

1. Scope and Liability

- 1.1. These general terms and conditions ("GTC") form the contractual basis between the customer and Orchestra Service SE ("Orchestra"). All deliveries and services provided by Orchestra shall be performed on the basis of these GTCs only. They are the primary components for contractual agreements between Orchestra and the customer. The customer agrees to the GTCs set forth upon placement of an order. They also apply to future contracts. Wherever differing regulations are to be found in service descriptions, price lists, special contract conditions ("SCC") or in special agreements for particular deliveries and services provided by Orchestra, then these take priority over those of the GTCs.
- 1.2. Orchestra reserves the right to change these GTCs, SCC or price lists at any time. This is particularly applicable, if a change is necessary due to legal regulations or because of a change to the business domain or the business activities of Orchestra. The revised regulations replace previous provisions and are also applicable to existing business relationships. Orchestra will inform the customer of such changes in sufficient time before they come into effect.
- 1.3. For new contracts, the GTCs, SCC, service descriptions and price lists valid at the time of the conclusion of contract apply. Previous provisions lose their validity when new ones come into effect.
- 1.4. Differing agreements and oral ancillary agreements are only binding, if they are confirmed in writing by Orchestra. Differing GTCs of the customer are herewith expressly excluded. The GTCs of Orchestra remain valid, if Orchestra knowingly provides deliveries and services, which without reservation go against the GTCs of the customer. These GTCs are considered as accepted by the customer no later than upon acceptance of the delivery or service.

2. Conclusion of Contract

- 2.1. Offers from Orchestra are always conditional and unbinding as long as they are not explicitly referred to as binding. Orders are only considered as accepted after Orchestra has confirmed them in writing. Supplements and modifications must also be confirmed in writing.
- 2.2. By ordering a delivery or service offered by Orchestra, the customer is making a binding offer of contract. The customer is bound to the offer for a period of two weeks after application.
- 2.3. A contract between Orchestra and the customer only comes into effect, when the task is accepted by Orchestra. An explicit declaration of acceptance is not required. Acceptance can be declared in written form or through delivery or performance of service.

3. Subject Terms of Contract, Subject of Performance

- 3.1. Deliveries and services ("subject of performance") from Orchestra in terms of these GTCs specifically include the delivery of hardware and software as well as the performance of the services. Services are in particular the installation, implementation and configuration of hardware and software, support and hotline, in particular troubleshooting of problems related to hardware and software, as well as consulting and training or other services.
- 3.2. The contents and coverage of individual subjects of performance arise from Orchestra's offer, SCC for individual subjects of performance, any possible service descriptions, individual contractual agreements or system descriptions.
- 3.3. Orchestra's subjects of performance are offered on the basis of what is currently technically, economically and operationally possible and reasonable.
- 3.4. Orchestra has the right to carry out all its subjects of performance either fully or partially in English.
- 3.5. Should Orchestra voluntarily go beyond its contractual relationship with the customer, providing voluntary, unpaid services, this will not represent a contractual matter but merely a favor. In this case, there is no legal claim. These favors can at any time be restricted, stopped or have their unpaid status removed. Orchestra will inform the customer of such changes in sufficient time before they come into effect. In this case, Orchestra has no obligation regarding price reduction, reimbursement or damage liability. In this case, the customer has no right of cancellation.
- 3.6. The use and application of Orchestra's subjects of performance is only permitted in full accordance with the applicable national and international laws and contractual agreements. Any other use, which differs from the contractual agreements, is only permitted with the written authorization of Orchestra under agreement of an additional service fee.

4. Subcontractor

Assuming no other agreements, Orchestra has the right, in ensuring the valid interests of the customer, to use suitably qualified third parties (freelancers, sub contractors) as vicarious agents in carrying out all or part of its contractual obligations. In this case, no contractual relationship exists between the customer and the third party.

5. Compulsory Cooperation of the Customer

- 5.1. In carrying out its subject of performance, Orchestra is reliant upon the total cooperation of the customer. For this, the customer has to provide at its own risk, completely and free of charge all its preparatory work, material, information (ongoing and in up-to-date form) and other services, particularly technical equipment such as hardware or software or other functionalities necessary for Orchestra to orderly carry out the subjects of performance. The customer is responsible for complying with the technical and professional conditions necessary for the application of Orchestra's subjects of performance. Assuming no other agreements, Orchestra gives no guarantee that the functional requirements of the customer will be possible through Orchestra's subjects of performance on the basis of preparatory work sent by the customer, unless this has been explicitly granted.

- 5.2. In particular, included with the compulsory cooperation of the customer are:

- naming one or more responsible and authorized contact persons before start of the service, who shall be available to Orchestra throughout the performance of the services and are authorized to make binding declarations for the customer that are required within the framework of performance of the services;
- providing the employees of Orchestra with access to all information required for their activities at any time upon request;
- providing the employees of Orchestra with all required documents in a timely manner and informing them of all technical data, facts or circumstances (in particular with regard to hardware and software) required for handling the subjects of performance;
- providing Orchestra with the technical infrastructure necessary for the exertion of the subjects of performance, particularly hardware and software capacities;
- providing access to the necessary facilities;
- creating a backup copy of saved data for backup and use even for order-related system failures, damages in recorded data or data loss;
- providing prior written information in a timely manner about all circumstances known to the customer which might influence Orchestra's contractually binding subjects of performance.

