

GENERAL BUSINESS TERMS AND CONDITIONS OF Amorph Systems GmbH

1. General, area of application

1.1 Opposing or deviating business terms and conditions of the Customer are only valid if we expressly approved their validity in writing.

1.2 The General Business Terms and Conditions shall apply for all present and future business between the contractual parties without any further reference to the General Business Terms and Conditions being required.

2. Quotations

2.1 We remain legally bound to our offers for a period of two weeks from the offer date, unless otherwise agreed in the offer.

2.2 If the Customer places an order with us, he shall be bound to his order for four weeks. Orders require our written confirmation to be legally valid.

2.3 We reserve ownership, copyright and other rights to documents, which form a constituent part of the offer. Third parties are only to gain access thereto if we have provided express written approval to them being passed on.

3. Prices and payment terms

3.1 Our prices are quoted in EURO (€) ex-works Stuttgart-Vaihingen. Costs for packaging and transport, and in the case of foreign deliveries, also customs duties and other charges, must be borne by the Customer.

3.2. In the case of service contracts and contracts for work and services, we are entitled to request appropriate advance payments.

3.3 All offered prices are net prices, to which the respective value-added tax will be added in the statutory amount. In the event of a change in the value-added tax we are entitled to adjust our prices accordingly.

3.4 Our invoices shall become due for payment upon receipt by the Customer.

3.5 The contracting partner has the right to offset counterclaims only if the counterclaims have become res judicata or are uncontested.

3.6. If after the conclusion of the contract we become aware of circumstances that lead us to have well-founded doubts about the Customer's credit worthiness or ability to pay (dishonor of a bill or cheque, compulsory enforcement, insolvency) we shall be entitled to demand from the Customer to provide, at his choice, compensation payment or payment required in the form of security, to the amount of the payment to be made by the Customer, concurrently with our services.

If the Customer is unable to provide such security within 14 days of receipt of a corresponding request, we are entitled to withdraw from the contract. We are further bound to continue provision of the service only concurrently with payment of the remuneration or the provision of securities to the amount of the payment to be made by the Customer.

4. Performance

4.1 Unless otherwise specifically agreed, we provide our services in our registered business offices.

4.2 Unless otherwise expressly agreed, we grant the Customer a non-exclusive and non-transferable right of use of the software. Temporal and local rights to use the software are subject to be specified in a separate software license agreement.

4.3 Unless otherwise expressly agreed, the Customer has the right to use the given software only in unchanged form as run-time version.

4.4 We reserve the unrestricted license to the delivered software. Any use of the delivered software by the customer, not expressly permitted in a separate license agreement is disallowed.

4.5. Shipping takes place in all cases on the account and at the risk of the Customer. If shipping is delayed for reasons which are the responsibility of the Customer, the risk is transferred to the Customer as soon as we give notice that the goods are ready for shipping.

4.6 We are entitled to provide our services as part-services, and to invoice them as such, provided that this can be reasonably expected to be accepted by the Customer.

5. Performance period

5.1 An agreed delivery time begins following provision of any documentation, approvals or releases to be obtained by the Customer, and receipt of an agreed advance payment.

5.2. If the Customer requires one of our services within a specific timeframe, an express agreement must be made to this effect. We are not bound to check material provided to us by third parties, in such case that the Customer has deadline related obligations or is bound otherwise towards these third parties.

5.3 Agreed delivery times are extended, including during a delivery delay, in the event of force majeure, labor disputes and other operational problems beyond our control. Agreed delivery times are subject to the reservation that we are supplied at the appropriate time by our suppliers. If this is not the case, delivery times are extended accordingly.

5.4 In the event of changes to the order agreed between the Customer and us after conclusion of the contract, and which affects the delivery time, the agreed delivery time is extended to the appropriate degree.

6. The Customer's obligations to provide assistance

6.1 The Customer shall support the performance of the contract to the best of his ability and especially:

- a) provide us the necessary information, materials and for performance information and documents available, in particular on equipment, devices, programs and program parts that are to interact with the service to be provided;
- b) document in a comprehensible form the errors detected for already rendered services, and notify us immediately;
- c) provide properly trained (at their own cost) personnel for cooperation.

6.2 If the Customer shall come in default of meeting his own responsibilities, our performance obligations shall be suspended for the period of the delay to the extent that the benefits cannot be provided without this actions, or can only be provided with additional effort. Such events cause additional expenses to be reimbursed to us by the Customer. Our other compensation claims remain unaffected.

7. Changes to the specifications

7.1 The Customer is aware that in principle a subsequent alteration of the contract concluded with us requires the agreement of both parties.

7.2 Should a contractor amend the contract, he shall notify the other party in writing and forward justification of the change request. If the other party agrees to the change request in writing, the contract applies as amended, whilst maintaining his identity, from the date of confirmation of acceptance.

If the other party is not ready for a change in the respective agreement, it shall notify the modification desiring contractors in writing and provide justification thereof. If an agreement, regarding the contract change, cannot be reached at the level of Managing Directors of both parties, the respective agreement will remain unchanged.

