

General Terms of Delivery and Services of Indi.Systems GmbH, status 01/2014

Clause 1 Scope of application

For all deliveries and services of Indi.Systems GmbH, the following terms and conditions shall exclusively apply.

Clause 2 Offer and Conclusion of Contract

A contract with the customer is only concluded with a written or electronic confirmation of Indi.Systems GmbH. The offers of Indi.Systems GmbH are subject to change.

Clause 3 Prices, terms of payment and default

1. The actual prices of Indi.Systems GmbH can be seen from the respective actual price list and shall only refer to the software product specified therein. Other services, which are not specified in the price list, are to be remunerated separately.
2. After receipt of the delivery the customer has to pay the purchase price immediately, however by no later than after the expiry of 14 days. If the customer is in default of payment Indi.Systems GmbH is entitled to request interest on default in the amount of 5 % percentage points above the respective base lending rate of the European Central Bank according to § 247 BGB [German Civil Code] insofar as the customer is a consumer. If, on the other hand, the customer is an entrepreneur within the meaning of § 14 BGB he has to pay interest on default in the amount of 8 % points above the respective base lending rate of the European Central Bank according to § 247 BGB. Further rights and claims of Indi.Systems GmbH shall remain unaffected.
3. If the customer is in default of acceptance or if he breaches other obligations, Indi.Systems GmbH is entitled to claim for the damages resulting, including any possible additional expenses.

Clause 4 Delivery and performance

1. Delivery dates are only binding if they have explicitly been agreed with Indi.Systems GmbH.
2. The adherence to agreed delivery times or obligations depends on the timely and proper fulfilment of the obligations and responsibilities of the customer. The delivery

time or obligations are to be adjusted to the extent in which the customer does not satisfy the timely and/or proper fulfilment of the obligations and/or responsibilities which are applicable to him.

3. If as a result of events of force majeure, for which it is not responsible, it is permanently not possible for Indi.Systems GmbH to fulfil the respective contract, based upon these General Terms of Delivery and Services, or not to fulfil it in time, the parties can cancel the corresponding contract under the exclusion of further claims and rights.

4. Indi.Systems GmbH reserves the right to cease operating the website at any time, fully or partially.

Clause 5 Transfer of Risk

1. The risk of the accidental loss and the accidental deterioration of these goods shall pass to the customer with the hand-over of the goods (the object of delivery) for shipment.
2. In the cases, in which an acceptance is agreed for the services to be provided by Indi.Systems GmbH or is presumed according to the contents of the contract, the risk of the accidental loss and the accidental deterioration to the services, to be provided by Indi.Systems GmbH, shall pass to the customer with the acceptance.

Clause 6 Retention of title

The goods shall remain the property of Indi.Systems GmbH until the full payment of the purchase price/the remuneration. A pledge and/or assignment as collateral or hand over of the goods by way of exchange are excluded. In the event of the resale the customer shall assign the claims and rights resulting from the resale (including possible collateral rights) to Indi.Systems GmbH with the conclusion of the respective contract, of which these terms and conditions form a part. Indi.Systems GmbH shall accept this assignment with the conclusion of the respective contract, of which these terms and conditions form a part. No deferral of the payment claims to which Indi.Systems GmbH is entitled towards the customer is associated with the assignment.

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Clause 7 Defects

1. The customer is aware that the software created by Indi.Systems GmbH as a rule is subject to a continuous adjustment process and the software inevitably is not free of all interferences to its function and faults. In particular the usability of the software does not only depend on the commissioning by the customer, the operation and the hardware environment, but also on technical adjustments to use-specific requirements to be carried out by the customer. Accordingly Indi.Systems GmbH – subject to a liability according to § 8 Par. 1 – shall not be liable for an impairment to the function of the software, which results from hardware defects, ambient conditions, false operation by the customer or similar conditions.
2. Insofar as Indi.Systems GmbH finally refuses the subsequent satisfaction or this finally fails or is not deemed reasonable for the customer the customer can cancel the contract in writing, reasonably reduce the remuneration, request damages or reimbursement of expenses.
3. The liability for defects of Indi.Systems GmbH shall cease to apply subject to liability according to § 8 Par. 1 insofar as the software is treated improperly by the customer or is used in a defective or non-compatible hardware or software environment. The same shall apply to the event that the customer unjustifiably makes changes to the software delivered by Indi.Systems GmbH.
4. Indi.Systems GmbH guarantees that the use of the software by the customer as per contract is not opposed by any rights of third parties.
5. The customer is informed that, within the framework of its duties to show care and attention, he must check before a first use of the software whether the installation of the software could lead to special interferences with already installed software, and further has to ensure a backup of his data before the first installation and during the regular operation and in the event of a presumed software fault he must take all reasonable additional backup measures.
6. Our obligation to pay compensation is oriented to § 8 below.

