

**General Terms & Conditions  
of Fresenius Digital Technology GmbH**

**A.**

**General Provisions**

**1 General, Scope**

- 1.1 These General Terms & Conditions ("**Terms & Conditions**") apply to all business transactions with our customers. The Terms & Conditions only apply when the customer is an entrepreneur (Section 14 of the German Civil Code - *BGB*), a legal entity under public law, or a special fund under public law (each a "**Customer**").
- 1.2 These Terms and Conditions shall apply to all future business transactions with the Customer, even where not expressly and separately agreed.
- 1.3 These Terms & Conditions shall apply exclusively. Any deviating, conflicting or additional general terms and conditions of Customer shall only become a part of the contract if and to the extent they have been expressly approved by us in writing. This requirement for approval shall apply without exception, even if we perform delivery to Customer without reservations being aware of Customer's general terms and conditions.
- 1.4 Any separate agreements made with Customer in the individual case (including side agreements, additions and amendments) shall have precedence over these Terms & Conditions. A written contract or our written confirmation shall be decisive for the content of such separate agreements.
- 1.5 Legally relevant declarations and notifications to be submitted to us by the Customer after entering into the contract (e.g. setting of deadlines, notification of defects, declaration of withdrawal (*Rücktritt*) or reduction of price (*Minderung*)) shall only be valid when made in writing.
- 1.6 References made to the validity of statutory provisions shall only be for clarification purposes. Even without such clarification, the statutory provisions shall apply unless they are directly modified in or expressly excluded by these Terms & Conditions.

**2 Conclusion of Contract**

- 2.1 Our offers shall be subject to confirmation and non-binding.
- 2.2 The placing of a purchase order for goods or services by the Customer shall be considered a binding offer to enter into a contract.
- 2.3 Acceptance of a binding offer can be declared either in writing (such as through order confirmation) or by shipping the goods to or performing the services for the Customer.

**3 Prices**

- 3.1 The price stated in the purchase order shall be binding. Unless agreed otherwise, all prices stated in the purchase order shall be in EURO.
- 3.2 The prices shall apply to the scope of delivery and services set forth in the order confirmations. Additional or special work or services will be invoiced separately. The

prices shall be understood as ex works plus packaging and statutory VAT; in the case of export shipments, customs duties, charges, and other public levies.

- 3.3 In the case of Sales Shipments, the Customer shall bear the costs of transport from the warehouse and, where appropriate, the costs of any transport insurance requested by the Customer. The Customer shall bear any customs duties, charges, taxes, and other public levies. Transport and all other packaging material as defined by the German Regulation on Packaging (*Verpackungsverordnung*), will not be taken back by us, but will become the property of the Customer.

#### **4 Payment Terms**

- 4.1 Payment is to be made without deductions at the latest within 14 days of the invoice date, plus VAT. If the payment period is exceeded, claims for the payment of interest may be asserted in accordance with applicable statutory provisions.
- 4.2 If the contract involves temporary leasing in return for valuable consideration, the rental charge will become due and payable in advance on the third working day of each month. In the first month of the rental period, the rental charge will become due and payable upon achievement of full readiness/availability.
- 4.3 It shall only be permissible to offset counter-claims of the Customer or retain payments as a result of such claims if the counter-claims are undisputed or have been judged legally binding by a competent court of law.
- 4.4 All of the Customer's payments shall be used to settle the oldest open invoice and will be offset against such invoices. Any provisions of the Customer deviating therefrom shall be ineffective.
- 4.5 We shall be entitled to perform or to render any outstanding deliveries or services solely in return for advance payment or the payment of a security deposit if we gain knowledge of circumstances after entering into the contract that could significantly diminish the creditworthiness of the Customer, and which could jeopardize the payment of our outstanding claims by the Customer under the respective contractual relationship (including from other single orders to which the same master agreement applies).

#### **5 Performance Period and Default of Performance**

- 5.1 Delivery will be made as quickly as possible. We reserve the right to perform part-deliveries/partial performance, or, to the reasonably acceptable extent for the Customer, replacement deliveries.
- 5.2 Delivery and performance dates shall be non-binding on principle, unless the parties have entered into a written agreement that deviates therefrom.
- 5.3 If performance is impossible for reasons of acts of god, including, but not limited to, shortages of raw materials, energy, and employees, industrial action, serious disruption to transport networks, such as roadblocks, unforeseen operational disruption or such for which we are not culpable, measures by the public authorities or other events that are not attributable to us ("**Force Majeure**"), we shall not be required to effect delivery or performance for the duration of the impediment to performance. In such cases, the delivery and performance period shall be prolonged for the duration of the impediment.
- 5.4 Default of performance on our part shall be governed by statutory provisions.

