

General Business Terms of DocuWare Group

All deliveries and services of DocuWare AG or one of DocuWare AG's 100% subsidiaries (hereinafter "DocuWare") rendered to another businessperson, including but not limited to any body corporate or special fund under public law, (hereinafter: "the Customer") are subject to the following General Business Terms, unless agreed on otherwise.

I. Conclusion of contract:

1. No conflicting or other conditions, notably Customer's general terms and conditions, do apply, even where DocuWare has performed a contract without expressly rejecting any such conditions.
2. DocuWare's offers shall not be binding and shall be subject to modifications. DocuWare is entitled to accept offers issued by Customer within two weeks from their receipt, unless Customer specifies a longer time period.
3. Side letters, subsidiary agreements, quality specifications to the products, warranties, guarantees, representations and other agreements or conditions shall be only valid, if made in writing.

II. Object of Delivery

1. In case the product to be delivered by DocuWare (hereinafter "Deliverable") is or contains software DocuWare may deliver at its option (i) on a data carrier, on which the object-code is stored; or (ii) by dispatching via E-Mail; or (iii) by referring the Customer to the download option via internet, always provided however the option chosen is reasonably acceptable for Customer.
2. In case a license key is necessary for the installation and the use of software to be delivered, DocuWare shall deliver such license key as necessary for the agreed operation and application of the software. For the delivery of the license key Para. 1 of this Section applies accordingly.
3. DocuWare shall deliver the documentation to the software at its option (i) in printed format, or (ii) pursuant to Para. 1 of this Section, in which case, however, the documentation shall always be delivered in printable format.
4. Before any delivery to Customer is completed, DocuWare may modify or enhance each of the Deliverables, always provided however that upon completion of delivery the agreed features and functions are met.
5. All deliveries shall be made „ex work“(EXW) pursuant the Incoterms 2000.
6. DocuWare may make partial deliveries, provided such partial delivery is reasonably acceptable for Customer.
7. In case Deliverables are delivered for testing and/or presentation purposes, such Deliverables shall remain DocuWare's property. Customer shall store the Deliverables in a safe way and keep them reasonably protected from any third party access. Customer may use such Deliverables for other than testing or presentation purposes only with DocuWare's prior written consent.

III. Date of Delivery and Delay in Delivery

1. Delivery dates shall only be binding, provided they are expressly agreed as such by DocuWare in writing. In case binding delivery dates are agreed, DocuWare shall only be considered to be in delay of delivery under the following conditions: (i) delivery is due and (ii) DocuWare fails to deliver within a reasonable extension period as granted by Customer; and (iii) such delay is caused by DocuWare's fault.
2. Compliance with binding delivery dates by DocuWare requires Customer to timely and fully perform its obligations to cooperate, to fully comply with the agreed terms of payment and any other of its obligations. Should these obligations not be met on time by Customer, the agreed delivery date shall be extended accordingly.
3. Should non-compliance with the agreed delivery date be attributable to force majeure, e.g. mobilisation, war, riot or similar events, e.g. strike or lock out, the agreed delivery date shall be extended by a period equal to the delay caused by force majeure.
4. In case slight negligence is causing delay in delivery DocuWare shall not be liable for damages caused by such delay in delivery. In any other cases DocuWare's liability shall be limited to typical damages and to an amount which upon the date of conclusion of the respective contract can reasonably be expected from DocuWare, however such amount not to exceed a maximum of 5% of the agreed price for the relevant Deliverable. Customer may only rescind the contract pursuant to applicable law, provided DocuWare is responsible for the delay in delivery. Upon request of DocuWare Customer shall inform DocuWare within reasonable time, whether Customer as a result of such delay rescinds the contract or insists on the delivery. The above limitation of liability shall not apply in case DocuWare has caused delay with gross negligence or wilful misconduct.
5. The above provisions of this Section shall not shift or alter the burden of proof to the disadvantage of Customer.

IV. Prices, Terms of Payment, Retention of Title

1. The agreed prices are ex works excluding the packaging and excluding the applicable VAT.
2. At DocuWare's request Customer will use best efforts to support DocuWare in obtaining an insurance covering all payment claims DocuWare may have against Customer under this business relation. DocuWare may select the credit insurance company.
3. Deliveries not insured according to Para.2 under this Section shall be made at Customer's option against advance payment (credit card) or cash on delivery.
4. Deliveries insured according to para.2 under this Sect. shall be paid by Customer within 14 days of the date of the invoice.
5. All Deliverables shall remain DocuWare's property until all claims for payment due to the respective delivery have been fully settled by Customer. The reservation of title shall not prevent Customer from reselling the reserved Deliverable in the proper course of business, unless such resale or transfer is explicitly prohibited by this Agreement. Customer herewith assigns its claims

from the resale of the reserved Deliverables for securing the payment obligation to DocuWare. Such assignment is limited up to the amount of the price agreed between Customer and DocuWare. DocuWare shall be entitled to disclose such assignment as necessary. Customer shall inform DocuWare, on demand, of the name and the address of the respective clients and of the type and the value of the claims against its clients. Customer shall further inform DocuWare without delay of any possible liens, encumbrances, confiscations or any other disposal or interventions into Customer's claims by third parties.

