

General Sales and Rental Conditions

§ 1

Scope of application

1. The ISD concludes contracts with entrepreneurs, legal entities under public law, and special funds under public law concerning deliveries of software and hardware by the ISD exclusively according to these General Sales and Rental Conditions in their current version.
2. These General Sales and Rental Conditions shall also apply to all future contracts concluded during the ongoing business relationship with the customer. The customer can download these General Sales and Rental Conditions from the homepage of the ISD at any time. The ISD will provide the customer with a free copy of these General Sales and Rental Conditions upon request.
3. Terms and conditions of the customer that are contrary to or deviate from these General Sales and Rental Conditions, as well as unilateral terms and conditions of the customer shall not apply, even if the ISD does not explicitly object to them or unconditionally renders or accepts services, unless the ISD has expressly approved such terms and conditions in writing.

§ 2

Subject of contract

1. Upon conclusion of the sales contract or rental contract, the ISD undertakes to provide the customer with the standard software in object code according to order confirmation, including the relevant user documentation in digital form (“contractual software”), granting him/her the rights of use as set forth in § 4, and with the hardware components according to order confirmation (“contractual hardware”). If a rental contract is concluded, the provision of the contractual software and hardware will be limited to the duration of the rental contract. The customer undertakes to pay the agreed purchase price or rent to the ISD.
2. The characteristics and functions of the contractual software and hardware owed by the ISD are conclusively stated in the **Product Description**, a free copy of which can be provided to the customer upon request. The ISD will neither check the purpose of the contractual software or hardware nor its compatibility with the existing hardware and software systems of the customer. The information given in the Product Description constitutes an agreement on characteristics, but no guarantee. A guarantee will only be granted in exceptional cases, where the guarantee is expressly denoted as such by the ISD.
3. Installation and configuration services, individual customization services, training and maintenance services, or any other services are not covered by this contract.

§ 3

Delivery

1. Contractual software and hardware is normally delivered within 4 weeks after contract conclusion (“delivery period”).
2. The delivery of the contractual software takes place by means of its provision to the customer by the ISD via download from the homepage of the ISD in accordance with the following regulations. Only in exceptional cases and after making a corresponding separate agreement between the parties will the ISD provide the customer with a copy of the contractual software on DVD.
3. The ISD will give the customer access to the protected area of its website, and will provide the customer within the delivery period with an initial, temporary license key. This temporary license key enables the customer to use the contractual software in accordance with the contract until the end of the third month after the first granting of the temporary license key. If a particular period for payment has been agreed upon, the temporary license key will be provided for a use of the contractual software until the agreed date for final payment, or will be extended successively. Within 2 weeks after complete payment of the purchase price by the customer according to § 5, the ISD will provide the customer with a final license key, which then enables the customer to permanently use the contractual software in accordance with the contract.
4. The delivery of the contractual software takes place packaged and “carriage paid” in the sense of a sales shipment (§ 447 BGB (German Civil Law Code)).
5. If the ISD is unable to deliver because it did not receive the supplies ordered from its suppliers although it had concluded congruent cover transactions, the ISD shall be freed from its duty to deliver and can withdraw from the contract. If this occurs, the ISD shall immediately inform the customer about the situation, and immediately reimburse the customer for any amounts he/she has already paid. Any further claims on the part of the customer shall be excluded in such cases.

§ 4

Use of contractual software

1. The contractual software is protected by copyright. The rights granted by the ISD to the customer to use the software are conclusively stated below. No further rights of use or exploitation shall be granted to the customer.
2. If the customer concludes a purchase contract, he/she shall obtain, subject to the complete payment of the purchase price, a non-exclusive, perpetual right to use the contractual software. If the customer concludes a rental contract, he/she shall obtain the right to use the contractual software for a period limited to the end of the contract duration. This right to use the contractual software includes its installation and its appropriate use by the customer.
3. The contractual software may – also on a network – only be simultaneously used by a number of natural persons not exceeding the number of licenses purchased by the customer. Also, the number of licenses and the type and scope of use are determined by the license certificate.