#### **6 Delivery**

- 6.1 Delivery shall be ex works. Upon request and at the expense of the Customer, the goods will be shipped to a different place of destination ("**Sales Shipments**").
- 6.2 Unless otherwise agreed, we shall be entitled to determine the mode of shipment (in particular, transport company, shipping method, packaging).

## **7 Services**

- 7.1 The services performed by us shall be charged according to hourly or daily rates on the basis of the hours and days worked. The service to be remunerated will be invoiced by us on a monthly basis or upon completion of the order.
- 7.2 The Customer is required to provide reasonable support for our activities. In particular, the Customer will, at its own cost, take all necessary measures within its sphere of influence to enable the orderly performance of the services.

## **8 Acceptance**

- 8.1 Completed deliverables performed under a contract for work within the meaning of Sections 631 et. seq. of the German Civil Code (*Bürgerliches Gesetzbuch - BGB*) are subject to acceptance. Acceptance is the prerequisite for the payment of remuneration. Partial acceptance shall be permitted. Services under a contract for services, in particular, consulting and support services, shall not be subject to acceptance, save where the requirement for acceptance of the service is expressly stipulated.
- 8.2 Upon completion, the Customer will be notified of the readiness for acceptance of the respective work and will be supplied with the deliverables including the accompanying documentation. The deliverables shall be deemed accepted if the Customer does not (i) within the acceptance period of 10 working days declare its acceptance providing us with a written acceptance certificate or (ii) refuse acceptance providing a written statement listing the material defects preventing Customer from declaring acceptance. The same shall apply if the Customer uses the deliverables for production purposes.
- 8.3 The acceptance test shall be deemed successful when the deliverable fulfills the contractually stipulated requirements in all material points.
- 8.4 The Customer is obliged to inform us without undue delay in writing if, in the course of the acceptance test, it discovers any deviations from the contractually stipulated requirements.
- 8.5 Minor defects shall not hinder acceptability of the deliverables, but shall be remedied as part of the warranty. The Customer shall record minor defects as defects in the written acceptance certificate, or shall inform us in any other manner.
- 8.6 If acceptance fails, we will promptly remedy any defects impeding acceptance and the deliverable will then once again be provided for acceptance testing. If the acceptance test is once again unsuccessful for reasons for which we are liable, the Customer shall be entitled to withdraw from the contract.
- 8.7 If acceptance is excluded due to the characteristics of the deliverable, then completion of the work takes the place of acceptance.
- 8.8 We shall be entitled to withhold performance if the Customer is in default of the acceptance or partial acceptance of deliverables or with the payment of accepted deliverables.

## **9 Transfer of Risk**

- 9.1 The risk of accidental destruction and accidental deterioration of the goods shall pass to the Customer at the latest upon the handover of the goods. For Sales Shipments, however, the risk of accidental destruction and accidental deterioration of the goods and the risk of delay shall pass immediately upon handing over the goods to the forwarding agent, carrier, or other person or agency appointed to perform delivery.
- 9.2 Where acceptance has been agreed, the same is decisive for the transfer of risk.

- 9.3 Customer's default of acceptance shall be deemed as handover of goods and/or acceptance, as applicable.
- 9.4 If the Customer is in default of acceptance, or if it fails to cooperate, or if our delivery is delayed for any other reason attributable to the Customer, we shall be entitled to demand compensation for any damages so incurred including additional costs (such as storage costs).

