

# General Terms and Conditions of Oraise Beteiligungs- und Verwaltungs GmbH & Co. KG



The General Terms and Conditions in German shall be decisive for the contractual relationship between Oraise Beteiligungs- und Verwaltungs GmbH & Co. KG and the Customer. The English wording shall be a non-binding translation only.

## 1. Scope of the General Terms and Conditions

These General Terms and Conditions apply to all contracts entered into between Oraise Beteiligungs- und Verwaltungs GmbH & Co. KG ("Oraise") and the Customer and to all other agreements made between the parties in the course of their business relationship. It is explicitly agreed that any general terms and conditions of the Customer shall not become part of the contract even if not explicitly rejected by Oraise. The Customer is obliged to give Oraise advance written notice if it is not prepared to accept these General Terms and Conditions.

These General Terms and Conditions are only intended for use in business with entrepreneurs according to Sec. 310 para. 1 of the German Civil Code ["BGB"].

## 2. Terms of Payment, Prices

All invoices issued by Oraise are payable immediately unless other due-dates have been agreed with the Customer. The receipt of the payment shall be decisive for the date of payment. In case of default, Oraise shall be entitled to withhold all further deliveries and services. If the Customer defaults in payment, Oraise shall be entitled to charge interest, calculated in accordance with the provisions of Sec. 288 BGB. All prices are quoted net and applicable statutory value added tax shall be added. Oraise is entitled to make part deliveries. Unless the prices are guaranteed in any cost estimates or offers, Oraise shall notify the Customer immediately if the price is expected to exceed the estimate by more than 15%. In that case, the Customer is entitled to terminate the contract pursuant to Section 650 BGB.

## 3. Delivery and Shipment

All offers are subject to change. Deliveries shall be effected while stocks last. All delivery periods stated by Oraise are subject to change unless a delivery period has been explicitly agreed in writing as binding. If the Customer demands any modification or supplementary items to the order after the placement of order or in case of any other circumstances beyond Oraise's control which make it impossible for Oraise to comply with the delivery date, the delivery period shall be extended appropriately. If it becomes fully or partially impossible for Oraise to fulfill its contractual obligation for the foregoing reasons, Oraise shall be released from its obligation to deliver.

The Customer shall always be liable for the costs of shipment and transport insurance; the route and method of shipment shall be at the sole discretion of Oraise. The Customer is obliged to inspect the received goods immediately on arrival and to notify Oraise in writing of any obvious damage in transit and any damage to packaging without undue delay. The same shall apply to any concealed damage. If Oraise forfeits its claims against the insurer or subcontractor owing to infringement of the foregoing obligation by the Customer, the Customer shall be liable for all damages resulting from the infringement. The risk of loss or damages to the goods shall pass to the Customer as soon as the goods leave the factory or Oraise's premises.

## 4. Retention of Title

All items of delivery shall remain the property of Oraise ("reserved goods") until full payment of all principal and incidental claims of Oraise from the business relationship with the Customer. The Customer is obliged to take out adequate insurance (i.e. against theft, damage by fire, water and low-voltage current) for all reserved goods and to submit proof of such insurance to Oraise on request. In case of damage, the Customer's insurance claims shall be deemed to be assigned to Oraise. The Customer is not entitled to dispose of the reserved goods. The Customer shall notify Oraise in writing immediately of any distress or confiscation of the reserved goods and shall advise third parties without undue delay in a suitable form that the goods are the property of Oraise. If the Customer nevertheless sells the reserved goods with the consent of Oraise, the Customer assigns all its claims against the purchasers to Oraise as from conclusion of contract with the third party. The Customer shall supply all information required by Oraise for the assertion of these rights and to provide any necessary support.

## 5. Limitation of Liability

Oraise is liable according to statutory provisions, if the Purchaser claims for damages as a result of malicious intent or gross negligence. In case of simple negligence, Oraise's liability is limited to damages inherent to this type of contract or foreseeable damages. Apart from the cases set out in sentence 1 herebefore, Oraise shall be liable according to statutory provisions insofar as Oraise culpably violates fundamental contractual duties; even in this case, Oraise's liability is limited to damages inherent to this kind of contract. The aforementioned limitations shall not apply in cases of harm to life, body or health.

Oraise shall not be liable for the recovery of data unless destruction of the data was due to intent or gross negligence on the part of Oraise. The Customer undertakes to ensure that his data can be reconstructed with reasonable outlay by implementing appropriate security measures which comply with best practice. The Customer shall take precautionary measures to mitigate any damage that may occur and shall in particular perform daily data backups. The Customer shall ensure that the data media used for backups are replaced regularly. Oraise shall assume no liability whatsoever for damage which could have been avoided by due and proper data backup.

## 6. Warranties

Oraise warrants that the goods have the contractually specified qualities and that they are free of any defects which would eliminate or reduce their value or fitness for the usual or contractually specified use, except in cases of insignificant reduction of the value or fitness for use. The warranty period is 1 year starting with the date of delivery. The Customer shall notify Oraise in writing immediately of any faults occurring during the warranty period. The warranty shall not cover the remedy of faults occurring owing to normal wear and tear, external influences or operating errors. The warranty shall lapse if the Customer modifies any devices, elements or peripherals itself or has them modified by a third party, unless the Customer submits full proof that the faults concerned were neither fully nor partly attributable to such modifications and that the modification does not complicate remedy of the faults.