4. The customer shall have the right to create one backup copy if this is required to ensure a future use in accordance with the contract. The customer must mark the backup copy with a visible “Backup copy” label and a visible copyright notice of the producer.
5. Other rights of the customer arising from §§ 69d, Sections 2 + 3, and 69e UrhG (German Copyright Law) shall also remain unaffected.
6. In case of a purchase, the customer shall have the right to make the purchased copy of the contractual software, accompanied by the license certificate, the final license key and the documentation, permanently available to a third party. In this case the customer must completely discontinue his/her use of the contractual software, remove all installed copies of the contractual software from his/her computers, and either delete all copies of the contractual software existing on other data carriers or hand them over to the ISD. Upon request of the ISD, the customer must confirm in writing that he/she has taken the above measures. Furthermore, the customer shall expressly agree with the third party upon strict observation of the scope of rights granted according to this § 4. The customer shall provide the ISD with the full name and address of the third party in writing. In the case of a provision of the contractual software to a third party the ISD is not obliged to perform any acts of cooperation.
7. In case of a rental, the customer shall not have the right to make the copy of the contractual software that was provided to him/her, or any existing backup copy available to third parties. In particular, the customer shall not be allowed to sell the software.
8. In no case shall the customer have the right to sublet or sublicense the acquired contractual software in any way, make it publicly available by wire or wireless means, or make it available to third parties in a manner that differs from Section 6, whether against payment or free of charge, e.g. by way of “Application Service Providing” or “Software as a Service”.
9. Copyright notices, serial numbers, and other features serving the purpose of program identification must not be changed or removed from the contractual software.
10. ISD uses a summary counter or License Manager to ensure that the rights of use granted to the customer are observed.
11. For each culpable violation of the customer’s duties arising from this § 4, the ISD shall be entitled to claim a lump-sum compensation from the customer in an amount that the ISD considers just and equitable and corresponds to the damage to be expected in the normal course of events. This lump-sum compensation amounts to at least € 20,000.00, unless the customer proves that no, or only minor damage, has been caused to the ISD. The principles of continued offence are excluded. Enforcement of the lump-sum compensation by the ISD does not exclude enforcement of claims by the ISD for injunctive relief or for any further damages. The lump-sum compensation will be taken into account by the ISD in case of any claims exceeding this lump sum.
12. The customer’s temporary right to use the contractual software granted with the sending of the temporary license key is limited to the end of the third month after initial provision of the temporary license key, and expires automatically after this period. If a particular period for payment has been agreed upon, the temporary license key will be provided for a use of the contractual software until the agreed date for final payment, or will be extended successively.

Also, Sections 1 to 10 shall apply correspondingly to the temporary use of the contractual software.

§ 5

Payment, Due date, Default of payment

1. All agreed prices are net prices, i.e. exclusive of any value-added tax. Discounts, reductions or bonuses shall only be granted if they have been separately agreed upon in writing.
2. In case of the conclusion of a purchase contract, the purchase price will be due upon provision of the software via download, provision of the temporary license key to the customer, and delivery of the contractual hardware (“delivery”) and must be paid within 14 days from the date of invoice. Payment and discount periods allowed by the ISD start with the date of invoice. Any agreed discount deductions are only permissible if the customer is not in arrears with the payment of other receivables resulting from our business relationship. Punctuality of payment is determined by the corresponding credit entry in the business account of the ISD.
3. In case of the conclusion of a rental contract, the rent for the respective month will be due in advance, on the third working day of each month. If the contract is not concluded on the first day of a calendar month, the rent for the first month will be calculated pro rata according to the remaining days of the month, starting with the date of contract conclusion.
4. If the customer falls into arrears with the payment of the purchase price or rent, he/she shall pay an interest of 9 % above the base interest rate whilst in arrears.