## **10 Reservation of Title**

- 10.1 We reserve title to the goods sold by us until complete payment of all of our current and future claims under this contract and from ongoing business dealings (Secured Claims).
- 10.2 Until such time as the Secured Claims are paid in full, the goods subject to reservation of title may neither be pledged to third parties nor used as collateral. The Customer must notify us, without undue delay and in writing, if and to the extent that third parties attempt to seize or attach the goods that are our property.
- 10.3 The Customer is entitled to resell and/or process the goods subject to retention of title within the course of ordinary business. In this case, the following provisions shall additionally apply.
- 10.4 The reservation of title shall extend to the full value of the products created through the processing, mixing, or combining of our goods, whereby we shall be deemed the manufacturer. If, through processing, mixing or combining with third party goods, the third party retains property rights, we shall acquire joint title to the processed, mixed, or combined goods in the proportion of their invoice values. Furthermore, the same conditions shall apply to the products created as to the goods delivered subject to reservation of title.
- 10.5 Pursuant to the above paragraph, the Customer hereby assigns to us as collateral the claims against third parties, in total or in the proportionate amount of our joint title, that arise from the resale of the goods or products. We accept the assignment.
- 10.6 Both the Customer and we shall be empowered to collect the claims. We shall undertake to not collect the claims for as long as the Customer fulfills its payment obligations towards us, does not default on payment, does not file for the commencement of insolvency proceedings, and no other impairment to its performance capacity arises. However, should this be the case, we may demand that the Customer informs us of the claims assigned to us as well as the creditors of such claims, makes all necessary disclosures for collection, surrenders the accompanying documents, and informs the creditors (third parties) of the assignment.

## **11 Claims for Defects**

- 11.1 For delivery transactions, the written form shall be required with regard to agreements on the specifications of the delivered goods. Information regarding the specifications of the hardware or software must be expressly designated as such.
- 11.2 Notification must be provided immediately of any externally visible defects discovered on receipt of the delivered goods; notification of hidden defects must be provided immediately upon discovery. If the goods are delivered by a forwarding agent, the complaint shall be entered in the consignment note. Our written consent shall be required for return shipments.
- 11.3 If the delivered item contains defects, we may, at our option, perform supplementary performance in the form of a remedy of the defects (rectification) or the delivery of defect-free goods (replacement delivery). Our right to refuse supplementary performance under the statutory prerequisites shall remain unaffected.

- 11.4 For inadequately rendered services, we shall be entitled to the right to rectification. To this effect, the Customer must specify an appropriate grace period.
- 11.5 The warranty period is twelve months. For work and services, it shall commence upon acceptance of the respective work or service; for deliveries, on the day of delivery.

## **12 Withdrawal and Termination**

- 12.1 In the event that supplementary performance fails, the Customer shall reserve the right, at its option, to demand a reduction in price, or – if the defects are not merely minor – to withdraw from or to terminate the contract.
- 12.2 If the Customer's behavior constitutes a breach of contract, in particular in the event of non-payment of the purchase price, we shall be entitled to claim our statutory right to withdraw from the contract.
- 12.3 If performance is impossible due to Force Majeure as defined in 5.3, and this impediment to performance lasts longer than three months, we shall be entitled to withdraw from or to terminate the contract. If, as a consequence of the delay, the Customer cannot be reasonably expected to accept delivery, or to accept the work or service, the Customer can withdraw from or terminate the contract through promptly providing us with a written notice to this effect.
- 12.4 Furthermore, each of the parties may withdraw from or terminate the contract for good cause without observing a period of notice.

## **13 Other Liability**

- 13.1 We shall only be liable if we, our legal representatives, or our vicarious agents are responsible for gross negligence or willful intent, or we culpably breach material contractual obligations and guarantees. This shall not prejudice our liability for injury to life, body, or health, or under the German Product Liability Act (*Produkthaftungsgesetz*) and the German Medicines Act (*Arzneimittelgesetz*).
- 13.2 In the event of ordinary negligent breaches of obligations that are essential to the achievement of the contractual purpose (essential contractual obligations (*Kardinalpflichten*)), our liability shall be limited to the amount of damage that is foreseeable and typical for the transaction in question.
- 13.3 If and to the extent that the Customer fails to make backup copies of its data at regular intervals, in the event of loss of data, the Customer must consider this as contributory negligence.

## **14 Confidentiality and Data Protection**

- 14.1 Each party must obtain the prior written consent of the other party before disclosing the existence of the mutual business relationship. This shall apply in particular to publication in all manner of media for publicity or marketing purposes. The parties will instruct their employees on this duty. A culpable breach of this duty by any employee of one of the parties shall also constitute a breach of contractual obligations under this contract.
- 14.2 The parties agree (a) to keep Confidential Information strictly confidential and under safe custody, (b) to use it solely for the contractual purposes (the "**Purpose**"), (c) not to copy or otherwise reproduce such Confidential Information, except as reasonably required for the Purpose, and (d) to only permit access by Entitled Persons to such Confidential Information. The term "**Confidential Information**" means all information disclosed by or on behalf of one party (the "**Disclosing Party**") to the other party (the "**Receiving Party**"), whether marked "confidential" or not, whether in oral, visual, electronic, written, or any other form including, but not limited to, financial data, trade secrets, know-how, strategies, inventions, ideas, formulas, processes, test data, procedures, recipes, and technical