- 5.3. If Orchestra should provide third party services based on agreements with the customer, the customer shall ensure that the third party fulfills the cooperation obligations in accordance with the above section 5.1. and section 5.2.

- 5.4. If compulsory cooperation is violated, the customer shall compensate Orchestra separately for the unnecessary extra expenditure – this includes all standby costs for staff incurred due to the violation of the compulsory cooperation. Alternatively, Orchestra may demand compensation for damages. Deadlines and dates are pushed back by the same amount of time as the period of delay caused by the failed cooperation. After the successful completion of a reasonable period of time agreed in written form, Orchestra moreover has the right to withdraw from a contract or, if an important reason exists, to cancel it. In this case, Orchestra receives the agreed payment minus any money saved on expenditure. Further claims by Orchestra remain unaffected.

6. Prices, Changes to Price

- 6.1. Prices for the arranged subjects of performance are based on the applicable offer or on Orchestra's valid price lists.
- 6.2. To fulfill the contract, the customer is also responsible for paying for the necessary travel costs, expenses, accessories, storage media and telecommunications, unless otherwise explicitly arranged. This applies equally to services (consulting, support hotline, installation, configuration, tests, etc.), which are not explicitly covered by the contract. Orchestra's valid price lists are applicable.
- 6.3. All prices exclude packaging, freight, dispatch, insurance and customs tolls in Euros (EUR) from the location of Orchestra, and are subject to the legal value added tax.
- 6.4. As long as Orchestra carries out subjects of performance in regard to continuous obligations, Orchestra has the right to change its prices at any time in compliance with the period of notice of 3 months to the beginning of each calendar month unilaterally via a written statement to the customer. If changes in price exceed 10% of the invoice value of the subjects of performance within the current contract period, the customer has the right to terminate the contract within four weeks from the declaration of the price increase. In the case of cancellation, Orchestra can decide by discretion whether the proposed increase should be revoked for the customer who terminated the contract, with the contract adopting the previous conditions. If the customer does not terminate the contract on time, the higher prices are agreed to be applicable in the future.
- 6.5. At the conclusion of contract, established price increases (e.g. end of temporary offers, reduction in combined offers) need no separate declaration and do not allow any termination rights on the part of the customer.

7. Cost Estimation, Preparatory Work

- 7.1. If the customer requires binding prices from Orchestra for subjects of performance, then a written cost estimate is necessary in which the subjects of performance are itemized and calculated in detail. Orchestra is bound to such a cost estimate for a period of 4 weeks after its release.
- 7.2. Cost estimate as well as preparatory work such as compiling contract specifications, project management documentation, plans, drawings or models, pitch presentations and other presentations required by the customer must be remunerated. If in doubt, these are to be paid on the basis of time or material involved or, if less expensive for the customer, on a daily rate.
- 7.3. When placing an order on the basis of a cost estimate any costs for the cost estimate and the costs of any preparatory work for the invoice will only be offset upon explicit written agreement.

8. Conditions of Payment, Limitations to Compensation Rights

- 8.1. Invoices are to be paid in full and due net within fourteen days of the invoice date at the latest. If the customer does not pay within this period of time then, unless contradictory terms of payment have been arranged, the customer is in default, without reminder, from the first day after the period.
- 8.2. Unless otherwise agreed, Orchestra has the right to demand suitable advance or down payments.
- 8.3. Objections to the contents and accuracy of an invoice must be presented to Orchestra without delay by the customer no later than 6 weeks after invoice being sent in written form. Otherwise, the invoice is regarded as having been accepted. If the customer cannot keep to this period for reasons outside his control, then he must present his objections no later than fourteen days after the elimination of that which prevents him from paying on time.

- 8.4. Payments are only valid when credited in an *Orchestra* account. Bills or checks will only be accepted following previous written agreement. Discounting fees will be charged by *Orchestra*, independent of the date the bill is accepted, from the due date of the demand. *Orchestra* offers no guarantee for timely collection or protest.
- 8.5. If the customer is in default for more than a month with his payments due, *Orchestra* has the right, after a written notification and a period of seven working days, to discontinue its subjects of performance or to make further performance of services dependent on prepayment or provision of an appropriate security deposit. If the customer is in default with a payment or if checks or bills are not credited through the drawee, *Orchestra* has the right to make all other payments of the customer due. Other existing terms of payment are no longer valid. Any possibly existing exceptional termination rights remain unaffected.
- 8.6. The customer must provide a provision of security to *Orchestra* of the necessary amount within a period of two weeks of the demand. The provision of security can also be provided through a directly enforceable security at one of the European Union registered credit institutes.
- 8.7. In the case of a default, the debt is to be paid with 8 percent interest points above the basic interest rate. With evidence, *Orchestra* is free to demand higher interest rates. The assertion of further damages remains unaffected.
- 8.8. *Orchestra* has the right to attribute the customer's payment to the customer's oldest debt, even in contradiction of other repayment conditions of the customer. If expenses or interest have already been incurred, *Orchestra* has the right to apply the payments first to the interest, then to the costs, and finally to the main service.
- 8.9. The customer can only offset demands from *Orchestra* with legally approved claims or demands in written form or those, which are established as legally valid. The same applies to the assertion of retention rights. The customer may only exercise a retention right if his counter claim is based on the same contractual relationship.
- 8.10. Should *Orchestra* perform services at a third party location under instruction of the customer, the customer does not have the right to withhold payment to *Orchestra* in the event of delayed payment, failure to pay or insolvency of the third party. The same applies in the event that the third party brings claims of any kind against *Orchestra*'s customer, in particular notification of defects or damage compensation claims or withholding or reduction of payments, or declaration of withdrawal from the contract.
- 8.11. All demands for payment by *Orchestra* to the customer, regardless of the legal relationship, are due immediately when circumstances have been established which, legally or following contractual agreements, give *Orchestra* the right to withdraw.
- 8.12. Payment demands by *Orchestra* for services performed have a standard time limitation of 5 years.