6. Customer shall only be entitled to offset DocuWare's claims for payment and/or to suspend performance of any obligation towards DocuWare, if Customer's counterclaims are finally adjudicated by a court of competent jurisdiction or if they are undisputed or if they are acknowledged by DocuWare. Additionally, Customer is authorised to exercise a right of retention and/or suspend performance only with respect to such Customer obligation which directly relates to or results from DocuWare's non-performance. Para. 9 of Sect. VI. shall not be affected or limited hereby.

V. License and usage rights

1. Subject to the payment of the agreed license fee and the following conditions DocuWare grants to Customer a non-exclusive, subject to Para 12 and 13 of this Section transferable right to install and use for internal purposes software that (i) is created by DocuWare or offered under the trademark of DocuWare (hereinafter "DocuWare Software"), or (ii) is not DocuWare Software (hereinafter: "Third Party" Software) in conjunction with the documentation and any material accompanying the software (the Documentation) and the license key.
2. A DocuWare System is the entirety of software components which are technically or logically linked to each other and as such administered within one common administration instance. Each DocuWare System contains logical entities of one or more Organizations. Such Organization technically represents inside the DocuWare System the company or the public administration of the Customer. The individual DocuWare software products and modules which can be installed in a DocuWare System contain a license for usage of the Software. Such a license is specifically issued to the one Organization of the Customer who purchased the software if not otherwise stated.
3. In the event that Customer had acquired a Client License, such license can after installation either be used as one Concurrent License or converted by the system administrator into two Named Licenses. A Client License used as a Concurrent License entitles the Customer to use the DocuWare Software on an unlimited number of workstations, provided that the multiple workstation/network system technically prevents the number of users able to work at the same time (simultaneously) as members of the Organization in any manner with DocuWare Software from exceeding the total number of available Concurrent Licenses. Client Licenses converted to Named Licenses entitles the Customer to assign such license to one named user and allow only this one user the exclusive usage of the DocuWare software.
4. In the event that Customer had acquired a Site License, such license may be used to install and use DocuWare software on an unlimited number of workstations of an Organization, provided that all users are physically located within one site. A site is defined as one building or as a group of buildings which is not divided by any public roads. Any usage of DocuWare software through users who are physically located outside such site require extra Named or Concurrent Licenses. DocuWare Software or any portion of such software may also be used temporarily but not permanently outside the site, if it is installed on a mobile computer (notebook, laptop etc.) and if this mobile computer is administered from this site.
5. A purchased Server License may be used to install and use the respective DocuWare Server Software on one server only. If such DocuWare Software requires or allows the installation and usage of portions of the DocuWare Software on different servers it may be installed and used on different servers on condition that no identical portion of such DocuWare Software is installed and used on more than one server. Such installed DocuWare Server Software although licensed by one specific Customer may also be used by all other Customer who's logical Organizations reside in the same DocuWare System.
6. In the In the event that Customer has acquired an Add-On Module License, the respective DocuWare Add-On Module may be installed and used through any user of the Customer's Organization, provided that this user in the same moment uses a valid DocuWare Client License.
7. In the event that Customer wants to acquire additional Licenses for a DocuWare System, Customer must be using the most current version of all DocuWare components in such system and a current maintenance and support subscription has to be in place.
8. In the event Customer acquires a Programmer's Toolkit License - also referred to as Software Development Kit ("SDK") - then Customer has a non-exclusive, non-transferable, non-sub licensable and royalty-free right to reproduce and distribute executable files created using the SDK. Customer is being granted a nonexclusive, non-transferable, non-sub licensable and royalty-free right to reproduce and distribute the runtime modules of the SDK provided that Customer: (a) distributes the runtime modules only in conjunction with and as a part of Customer's software product; (b) does not use DocuWare's name, logo, or trademarks to market his software product; (c) includes DocuWare's copyright notice for the SDK as part of the sign-on message for his software product; and (d) indemnifies, holds harmless, and defends its licensor from and against any claims or lawsuits, including attorney's fees, that arise or result from the use or distribution of his software product.

The "runtime modules" are those files in the SDK that are identified in the accompanying written materials as required during execution of Customer's software program.

