

General Terms and Conditions

All deliveries and services of Optimum datamangement solutions GmbH (hereinafter referred to as "Optimum") are subject exclusively to these General Terms and Conditions. Deviating or supplementary agreements - in particular contradictory terms and conditions - as well as any special assurances require the express written confirmation of Optimum.

§ 1 COMMISSIONING

- (1) The client must place written orders with Optimum, specifying the type and number of products to be delivered, the applicable price, the desired delivery time, the place of delivery and the place of invoicing.
- (2) A contract is only concluded upon written order confirmation by Optimum.

§ 2 DATES AND DEADLINES

- (1) Unless otherwise agreed, delivery times of six months after conclusion of the contract shall be provided for.
- (2) All dates and deadlines for deliveries and services by Optimum are only binding if they have been designated as binding in writing by the client and Optimum. Optimum is not liable for delays or impossibility of delivery due to force majeure or other circumstances for which Optimum is not responsible.
- (3) Any claims for damages by the client due to delayed delivery or performance shall be limited to 0.5% for each full week of delay, up to a maximum of 5% of the order value in question. Section 10 (Liability) shall apply in all other respects.
- (4) If the delivery or performance of services is delayed due to circumstances for which the client is responsible, Optimum shall be entitled to invoice the resulting additional expenses in accordance with the applicable price lists.

§ 3 DELIVERY AND TRANSFER OF RISK

- (1) Delivery is ex warehouse Optimum. Optimum is responsible for the transportation and delivery of the products and will invoice the client for any transportation costs incurred.
- (2) Optimum is entitled to execute and invoice the delivery to be made in partial deliveries; any agreed payment deadlines shall apply accordingly.
- (3) If the client is a merchant, the client must inspect the goods within the period specified by the payment deadline and report any defects. Otherwise, recognizable defects shall be deemed approved.

- (4) The risk of damage and accidental loss shall pass to the customer when the goods are handed over to the carrier.

§ 4 WITHDRAWAL FROM ORDER

- (1) If the client cancels a delivery order with Optimum's consent, Optimum may demand 15% of the order value as compensation from the client without further proof.
- (2) This provision does not affect Optimum's further claims for compensation for damages resulting from the cancellation.

§ 5 PRICES, PAYMENTS

- (1) The prices resulting from the individual offer or the respective valid price list are to be understood within the Federal Republic of Germany plus the VAT valid at the time of invoicing, the costs for packaging and transportation as well as any expenses and travel costs.
- (2) Payments are due within 14 days of the invoice date without deduction.
- (3) Optimum shall be entitled to default interest without further reminder if payment deadlines are exceeded. The right to assert further claims for damages caused by default remains unaffected.
- (4) Incoming payments that are not explicitly intended for the repayment of a specific debt shall first be credited against interest on arrears, then against reminder fees and finally against the oldest debt.

§ 6 RETENTION OF TITLE

- (1) Products delivered for test and demonstration purposes remain the property of Optimum. They may only be used by the client within the framework of the agreements made with Optimum.
- (2) Optimum retains ownership of all delivered products until all claims have been settled in full.
- (3) Any further processing of the products delivered by Optimum shall be carried out for Optimum. If Optimum products are incorporated into third-party products by the client, Optimum shall become co-owner of the newly created products in proportion to the pro rata product value.
- (4) The products thus created shall be deemed to be Optimum's reserved goods. The client shall only be entitled to resell the delivered or manufactured products subject to retention of title if it does not meet its payment obligations to Optimum. Pledging or transfer by way of security is not permitted.

- (5) The client hereby assigns to Optimum by way of security any (purchase price) claims arising from the resale/rental of goods subject to retention of title, including ancillary rights in the amount of the value of the delivered products. Optimum revocably authorizes the client to collect the claims in its own name for the account of Optimum.
- (6) Optimum is entitled to take back goods subject to retention of title in the event of breach of contract by the client, in particular in the event of default of payment. Taking back the goods does not constitute a withdrawal from the contract.
- (7) In the event of access by third parties to the goods subject to retention of title, the client shall point out Optimum's ownership and inform Optimum immediately.
- (8) Should the client fail to properly fulfill his payment obligations, Optimum shall be entitled at any time to notify the client's purchasers of the assignment and to take possession of the reserved goods; this shall not constitute a withdrawal from the contract.
- (9) Optimum shall release the securities at the client's request to the extent that their value exceeds all claims to be secured by more than 20%.

