



Terms and Conditions

§ 1 Validity of the Terms and Conditions

(1) All contracts concluded with MARX Software Security GmbH, hereinafter referred to as "Provider" , are based solely on these terms and conditions. They also apply to all future business relations, even if they have not been expressly stipulated once again. These terms and conditions will be considered as accepted at the latest with the acceptance of a delivery or of services provided by the Provider. This clearly contradicts any statements made by the contract partner, hereinafter referred to as the "Ordering Party" or "Purchaser" , in reference to his General Standard Terms and Conditions. The Purchaser´s General Standard Terms and Conditions as well as any purchasing terms and conditions will not become part of the contract, even if we remain silent or accept deliveries.

(2) Any deviations from these General Standard Terms and Conditions are not effective unless confirmed by the Provider in writing.

§ 2 Offer and Contract Conclusion

(1) The offers made by the Provider are subject to confirmation and not binding. Price and delivery information and other agreements made verbally, by telephone or telegraph are not binding unless confirmed by the Provider in writing or by fax. Should the Ordering Party not be in agreement with the contents of the confirmation received from the Provider in any way or should the confirmation contain an error, the Ordering Party is obligated to report this immediately in writing. Should the Ordering Party fail to make this report, the confirmation will be considered as approved and become the basis of the contract.

(2) The information provided in brochures, advertising, etc. is not binding, also with respect to the price. Offers that have been specially prepared by the Provider remain binding for 30 days. The Ordering Party is bound to his order for six weeks. Orders require confirmation by the Provider to become effective. If the acceptance of an order is not declined within four weeks of its receipt, it is considered as confirmed.

(3) Permission to use software and/or the execution of services are not confirmations.

(4) It is not possible to withdraw from a sales contract.

§ 3 Delivery and Scope of Services

(1) The Ordering Party is obligated to take delivery of the software/services without delay by signing an acceptance note upon receipt. If an acceptance note is not signed by the Ordering Party, the software or the service will be considered as accepted four weeks after the actual receipt. For standard as well as individually designed software, the Provider will train the Ordering Party in the operation of the software and/or the entire system only on the basis of separate remuneration; this shall also apply to program changes.

(2) Performance specifications contained in system analyses, documentations, etc. are descriptions only and in no way warranties of qualities. This requires an explicit and separate written agreement.

(3) The Provider is entitled to deploy sub-contractors to perform his contractual obligations.

(4) Orders based on information and documentation provided by the Ordering Party will be executed at the risk of the Ordering Party with respect to any property rights held by third parties.

(5) Part deliveries are permissible. Each part delivery is considered an independent service.

(6) The Provider is not obligated in every case to deliver the current or most recent program or product version if an earlier version is also able to fulfill the intended purpose approximately.

(7) The software is never delivered as a source code.

(8) According to current state-of-the-art technology, software is never completely free of errors. In the events of significant defects, instructions to avoid the effects of the defects are considered as sufficient rectification. The seller assumes no responsibility for ensuring that the program functions meet the requirements of the Ordering Party or operate together in the selection made by him.

§ 4 The Ordering Party's Duty to Cooperate

(1) The Ordering Party is obligated to observe operating instructions, maintenance regulations and instructions on the use of software and equipment provided by the Provider. In the event of noncompliance, the consequences will be the responsibility of the Ordering Party, even during the warranty period. At no time may the equipment be opened without proper authorization, i.e. without the written consent of the Provider; otherwise, any warranty claims will expire. The proof of proper utilization lies with the Ordering Party.

(2) During the course of development work, the Ordering Party may be required, in his own interests, to make available equipment, in particular complete computer systems including software, for the duration of the work. If the Provider is permitted to use equipment or software for development purposes, these will also serve as security for the payment of the development costs and all other outstanding invoices and will not be returned until all outstanding amounts have been paid in full. If the Ordering Party is not in agreement with this provision, cash in advance will be required and agreed upon, i.e. payment for the total development costs before work begins.

(3) Resale: in the event of resale, the reseller himself is responsible for observing all the relevant legal regulations, in particular foreign trade regulations and embargo regulations.

§ 5 Delivery and Service Period

(1) Delivery dates or deadlines are always considered as not binding.

(2) If, after receipt of the order confirmation, the Ordering Party requests modifications in the order that affect production time, the delivery period does not begin until receipt of written confirmation of the modification.

(3) In the event of nonfulfillment of delivery dates, the Ordering Party has no claim to damages, to make a covering purchase or to withdraw from the contract.