8. Computer Installation

8.1 The Customer agrees to let us install the products supplied by us and give us the necessary support without charge. This concerns in particular the use of the computer equipment which is the property of the Customer, including computing time, giving staff administrative leave and the use of the Customer's space.

8.2 For this purpose the Customer will appoint to us, in due time of the installation, the contact person of the customer company and provide us with the necessary authorizations, so that the necessary decisions and measures can be taken on the Customer's side in time.

8.3 The Customer undertakes to ensure his records, in an appropriate manner and in full, immediately prior to the installation and during the installation phase regularly, at least once a day, insofar as his records are affected by the installation of our products. We are entitled to refuse performance as long as the Customer fails to do so. The right to refuse performance for other reasons remains unaffected.

9. Retention of title

9.1 We reserve title to the goods delivered by us until full payment of the purchase price and all incidental claims.

9.2 If the Customer is an entrepreneur, we reserve title and proprietary rights to the materials delivered by us until complete and incontestable payment of all claims out of this business relationship.

9.3 In case of seizures, other interventions of third parties or bills receivables of the purchased objects, the Customer informs us immediately in writing.

Enforcement officers and all other third parties must be informed by the Customer about our proprietary rights over the delivered products.

9.4 If the third party is unable to reimburse us for the judicial and extrajudicial costs of enforcement of the cancellation of the seizure and the replacement of the purchase object, the Customer is liable for the loss incurred.

9.5 Provided that the Customer is authorized, on an individual basis, to resell in normal business transactions the goods acquired from us, he assigns as early as now any accounts receivables at the amount of the final invoice amount, including sales tax, arising from the resale to its customers or third parties. The contracting party shall be entitled to enforce the aforementioned claims even after they have been assigned. Our right to collect the claims ourselves remains unaffected thereof. However, we undertake not to collect the debts as long as the Customer complies with his payment obligations, is not in default of payment and in particular a petition for the institution of bankruptcy proceedings has not been submitted and payments have not been suspended. Should this be the case, we can demand that the Customer informs us about his assignment of claims and the corresponding debtors, gives us all information necessary for the collection of the claims, surrenders the relevant documents, and informs his debtors about the assignment.

9.6 The processing or transformation of the purchased goods by the Customer is always done for us. If the object of purchase is processed with other items not belonging to us, we acquire joint ownership of the new item in proportion to the value of the purchased item to the other processed items at the time of processing.

9.7 If the retained goods are processed or irreversibly associated with other items that do not belong to us, then we acquire co-ownership on the new item in relation to the value of the goods' invoice value to the other processed mixed goods at the time of processing. Thus the Customer shall act as custodian for the sole or part property rights for us.

9.8 At the request of the Customer, we undertake to release the securities to which we are entitled insofar as the realizable value of our securities exceeds the claims to be secured by more than 50 %.

The choice of the securities to be released is within our scope of responsibility.

10. Subcontractors

We are entitled to sub-contract third parties. This does not affect our obligations towards the Customer.

11. Guarantee

11.1 Unless specified otherwise, we offer a guarantee in accordance with the applicable legal regulations.

11.2 The Customer must check the goods deliveries and services provided by us immediately for conformity with the contract, freedom from faults and completeness, and in the event of deviations or faults, report this to us immediately. If the Customer fails to notify us thereof, the goods or services are deemed to be accepted, except in the case of a fault which was undetectable when checking the goods. If such a fault is found at a later time, the Customer must report this to us immediately on discovery; otherwise the goods or services are deemed to be accepted even with respect to this fault. If the goods or services are deemed to be accepted, regress claims by the Customer in accordance with §§ 437 ff., 478 BGB (German Civil Code) are also excluded.

11.3 We may reject the means of subsequent fulfilment chosen by the Customer, without detriment to § 275 Paragraphs 2 and 3 BGB, if this is only possible at a reasonable cost. The subsequent fulfilment claim of the Customer is restricted in this case to the other type of subsequent fulfilment; our right to reject this as well, if this is only possible at unreasonable cost, remains unaffected.

11.4 Non-essential defects do not entitle the Customer to withdraw from the contract.

11.5 If we establish that a fault reported by the Customer regarding the goods supplied by us is due to faults with goods or materials supplied by one of our suppliers, we will notify the Customer to this effect in writing, and relinquish our guarantee and recourse actions against the supplier in favor of the Customer. In this case, the Customer can only make guarantee and regress claims against us if he has been demonstrably unsuccessful in making such guarantee and recourse actions against our supplier.

11.6 If we establish that a fault reported by the Customer is in fact not present, or the goods supplied have been modified in some way not approved by us, which was the cause of the damage, or the damage is due to improper handling or wear, the Customer is bound to reimburse us for the costs of the attempted removal of defects, and in particular the costs for working time and material, and travelling costs. The Customer has the right to prove that we have sustained no damages or lesser damages.

