

# General Terms and Conditions for SIGMA Enterprise Solutions GmbH

## I. General

1. All deliveries and services (whether provision or implementation of hardware or software) are subject to these Terms and Conditions, as well as to any other separate contractual agreements. The manufacturer's licence terms supplied with the software products are part of the supplier's terms and conditions of provision regulated below. Deviant purchasing terms of the buyer will not become part of this contract, even upon acceptance of the order, nor even in the absence of express objection from the supplier. In the absence of a particular agreement, a contract comes into effect with the written order confirmation of the supplier.
2. The supplier's offers are non-binding. The technical data and descriptions in the respective product information or advertising material will only become a part of the contract upon express written inclusion in the contract, and do not constitute a guarantee of characteristics, unless the supplier confirms them expressly as guaranteed. The images, diagrams and details of weights and dimensions contained in the descriptions are only indicative unless expressly stated as binding.
3. The supplier reserves property rights and copyright for samples, cost estimates, drawings and similar information of a physical and non-physical nature, including computer files; they may not be made accessible to third parties.
4. The supplier may have all its services provided by third parties, provided that it announces this to the client before the provision of the service, demonstrates the technical qualification of the third party with suitable documentation, and provided that the provision of the service by the third party is acceptable to the client.
5. The supplier undertakes to provide software and hardware documentation solely in electronic form.

## II. Withdrawal

The supplier may withdraw from the contract if

1. the client has made false statements about its creditworthiness and the statement refers to a fact that is significant for the assessment of its creditworthiness, or
2. creditworthiness is omitted and the client is not prepared to make step-by-step payments or provide security, despite being requested so to do, or
3. the supplier is not able to deliver as the result of a non-delivery by an upstream supplier for which the supplier is not responsible, even though the supplier has made all reasonable efforts to procure supplies. In this case, the supplier will inform the buyer immediately about the non-availability, and reimburse the buyer immediately for any considerations already received.

## III. Training services

The following provisions apply only to orders with standard training. Individual training in service packages for hardware or software launches are not covered by these provisions.

1. The agreement concerning the provision of training services is subject to the condition that the minimum number of participants stated by the supplier is attained.
2. The content of the training services will be based on the respective training programme. The client has no right to the use of specific training staff. The training location and time frame can be changed by the supplier with good reason, provided that this is reasonable for the client.
3. The client can withdraw from the training services contract by written declaration until two weeks before the start of the training at the latest. If the client does not take part in the training and has not declared its withdrawal in good time, it must pay half of the agreed remuneration, unless the client proves that the damages suffered by the supplier amount to a smaller sum. If the client does not take part in the training and has not declared the withdrawal up to one day before the start of the training, it must provide the full agreed remuneration, unless the client demonstrates that lesser damages have been suffered by the supplier.

## IV. Software licensing

Provided that no separate licence agreement has been concluded in connection with the software licensing, and unless more specifically regulated in the order form or order confirmation, the following provisions shall apply:

1. The supplier shall grant the buyer a non-exclusive, non-transferable, indefinite right to use the supplied software and its documentation. It shall be licensed for use on the device and by the number of users specified in the order form or order confirmation.
2. The buyer may only duplicate, edit or translate the software, or transform it from the object code to the source code, to the legally permitted extent (§69a et seq. of the UrhG – German Act on Copyright and Related Rights). The buyer is obliged not to remove manufacturer information – in particular copyright marks – or to change them without prior express permission from the supplier.
3. All other rights to the software and documentation, including copies, shall remain with the supplier or software supplier. The issuing of sublicences is not permitted.
4. If the client is in breach of one of the aforementioned provisions of Section IV, or of any other regulation regarding the use of the software in the order form or order confirmation, or of the separate licensing agreement or the licensing terms and conditions of the manufacturer, the supplier can, after an unsuccessful reasonable grace period, terminate the usage right granted to the client, in writing and with immediate effect, without the licensing fee being reimbursed.

## V. Client's obligations to cooperate

1. For the provision or implementation of hardware or software, if the supplier is also to provide support services, the client is obliged to use the programs in a proper manner and to back them up. The accessories

used (such as data-storage media) must satisfy the appropriate quality requirements.

