

General Terms and Conditions of Business

1 GENERAL

The following terms and conditions apply exclusively for the overall business relationships with our customers. The customer acknowledges them as binding for this agreement and, in their particular version, also for all future transactions. We do not accept terms and conditions of the customer that are contrary to or deviate from these, regardless of when we have received such terms and conditions. The terms and conditions for software licences are described in separate agreements.

2 OFFER AND CONCLUSION OF AGREEMENTS

1. Our offers are always subject to change and non-binding.
2. The periods of validity of the offers are given in the individual offers themselves.
3. After the period of validity has expired, we are no longer bound to the prices and delivery periods named in the offer.
4. 3S-Smart Software GmbH retains the right to make changes to items to be supplied at any time and without particular notice while retaining the fundamental characteristics. If there are printing errors or errors in calculation in the offer, we retain the right to make corrections.
5. Our written order confirmation is relevant for the content of the purchase agreement. Oral agreements made by word of mouth around the time of the conclusion of the agreement which add to or change the order confirmation require our express written confirmation in order to be effective.

3 SUPPLY AND PERFORMANCE

1. Our written order confirmation is decisive for the scope of the supply obligation.
2. We are entitled to make partial deliveries if reasonable for the customer.
3. We retain the right to have orders implemented by third parties.
4. Delivery data transferred to or agreed with the customer are for orientation purposes and presume clarification of all technical questions and details. They are only binding if expressly stated to be so in writing.
5. In the case of agreed delivery times it is assumed that the customer will fulfil any obligations he may have to cooperate with us. If we undertake adaptations of programmes to meet customers' requirements or make individual programming, only requirements stated in writing are binding for us. Any interfaces must be disclosed.
6. Delays in delivery caused by force majeure, changes to official approval or legal conditions, operating disturbances, strikes or difficulties in sourcing materials - even if they affect our suppliers - are not our responsibility, even if delivery times have been definitively agreed upon.
7. The acceptance of a project must take place in writing after making available the delivery and request by 3S-Smart Software Solutions GmbH. A project is also deemed to be accepted if the delivery is in productive use and/or if, within a period of 6 weeks, no objections have been made regarding the demanded content of the project. If, within the specified period, 3S-Smart Software Solutions GmbH has not yet received either a declaration of acceptance or an error message, the project is deemed to be accepted. If there are defects that are not material, acceptance may not be refused. Any warranty claims remain unaffected by this.

8. If the customer does not accept the object of the agreement at the specified time, we are entitled to set an appropriate period of grace and to dispose of the goods in another manner after the period of grace and to deliver the goods to the customer after an appropriately extended period. Regardless of this, our rights to withdraw from the agreement or to claim damages for non-performance according to § 326 BGB (German Civil Code) remain unaffected. If we demand damages based on non-performance, we may demand (without proof) 20% of the agreed price plus payment for work already performed and material used as compensation, in so far as considerably reduced damages cannot be proven to have accrued. We retain the right to claim higher actual damages.
9. The fulfilment of the agreement on our part is subject to the reservation that the fulfilment does not conflict with any national and international regulations under foreign trade law or embargoes and/or other sanctions.

4 PRICES

1. The prices stated in our order confirmation are controlling. Our prices do not include packaging and delivery costs. The prices are exclusive of the legally valid rate of VAT.
2. List prices are applicable, if no agreement is made to the contrary.
3. Package benefits are valid only for the acquisition of the corresponding packages; no package benefit can be granted by gradual buying of individual components.

5 DESPATCH

1. Despatch and delivery – even with partial deliveries- take place from company headquarters and at the expense of the customer.
2. In the absence of specific instructions, we despatch goods in the way which seems most suitable to us. Deliveries are insured on request of the customer in his name and at his expense.

6 TRANSFER OF RISK

1. The place of performance is the registered office of the user. For any delivery, § 447 BGB (German Civil Code) is applicable.
2. If there is to be an acceptance procedure, this is controlling for transfer of risk.