11.7 Warranty claims made by the Customer are subject to a period of limitation of one year. The limitation starts with the delivery in relation to the delivery of goods and with the fulfillment of works obligations in relation to works receipt. Customer recourse against us under §§ 437 ff., 478 BGB is subject to a statute of limitation under § 479 BGB. If we install a construction work or a work whose success consists in the provision of planning or monitoring services for this, the warranty claims are subject to statutory limitation in five years according to § 634 A BGB, beginning with the acceptance of the work.

11.8 Warranty claims for the delivery of used goods shall be excluded.

12. Withdrawal

12.1 If we do not provide a due service or if we do not provide it according to contract, the Customer can resign from the contract sustained in accordance with legal regulations. If a partial delivery of goods or services has been made, then the Customer may only withdraw from the entire contract, only if he does not have interest in the part delivery.

12.2 The Customer may not withdraw from the contract on the grounds of only minor infringement of obligations on our part.

12.3 Irrespective of legal regulations, we are entitled to withdraw from the contract if

- a) the Customer fails to act in accordance with the contract and the infringement is substantial,
- b) the Customer provides false information regarding his creditworthiness or
- c) the service due from us is not available. In this case we undertake to notify the Customer immediately of such non-availability, and immediately refund any relevant payments made by the Customer.

13. Rights of third parties

13.1 If claims are made against the Customer by a third party to the effect that our services infringe his rights, the Customer must notify us immediately and comprehensively in writing, and allow us the opportunity to refute the claims made.

13.2 If the Customer provides us with drawings, models or samples for the manufacture of products, the Customer gives us his assurance that these are free of the proprietary rights of third parties. If third parties make claims against us on the grounds of proprietary rights, the Customer must indemnify us against such claims at the initial request. In this case, and without further review of the legal situation, we are further entitled to discontinue production and delivery of the products concerned.

14. Liability

14.1 We are liable for any and all damages that have been caused by our employees intentionally or through gross negligence.

14.2 We are liable for culpable breach of contractual obligations in the event that we are responsible for such breach, and this endangers the achievement of the purpose of the contract.

14.3 We are also liable for damages resulting from injury to life, limb or health that are based on a culpable breach of duty by us or by a culpable breach of duty by our legal representative or one of our agents.

14.4 Otherwise, all claims for compensation for damages against us, in particular on the grounds of delay or infringement of obligations, and non-contractual claims, including on the grounds of lost profit, savings or usage benefits, failed applications, indirect damages and consequential damages, are excluded.

14.5 In addition, possible claims for compensation for damages are further limited in extent and amount to the contracted project volume at the time of contract conclusion; claims may not be made on the basis of the realization of excess risks not foreseeable by us. Furthermore, the assertion of financial losses is excluded.

This limitation does not apply if it occurs due to damages resulting from injury to life, limb or health, which is based on a culpable breach of duty by us or by a culpable breach of duty by our legal representative or our vicarious agents of the user.

14.6 Our legal liability because of an injury of health or life as well as according to the law about the liability for faulty products (product liability law) remains untouched of the foregoing clauses.

15. Confidentiality

15.1 The parties to the contract mutually undertake to maintain strict confidentiality with regard to all business secrets which come to their knowledge in the course of the contractual relationship, and not to disclose them to third parties. These obligations continue in effect beyond the term of the contract.

15.2 The parties will maintain confidentiality in accordance with § 5 BDSG and only use people in the implementation of the contractual tasks, which have been bound to maintain data secrecy.

16. Protection of innovations

The exchange of information of any type between the parties does not in any case constitute detriment to innovations under § 3 PatG, Art. 54 of the European Patent Convention or corresponding stipulations of other national patent laws.

17. Head-hunting of employees

17.1 The hiring or other employment of our employees who have taken action in connection with the implementation of an agreement shall be made only with our prior written consent. This also applies to employment in any subsidiaries of the Customer. This provision shall apply during the entire term of the contractual relationship of the parties, and a further two years following the end of the contract.

17.2. The Customer shall pay a contractual penalty amounting to € 50.000,00 for each case of infringement of duties regulated under item 1. The objection of the continuation of offence is ruled out. We reserve the right to any claim of a higher damage. The customer has the right to prove that no loss or a significantly lower loss has been incurred.

18. References

If not agreed in writing, we are entitled to name the Customer as a reference customer.

19. Place of jurisdiction, fulfilment and applicable law

19.1 The legal venue for all disputes originating from these agreements shall be Stuttgart, Germany.

19.2 The place of contractual fulfilment shall be Stuttgart, Germany.

19.3 All legal relationships between the Customer and us are subject exclusively to German law. The United Nations Convention on the International Sale of Goods (CISG) shall be expressly excluded.

20. Miscellaneous, severability clause

20.1 No subsidiary verbal agreements have been made.

20.2 If any stipulation of the contract, any stipulation added in future, or a stipulation of these terms and conditions proves to be invalid or infeasible, in whole or in part, or later becomes invalid or infeasible, or the contract is found to contain an omission, this shall not affect the validity of the remaining stipulations. The parties to the contract agree in this case, in place of the invalid or infeasible stipulation, to rectify the omission, to acknowledge the validity of applicable legal regulations.

As of October 2019