9. Time Scheduling, Periods of Service, Force Majeure

- 9.1. Time scheduling and delivery times of *Orchestra* are always conditional and unbinding as long as they are not explicitly referred to in writing as binding. Keeping to the dates set for the subjects of performance relies upon the customer fulfilling the compulsory cooperation described above. If the customer does not meet requirements in a timely manner, then the periods of service are lengthened proportionally.
- 9.2. *Orchestra* has the right at any time to partial deliveries and partial services as well as to corresponding invoicing, if *Orchestra* itself receives only partial deliveries. Binding time schedules and delivery times remain unaffected.
- 9.3. Fixed dates for installations or other services are binding for the customer. If the customer cancels or terminates an agreed deadline or order, he is obligated to pay the agreed compensation, including fees and expenses.
- 9.4. If *Orchestra* does not carry out a subject of performance due, only then can the customer withdraw from the contract or demand damage compensation, as long as he has given *Orchestra* a reasonable period to carry out the subject of performance together with an explicit declaration that he will reject the subject of performance after the unsuccessful end of the period of service (penalty of denial of service). After the period of service the customer can no longer demand the subjects of performance. A customer withdrawal from the contract due to late completion of subjects of performance only affects the contractual relationship affected by the delay. The customer can only legally withdraw from a contract as long as *Orchestra*'s delay is culpable.
- 9.5. *Orchestra* requires that the customer declare bindingly within a period of one week whether he wishes to withdraw from the contract or demand damage compensation.
- 9.6. In the case of non-binding delivery dates having been agreed, *Orchestra* is only in default with the performance of services once the customer has notified *Orchestra* in writing of an extended deadline of at least 4 weeks. In the event of delay, the customer has the right to compensation for the delay to the amount of 0.5% of the invoice value of the subjects of performance that are delayed for each complete week of delay, however limited to no more than a total of 5% of the invoice value for the subjects of performance that are delayed.
- 9.7. Further claims are ruled out in all cases of delayed delivery, even after the end of an extended deadline provided to *Orchestra*. This does not apply in the case that the delay is due to deliberate acts or gross negligence by *Orchestra* or that a mandatory legal liability is intended.
- 9.8. Delays of deliveries and services due to force majeure or due to events that make subjects of performance by *Orchestra* significantly more difficult or impossible, such as material procurement difficulties plant disruptions, labor disputes, governmental orders, natural disasters, civil unrest, war, even if they occur to suppliers or sub-suppliers of *Orchestra*, shall not be attributed to *Orchestra* even with regard to time scheduling or terms of service. They grant *Orchestra* the right to postpone the start of the work by a reasonable amount of time.
- 9.9. If the hindrance lasts more than 2 months, the partner conforming to the contract has the right to partially or totally withdraw from the contract relating to the section of the subjects of performance not yet completed however without any right for compensation or damage claims.

10. Transfer, Delivery, Acceptance

- 10.1. If legally, or following agreements in the contract, a contractual transfer of subjects of performance to the customer is to be made, this is seen as implemented, when and as soon as the customer himself or a third party authorized by him has the ability to take control of the subjects of performance.
- 10.2. The contractual subjects of performance are delivered, according to legal or contractual regulations, through the transfer as described in the previous paragraph. In the case that *Orchestra* is obliged to provide installation or instruction to the customer in the subjects of performance, then this is seen as delivered with the completion of the installation or instruction.
- 10.3. If an acceptance or partial acceptance has been explicitly agreed upon or legally established, then *Orchestra*'s subjects of performance must be checked by the customer immediately after completion against the contract and, as long as no deficiencies are noted, which might lead to a valid refusal to acceptance, they must be accepted immediately by the customer.

The following is valid for the acceptance of subjects of performance:

- The customer must make *Orchestra* aware within two weeks of any deficiencies in the subjects of performance, which will clearly interfere with their contractually agreed use or the normal use of subjects of performance of this type. The declaration of deficiencies by the customer must be made to *Orchestra* in writing and in exact detail.
- Severe evaluation deficiencies, particularly if shown in the correct way and within the prescribed period, will be resolved by *Orchestra* within a reasonable period of time. *Orchestra* is free to decide how it resolves the deficiency. *Orchestra* will inform the customer in written form of the corrective action. After being informed of the corrective action, the customer will reevaluate the service result within five working days and – if the deficiency has been successfully resolved – will, within an additional 5 working days, provide a written acceptance of the subjects of performance.
- If the customer does not declare anything in the period provided or if he does not mention any ongoing deficiency, then the subjects of performance are considered to be accepted. The customer has the full onus of responsibility, particularly for the timely declaration of the ongoing, severe deficiencies, which hinder full or partial acceptance. If the customer, however, shows the deficiencies in form and in the prescribed period as being ongoing, *Orchestra* has the right and is obliged to resolve these deficiencies within a reasonable period of time. Several subsequent improvements are allowed in suitable and reasonable extent.

