
GENERAL TERMS AND CONDITIONS TRADE GOOD & STANDARD- SOFTWARE

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SCOPE

1. These general terms and conditions of the MHP Solution Group govern the distribution of the trade good by MHP or a company of MHP Solution Group (in the following MHP). These conditions apply exclusively. Deviating or contrary conditions will not be recognised to the extent that MHP does not consent to them in writing.
2. These general terms and conditions apply only to companies, legal persons under public law or special estates under public law in the sense of § 310 Para. 1 BGB.
3. These general terms and conditions also apply for all future transactions between the parties as well as cases in which MHP carries out services while aware of deviating or contrary terms and conditions.

OBJECT OF CONTRACT

1. The object of contract is the acquisition of trade goods.
2. The trade good is a good (hardware, software, systems), for which MHP holds the distribution rights but which it does not manufacture itself.
3. MHP sells software (standard-software) that it did not manufacture itself strictly as a trade good.
4. The customer receives the program in object code on a data storage device specified with the customer. The scope of service is known to the customer.

CONCLUSION OF CONTRACT

1. A contract is concluded with the signing of an "order" or an "order sheet" by the customer and the confirmation of the order by MHP. The date of the confirmation of contract is considered the date of the conclusion of contract.
2. The customer's order is a binding offer that MHP can accept within two weeks by sending an order confirmation or by sending the goods.
3. The provisions of the order confirmation are solely determinative for the legal relationship between MHP and the customer including the general terms and conditions as well as any additionally concluded special contracts/applicable GTCs/other terms of contract.
4. The customer will receive on the first order the GTCs "Trade Good/Standard-Software", which will apply until modified to all subsequent orders.
5. Oral side-agreements to the order are only binding if they are confirmed in writing. This applies also to subsequent changes and amendments. Each contracting partner can request in writing changes in the agreed upon scope of performance by the other contracting partner.
6. If a modification to the contract from the customer requires an extensive review, this will be arranged separately. The expenditures required for this review can be billed by MHP. The contractual modifications to the agreed upon conditions required for a review and/or modification will be specified in writing in an additional agreement on modifications or in an additional order sheet and will enter into force corresponding to the contract.
7. The risk for any errors in communication in the context of an oral order will be borne by the customer.
8. To the extent necessary and relevant additional responsibilities of the contracting partners will be stated in the order sheet.
9. MHP can transfer contracts within the MHP Group to any other company. Furthermore any assignment of rights or transfers of obligations from a contract requires the prior written consent of both the customer and MHP. This consent may not be denied capriciously.

10. Before a contracting party undertakes legal actions due to failure to fulfil a term of contract, the other party in the case must be given an appropriate opportunity for fulfilment.

PERFORMANCE

1. Delivery will proceed according to the agreement and/or within 14 days from receipt of the order.
2. The installation of standard-software will be carried out by the customer to the extent not otherwise agreed upon.
3. MHP delivers exclusively at the risk to the customer even if the transport costs are expressly accepted. The risk of an accidental loss and incidental worsening transfers to the customer at the latest with the hand-over of the good. In the case of sale by mail the risk of any loss or incidental worsening of the good as well as the risk of delay already transfers to the customer when the good is handed over to the person transporting it. In these cases the customer must pay the purchase price.
4. Place of performance is the headquarters of MHP.
5. The conclusion of a transport insurance policy remains up to the customer.
6. If the customer is in default of acceptance, this is deemed equivalent to hand-over.
7. If the customer is in default of acceptance, he fails in obligations of cooperation or delivery is delayed for reasons for which the customer can be held responsible, MHP is entitled, to demand compensation of the damages that result from this included added costs (e.g. storage costs). The customer remains allowed to demonstrate that MHP suffered no or considerably lower damages than those that are asserted.
8. MHP guarantees that in the case of standard-software – not programs it developed itself men - MHP holds the full distribution right to these products. The special use rights, guarantees, are included by the specific manufacturer and are binding for the use of the good.
9. A use of the good is equivalent to recognition of the enclosed terms and conditions.
10. The customer is obligated to recognise the delivery and contractual conditions of the software manufacturer and/or software supplier as well as the copyrights of the software manufacturer and/or license holder. This applies analogously if the software was adapted to or developed for the customer's system.
11. The services for the trade good encompass the delivery of the commissioned good.

RETURN/EXCHANGE OF GOODS

1. Return shipments of goods are only permitted with the prior expressed approval of MHP. To the extent that these are on-hand and return of goods is agreed upon, a lump sum added cost will be charged.
2. To the extent that this is a return of defective goods that are under warranty by MHP, these costs will not be imposed.
3. Other return shipments of goods that are received at MHP "postage due" will not be accepted.
4. In the case of incorrect orders by the customer, the good must be delivered to MHP "free to buyer's address" at risk to the customer.

PRICES/TERMS OF PAYMENT

1. The prices apply to the scope of services and delivery listed in the order confirmation and according to the price list in force at the time the order is made.

