

General terms and conditions of Soloplan GmbH, Software für Logistik und Planung – Following named „Soloplan“ –

Please note that the English version is an unofficial translation and is meant only as an aid to understanding. Only the German version of these general terms and conditions is legally binding. In the event of discrepancies the German version shall prevail.

General terms and conditions of Soloplan GmbH, Software für Logistik und Planung – hereinafter called “Soloplan” –

1. Area of validity – Subject matter of the contract
- 1.1 Our general terms and conditions are valid for the permanent transfer of possession of standard software in accordance with the contractual agreement made between Soloplan and the buyer.
- 1.2 Solely Soloplan's general terms and conditions shall apply; the buyer's conditions which conflict with or differ from our general terms and conditions shall not be recognised except if Soloplan has explicitly agreed, in writing, to their validity. Soloplan's general terms and conditions shall also apply in the event that Soloplan, being aware of conflicting or differing general terms and conditions, performs the contractual services without reservation.
- 1.3 Soloplan transfers to the customer, against the payment stated in the order form, one example of each of the software products (hereinafter called programs) stated in the order form for the customer's own permanent use and the documentation in accordance with paragraph 3.3 (contractual software).
- 1.4 The functional range of the software is that which is stated in the order form.
- 1.5 The supplier also performs the additional services specified in the order form, e.g.:
 - Installation, training
 - Customization of the program in accordance with Soloplan's description
2. Conclusion of the Contract
 - 1.2 The buyer's order is a binding offer which Soloplan can accept within 2 weeks by sending an order confirmation or by commencing the activity with the agreement of the buyer. Offers made or quotations given by Soloplan beforehand are subject to change.
 - 2.2 The offer, the undisputed written order confirmation and Soloplan's product specifications are decisive for the content of the contract.
3. Delivery
 - 3.1 The contractual software is delivered in an executable form (object code). The source code is not an object of the contract and is therefore not included in the delivery.
 - 3.2 The program's executable codes are delivered by Soloplan on a data medium of the type stated in the order form or, if agreed in the order form, by transmitting the required information for download from the Internet.
 - 3.3 Soloplan delivers the documentation stated in the order form with the contractual software to the customer. This documentation is in the language and form stated in the order form. The basic information (documentation) and the installation hints are delivered in paper form or in a printable form.
 - 3.4 As soon as the download to be carried out by the customer has been agreed, Soloplan shall send, at the buyer's request, the agreed delivery medium with the program code in accordance with paragraph 3.1 and the documentation in the agreed form to the point of delivery named in the order form.
4. Terms of Delivery

Soloplan is bound to the delivery terms it has named. If no fixed delivery date has been agreed, standard software shall be delivered 2 weeks after the conclusion of the contract. If additional customization is to be carried out for the ordering party, the delivery date is in accordance with the offer or project plan. If the buyer is obliged to cooperate, the delivery time limit does not start until the buyer has fulfilled this obligation. If the assertion of the customer's rights requires a reasonable extension of deadline to be set, it shall be at least two weeks. This deadline period begins with the receipt of the extended deadline notification.
5. Non-disclosure agreement and data security; Safekeeping of the documents
 - 5.1 The contractual partners are obliged to treat the other contractual partner's confidential information and documents, which either can obviously be seen to be confidential or are designated as such by the other contractual partner, as trade secrets.
 - 5.2 The buyer shall treat all programs, codes, documentation and concepts supplied by Soloplan as Soloplan's trade secrets.
 - 5.3 Soloplan employees are obliged to comply with the non-disclosure of data in accordance with paragraph 5 of the Federal Data Protection Act (Bundesdatenschutzgesetz). Furthermore the buyer is responsible for compliance with the law and regulations regarding data protection and data security.
 - 5.4 Soloplan shall store, with due diligence, all documents and data given to Soloplan by the customer. This obligation ends one month after receipt of the order fee. The buyer must collect all documents from Soloplan within this period. Afterwards Soloplan can destroy or delete them.
6. Copyright and range of utilization
 - 6.1 Soloplan GmbH grants the buyer, against payment, the simple (not exclusive) right to permanent, simultaneous use of the software by the number of users stated by name in the order