No Multiplexing – no License pooling: In any case the Customer has to ensure, that every user who gets direct or indirect access to DocuWare software components - including all server components - or to DocuWare data through usage of non-DocuWare software is also using a valid DocuWare Client License, either as Named or Concurrent License.

9. In case and to the extent Customer has acquired from DocuWare licenses to any Third Party Software, DocuWare reserves the right to limit Customer's license rights pursuant to the requirements of the licensing terms between DocuWare and the Third Party licensor. In the event a Microsoft SQL-Server license is acquired by Customer, the respective license is, in addition to the limitation set forth above, also runtime restricted and may only be used in conjunction with DocuWare Software. The aforementioned Third Party Software may not be used for any purpose of development and/or in conjunction with applications, databases or schedules that are not contained in DocuWare Software. However, it is permitted through the use of appropriate tools, to access those databases and schedules that are generated by DocuWare Software.
10. Nothing in the General Business Terms entitles Customer to use any name or trademark of DocuWare for any purpose whatsoever, or to use any other name or mark confusingly similar thereto, without the express written consent of DocuWare, save as expressly set forth in these terms and conditions.
11. None of the Deliverables may be modified adapted, disassembled, decompiled, reconstructed or transformed, unless and to the extent permitted by mandatory law.
12. Customer may permanently transfer any software and Documentation acquired from DocuWare to third parties, whether against consideration or free of charge, provided that (i) Customer has completely transferred the software and the Documentation to such third party, and (ii) Customer has concluded with such third party a license agreement, which license terms and confidentiality obligations shall be for the third party at least as restrictive as the respective terms of these general terms and conditions, and (iii) such third party has agreed to procure from DocuWare a new license key after compensating DocuWare for all costs incurred by DocuWare for generating such license key. In case the above requirements are met, Customer shall (i) completely transfer the Software and the Documentation by delivering all original data carriers to such third party and (ii) completely deliver any copy made thereof to such third party or, at its option, destroy any not transferred copies thereof. With the completion of transfer of the software Customer's right to use the software and the Documentation shall lapse immediately.
13. Customer shall be entitled to transfer the software and the Documentation to third parties on a non permanent basis, provided that (i) such transfer shall not be made for profit purposes (e.g. leasing, Software-as-a-Service), and (ii) Customer has concluded with such third party a license agreement, which license terms and confidentiality obligations shall be at least as restrictive for such third party as the respective terms of these general terms and conditions, and (iii) such third party has agreed to procure a new license key from DocuWare for all costs incurred by DocuWare for generating such license key. When the third party is using the software, Customer shall have no right to use the Software and the Documentation. Any non permanent transfer of the software to third parties for a profit purpose (e.g. leasing, Software-as-a-Service) shall not be permitted, unless DocuWare has granted Customer its prior written consent.
14. If Customer intends to export the software in a country outside the EU, Customer shall obtain all information regarding the export regulations (Bundesausfuhramt, 65760 Eschborn/Taunus) and obtain all permits, ordinances, order or regulations covering such export.
15. Customer's right to use the software and the Documentation shall lapse with immediate effect through any use that is not in strict compliance with this Section V.

VI. Defects of Quality

The exclusive warranty and remedy of Customer for defects in quality of Deliverables shall be as follows:

1. Customer shall make an incoming inspection immediately after delivery of each Deliverable. Should Customer fail to notify in writing a deficiency as to the completeness, the quantity and defects within five days from delivery, the Deliverable shall be deemed to be complete and correct, unless Customer proves a latent and hidden defect, which could not be revealed by such incoming inspection, which in the business or type of industry involved could reasonably be expected. An incoming inspection of software shall require an installation and use of software, unless this cannot unreasonably be expected in the business or industry involved.
2. DocuWare warrants that the Deliverables upon date of delivery are substantially free from defects. DocuWare warrants that Software will substantially comply with the features and functions specified in the respective Documentation in the data sheet to the respective Software (published e.g. under www.docuware.com)
3. If within the warranty period the Deliverable does not substantially comply with warranty given under Para. 2 of this Section above, DocuWare shall free of charge either use reasonable commercial efforts to correct such defects of the Deliverable or, at its option, replace defective Deliverables, provided that the cause of the defect already existed at the date of delivery of software to Customer. Corrective actions of Customer as to the Software may include (i) the provision of an updated or enhanced release of the licensed Software, or (ii) the provision of patches, provided such corrective actions are reasonably acceptable for Customer and the agreed features and functionalities are met. In case DocuWare's attempt to remedy the defect fails, Customer may – notwithstanding any claims for expenses or damages Customer may have according to Sect. VIII. - withdraw from the contract or reduce payment. In case of withdrawal from the contract Customer shall, at DocuWare's request, destroy the original data carrier and the Documentation made available by DocuWare.