Deficiencies, which do not at all or barely affect the use of the subjects of performance do not entitle the customer to reject the whole or partial acceptance. These deficiencies are to be noted in a written acceptance report. *Orchestra* resolves such deficiencies within the framework of the deficiency claims made by the customer.

- 10.4. Subjects of performance are seen as having been approved in the following cases:

- the customer tells *Orchestra* explicitly or implies that they have completely or partially accepted the subjects of performance;
- if the customer makes his own adjustments, improvements or other modifications to the subjects of performance without previous written approval from *Orchestra*, or allows them to be done by a third party or if the customer changes the result or use or allows such changes to be carried out by a third party; the customer then verifies that the deficiencies are not connected with the work done by *Orchestra*.

- 10.5. The customer does not have the right to refuse to cooperate with the transfer or delivery of contractual subjects of performance on the basis of deficiencies that do not prevent the contractual subjects of performance from being accepted. When such deficiencies exist, the customer is free to make deficiency claims which have been mentioned in these GTCs as long as the specific prerequisites exist.

11. Refusal of Acceptance or Acceptance by the Customer

- 11.1. If the customer does not accept the contractual subjects of performance, even though he is obliged to do so, then *Orchestra* can provide the customer a 14-day extended deadline to explain in writing. There is no need to set an extended deadline if the customer makes a serious, final refusal or if, during the time he is supposed to be fulfilling his liability to pay, he clearly is not in a position to do so. Moreover, cases in which by law the setting of an extended deadline is not necessary are also valid.
- 11.2. If the customer does not validate his rejection during this period or if he does not accept the subjects of performance and he does not declare any deficiencies or reasons which would give him the right to reject, then the subjects of performance are seen as having been accepted. An acceptance is also valid, when the customer uses the subjects of performance of *Orchestra*.
- 11.3. After the end of a failed period of extended deadline or – if the setting of an extended deadline is unnecessary – and in the case of a customer refusal to accept or approve, *Orchestra* can, amongst other things, withdraw from the contract or demand damage compensation in place of the service or unnecessary expenditures. If *Orchestra*'s damage compensation is effective, *Orchestra* can demand as an all inclusive damages contribution 30 percent of the invoice for the subjects of performance in question. The customer is free to present evidence that no or very little damage was caused. The assertion of further damages by *Orchestra* remains unaffected.

12. Shipping and Transfer of Risk

- 12.1. Shipment takes place from the location of *Orchestra* at the cost of and risk to the customer. Once the subjects of performance have been dispatched from the location, the risk is transferred from *Orchestra* to the customer. This applies no later than upon transfer of the subjects of performance to the person performing the transport. The same applies if the shipping is performed by *Orchestra*'s own personnel. The same applies in the case of subjects of performance where, legally or following contractual agreements, an acceptance is required. In the absence of any other special agreements, *Orchestra* is free to choose the transport company as well as the type of transport.