2. If the supplier has undertaken to provide support services, the supplier may in principle provide these by means of remote maintenance. To this end, the client shall implement, or have implemented, the appropriate remote-support platform (RSP) of the software manufacturer for the provision of maintenance services by the supplier or software manufacturer. If the client does not request any remote or on-site maintenance, it is obliged to bear the resulting additional costs, which will be shown in the relevant contract offer.
3. If the supplier is only contractually obliged to maintain software without the prior provision of hardware and/or software, the client shall guarantee that the hardware, database, operating-system version and Internet connection for remote support by the supplier or software manufacturer meet technical standards, and that the licence for the use of browser software is valid. Section 2, Clause 2 above applies accordingly.
4. The client is obliged to save its documents and data regularly and in an appropriate form. It must guarantee that, after a technical failure, the most recently saved status before the failure is available, as otherwise it will not be possible for the supplier to restore the data and documents.

## VI. Prices and payment terms

1. The prices agreed upon in the order form or order confirmation shall apply. If no price is set in the order form or order confirmation, the prices valid according to the supplier's price list when the contract was concluded shall apply. Unless otherwise agreed, the prices ex the supplier's premises shall apply. There will be extra charges for the value added tax at the respective statutory rate and any other country-specific duties for delivery abroad and services abroad, as well as packaging and transport costs, and costs of transport insurance.

Remuneration for data-storage media, operating resources, accessories, installation, instruction, training and travel costs as well as travelling time are not included in the equipment and software prices and will be charged separately.

2. The supplier's invoices must be paid without deductions within 10 days of issue.

Partial services will be invoiced upon their delivery.

For take-away purchases, the invoice amount is payable immediately in cash.

For orders from new clients, the client must make an advance payment of 10% of the price of the delivery items within 7 days of the order confirmation. For training services, 50% of the cost is payable upon registration and 50% at the beginning of the training.

3. If, after the supply contract has come into effect, the supplier agrees to the transfer of this contract from the client to a leasing company, the client must pay interest, under the appropriate application of Section VI Clause 6, for the time period between the anticipated supply of the delivery object and the entry into force of the entry agreement between the supplier and the leasing company.

4. If the delivery time is more than 4 months, the supplier reserves the right to increase the prices according to the cost increases that occur due to increases in staff costs, equipment costs or material costs. If the increase is more than 4.5% of the agreed price, a non-commercial client has the right to withdraw, which must be exercised in writing within one week of receipt of notification of the increase.

5. All receivables due to the supplier shall become immediately payable if the payment dates and deadlines are not observed without reason, or if the supplier becomes aware of a significant deterioration of the

financial circumstances of the client. The provisions in accordance with Item 3 remain unaffected.

6. If the client defaults on payments, interest of 8 percent above the respective base rate p.a. will be charged. The interest rate will be increased or decreased if the supplier provides evidence of a higher interest rate or the client provides evidence of a lower interest rate.
7. The buyer may only offset against price or remuneration claims of the supplier such claims that are uncontested or legally established, or that are sub judice and ready for decision. Commercial customers may only assert a right to retention in the case of uncontested or legally established claims or claims that are sub judice and ready for decision.
8. In accordance with the legal requirements of §313 BGB (German Civil Code) the Supplier reserves the right to make changes to agreed prices and other contractual conditions should this become necessary due to market measures or influencing external suppliers. The customer will be informed immediately. If the customer does not agree with the changes made, the customer shall have the right to terminate the contractual relationship. Any claims for damages or other compensation on the part of the supplier are hereby excluded.

## VII. Delivery time, delayed delivery

1. During the delivery period, the supplier reserves the right to make changes to the design, format or colour of the delivery items, and to change the scope of supply, provided the delivery items are not significantly changed, and the changes are reasonable for the client.
2. The supplier expressly reserves the right to provide partial deliveries and services and charge for them, if this is reasonable for the client when the interests of the supplier are taken into consideration.
3. Delivery dates and delivery periods are non-binding unless the supplier has expressly confirmed them to be binding. Delivery periods begin with the sending of the order confirmation. Delivery periods are complied with if the delivery item is dispatched within the delivery period. In the event of force majeure or operational disruptions that occur for the supplier or its upstream suppliers due to riot, dispute or lockout and that temporarily prevent the supplier or its upstream suppliers, through no fault of their own, from supplying the delivery items by the agreed deadline or within the agreed period, or from providing the service, the agreed dates and deadlines will be extended by the duration of the disruptions to deliveries or services caused by these circumstances. If such disruption leads to a service postponement of more than 3 months, the client may withdraw from the contract concerning the delivery item or service affected.
4. Fulfilment of the delivery or service obligation requires the timely and proper fulfilment of the client's obligations. A further prerequisite for fulfilment of the delivery or service obligations in the case of a software or hardware implementation is that the client has carried out all necessary preparatory work for the installation, such as the installation of cables and sockets, in good time before the start of the delivery by the supplier. If additional expenses arise for the supplier due to incorrect or insufficient preparatory work on the part of the client, they shall be borne by the client. If the preparatory work has not been carried out in a timely manner, the completion time for the supplier will be extended by the duration of the delay caused by the client with the addition of a surcharge for the commencement/resumption of the work by the supplier.
5. Eight weeks after the culpable failure to meet a binding delivery date or a non-binding delivery period, the client may request in writing that the supplier make the delivery within a reasonable period, indicating that it will reject the handover of the delivery item affected by the

