

# Terms and Conditions of Sale and Delivery

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Dresden, Germany

## 1. Scope of Terms and Conditions

The following Terms and Conditions apply between SQL Projekt AG, hereinafter SQL, and its customers for all current and future business relationships.

The Terms and Conditions are described in detail in the offer.

Different, conflicting or additional terms and conditions of the Customer shall not become a part of this Contract, unless we expressly agree to their applicability in writing.

## 2. Conclusion of Contract

SQL provides the Customer with a written offer. This offer is subject to change. Technical and other changes are permissible within reasonable limits. This offer by SQL invites the Customer to submit an offer to conclude the contract. A contract shall come into effect only when the order is confirmed by SQL in writing.

If the Customer orders services which it can then request from SQL within a certain period of time (blanket order), a valid contract is concluded between the SQL and the Customer for the total amount of services ordered. The Customer is under the obligation to accept the ordered services on the delivery date at the latest. SQL is entitled to deliver and invoice the goods to the Customer immediately following the order deadline.

## 3. Delivery

The deadlines for deliveries and services, specified by SQL, are not binding.

In the event of force majeure or events which are beyond SQL's control (such as operational disruptions, strikes, riots, armed conflict, etc.), SQL is entitled to

postpone delivery during the period of disruption, and to withdraw from the contract in case the disruption takes unreasonably long.

Any delivery shall be Ex Works. The Parties agree that Incoterms are valid.

SQL is entitled to render performance in instalments and to issue partial invoices if the type of service allows this. Unless otherwise agreed, the place of fulfillment shall be the headquarters of the Client.

## 4. Performance

Delivery is subject to timely delivery to us on the part of our suppliers. SQL shall inform the Customer without delay in case the delivery item is unavailable. SQL shall only guarantee timely provision of its deliveries and/or services to the extent that it receives the required supplies and other services on time.

Deliveries of standard software created by SQL shall be governed additionally by the Software License and Maintenance Contract of SQL Projekt AG.

When supplying third-party hardware and/or software that does not come from a company belonging to the SQL Group, the Customer authorizes SQL to conclude a contract directly between the Customer and the respective manufacturer on behalf of the Customer. A software license agreement granting the rights of use is also concluded directly between the Customer and the third-party manufacturer. The Customer shall have the right to request remediation of defects from the third-party manufacturer and the right to hold it responsible for defects. The Customer authorizes SQL to settle accounts with the third-party manufacturer in its own name. SQL shall invoice the Customer for this delivery and/or service.

If SQL, as a value-added reseller, delivers a SAP software, the End User License Agreements (EULA) for the provision and maintenance of standard software of SAP Deutschland SE & Co. KG, shall apply additionally. These are provided by SQL.

When delivering update software/software, SQL does not guarantee that all functions of the previously installed IT solution/software will be preserved. This

also applies if SQL has delivered the entire software and hardware before the update version.

The scope of deliverables of the third-party software/hardware to be supplied by SQL follows from the respective description of the manufacturer of the software/hardware.

Where required or at the Customer's request, SQL will offer a separate contract for the provision of training, consulting, service and maintenance services. The respective prices are stated in the current list of SQL prices and terms.

Services provided by SQL in the context of custom programming and customization are subject to the provisions on service contracts (Sections 611 et seq. German Civil Code (BGB)), unless a result is owed under the contract. In this case, provisions on contracts for work shall apply (Sections 631 et seq. BGB).

SQL is entitled, in the context of technical progress, to make changes and deviations from information contained in the order confirmation.

SQL will install the delivered products for a fee according to our written order confirmation, unless agreed otherwise.

SQL will perform the installation in the scope specified in our written order confirmation. Unless the scope of installation is specified in greater detail in the contractual terms, it is assumed that SQL will perform a standard installation. Standard installation means installation of the supplied standard soft- and hardware according to the installation instructions included in the documentation of the standard soft- and hardware. Configuration, customization and the like are not included. Should these be required, the Contracting Parties shall conclude a separate agreement. If the hardware and software required for the installation are not provided by SQL, or are provided only partially, the Customer is obliged to provide the hardware and software necessary for a proper execution of the installation. Should installation works be performed outside normal working hours, i.e. not between 8.00 am and 6.00 pm on weekdays, SQL is entitled to charge for overtime and Sunday and holiday

work (according to the applicable SQL price and condition list).