data, and all notes, compilations, summaries, memoranda or other documents prepared by the Receiving Party which contain, reflect or are otherwise derived from the before mentioned information as well as any copies thereof and of the before mentioned information. "**Entitled Persons**" are only the statutory representatives, members of corporate bodies and employees as well as the professional advisors of (i) the Receiving Party and (ii) the Receiving Party's Affiliates. The Receiving Party shall (i) limit access to the Confidential Information to a minimum number of persons as necessary for the Purpose and (ii) notify all such persons of the existence of this confidentiality obligation at the time the Confidential Information is disclosed to them and (iii) procure that they comply with the terms of this confidentiality obligation as if they were a receiving party to it. The Receiving Party shall be liable for any non-compliance of such persons with the terms of this confidentiality obligation as if the Receiving Party was itself so noncompliant. "**Affiliate**" shall mean any company (*verbundenes Unternehmen*) within the meaning of Section 15 et seq. of the German Stock Corporation Act (*Aktiengesetzbuch*). The Receiving Party's obligations under this confidentiality obligation shall not apply to Confidential Information which (a) was known to the Receiving Party at the date of disclosure of the Confidential Information by the Disclosing Party, (b) is after the date of disclosure acquired by the Receiving Party in good faith from an independent third party who is not subject to any obligation of confidentiality in respect of such information, (c) was at the time of its disclosure in the public knowledge or has become public knowledge during the term of this confidentiality obligation other than through a breach of this confidentiality obligation by the Receiving Party, (d) is independently developed by the Receiving Party without recourse to any of the Confidential Information. In the event the Receiving Party is required to disclose any Confidential Information as part of a judicial process, governmental investigation, legal proceeding or other similar process, the Receiving Party shall give the Disclosing Party prior written notice of such requirement. Reasonable efforts shall be made to provide this notice in sufficient time to allow the other party to seek an appropriate protective order or modification of any disclosure. The Receiving Party shall comply with any protections obtained by the Disclosing Party with regard to the disclosure of the Confidential Information, and shall disclose only that information as its counsel shall reasonably determine is necessary to comply with the requirement. Upon the Disclosing Party's written request which may be made at any time and at the Disclosing Party's sole and exclusive discretion, the Receiving Party shall, to the extent permissible under applicable law and its internal policies, without undue delay (i) return to the Disclosing Party any Confidential Information provided by or on behalf of the Disclosing Party to the Receiving Party in physical form, including, but not limited to, product samples, and otherwise (ii) destroy the Confidential Information. Rights of retention as stipulated in Section 273 of the BGB, or other provisions, shall be excluded. The confidentiality obligations shall remain in effect for a period of 5 years following termination of the contract.

- 14.3 Where we process or use personal data for the Customer in the course of carrying out an order, the parties will enter into a written agreement in accordance with the provisions of Section 11 of the Federal Data Protection Act (*Bundesdatenschutzgesetz*) before carrying out work.

## **15 Governing Law and Jurisdiction**

- 15.1 If the Customer is a merchant within the meaning of the German Commercial Code (*Handelsgesetzbuch*), a legal entity under public law, or a special fund under public law, all legal disputes arising directly or indirectly from this contractual relationship shall be subject to the exclusive jurisdiction of the courts of Bad Homburg v. d. H, Germany.
- 15.2 The laws of the Federal Republic of Germany excluding the Convention on the International Sale of Goods (UN CISG) and without regard to principles of conflicts

of laws shall apply to these Terms & Conditions and the entire legal relationship between the Customer and us.

**B.**

**Special Provisions for the Sale and Lease of Software**

**16 Additional Applicability**

In addition to the general provisions in Part A, the following special provisions shall apply to the sale of Contract Software and to the leasing of Contract Software (the latter "Software as a Service" or "SaaS").

**17 Object of the Agreement**

- 17.1 "Contract Software" means the computer program in object code enclosed in the offer including accompanying documentation in the language stipulated in the offer.
- 17.2 The subject matter of a purchase agreement is the long-term provision of Contract Software and the granting of license described in section 18 of these Terms & Conditions. The hardware and software environment within which the Contract Software is to be deployed shall be likewise stipulated in the offer.
- 17.3 The subject matter of a SaaS-contract is the provision of software plus the granting of rights required for the contractual use thereof limited to the contractual term in accordance with section 24 of these Terms & Conditions. We shall provide the Customer with a copy of the program that is the object of the contract in digital form on a suitable data medium along with a version of the associated documentation. Where the software is protected by a license key, the Customer will be provided with the license key solely for the use of the software as stipulated in detail in the present contract, in the offer, and the documentation. The due specification of the software can be conclusively taken from the offer and the documentation.
- 17.4 Installation and configuration services shall not be part of the granting of utilization rights but shall require a separate order.

