

# General Terms and Conditions of Sale of MARINGO Computers GmbH

## 1 General

1.1 The following terms and conditions shall apply to all deliveries, services and sales quotations of MARINGO Computers GmbH (hereinafter referred to as "MARINGO").

1.2 Any contrary terms and conditions of the customer shall not become an integral part of this agreement in case of delivery, even without express opposition.

1.3 Variations of these terms and conditions and/or amendments, as well as modifications and amendments of concluded contracts and the applicable terms and conditions referring to such contracts of MARINGO, shall be in writing.

1.4 MARINGO is entitled to change these terms and conditions by informing the customer about the changes in writing. 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 the expiration of the period of one month if the customer does not terminate the contract.

## 2 Sales quotations and conclusion of the contract

2.1 All sales quotations made by MARINGO are non-binding, in particular regarding prices, quantities, delivery period, delivery options, and other services.

2.2 The express warranty of characteristics shall require written confirmation by MARINGO.

2.3 The extent of services to be performed by MARINGO shall be determined solely by the written contracts. As far as concluded, the Sales and Service Partnership Agreement, the End User License Agreements for software of the respective supplier, the Maintenance and Support Agreement for users and, in addition, these General Terms and Conditions of Sale shall apply in their order of listing.

2.4 MARINGO reserves the right to make changes at sales quotations or sales orders mandatory 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. Neither the installation by MARINGO nor the training and instruction of the customer or his/her employees concerning the operation of delivered software and hardware belong to the extent of services. These services will only be provided based on a corresponding 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 for the provision of premises and infrastructure, documentation and personnel. If the customer fails to properly fulfil his/her obligations to cooperate according to sentence 1, then the execution periods as provided in the agreement shall be extended accordingly. MARINGO shall have the right to charge additional work and expense caused by the delay, in particular for the extended provision of its own personnel or resources. Any claims of MARINGO resulting from § 643 BGB (German Civil Code) remain unaffected.

3.3 Information shall require written confirmation.

## 4 Extent of services

4.1 MARINGO shall have the right to use the assistance of third parties in order to perform a service owed by it.

4.2 MARINGO shall be entitled to make partial deliveries and partial performance of services to a reasonable extent.

4.3 Products (hardware, software, data media, documentation, etc.) delivered for test purposes remain the property of MARINGO. MARINGO reserves the right to prepare software in such a way that programs will no longer be fully operational after the expiry of the agreed test period. 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 Changes in orders shall result in the cancellation of agreed dates and terms unless otherwise agreed.

5.3 The dates of delivery and performance shall be extended accordingly in case of force majeure or any other incidents outside of MARINGO's responsibility which have a considerable impact on the delivery and performance including strike or lockout 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 the statutory VAT. Other deliveries and services for which no price was agreed at the time of ordering shall be charged at list prices valid on the day of the 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 price list valid at the time of order acceptance.

6.3 MARINGO shall not be bound to quoted prices if a delivery period longer than 4 months from the time of the written sales order has been agreed upon. In this case, the prices valid at the time of delivery shall be charged.

6.4 Possible refund claims of the customer, e.g. due to overpayment, double payment, etc. shall be credited to the customer's invoice account and, as far as possible, shall be charged with the next payment falling due.

## 7 Payment

7.1 Unless otherwise agreed, prices for deliveries of goods as well as support and any other services shall be paid immediately free of any deduction. In the event of default payment by the customer, MARINGO shall be entitled to charge interest on delayed payments 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 these 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 at the same time, and provided that the customer did not agree on a repayment provision, then the oldest debt due of several liabilities have to be paid first in each case.

## 8 Default of acceptance by the customer

If the customer is in default of acceptance of ordered goods and services, MARINGO, after setting a reasonable period of grace not exceeding 14 days, shall have the right to withdraw from the agreement and to demand compensation. If MARINGO demands compensation for damages, then this compensation shall amount to 30 % of the contract value unless the customer provides evidence of minor damages or MARINGO provides evidence of major damages.

## 9 Transfer 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 by MARINGO according to the order together with an employee of MARINGO. If products essentially work as specified in the contract, the customer shall without delay declare his/her acceptance in writing. If the customer refuses acceptance, he/she shall inform MARINGO without delay, but no later than 10 working days after installation, of ascertained errors with detailed descriptions in an error log. 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 insignificant defects.

9.3 Unless otherwise agreed, MARINGO shall be liable for defects of its software and hardware or services or work performances in accordance with the special regulations applicable to them.

9.4 In the event of culpable breach of contractual obligations, the customer shall in either case request MARINGO to rectify defects free of charge.

9.5 Warranty claims of the customer based on the provision of services by MARINGO and within the extent of these terms and conditions shall be subject to a limitation period of one year.

## 10 Retention of title

10.1 MARINGO shall retain full ownership of the delivered hardware, the delivered data media and the right of use of the software contained in such data media until full payment of the purchase price has been made. If the customer is a businessman, the aforementioned retention shall apply until full payment of all liabilities arose or arising from the business relationship. This shall also apply if an 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 right to use specified in the productive license of the manufacturer with the full acquisition of title in the program media.

10.2 The user shall store the delivered goods under retention of title for MARINGO with the diligence of a prudent businessman and shall adequately insure all goods at his/her own expense against fire, water, theft and any other damage risks. Upon 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 the further licensing of software. The customer shall be entitled to collect these claims until revoked. When required by MARINGO, the customer must inform MARINGO about the assigned claims and their 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

payments, MARINGO shall be entitled to repossess the goods subject to 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 of the goods under retention of title and to charge the revenues sales of the goods against any open claims.

10.5 If MARINGO makes use of its repossession 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 allow the employees of MARINGO authorized to collect the goods subject to 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 Extent of the concession of rights

MARINGO retains all rights at the delivered MARINGO software, including copyrights, industrial property rights and exploitation rights. The property rights - including the rights of third parties - indicated on program media or packaging must be observed. Unless otherwise expressly agreed, the customer acquires a simple right to use the software. The customer's right of use depends on the license conditions of the respective software manufacturer for the corresponding products.

## 12 Liability of MARINGO

12.1 MARINGO shall be fully liable only for intent and gross negligence and for lack of warranted characteristics.

12.2 MARINGO shall be liable for negligent breaches of its essential contractual obligations, regardless of which legal reasons. The liability is limited to typical contractual and foreseeable damages.

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 prevented by reasonable measures taken by the user, in particular program and data backup.

12.5 The aforementioned regulations concerning the liability shall also apply to staff members and other vicarious agents of MARINGO.

12.6 The regulations of the German Product Liability Law remain unaffected.

## 13 Property rights of third parties

The customer hereby agrees to inform MARINGO without delay of any infringement of third party property rights regarding delivered software and hardware and to leave the legal defence to MARINGO at its own expense. MARINGO shall be entitled to carry out necessary software modifications at its own expense at delivered and paid software due to property right claims 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 the consent of MARINGO.

## 15 Final provisions

15.1 MARINGO shall be entitled to use the assistance of third parties to fulfil its contractual obligations. MARINGO's obligations 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, the validity of the remaining provisions shall not be affected.

15.3 If the user is a businessman, the place of fulfilment 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 or usual place of residence abroad, the place of jurisdiction shall be the registered office of MARINGO. However, MARINGO shall also be entitled to sue the user at his/her general place of jurisdiction.