7 WARRANTY, COMPLAINTS, LIABILITY

1. The item delivered is to be examined by the customer for lack of defects and completeness immediately after its delivery. Any defects which are discovered must be reported to us in writing and accompanied by a precise description. Obvious defects must be communicated in writing to us immediately after delivery; otherwise the assertion of warranty claims based on any such defect is barred. Defects discovered later must be reported to us immediately; otherwise the item delivered is deemed to be accepted, also as regards this defect.
2. If the defect only occurs in conjunction with certain hardware, the hardware must be retained ready for inspection by us in the same state in which it was when the defect was recognised.
3. If a defect should occur in the item purchased, we will first implement rework (depending on the defect, also rework on several occasions) or make replacement delivery, at our discretion. If we decide to remedy the defect, we are obliged to cover all necessary associated costs, in particular transport, work and material costs.
4. We do not accept liability for damage which is due to improper use, incorrect operation and handling, natural wear, lack of maintenance, unsuitable operating media, chemical, electrochemical or electrical influences etc. to the extent that we are not culpable for such. We are also not liable for programmes can be run on hardware that we did not supply. We do not accept liability for the running capacity of software that we have supplied if other software / third-party programmes influence such running capacity. We do not accept liability for loss of data or damages resulting from incomplete data backup or lack of such backup, here we make express reference to the responsibility of the customer.
5. We do not accept liability for damage caused by EDP viruses, unauthorised access via the internet or data links (hackers), operating system errors and so-called standard software (e.g. Microsoft Office).

6. The period, within which claims for defects may be asserted, amounts to – except in the case of claims for damages – twelve months from the transfer of risk, unless a defect was fraudulently concealed.
7. Any assignment of warranty claims to third parties is possible only with our prior express written consent. The customer does not receive from us warranties in the legal sense.
8. Manufacturers' guarantees remain unaffected.

8 DAMAGES / LIMITED LIABILITY

1. We are liable for intentional acts and gross negligence. Furthermore, we are liable for the negligent violation of obligations, the fulfilment of which is absolutely necessary for the proper execution of the agreement, the violation of which endangers the achievement of the contractual purpose and the observance of which the Customer regularly entrusts; however, in this case, we are liable only for contract-typical foreseeable damages. We are not liable for the slightly negligent violation of obligations other than those specified in the preceding sentences.
2. The preceding liability exclusions do not apply upon any injury to life, body or health. Liability under product liability law remains unaffected.

9 PAYMENT

1. All invoices shall be paid within 14 days of date of invoice without deduction if not otherwise agreed. Discounts require prior written agreement.
2. If the payment target is exceeded and a reminder issued, interest of 8 % above the respective basic rate of interest of the German Central Bank shall be paid on the invoiced amount. The assertion of further claims for damages is not ruled out.
3. Bills of exchange are only accepted as payment after prior written agreement. Discounting fees are charged from the day when payment is due, regardless of the time when the bill of exchange is accepted. No guarantee whatsoever is undertaken for timely cashing or timely protest.
4. If bills of exchange or cheques are not credited by the drawee on time, all other claims of the company against the customer existing at such point in time become immediately due. Any other payment targets then become null and void. The same applies for the case that amounts owing are not paid when they are due.
5. Retention of payment or offsetting against any existing counterclaims of the customer is not permitted except in cases of undisputed or legally established claims.
6. All claims against the customer, no matter from what legal relationship, are immediately payable, if events occur which according to legal or contractual provisions entitle us to withdraw
7. If the customer is in arrears with payment, we are entitled to defer outstanding deliveries for this or other orders until the due amount has been paid and only to undertake future deliveries against advance payment or cash on delivery.

10 RETENTION OF TITLE

1. All goods supplied by us remain our property until all our claims from this business relationship have been settled.
2. Upon the completion of projects in several sub-phases, with each internal acceptance and partial payment, this applies separately for each project phase.
3. If the customer behaves in contravention of this agreement, in particular in cases of arrears of payment, we are entitled to repossess the goods and to oblige the customer to release them. Costs which accrue to us through the repossession shall be borne by the customer.
4. The customer may not sell on, pledge as security or mortgage the goods which are subject to retention of title. If the goods are subject to seizure by third parties the customer must inform us immediately, sending us all the relevant documents at his disposal.
5. Enforcement of retention of title or pledging of the items delivered by ourselves are not considered as withdrawal from the contract.

11 PERIOD OF LIMITATIONS

All claims of the purchaser, no matter for what legal reason, shall be time-barred within 12 months of delivery or acceptance of the items supplied, in so far as longer periods are not prescribed by law.

12 CONCLUDING PROVISIONS / SEVERABILITY CLAUSE

1. Any amendment or supplement to these Terms and Conditions of Business requires written form. This also applies to an rescission of the written form requirement.
2. The law of the Federal Republic of Germany is valid, to the exclusion of UN Convention on Contracts for the International Sale of Goods.
3. If any provision of our General Terms and Conditions of Business should be incorrect, contestable or ineffective, the effectiveness of the remaining provisions shall not be affected. Ineffective provisions as well as any gaps in this agreement shall be replaced or closed by provisions that come as close as possible to the economic intention of the original. In any event of doubt, the statutory provisions shall apply.
4. The place of performance and the exclusive area of jurisdiction for all disputes arising from or in connection with this agreement is Kempten.

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