

General terms and business conditions of the Sommer Informatik GmbH

stand: 2022-12-01

1. Conclusion of the contract

Our offers aren't binding and subject to change. The customer is bound to his order four weeks, counting from the receipt by us. Only our terms and conditions apply. Conditions of the customer are also not a part of the contract if we don't explicitly contradict them. Documentation, sample pieces, drawing, information and proposals remain our intellectual property. Is no contract included, shall return to them or delete them and aren't allowed to use them.

2. Subject matter

The guarantee of the properties requires our explicit and written Confirmation; otherwise the representation of properties is only for Identification of the delivery item. The message in the documents listed in appendix 1, etc. serve only to describe the product and aren't attribute guaranties. Data, numbers, dimensions, etc. give only the right order. The customer has the risk, because the selection a specification of the delivery item his wishes and needs correspond. He should get some expert and independent dent advice in front of signing the contract. We can the whole or a part of the program and services of the third parties use.

3. Customer requirements and specification

We need the wishes of the customer which should be considered in the preparation of the contractual object specification always written. To clarify or change of contractual conditions, in particular the subject matter here of can we manufacture memos. These notes are for both parties binding. If we leave it to the customer with a written notice to such legal consequences and he didn't object in writing within 10 days. We can produce a specification, which is subject to the conditions who are referred in 2 binding for both parties, if we create a individual software for our customers. The scope can necessary extended by additional orders in a reasonable remuneration. Additional jobs should be concluded in writing.

4. Copyright and user rights

The comprehensive copyright with all powers under § 12-267 of the copyright act at all prepared under the contract and settlement, including warranty and maintenance documents, information and contractual items available are exclusively to us. We left to the customer a debt legal right of use to the contractual objects. The use is only permitted on a central processing unit and only for business purposes, not for purposes of third parties. The use must be according in the contract. There is just one use according in the contract which the programs are in the instruction manual described executed using as well as the making of copies in machine-readable form for backup after 6. A change of the programs isn't according to the contract. Demonstration programs are only allowed to use for demonstration and testing, not for administrative purposes. If the software isn't purchased for their own use but for further shares, applies 22.

5. Penalty at prohibited use

For each use of a delivered program outside of the contractually specified area (see 4, 22; especially by using after the end of the using right, use outside the jurisdiction, venue usage range, use by third parties or for third parties) is provided as a penalty 1,5 times the license fee invoiced, namely for each central processing unit on which the program could be used due to the infringement. The customer is liberty to prove that the program hasn't been used. We reserve the right to make higher damage claims and request a written penalty clause declaration. We refer to the right of termination by 21. Para. 2

6. Duplication

The program may only be copied for a backup or archival purpose. There are only 3 copies allowed. The prohibition of multiple uses is to be noted. Written documents may not be reproduced. The customer can obtain additional copies of the documentation for consideration with us. If the loose of the program made credible can we refund the customer as far as possible the program for the cost plus 10% of the license fee.

7. Secrecy

Third parties aren't allowed getting in contract subject. This applies for employees of the customer too, unless they use a part of the contractual items to their official duties. All employees who may have to access the articles which teach about the limited use rights and on criminal liability and liability for damages of any and beyond this. The customer is responsible for maintaining the confidentiality.

8. Delivery and performance periods

Information about the delivery date aren't binding information. Deadlines are always extended by the period during which we are waiting for news or information of the customer (for example: Specifications according to paragraph 3, 1, according to opinion 3, para. 2 or 10, para. 3, on decision showers or error information). All reminders and customer deadlines must be in writing. Grace ratios must be 20 working days least. Deadlines are also deemed to comply if they are exceeded by a meaningless for the interests of the customer time. If the client implementation of the contract gives up due to a delay by us. We stands only in damage if we are responsible for the by gross negligence or intent. These regulations apply for all kinds of delivery and performance deadlines, for example: As well as warranty obligations.

9. Fringe benefits

We provide for the transport, installation testing the delivery items and for a training of the staff. We charged additionally an adequate remuneration to this.

10. Decrease

Both parties can request a partial acceptance in each case after completion of conventional power levels The plan submitted to the acceptance date performance level and the declaration of acceptance are binding. Subsequent changes shall require the consent of the contracting party. We make changes and additions with removed portions only against an additional fee. We can require a written declaration of acceptance by the customer. Acceptance may only refused if the power has significant or remedy deficiencies aren't capable. Service which is presented to the customer with the written request for acceptance shall be deemed unconditionally accepted. If the customer doesn't give a written message within 10 working days and was notified in writing of this legal consequence. These rules also apply for the partial acceptance too.

11. Function wholesale of the customer

The customer should take some appropriate measures in the event that a program is wholly or partially not working properly by a fallback producers, data backup, fault diagnosis, etc. We inform the customer insists on the importance of proper data backup.