- 12.2. If the shipment is delayed or becomes impossible at no fault of *Orchestra*, the risk is transferred to the customer upon sending of a notification of the readiness for shipment to the customer. *Orchestra* has the right to charge the customer at the start of every calendar month for storage. This can be from 0.5 percent to 5 percent of the invoice total. *Orchestra* is free to charge higher storage costs.
- 13. Retention of Title**
- 13.1. Subjects of performance remain the property of *Orchestra*, despite transfer of property to the customer, until fulfillment of all claims against the customer resulting from the business relationship.
- 13.2. *Orchestra* retains all right to ownership and copyrights for cost estimates, drawings and other documents. They may not be made available to a third party. If no order is placed, all drawings and other documents sent with an offer are requested to be returned to *Orchestra* in full and without delay.
- 13.3. The customer is obliged to handle the subjects of performance with care. If repair and maintenance work is necessary, the customer must carry these out regularly and on time at his own expense.
- 13.4. Processing or transformation by the customer shall always take place for *Orchestra* as the manufacturer, however without obligation on the part of *Orchestra*. If *Orchestra*'s ownership or co-ownership expires due to combination or processing, the customer's ownership or co-ownership of the resulting item shall be transferred to *Orchestra* proportionally (invoice value), effective as of passing on the contract to *Orchestra*. In this case, the customer shall hold *Orchestra*'s ownership or co-ownership in custody at no cost. The resulting item is then considered retained goods.
- 13.5. The customer has the right to process, modify or otherwise adapt the retained good to the needs of the customer or sell it in normal business transactions as long as he is not in default or the licensing conditions of *Orchestra* do not forbid it. For security reasons the customer may on no account however transfer the subjects of performance to a third party as part of general business dealings. The customer assigns all money due from the sale or for other legal reasons to *Orchestra* in advance. If the money from a customer is passed from a sale or any other legal cause into a current account, then the customer should also transfer his money from the current account to *Orchestra*. *Orchestra* accepts the assignments. If the retained good is combined with other objects owned by third parties or is sold, the assignment applies only to the amount of the invoice value of the retained good. The customer is empowered to collect such receivables in his own name and must pass it on to *Orchestra* at the level of the existing request. Upon request by *Orchestra*, the customer must show the debtor proof of the assignment. *Orchestra* will release securities by its own choice, as long as these exceed 20 percent of all the requests by *Orchestra* to the customer.
- 13.6. *Orchestra* must be informed immediately of any existing or implemented access for third parties to the retained good or to the assigned payments such as in the case of an attachment, or in the case of damages or the destruction of subjects of performance. The retention of title by *Orchestra*, which establishes the rights regarding the retained good, must be shown to the third party. Any costs resulting from this shall be covered by the customer.
- 13.7. The authorization of the customer to dispose of the retained good and to collect such receivables expires upon failure to comply with the payment conditions, in particular also in the event of bill or check protests. In this case, *Orchestra* has the right to repossess the retained good. Any costs resulting from this shall be covered by the customer. Withdrawal from a contract is only possible when this withdrawal has been declared explicitly.
- 13.8. The assertion of *Orchestra*'s rights from the retention of title does not free the buyer from his contractual obligations. The value of the subjects of performance is calculated at the time of the withdrawal by the existing payment request from *Orchestra* to the customer.
- 14. Copyright, Regulations of Use, Licensing Agreement**
- 14.1. Should a copyright, service protection right or any other protection right result from *Orchestra*'s subjects of performance, then *Orchestra* gives the customer the simple, non-exclusive right to use these subjects of performance in the framework of the specific contract; this is unrestricted on a time and area level. If the customer intends to transfer such protected subjects of performance from *Orchestra* to a third party, then he is obliged to inform *Orchestra* in full immediately. The granting of user's rights by *Orchestra* to the customer will only become effective once the customer has paid the sum due from the contract to *Orchestra*.
- 14.2. By fulfilling the compulsory cooperation, the customer does not become joint owner of the copyright and other rights. Suggestions, recommendations, etc. by the customer also do not establish joint ownership of copyright.
- 14.3. Should the customer simply receive a time restricted user's right for remaining subjects of performance, or should he lose this right due to a withdrawal, then the customer must return all material to *Orchestra* (e.g. storage media, documentation, work drawings, data records, plans, etc.) and moreover must delete these from their systems. No copy of these may be kept.
- 14.4. User rights afforded the client shall not prohibit *Orchestra* from using or exploiting at their own discretion those techniques, ideas, concepts, know-how, etc. attained during the execution of the individual contract that are distinguished by general applicability.
- 14.5. If agreements are reached regarding the details of *Orchestra*'s copyright ownership of the subjects of performance, then these may not be changed or deleted by the customer or a third party, not even if the customer continues with, changes or further develops the subjects of performance. Should the customer violate these agreements, then separate license fees will be brought against him. The customer is, however, still obligated to immediately remove the changes made to the agreements.