§ 7 COOPERATION OF THE CLIENT

- (1) The client shall grant Optimum at least free access to the designated systems and unhindered access to the associated diagnostic and application programs, documentation, etc. on the agreed service or installation date.
- (2) If required, Optimum shall install software for the operation of remote access via the Internet (e.g. TeamViewer) on the delivered systems at its own discretion. The client shall create the technical and organizational conditions for the operation of this remote access within its company and maintain them during commissioning, diagnosis and maintenance periods.

§ 8 SOFTWARE USAGE RIGHTS

- (1) Rights of use to software provided are tied to the hardware supplied or provided by the customer, are non-exclusive and non-transferable.
- (2) The modification of software provided is not permitted.
- (3) Reproduction of provided software is only permitted within the scope of an appropriate data backup.
- (4) Optimum is entitled to provide delivered software with copy protection.
- (5) The client shall not be entitled to demand the release of the source code.

§ 9 WARRANTY

- (1) Optimum warrants that the contractual products are free from defects, including the absence of warranted characteristics. The contractual products shall be manufactured with due care in accordance with the general state of the art.

- (2) Optimum warrants that the contractual products are generally accurately described in the product information and are generally fit for use within this framework. The technical data and descriptions in the product information alone do not constitute a guarantee of specific properties. A guarantee of properties in the legal sense is only given if the respective information has been confirmed in writing by Optimum.
- (3) Optimum does not guarantee that the products meet the client's requirements.
- (4) For all defects reported to Optimum in writing during the warranty period, Optimum will, at its discretion, provide services free of charge in accordance with these warranty provisions, either remotely or on-site.
- (5) Optimum undertakes to rectify defects in services and to repair or replace defective products.
- (6) The client shall grant Optimum the necessary time and opportunity to rectify any defects at its reasonable discretion. During the period of rectification of defects, the obligations to cooperate according to § 7 apply. If the client refuses to do so, Optimum is released from its warranty obligations.
- (7) The warranty claim is void if a notified defect is based on the fact that the client or a third party has modified products, used them improperly or installed, operated and maintained products not in accordance with the specifications. In this case, Optimum is entitled to invoice the expenses incurred as a result of the complaint.
- (8) The warranty period for merchants is 1 year and for private individuals 2 years from the date of delivery.

§ 10 INDUSTRIAL PROPERTY RIGHTS OF THIRD PARTIES

- (1) Optimum shall defend the client against claims which are derived from an alleged infringement of industrial property rights of third parties, e.g. patents, registered trademarks, utility models, in the Federal Republic of Germany by the products delivered under this contract.
- (2) Optimum shall reimburse the client for all legally imposed costs and damages up to the amount of the liable share capital, provided that the client immediately notifies Optimum in writing of such claims, provides Optimum with all information and support necessary to defend against such claims, and leaves Optimum the sole decision as to whether the claim is defended or settled.
- (3) If a final judgment is issued prohibiting the client from using a product, Optimum shall, at its own discretion, either replace or modify the product so that it no longer infringes the property rights of third parties, or procure the right to use the product for the client.
- (4) If none of the aforementioned alternatives can be reasonably realized, Optimum will take back the products and refund the purchase price to the client minus a reasonable usage fee.

- (5) Optimum shall not be liable for infringements of industrial property rights if these result from the use of the products in connection with products not supplied by Optimum, are based on a modification of the products, are based on the use of the product as part of a process infringing industrial property rights or are attributable to the use of a software program other than the latest version.
- (6) Insofar as the delivered products were manufactured according to the client's designs or instructions, the client shall indemnify Optimum against all claims asserted by third parties due to the infringement of industrial property rights and copyrights. Any legal costs shall be advanced appropriately.
- (7) This § 10 conclusively determines the rights of the client in the event of an infringement of industrial property rights by the delivered products, to the exclusion of all further claims of the client.