12. Warranty

The parties agree that failures even with careful preparation of the software can't be excluded according to the prior art. We Warrant that the program functions in accordance with the program description and a possible requirement specification are correctly executed. Usage restrictions or errors caused by through use, hardware, operating system environment, etc. can be as long as not attributed to us, such as we aren't disorders in question of the excluding. We accept the guarantee in the first place by repair. The repair is performed by remedy to leave a new program version (fees may reasonable charge for a enhancements over the contract version) or the fact that we suggest ways to avoid the effects of the error. Not in every case is the characterized by a complete rework troubleshooting possible. The choice of remedy stands for us. A new version of the program is for the customer responsibility, even if this leads him to unacceptable adjustment and reorganization problems. Condition of rectification is a error message after 13 paragraph 2. If the repair after several attempts not succeed, is for the customer unreasonable or is refused by us, has the customer the right to reduce the remuneration (reduction) or to reverse the contract (conversion). Other warranty rights are excluded. We don't owe expenses for remedial measures by third parties. Claims for damage applies 14. Any warranty lapse if the program has been used against 4 para. 2 and 22 (especially, when it was changed without our written consent) and the customer can prove that the lack of a non-conforming is independent use. We make a reasonable extent to educate the malfunction when there a defect, the lack of our software or any other part of the computer installation is to assigned. We put the effort into account, to the extent not our responsibility for the malfunction is detected. The customer gives us the purpose of our warranty measures and all necessary assistance, in particular of the error after 13 para. 2, insight into the operating documents, use of computer equipment, access to the operating rooms, etc.

13. Complaints

The customer has to check immediately our deliveries and services for completeness and flawless. The customer is always put forward a complaint in writing with a precise description of the defect. The customer should purpose the operation document including the error message with the required accuracy. Delayed or inadequate complaints liberate us from the warranty. As far as put we the effort, in particular the additional costs in case of Insufficient documentation errors, in accounting.

14. Liability

The use of spectral data, which are available in our software products, can in no Case lead to a claim against the manufacturer of the products, neither the producers can be prosecuted. We pay compensation, for whatever legal reason, but only subjects to the following rules. In case of intern, gross negligence, personal injury or in the absence of a warranted quality afford we the full compensation. In other cases, will we replace with ordinary negligence half of the damage where our payment obligation in connection with this agreement is limited to the total of the license fee by 16. We aren't liable for slight negligence. We remain particularly to open the objection of contributory negligence of the customer. This applies in particular for damage resulting from data loss due incorrect operation and insufficient safeguard against computer faults.

15. Limitation

The warranty claims barred from the transfer of risk within 6 months. Claims of the customer from culpa in contrahendo, breach of duty in addition, delay or avoidance of the contract applies a limitation period of one year starting from the date on which the customer succumbed aware of the damage. Inhibition of limitation period ends when negotiations on claims by the customer or defects rest are longer than a month or if statements on deficiencies of us which are longer than two months without any reprimand not to issued.

16. Payment and retention of title

The customer pays for the described service in the contract one license fee in accordance with the agreements, in the alternate according to our price list. For ancillary services (9) provide we the reasonable fees in charged.

17. Payment

The license fee for unchanged supplying standard software is unless otherwise agreement instant after delivery and receipt of a relevant invoice due. Are offered on order confirmations or statements in other payment arrangements expelled, than have this priority. With commissioning of customizations, a deposit from 50% of the contract price payable. The balance is due at the delivery/ acceptance. As far as we transfer property rights and other rights (e.g. Copyright powers) to the customer, we reserve the rights until the full payment of our claims under the contract prior. The customer only allows with such claims to set off, they are undisputed legally. A retention of the customer we always can turn as security by a bank guarantee.

18. Cession

The customer is allowed to assign the claims from this contract to third parties.

19. Rights of third parties

We are ensuring that the transfer of rights pursuant to this agreement preclude any third party rights. If it is necessary are we liable in accordance with 14. In case that a third party claim conflicting rights towards the customer he will inform us comprehensively in writing without delay. We assist in the defense of such claims. At our request of the customer, grants the rights for us to conduct the despite; in this case, provide we free of costs to the customers.

20. Data protection

The customer agrees that we store personally identifiable information with respect to the business relationship.

21. End of the contract

Basically has the customer the right to use (4 para. 2-4) indefinitely. For an important reason we may terminate the right of use without notice by written declaration. Such termination should be preceded by a written warning. One reason for termination without notice exists in particular if the customer the contracted rights of use granted exceeds, or if the secrecy towards third parties is broken or no longer ensured or if the customer gives up the operation or otherwise permanently not longer the program need. In this case must the customer delete all obtained from the contract, in particular the documents referred in Annex 1, publish and delete the program. The complete publishing and deletion has he to assure against us. In the event that the customer is entitled to refund of royalties appropriate the software useful life of four years applies.

22. Special rules for software dealer

Who acquires software for resale to a third party (traders) they may not to use itself, only this third pass. Only special demonstration programs may be installed for demonstration purposes on a machine from the dealer or on computers of the costumers. The demonstration software has to be specially ordered for the customer with us and set up by us for the client computers on the customer or we will provide special demonstration software for legal disclosure or to prospective customers. 4 must always be observed. The trader is liable for all disadvantages readily fault and any expenses incurred by us from the failure to comply with these rules.

23. Final provisions

Jurisdiction for all claims in connection with this agreement provided that the customer is a merchant or assimilated, seat of the contractor. However, we have the right to sue the customer at every legal jurisdiction. If any provision of this contract be or becomes ineffective, than will through this the contract the remaining content isn't affected. The invalid provision shall rather to be replaced by a provision what the meaning and purpose of the ineffective provision in a legally effective manner economically comes closest. The same applies for contractual loopholes. The legal relationship between the parties to the transfer of software are determined exclusively by this contract and the documents will refer in this agreement. Subsidiary agreement aren't affected. Changes and amendments must always be confirmed in Writing by our management. Writing requirements which are set up by law or this agreement are always effective conditions and can the contract the remaining content isn't affected.