

General Terms and Conditions of Business– datadirect GmbH

(last update: March 2013)

1. Validity

(1) These General Terms and Conditions of datadirect GmbH, Freiburg/Br. (hereinafter: datadirect) shall apply to all contracts concluded with datadirect. They also apply to all future business relations even if not specifically agreed again.

(2) Any business terms of the contractual partner which differ shall not be binding unless expressly accepted in writing by datadirect.

(3) These General Terms and Conditions supplement framework agreements, individual written agreements and price lists. In so far as their provisions shall differ in individual cases, these General Terms and Conditions shall be waived in this respect.

2. Offer / conclusion of contract

(1) Offers are subject to confirmation and without obligation. Details in advertising texts and correspondence are, unless agreed otherwise, not to be deemed guaranteed characteristics or warranties.

(2) The sales staff of datadirect are not authorized to make additional agreements or give verbal promises above and beyond the contents of any written agreement.

3. Terms of delivery

(1) Contractual performance deadlines are, if no agreement exists to the contrary, guidelines and not fixed dates. In the event of delays which are the responsibility of the customer, any binding or non-binding deadlines agreed may be extended. The agreement of binding delivery dates or deadlines must be confirmed in writing.

(2) Delays in delivery or performance due to force majeure or resulting from unforeseen events or events for which datadirect are not responsible and which cause delivery to be temporarily difficult or impossible – including industrial disputes, acts of government authorities etc, including those which occur at datadirect's suppliers – shall not be the responsibility of datadirect, even in the case of binding agreed deadlines. datadirect shall be entitled to postpone delivery or performance by the duration of the hindrance plus a reasonable start-up time or to withdraw from the contract as a whole or in part in respect of the part of the contract not yet fulfilled. datadirect shall inform the contractual partner immediately about these hindrances. In the event that the hindrance is longer than two months, the contractual partner shall be entitled to withdraw due to non-fulfilment of the contract. The contractual partner shall not be entitled to claim compensation.

(3) In the event of amendments to the contract which affect the delivery deadline, the deadline shall be prolonged accordingly, in so far as no special agreements have been made to the contrary.

(4) datadirect shall be entitled to hold back deliveries and performance for as long as the purchaser is in default of contractual obligations relating to other contracts.

(5) datadirect shall be entitled to employ subcontractors to perform its services. datadirect shall be liable for their performance to the same extent as for their own.

4. Terms of payment

(1) The prices agreed do not include sales tax. The reimbursement of travel and expenses etc. is included in a separate agreement.

(2) Unless agreed otherwise, invoices are due within seven days from date of invoice without deductions. In the event of any delay in payment, interest on arrears shall be charged in accordance with § 288 BGB. Any further claims shall remain reserved.

(3) The contractual partner shall only be entitled to set-off if their counterclaims have been established as legally binding, undisputed or recognised by datadirect.

5. Scope of delivery, purchase

(1) Unless specifically agreed otherwise, datadirect shall sell the customer hardware and software not produced by it. This shall be handed over to the customer together with the documentation supplied by the manufacturer. The selection and dimensioning of the hardware shall be according to the specifications of the customer. This also applies in so far as datadirect advises the customer on the purchase of hard-/software by a third party. Advice is based solely on the specifications of the customer regarding needs and corporate planning.

(2) Installation and configuration of software as well as instructions/training in the use of hardware and software are owed only due if agreed separately.

6. Passing of risk and delivery

(1) Risk shall pass to the purchaser as soon as the consignment has been handed to the person entrusted with transport or has left the warehouse of datadirect for delivery. Unless expressly agreed otherwise, datadirect shall be free to select the delivery route and means of transport. The goods will be insured at the request and expense of the buyer.

(2) In the event that shipment is delayed at the request of the purchaser or due to reasons for which the purchaser is responsible, the goods shall be stored at the expense and risk of the buyer from the date of notification of readiness for shipment.

7. Reservation of title

(1) datadirect reserves title to the goods for purchase until all contractual payments have been received. The reservation of title shall apply until all accounts receivable from the business transaction including future claims have been settled.

(2) In the event of breach of contract, in particular delays in payment, datadirect shall be entitled, after giving notice and stating a deadline, to withdraw from the contract and take back the goods.

