

## General Terms and Conditions

### § 1 General

For use vis-a-vis

1. a person, who acts in exercise of his/her commercial or independent professional employment (business person) upon conclusion of the contract;
  2. a public sector corporation or a public law entity with special funds,
- the following business conditions apply to all legal transactions which are concluded from 1/1/2002. Changes require written confirmation by Software4You Planungssysteme GmbH (S4U) to be effective. These general terms and conditions also apply to future business relations if their validity has not been specifically agreed upon again.

The business conditions are easily accessible on the Internet at any time at [www.software4you.com](http://www.software4you.com) and are repeated at the initial start-up. The customer acknowledges the general terms and conditions of S4U on the order forms/order confirmations as well as on the online configuration. He/she can print out the general terms and conditions at any time by simply clicking the mouse on the button shown.

### § 2 Bidding and contract conclusion

Orders are legally binding with a written confirmation (letter, fax, e-mail) by S4U.

Additional agreements and oral statements of employees or representatives require written confirmation to be effective.

The property rights and copy right to cost estimates, organizational proposals as well as miscellaneous planning and bidding documents remain with S4U. They may not be made available to third parties and are to be returned upon request, if an order is not issued.

All bids are subject to confirmation and are non-binding.

After conclusion of the contract, S4U is entitled to give the name, the logo and the business of the client for advertising purposes.

### § 3 Prices and payment conditions

1. The prices are straight net prices plus the legally applicable sales tax.
2. The payment of the invoice amounts must occur, in so far as nothing else is stipulated, no later than 10 days from the date of invoice without a cash discount. A payment goes into the account of S4U with the value date.
3. Checks, drafts and payment instructions are only accepted after special agreement and on account for payment after calculation of collection and discount charges. A payment is considered to have taken place to the account of S4U from the point in time of the unconditional value date.
4. Monthly fees are payable on the first work day of the month.
5. If prices are increased for contractual services after the conclusion of the contract, due to official regulations or due to S4U vendor salary, material or other price increases of more than 5% that are passed on to S4U, then S4U is entitled to increase the stipulated prices accordingly, in so far as it must render the service due within 4 months of the contract conclusion.

### § 4 Default

1. When there is a default in payment with commercial transactions in the sense of § 353 of the German Commercial Code or when a period defined by the calendar is exceeded, S4U is entitled to calculate interest in the amount of 5% over the applicable base lending rate in accordance with the Discount Rate Transitory Act from the point in time concerned. The customer reserves the right to the proof that a loss to S4U in this amount did not occur or is essentially less. S4U can claim the loss actually occurring instead of the lump sum. The assertion of additional damage caused by delay remains inviolate.

2. All claims of S4U are due for payment when there is non-compliance with a period of payment or when circumstances become known to S4U after conclusion of the contract that place creditworthiness in doubt in the view of the bank. In this case, S4U is entitled to withdraw, to complete outstanding services only against advance payment or security, or to withdraw from the contract after expiration of an appropriate

grace period for payment, in so far as it is still unfulfilled.

#### § 5 Delivery conditions

1. If a delivery or installation period is stipulated, then this begins with the date of the contract confirmation of S4U under the condition that the technical execution is completely clarified, when the equipment to be provided or installed by the customer is not defective and is installed properly and when the miscellaneous installation conditions to be provided by the customer at his/her own cost are not defective. With non-timely receipt or the existence delivery and installation conditions to be provided by the customer, the period is extended accordingly.
2. The period for delivery and service is extended appropriately when there are actions within the scope of labor disputes, in particular, strikes, lock-outs as well as the occurrence of unforeseeable obstacles, which lie outside of the will of S4U, unless the delivery or service is impossible due to this.

#### § 6 Warranty claims

For material defects of deliveries and services, S4U guarantees as follows, to the exclusion of additional claims – subject to § 7:

1. S4U amends all of those parts free of charge or delivers new, those which show a defect within the limitation period, if its cause existed in the time of the transfer of risk.  
Defects must be indicated by the customer after delivery or acceptance of the service immediately in writing, obvious defects no later than within three days, concealed defects no later than within three days after their discovery. The defect is to be described exactly.
2. A material defect does not exist, in so far as the item is suited for customary use and shows a condition that is usual with items of the same type and which could be expected from the customer. With software installation, a defect is only a reproducible defect in the sense of the contract.  
There is no material defect, in particular, when there is
  - unsuitable or improper use,
  - improper storage,
  - defective installation and/or startup by the customer or a third party,
  - natural wear and tear, erroneous or negligent handling,
  - improper maintenance,
  - use of unsuitable equipment,
  - chemical, electronic or electrical influences, in so far as S4U is not responsible for them.
3. After agreement with S4U, the customer must give the required time and opportunity for the execution of all improvements and replacements that appear to be necessary by S4U, in particular to send, on demand, the delivery object to S4U or to one of the third parties to be determined by S4U as the case arises, or else S4U is released from liability for the results resulting from this. Only in pressing cases involving the endangerment to safety and/or defense of disproportionately large damage, which must be communicated immediately, the customer has the right to have the defect removed himself/herself or by a third party and to request from S4U replacement of the necessary expenditure.
4. With regard to costs resulting from rectification and/or replacement, S4U bears – in so far as the complaint is legitimate – the costs for the replacement object including the shipment as well as the appropriate costs of dismantling and assembly, in addition, if the situation of the individual case can fairly demand it, the costs of any necessary appointment of programmers and support staff. S4U can refuse the rectification, in so far as it would be disproportionately connected with costs.
5. Within the scope of legal provisions, the customer has a right to withdrawal from the contract, when – and with consideration of the legal exclusions – a period set for S4U for the rectification or replacement is allowed to elapse due to a material defect. If conditions of withdrawal exist, but the defect is only immaterial, the customer is only entitled to a right to reduction of the contract price. Otherwise, the right to reduction of the contract price remains excluded.
6. If the customer or a third party rectifies improperly, no liability exists for consequences resulting from this. The same applies to the changes made to the delivery objects without the prior agreement of S4U.