- 14.6. The customer shall inform *Orchestra* immediately in writing, if he is notified of breaches to commercial copyright or property rights to the subjects of performance delivered by *Orchestra*. *Orchestra* is solely authorized and obligated to defend the customer against claims by the owners of such rights and to meet these claims at *Orchestra*'s expense, insofar as they are based on immediate breach by subjects of performance delivered by *Orchestra*. The liability assumes that the customer has not combined subjects of performance from *Orchestra* with subjects of performance of a third party without previous written approval from *Orchestra* and on no account uses the subjects of performance in an unauthorized manner. *Orchestra* has the right to make necessary changes to the subjects of performance or replace them in the event of copyright violations with respect to third parties, at *Orchestra*'s discretion. The customer cannot derive any contractual rights from this.
- 14.7. In reverse, the customer is obligated to indemnify and defend *Orchestra* against all claims of the owner of commercial copyrights and property rights that are made against *Orchestra* as a result of *Orchestra* following the instructions or directives of the customer or as a result of the customer changing subjects of performance of *Orchestra* or integrating them in a system.
- 14.8. Unless agreed otherwise, *Orchestra*'s software is passed onto the customer for time-unrestricted, non-exclusive, common use within the framework of the agreed intended use. If *Orchestra* provides the customer with a multi-user license for *Orchestra*'s relinquished software, then the specifications of use and license agreements for each of the individual licenses are valid.
- 14.9. *Orchestra* remains the owner of all rights to the software provided to the customer, all rights to parts of this software and software derived entirely or partially from it, including the associated materials. This applies even if the customer changes the software to an extent permitted by the contract or combines it with own software or that of a third party.
- 14.10. The customer may make copies of the software provided to him, as a whole or in part, only for backup purposes. Copying of documents provided, such as documentation, operating instructions, etc., is only permitted with the prior written approval of *Orchestra*. The customer is forbidden to make the software and documents provided to him available to third parties without the prior written approval of *Orchestra*.
- 14.11. Editing of the provided software, in particular through modification, translation, decompilation, reverse engineering or combination with other programs, is only permitted with the prior written approval of *Orchestra*. Copyright marks by *Orchestra* on or in the software may not be removed and must be included with copies and edited versions. Copies created in breach of this provision are the property of *Orchestra* and are copyrighted by *Orchestra*. *Orchestra* can forbid the use of such copies and may demand that they are either handed over immediately or completely destroyed with proof.
- 15. Deficiency Claims**
- 15.1. In default of explicitly agreed characteristics of state *Orchestra* provides warranty for deficiencies so that the contractual subjects of performance are suitable for their normal use, or use described in the contract, and that they have characteristics which are usual for subjects of performance of this type and which the customer would expect.
- 15.2. Any documents from an offer by *Orchestra*, such as drawings, illustrations or declarations of weight are passed on carefully but only approximate and not binding unless they have been explicitly described as binding. In this case, the customer can level no deficiency claims against *Orchestra*.
- 15.3. The right to technical or design deviations from descriptions or information in brochures, catalogs or written documents as well as model design or material changes following technical progress or upon changes in the market situation is reserved, from which the customer may derive no claims against *Orchestra*.
- 15.4. Descriptions of functions and service characteristics of the subjects of performance of *Orchestra* are agreed characteristics. The customer cannot obtain guarantees of quality through *Orchestra*. In fact these must be explicitly described as such. These must be much more explicitly described than others. Manufacturing guarantees remain unaffected.
- 15.5. The quality of the subjects of performance refers basically just to the function and product descriptions of the manufacturer or *Orchestra* as agreed at the time of the conclusion of contract. Official statements, recommendations or advertising through *Orchestra* (including through staff and agents of *Orchestra*) or third parties will not give any contractual quality of the subjects of performance, nor will they establish a guarantee of quality.
- 15.6. The warranty is not based on the natural wear or wear caused through use, nor is it based on mistakes, interferences or damages which have been brought about after transfer of risk due to defective, unsuitable or neglectful operation, maintenance, use or handling, due to excessive stress, unsuitable equipment or due to electrical or mechanical impact which is not set out in the contract or due to the use of unusual operating conditions by the customer or a third party.
- 15.7. *Orchestra* offers no guarantee for subjects of performance based on inaccurate information or declarations from the customer or third parties (in particular about hardware or software) or on faults of the customer's hardware and software.
- 15.8. If the subjects of performance from *Orchestra* follow the drawings, descriptions or plans of the customer, then the customer must guarantee that the subjects of performance thereby produced by *Orchestra* do not violate any patents or the legal rights of third parties. The customer exempts *Orchestra* from any claims by third parties resulting from the violation of patents or protection rights.
- 15.9. If the customer makes his own adjustments, improvements or other modifications to the subjects of performance without the approval of *Orchestra*, or allows them to be done by a third party or if the customer changes the specifications or use or allows such changes to be carried out by a third party, then the deficiency claims of the customer become invalid and customer verifies that the deficiencies are not connected with the work done by *Orchestra*.
- 15.10. There is no warranty for the use or operation of subjects of performance during the development stage by the customer, when this has not yet been explicitly approved by *Orchestra*.
- 15.11. All those parts or services are at the discretion of *Orchestra* to be improved free of charge, redelivered or carried out again, which within the agreed or, if nothing has been agreed, within the legally limited time period – regardless of the period of service – show deficiencies as far as their cause originates from the time of the transfer of risk.