4. Any warranty claim of Customer under this Section shall be time-barred 12 months from the date of delivery (warranty period). This shall not apply in case applicable mandatory law provides for longer limitation periods or with regard to damages caused by personal injuries, by DocuWare's intent or gross negligence as well as to damages attributable to fraudulent concealment of defects by DocuWare. Provisions of applicable law relating to restraint and restart of limitation periods shall not be affected.
5. Customer shall immediately notify DocuWare in writing of any defects in quality. In any event, Customer loses the right to rely on a defect in quality, if he does not give DocuWare notice hereof at the latest within a period of 12 month from the date of delivery.
6. Warranty claims of Customer with regard to software shall be excluded if and to the extent
 - the quality of the Deliverable does not substantially differ from the agreed quality; or
 - the defect does not substantially affect the use of the Deliverable; or
 - the defect was not immediately notified in writing by Customer after getting knowledge of the defect; or
 - a software defect is not reproducible or retraceable by machine created reports; or
 - the delivery of software is part of and/or covered by DocuWare's support and maintenance obligation.
7. In case defects are notified immediately, payments by the Customer may be withheld to an extent which is reasonably proportionate to the defect that has occurred. The Customer may withhold payments only if a notice of defect is asserted and there is no doubt that such defect is justified. If the notice of defect turns out to be wrong, DocuWare is entitled to demand compensation from the Customer for the expenses it has incurred.
8. Sect. VIII. applies accordingly to Customer's claims for damages and expenses based on defects in quality or Deliverables as granted by applicable law.

VII. Non-Infringement of Third Party Rights

The exclusive warranty and remedy of Customer for the infringement of third party rights by the Deliverables shall be as follows:

1. DocuWare warrants that the Deliverables on the date of delivery are free from any industrial property rights and copyrights of third parties (together hereinafter „Industrial Property Right“) as recognized at the agreed place of delivery, that substantially restrict the contractually agreed use by Customer.
2. In case of an alleged infringement of Industrial Property Rights DocuWare shall be entitled – to the extent reasonable acceptable to Customer - to replace the infringing Deliverable by a Deliverable, that no further infringes Industrial Property Rights and substantially complies with the agreed features and functions.
3. Any warranty claim of Customer under this Section shall be time-barred 12 months from the date of delivery from DocuWare to Customer. In any event, Customer loses the right to rely on an infringement of Industrial Property Rights, if he does not give DocuWare notice hereof at the latest within a period of 12 month from the date of delivery.
4. Any warranty of non infringement of third party rights shall be excluded if the infringement of Industrial Property Rights is not caused by the Deliverable itself, but by Customers application or use of the Deliverable, unless such use or application was explicitly permitted according to the Documentation. Claims of Customer are also excluded if Customer fails to notify DocuWare immediately in writing of a possible infringement of Industrial Property Rights.
5. Sect. VIII. applies accordingly to Customer's claims for damages and expenses based on infringement of Industrial Property Rights as granted under applicable law.

VIII. Limited Liability

1. Any and all liability of DocuWare for damages and/or expenses of Customer (hereinafter „claims for damages“) - irrespective of the legal basis - in particular caused by breach against contractual obligations and tort, are excluded. DocuWare shall not be liable for damages due to the loss of saved data, if the damage was avoidable by the proper application of data saving measures.
2. The above exclusions and limitations shall not apply for any damage caused due to (i) strict product liability law, or (ii) DocuWare's intent or gross negligence, or (iii) personal injuries, or (iv) any breach of essential contractual obligations. However, the liability for the breach against essential contractual obligations shall be limited to typical damages and to an amount, which upon the date of purchase can reasonably be expected from DocuWare, unless the damage is caused by intent, gross negligence or personal injury. The burden of proof shall not be shifted or altered to the disadvantage of Customer by the foregoing stipulations.
3. In case Customer is entitled to claims for damages according to this Sect. VIII., these shall become time-barred when the limitation period for defects in quality would expire according to Sect. VI. For Customer's claims for damages based on strict product liability law the statutory period of limitation shall continue to apply.

IX. General Provisions

1. Contracts with Customers and their conclusion shall be governed by and construed in accordance with the laws of Germany. Exclusive legal venue for all disputes arising in connection with or as a result of these general terms and conditions shall be Munich (Germany).
2. In case a provision of this general terms and conditions is or becomes ineffective, the effectiveness of these general terms and conditions shall thereby not be affected. The parties shall replace the ineffective provision by such effective provision as comes closest to the parties' intention at the time of the conclusion of the contract.