7. The customer can not assert any claims for supplementary performance, when he/she becomes aware of the defect at the conclusion of the contract or does not recognize it due to gross negligence, unless there is fraudulent intent or a condition guarantee. Number 2 of this paragraph applies with regard to ongoing claims.
8. If S4U rectifies the defect, then the course of the limitation period during the time period in which the use of the delivery object is impossible for the customer due to these activities of S4U, is limited by this,.
9. Except for parts finished as new, any claims for rectification including any claims for damages are excluded for delivery objects used.
10. S4U retains the claim to return service, in so far as the duty for supplementary performance is impossible due to services not completed according to the contract. If the impediment to performance occurs due to a sole or predominant fault of the customer, or with the service in default of acceptance, then S4U retains its claim to return service.
11. If S4U accepts a written guarantee for the condition of an object, then the customer is entitled to legal claims for damages against S4U in addition to the rights resulting from the guarantee.
12. Offset or the exercise of a right of retention by the customer is only permissible with an uncontested or legally established claim.

### § 7 Extent of liability

S4U is liable for damages that have not occurred to the object of delivery itself - for whatever legal grounds – only

- with intent;
- with gross negligence of the institutions or managing employees;
- with culpable damage to life, limb, health;
- with defects, which S4U intentionally misrepresented by silence or the absence of which S4U has guaranteed;
- with defects of the object of delivery, in so far as it is liable according to the Product Liability Act for personal or material loss to privately used objects.

When there is a culpable breach of these contractual obligations, S4U is also liable when there is gross negligence of non-managerial employees and when there is minor negligence, in the latter case limited to the reasonable, foreseeable losses typical of the contract, which does not involve a financial loss. Further claims are excluded.

### § 8 Statute of limitations

All customer claims – for whatever legal means – are time-barred twelve months from delivery, start-up and/or acceptance of the service. The legal periods apply for deliberate or fraudulent behavior as well as for claims in accordance with the Product Liability Act and for claims for withdrawal of the business person (§ 479 Sec. 1 of the German Civil Code).

### § 9 Retention of title

1. The objects delivered and/or installed by S4U as well as standard licenses (retained goods) remain the property of S4U up to the complete repayment of all, also future, claims from the business relationship with the customer, for whatever legal grounds, even when payments are made on especially designated claims. With an open account, the property retained is security for the outstanding balance claim of S4U. Treatment and handling of the retained goods takes place on behalf of S4U, which is considered as manufacturer in accordance with § 950 of the German Civil Code and therefore retains possession at all times in the processing level of the products. The treatment and handling is free of charge and without obligation for S4U.
2. Customer claims from a resale of the retained goods become security for all, also future, claims of S4U from the business relationship assigned to S4U, and indeed regardless of whether the retained goods are without or after processing and whether they are resold to one or more recipients. The customer is also authorized for the collection of this assigned claim after the assignment, unless he/she discontinues his/her payment or S4U revokes this collection authorization.

The authority of S4U to collect the assigned claims itself remains inviolate. Upon request, the customer must immediately indicate in writing to S4U to whom it has sold these objects, which claims arise from the disposal and to surrender these for the collection of the required documents.

3. The customer is only entitled to and authorized for resale of the retained goods based on a sales contract, contract for work and services, contract for work and materials or other contract, when the property rights of the S4U are reserved up to the complete payment of the delivery objects by a third party customer. The customer is not entitled to a disposal of the retained goods, in particular, pledge or promise of security. At the request of S4U, the customer is obligated to indicate the transfer via a recipient for payment to the S4U.

4. If the securities existing for S4U exceed their claim by more than 20%, then S4U is obligated upon request of the customer or of a third party affected by the excess security of S4U in this respect for the release of securities at the option of S4U.

5. The customer must immediately notify S4U of garnishment, confiscation and other disposal by a third party.

6. With behavior of the customer contrary to the contract, in particular, with default in payment, S4U is entitled to the retraction of the delivery object after a reminder and the customer is obligated to surrender. The assertion of the retention of title as well as the garnishment of the delivery object by S4U is not considered withdrawal from the contract.

7. The petition for opening of the bankruptcy proceeding on the assets of the customer entitles S4U to withdraw from the contract and to request the immediate return of the delivery object.

#### § 10 Copyright

S4U reserves unlimited property and copyright trademark rights to all physical and non-physical information – also in electronic form. They may not be made available to a third party without consent.

#### § 11 Data protection

In accordance with § 28 of the Federal Data Protection Act, S4U advises that the customer data received in conjunction with the business relationship is processed and saved for its own purposes by S4U.

#### § 12 Safety regulations

The customer is responsible for compliance with maximum laws, ordinances and security law provisions, in particular with regard to authorizations, installations, operation, maintenance and repair of delivery objects and is obligated to fulfill these. The customer is obligated to release S4U from all claims that arise from the non-observance of such provisions by the customer.

#### § 13 Miscellaneous

1. The jurisdiction is Munich. However, the S4U is entitled at its discretion, to also avail itself of the jurisdiction responsible for the domicile of the customer.

2. The law of the Federal Republic of Germany applies. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.

3. The invalidity of a provision does not affect the validity of the other provisions.

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