

## **1. Parties to the contract**

The contractual relationship is between 1st Selection GmbH and its client (hereafter "client").

## **2. Validity**

2.1. Deliveries, services and offers of our company are provided solely on the basis of these general terms and conditions, irrespective of the type of legal transaction. Declarations of intent of our company are on the basis of these general terms and conditions. We do not recognize any adverse terms and conditions of the client unless we have agreed to this in writing with the client. Any deviation from this written form requirement must also be in written form. In the event of a contract being concluded by electronic means, the written form requirement shall be fulfilled only by a secure signature within the meaning of the digital signature law.

2.2. Fulfillment of contract terms on the part of our company shall not be considered as acceptance of contract terms that deviate from these general terms and conditions. Unless expressly agreed otherwise in detail, the general terms and conditions apply for the entire scope of the business relations of our company and the client (customer) as well as for all other legal transactions between the parties to the contract.

## **3. Contract conclusion**

3.1. Our offers are subject to change. Our offer and project documents may not be reproduced or made available to third parties without our consent. They must be given back by the client if a contract is not concluded.

3.2. Verbal commitments, ancillary agreements and such, in particular those given by sellers, messengers etc., which do not conform with these general terms and conditions or other written declarations of intent of our company, shall not be binding for us. Our brochures, advertisements etc. shall not be part of the contract unless expressly referred to in the written offer.

3.3. Contracts are not considered as concluded until the written order has been confirmed by us in writing or has been fulfilled by us by sending or handing over the goods ordered by the client.

3.4. Unless otherwise agreed, our offers cease to be valid 30 days after the quotation date. If offers are sent to us, the tenderer shall be bound to the offer for an appropriate period of at least 2 weeks after the offer is received.

## **4. Orders**

Orders of the client must be sent in writing to our principal office, using the entire trade name, at the following address:

1st SELECTION GmbH  
Bohnsdorfer Chaussee 51  
12529 Schönefeld  
Germany  
or via email: office@1st-selection.eu

## **5. Period of delivery**

5.1. Our company endeavors to comply with the agreed deadline for fulfillment (completion) as closely as possible. Unless otherwise agreed, delivery dates are non-binding.

5.2. The period of delivery begins from the first work day on which the client has complied with all obligations which are necessary for the implementation of the order, in particular that the client has fulfilled all technical and contractual agreements, preliminary work and preparatory measures, and any necessary authorizations (e.g. image rights, rights of use, rights of access etc.) are granted and an advance payment which may have been agreed is credited to our company account.

5.3. We are entitled to exceed the agreed delivery dates and deadlines by up to one week. After expiry of this period the client may withdraw from the contract after an appropriate period of grace has been set. Delays in delivery and cost increases arising from incorrect, incomplete or subsequently changed data and information or provided documents which are the responsibility of the client are not our responsibility and our company shall not be in default in these cases. Additional costs arising here shall be borne by the client. The client is also obliged to reimburse all losses arising here for the contractor, in particular from lost profit, regardless of the fault of the client.

5.4. Larger orders and orders which contain several units or programs entitle us to provide partial deliveries and partial billing of our deliveries and services.

## **6. Service changes**

Slight changes or other changes, which are reasonable for our clients, to our service and delivery obligations and also changes which serve the purpose of technical progress and are thus self-justifying shall be considered as approved beforehand.

## **7. Prices, dispatch, packaging and insurance**

7.1. Unless otherwise agreed, prices are net ex works excluding packaging, freight costs, transport insurance and VAT. Pricing and billing are in Euro (€). On request and at the expense of the client, transport insurance can be concluded by us. The costs of this shall be borne by the client.

7.2. Cost increases between the conclusion of the contract and the delivery date, e.g. on account of increases in terms of the collective contract, internal pay settlements or increases in the costs necessary for the provision of services (e.g. for materials, energy, transport, outside services, financing etc.) entitle us to increase or reduce the prices accordingly. For consumer business the last sentence applies only for services with which there is more than two months between the conclusion of the contract and the delivery date.

7.3. For repeat orders the prices of the preceding transaction shall apply only if these are expressly confirmed by us.

## **8. Terms of payment**

8.1. Unless otherwise stated our invoices are payable at the latest 14 days from receipt without any deductions and free of charges. For partial invoices, the terms of payment for the entire order apply analogously.

8.2. With orders provided in partial segments we are entitled to render account after delivery of each individual unit or service. Payments made by the client are deemed to be effected when they arrive in our business account.

8.3. In the event of default of payment, we are entitled, from the due date, to claim default interest at 8 % above the basic rate of interest. We reserve the right for further claims, in particular the claim for higher interest rates from the title of damages.