delay after the expiry of the period. Upon receipt of the request, the supplier will be in default

6. In the case of support services provided by the supplier, the supplier is only responsible for the support service and the client for the overall outcome.
7. The buyer may withdraw from the contract without setting a time limit if the supplier becomes definitively unable to perform the entire service before the transfer of risk. The buyer may also withdraw from the contract if it becomes impossible to deliver part of an order and it has a justified interest in rejecting a partial delivery. If this is not the case, the buyer must pay the contractual price applicable to the partial delivery.

The same applies in the case of inability of the supplier. Otherwise, Section XIII Clause 2 applies.

If the impossibility or inability occurs during the acceptance delay, or if the buyer is solely or predominantly responsible for these circumstances, the buyer will remain obliged to provide remuneration.

8. If the buyer sets the supplier a reasonable deadline after the due date for the service – subject to legal exceptions – and if the deadline is not complied with, the buyer is entitled to withdraw within the framework of the statutory provisions.

Further claims as a result of delayed delivery are based exclusively on Section XIII Clause 2 of these Terms and Conditions.

#### **VIII. Transfer of risk, acceptance**

1. The risk shall transfer to the buyer when the delivery item has left the plant, even if it is a partial delivery or the supplier has undertaken other services, such as shipping costs or delivery and installation. If an acceptance is to take place, this shall be the determining factor for the transfer of risk. It must be carried out immediately on the date of acceptance, or alternatively after the supplier's notification of readiness for acceptance. The buyer may not refuse acceptance due to the presence of an insignificant defect.
2. If the shipping or acceptance is delayed or stopped due to circumstances for which the supplier is not responsible, the risk shall be transferred to the buyer on the date of notification of readiness for shipment or acceptance. The supplier undertakes to take out the insurance policies requested by the buyer at the buyer's expense.
3. Partial deliveries are permitted if reasonable for the buyer.

#### **IX. Complaints and notices of defects**

1. Identifiable material defects are to be reported by the buyer immediately, at the latest 15 days after receipt of the goods. Labels on boxes, content labels and check slips sent with the delivery are to be submitted with the complaint. Other material defects are to be reported in writing by the buyer immediately upon discovery.
2. In each case, receipt of the complaint by the supplier is decisive.
3. If a notice of defect is sent without good reason, the supplier is entitled to request that the buyer reimburse it for any expenses incurred, unless the buyer demonstrates that it is not at fault regarding the unjustified notice of defect.
4. In the absence of a timely notice of material defect, material defect claims are excluded.
5. The buyer may not refuse receipt of deliveries due to insignificant defects.

