

General terms and conditions of ORDERLINE GmbH

A. General terms

Subsequent terms are valid for all deliverable and performance of ORDERLINE GmbH. These general terms and conditions are exclusively valid towards companies.

§ 1 Terms of a contract

For the following terms of a contract special conditions exist, which are completed through these general terms:

- Software adaptation
- Terms for application of software
- Delivery of hardware including packet software of third Party.

In addition part A of these „General terms“ is valid.

§ 2 Exclusivity

The terms and conditions of ORDERLINE GmbH are exclusively valid:

As far as the customer also uses General terms and conditions, the conclusion of contract comes about also without expressly agreement about the inclusion of General terms and conditions. As far as the different General terms and conditions conform in contents, these apply accordantly. In place of individual regulations which contradict themselves the regulations of the dispositive law come into effect. The same is valid in case the terms and conditions of the customer contain regulations, which are not included in the basic of these terms and conditions. If present terms and conditions contain regulations, which are not included in the terms and conditions of the customer, the regulations of this contract are valid.

§ 3 Cooperation and exchange contracts

The achievement of the respective contract success requires a close cooperation between the customer and ORDERLINE GmbH. Both partners declare their unlimited willingness for mutual consideration, extensive information, provident warning about risks and protection against disturbing influences of third party within the legal regulations. A company-law connection between customer and ORDERLINE GmbH is not justified hereby.

§ 4 Obligations to cooperate

As far as obligations to cooperate are set up, the customer pledges himself to carry out these, so that no delay in execution of the respective service results.

§ 5 Contract award

Orders of the customer can be placed by all persons, which act in the name of the customer, as far as the customer has knowledge of their action or would have been able to have with due diligence.

§ 6 Project leaders

For realization and processing of an order both contract parties appoint each one project leader and one substitute in written form, who are authorized internally and externally to be able to make binding decisions within the respective order against ORDERLINE GmbH.

Declarations of legal representatives, authorized officers or plenipotentiaries are not affected by the before mentioned regulation. For these the relevant legal regulations are valid furthermore.

§ 7 Order execution

ORDERLINE GmbH is entitled to use third parties when executing the orders.

§ 8 Data protection

Both parties guarantee that they do not take any action within this contract, which offend against existing data protection regulations.

§ 9 Confidentiality

ORDERLINE GmbH settles a confidentiality agreement with the customer. Additional and as far as a separate confidentiality agreement is not concluded, following regulations are valid:

ORDERLINE GmbH and the customer commit themselves mutually to keep all business- and trade secrets of the other side secret and not to forward them to third party or to make use of them in any mode. The documents and information, which the other contract partner receives because of the business connection, are only permitted to use within the respective contract purpose by this contract partner.

The customer is obligated to provide all confidential information by the notation „confidential“.

Through appropriate agreements, as well as the creation of technical and organizational arrangements the contract parties ensure that their staff and vicarious agents observe the obligation to confidentiality.

These obligations will also persist for a duration of 5 years after termination of the contractual relationship.

§ 10 Conclusion of contract

The offers of ORDERLINE GmbH are open. Subject to changes of the services within reason.

As far as services of ORDERLINE GmbH are performed free of charge, a customer cannot derive a claim from this, that such a service will be performed free of charge at a later time, too.

§ 11 Payment

In the supply of goods, the payment in full upon delivery is due.

The customer will get in default of payment 14 days after due-date without further declaration of ORDERLINE GmbH, in so far he did not pay.

The enforcement of further delay claims of ORDERLINE GmbH is not excluded.

§ 12 Property rights of third parties

If a third party to the customer any claims of infringement of intellectual property rights through the software supplied by ORDERLINE GmbH and the application of the software is impaired or forbidden through this, ORDERLINE GmbH guarantees as follows:

ORDERLINE GmbH either will modify or replace the software at their choice and at their expense so that they do not violate the property right, but yet in essence does correspond to the agreed functions and features in a way reasonable for the customer or the releases the customer from license fees for application the software during the agreed lease time against the property right holder or third parties.

If ORDERLINE GmbH does not succeed in this on reasonable terms, they will inform the customer about this and prohibit him the use of the software from a certain date in time. The customer is obliged by choice of ORDERLINE GmbH either to delete the software including the documentation and all copies, or to return it to ORDERLINE GmbH. A compensation claim of ORDERLINE GmbH exists only for the period, in which the software could be used by the customer.

Requirements for the liability of ORDERLINE GmbH are, as per above paragraphs, that the customer informs ORDERLINE GmbH about claims of third parties, who does not acknowledge the claimed property rights violation and entrusts any altercation including possible out-of-court settlements either ORDERLINE GmbH or conducts them only in agreement with ORDERLINE GmbH.