8.4. We are entitled to check the credit rating of customers using the common means available. If this gives rise to doubt about the credit rating of the customer or if there is otherwise a considerable deterioration in the financial circumstances of the business partner, we are entitled to revoke any periods allowed for payment and to make further deliveries only against prepayment or cash on delivery.

8.5. Non-compliance with the agreed payments entitles us to stop the current work and to withdraw from the contract.

## **9. Rescission of contract**

9.1. Beyond the general legal provisions, we are entitled to withdraw from the contract including with default of acceptance of the client and for other important reasons, in particular the initiation of bankruptcy proceedings on the assets of a contractual partner or dismissal of a bankruptcy petition for lack of cost-covering assets and with initiation of judicial composition proceedings.

9.2. In the event of rescission we are entitled to payment of a lump sum of 20 % of the gross invoice amount. Any claims for damages in excess of this shall remain unaffected.

9.3. If the client is in default of payment, we are entitled to stop all further services or deliveries and are entitled to retain still outstanding deliveries or services and to demand advance payments or securities or to withdraw from the contract.

## **10. Dunning fees and expenses of collection:**

In the event of default of payment, the client has to reimburse us with the arising dunning fees at a lump sum amount of EUR 10.00 plus postage for every sent reminder and for the expense for updating the accounts a lump sum of EUR 3.50 per quarter. The client is also obliged to reimburse all dunning fees and expenses of collection necessary for the appropriate prosecution.

## **11. Place of fulfillment**

Unless otherwise agreed, the place of fulfillment for deliveries and services is the registered office of our company.

## **12. Mistake**

Rescission of the contract concluded between our company and the client on the grounds of mistake is excluded.

## **13. Reservation of title:**

13.1. Until the complete payment of the purchase price or compensation, the goods delivered by us shall remain in our possession. Reservation of title of a contractual partner is not recognized.

13.2. In the event of reclamation or redemption of the goods under reservation of title by us, there shall be withdrawal from the contract if this is declared expressly. In the event of redemption of goods, regardless of further claims, any occurring forwarding charges and other charges must be paid to us.

13.3. The goods under reservation of title may not be pledged or assigned by way of security or otherwise assigned by the client. With any foreclosures by non-consensual charging order or other use by third parties, the client is obliged to assert our proprietary right immediately and to inform us.

13.4. The client bears the sole risk for the goods subject to the reservation of title, in particular for the risk of loss or damage.

13.5. The client as conditional buyer assigns to us now the future claims which shall arise for the client from the resale of the goods to a third party. This assignment in advance is on account of payment.

## **14. Copyright and use**

14.1. Copyrights, trademark rights, domain rights, characteristic rights, know-how, in particular non-protected inventions, commercial experiences, company secrets which become known or disclosed to the client as part of the cooperation, remain the sole entitlement of our company or our licensors. The client has only the right to use the software after payment of the remuneration agreed for this for the client's own purposes and only for the hardware and software as covered by the contract with the acquired number of licenses for simultaneous use at several workplaces. By this contract only authorization to use the corresponding products is acquired. In particular, distribution or utilization going beyond use for own purposes by the client are not permitted.

14.2. Every violation of our intangible property rights shall lead to claims for damages, and in such a case there must be full satisfaction.

14.3. Labels, ownership information and copyright notations of our company may not be removed or changed by the client. We also reserve the proprietary rights and copyrights to cost estimates, concepts, illustrations and other documents. These documents may also not be used for other purposes, reproduced or made available to third parties and do not give entitlement to

reproduce individual parts. The documents, trial software and samples belonging to the offers must be given back without request.

#### **15. Warranty, duty to examine and obligation to give notice of defects:**

15.1. We shall fulfill warranty claims of the client if there is a rectifiable defect, and here we are authorized to choose between replacement, repair within an appropriate period or a reduction in price. Claims for damages of the client aimed at redress of the defect can be asserted only when we have defaulted with the fulfillment of the warranty claims.

15.2. The client has to inspect the goods immediately after delivery and within 7 work days at the latest. Defects discovered here shall be indicated to us in writing immediately and at the latest within 3 work days after their discovery and with notification of the type and extent of the defect. Concealed defects must be contested in writing immediately and at the latest within 3 work days after their discovery.

15.3. If a notice of defects is not made or is not made on time, the goods shall be considered accepted.

15.4. For the checking of the objection to claimed defects the client is obliged to grant us free of charge access to the objected to system or its components.

15.5. Service descriptions, specifications or similar documentation compiled for the fulfillment of the order are only commitments of use. The warranty obligation with individual software begins with the program acceptance regulated in more detail in the order.