- form. The buyer is thereby authorized to install, load and run the contractual software at the maximum number of user workstations (named user) stated in the order form. In addition, the buyer is authorized to create backup copies and typical data backups in a reasonable quantity. The buyer is authorized to edit the software in order to make a change to produce interoperability or to eliminate an error. The buyer is authorized to pass on/sell the contractual software once only to a third-party. In this case the buyer passes deletes all copies made by him or passes them on to the buyer or transferee. Further distribution or sub-licensing requires Soloplan's agreement and shall be subject to payment.
- 6.2 Every utilization in excess of the contractually agreed quantity, in particular a simultaneous utilization of the software by a greater number of users than named in the order form, is an action in violation of the contract. In this case the buyer is obliged to inform Soloplan, without delay, of the excess utilization. The parties shall then try to reach an agreement regarding the extension of the utilization rights. The buyer is obliged to pay compensation, in accordance with Soloplan's price list, for the period of excess utilization, i.e. until conclusion of such an agreement or until the cessation of the excess utilization. A three year linear depreciation is used as the basis for calculating the compensation. If the customer does not inform Soloplan of the excess utilization, a contractual penalty is payable to the sum of three times the price of the utilization in accordance with the Soloplan price list.
 - 6.3 Copyright and other protective right annotations within the contractual software may not be removed or changed. They shall be included on every copy.
 7. Payment
 - 7.1 The contractually agreed payment is payable, without any deduction, upon delivery (in accordance with paragraph 3) and upon granting user the utilization rights (in accordance with paragraph 5) to the buyer at the price, excluding statutory value added tax, indicated in the order form.
 - 7.2 If Soloplan has agreed to accept cheques or drafts exempt from charges then it is only on account of performance.
 - 7.3 Non settlement of the payment within 20 days after receipt of an invoice or equivalent statement of payment results in the buyer being in default.
 - 7.4 Soloplan calculates the statutory interest for default for late payment. Soloplan can assert the right to higher interest for other legal reasons. Offsetting against claims by Soloplan is prohibited so far as the buyer's claim is not undisputed or legally established. The buyer's right of retention is excluded unless the buyer's counter-claim originates from the same contractual relationship and is undisputed and legally established (in court).
 8. Material defects and defects of title
 - 8.1 After the transfer, the buyer is obliged to observe the update and maintenance instructions given by Soloplan and to arrange for the backup of the data transferred and prepared during the utilization.
 - 8.2 A material defect arises if the contractual software with documentation does not contain the contractually agreed properties or is not suited to the contractually agreed use. The contractual properties are stated in the order form in connection with the respective offer. The buyer acknowledges that, due to the current state of the technology, it is not possible to develop data processing programs, particularly when they are connected with other programs, which always work free of errors. This does not constitute a program defect.
 - 8.3 Soloplan and/or third parties are entitled to copyrights for the contractual software. A defect of title arises if the buyer cannot be granted the required rights for the contractual utilization.
 - 8.4 After delivery of the program to the buyer, the buyer shall, without undue delay, inspect the contractual software for any defects and inform Soloplan of any defects. The obligation results from paragraph 377 of the German Commercial Code (HGB). If the inspection does not take place without undue delay, the software is considered as accepted one month after transfer. If the buyer violates this obligation the buyer no longer has the rights, regulated in the following section, regarding defects which would have been obviously apparent on first inspection.
 - 8.5 Any defects shall be documented by the buyer in a way which Soloplan can understand and Soloplan shall be informed of the discovery without undue delay and in writing.
 - 8.6 If the buyer informs Soloplan of defects in accordance with paragraph 8.2, Soloplan will execute the subsequent performance as follows. Soloplan is entitled to choose between rectifying the defect or delivering a replacement. The buyer can only demand a replacement or rectification within a reasonable period of time if the other aforementioned form of subsequent performance cannot reasonably be expected of Soloplan. The rectification of the defect by Soloplan can also be carried out in the form of procedural instructions given to the buyer via telephone, written or electronic means. Any additional expense for Soloplan, which arises because the buyer has moved the contractual software to a location other than the buyer's registered office, is borne by the buyer. If Soloplan's subsequent performance was not successful within a reasonable period of time (which allows at least two rectification attempts), the buyer is obliged to set a final reasonable extension to the deadline which allows at least two more rectification attempts. If