2. The customer will pay a compensation to MHP for the ordered services that will derive from packet prices and honoraria according to the prices list that was valid for the update and/or other services at the time the order was placed. MHP is entitled to make partial deliveries which can then be billed as they are completed. MHP explicitly reserves the right to demand partial payments.
3. All prices stated by MHP are net prices without the VAT; the VAT will be added in the specifically legally mandated amount unless the prices are explicitly given as gross prices including the VAT in the specifically legally mandated amount. The VAT will be billed at the tax rate in force at the time the service is rendered. If the tax rate changes during the contract period, then the different periods with their respective tax rates are deemed separately agreed upon.
4. Costs for separate packages and transports are to be borne by the customer, to the extent that nothing else is agreed upon.
5. Software prices do not include installation and skill adjustment or any software updates; nor do prices for software include installation, skill adjustment and any required updating of other hardware and/or software. Such services must be ordered separately by the customer and can be billed separately; separately billed training sessions inform about the most important performance characteristics of an object of delivery without being able to replace an extensive training. MHP offers separate service, care and training agreements for such services.
6. If the customer enters into default of payment, MHP is entitled to charge interest in the amount of 9 %-point p. a. above the German prime lending rate. In the case of a demonstrably higher level of interest, MHP is entitled to charge the demonstrated interest rate. The assertion of additional damages is not affected.
7. If the customer's cheque or bill of exchange are not honoured in the case of partial payments, MHP is entitled to immediately call due the entire outstanding debt even if additional cheques or bills of exchange have been accepted. In this case MHP can also demand pre-payments or payments of securities for all other services contractually owed to the customer as well as withdraw from these contracts after a suitable grace period and/or, demand such compensation for damages as is permitted under law.
8. The compensation is immediately due and payable in full after the delivery and issue of billing statement by MHP.
9. Offsetting with counter-claims held by the customer or the retention of payments on the basis of such claims is only permitted to the extent that the counter-claims are undisputed or have been legally established.

WARRANTY

1. The relevant provisions of law apply to the customer's warranty claims to the extent that nothing to the contrary is specified in the following.
2. The basis for liability for defects are those performance characteristics agreed upon in the order sheet. To the extent that there is a gap in the rules, one must determine whether these is a defect on the basis of relevant provisions of law.
3. The customer's claims for compensation based on defects assume that he has met his legal obligations to inspect and report (§§ 377, 381 HGB). If in the course of inspection or later a defect become apparent, it must be reported to MHP in writing immediately after delivery or detection of the defect. A report is considered immediate if it is completed within two weeks whereby timely sending of the notification report suffices to meet the deadline.
4. Independent of this obligation to inspect and report, obvious defects must be reported in writing within 14 days of receipt of the shipment, whereby the timely sending of the notification report suffices to meet the deadline in this case as well. If the proper inspection and/or reporting of the defect is neglected, the liability for the unreported defect and any subsequent damages is excluded.

5. In the case of material defects in the delivered objects MHP is entitled and obligated at its discretion first to attempt remediation or to send a replacement shipment. If this fails, the customer may withdraw from the contract or can appropriately reduce the purchase price.
6. If the culpability for the defect lies with MHP, the customer can demand compensation for damages under the specific preconditions set forth in § 8. Other legal claims remain unaffected by this.
7. The customer is likewise aware that an assurance that the object of purchase will function perfectly in combination with other products is not given.
8. MHP will make every effort in the case of remediation to meet the customer's deadline expectations.
9. The warranty is voided in the event of any intervention by the customer on the object of delivery that makes it impossible to remedy the defect or makes it unreasonably difficult. The assertion of the warranty claim is also excluded if operating or maintenance instructions are not followed, modifications are made in the delivered good, parts are replaced or consumables are used that do not conform to the original specifications.
10. The customer must send the good that is the object of the complaint back to MHP on demand, precisely stating the complaint and the invoice number. If the complaint is justified MHP will reimburse the costs of the most inexpensive shipping route. In any case the customer must bear any costs for remediation of defect that are incurred due to its own modifications.