15.6. The obligation to remedy the defect ceases to apply when the client does not enable us to take all measures necessary for the inspection and the remedy of the defect as well as access to the system. The period for asserting warranty claims is 4 months.

15.7. Corrections and amendments which are necessary until the agreed delivery or service on account of organizational and programming defects which are our responsibility shall be carried out on our part free of charge.

15.8. Costs for support, diagnosis and elimination of errors and troubleshooting which are the responsibility of the client as well as other corrections, changes and amendments shall be carried out by us only against payment. This also applies for the remedy of defects if program changes, amendments or other actions have been carried out by the client or by third parties.

15.9. We assume no warranty for errors, malfunctions or damage caused by improper operation, changed operating system components, interfaces and parameters, use of unsuitable organizational aids and data carriers if these are required, abnormal operating conditions (in particular deviations from the installation and storage conditions) and damages in transit.

#### **16. Compensation**

16.1. All claims for damages against us are excluded in cases of slight and gross negligence. The aggrieved party has to prove the act of slight negligence or gross negligence.

16.2. The limitation period for claims for damages of the client is 6 months after becoming aware of the damage and the liable party. These provisions on compensation also apply when damages caused by defects, consequential damages caused by defects and incidental damages are claimed with the claim for damages.

16.3. The provisions contained in these general terms and conditions or otherwise agreed provisions on compensation also apply when the claim for damages is asserted as well as or instead of a warranty claim.

16.4. Compensation for financial losses and consequential losses, lost profits and for losses from claims of third parties against our company is always excluded if legally permissible.

#### **17. Product liability**

Recourse claims within the meaning of § 10 of the product liability law (Produkthaftungsgesetz, ProdHaftG) are excluded unless the party entitled to recourse proves that the error was caused within our sphere of responsibility and with at least gross negligence.

#### **18. Non-solicitation agreement**

The contractual partners are obliged to maintain mutual loyalty. They will refrain from any enticement or employment, including via third parties, of employees of the other contractual partner who have worked on the development and implementation of the orders, for the duration of the contract and 12 months after termination of the contract. In the event of infringement, the violating party to the contract is obliged to pay lump sum compensation at the amount of the annual salary of the employee.

#### **19. Non-disclosure:**

19.1. The parties to the contract are obliged to maintain secrecy about all instances, of which they become aware during a contractual relationship, of internal business processes of the other contractual partner with respect to third parties including beyond the term of this contract. In the event of infringement, the violating contractual partner is obliged to pay a contractual penalty of 70 % of the order total. Any claims for damages in excess of this shall remain unaffected.

19.2. Our company is entitled, however, to generally carry out advertising with positive results from the contractual relationship so that our activity is announced generally and for potential clients. The client declares agreement to be cited as a reference with presentations and publications.

#### **20. Retention/contractual exclusion of set-off/prohibition of assignment**

20.1. With justified notice of defects, the client, apart from in cases of rescission, is not entitled to retain the entire gross invoice amount and instead may retain only a reasonable amount thereof.

20.2. The client is not entitled to offset own claims against claims of our company.

20.3. The client may assign, pledge or otherwise dispose of claims and receivables to which the client is entitled against our company only with our prior written consent.

#### **21. Event of default**

To the extent that the client's payment obligations must be in installments, it shall be agreed that in case of delayed payment of even one installment all outstanding part services become due immediately without any determination of grace periods.

#### **22. Severability clause**

If individual provisions of these general terms and conditions are or become ineffective, this shall not affect the remainder of this contract. Any ineffective provision shall be replaced by a legally effective regulation which comes closest to the economic effect of the ineffective provision.

#### **23. Use of data, change of address, changes in the the terms and conditions**

23.1. The client gives consent that the personal data contained in the order or purchase contract may also be electronically processed and stored by us as part of the fulfillment of this contract.

23.2. The client is obliged to inform us of changes in the client's residence or business address if the legal transaction as specified in the contract is not fulfilled entirely by both sides. If the event this notification is not provided, declarations shall count as delivered if they are sent to the last notified address.

23.3. Changes to the general terms and conditions shall be considered accepted and are also effective for existing contracts if the client does not object to the changed general terms and conditions within 3 weeks of the corresponding announcement. The announcement of the changed general terms and conditions can be in writing or by electronic means (email). The respective valid general terms and conditions are available on the internet homepage of our company.

#### **24. Choice of law, place of jurisdiction**

German law shall apply. Applicability of UN sales law is expressly excluded. The contractual language is German. Exclusive jurisdiction shall rest with the competent local court for such matters in the city in which our registered office is located.

#### **25. These general terms and conditions:**

are available in a German version and in versions in other languages. For the interpretation of the general terms and conditions the German version must always be consulted and the purpose and intention of the parties must also be ascertained according to this.