- Soloplan is also not successful within this final period of time, the buyer is entitled to a reduction in payment or to cancel the contract. Waiting for deadlines to expire and setting deadlines is unnecessary if this can no longer be reasonably expected of the buyer, in particular if Soloplan has definitively and seriously refused the subsequent performance. The subsequent performance is not considered as definitively failed, even after the second subsequent performance attempt. Rather, during the deadline extension, Soloplan may determine the number of subsequent performance attempts depending on the type of defect, the particular circumstances (staff, etc.) and the type of software affected (participation of third parties, etc.).
- 8.7 Instead of the service, the buyer can assert the right to damages or reimbursement of expenses in addition to the cancellation or payment reduction only if Soloplan is guilty of gross negligence.
 - 8.8 The right to cancellation, damages or reimbursement of expenses instead of the whole service only exists in cases of severe defects. In the case of a justified cancellation by the buyer, Soloplan is entitled to demand reasonable compensation for the use the buyer has obtained from application of the contractual software until the unwinding of the contract.
 - 8.10 Claims regarding material defects and defects of title become statute-barred one year after the delivery of the program.
 - 8.11 If the buyer has modified the program himself/herself or has had it modified by a third party, claims regarding material defects or defects of title are not applicable unless the buyer proves that the defects are not due to this fact and if the defect analysis and rectification by Soloplan will not be considerably compromised. This also affects the installation of the programs onto operating systems or hardware which do not meet Soloplan's recommendations (approval).
 - 8.12 In the case of fraudulent intent and in the case of the acceptance of a guarantee by Soloplan, the statutory material defects are not affected.
 - 8.13 If a third party asserts a claim for the violation of protective rights against the buyer, the buyer shall, without undue delay, inform Soloplan and, as far as possible, entrust to Soloplan the defense against these claims. The buyer shall provide every reasonable support to Soloplan. In particular, the buyer shall provide Soloplan with all necessary documentation and information, if possible in writing, about the usage and any editing of the program.
 - 8.14 If the third party's rights have been violated, Soloplan can select the form of rectification and either
 - a. obtain, in favor of the buyer, a right of use sufficient for the purposes of this contract from the person with authorization concerning the protective right or
 - b. modify the software violating the protective rights so that the functions are not affected or so that the functions are only affected to an extent acceptable for the buyer or
 - c. exchange the software violating the protective rights so that the functions are not affected or so that the functions are only affected to an extent acceptable for the buyer. The new software violates no protective rights when used according to the contract. Or
 - d. deliver a new program version which does not violate any third party's protective rights when using according to the contract. The regulations of this paragraph 8 also apply accordingly to material defects.
 9. Limitation of liability
 - 9.1 Soloplan is liable for damages due for any legal cause. The amount of damages is set in accordance with the following stipulations. Soloplan's liability for losses (caused by itself, or by a legal representative or one of its vicarious agents with intent or due to gross negligence) is stipulated and limited as follows: Up to 1.5 million Euros for damage to person and property, up to 250,000 Euros for financial loss (software risks), up to 500,000 Euros for financial loss due to loss events caused by the violation of individual-related regulations under the terms of the Federal Data Protection Act and up to 100,000 Euros for damage to work in progress.
 - 9.3 Soloplan's liability for damages due to grave negligence on the part of the organization of Soloplan is also limited as is the amount for losses incurred due to the absence of a guaranteed property.
 - 9.4 In the case of violation of fundamental contractual obligations, Soloplan is liable (if it is not a case named in the paragraphs 9.2 to 9.3 and in 9.6) for an amount capped to the contractually anticipated damage, however only up to a maximum of the order volume. Every other liability for damages, in particular liability without negligence, is excluded. The buyer's contractual claims to damages become statute-barred one year from creation of the claim so long as shorter legal statutes of limitations do not exist.
 - 9.6 Liability in accordance with the Product Liability Act remains unaffected.
 - 9.7 If a loss is due to negligence on the part of Soloplan and on the part of the buyer, the buyer must allow his/her contributory negligence to be offset.
 - 9.8 The buyer is responsible for regularly backing up his/her data. In the case of data loss due to Soloplan's negligence, Soloplan is therefore liable solely for the costs of the duplication of the data, the back up copies to be created and for the costs of restoring the data which would be lost, even if the data were backed up correctly.