- 15.12. The resolution of deficiencies is first performed at *Orchestra's* discretion as a fulfillment of warranty through subsequent improvement or replacement delivery. Several subsequent improvements or replacement deliveries are allowed in suitable and reasonable extent. Regarding the transfer of software, resolution of deficiencies can involve *Orchestra* delivering or transferring a revised version (update) to the customer, which does not include the deficiencies. Corrective action must take place in a reasonable period of time.
- 15.13. In the case of fulfillment of warranty by subsequent improvement, the customer must support *Orchestra* in a reasonable and necessary way. In particular, the customer will allow the deficiency to be reviewed and evaluated. If the customer refuses to allow *Orchestra* inspection and evaluation of the deficiency in question or if the customer does not support *Orchestra* to the necessary extent or if he removes the deficiency in his own way without prior written approval from *Orchestra*, then he loses the deficiency claim for this deficiency. This is the case, unless *Orchestra* is in default.
- 15.14. Subjects of performance that need to be sent back to *Orchestra* due to deficiencies can only be sent with the prior written approval of *Orchestra*. Returns to *Orchestra* without prior written approval may not be accepted by *Orchestra*. In this case, the customer will be charged for the costs of the return.
- 15.15. *Orchestra* will inform the customer in written form of the corrective action or replacement delivery. After being informed, the customer will inspect the service result or the replacement subjects of performance delivered within 5 working days and – in the case that the deficiencies have been resolved or the replacement is without deficiency – confirm the success of the warranty fulfillment within 5 additional working days in written form. If the customer does not make a declaration in the period provided or if he does not describe a deficiency as being ongoing, then the fulfillment of warranty is assumed successful. The customer has the full onus of responsibility, particularly for the timely declaration of the ongoing nature of the deficiency. If the customer, however, shows the deficiencies in form and in the prescribed period as being ongoing, *Orchestra* has the right and is obliged to resolve these deficiencies within a reasonable period of time.
- 15.16. If the fulfillment of warranty is seen to have conclusively failed or the customer sees the further fulfillment of warranty as unsatisfactory, the customer has the right to demand a reduction of payment (decrease), cancellation of the contract (withdrawal), damage compensation or compensation for unnecessary expenditure or compensation for the expenditure of a corrective action carried out by himself (own action). Damage compensation and a right to withdrawal are not permitted if the importance to the contract is insignificant, particularly if the deficiencies are insignificant or if *Orchestra* has provided partial services, which are as such in the interest of the customer. If a deficient subject of performance is transferred to the customer by *Orchestra* at the time of a continuous obligation, then the customer has the right, following definite failure of the fulfillment of warranty, or further fulfillments being unreasonable, to withdraw from continuous obligation without notice on the basis of an important reason.
- 15.17. At the request of *Orchestra*, the customer must bindingly declare within a period of one week, which deficiency claim he wishes to validate.
- 15.18. In the case of withdrawal, the customer is responsible for all auxiliary and legal costs regarding degradation, decrease and non use.
- 15.19. Should the customer choose to withdraw from the contract because of a deficiency, there is no possibility for additional damage compensation because of the deficiency. If instead the customer chooses damage compensation, then the subjects of performance remain with the customer should he so desire. The same applies for any claim by the customer for compensation for vain expenditure or for compensation for the expenditure of a corrective action carried out by himself. The damage compensation is limited to the difference between the agreed costs and the value of the deficient subject of performance. If the transfer happens during a continuous obligation, the damage compensation to be paid by *Orchestra* is restricted to the agreed cost of one contract year. These determinations do not apply in the case of willful or negligent violation of contract by *Orchestra*.
- 15.20. If the customer receives deficient installation or set-up instructions, then *Orchestra* is only responsible for the delivery of new installation or set-up instructions free of deficiency and only then if the deficiencies of the installation or set-up instructions are different from the standard installation or set-up of *Orchestra's* subjects of performance.
- 15.21. Afore-mentioned restrictions are not valid as long as *Orchestra* has taken on a guarantee for the characteristics of the subjects of performance or if *Orchestra* has fraudulently neglected to mention deficiencies.
- 15.22. The customer and *Orchestra* agree that in fulfilling the warranty, subjects removed through exchange or service become the property of *Orchestra*.
- 15.23. Corrective action takes place only at the place of delivery of the subject of performance. At the customer's request, *Orchestra* will perform corrective action at a location specified by the customer. In this case, the customer must provide *Orchestra* with any additional expenditure, outlay as well as pay additional costs.
- 15.24. Costs and expenditure from *Orchestra* particularly those due to false or incomplete customer information or unverifiable fault complaints are to be carried by the customer.
- 15.25. In complementary negotiations regarding the fulfilling of warranty by *Orchestra*, there is no approval of customer's claim. In particular, *Orchestra* does not admit under any legal terms the deficiencies of the subjects of performance.
- 15.26. Deficiency claims against *Orchestra* are directly available only to the customer. Without the approval of *Orchestra*, these are non-transferable (transfer ban).
- 16. Inspection and Complaint Obligations, Limitations to Deficiency Claims**
- 16.1. Faults that arise shall be reported to *Orchestra* by the customer immediately with an exact, written description of the deficiency. The customer is obligated to inspect the subjects of performance immediately for visible deficiencies, particularly in regard to completeness and functionality, and to let *Orchestra* know in writing immediately no later than ten (10) working days from the delivery of the contractual subjects of performance of any deficiencies. The customer has the full onus of responsibility for all conditions of entitlement, particularly for the deficiency itself, for the time of its discovery and for the timely notification of defect. Deficiencies which, in the framework of the described, orderly inspection of the subjects of performance cannot be established, must be shown to *Orchestra* by the customer within 10 working days after their discovery with the complaint demand. If the inspection or complaint obligations are violated, the subjects of performance in question together with the deficiency in question are seen as having been accepted.
- 16.2.** Deficiency claims become time barred within one year of the delivery or the acceptance of the subjects of performance in question.
- 16.3.** The limited time period is not broken up or stopped either through a subsequent improvement or through the obtaining of a report or negotiations over alleged deficiencies, particularly the inspection of subjects of performance in question, whether these are through deficiencies notified by the customer or similar measures.
- 17. Liability**
- 17.1.** *Orchestra* is liable for calculable damage to body and health or the loss of life of the customer and the claims from the product liability law (ProdHaftG) according to legal regulations.
- 17.2.** For deliberate acts and gross negligence, *Orchestra* is legally liable according to legal regulations.
- 17.3.** For negligence caused by violation of contractual obligations, even by representatives or vicarious agents, *Orchestra's* liability is restricted to the typical, predictable extent at the time of conclusion of contract, a sum higher than 500,000.00 Euros by *Orchestra* is ruled out.
- 17.4.** The liability restrictions also include any claims by the customer for compensation for such expenditure made trusting the receipt of the subjects of performance as agreed in contract, and which he justly could make ("vain expenditure").
- 17.5.** *Orchestra* is also liable for loss of profit, loss of savings, damage claims by third parties against the customer or other indirect resulting damages only to the extent of the typical contractual predictable risks.
- 17.6.** The liability of *Orchestra* for loss of data shall be limited to the usual restoration expenses that would have been incurred with regular creation of backup copies in accordance with the existing risk. In regard to this, *Orchestra* is only liable if the loss of customer data was not caused deliberately or through negligence and only when the customer has made suitable provisions to restore the lost data with justifiable expense unless *Orchestra* has contractually taken over the responsibility of data protection. The liability for loss of data is limited to the normal costs of restoration.
- 17.7.** Provided *Orchestra* keeps data and content from the customer on a data network, then these data and content are also independent of third party work, over which *Orchestra* has no influence. Provided that access to the network takes place by third parties, then *Orchestra* has no liability for the availability of data and content.
- 17.8.** The limitations to liability are also valid, provided that legal representatives or vicarious agents from *Orchestra* have been involved.
- 17.9.** Claims against *Orchestra* for damage compensation or compensation for vain expenditure – other than in the case of deliberate or negligent damage and personal injury – are time barred to one year. Details for the start of the limited time period can be found in paragraph 199.2 of the German Civil Code (Bürgerliches Gesetzbuch – BGB). The statute of limitation starts no later than at the end of the limited time periods as described in paragraph 199.3, 4 BGB.
- 17.10.** In these general terms and conditions, specific terms of liability for defects in material or for warranty of title remain unaffected by the specifications of the previous paragraph.
- 17.11.** *Orchestra's* liability for service delays is determined according to sec. 9. of these GTCs. For defects in material or for warranty of title of the contractual subjects of performance, *Orchestra* is liable according to the regulations determined in sec. 15. of these GTCs.
- 17.12.** The right exists to agree further limitations to liability separately, provided this is legal. Provided there is nothing to the contrary in the paragraphs of this section, each of *Orchestra's* liabilities, regardless of regulation, is ruled out.
- 17.13.** At the request of *Orchestra*, the customer is obligated to verify in writing the possession of company and product liability insurance that provides sufficient coverage of the applicable risks.
- 18. Duration of Contract, Cancellation**
- 18.1.** Provided that nothing else has been arranged between the parties, contracts with *Orchestra*, which are continuous obligations, are closed for an indefinite term... They can only be cancelled after 12 months by one party following a period of notice of 6 months to the end of a calendar year. The right for exceptional cancellation for an important reason remains unaffected. Notice must always be provided through registered mail.
- 18.2.** If a contract is limited to a specified period of time or if a minimum running time is agreed, then the contract is tacitly lengthened to the agreed contract running time, if written notice is not given in the agreed period. In such a case, withdrawal is possible at the earliest at the end of the period and always with a period of notice of three months before the end of the period.
- 18.3.** In the case of notice given, regardless of the reason and from which party, *Orchestra* has the right of payment net of any saved expenditure.
- 19. Assignment, Transfer to Third Parties, Use by Third Parties**
- Orchestra* has the right to bring claims against the customer and transfer or assign rights and obligations to third parties in total or in part based on contractual agreements. The customer is only allowed this after prior written consent by *Orchestra*.