7. The afore-mentioned regulations are not associated with any reversal of the burden of proof for the disadvantage of our customers.

Clause 8 Liability

1. Claims for damages and reimbursement of expenses (hereinafter jointly “claims for damages”) of the customer against Indi.Systems GmbH, no matter for what legal grounds, are excluded unless they are based on the provisions of the Product Liability Act, a wilful or grossly negligent breach of contractual or statutory obligations by Indi.Systems GmbH, health damages and physical injuries of the customer as a result of a breach of obligation, for which Indi.Systems GmbH is responsible, the assumption of a guarantee for the existence of a property or the breach of essential contractual duties (cardinal duties) by Indi.Systems GmbH. Essential contractual duties (cardinal duties) are such duties, the satisfaction of which makes the proper execution of the respective contract, which is to be concluded based on these terms and conditions, possible at all and on the compliance with which the customer may rely as a rule.
2. In the event of the breach of essential contractual duties by Indi.Systems GmbH the customer’s claim for damages against Indi.Systems GmbH is limited to the typical, foreseeable damages for the contract insofar as Indi.Systems GmbH is not liable for wilful or grossly negligent breaches of duty, not for health damages and/or physical injuries or owing to the assumption of a guarantee for the existence of a property. The damage is deemed foreseeable, if the realisation of which can typically be expected with the breach of the respective typical obligation for the contract.
3. If Indi.Systems GmbH is in default with the service then the damages of the customer due to delay – insofar as none of the liability cases stated in the afore-mentioned Par. 1 exist – are limited to the (expected) total remuneration of the respective contract.
4. Such a breach of duty of its legal representative or vicarious agents is deemed equivalent to a breach of duty by Indi.Systems GmbH.
5. § 7 Par. 7 shall apply accordingly.

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Clause 9 Software

1. The customer is obliged to examine the delivered software for evident defects which readily draw the attention of an average user.
2. Passing on software information and documentation to third parties, in whatever form, is excluded. The customer is not entitled to the change or withdrawal of individual components of the software or its documentation.

Clause 10 Privacy Policy

1. The personal data, which the customer of Indi.Systems GmbH provides with an order or by e-mail will exclusively be processed by complying with the stipulations of the Federal Data Protection Act.
Passing on the information is done only to the shipping company commissioned with the delivery, insofar as this is necessary for the delivery of the goods. For processing payment transactions, Indi.Systems GmbH passes on the payment information of the customer exclusively to the financial institution responsible for payment.
2. As for the rest, Indi.Systems GmbH assures that it will not disclose the personally identifiable information to third parties, unless there is a legal obligation to do so or the customer previously explicitly consented to this. In the case that Indi.Systems GmbH should call upon the services of third parties, for the execution and management of processing operations, the regulations of the German Federal Data Protection Act will be complied with.

Clause 11 Copyright

The software product of Indi.Systems GmbH is protected under copyright law. The customer of Indi.Systems GmbH is granted a simple, non-transferrable, time-unlimited right of use to the respective software product for respectively one application case.

Clause 12 Statute of Limitations

1. The statute of limitations for claims from liability for quality and title of consumers is 2 years from the legal start of the statute of limitations.
2. The statute of limitations for claims from liability for quality and title of entrepreneurs is

one year and will begin with the passing of the risk.

3. Notwithstanding the afore-mentioned provisions the legal statutes of limitations shall apply in case of claims for damages and reimbursement of expenses from wilful intent, gross negligence, guarantee, fraudulent intent as well as with injuries to life, the body and damages to the health and with claims from the Product Liability Act.

Clause 13 Applicable law, place of jurisdiction, place of performance and other provisions

1. The legislation of the Federal Republic of Germany shall apply, with the exception of the United Nations Convention on Contracts for the International Sale of Goods.
2. As a place of jurisdiction, the headquarters of Indi.Systems GmbH, Bremen (courts in the City of Bremen) shall be agreed if the customer is a merchant or a public law special fund.
3. The place of performance of all reciprocal obligations is Bremen.
4. Insofar as one provision of these terms and conditions or a contract, of which these terms and conditions are a part, is or should become invalid the parties will agree upon such a provision, which shall effectively and legally regulate the financial intention of the invalid provision to the full extent or – insofar as this is not possible in a legally effective manner – to a large extent.