

General Terms and Conditions (GTaC)

as of April 2004



(Solely the German version is legally binding; this version is just a translation.)

1. Area of Application

- 1.1. These General Terms and Conditions apply to all stipulations with customers of miray Software GbR including those arisen via telecommunication channels (§ 312b Abs. 2 BGB).
- 1.2. The GTaC are effective for deliveries and services by miray to the client ("AG").
- 1.3. Terms differing from these GTaC - as far as not constituted in the entire offering of the AG - are not effective.

2. Offering

Our offerings are always subject to confirmation and possibly depend on the availability from our suppliers. Graphical representations, descriptions, declarations of dimension or weight in prospectuses, documents, catalogues etc. are subject to alteration by miray.

3. Self-supply Reservation

If the stipulated consignment is not available because miray itself has not been supplied by its suppliers or the inventory stocks of miray for this consignment are exhausted, miray is entitled to withdraw from the contract. In this case the AG will be informed immediately that the stipulated consignment is not available.

4. Delivery of Software

Software is committed to the customer as a licensee for use within the limits of a single-workstation-license. Any simultaneous use on two or more workstations or any use within a network requires an appropriate number of single-workstation-licenses or an adequate multi-workstation-license.

5. Right of Cancellation by AG, if being a end-user

In case that the stipulation results from exclusive use of telecommunication channels (i.e. by telephone, in written form including facsimile or by e-mail) the AG is entitled to the following right of cancellation:

- 5.1. The AG may cancel contracts in written form (by e-mail as well) or by returning the consignment within the respite of two weeks to the address of miray in each case.
- 5.2. There is no right of withdrawal for software that has already been unsealed by the AG.
- 5.3. Further, there is no right of withdrawal for deliveries that have been transmitted online (e.g. software for download).
- 5.4. The respite of two weeks begins with receipt of the consignment. It is ensured by dispatch of the complete, unused and undamaged consignment to miray.
- 5.5. As far as the order value amounts more than 40,00 Euro, miray restitutes the freight charges for reconsignment by Deutsche Post AG. Charges of other carriers will not be restituted. Shipments sent freight unpaid will not be accepted by miray and will be returned at the expense of the AG. Freight unpaid shipments and deficiencies in franking count as not sent properly and do not have effect on ensuring the respite.
- 5.6. Miray is entitled to retain a diminution emerging from utilization of the consignment.
- 5.7. If the returned consignment is damaged or defective, miray is entitled to demand compensation from the AG.

6. Passing of Risk, Delivery Period

- 6.1. Risk passes to the AG as soon as the consignment has been delivered by miray to the person or institution decided to handle shipping.
- 6.2. If the breach of a possible delivery date is caused by force majeure, e.g. mobilization, war, riot, general telecommunication interference or similar events, e.g. strike, lockout, periods are extended adequately. Miray will inform the AG immediately about the delay in delivery.

7. Terms of Payment

Purchase price becomes due immediately with ordering.

8. Charging, Right of Retention

The AG can only charge up against such receivables that are undisputed or legally ascertained.

9. Deficiencies in Matter

- 9.1. It is pointed out to the AG that it is technically impossible to develop software that is absolutely faultless. Therefore miray only accepts warranty for the technical usability of the program delivered by miray for its declared intended purpose. There is no warranty being issued that the standard software is in accordance with the operational characteristics of the AG as far as nothing different is stipulated in written form. Employees of miray are not authorized to enter into verbal commitments. In case of illicit interventions concerning the software installation by the AG or third party any further warranty on the part of miray will become void.
- 9.2. The parts of the consignment that show a deficiency in matter within the limitation period as far as its cause has already been existing at the moment of passing of risk have to be mended, to be delivered again or to be yielded again gratuitously at the option of miray.
- 9.3. Despite a repeated fulfillment the period of limitation does not start over. (10.3).
- 9.4. Claims from deficiencies of matter become time-barred within 12 months from handover of the consignment. This does not apply as far as §§ 438 Abs. 1 Nr. 2, 479 Abs. 1 and 634a Abs. 1 Nr. 2 BGB stipulate longer respites as well as in cases of injury of life, body or health, in case of an intentional or grossly negligent breach of duty of the AG and in case of fraudulent concealment of a deficiency. The legal requirements about inhibition of expiry of the time limit, inhibition or restart of respites stay unaffected. For end-users the time limit does not expire until 24 months from handover.
- 9.5. If a belated fulfillment is failing, the AG may – irrespective of possible claims for damages (13.) – withdraw from the contract or lower the commission.
- 9.6. Claims for deficiencies do not exist in case of damages, which emerge after passing of the risk, either (1) as a result of incorrect operation or handling or (2) due to use of other software, which is not compatible to the object of delivery, or (3) due to exterior influences that are not assumed according to the

contract. If the AG conducts improper modifications to or unauthorized interventions in the software installation, there are no claims for deficiencies for these and the resulting consequences.