§ 6 Passage of Risk

The goods are dispatched on the account and at the risk of the seller. The risk passes to the Purchaser as soon as the shipment is handed over to the person effecting the transport or has left the Provider's warehouse to be shipped. Should the dispatch become impossible through no fault of the Provider, the risk passes to the Ordering Party with the report that the shipment is ready to be dispatched. The Provider assumes no responsibility for any type of transport difficulties.

§ 7 Warranty

(1) The goods are to be inspected upon receipt at the destination without delay and treated with the diligence required of a prudent businessman. The nature of the goods will be considered as accepted if no complaint is sent to the Provider within eight days after their arrival at the destination. The same shall apply for short or incorrect deliveries. It is agreed with binding authority that all complaints and notices of defects require the form of a "registered letter".

(2) For defects or the absence of warranted qualities in the object sold or services rendered that are reported by the Purchaser in a "registered letter" immediately upon detection and that are based on circumstances before the passage of risk, the Provider will provide an exclusive guarantee in such a way that the Provider will either rectify the defects or subsequently deliver goods free of defects at his free discretion. Following the failure of the 2nd rectification or the 2nd replacement delivery, the Ordering Party can demand a reduction in payment or a cancellation of the contract as desired. If no other agreement has been made, the warranty

begins with the handing over of the goods and ends after six months regardless of the operating life of the object sold. Any longer warranty periods stipulated or promised will only take effect if the Purchaser has settled all outstanding claims in full by the appointed deadline. If the Purchaser is in delay in payment for 14 days or more, the warranty period will be six months in general, i.e. even if other promises have been made.

(3) For software, the warranty period is six months without exception. The same shall apply for the purchase of goods according to our "industry price lists" - i.e. even if longer warranty periods have been otherwise indicated in our regular catalogues, brochures and other advertising (these apply for "purchases according to the list price" only).

(4) The provisions of § 7 govern the warranty provided for the products in full and exclude all other warranty claims of any kind.

(5) The warranty obligation is not applicable if the Purchaser does not comply with our request to return the defective goods immediately.

(6) Limitation of liability: damages claims based on impossibility of fulfillment, positive breach of an obligation, culpa in contrahendo and on tort are excluded against the seller as well as his vicarious agents insofar as there is no intent or gross negligence involved. In any case, any liability is limited to the value of the merchandise delivered. The Provider is exempt from liability for so-called "consequential damages caused by defects". The Provider is exempt from all liability or joint liability in the event that the Purchaser commissions companies that work for Marx Datentechnik GmbH as sub-contractors. Any claims made against these support companies or free-lance workers for MARX Software Security GmbH can be asserted against the sub-contractors only. It is always tacitly understood that the Purchaser commissions any of these third parties, regardless of whether these parties contact the Purchaser directly or indirectly through MARX Software Security GmbH. This shall also apply to a purely verbal contract and in the event that these companies work for the Purchaser free of charge.

(7) Should the Ordering Party make use of his right to withdraw from the contract according to § 7/(2), all claims to the costs for the failed work and any type of damages are excluded.

(8) Complaints or differences of opinion of any kind do not entitle the Ordering Party to exercise the right of retention. The material and any other articles delivered are subject to unavoidable deviations in the nature and design. Should any goods delivered or software or services rendered contain errors, the Provider has the double (repeated) right to rectify the problem before the Ordering Party can demand to withdraw from the contract. A rectification must take place within four weeks at the latest following the receipt of the complaint.

(9) Work performed by the Ordering Party to integrate or install the security systems sold cannot be remunerated in any way. The Ordering Party also has no claim to remuneration for rectification performed by the Ordering Party or third parties commissioned by him.

(10) There is no exchange and no return for software, data media and books.

§ 8 Repairs

(1) The original warranty periods will not be impaired nor interrupted by the repair or modification of the goods delivered.

(2) All repairs are performed without recourse if there is no nonconformance report available.

§ 9 Reservation of Ownership

(1) The goods delivered remain the property of the seller until payment in full of the purchase price and all other outstanding amounts owed to the seller by the Purchaser. For accounts current, the reservation of ownership serves as security for the account balance owed to the seller.

(2) In the event that the Purchaser should act in violation of the contract, with delay in payment in particular, the seller is entitled to take back the reserved goods or to demand assignment of the Purchaser's claim to restitution against a third party, if applicable. The Purchaser is entitled to sell goods belonging to the seller within the scope of the proper conduct of business, but not to pawn or pass title as security.