§ 6

Warranty

1. The ISD warrants that the contractual software and hardware (“delivered goods”) have the agreed characteristics and that the customer can use the delivered goods without infringing the rights of any third parties. A defects warranty shall not apply to defects caused by a use of the delivered goods in conjunction with an incompatible hardware or software environment. Likewise, the ISD does not guarantee the accuracy of external data such as design data of parts which have been provided to the ISD by the respective manufacturer, and have been made available to the customer together with the delivered item. The customer shall be responsible for verifying the correctness and up-to-dateness of such data.
2. The customer shall inspect the delivered goods immediately upon their receipt for apparent defects. Any defects found must be immediately reported in writing to the ISD, otherwise a warranty for these defects will be excluded. The same applies to defects that are discovered later. § 377 HGB (German Commercial Code) shall apply.
3. If the delivered goods have a defect, the ISD shall initially be entitled and obliged to take corrective action. The ISD can either choose to eliminate the defect (“rectification”) or to provide a replacement delivery within a reasonable period. The replacement delivery for the customer may consist in a newer state of the contractual software, unless this would lead to unacceptable impairments. In case of any legal deficiencies, the ISD can either choose to provide the customer with a legally unobjectionable way to use the delivered goods, or to modify them in such a way that no rights of any third parties will be infringed any more.

4. The ISD shall have the right to provide warranty service on the customer's premises. The ISD's duty to eliminate defects shall also be deemed fulfilled if the ISD provides updates equipped with an automatic installation routine on its homepage for download, and offers telephone support to the customer to solve problems that may occur during installation.
5. The right of the customer to either reduce the purchase price or to withdraw from the contract after two failed attempts to eliminate the defects or to provide the customer with an intact replacement delivery shall remain unaffected. The right to withdraw from the contract shall not apply in case of insignificant defects. If the customer raises claims for damages or for futile expenditures, ISD shall only be liable according to § 7.
6. If a maintenance contract has been concluded between the parties, the period for rectification shall correspond to the period laid down in this maintenance contract.

§ 7 Liability

1. Claims raised by the customer for damages, irrespective of their legal grounds, and for futile expenditures shall be excluded, unless the damages resulted from a deliberate or grossly negligent breach of duty, or from at least negligent violation of a contractual obligation, the fulfilment of which is essential to the proper execution of the contract and on which the customer may rely (essential contractual obligation); in the latter case, liability shall be limited to damages that are, at the time of contract conclusion, foreseeable and typical for the contract.
2. The aforementioned liability limitation according to Section 1 shall also apply to the personal liability of legal representatives or vicarious agents of the ISD.
3. The liability limitations according to Sections 1 and 2 shall not apply to claims on account of injury to life, body, health or freedom; or liability according to the Product Liability Act; or if the ISD has, in exceptional circumstances, accepted a guarantee. In such cases the statutory periods of limitations shall apply.
4. The customer shall be responsible for a regular backup of his/her data. In the event of a loss of data caused by the ISD, the liability of the ISD shall therefore – irrespective of the aforementioned liability limitations according to Sections 1 and 2 – be limited to the costs that would have incurred in case of a proper, at least daily, data backup by the customer.

§ 8 Limitation periods

1. Contractual claims for damages and claims for futile expenditures by the customer due to a defect of the delivered goods, as well as the right to demand rectification shall expire after 12 months. Recourse claims according to § 478 f. BGB (German Civil Law Code) shall remain unaffected.
2. Section 1, Clause 1 shall not apply in case of an intentional or grossly negligent breach of duty or violation of essential contractual obligations and in the cases set forth in § 7, Section 3. Here, the statutory periods of limitations shall apply.

§ 9**Reservation of ownership**

1. The ISD reserves the right of ownership to the delivered goods until complete settlement of all its outstanding claims against the customer ("secured claims"). Secured claims are all current and future claims of the ISD arising out of the business relationship with the customer, including all claims relating to the balances from current account.
2. The customer has the obligation to store the delivered goods with care for the ISD and to adequately insure them against loss and damage at replacement value. The customer assigns his/her claims to corresponding insurance benefits in advance to the ISD, and the ISD will accept the assignment.
3. The customer shall have the right to use the delivered goods in normal business transactions, as long as he/she is not in arrears with payment. The customer is not entitled to pledging, security assignment or other mortgaging of the contractual hardware.
4. In the event of delayed payment, a significant deterioration of the financial situation of the customer, or any other significant breaches of duty by the customer, he/she undertakes, subject to § 107, Section 2 InsO (German Insolvency Regulations), to surrender the delivered goods. This obligation shall apply independent of a withdrawal or any grace periods. The taking back of the delivered goods shall only take place by way of security, and shall only constitute a withdrawal from the contract if this has been expressly declared by the ISD in writing.
5. The customer shall immediately notify the ISD about any enforcement proceedings by third parties affecting the delivered goods, claims assigned to the ISD, or any other securities, and inform the ISD about the measures to be taken for an intervention; this shall also apply to impairments of any other nature.
6. Should reservation of ownership not apply under the law of the country where the delivered goods are located, the customer shall provide equivalent security upon request of the ISD. If the customer fails to comply with this request, the ISD can demand immediate payment of all outstanding invoices.

