to retention of title. In such cases, we are entitled to withdraw from the agreement and do not have to first give the contracting party a deadline for performance. Furthermore, we are entitled, including if we do not withdraw from the agreement, to demand surrender of the goods subject to retention of title, or to revoke the contracting party's authority to collect the receivables due from the resale.
5. Processing or modification of the supplied goods performed by the contracting party shall always be performed for us. If the delivered item is processed along with other items not belonging to us, we shall acquire co-ownership of the new item based on the ratio of the value of the delivered goods to the other processed items at the time of processing. If the items are processed or modified, we shall not become the producer as defined in § 950, Civil Code. Aside from this, the provisions which apply to items delivered subject to retention of title also apply to items created via processing.
6. The contracting party remains entitled to collect the relevant amounts, including after transfer. However, we are authorized to collect receivables ourselves if the contracting party does not meet its payment obligations by drawing on the collected revenue, or if it is in payment arrears, or if an application for opening of insolvency proceedings has been submitted, or if insolvency proceedings have been opened, or if it ceases to make payments. In such cases, we may instruct the contracting party to notify us regarding the transferred claims, supply all information necessary for collection, submit all accompanying documents, and notify the debtor (third party) regarding the transfer. However, we are not entitled to collect receivables if that would infringe the Insolvency Code.
7. If requested to do so by the contracting party, we shall release guarantees due to us insofar as the value of the guarantees exceeds covered claims by more than 20%; we are free to decide which guarantees to release.

§ 6 Acceptance Default; Right to Terminate

1. If the contracting party is in acceptance default because it has not accepted the goods, despite being obligated to do so, or if it fails to cooperate or make preparations as required, or if delivery is delayed due to reasons for which the contracting party is responsible, the goods shall be deemed delivered, and risk shall pass to the contracting party. From that point on, we shall only be liable for intentional acts or gross negligence. In the event of acceptance default, the contracting party shall bear the resulting costs, in particular warehouse costs of at least 0.5% of the net invoice amount per month.
2. If the contracting party is in acceptance default, we may demand 20% of the purchase price as compensation without the need for further verification, unless it can be demonstrated that there has been significantly less damage or no damage at all. We explicitly reserve the right to assert claims for actual damages in a higher amount than that. Furthermore, we are entitled to auction the goods or sell them privately provided we have given prior warning.
3. If, in the case of goods and services produced specially for the contracting party, it terminates further implementation of the agreement less than 90 days before the agreed delivery date, it shall pay 60% of the net order amount. If appropriate, it may demonstrate that less damage has arisen. We reserve the right to claim greater damages if they have actually occurred. Furthermore, the provisions of § 649, Civil Code also apply. In the case of standard agreements terminated less than 60 days before the agreed delivery date, 30% of the net order amount shall be payable; moreover, the provisions which apply to termination less than 90 days before the agreed delivery date also apply.

§ 7 Transfer; Retention Rights

1. The contracting party is not allowed to transfer its claims to third parties.
2. The contracting party is only entitled to assert retention rights insofar as its counterclaim is based on the same contractual relationship with us.