(3) In the event of seizure or other interventions by third parties, the customer shall inform datadirect in writing of such an event without delay.

8. Usage rights

(1) In so far as services rendered by datadirect are protected by copyright, all rights of use shall only pass to the contractual partner on receipt of payment in full.

(2) Rights of use shall only be transferred to the purchaser in terms of time, place and content to the extent expressly agreed or required for the purpose of the contract. The rights shall otherwise remain with datadirect. The right to amend or edit is not granted unless agreed otherwise. The contractual partner is not entitled to grant sublicenses unless this has been agreed separately. This shall also apply with regard to the use within the company.

9. Acceptance

In so far as datadirect renders work and service, the contractual partner shall be obliged within ten working days of the goods being placed at their disposal to check these for function and any defects. Should the goods not be checked within this deadline, they shall be considered to have been accepted. The goods shall also be considered to have been accepted if the contractual partner puts them to use without objections.

10. Early termination

(1) In so far as datadirect perform work and the contractual partner wishes to terminate the contract at the concept stage, in the case that a right to terminate has been agreed, a reduced remuneration corresponding to the costs incurred shall deem to have been agreed as compensation. In other respects § 649 BGB shall apply. Services commissioned and third party expenses required are to be reimbursed in all cases.

(2) All rights of use shall remain with datadirect in the case of early termination.

11. Customer participation

(1) As far as required or agreed, the customer shall support datadirect appropriately in the creation of work or the performance of services. Data and information is to be provided to datadirect in the format required. In so far as the customer provides data

in an electronic format infected with damaging programs (e.g. computer viruses) the customer shall be liable for any damage caused to datadirect.

(2) The services of datadirect are subject to the customer having adequate equipment. The customer is to observe the specific technical demands stated by datadirect on hardware and software and their specifications (e.g. security settings) for contracts and orders. Any modifications by datadirect not foreseen in the contract are not included in the price.

(3) The customer is obliged to ensure regular (daily) backup of data and software.

(4) Unless agreed otherwise, the customer shall be responsible for the maintenance of the IT infrastructure including security and malware protection as well as correct password administration.

12. Hosting

In so far as datadirect provides hosting services, availability is guaranteed for 97% as monthly average, unless greater availability has been agreed. In the event that the customer expects higher access rates, datadirect is to be informed a week in advance.

13. Claims / Warranty

Within the framework of § 377 HGB the customer is to check the performance and accounting immediately. Obvious faults are to be reported immediately to datadirect. Faults which cannot be immediately detected, even by careful checking, are to be reported to datadirect immediately on discovery in writing giving specific details.

14. Responsibility for content

(1) datadirect is neither entitled nor obliged to give legal advice. The contractual partner is responsible for checking the approval for use of products and solutions in or for their business. Before using configurations and implementing software solutions it is their responsibility to check whether these might infringe copyrights, personal rights, criminal law, labour laws, data protection or other laws in their industry.

(2) The use of software licences acquired is only permitted within the terms of the licence concerned.

15. General limitation of liability

Claims for damages against datadirect are excluded unless they are due to deliberate or grossly negligent behaviour causing the breach of contractual duties or injury to the body or health of a person. The same shall apply in so far as the replacement of direct or consequential damage is demanded. Any liability shall be limited to the damage typical for such cases and foreseeable at the time the contract was concluded. Liability in accordance with the Product Liability Law remains unaffected.

16. Confidentiality

datadirect shall treat with strictest confidence all business secrets of the contractual partner to which they have access in the process of performance of the contract. In the event that datadirect commissions a subcontractor to perform services, datadirect shall pass on this obligation.

17. References

Unless agreed otherwise, datadirect shall be entitled to name the contractual partner as a reference in their advertising.

18. Text form

Legally binding declarations concerning datadirect as well as any amendment to the contract must be made in writing or by telefax.

19.

Place of performance, jurisdiction, governing law

The place of performance for all commitments and jurisdiction for all disputes arising from the contract shall be in the courts of law of Freiburg, provided the contractual partner is a registered merchant or a legal person under public law. The contract shall be governed by the laws of the Federal Republic of Germany excluding the UN Convention on the International Sale of Goods.

20. Severability

If individual provisions of this contract are or become ineffective, the remaining provisions shall remain in full force and effect.