

General Terms and Conditions of the company Albatros Datenservice GmbH (hereinafter “Albatros”), Karlsruhe

Article 1 General Provisions

1. Albatros provides all deliveries and services exclusively based upon these General Terms and Conditions.
2. Other terms and conditions that vary herefrom are not binding upon Albatros, even if the customer provides notice that such terms and conditions are the customer's terms and conditions. If Albatros fails to respond concerning terms and conditions that vary herefrom, such failure to respond shall not be deemed acknowledgement of or consent to such terms and conditions.
3. If two confirmation notices that contain variant terms and conditions are transmitted at the same time, the notice that applies shall be that sent by Albatros.

Article 2 Offers

1. Offers and cost estimates are always subject to change and non-binding. Orders are not deemed accepted unless and until we have fulfilled and sent them or have confirmed them in writing.
2. We reserve the right to make changes in measurement, weight, and power tolerances or technical changes, or to switch models, as well as to deviate from prospectuses and other written documents in the course of technological progress, and such changes are permitted provided that they are not substantial and that they are reasonable for the customer.

Article 3 Time limits / deadlines

1. Time limits and deadlines cited by us are binding only insofar as they have been expressly agreed in writing. For events of force majeure and other extraordinary circumstances, including, in particular, labor disputes, governmental intervention, and disruptions in traffic, whether such circumstances have been in effect at our location or at the location(s) of our supplier(s), shall release us, for the duration of the effects thereof and, if such circumstances render performance impossible, shall release us in full, from our obligation to provide goods and services. A contractual penalty, if any, that has been agreed shall also not be deemed due under such circumstances. Albatros shall notify the customer without delay as to the non-availability of the service in question and shall return to the customer any consideration that has already been rendered by the customer.
2. If, for reasons that we have not culpably caused, one of our suppliers does not supply us, provides us with the incorrect supply, or fails to supply us in due time such that we are able to fulfill our obligation to provide the customer with goods and services on time, we are entitled to rescind the agreement entered into with the customer insofar as such agreement concerns goods that cannot be delivered. Albatros shall notify the customer without delay as to the non-availability of the service in question and shall return to the customer any consideration that has already been rendered by the customer.
3. Partial deliveries and performance of partial services are permitted. If the partial deliveries extend over a period of more than 14 days, we are entitled to issue partial invoices for the goods that have already been delivered.

Article 4 Shipping / transfer of risk

1. The place of performance for deliveries and services shall be the location in which the company has its registered office, in Karlsruhe. In all cases in which we do not ourselves deliver the goods to the customer, the risk associated with the goods shall pass to the customer as soon as the shipment has been transferred to the company carrying out the transportation thereof. Shipping costs shall be borne by the customer and the goods shall be insured for transportation at the customer's expense.
2. If the shipment is delayed or rendered impossible without our being at fault therefor, the risk associated with the goods shall pass to the customer at the time at which notice is rendered that the goods are ready for shipping.