(3) He is obligated to immediately contradict a seizure of the reserved goods or any other encroachment on the rights of the Provider by third parties and to inform the Provider of this without delay. He will assign to him the claims resulting from the sale against his purchasers in the full amount and with all security rights. In the event that circumstances occur at the Purchaser`s that in the opinion of the Provider no longer allow a credit period, the Purchaser is obligated to provide access to the reserved goods in his possession, to send a list of the number of units still in his possession, to separate the goods and hand them over to the Provider.

(4) The Purchaser is obligated to insure the goods belonging to the seller against all storage risks and to provide proof of the conclusion of an insurance policy to the seller. Without proof the seller is entitled to insure the reserved goods against theft, water damage, breakage and other damages at the expense of the Purchaser.

(5) Should the seller take back or seize the reserved goods, this does not represent a withdrawal from the contract insofar as the installment code does not apply.

§ 10 Prices, Payment and Due Date; Repossession Period

(1) If no other agreement has been made, the prices apply net in EUR excluding sales tax ex factory Wackerstein.

(2) If no other agreement has been made in writing, all amounts become due net without deductions of any kind 14 days following the date of invoicing. Should "payment within 10 days with cash discount" be arranged as an exception, this will apply only if there are no further outstanding amounts owed at the time of payment.

(3) The seller is entitled to first set off payments against the Purchaser`s older debts, in spite of terms and conditions of the Purchaser to the contrary. If costs and interest have already been incurred, the seller is entitled to first set off the payment against the costs, then against the interest and finally against the main debt.

(4) A payment is not considered received until the Provider has the amount at his disposal. In the case of check payment, the payment is considered received when the check has been cashed and credited to the Purchaser`s account.

(5) Should the Purchaser delay payment, the seller is entitled to charge interest starting from this point in time in the amount of the interest rates charged by commercial banks for credit in open current accounts plus the legally applicable sales tax, but at least 12 % p.a.

(6) Should the Purchaser fail to meet his obligation to pay, in particular if a check is not cashed or deadlines exceeded or if he stops payments, or if the seller becomes aware of other circumstances that call the credit worthiness of the Purchaser into question, the seller is entitled to demand the entire balance due, even if he has accepted checks. In this case, the seller is also entitled to advance payments or security.

(7) The Purchaser is only entitled to offsetting, retention or reduction of purchase price, even if asserting notice of defects or counterclaims, if the counterclaims have been determined as legally effective or are undisputed.

(8) If only part of the agreed number of units is taken in a blanket or call order (so-called "blanket agreements") within the stipulated time period, the Provider is entitled at free discretion to either charge the price for this delivery quantity (from the graduated price list) or to deliver and charge the quantity not called.

(9) In the event that there is an overlap in the issuance of a price list at the time an order is placed, the price indicated or stipulated at the time of the order shall apply. There will be no credit given for the difference between the new and the calculated price.

(10) The return period for loaned objects - e.g. for so-called test packages - is a maximum of 12 months from the date of dispatch. The same shall apply if the Provider has agreed to take back old goods on a voluntary basis.

§ 11 Terms of Payment

(1) Outstanding amounts are to be paid in cash or by bank transfer. Checks will be accepted on account of payment only, but not in lieu of payment. Credits are issued in the amount owing after the deduction of all costs. The day of payment is the day on which the amount is at the seller's disposal.

(2) The Purchaser assumes all costs and risks for conveying the invoice amount to the seller. Payments are to be made to the appointed paying agent only. The Purchaser assumes the risk for conveying the invoice amount to the seller.

(3) Bills of exchange will not be accepted; the same shall apply to checks.

(4) No payments are permitted to sales representatives and employees without limited commercial authority. They have no effect of discharging the debt. This shall apply in the same way to checks and cash payments.

§ 12 Applicable Law, Place of Performance, Place of Jurisdiction, Partial Invalidity

(1) The laws of the Federal Republic of Germany apply for these terms and conditions of business and all legal relations between the seller and the purchaser. German law will also apply to foreign purchasers. The application of UN laws on sales is excluded.

(2) The place of performance for delivery and payment is D-85104 Pförring, Wackerstein (part of town).

(3) Insofar as the Purchaser is a fully qualified merchant according to the HGB (German Commercial Code), a legal person under public law, or special assets under public law, Ingolstadt is the exclusive place of jurisdiction for all legal action resulting directly or indirectly from the contractual relations. However, we are entitled to bring action at the place of jurisdiction of the Purchaser at our free discretion.

(4) Should any provision in these terms and conditions of business or any provision in any other agreements be or become null and void, this will in no way affect the validity of all the remaining provisions or agreements.