20. Exclusion, Purchase Risk, Provision for Self Delivery

- 20.1. *Orchestra* does not take any purchase risk for purchase items ordered and not immediately delivered, unless an explicit written agreement has been reached with the customer.
- 20.2. If *Orchestra* receive hardware or software or other deliveries or services from third parties and this is evident to the customer, then all the delivery conditions, delivery times, availability and performance characteristics agreed to with the customer and relevant to the delivery by *Orchestra* are applied to the third party. *Orchestra* will give the customer timely notice of this. The conclusion of contract takes place with the correct and timely self delivery via the supplier by *Orchestra*. This is only applicable in the case that *Orchestra* is not responsible for the non-delivery, particularly during the conclusion of a congruent hedging transaction with a supplier.

21. Confidentiality

- 21.1. The parties oblige themselves to keep strictly confidential company and operational secrets of the other party as well as personnel-related data, as defined by the Data Protection Law, which is entrusted or otherwise becomes available in connection with business transaction of the contract and not to use this for itself or provide it to third parties as far as no differing regulations are in place or such information is not public or known outside the contract or the business relationship.
- 21.2. If one party is obligated to give confidential information due to law or regulations by authorities or legal directive, then they must inform the other party immediately in writing.
- 21.3. The obligation to secrecy applies to all employees or third parties who may be employed during the duration of the contract. They must sign to this effect, whether they are employed or freelance.
- 21.4. At the end of contractual relations, any possible information, including copies held by one party, are to be returned without request from the other party, provided that no legal obligation exists to keep it.

22. Closing Provisions

- 22.1. The place of performance for all contractual services is Munich. *Orchestra* has the right at any time to choose a different place of performance.
- 22.2. The place of jurisdiction for all disputes about rights and obligations and regarding the contract is *Orchestra's* location. *Orchestra* has the right however to call the customer to any other legal place of jurisdiction
- 22.3. The export of goods by *Orchestra* to non-EU countries requires the written consent of *Orchestra*, regardless of the fact that the customer must obtain all necessary official import and export authorizations.
- 22.4. For the specifications of the agreement, German law is applied, particularly excluding regulations in international private law (IPL) or UN resolutions regarding contracts for international merchandise (CISG).

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