If the customer stops the use of the software because of mitigation of damages or other important reasons, he is obliged to indicate the third party, that with the stop of use an acknowledgement of the claimed property rights violation is not connected.

As far as the customer is responsible for the property rights violation himself, claims against ORDERLINE GmbH are excluded.

Further claims of the customer because of a violation of property rights of third parties are excluded. This exclusion does not apply to intent gross negligence and injury to life, body and health.

§ 13 Warranty

Minor modifications of execution of services and minor deviations of the agreed nature do not entitle the customer to warranty claims.

As far as software programming is item of the concrete contractual relationship, it is pointed out that it is not possible to create a faultless software program according to the state of science and technology.

§ 14 Statutory limitation

The statutory limitation for claims and rights because of defects of delivery items - for whatever legal reason – amounts to one year. However, this is not valid with malicious concealment of the defect, with guarantees (§ 444 BGB), with intent or gross negligence of ORDERLINE GmbH or with intent or gross negligence of a legal representative or vicarious agent of ORDERLINE GmbH, for damages resulting from injury to life, body or health, for claims according to the product liability law, as well incases of § 438 section 1 No. 1 BGB (legal defects in immovable property), § 438 section 1 No. 2 BGB (buildings, things for buildings), § 479 section 1 BGB (recourse claim of the entrepreneur) or § 634 a section 1 No. 2 BGB (buildings or work, whose success consists in the provision of planning or supervision service for this). The periods specified in sentence 2 above are subject to the statutory limitation period.

A change in the burden of proof to the detriment of the customer is not connected with the above regulations.

§ 15 Liability

1. In all cases of contractual and non-contractual liability ORDERLINE GmbH indemnifies exclusively within following limits:

1.1 In case of intent ORDERLINE GmbH is liable according to the legal regulations. As well ORDERLINE GmbH is liable in the absence of a condition for which ORDERLINE GmbH has assumed a guarantee.

1.2 In case of gross negligence ORDERLINE GmbH shall only be liable in the amount of the contract-typical foreseeable damage that should be prevented by the breach of duty;

1.3 In other cases ORDERLINE GmbH is only liable in case of breach of an essential contractual obligation, if the contractual purpose is at a risk through this. This liability is limited to the amount of the contract-typical foreseeable defect. Essential obligations are obligations, whose completion first enables the proper implementation at all and compliance with which the contractual partner may regularly rely.

1.4 The liability according to 1.3 is limited to 50.000,- € per case of damage.

2. The limitations of liability according to para. 1 are not valid in liability for injury of life, body and health according to the law on product liability.

3. The limitation period of the above claims in this § 15 amounts to 1 year. This is not valid for above claims according to para. 1.1, 1.2 and para. 2, for these the legal limitation period are valid. The limitation period according to sentence 1 starts with the specific time determined in § 199 Abs. 1 BGB. It takes effect no later than the expiry of the maximum periods specified in § 199 section 3 and 4 BGB.

4. A change of the burden of proof to the disadvantage of the customer is not connected with the above regulations.

§ 16 Force majeure

In the case that, despite of all reasonable efforts, a party cannot provide the performance owed due to force majeure (in particular war, strike, natural disasters and power failure) it will be released from its obligations for the duration of the hindrance.

Die ORDERLINE GmbH is not liable for faults, which are not in their sphere of influence.

§ 17 Ranking

The regulations between ORDERLINE GmbH and the customer are ranked as follows, the lower digit being the higher one:

- 1.individual written changes and / or supplements of this contract after conclusion of contract
- 2.contracts signed by the parties including their attachments
- 3.these General Terms and Conditions
- 4.legal regulations
- 5.standards and norms

For the same-ranking documents, which have arisen chronologically, the most recent one is decisive. Gaps are filled by the respective subordinate provisions.

§ 18 Assignment

The customer only is able to assign rights of this contract by written agreement of ORDERLINE GmbH.

§ 19 Set-off against claims

Offsetting by the customer against claims of ORDERLINE GmbH is only permitted with counterclaims of the customer in the amount of the costs of rectification or completion of the defect and with undisputed or legally established claims.

§ 20 Written form and subsidiary agreements

Subsidiary agreements do not exist. Contract amendments and / or supplements require the written form. Here the telecommunicative transfer (for example e-mail) is sufficient for observing the written form. The same applies to repeal of this written form clause.

§ 21 Place of fulfillment

Place of fulfillment for deliveries and services is the registered office of ORDERLINE GmbH.

§ 22 Jurisdiction

If the customer is merchant, legal entity of public law or public special assets, exclusive jurisdiction for all disputes of this contract is the court, which is responsible for the registered office of ORDERLINE GmbH.