LIABILITY FOR DAMAGES

1. MHP is liable according to provisions of law.
2. Liability for breaches of contractual obligations as well as for delinquency is limited to intentional malice and gross negligence. This applies also to intentionally malicious or grossly negligent acts of employees, management personnel and temporary employees.
3. This liability limitation does not apply in the case of loss of life, limb or health as well as in the case of damages arising from delay and claims deriving from the breach of so-called primary (cardinal) obligations from this contract. These are essential contractual duties whose fulfilment per se makes the proper execution of the contract possible in the first instance and on whose fulfilment the customer may regularly rely and depend and whose breach endangers the purpose of the contract itself. In these case MHP is liable for every degree of culpability. To the extent that these are not damages that result from the loss of the customer's life, limb or health, MHP is only liable for damages of types that typically occur.
4. In the case of liability for simple negligence, MHP's obligation to provide compensation is limited to an amount of EUR 25,000.00 per instance, in total however to EUR 75,000.00 even if it is a case of breach of essential contractual obligations. This limitation however does not apply to liability owing to injuries to life, limb or health.
5. To the extent that typical, foreseeable damages would exceed a liability sum of EUR 25,000.00 per loss event or a total of EUR 75,000.00, the customer must notify MHP of this so that additional insurance against the risk can be arranged.
6. Liability for loss of data is limited to the typical cost of recovery and restoration that would arise with regular creation of back-up copies commensurate with the risk.
7. Liability on the part of MHP in cases of force majeure, especially strikes or lock-outs, is excluded by mutual agreement. MHP accepts no obligation to assume liability for damages of any kind that arise from a supplemental software used by the customer (especially malfunctions or incorrect data) or a pre-system of this kind.
8. The liability exclusions and limitations stated above apply in the same scope in favour of the organs, legal representatives, employees and other persons working for MHP.
9. Claims deriving from guarantees and the Product Liability Act remain reserved.

RESERVATION OF TITLE

1. All goods delivered to the Customer by MHP remain the property of MHP until the full payment of all claims arising from the business relationship.
2. The customer may neither pawn nor otherwise give the good that is under MHP's reservation of title as a security nor sell it nor give to the possession of another party.
3. The customer may only dispose of the objects under reservation of title to the extent that they are to be processed, installed or re-sold as part of a regular and proper business transaction. The modification or processing of goods under reservation of title is done for MHP without imposing any obligation on it. The newly created item is also considered a good under reservation of title.
4. If MHP's ownership is voided by combination, mixture, processing or in some other way, it is agreed here and now that the customer's ownership of the new, integral object will be granted to MHP in proportion to its share of the total value (billed value of the good).
5. The customer must notify third parties of rights to the good.
6. The customer will legally defend the (co-) ownership for MHP free of charge. The customer here and now assigns any claims arising from re-sale, including the payment of security, to MHP in the corresponding amount. If the value of the goods encompassed by the simple or extended reservation of title or the customer's claims exceed the MHP's claims against the customer by more than 20 per-cent, MHP will on request of the customer reduce the excess security to the extent that the security rights exceed MHP's claims by more than 20 per-cent.
7. The customer is obligated to immediately notify MHP in writing of any liens or other third-party attachments to the good delivered under reservation of title. The customer is obligated to provide MHP with all of the information required to assert its rights deriving from § 771 ZPO.
8. The customer must carefully store the good delivered to him under reservation of title and must insure it at own cost against all risks.
9. The customer hereby assigns his possible future claims deriving from insurance contracts with respect to the good delivered under reservation of title. The customer must bear the costs of all measures necessary to preserve ownership.

CONFIDENTIALITY/PROTECTED RIGHTS

1. The contracting partners will treat essential and not generally known matters of the other contracting partner with confidentiality. Any protection of especially confidential information going beyond this and the therewith associated establishment of prerequisites and conditions require in each case the conclusion of a separate written agreement (confidentiality agreement). Confidential information that is given by one partner to the other in the framework of this contract must be clearly labelled as confidential. The legal provisions concerning data protection must be observed. Sharing this information with third parties is prohibited.
2. The customer will make neither the programs nor the documentation accessible to third parties, neither wholly nor in part. The customer is liable for all damages that MHP suffers from the breach of this obligation.
3. The customer is obligated to observe the licensing rules of the specific external licensor in the purchase of software that is distributed by MHP. MHP cannot be held liable for the breach of any patent or other protected rights by the customer. The customer indemnifies MHP from any third party claims to that extent.
4. The customer agrees that he will be included in the MHP reference list.
5. The customer agrees that MHP will save the customer's personal data, process it and communicate it to companies in the corporate group to the extent that this is required for the fulfilment and settlement of the order/commission.

6. The contracting parties are obligated to treat as confidential all objects (e.g. documents, information) that are sent to them before or during the execution of the contract from their respective other contracting partner or of which they become aware and which are legally protected, and any business or commercial secrets that they receive and are designated as confidential, even beyond the end of the contract unless they are publicly disclosed absent a breach of obligations of confidentiality. The customer will instruct employees or other third parties to the extent necessary concerning the need for confidentiality concerning the corresponding objects.

EXPIRATION

Claims from a contract expire within three years, if the law does not provide for a different expiration period.

CONCLUDING PROVISION

1. The obligations from the contract are exclusively fulfilled in the Federal Republic of Germany. German law under exclusion of the UN CISG [UN Convention on the International Sale of Goods].
2. Should differences of opinion arise from this business relationship, the business partners will make every effort to resolve them in an amicable fashion. For all disputes arising from the contractual relationship, the headquarters of MHP in Neustadt am Rügenberge is the sole court of jurisdiction. Moreover, MHP is entitled to bring legal action at the court responsible for the customer's headquarters.