§ 8 Guarantees; Statute of Limitations for Defect Claims

1. Warranty claims asserted by the contracting party are based on the assumption that it must immediately check the goods after receiving them per § 377 of Germany's Commercial Code [HGB], and at the latest three days after receiving the goods must send us a written report regarding any defects found, including detailed information regarding the defect. Further claims based on obvious defects cannot be asserted. If a hidden defect is found, we must be notified in writing immediately.
2. Defect claims become statute barred after 12 months after we delivered the goods to the contracting party.
3. If, despite the fact that due attention was paid, the delivered goods have a defect that was already present on the date of risk transfer, provided a written complaint was submitted in a timely manner we will rectify the defect or supply replacement goods, depending on what the contracting party requests.
4. If there is a defect for which we are responsible, the contracting party can only assert further rights (withdrawal from the agreement or price reduction) if it first gives us two opportunities for rectification (fix the defect or supply replacement goods) within an appropriate deadline.
5. Defect claims do not arise if there are only minor deviations from the agreed specifications, or if usability is only slightly impaired, or in the event of natural wear & tear, or in the event of damage that occurred following risk transfer due to improper or negligent handling or excessive strain beyond the scope of the agreement. If the contracting party or a third party performs improper repairs & maintenance or makes improper changes, defect claims based on such actions or the consequences thereof cannot be asserted. This applies in particular to defects resulting from using unsuitable operating materials, or if the contracting party has not fulfilled the installation requirements.
6. We are entitled to charge the contracting party for additional costs resulting from rectification (fixing the defect or supplying replacement goods), in particular shipping costs, travel costs, labor costs or materials costs, insofar as these costs arise because the contracting party brings the supplied items to a place other than the place of fulfillment.
7. If the contracting party unjustifiably asserts defect claims for which we are not responsible, we are entitled to charge the contracting party appropriately for costs arising from loss assessment or remedial action.
8. The contracting party may only assert recourse claims against us insofar as it has not drawn up any agreements with its buyers (third parties) beyond statutory mandatory defect claims. The provisions in Section 6 apply by analogy to recourse claims asserted against the supplier by the contracting party.

§ 9 Damages Claims

1. Damages claims and expenditure reimbursement claims relating to defects cannot be asserted if we were unable to carry out rectification for reasons for which we were not responsible. Damages claims based on defects or consequential damages cannot be asserted insofar as we did not cause the defect intentionally or with gross negligence.
2. Damages claims cannot be asserted against us or our agents unless they are based on negligent injury to life, body or health, or intentional or negligent infringement of obligations by one of our statutory representatives or agents.
3. Furthermore, damages claims cannot be asserted against us based on infringement of obligations by us that is not grossly negligent, or based on negligent infringement of obligations by one of our statutory representatives or one of their agents that is not intentional or grossly negligent. In the event of negligence, our liability shall be limited to typical and foreseeable damages.
4. In the event of damages claims per Section 3, liability shall be capped at €500,000 per claim.
5. Damages claims become statute barred after 12 months.

§ 10 Software

In addition to the above provisions, the following provisions apply to software:

1. Warranty
 - 1.1 It should be borne in mind that given the current state of the art, it is not feasible to completely rule out problems under all operating conditions, and therefore such problems do not constitute material defects.
 - 1.2 Unless agreed otherwise, software will be supplied in the current version as of the delivery date.
 - 1.3 Software programs must match the descriptions in the manual; we cannot be expected to provide program functionalities beyond that. Descriptions in test programs, product descriptions, brochures etc. are non-binding and do not represent agreed specifications. If specifications other than those indicated in the manual are desired, this must be set forth explicitly in a written agreement between the contracting party and one of our authorized representatives.
 - 1.4 Warranties are based only on the last software/update supplied to the contracting party.
 - 1.5 In all instances the contracting party must use the software products on the approved types of data processing system. Malfunctions resulting from failure to fulfill applicable system requirements or the current minimum requirements indicated by us do not constitute defects.
 - 1.6 If a defect arises in the software, the contracting party must immediately notify us in writing after discovering the defect. When submitting a written complaint, the contracting party must provide a precise description of the defect and how and when it occurs, to help us assess the defect and rule out the possibility of an operating error. The contracting party must, at no charge, make every reasonable effort to help us locate and resolve the defect, and if necessary must supply us with data or grant access to hardware.
 - 1.7 We may fulfill our obligation to rectify defects by supplying a newer version of the program. If we provide instructions regarding a workaround solution, this shall be deemed adequate rectification if the remaining problems are only minor and reasonable from the contracting party's standpoint.
 - 1.8 If the defect is not reproducible, claims to rectification cannot be asserted.
2. Damages claims for loss of stored data cannot be asserted if the damage would not have occurred had the data been properly backed up.
 - 2.1 If the agreement is cancelled, the contracting party must return the original storage media and delete all copies of the software products including any modified copies. During the two-week period following the end of the agreement we must receive written notification that all existing copies have been deleted.
2. Usage Rights
 - 2.1 The contracting party shall be given non-transferable, non-exclusive rights to use the programs provided. The software must not be given to third parties unless we have explicitly approved this in advance through an authorized representative.
 - 2.2 The contracting party must not allow third parties to access the software, in whole or part. Individuals who are exercising the contracting party's usage rights on its behalf are not considered third parties.
 - 2.3 The contracting party hereby acknowledges that the software products, including user documentation and other documents supplied, are subject to copyright.
 - 2.4 The software supplied, including subsequent versions and parts thereof and the accompanying documentation, may only be used on one central unit. Making of copies is only permitted for the purposes of own archiving and data backup on the central unit. The contracting party must label any copies made, using the identification number, ownership stamp, copyright emblem and other markers on the software.
 - 2.5 If the contracting party infringes the usage terms, we may demand that the software and all other parts and copies be returned immediately.
 - 2.6 If it has been agreed with the contracting party that the software will be provided on a trial basis, in cases of doubt the contracting party is entitled to use the software for 30 days, provided it complies with the provisions in Section 1. During the trial period, the contracting party is entitled to withdraw from the agreement without having to give reasons, provided it does so in writing. If the contracting party withdraws from the agreement, Section 1.10 applies.
 - 2.7 If the contracting party is in arrears in paying the agreed fees, we are entitled to demand that it refrain from using the software provided. Its usage rights will be restored automatically as soon as all outstanding amounts have been paid or one of our authorized representatives explicitly gives approval.
 - 2.8 If the contracting party continues to use the software when it is no longer entitled to do so, or uses it in a manner other than that stipulated in the agreement, it shall owe 1 month's fee for each started month, subject to further claims.

