

# General Terms and Conditions of Sale of MARINGO Computers GmbH

## 1 General

- 1.1 The terms and conditions set out below shall apply to all deliveries, services and quotations of MARINGO Computers GmbH (hereinafter referred to as MARINGO).
- 1.2 Terms and conditions of the customer to the contrary shall not become integral part of this agreement even without express opposition in case of delivery.
- 1.3 Any variations of these terms and conditions and/or amendments as well as modifications and amendments of concluded contracts and of the applicable terms and conditions referring to such contracts of MARINGO shall be agreed in writing.
- 1.4 MARINGO shall be entitled to change these terms and conditions by informing the customer in writing about the changes. All changes shall become effective one month after notification. If changes are made to the disadvantage of the customer, the customer shall have the right to terminate the contract within one month after receipt of the notification of amendment. Changes shall become effective with expiration of the period of one month if the customer does not terminate the contract.

## 2 Offers/Conclusion of the contract

- 2.1 All offers of MARINGO are without obligation and shall not be binding, in particular with reference to prices, quantities, delivery period, delivery options and other services.
- 2.2 The express warranty of properties shall require MARINGO's confirmation in writing.
- 2.3 The extent of services to be performed by MARINGO shall be solely agreed by contract in writing. As far as agreed, the MARINGO sales and service partnership agreement for MARI Projekt, the end user licence agreements for software of the respective supplier, the software maintenance agreement for users and, in addition, these terms and conditions of sale shall apply in their order of listing.
- 2.4 MARINGO reserves the right to make changes at offers or order acknowledgements necessary due to legal or technical standards.

## 3 Installation, training and consulting

- 3.1 The customer shall be responsible for the proper installation of delivered software and hardware. The installation by MARINGO and the training and instruction of the customer or his employees with respect to the operation of delivered software and hardware do not belong to the extent of services. Such services will only be performed on the basis of a respective agreement and will be charged separately.
- 3.2 If MARINGO provides training, consulting or installation services, the customer shall assure that the requirements on the customer side are fulfilled, in particular with respect to the provision of premises and infrastructure, documentation and human resources. If the customer fails to properly fulfil his obligation to cooperate according to article 1, the periods of performance as provided in the contract shall reasonably extend. MARINGO shall have the right to charge additional work and expense caused by the delay, in particular with respect to own personnel or own resources made available for a longer period of time. Any claims of MARINGO resulting from § 643 BGB (German Civil Code) shall remain unaffected.
- 3.3 Information shall require confirmation in writing.

## 4 Extent of services

- 4.1 MARINGO shall have the right to make use of third party assistance in order to perform a service owed by it.
- 4.2 MARINGO shall be entitled to make partial deliveries or partial performances to a reasonable extent.
- 4.3 Products (hardware, software, data media, documentation etc.) delivered for test purposes shall remain the property of MARINGO. MARINGO reserves the right to prepare software so that programs will no longer be fully serviceable after the expiry of the agreed period of testing. The customer may not assert any claims thereof.

## 5 Date of delivery

- 5.1 The dates of delivery stated by MARINGO shall be non-binding. If MARINGO exceeds the date of delivery more than 4 weeks, the customer shall be entitled to grant MARINGO a reasonable period of grace.
- 5.2 Unless otherwise agreed, changes in order will result in the cancellation of agreed dates and terms.
- 5.3 The dates of delivery and performance shall reasonably extend in the event of force majeure or any other incidents outside of MARINGO's responsibility having considerable impact on the delivery and performance including strike or lock out at MARINGO, its suppliers or its subcontractors.

## 6 Prices

- 6.1 Our prices are net prices excluding packing and freight. Prices shall be based on our current price list plus statutory VAT. Other deliveries and performances for which no price was agreed at the time of order placement shall be charged at list prices valid on the day of performance.
- 6.2 Unless a fixed price has been agreed upon by the parties, training, installation and other services shall be charged according to the respective price list valid at the time of order acceptance
- 6.3 MARINGO shall not be bound to stated prices if a delivery period of more than 4 months from the time of order acknowledgement in writing has been agreed upon. In this event, the prices valid at the time of delivery shall be charged.
- 6.4 Possible refund claims of the customer because of overpayment, double payment etc. shall be credited to the customer's account and, if possible, shall be charged with the next payment falling due.

## 7 Payment

- 7.1 Unless otherwise agreed, prices for shipment and support and any other services shall be payable free of any deduction upon receipt of the invoice. In the event of default payment by the customer, MARINGO shall be entitled to recover default interest at a rate of 5% above the base interest rate of the European Central Bank unless the customer provides evidence of minor damage and MARINGO provides evidence of major damage.
- 7.2 The customer may only set off undisputed or legally established claims or charge such claims against claims of MARINGO. The customer shall have no rights to retention unless the underlying counterclaims have been undisputed and legally established.
- 7.3 If the customer owes several payments to MARINGO and did not agree on repayment with MARINGO, the due liability and of several liabilities the oldest debts have to be paid first.

## 8 Default of acceptance

If the customer is in default of acceptance of ordered goods and services, MARINGO shall have the right, after setting a reasonable period of grace not exceeding 14 days, to withdraw from the contract and to claim damages. If MARINGO claims damages, damages shall account for 30% of the contract value unless both parties provide evidence of minor or major damages.