The same is valid, if the customer does not have a general jurisdiction in Germany or the residence or usual stay at the time of the action is not known. ORDERLINE reserves the right to file or initiate legal action or other legal proceedings at the customer's place of general jurisdiction.

If the customer is not a merchant, legal entity of public law or public special assets, the legal regulation is valid.

§ 23 Applicable law

The law of the Federal Republic of Germany is exclusively valid without Es gilt ausschließlich das Recht der Bundesrepublik Deutschland without the reference norms of international private law and to the exclusion of the UN Sales Convention (CISG).

§ 24 Ineffectiveness of individual regulations

If individual regulations of this contract should be or should become invalid, the validity of the other regulations remains unaffected.

As far as the ineffectiveness of regulations does not result from a violation against regulations about General terms and conditions according to §§ 305 ff. BGB, an effective regulation is considered as agreed, which most economically approximates the content of the invalid regulation.

B. Software adaption

As far as software adoption is owed, ORDERLINE GmbH will deliver the necessary adoption services. The regulations of part A are valid additional.

§ 1 Scope of service

The scope of service owed by ORDERLINE GmbH result from the specification in the offer respectively the order confirmation.

Every contract party names a project leader for the duration of the project.

§ 2 Rights at the individual adoptions

ORDERLINE GmbH grants the customer a simple, not exclusive, temporary unlimited and irrevocable right concerning the adoption services, to use this software on his system. Further rights are not granted to the customer.

§ 3 Scope of delivery

ORDERLINE GmbH will obtain or produce the contractly agreed standard software and deliver and install it. Included in the delivery scope are the programs in the object code respectively intermediate code and the delivery of an user documentation. The customer does not receive the source code.

C. Use of the ORDERLINE standard software

ORDERLINE GmbH grants usage rights to the licensed software according to these conditions. The customer receives property only on the storage medium, manual as well as on the other related written documents. The regulations of part A are valid additional.

§ 1 Scope of the license

If the customer has purchased multiple licenses, always only at most as many multiple licenses have been purchased by the customer. If the expected number of users of the software exceeds the number of the purchased licenses, so the customer must have appropriate mechanisms or methods to ensure that the number of persons, who use the software simultaneously, does not exceed the number of the licenses.

§ 2 Rights to the software

ORDERLINE GmbH grants the customer a simple, not exclusive, temporarily unlimited, irrevocable right regarding the standard software, to use this software on his system according to contract described in attachment 1. The customer does not receive further rights.

The usage rights are limited to following terms of action within the normal usage:

- The installation of the software on the computers to the use of the software in the agreed scope of the necessary computers
- The loading of the software in the respective memory and execution of the program;
- The preparation of backup copies;
- Necessary actions within § 69d para. 3 UrhG;
- Decompilation according to § 69e of UrhG.

If the backup copies are prepared according to these regulations by the customer, these have to be marked as backup copies by the customer.

§ 3 License protection

The software is equipped with a license protection mechanism.

§ 4 Copyright

The software is copyrighted, the rights resulted from the copyright belong to ORDERLINE GmbH. The software contains copyrighted material and trade secrets, to which the customer is committed. The copyright includes in particular the program code, the documentation, the appearance, the structure and organization of the program files, the program name, logos and other presentation forms within the software. Every not authorized copying, use, forwarding, change or reproduction of the content of the software is prohibited.

The manual as well as other documents belonging to the software can also be copyrighted.

D. Delivery of hardware including packet software of third parties

The license conditions of the manufacturer have to be observed. The regulations of part A are valid additional.

§ 1 Payment conditions and prices

All invoices of ORDERLINE GmbH are payable 14 days after date of invoice. Authoritative is the date of incoming payments at ORDERLINE GmbH. In case of default ORDERLINE GmbH is entitled to restrain further supplies and services.

All prices are exclusive of VAT.

ORDERLINE GmbH is entitled to make partial deliveries.

§ 2 Delivery and shipping

All offers are open. If a customer requests changes or additions of the order after order placement or there are other circumstances, which make the compliance of the delivery date impossible, although ORDERLINE GmbH is not responsible for these circumstances, so the delivery date shifts by a reasonable period.

Is the non-compliance with a binding delivery date demonstrably attributed to mobilization, war, riot, strike or lockout or other in accordance with general legal principal circumstances beyond the control of ORDERLINE GmbH, so the delivery period is extended appropriately. The customer can withdraw from the contract, if he sets a reasonable grace period for ORDERLINE GmbH after expiry of the extended deadline.

The costs for the dispatch and the transport insurance are always to be borne by the customer, in which the choice of the dispatch way and delivery is at the discretion of. The customer is obliged to check the goods immediately on arrival and report any visible damage to the packaging to ORDERLINE GmbH immediately in writing.

