

Scope of Agreement

1. These General Terms and Conditions (GTCs) shall apply to all parts of all contracts and legal transactions of Libelle AG (hereinafter called: Libelle). They do not apply to contracts with private endusers.
2. Differing terms and conditions of the customer shall not become effective. Special general terms and conditions for particular goods and services of Libelle will prevail.
3. Prices shall be net excluding value added tax; VAT will be added to the agreed prices according to the statutory amount. Libelle may require partial or complete prepayment.
4. The right for set-off by the customer may only be effective if the counterclaims are undisputed or acknowledged by Libelle or have become res judicata. The customer shall be entitled to withhold payments as far as the counterclaim arises from the same contractual relationship.
5. All rights of the customer at supplied products/software shall expire if Libelle claims its retention of title.

Infringement of Intellectual Property Rights

6. Libelle shall indemnify the customer from any claims arising from the infringement of third party intellectual or industrial property rights valid in the European Union provided Libelle caused the infringement deliberately or negligently. Hereof the customer shall give notice immediately to Libelle in writing. Libelle shall be allowed either to collaborate with the customer or to lead in defending against the claims as far as legally allowed. The agreed conditions of Libelle's products shall not cover the absence of third party intellectual or industrial property rights outside of the European Union.
7. In any case of such infringement Libelle shall initially be allowed to indemnify the customer by providing at its choice an equivalent replacement or supplementary performance or licence payments to the injured third party or by granting rights of return. Customers claims for damages not based on fault of Libelle shall remain unaffected.

Duties of Examination and Defects

8. The customer shall duly comply with his duties of examination and complaint as required under sec. 377 HGB (German Commercial Code). Such duty of examination is a pre-requisite for the customers assertion of claims in respect of defects. Libelle shall not be liable for defects in case of insignificant deviations of Libelle's goods and services from the agreed condition or from the fitness for use specified in the contract.
9. In case of defects the customer shall only be entitled to claim either the removal of the defect or a replacement, at the choice of Libelle at the place of delivery agreed. Provided only (i) the customer had set Libelle unsuccessfully a target of an at least three weeks period for the equivalent replacement or supplementary performance or (ii) three attempts of Libelle to repair the product or deliver the replacement have failed, the customer may demand a price reduction or may terminate the contract. In case of termination, the customer shall combine the declaration of the granted target period with the declaration that he will refuse to accept Libelle's goods and services after the expiration of that period. Further claims for damages shall be subject to clauses no. 10 and 11 as well as no. 14 to 19.

Delay in Performance and default

10. On default of Libelle in its performance, claims of the customer for compensation or reimbursement of expenditure (compensation for delay in performance) caused by the delay of Libelle shall be restricted to the extent of 0.5 % of the price for the goods and services, which cannot be used due to the delay, for each completed week of default. The compensation for delay in performance shall not exceed the amount of 5 % of this price. This limitation shall not apply, if the default of Libelle is based on gross negligence or wilful misconduct of Libelle.

11. In case the customer demands compensation in lieu of performance (or reimbursement of expenditure accordingly), these claims shall be restricted to the extent of 1 % of the price for the goods and services, which cannot be used due to the delay, for each completed week of default and shall not exceed 10 % of this price. Clause 10, sentence 3 shall apply accordingly.

Termination and Compensation in lieu of Performance

12. The customer shall not be entitled to terminate the contract due to a breach of duty by Libelle, if Libelle has not caused the breach of duty deliberately or negligently.
13. In case the customer may demand the termination of contract and/or compensation in lieu of performance or claims to be entitled to any of these measures, on demand of Libelle the customer shall notify Libelle in writing within reasonable period of time about his demand and whether the customer asserts those claims or insists in Libelle to perform.

Liability

14. Libelle shall be liable for customer's losses either (i) caused by Libelle (or its statutory agents, or its employees or its subcontractors, if performing the contract on behalf of Libelle)
 - deliberately or through gross negligence, and/or
 - arising out of a deliberate or negligent breach of contract which is resulting in death, injury to body or health;or (ii) according to the German Product Liability act and as far as Libelle has issued a guarantee for an agreed condition of Libelle's goods and services.
15. Unless provided in clause no. 14, the following shall apply for any cases of minor negligence: Libelle shall be held liable only in the event of a material breach of contract (cardinal obligations). With regard to monetarily loss and damage to property this liability of Libelle shall be limited to the foreseeable damages and/or loss which typically has to be expected. The limitation of liability includes the loss of profit and missing savings as well. The liability of Libelle for any further consequential harm caused by a defect shall be excluded.
16. The liability referred to in clause no. 15 shall furthermore be limited to the amount of the contractual value (whereas in case of continuing obligations, the contractual value shall be the amount of the annual remuneration), but subject to a minimum liability of Euro 50,000. The parties may agree to an exceeding liability in return for extra payment. The customer shall notify Libelle at the latest at the conclusion of the contract, if the foreseeable damage surpasses the contract value.
17. The customer shall assume to conduct data backup procedures constituting a cardinal obligation under this contract regularly and adequate to appliance and application, but not less than daily, and thus ensure that lost data can be restored at reasonable expense. In case Libelle has caused the loss of data deliberately or negligently, Libelle shall be liable for recovery only to the extent supposing the customer has fulfilled its duty of conducting the data backup procedures mentioned above.
18. The no-fault-liability of Libelle in the field of rental law or similar utilisation relationships for defects already existing at the time of the conclusion of the agreement in accordance with sec. 536 a German Civil Code shall be excluded.
19. The foregoing provisions of clauses no. 14 to 18 shall also apply to the benefit of Libelle's employees or subcontractors, if performing the contract on behalf of Libelle.