10. Software maintenance
 - 10.1 Soloplan shall provide the following maintenance services for the software stated in the order form (third party software excluded) for the payment stated in the order form and in accordance with the provisions of this contract:
 - a. Delivery of new, further developed versions within the framework of the order's range
 - b. Standard hotline, i.e. help regarding the operation of the program functions via telephone, fax or e-mail. Consulting services which considerably exceed help regarding the operation of the program (e.g. installation support, amongst others) shall be invoiced, according to hours worked, using the current hourly rates (P1). The standard hotline is manned Monday to Friday from 0800 until 1700 hours. Statutory holidays are excluded. Depending on the complexity, queries are processed in the short term.
 - 10.2 The maintenance contract starts with the delivery of the programs. The contract is for an indefinite period of time. It can be cancelled by either partner with a notice of three months to the end of a calendar year. The minimum length of the maintenance contract is until 31.12 of the year following the year in which the program was delivered. Cancellation must be in writing. If the maintenance contract is not cancelled it is automatically extended for another year.
 - 10.3 The flat rate maintenance payment is stated in the order form. The payment for additional services is based on the current additional charges price list. All prices and flat rates are exclusive of the respective statutory value added tax. The flat rate is due on the first business day of the invoice period. Maintenance contracts concluded during an ongoing year are invoiced based on the proportion of months until the end of the year. For the ongoing calendar year, the due date remains as the first business day of the invoice period. For the following calendar year the flat rate is due, in advance, on 1 January for the entire year. Part payments are not possible. Soloplan is entitled to adapt the flat rate maintenance payment and the price list in accordance with its current price list at the start of the invoice period. Soloplan shall inform the buyer of a change to the payment, in writing, at least two months beforehand. If the maintenance payment is increased by more than 10% the buyer is entitled, within a time limit of one month after receipt of the demanded increase, to cancel the maintenance contract to the end of the current invoice period.
11. Other
 - 11.1 This contract is subject to German law. The UN Convention on Contracts for the International Sale of Goods shall not apply.
 - 11.2 Place of performance and place of payment shall be the registered office of Soloplan.
 - 11.3 The sole place of jurisdiction for contracts with merchants, legal entities under public law or special funds under public law is the court with jurisdiction over our registered office.
 - 11.4 Solely applicable for the legal relationship between Soloplan and the buyer is the written contract including these General Terms and Conditions. This states, in full, all agreements made between the contractual partners regarding the subject of the contract. Oral consent given by Soloplan before conclusion of this contract is without obligation and the contractual parties' oral agreements shall be replaced with the written contract unless each party explicitly states that the oral agreements continue to apply. Additions and amendments to the agreements, including these General Terms and Conditions, shall require the written form to be applicable. An amendment to this clause also requires the written form to be applicable. Except for the managing directors and persons vested with the general commercial power of representation, employees of Soloplan are not entitled to make oral agreements which differ to those hereof.
 - 11.6 If any provision of this contract is prohibited completely or partial by law or judged by a court to be unlawful, void or unenforceable, the validity of the remaining provisions shall not be in any way affected. This shall also apply if the contract should be found to contain any omissions.

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