§ 10

Protective measures, Right to perform audits

1. The customer undertakes to protect the contractual software and, where appropriate, also the license key for online access, by means of suitable measures against unlawful access by third parties. In particular, all copies of the contractual software and the license key must be stored in a safe place.
2. Upon request of the ISD and without prejudice to § 4, Section 9, the customer shall enable the ISD to check whether the contractual software is being used properly, and in particular whether it is being used qualitatively and quantitatively within the scope of the acquired licenses. The customer is obliged to provide the ISD with information on this matter, give insight into relevant documents and enable verification of the utilized hardware and software environment. The ISD shall have the right to perform these checks on the customer's premises during his/her regular office hours, or to have the checks performed by a third party that is obliged to maintain confidentiality. The ISD will ensure that disruptions of the customer's business activities are kept to a minimum in the process.

§ 11

Confidentiality

1. "Confidential information" comprises all information and documents of the other party which are either marked as confidential, or must be considered confidential due to the circumstances, especially information on operational processes, business relations and know-how, as well as reductions of the list prices for the contractual software that were, e.g., granted to the customer by the ISD.
2. The parties agree to maintain secrecy about confidential information.
3. Excluded from this obligation is confidential information that:
 - a. was demonstrably already known to the receiving party upon conclusion of the contract, or was made known afterwards by a third party without violating any confidentiality agreement, legal regulations or administrative orders;
 - b. was either publicly known upon conclusion of the contract, or was made publicly known afterwards without violating this contract;
 - c. must be disclosed due to legal obligations, or by order of a court or a public authority. If legally permitted and possible, the receiving party obliged to disclose the information shall inform the other party in advance to give it an opportunity to take action against the disclosure.
4. The parties agree to disclose confidential information only to advisors who are subject to professional secrecy, or have agreed to observe duties of confidentiality equivalent to those set forth in this contract. Furthermore, the parties agree to disclose confidential information only to those of their employees who require such information to fulfil this contract; they also agree to commit these employees, to a legally permissible extent, to maintain confidentiality even after their duties have ceased.

§ 12

Miscellaneous

1. The delivered goods may be subject to (re-)export risks, e.g. to those of the United States of America or of the European Union. The customer must observe these provisions in case of a resale or other exports.
2. The customer may only transfer claims against the ISD after the ISD has given its written permission to do so. § 4, Section 6 shall remain unaffected.
3. The customer may only offset claims by the ISD where his/her counterclaim is undisputed or legally established or ready for decision. The same shall apply to the enforcement of a right to refuse performance or right of retention. Furthermore, the customer can only base a right of retention on claims from the contractual relation from which his/her duties arise, and can only enforce such right if the ISD has provided no adequate security despite written requests of the customer to do so.
4. Modifications and addendums to the contract or to these conditions must be in writing. This also applies to the modification or annulment of this clause.
5. Place of fulfilment shall be Dortmund, Germany. Exclusive place of jurisdiction shall be Dortmund, Germany.
6. The contract shall be governed by German law, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) dated 11 April 1980 (UN sales law).
7. All enclosures referred to in the contract or in these conditions constitute a binding, integral part of the contract.
8. If individual provisions of the contract or of these conditions should be invalid, this shall not affect the validity of the remaining provisions. The contracting parties shall endeavour to replace the invalid provisions by valid ones the commercial purpose of which comes closest to that of the invalid provision.