Limitation of Time

20. The period of limitation regarding the claims in respect of

defects, in particular compensation in lieu of performance (or reimbursement of expenditure accordingly) or replacement or termination or price reduction shall be one (1) year and shall start with the statutory beginning of the limitation period. The limitation period regarding the claims in respect of defects of replaced goods and services shall also be limited to the expiry of period under sentence 1.

All further claims shall be subject to a limitation period of one (1) year from the date of knowledge or grossly negligent lack of knowledge of the circumstances constituting the claim. In any case, however, such claims shall be subject to a limitation period of five (5) years from the date on which the act, breach of duty or other event constituting the claim occurred.

21. The foregoing provisions of clause no. 20 shall not apply in case of claims due to fraudulent intent or due to the liability for wilful misconduct or in case of claims arisen out of death, injury to body, health or liberty or claims under the German Product Liability Act.

Export

22. Export, re-export or otherwise executed exportation of Libelle's goods and services shall be at the customer's responsibility. The customer will be obliged to fulfil existing export control regulations of Germany and the USA and the Commercial Law of other countries if applicable.

Applicable Law and Place of Jurisdiction

23. These GTCs and all related contracts shall be subject to the laws of Germany but shall not be subject to the UN Sales Convention. Place of jurisdiction shall be Stuttgart.

Software – Licenses

24. The customer shall be granted a license by Libelle with regard to the ordered and delivered Software, which may be used exclusively within the limits of the following conditions.
25. The software including user manuals and all further documents shall be protected by copyrights and remain trade secrets of Libelle. The Software shall be delivered as machinery executable program and/or executable object code without granting any right in rem in the source code or in related program libraries.
26. The license shall be an individualized end user license protected by hardware and software protection measures. The software shall be executable only by entering the software registration key, which has to be reordered from Libelle in case of renewed or modified configuration of the customer's computer system. The customer shall guarantee activation and maintenance of the software protection measures.
27. Libelle shall grant the customer a non-exclusive but transferable license to use the software only for internal purposes. Sublicensing, rent, loan, use for external office services and application service providing are prohibited as well as any granting of use to third parties for fixed periods of time or any other kind of making available the software to third parties.
28. The customer shall be allowed to duplicate the software as long as the duplication is necessary for the use of the program. In particular, necessary duplication shall be the installation of the program from the original storage media into the mass storage as well as loading into the main memory (RAM) of the system.
29. Unless specially permitted, all kind of recording or storing or use of the software simultaneously at more than one hardware system or by more than one user at the same time shall be prohibited. The same shall apply to the use of the software within a network or multi user system. The license shall be limited to mirror the databases according to the specifications of type and scale. The customer shall guarantee to buy additional licenses to the extent he exceeds the limits of the license granted or copies permitted.
30. The customer shall be allowed to transfer the license to a third party upon termination of his own use. In this case the cus-

tomers shall be obligated to receive a written commitment of the third party acknowledging the regulations of clauses no. 24 to 33 at the latest at the time of delivery. The customer shall guarantee to deliver the software including all backup copies to the new buyer as well as to destroy all remaining copies. This shall apply as well to user manuals and any other related documents. Libelle shall be obliged to individualize and deactivate the necessary individual hardware and software protection measures according to clause no. 26 only on presentation of the original document of commitment referred to in sentence 2.

31. Except for one backup copy to be stored in its own archives, any further production of copies by the customer is prohibited. The customer is neither allowed to make any changes to the software program nor to decompile the software source code nor to do any other kind of reverse engineering. Upon request, all needed information for interoperability within the customer's system will be provided by Libelle.
32. The grant of the license according to clauses no. 24 to 27 shall be subject to the condition of payment of the total amount of license fees. In delivering the software, the license is only granted to the customer tentatively and revocable.
33. Any material or repeated breach of contract referring to the regulations of license shall entitle Libelle to terminate the license without notice even after complete payment of the license fees. In this case, Libelle shall not be obligated to refund any former payments.

Services

34. The implementation of software licenses is operated exclusively by Libelle employees or respectively by certified Libelle partners. In all other cases Libelle reserves to attend its duty to support the implemented licences.
34. For cancellation/shift of agreed service dates Libelle reserves itself the right to bill the following rates:
 - Up to 5 working-days before agreed date: 25% of the scheduled services
 - Up to 2 working-days before agreed date: 50% of the scheduled services
 - 1 working-day before agreed date: 75% of the scheduled services

(Stand 01 December 2009)