#### **X. Retention of title**

1. The supplier shall retain ownership of the delivery item until receipt of all payments for receivables resulting from the business relationship.
2. If the goods subject to retention of title are combined to become part of a new item that belongs to the buyer, it is deemed agreed that the buyer grants the supplier joint ownership of the new item and will keep it safe with no charge to the supplier. The supplier's proportion of ownership shall be determined by the ratio of the value of the goods subject to retention of title to the value of the new item.
3. The buyer hereby assigns to the supplier all receivables arising from the resale of goods against their acceptance. If goods subject to retention of title are resold together with other goods that do not belong to the supplier, the buyer shall assign to the supplier the part of the receivables corresponding to the invoice amount for the goods subject to retention of title. In the case of resale of goods subject to retention of title that belong only in part to the supplier, the part of the receivables resulting from the resale assigned to the supplier shall be based on the supplier's proportion of ownership.
4. The buyer remains revocably authorised to collect the receivables from the resale. Upon request, it must notify its buyer of the assignment, and give the supplier all information and issue all documents that the supplier requires to assert its rights.
5. The supplier undertakes to release all securities to which it is entitled insofar as their value exceeds the receivables to be secured by more than 10%.
6. If mandatory statutory provisions of the respective country do not provide for retention of title within the meaning of Section X, Clauses 1–5, but acknowledge other rights to secure receivables from invoices of the supplier, then the supplier reserves these rights. The buyer is obliged to cooperate in measures that the supplier is entitled to take to protect its ownership right or any other right to the goods subject to retention of title that takes its place.
7. The supplier is entitled to insure the item of delivery, at the expense of the buyer, against theft, breakage, fire, water and other damage, if the buyer itself has not demonstrably taken out such insurance policy.
8. The buyer may neither pledge nor assign the delivery item as security. In the event of attachment, seizure or other injunctions by third parties, it must inform the supplier immediately.
9. In the event of conduct of the buyer that violates this contract, in particular payment default, the supplier is entitled to repossess the delivery item after notice has been given, and the buyer is obliged to surrender it.
10. An application to initiate insolvency proceedings entitles the supplier to withdraw from the contract and demand immediate return of the delivery item.

#### **XI. Claims for defects**

The supplier shall provide a guarantee for material damage and defects of title of the delivery, with the exclusion of further claims – subject to Section XIII – as follows:

##### Material defects:

1. All parts that appear to be defective as a result of circumstances occurring prior to the transfer of risk are to be repaired or replaced free from defects, at the discretion of the supplier and free of charge. The detection of such defects must be reported to the supplier

*\*For information only: This document is the translation of the German original document with the title "Allgemeine Geschäftsbedingungen der Firmengruppe SIGMA". Binding version is only the German version.*

immediately. Replaced parts shall become the property of the supplier.

2. After consultation with the supplier, the buyer must afford the necessary time and opportunity for the execution of all repairs and replacement deliveries that appear necessary to the supplier; otherwise the supplier is released from liability for the resulting consequences. Only in urgent cases of endangerment of operational safety or for the prevention of disproportionately substantial damages, of which the supplier must be informed immediately, does the buyer have the right to rectify the defect itself or have it rectified by third parties, and to demand compensation for the necessary expenses from the supplier.

3. Of the costs directly caused by the repair or replacement delivery, the supplier shall bear the costs of the replacement part and postage, provided the complaint is established to be justified. The supplier shall also bear the costs of dismantling and installation, as well as the costs of any necessary provision of the required fitters and assistants, including travel costs, provided this does not result in a disproportionate burden on the supplier.

4. The buyer has a right to withdraw from the Agreement within the framework of the statutory provisions if the supplier – subject to legal exceptions – unsuccessfully exceeds a reasonable grace period set for it to carry out the repair or supply a replacement due to a material defect. If there is only a non-significant defect, the buyer only has a right to a reduction of the contractual price. The right to a reduction of the contractual price otherwise remains excluded.  
 Further claims are based on Section XIII, Clause 2, of these Terms and Conditions.

5. No guarantee is provided in the following cases in particular:

- Unsuitable or improper use, incorrect installation or commissioning by the buyer or third parties, natural wear and tear, incorrect or negligent handling, improper maintenance, unsuitable equipment, defective construction work, unsuitable foundations, and chemical, electrochemical or electrical influences – provided the supplier is not at fault.
- Loss of data at the client as a result of a defect for which the supplier is responsible, if the client has not regularly and properly stored its data, in violation of its duties from Section V Clause 4, and this is the sole reason for restoration being impossible.

6. If the buyer or a third party performs improper repairs, the supplier is not liable for the resulting consequences. The same applies for changes made to the delivery item without prior permission from the supplier.

#### Defects of title:

7. If the use of the delivery item leads to a violation of industrial property rights or copyrights in Germany, and if the supplier is solely responsible for this, in principle, the supplier will obtain the right or further use for the buyer, at the supplier's expense, or modify the delivery item in a way that is reasonable for the buyer, so that the property right violation no longer exists.

If this is not possible under economically reasonable conditions or within a reasonable time limit, the buyer is entitled to withdraw from the contract. Under the stated conditions, the supplier also has a right to withdraw from the contract.