**18 Rights of Use for Purchased Software**

Upon full payment of the charges, the Customer shall obtain a non-exclusive, non-transferable right to use the Contract Software, as stipulated in the offer. Permitted use shall include installation of the Contract Software and the intended use by the Customer.

**19 Support and Maintenance**

Unless the parties expressly agreed otherwise, support and maintenance services will be invoiced at cost.

**20 Rights of Use for Leased Software**

Upon full payment of the charges, the Customer shall obtain a non-exclusive, non-transferable, and non-sublicensable right, limited to the term of the SaaS-contract, to use the software in the scope described in this contract and the offer. Contractual use shall include installation of the Contract Software and the intended use by the Customer.

**21 Limitations of Use**

- 21.1 Under no circumstances shall the Customer have the right to transfer, lease, or sublicense in any other manner the acquired Contract Software, to publicly reproduce or provide access to it via a cable or wireless network, or to place it at

the disposal of third parties at no cost or in return for payment, such as through application service provision or as software-as-a-service.

- 21.2 The Customer is entitled to make a backup copy, where required to safeguard future use. The Customer will affix a label in a prominent place on the backup copy containing the words "Backup Copy" accompanied by a copyright notice of the software producer.
- 21.3 The Customer shall only be entitled to decompile and reproduce the Contract Software in such cases that are provided for by law. However, this shall apply under the condition that we have not provided the Customer with access to the necessary information upon request within a reasonable notice period.
- 21.4 If the Customer uses the Contract Software to an extent that exceeds the acquired rights of use in qualitative terms (with regard to the type of permitted use) or quantitative terms (with regard to the number of acquired licenses), the Customer will promptly seek to acquire the rights of use required for permitted use. Should the Customer fail to do so, we will claim the rights to which we are entitled.
- 21.5 Copyright notices, serial numbers, and other characteristics that serve as program identification shall be neither removed from the Contract Software, nor altered.
- 21.6 In the event of the sale or leasing of Contract Software that we have not produced, the terms and conditions of licensing and use of the respective software producer shall apply in addition to these Terms & Conditions. We shall provide the Customer with such license terms and conditions upon request.

## **22 Warranty for Purchased Software**

The warranty shall not cover defects that are caused as a result of deployment of the Contract Software in a hardware and software environment that does not meet our stipulated requirements, or any changes or modifications the Customer has made to the software without being entitled to do so by law, under this Contract, or through our prior written authorization.

## **23 Security Measures**

- 23.1 The Customer will use appropriate measures to prevent the Contract Software and, where appropriate, the login details for online access, from unauthorized use by third parties. In particular, all copies of the Contract Software and the login details must be kept in a secured area.
- 23.2 Upon request, the Customer must make it possible for us to examine the proper use of the Contract Software, in particular, the extent to which the Customer is using the program in qualitative and quantitative terms within the scope of its acquired rights of use. To this effect, the Customer will provide us with information, allow us to inspect the relevant documents and files, and enable us, or an audit company appointed by us and reasonably acceptable to the Customer, to audit the hardware and software environment deployed. We, or a third party that is bound to secrecy, may perform the audit on the business premises of the Customer during ordinary hours of business. We shall undertake to ensure that our work at the Customer's business location will subject the Customer's business operations to the least amount of disturbance reasonably possible. If the audit reveals that the number of permitted users has been exceeded by 5% (five percent), or reveals any other considerable non-compliance with the contractual terms of use, the Customer shall bear the cost of the audit; in all other cases, we shall bear the costs.

## **24 Contract Term and Termination of SaaS Contracts**

- 24.1 Unless otherwise expressly agreed, SaaS-contracts are entered into for an initial term of 12 months.

- 24.2 The term shall be extended for another 12 months, unless a party to the SaaS-contract terminates the contract in writing at the latest 3 months prior to the expiration of the current term.
- 24.3 In the event of termination, the Customer must cease using the Contract Software and remove all installed copies of the program from its computers and, where required, promptly return such copies to us, or destroy and provide us with written confirmation of the destruction of such copies.