§ 11 LIABILITY

- (1) Optimum shall only be liable for compensation for damages, regardless of the legal grounds, including delay and impossibility, if the damage is due to gross negligence or intent on the part of Optimum or the absence of a warranted characteristic.
- (2) No liability exists
 - a) for indirect damages, consequential damages and loss of profit,
 - b) for the loss of data, unless the customer backs them up daily in machine-readable form and thus guarantees that these data can be restored with reasonable effort.
- (3) Liability is limited to damages that could reasonably be expected to occur according to the circumstances known to Optimum at the time. Optimum's liability is limited to the amount paid by the client to Optimum for delivery and services and to a maximum of the liable company capital.
- (4) The claim for liability does not apply if the damage is due to the client or a third party modifying or improperly using products or if products have not been installed, operated and maintained in accordance with the specifications.
- (5) Claims against employees and agents of Optimum who have acted as vicarious agents of Optimum are excluded.
- (6) Claims for damages shall become time-barred in accordance with the statutory provisions, but at the latest 6 months after delivery or performance of the defective service.

§ 12 COMPENSATION FOR BREACH OF CONTRACT

- (1) Optimum draws attention to the fact that the client is liable for all damages incurred by Optimum as a result of breaches of these General Terms and Conditions.

§ 13 EXPORT REGULATIONS

- (1) Products and technical know-how supplied by Optimum are intended for use and to remain in the country of delivery agreed with the client. The re-export of contractual products, individually or in system-integrated form, is subject to authorization by the client and is generally subject to the foreign trade regulations of the Federal Republic of Germany and the country of delivery agreed with the client.
- (2) Any onward delivery of contractual products by clients to third parties, with or without Optimum's knowledge, shall simultaneously require the transfer of the export license conditions. The client is liable to Optimum for the proper observance of these conditions.

§ 14 EU IMPORT SALES TAX

- (1) Insofar as the client is domiciled outside of the Federal Republic of Germany, the client is obliged to comply with the regulations regarding import VAT of the European Community. This includes in particular the unsolicited disclosure of the VAT identification number to Optimum.
- (2) Upon request, the client is obliged to provide Optimum with the necessary information regarding its status as an entrepreneur, regarding the use and transportation of the delivered products and regarding the statistical reporting obligation.
- (3) If Optimum incurs additional expenses as a result of inadequate or incorrect information provided by the client regarding import sales tax, these shall be reimbursed by the client.
- (4) Any liability on the part of Optimum arising from the consequences of the information provided by the client regarding import VAT or the relevant data is excluded, insofar as there is no intent or gross negligence on the part of Optimum.

§ 15 DATA PROTECTION

- (1) By placing an order, the client agrees that Optimum shall record and utilize all information provided by the client in a data processing system, but shall not make it accessible to third parties.

§ 16 TRADEMARK RIGHTS

- (1) All product names and registered trademarks used shall be recognized by the client as the property of their owners, regardless of whether they are identified as such or not.

§ 17 ASSIGNMENT / WAIVER

- (1) Optimum may have its obligations to the client fulfilled by a third party. This transfer does not release Optimum from its obligations.
- (2) The client may not assign or otherwise transfer the contract or any rights arising thereunder to third parties without prior written consent.

§ 18 PLACE OF JURISDICTION

- (1) Contracts between Optimum and the client are exclusively subject to the laws of the Federal Republic of Germany.
- (2) The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- (3) The exclusive place of jurisdiction is the registered office of Optimum. Optimum may also take legal action against the client at the client's general place of jurisdiction.

§ 19 MISCELLANEOUS

- (1) All contract-related notifications that are required or can be made between the client and Optimum must be made in writing, stating the purchase or license agreement.
- (2) All notices shall be deemed to have been duly given if sent to the last address notified in writing by the party concerned.
- (3) In the event of any inconsistency between the German and English versions of this Agreement, the German version shall prevail.

§ 20 SEVERABILITY CLAUSE

- (1) Should any of these provisions be invalid, this shall not affect the validity of the remaining provisions.
- (2) The invalid provision shall be replaced by a valid provision which comes closest to the intention of the author of the invalid provision.

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Last updated: May 3, 2016