## 9 Passage of risk, acceptance of services, breach of duty and rectification of services

- 9.1 If the customer is not a consumer, all costs arising from deliveries shall be at the expense and risk of the customer.
- 9.2 The customer shall immediately test products installed as ordered by MARINGO together with an employee of MARINGO. If products basically work as specified in the contract, the customer shall without delay declare in writing his acceptance. If the customer refuses acceptance, he shall inform MARINGO without delay but not later than 10 working days after installation of ascertained errors in the form of an error list with detailed descriptions. If MARINGO does not receive a declaration of acceptance or an error message within the mentioned period, the work shall be considered as accepted. The customer may not refuse acceptance in the event of immaterial defects.
- 9.3 Unless otherwise agreed, MARINGO shall be liable for defects of its software and hardware or services or work performances as set forth in the warranty provisions applying for such products and services.
- 9.4 In the event of culpable infringement of contractual obligations, the customer shall in either case ask MARINGO for free rectification of defects.
- 9.5 Warranty claims of the customer based on the provision of services by MARINGO and in accordance with the rules of the present agreement shall be subject to a limitation period of one year.

## 10 Retention of title

- 10.1 MARINGO shall retain full title of the delivered hardware, the delivered data media and the usage right at the software contained in such data media until payment in full of the purchase price has been made. If the customer is a businessman, the aforementioned retention shall apply until completely payment of all liabilities arising from the business relation. This shall also apply if individual or all claims of MARINGO have been included in an open account and the balance has been drawn and accepted. The customer shall get the usage rights specified in the productive license of the manufacturer with acquisition of title in the program media.
- 10.2 The user shall store for MARINGO with the diligence of a prudent businessman the goods delivered under retention of title and shall sufficiently insure all goods at his own expense against fire, water, theft and any other damage risks. With the conclusion of this agreement, the user assigns all claims from insurance contracts to MARINGO. MARINGO accepts such assignment.
- 10.3 The user shall assign to MARINGO all claims arising from the resale of goods or from the further licensing of software carried out by the partner himself. The customer shall be entitled to collect assigned claims until revoked. When required by MARINGO, the customer has to inform MARINGO about assigned claims and its debtors. Following such information, MARINGO shall have the right to disclose the assignment to the debtor of the user.
- 10.4 If the user shall be in breach of contract (in particular in payment default) or in the event of expected suspension of payment, MARINGO shall be entitled to repossess the goods under retention of title at the expense of the user or to require the assignment of any repossession claims of the user against third parties. These rights shall also continue to apply if secured claims are statute barred. MARINGO shall be entitled to dispose the goods under retention of title and to charge any open claims against the partner with the sales revenues.
- 10.5 If MARINGO makes use of its withdrawal right according to the previous sentence, MARINGO shall be entitled to collect all goods under retention of title that are still in possession of the user. The user shall grant the employees of MARINGO authorized to collect the goods under retention of title access to the business premises, even without prior notification.
- 10.6 The exercise of rights according to the rules hereunder or a repossession request shall not be regarded as a withdrawal from the contract.

## 11 Concession of rights

MARINGO retains all rights at the delivered MARINGO software, including copyrights, industrial property rights and patent rights. The property rights - also the rights of third parties - indicated on program media or packaging have to be observed. Unless otherwise agreed, the customer acquires a single right to use the software. The customer's usage right depends on the license agreements of the respective software manufacturer for the respective products.

## 12 MARINGO's liability

- 12.1 MARINGO shall be fully liable only for intent and gross negligence and for lack of guaranteed characteristics.
- 12.2 MARINGO shall be liable for negligence of its contractual obligations, irrespective of which legal reason. The liability is limited to foreseeable damages such as are typical of the contract.
- 12.3 The liability shall be excluded in all other cases.
- 12.4 MARINGO shall not be liable for damages if the damages could have been avoided by reasonable measures taken by the user, in particular program and data backup.
- 12.5 The aforementioned regulations with respect to liability shall also apply to staff members and other vicarious agents of MARINGO.
- 12.6 The regulations of the product liability law remain unaffected.

## 13 Trademark rights of third parties

The customer hereby agrees to inform MARINGO without delay of third party trademark rights with respect to delivered software and hardware and to leave the legal defence to MARINGO at its own expense. MARINGO shall be entitled to carry out at its own expense software modifications at delivered and paid software due to trademark rights of third parties.

## 14 Assignment of claims

The customer shall not be entitled to fully or partially assign to third parties contracts concluded with MARINGO or individual rights or obligations thereof without permission of MARINGO.

## 15 Final provisions

- 15.1 MARINGO shall be entitled to make use of third party assistance in order to perform its contractual obligations. MARINGO's obligation according to this agreement shall remain untouched.
- 15.2 No subsidiary agreements to these general terms and conditions have been made. If any provision of this agreement is or becomes invalid, it shall be without prejudice to the effectiveness of the other provisions.
- 15.3 If the user is a businessman, the place of fulfillment for all services agreed hereunder shall be the registered office of MARINGO.
- 15.4 The law of the Federal Republic of Germany shall apply.
- 15.5 If the user is a businessman or has its registered office in a foreign country, the place of jurisdiction shall be the registered office of MARINGO. MARINGO shall also be entitled to sue the user at the user's general place of jurisdiction.