

# General Terms and Conditions

of Miray Software AG, as of August 2021

(This version is just a translation; only the German version is legally binding.)

## 1. Area of Application

1.1. These General Terms and Conditions ("T&C") apply to all agreements between clients and Miray Software AG ("Miray") including those concluded over telecommunication channels (§ 312b Abs. 2 BGB).

1.2. The T&C are effective for deliveries and services by Miray to the client ("Client").

1.3. Terms differing from these T&C – as far as not constituted in the entire offering of the Client – are not effective.

## 2. Offering

Our offerings are always subject to confirmation and possibly depend on the availability from our suppliers.

Graphical representations, descriptions, declarations of dimension or weight in prospectuses, documents, catalogues etc. are subject to changes by Miray.

## 3. Self-supply Reservation

If the agreed consignment is not available because Miray itself has not been supplied by its suppliers or the inventory stocks of Miray for this consignment are exhausted, Miray is entitled to withdraw from the contract. In this case the Client will be informed immediately that the agreed consignment is not available.

## 4. Delivery of Software

Software is committed to the licensee for use within the limits of a single-workstation-license. Any simultaneous use on two or more workstations or any use within a network requires an appropriate number of single-workstation-licenses or an adequate multi-workstation-license.

## 5. Right of Withdrawal for Clients being Customers

In case that the agreement results from exclusive use of telecommunication channels (i.e. by telephone, in written form including facsimile or by E-mail) the Client is entitled to the following right of withdrawal:

5.1. The Client may cancel contracts within two weeks in written form (including E-mail) or by returning the consignment to the address of Miray in each case.

5.2. There is no right of withdrawal for software that has already been unsealed by the Client.

5.3. Further, there is no right of withdrawal for consignments that have been transmitted online (for example downloaded software).

5.4. The respite of two weeks starts at receipt of the consignment. It is preserved by dispatch of the complete, unused and undamaged consignment to Miray.

5.5. As far as the order value amounts more than 40,00 Euro, Miray restitutes the freight charges for reassignment by Deutsche Post AG. Charges of other carriers will not be restituted. Shipments sent freight unpaid will not be accepted by Miray and will be returned at the expense of the Client. Freight unpaid shipments and deficiencies in franking are considered as being sent improperly and do not have a preserving effect on the respite.

5.6. Miray is entitled to retain a diminution emerging from utilization of the consignment by the Client.

5.7. If the returned consignment is damaged or defective, Miray is entitled to demand compensation from the Client.

## 6. Passing of Risk, Delivery Period

6.1. Risk passes to the Client as soon as the consignment has been delivered by Miray to the person or organisation destined to handle shipping.

6.2. If possibly agreed delivery date cannot be kept due to force majeure, for example mobilization, war, riot, general telecommunication interference, or similar events, for example strike, lockout, periods are extended adequately. Miray will inform the Client immediately about the delay in delivery.

## 7. Terms of Payment

Purchase price becomes due immediately with ordering.

## 8. Charging, Right of Retention

The Client may only charge up against such receivables that are undisputed or legally ascertained.

## 9. Deficiencies in Matter

9.1. It is pointed out to the Client that it is technically impossible to develop software that is absolutely error-free. Therefore Miray only accepts warranty for the technical usability of the program delivered by Miray for its declared intended purpose. There is no warranty being given that the standard software is in accordance with the operational characteristics of the Client as far as nothing different is agreed in written form. Employees of Miray are not authorized to enter into verbal commitments. In case of illicit interventions concerning the soft-

ware installation by the Client or third party any further warranty on the part of Miray will become void.

9.2. The parts of the consignment that show a deficiency in matter within the limitation period, as far as its cause has already been existing at the moment of passing of risk, have to be corrected, delivered again, or provided again ("supplementary performance") gratuitously at the option of Miray.

9.3. Supplementary performance does not restart the limitation period (clause 9.4.).

9.4. Claims from deficiencies elapse within 12 months from handover of the consignment. This does not apply as far as §§ 438 Abs. 1 Nr. 2, 479 Abs. 1 and 634a Abs. 1 Nr. 2 of German BGB stipulate longer respites as well as in cases of injury of life, body, or health, in case of an intentional or grossly negligent breach of duty and in case of fraudulent concealment of a deficiency. Legal regulations about expiry suspension, suspension or restart of respites stay unaffected. For customers, the limitation period does not expire before 24 months from handover.

9.5. If supplementary performance fails, the Client may – irrespective of possible claims for damages (clause 12.) – withdraw from the contract or reduce compensation.

9.6. Claims for deficiencies do not exist in case of damages, which emerge after the passing of risk, either (1) as a result of incorrect operation or handling or (2) due to use of other software, which is not compatible to the object of delivery, or (3) due to external influences that are unconsidered according to the contract. If the Client conducts improper modifications to or unauthorized interventions in the software installation, this will suspend any claims for deficiencies and resulting consequences.

9.7. The Client will reprove Miray for deficiencies immediately in written form. Clients who are customers will notify Miray about pending deficiencies in written form or by E-mail within a respite of two weeks from receipt. After expiration of the respite the assertion of pending deficiencies is ceased.