If no installation service was agreed in the written order confirmation, it is assumed that the SQL is not obliged to perform the installation. The Contracting Parties shall conclude a separate agreement for this purpose.

A handoff shall be carried out where provisions on contracts for work apply. The result of the handoff shall be recorded in a protocol to be jointly prepared and signed by SQL and the Customer. This also applies to freedom from defects.

If the Customer does not carry out the handoff immediately, SQL may set a reasonable deadline of at least one week. The handoff shall be deemed tacitly approved once the deadline has expired if the Customer has been expressly informed of the deadline in writing, and has not given a notice of defects within the set period. Insignificant defects that do not affect the functionality of the product do not justify a refusal of a handoff.

If the performance owed by SQL can be split into separate subsystems that can be handed over separately, the Customer is obliged to accept them once they are ready for a handover.

If the Customer has purchased standard soft- and/or hardware, it shall comply with the contractual obligations arising from the contract, which is concluded directly with the respective manufacturer of the goods (according to this clause). The Customer shall be solely responsible for this.

If the Customer has ordered custom programming, customization, or similar, SQL will perform a function test together with the Customer, in connection with the handoff, in order to verify the compliance with the specifications. They will also perform a subsequent trial operation. The result of the handoff will be recorded in a protocol to be jointly prepared and signed.

The Customer shall support SQL in the fulfilment of the Contract to the extent needed free of charge, for example, by providing employees, workspaces, hardware and software, data and telecommunications

equipment, and remote data transmission equipment, and by participating in specifications, tests, approvals, etc. It shall provide SQL with access to hardware and software by means of remote data transmission. In this case, SQL shall protect Customer's essential interests, in particular its data. If easy access via telecommunication equipment is not possible or is not granted, the Customer shall have sole responsibility for all disadvantageous consequences caused thereby (such as additional costs incurred by SQL). Agreed deadlines shall be extended by the period in which access is not possible or not granted, and by a reasonable start-up time thereafter.

The Customer shall designate a contact person and his/her deputy who will act as contact persons for SQL. They shall be authorized to take the necessary decisions themselves, or to bring about the required decisions without delay. The contact persons shall ensure good cooperation with the SQL account manager. If the designated persons change, the Customer shall inform SQL about the change without delay. Until such information has been received, the person previously acting as a contact person and/or his/her deputy shall be entitled to make or receive statements within the scope of their previous responsibilities.

## 5. Prices and Terms of Payment

Prices and license fees are listed in the order confirmation.

All prices are net prices incl. the applicable VAT. Invoices shall be settled in full within 15 days of the invoice date, provided the Parties have not agreed otherwise in the written contract.

Installation costs, expenses, travel expenses, costs for packaging, transport and transport insurance, and other costs shall be included only if this has been agreed in writing in the order/order confirmation.

If the Customer does not pay, it shall fall in arrears 10 days after the due date, without the need for SQL to send further reminders. SQL is entitled to offset payments against older liabilities of the Customer first. If costs and interest have already been incurred due to

the late payment, SQL shall be entitled to offset the payment first against these costs, then against the interest, and finally against the primary service.

## 6. Granting of Rights

Rights are granted exclusively to the Customer and are subject to the condition precedent that the full purchase price is paid. Until that condition is fulfilled, SQL is entitled to revoke the use of the software at any time.

Only the Customer is authorised to use the software. It shall immediately notify SQL of any access to the program by third parties, for example in case of a court-ordered seizure, as well as of any damage or destruction of the program. The Customer may not assign its rights to a third party.

The Customer is obliged to handle the software with care. If maintenance and inspection works are required, the Customer shall carry these out at its own expense on a regular basis.

## 7. Guarantees

SQL shall assume a guarantee, in particular for the quality of the delivery item, only if this has been expressly agreed. Statements made by SQL in connection with this Contract (e.g. function details in performance specifications, as well as declarations and information given in the course of contract negotiations, references to DIN standards, etc.) do not constitute a guarantee.

## 8. Warranty

Claims for defects for which SQL is responsible are time-barred after 12 months from the date of delivery, unless the defect was fraudulently concealed. The limitation period begins with the transfer/delivery of the software. A defect is a deviation of the SQL software from the functionality described in the operating instructions that limits the use of the software to a considerable extent. SQL is not liable for operating or configuration errors of the Customer. SQL cannot

guarantee that the work results, which the Customer seeks to achieve with the help of the SQL software, will be correct.

