Terms of Service

from up to data professional services GmbH (up to data), Energie-Allee 1, 55286 Woerrstadt, Germany

1. General
1.1 The present General Terms and Conditions (GTC) apply to all our business relations with our customers / buyers, also for future business of the parties.
1.2 Deviations from these terms and conditions, in particular the validity of the purchaser's terms of reference, require the express approval of up to data.

2 Contract
2.1 Our offers and prices are non-binding. Orders are only binding for us if we confirm them or comply with them by sending the goods. Verbal additional comments are only valid if we confirm them in writing.

3 Delivery
3.1 Unless otherwise agreed delivery is ex works, without packaging.
3.2 Loading and shipping are uninsured, at the risk of the recipient.
3.3 As long as the buyer is in arrears with the liability, the obligation to deliver from up to data is suspended.
3.4 In case of culpable exceeding of an agreed delivery period, delay in delivery is only given after setting a reasonable period of grace.

4 Prices and Payment terms
4.1 Prices are subject to VAT.
4.2 The invoices of up to data are payable without deduction - unless otherwise agreed - 10 days after date of invoice and payable net cash.
4.3 If the payment period is exceeded, interest will be charged, subject to the assertion of further damage, in the amount of the usual bank debit interest, at least 3% above the respective Bundesbank discount rate.
4.4 In the event of late payment and justified doubts as to the buyer's ability to pay or the creditworthiness of the buyer / customer, up to data is entitled, without prejudice to other rights, to demand security or advance payments for outstanding deliveries and to immediately forfeit all claims arising from the business relationship.
4.5 Only undisputed or legally binding claims entitle the buyer to offset or retain.

5 Software
5.1 up to data grants the customer a simple right of use for its own software and software developed for the customer, unless otherwise agreed.
5.2 In the case of third-party software that the customer provides or provides up to data with, the license agreement is subject to third-party license terms.

6 Acceptance of works services
6.1 The customer must check that a service has been ordered within one week to check whether it complies with the contract. He can refuse acceptance only because of material defects, non-essential defects are subject to the warranty. If the acceptance is not refused in writing within the deadline due to a defect, the service is deemed accepted. In the case of an operational use of the service, the acceptance is deemed to have taken place.

7 Retention of title
7.1 up to data reserves ownership of the delivered products (including software) until full payment of the purchase price.
7.2 The assertion of the retention of title in the event of culpable payment arrears by the customer shall not be deemed a withdrawal from the contract, unless up to data expressly informs the customer thereof.
7.3 If the retention of title is asserted, the right of the customer to reuse the software expires. All program copies made by the customer must be transferred or deleted.

8 Force majeure
8.1 Cases of force majeure - as such, the circumstances and occurrences that can not be prevented with the care of proper management - suspend the contractual obligations of the parties for the duration of the disturbance and to the extent of its effect. If the resulting delays exceed the period of six weeks, both parties to the contract are entitled to withdraw from the contract with regard to the scope of services affected. Other claims do not exist.

9 Warranty
9.1 Up to data warrants that the goods or software essentially correspond to the supplied documentation. Minor deviations do not constitute a warranty claim. Other documents and statements are irrelevant to the nature of the product.
9.2 The buyer has to examine the delivered goods after receipt within eight days for defects and to indicate recognizable defects, otherwise the goods are considered approved. Defects discovered later shall be reported in the same way, otherwise they shall be deemed approved. The notification of defects must describe the claimed defect exactly. Section 377 HGB remains unaffected.
9.3 up to data shall remedy defects within one year of our choice (replacement or subsequent improvement). There is no warranty for trial software.

10 Limitation of Liability
10.1 up to data is liable for intent and gross negligence, personal injury, condition and manufacturer's warranties and under the Product Liability Act. For simple negligence is only liable if a duty is violated, the compliance of which is of particular importance for the achievement of the contract (cardinal obligation) and such damage was typically foreseeable. Any further liability is excluded.
10.2 The liability is - with the exception of intent - limited to the order value. up to data is liable only for direct damages, liability for indirect damage is excluded.
10.3 The liability rules also apply in favor of representatives, employees and vicarious agents.

11 Further regulations
11.1 Amendments, side agreements and declarations must be made in writing (e-mail suffices). This also applies to a waiver of the written form requirement.
11.2 If a provision of the contract is wholly or partially invalid, the effectiveness of the remaining provisions remains unaffected. The ineffective determination is deemed to be replaced by that effective provision which comes closest to the economic purpose of the ineffective provision. This also applies to a contract gap.
11.3 The place of performance for the delivery is the respective place of departure of the goods, for the payment Woerrstadt.
11.4 The contract is exclusively subject to the laws of the Federal Republic of Germany with the exception of the UN Sales Convention (CISG) and the EU Private International Law (Rome I). Exclusive judge is Alzey.

As of 10/2018