9.8. Claims of the Client resulting from expenditures necessary for the purpose of supplementary performance, especially forwarding expenses, are excluded as far as they are based upon the fact that the consignment has subsequently been moved to a location different from the delivery address.

9.9. Miray has to be conceded supplementary performance within an appropriate period of time. If denied, Miray is exempt from liability for deficiencies in matter.

9.10. Advanced claims or claims different from those regulated in clause 9. of the Client against Miray due to a deficiency in matter are excluded. Furthermore clause 12. applies regarding claims for damages.

## 10. Infringement of Property Rights, Other Deficiencies in Title

10.1. As far as third party asserts legitimate claims against the Client based on the infringement of property rights through a consignment from Miray, utilized contractually, Miray is liable against the Client as follows within the respite constituted in clause 9.4:

10.1.1. For the consignment in concern, Miray will at own option and expense either effect right of use or change it in a way that these property rights are not infringed any more, or substitute it. If this is not feasible for Miray on appropriate conditions, the Client is entitled to the legitimate rights of withdrawal and reduction.

10.1.2. The liability of Miray to compensate damage is determined in clause 12.

10.1.3. The liabilities of Miray mentioned above only persist as far as the Client informs Miray immediately and in written form about the claims raised by a third party, does not acknowledge an infringement and reserves all defense actions and negotiations for settlement to Miray. If the Client discontinues utilization of the consignment for reasons of loss minimization or other important reasons, the Client will indicate to the third party that the discontinuation of utilization does not involve a confession of an infringement of property rights.

10.2. Claims of the Client are excluded as far as the Client is responsible for the infringement of property rights.

10.3. Furthermore, claims of the Client are excluded as far as the infringement of property rights is caused by special demands of the Client, by utilization not predictable by Miray or by the Client modifying the consignment or utilizing it in combination with products not de-

livered by Miray.

10.4. In case of other deficiencies in title, the regulations of clause 9. apply accordingly.

## 11. Impossibility, Adaptation of Contract

11.1. As far as delivery is impossible, the Client is entitled to claim compensation unless Miray is not responsible for the impossibility. But the claim for compensation by the Client is limited to 10 % of the value of that part of the consignment that cannot be utilized by the Client due to the impossibility. This does not apply as far as in cases of intention, gross negligence or initial inability or due to harm for life, body or health an obligatory liability applies; this does not imply a change of the burden of proof to the disadvantage of the Client. The right of withdrawal of the Client stays unaffected.

11.2. As far as events of force majeure (clause 6.2) change the economic relevance or the contents of the consignment significantly or affect on the business of Miray significantly, the contract will be accommodated adequately under consideration of good faith. As far as this is economically not justifiable, Miray has the right of withdrawal. If Miray wants to exercise this right of withdrawal, Miray will notify the Client thereof immediately after getting awareness of the consequences of the event, even if there was an agreement with the Client at first regarding an extension of the delivery period.

## 12. Other Claims for Compensation

12.1. Claims for compensation and claims for reimbursement of expenses of the Client, regardless of the legal basis, especially due to breach of duties from the obligation and from illegal action, are excluded. Therefore Miray is especially not liable for damages that arise at the consignment itself and for loss of profit or for other financial losses of the Client.

12.2. This does not apply as far as there is no obligatory liability for example according to the law of product liability or in cases of intention, gross negligence, due to harm for life, body, or health.

12.3. Compensation for the infringement of essential contractual obligations is limited to the contract-typical, predictable damage, as far as it is not based upon intention or gross negligence or liability arises from harm for life, body, or health.

12.4. As far as liability of Miray is excluded or limited according to clause 12., this also applies to the personal liability of its clerks, employees, contributors and other assistants but not to the personal liability of legal representatives and executives.

12.5. As far as the Client is entitled to compensation according to clause 12., entitlement will lapse within 12 months from delivery. In case of intention, bad faith and in case of claims for compensation resulting from the law of product liability, statutory limitation periods apply.

12.6. The regulations of clause 12. do not imply a change of the burden of proof to the disadvantage of the Client.

## 13. Confidentiality

13.1. Concerning the documents, knowledge, information and other technical documentations – independent if the used medium – ("Information") of the other party obtained on base of the contract, either party will neither pass them on to a third party nor use them for other purposes than those contractually agreed on without written consent of the other party. They have to be protected against unauthorized inspection or use. Without restraint of other rights, one party can demand to return them if the other party infringes these duties.

13.2. The duties according to clause 13.1 start at first receipt of information and ends 36 months after expiration of the contract.

13.3. The duties according to clause 13.1 do not apply to information which is matter of common knowledge or is already known to the receiving party at receipt without being obligated to nondisclosure or is transmitted subsequently by an authorized third person or is developed by the receiving party without utilization of information subject to nondisclosure from the other party.

## 14. Subsidiary Agreements, Place of Jurisdiction, Applicable Law

14.1. Subsidiary agreements require written form.

14.2. Place of jurisdiction is Munich (Germany) if the contractual partner is a business in terms of German Handelsgesetzbuch.

14.3. German law applies to the exclusion of CISG.