Moreover, the supplier will indemnify the buyer against undisputed or legally established claims of the holders of the property rights concerned.

8. The obligations of the supplier listed in Section XI, Clause 7, are conclusive, subject to Section XIII, Clause 2, in the case of infringement of property rights or copyright.

They only exist if

- the buyer has informed the supplier immediately of asserted property-right or copyright infringements;
- the buyer shall support the supplier to a reasonable extent in the defence against the asserted claims, or shall enable the supplier to carry out modification measures in accordance with Section XI, Clause 7;
- the right to carry out all defence measures, including out-of-court settlements, is reserved for the supplier;
- the defect of title is not based on an instruction from the buyer, and
- the violation of rights was not caused by the buyer changing the delivery item without authorisation or using it in a manner not in accordance with the contract.

#### XII. Manufacturer's warranties

If the supplier is not the manufacturer of a delivery item, and if the manufacturer offers the supplier's client an independent manufacturer's warranty that goes beyond this guarantee, the supplier shall inform the client of this and provide the client with the warranty documents on request. The supplier is not responsible for the manufacturer's fulfilment of the warranty.

#### XIII. Liability

- If the delivery item cannot be used by the buyer in accordance with the contract due to fault of the supplier as a result of neglected or incorrect execution of proposals or advice given before or after the conclusion of the contract, or as a result of the violation of other ancillary contractual obligations – in particular instructions for the operation and maintenance of the delivery item – the regulations of Sections XI and XIII Clause 2 shall apply with the exclusion of further claims by the buyer.
- For damages that do not occur to the delivery item itself, the supplier is only responsible – regardless of the legal basis:
  - in case of intent;
  - in case of gross negligence of the owner/corporate entity or executive employee;
  - in case of culpable harm to life, limb or health;
  - in case of defects that it has fraudulently concealed or the absence of which it has guaranteed;
  - in case of defects in the delivery item, insofar as liability is held in accordance with product-liability law for physical injury and material damage to privately used items.

In the case of culpable violation of significant contractual duties, the supplier is liable, even in the event of gross negligence of non-managerial employees and minor negligence, in the latter case limited to damage typical of the contract that was reasonably foreseeable, and that must be in reasonable proportion to the value of the delivery item.

Further claims are excluded.

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#### **XIV. Limitation**

Claims for defects shall expire within 12 months of delivery or acceptance. For claims for compensation according to Section XIII, Clause 2, a–e, the statutory time limits apply.

#### **XV. Applicable law, place of jurisdiction, final provisions**

1. For all legal relationships between the supplier and the buyer, only the law of the Federal Republic of Germany, relevant to the legal relationships between domestic parties, shall apply.
2. The place of jurisdiction is the court responsible for the supplier's place of business. However, the supplier is entitled to file complaints at the principal place of business of the buyer.
3. The place of performance is Chemnitz.
4. If the client is a legal person under public law or a special fund under public law, the provisions applicable to a merchant under these terms and conditions will also apply.
5. The client may only transfer its rights and obligations from the contract concluded under these terms and conditions with written permission from the supplier. The same applies for the transfer of its rights arising from this contract.
6. The client must inform the supplier, without delay, of any changes of location or registered office, and changes in legal status and contingent liabilities of its company.

7. If the client has its (registered) office outside of the Federal Republic of Germany, but within the European Community, it is obliged to observe the VAT regulations of the European Community. The client is obliged to inform the supplier of its VAT identification number and provide the necessary information regarding its entrepreneurial status, the use of transport for the delivery items and the statistical reporting obligation.

8. The client hereby consents to data made known in the context of the contractual and business relationship within the meaning of data-protection legislation will be stored by the supplier, provided this is necessary for the execution of the contract, in particular for order processing and customer support, whereby the interests of the client must be considered.

#### **XVI. Severability clause**

1. If the contract concluded under these terms and conditions contains a lacuna, or if a provision is or becomes unenforceable, in whole or in part, the remainder of the contract shall remain enforceable.
2. If the unenforceability is not due to a violation of §305 et seq. of the BGB (German Civil Code), a provision shall be deemed to be agreed that occupies the place of the omitted or unenforceable provision, that approximates as closely as possible the contractual partners' intended commercial purpose of the omitted or unenforceable provision.
3. However, the contract is completely unenforceable if, even taking into consideration the change provided for in Section XVI, Clause 2, adherence to the contract would represent an undue hardship for one of the contractual partners.