Within the scope of its warranty obligations, Oraise shall be entitled to repair or replace any faulty devices, elements or peripherals. The Customer shall remove programs (inclusive of its application programs), data, data carriers, modifications and attachments to the extent necessary prior to the replacement. The Customer shall grant Oraise the necessary time and



opportunity to perform repair work. If Oraise does not succeed in remedying severe faults within a period of 6 months as from receipt of due and proper notice of the fault, the Customer shall be entitled to grant Oraise an extension of time, stating that the Customer will refuse remedy of the fault on expiry of that extension period. On expiry of the foregoing time period, the Customer shall be entitled to withdraw from the contract or to mitigate the purchase price if the fault has not been remedied within the prescribed extension of the time period.

All statements in manuals, documentation and/or advertising materials which refer to the expandability of a product or to any available peripherals are subject to change, in particular because the products undergo a continuous adjustment process and any such statements could also refer to future developments.

## 7. Software

Oraise warrants that software created and supplied by Oraise is essentially free from material and manufacturing faults for a period of 1 year as from the date of delivery. Insignificant deviations from the contracted specifications or marginal limitation in serviceability, especially such errors, which can be resolved by other means of the software, do not constitute a defect or damage of the created or supplied software. The foregoing warranty is restricted to the said performance. The Customer is aware that it is not possible to rule out errors in programs in accordance with the state of technology.

In case of a legitimate complaint, Oraise reserves the right to conduct a total of three rectification of defects or, in case of final failure of the attempted repairs, to grant the Customer a right of withdrawal from the contract or a reduction in the purchase price at the Customer's discretion. Clause of the limitation of liability pursuant to number 5 shall apply for the created and supplied software *mutas mutandis*.

Oraise reserves the right to make modifications to the programs after delivery if the modification improves the efficiency of the program and does not impair the other software.

All statements in manuals, documentation and/or advertising materials which refer to the expandability of a product or to any available peripherals are subject to change, in particular because the products undergo a continuous adjustment process and any such statements could also refer to future developments. If performance by Oraise is subject to acceptance, performance shall be deemed accepted if the Customer starts operating the products without filing any objection.

## 8. Lease

All hardware and software is provided for use by the Customer solely at the erection location stated in an acceptance record agreed between both parties. Any software supplied to the Customer is intended exclusively for operation of the hardware as specified in the contract; any other use whatsoever is prohibited. The Customer is not entitled to permit use of the leased products by third parties without the prior consent of Oraise. The Customer is not entitled to make any modifications or add any attachments to the leased products without the consent of Oraise. The Customer is responsible for selection of the leased products. The term of lease is specified in the contract and begins on the date on which the products are ready for operation. The lease shall automatically be ex-

tended for further 6 months in each case unless one of the parties terminates the lease agreement in writing and by registered mail at least 4 weeks prior to expiry of the lease. The parties shall specify the terms and conditions of installation and setup in a minutes of meeting and the Customer shall satisfy these terms and conditions of installation and setup by the date of delivery. The parties shall specify the date of readiness for operation in an acceptance record. The obligation to pay the lease payments shall begin on the first working day after creation of readiness for operation. The Customer shall treat the leased products with all due care in accordance with generally accepted standards. The leased products may be used only for their intended purpose. Oraise is entitled to have the leased products inspected at the place of operation at any time during normal business hours. In case of loss or theft of the leased products, the Customer shall reimburse Oraise to the amount of the reinstatement value, anyhow the Customer is entitled to prove evidence that the damage occurred is less than the reinstatement value. Oraise shall be obliged to maintain the leased products and keep them ready for operation only if the parties have signed a separate service agreement. In that case, the leased products can be replaced by other hardware or software with the same function. Oraise shall assume no other liability whatsoever, except of any liability of Oraise as a result of malicious intent or gross negligence or in a case of harm to life, body or health. The parties shall reach a separate agreement governing the arrangements for return and deinstallation of the leased products on termination of the lease.

## 9. Confidentiality

Oraise and the Customer undertake for an indefinite period of time to treat all business and trade secrets of the other party as strictly confidential and not to disclose such secrets to third parties or exploit them in any way whatsoever. Any documents, drawings and other information received by either party in the course of the business relationship may be used solely within the scope of the contractual purpose.

## 10. Miscellaneous

Should any individual provisions of these General Terms and Conditions be or become wholly or partially invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall instead be replaced by a valid provision which comes as close as possible to the intended purpose. The parties have not entered into any subsidiary agreements. Any amendments to the contract shall only become valid if confirmed in writing. The Customer is entitled to assign any rights arising from its business relationship with Oraise only with the prior written consent of Oraise. The Customer shall be entitled to set off any claims against the demand for the purchase price only if the counterclaims are accepted by Oraise or have been recognized by (declaratory) judgment legally binding. Insofar as legally admissible, the sole place of jurisdiction for any disputes shall be the domicile of Oraise in the Federal Republic of Germany. All relations between the parties shall be governed by German law excluding the United Nations Convention on Contracts for International Sale of Goods ["UN-Kaufrecht"].