§ 3 Retention of title

The delivery item remains property of ORDERLINE GmbH until the fulfillment of all claims against the customer arising from the business relationship.

In case of sale of the delivery item the customer herewith cedes the claim from the resale against the customer with all ancillary rights to ORDERLINE GmbH by way of security, without the need of further special explanations. The cession is valid including any balance claims. However, the cession is only valid up to an amount, which is corresponding to the price of the delivery item invoiced by ORDERLINE GmbH. The portion of the claims assigned to ORDERLINE GmbH is primarily to be satisfied.

If the customer connects the delivery item or the virgin material with property land or moveable things, so he also assigns his claims, which he is entitled to as compensation for the connection with all ancillary rights as a precaution in the amount of the ratio of the value of the delivery item respectively the virgin material to the other connected goods at the time of the connection to ORDERLINE GmbH, without the need of further special explanations.

Until revoked the customer is entitled to collect the claims assigned in these provisions (retention of title). The customer will immediately forward payments made to the assigned claims up to the amount of the secured claim to ORDERLINE GmbH. If there is an important reason, in particular default in payment, cessation of payment, opening of insolvency proceedings, bill protest or justified indications of over-indebtedness or impending insolvency of the customer, ORDERLINE GmbH is entitled to revoke the collection authority of the customer. In addition, after prior warning and within a reasonable period of time, the assignment of security may be disclosed, the assigned claims may be utilized, and the disclosure of the assignment by the customer to its (final) customers may be required.

In case of a legitimate interest the customer has to provide ORDERLINE GmbH with information, which is important to assert their rights against their customer, and to hand over the requested documents.

During the existence of the retention of title, the customer is prohibited from pledging or transferring ownership. The resale is only allowed to resellers in the ordinary course of business and only under the conditions that the payment of the equivalent value of the delivery item is made to the customer. The customer also has to agree with the customer that only with this payment the customer acquires property. In the event of seizure, confiscation or other dispositions or interventions by third parties, the customer must notify ORDERLINE GmbH immediately.

As far as the realizable values of all security rights, which ORDERLINE GmbH is entitled to, exceed the amount of all secured claims by more than 10%, ORDERLINE GmbH will release a corresponding part of the security rights by request of the customer. ORDERLINE has the choice of sharing between different security rights.

In the event of breaches of duty by the customer, in particular default of payment, ORDERLINE GmbH is authorized – even without deadline - to demand the return of the delivery item or the new product and / or to withdraw from the contract; the customer is obliged to surrender. There is no declaration of resignation of ORDERLINE GmbH in the delivery request of the delivery item / the new product, unless this is explicitly stated.

§ 4 Warranty

It is known to the contracting parties that according to the current state of technics it is not possible to create a completely free of defects software.

An actualized complete documentation is only delivered for significant changes within the liability for defects.

An insignificant defect does not give rise to any warranty claims.

ORDERLINE GmbH first provides supplementary performance in case of defects.

The supplementary performance is made by the choice of ORDERLINE GmbH through elimination of the defect or the provision or delivery of a fee of defects software. The removal of defects also applies if ORDERLINE GmbH shows the customer reasonable possibilities to avoid the effects of defects.

ORDERLINE GmbH is authorized to make the supplementary performance dependent on the case that the customer has paid a reasonable part of the compensation.

If the attempt to remedy the defect fails, the customer is entitled to set a reasonable grace period for rectifying the defect. He must expressly point out in writing, that he reserves the right to rescind the contract and/or claim damages in the event of another failure.

If the rectification fails even in the grace period, the customer can withdraw from the contract or reduce the compensation.

Compensation or reimbursement of futile expenses due to a defect is provided by ORDERLINE GmbH in accordance with the limits set out in Part A "Liability".

New program states:

If necessary the customer has to take over a new program status as a part of the defect liability, unless that leads to inadequate adjustment and conversion problems for him. If a new version of the software is provided in the process of removal of a defect, the replaced version must be destroyed or returned to ORDERLINE GmbH upon request.

Abusive shortcomings:

The customer is obliged to reimburse the costs for a defect removal operation, if the customer recognizes or has negligently failed to recognize that a defect is not present and nevertheless urges ORDERLINE GmbH to remedy the defect.

The delivery of a user manual in English is permitted, if the subject matter of the contract is not yet localized for the respective market. The same applies, if the subject of contract is generally only available in English.

§ 5 Limitation of liability

In case of a claim of ORDERLINE GmbH from warranty or liability a contributory negligence of the customer must be considered appropriately, especially if there are insufficient error messages or insufficient data backup. Insufficient data backup exists in particular if the customer has failed to take precautions by appropriate state-of-the-art safeguards against outside influences, in particular against computer viruses and other phenomena that can jeopardize individual data or a complete dataset.

Moreover the regulations under part A are valid.