§ 11 Intellectual Property Rights

1. We hereby release the contracting party from all res judicata payment obligations or payment obligations arising from settlements approved by us that are based on allegations that a supplied product infringes a German patent or other intellectual property rights. The prerequisite for this is that the contracting party must notify us immediately in writing regarding any claims asserted against it or subsequent proceedings, and must grant us authority to conduct and end the legal dispute independently, and must provide us with appropriate assistance in conducting the legal dispute.
2. We are free to decide whether to grant the contracting party the right to continue using the product or to exchange or modify the product in such a way that intellectual property rights are no longer infringed, or if the aforementioned measures are not feasible for us under commercially appropriate conditions we may withdraw the product and credit the contracting party accordingly based on applicable depreciation rates.
3. The contracting party is not entitled to assert any claims beyond those indicated above.

§ 12 Exports

The products supplied by us are intended for use in Germany only, and it is our intention that they remain there. Exporting of products is subject to export controls. It is the contracting party's responsibility to obtain information about applicable import and export regulations. The contracting party shall bear all costs of supplier declarations for demonstrating preferential origin and long-term supplier declarations pursuant to Council Regulation (EC) No 1207/2001. If further costs arise in connection with required declarations and information to be provided by us and involving third parties and costs, the contracting party hereby irrevocably releases us from those costs.

§ 13 Data Protection

Data regarding the ordering party received in the course of this business relationship will be processed by us in accordance with the relevant data protection legislation.

§ 14 Place of Jurisdiction; Severability; Applicable Law

1. The sole place of jurisdiction for all disputes arising from or in connection with the contractual relationship is the relevant court at the location of our headquarters (Municipal Court Munich, Regional Court Munich), insofar as the buyer is a merchant.
2. These General Terms & Conditions are subject to German law to the exclusion of private international law and to the exclusion of UN CISG.
3. If a provision of these General Terms & Conditions or a provision of the agreement is or becomes invalid, this shall not affect the validity of the other provisions or agreements. In such instances, in place of the invalid provision we and the contracting party shall draw up a valid provision that approximates as closely as possible to the invalid provision, within the scope of what is legally permissible. If it is not feasible, the relevant legislation shall apply in lieu of the invalid provisions.