SQL undertakes to rectify defects of SQL products within the rectification period free of charge, exclusively by means of replacement, repairs, or workarounds, if the contractual use is significantly affected. If a replacement or a repair are not successful within a reasonable period of time, the Customer may the Contract to be cancelled or the payment to be reduced. If the Customer withdraws from the Contract, it shall pay a reasonable usage fee for the period up to the withdrawal date. The fee shall be calculated on the basis of a four-year straight-line depreciation.

The Customer undertakes to adequately document any defects and to assist SQL in correcting defects with due diligence. It undertakes, in particular, to provide access to the system as required, and to provide personnel who are familiar with the application and the processes.

Remediation of defects does not cover defects that do not originate in the SQL products, but are caused by improper operation, use of unsuitable equipment, or changes or other actions by the contracting party or third parties.

Functional details in a respective performance specification as well as declarations and information given in the course of contract negotiations do not constitute warranties, unless they have been expressly designated as such and confirmed in writing by SQL.

In case of a breach of duty that is not due to a defect in the software, the Customer may only withdraw from the Contract if SQL is responsible for this breach of duty.

If an examination has established that an alleged defect is not covered by warranty obligations of SQL (false defect), the Customer shall be charged for the services provided by SQL in connection with the verification and troubleshooting, at the applicable rates stated in the current price and condition list plus expenses incurred. The Customer shall not be charged if it would not have been able to recognise the defect was false even if it had exercised due diligence.

## 9. Liability

SQL is only liable for damage caused intentionally or by gross negligence. SQL shall be liable for slight negligence only if it violates material contractual obligations, the fulfilment of which is a fundamental prerequisite for the proper implementation of the contract in the first place, and on which the licensee can reasonably expect to be able to rely. SQL shall also be liable for damages resulting from loss of life, bodily injury or damage to health, or if it enlists a particularly high degree of trust.

Insofar as liability concerns damages due to slight negligence, which did not cause loss of life, bodily injury or damage to health to the contracting party, such claims are time-barred after one year from the cause giving rise to the claim. The same applies to damage claims due to a defect at the time of delivery, unless the defect was fraudulently concealed.

SQL shall not be liable for loss of data and/or programs to the extent that the damage is due to the Customer failing to perform backups, and thereby failing to ensure that lost data could be recovered with a reasonable effort.

Where liability for damages on the part of SQL is excluded or limited, this shall also apply with regards to personal liability for damages of our employees, employees, representatives and vicarious agents.

The above provisions shall also apply to vicarious agents of SQL.

Liability under the German Product Liability Act ("Produkthaftungsgesetz") shall remain unaffected.

## 10. Termination and Rights of Recourse

If the Customer terminates the Contract without a good cause, SQL may request a flat-rate amount of 20% of the order value minus any expenses saved.

Customer's statutory rights of recourse against SQL pursuant to Section 478 of the German Civil Code (BGB) shall be valid only insofar as the Customer has

not made any agreements with its client which go beyond the statutory warranty claims.

## **11. Applicable Law, Place of Jurisdiction, and Final Provisions**

Assignment of claims is permissible only with a prior written consent of the other contractual party. Such consent may be withheld only on substantial grounds. The provision of Section 354a of the German Commercial Code (HGB) shall remain unaffected.

A right of retention may only be asserted for counter-claims arising from the respective contractual relationship.

The Contracting Parties may set off only those claims that have been legally established or are undisputed.

Should individual provisions contained in these Terms and Conditions be invalid or lose their legal validity due to subsequent circumstances, or should a loophole in these Terms become apparent, the legal validity of the remaining provisions shall remain unaffected.

Such invalid provision or omission shall be replaced by a provision that, as far as possible, shall approximate as closely as possible what the parties would have wanted if they had been aware of such a point.

Consumer rights that are protected by law are not affected by this provision.

The contractual relationship is based on the provisions of these General Terms and Conditions, and on the laws of the Federal Republic of Germany. The place of performance and the place of jurisdiction for all disputes arising from the contractual relationship shall be the place of business of SQL, provided that the Customer is a business person or a legal entity under public law.

The place of jurisdiction for any disputes shall be Dresden, unless another place of jurisdiction is specified.

The UN Convention on Contracts for the International Sale of Goods (CISG) dated 11.04.1980 shall not apply.