- 9.7. The AG will reprove miray for deficiencies in matter immediately in written form. If the AG is end-user he will notify miray about pending deficiencies in written form or by e-mail within a respite of two weeks from receipt. After expiration of the respite the assertion of pending deficiencies is barred.
- 9.8. Claims of the AG resulting from expenditures necessary for the purpose of belated fulfillment, especially forwarding expenses, are barred as far as they are based upon the fact that the consignment has been brought to a location different from the delivery address afterwards.
- 9.9. Miray has to be conceded an alternative for belated fulfillment within an appropriate period of time. If this is denied, miray is exempted from liability for deficiencies in matter.
- 9.10. Advanced claims or claims different from those regulated in cipher 9. of the AG against miray due to a deficiency in matter are barred. Furthermore cipher 12. applies regarding claims for damages.

10. Infringement of Property Rights, Other Deficiencies in Title

- 10.1. As far as third party asserts legitimate claims against the AG based on the infringement of property rights through a consignment rendered by miray and utilized contractually, miray is liable against the AG within the respite constituted in 9.4 as follows:
 - 10.1.1 For the consignment in concern, miray will at own option and expense either effect right of use or change it in a way that these property rights are not infringed any more or substitute it. If this is not feasible for miray on appropriate conditions, the AG is entitled to the legitimate rights of withdrawal and reduction.
 - 10.1.2 The liability of miray to compensate damage is based upon 12.
 - 10.1.3 The liabilities of miray mentioned above only persist as far as the AG informs miray immediately and in written form about the claims raised by third party, does not acknowledge an infringement and all defense actions and negotiations for settlement stay reserved to miray. If the AG discontinues utilization of the consignment for reasons of loss minimization or other important reasons, he will point out to third party that the discontinuation of utilization does not involve a confession of an infringement of property rights.
- 10.2. Claims of the AG are barred as far as he is responsible for the infringement of property rights.
- 10.3. Furthermore, claims of the AG are barred as far as the infringement of property rights is caused by special demands of the AG, by utilization not predictable by miray or by the AG modifying the consignment or utilizing it in combination with products not delivered by miray.
- 10.4. In case of other deficiencies in title, the regulations from 9. apply accordingly.

11. Impossibility, Adaptation of Contract

- 11.1. As far as delivery is impossible, the AG is entitled to claim compensation unless miray is not responsible for the impossibility. But the claim for compensation of the AG is limited to 10 % of the value of that part of the consignment that cannot be utilized by the AG due to the impossibility. This does not apply as far as in cases of intention, gross negligence or initial inability or due to harm for life, body or health an obligatory liability applies; this does not imply a change of the burden of proof to the disadvantage of the AG. The right of withdrawal of the AG stays unaffected.
- 11.2. As far as events of force majeure (6.2) change the economic relevance or the contents of the consignment significantly or affect on the business of miray significantly, the contract will be accommodated adequately under consideration of good faith. As far as this is economically not justifiable miray has the right of withdrawal. If miray wants to exercise this right of withdrawal, miray will notify the AG thereof immediately after getting awareness of the consequences of the event, even if there was an agreement with the AG at first concerning an extension of the delivery period.

12. Other Claims for Compensation

- 12.1. Claims for compensation and claims for reimbursement of expenses of the AG, regardless of the legal ground, especially due to breach of duties from the obligation and from illegal action, are barred. Therefore miray is especially not liable for damages that arise at the consignment itself and for loss of profit or for other financial losses of the AG.
- 12.2. This does not apply as far as there is no obligatory liability for example according to the law of product liability or in cases of intention, gross negligence, due to harm for life, body or health.
- 12.3. Compensation for the infringement of essential contractual obligations is limited to the contract-typical, predictable damage, as far as it is not based upon intention or gross negligence or liability arises from harm for life, body or health.
- 12.4. As far as liability of miray is barred or limited according to 13., this also applies to the personal liability of its clerks, employees, contributors and other assistants but not to the personal liability of legal representatives and executives.
- 12.5. As far as the AG is entitled to compensation according to 12., they become time-barred within 12 months from delivery. In case of intention, bad faith and in case of claims for compensation resulting from the law of product liability the legal regulations for lapse of time apply.
- 12.6. The regulations of 13. do not imply a change of the burden of proof to the disadvantage of the AG.

13. Confidentiality

- 13.1. Concerning the documents, knowledge, information and other technical documentations – independent if the used medium – ("Information") of the opposite party obtained on base of the contract, either party will neither pass them on to a third party nor use them for other purposes than those contractually agreed on without written consent of the opposite party. They have to be protected against unauthorized inspection or use. Without restraint of other rights one party can demand their return if the opposite party infringes these duties.
- 13.2. The duty according to cipher 13.1 start with the first receipt of information and ends 36 months after expiration of the contract.
- 13.3. The duty according to cipher 13.1 does not apply to information that is matter of common knowledge or that are already known to the receiving party at receipt without being obligated to nondisclosure that are transmitted subsequently by an authorized third person or that are developed by the receiving party without utilization of information from the opposite party that are subject to nondisclosure.

14. Subsidiary Agreements, Place of Jurisdiction, Applicable Law

- 14.1. Subsidiary agreements require written form.
- 14.2. Place of jurisdiction is Munich (Germany) if the contractual partner is businessman in terms of the Handelsgesetzbuch.
- 14.3. German law applies to the exclusion of CISG.