Article 5 Warranty / liability

1. For defects and for failure to possess warranted characteristics, provided that we are notified thereof in writing by the client immediately after such circumstances are discovered and Albatros is responsible for such circumstances, we provide a warranty such that we will, at our option, either improve the goods or services in question by way of subsequent improvement, or subsequently supply replacement objects or parts that are not defective. The customer is entitled to reverse the agreement (rescission) or to reduce the amount of remuneration (reduction) only if the supply of replacements or subsequent improvement of the goods or services in question has failed.
2. If the customer considers an object that has been delivered to be defective, the customer must send such object to Albatros in the original packaging or in equivalent packaging. The customer must always provide meaningful documentation of faults, if any, that occur in the software. In particular, the error messages that have been displayed must be recorded and such record transmitted to Albatros in writing. The customer must actively support Albatros in remedying errors and defects, if any.
3. Prior to the remediation of errors and defects, particularly before the replacement of any machine, the customer is required to back up all programs, data, and data storage media in full and must remove such materials if necessary.
4. We are obligated to render subsequent improvement or supply replacements only after payment of a portion of the agreed price that is appropriate in light of the defect.
5. Excluded from this warranty are errors and defects that arise due to external influences, faulty use, changes, additions, installations and de-installations, and/or attempts at repairs that are not carried out by Albatros, or due to any other manipulations.
6. The customer's warranty claims, if any, as well as claims to compensation for consequential damage or losses due to defects shall lapse one year after delivery of the goods in question. Unless otherwise agreed, Albatros undertakes no warranties in the legal sense. Nothing herein shall affect manufacturer's warranties.
7. The customer commits to treat passwords received from Albatros as strictly confidential and to inform Albatros immediately if it becomes aware that any such password is known to unauthorized third parties. Should unauthorized third parties make use of the services of Albatros as a result of the customer's fault, the customer is liable to Albatros for compensation for the use thereof and for payment of damages. The customer is moreover obligated to carry out data backup processes at regular intervals, particularly before the commencement of any work on the computer system and before the installation of any hardware.
8. Albatros is liable for intentional and grossly negligent breaches of contract as well as for breach of essential contractual obligations through ordinary negligence. In the latter case, the liability of Albatros is limited to up to an annual licensing fee. Nothing herein shall affect statutory liability for personal injury or liability pursuant to the Product Liability Act (Produkthaftungsgesetz). The limitation of liability also applies to statutory representatives of Albatros and to agents used by Albatros in performance of its contractual obligations (Erfüllungsgehilfen). Albatros is liable for loss of data only if such loss would have been unavoidable even if appropriate measures had been taken to secure the data and did not occur as a result of disruptions or third-party influences.

Article 6 Reservation of title

1. We reserve title to the objects supplied by us (goods subject to reservation of title) until all receivables to which we are entitled, including such as may yet arise during the course of the business relationship, irrespective of the legal grounds therefor, have been discharged in full.
2. In the case of third-party access to the goods subject to reservation of title, particularly in the case of pledging of the goods, the customer shall point out that the goods are our property and shall notify us of such circumstance immediately. The customer shall bear the costs and shall be responsible for any damage or losses in the event of fault.

Article 7 Payment

1. Unless otherwise agreed, our invoices are payable net within 14 days as from receipt of the invoice.
2. From the time at which payments fall due, we are entitled to charge the customer interest at the customary bank rate, but not less than 8% p.a. above the then-applicable base interest rate established by the European Central Bank.
3. The customer is entitled to offset its own claims against our receivables, or to reduce payment, only insofar as we do not dispute such counterclaims and such counterclaims are due and payable or they have been established with final, binding legal force.
4. If the customer fails to comply with its obligations to render payment, or if circumstances that give rise to serious doubts as to the customer's solvency or creditworthiness come to light, we are entitled to render the remaining amount owed due and payable or to demand that security be furnished.

Article 8 Intellectual property and copyright

1. Albatros is the holder of the rights to the software/programs that are the subject of the agreement or has been authorized by the holder of such rights to resell such software/programs.
2. The customer is granted a non-transferable, non-exclusive right to use the programs (license). Unless otherwise agreed, the customer is entitled to use the program on only one computer at any given time. The customer is entitled to carry out data backups according to the state of the art and to prepare the backup copies necessary for such purpose. The further scope of the customer's license shall be agreed separately.
3. The customer is not entitled to modify or remove existing copyright notices. The license does not include authorization to edit the programs.

Article 9 Place of jurisdiction / applicable law

1. The law of the Federal Republic of Germany applies to all disputes arising out of or in connection with this agreement. The exclusive place of jurisdiction for all disputes under this agreement shall be Karlsruhe if the customer is also a merchant (Kaufmann) or has no general place of jurisdiction in Germany. If the customer relocates its office or usual residence to a location abroad after entering into the agreement, or if the customer's usual residence is unknown at the time that suit is filed, Karlsruhe is likewise agreed as the exclusive place of jurisdiction. Albatros is also entitled to file suit in the location in which the customer has its registered office.
2. The law of the Federal Republic of Germany applies, to the exclusion of the provisions as to the United Nations Convention on Contracts for the International Sale of Goods (CISG) and of German international private law.

Article 10 Severability

1. If any individual provision of an agreement for provision of deliveries and services of which these terms and conditions are an integral component is or becomes invalid, such circumstance shall not affect the validity of the remaining provisions hereof.