

DATA MODUL AG - General Terms and Conditions of Sale

Valid as of December, 2009

1. Scope

1.1 These General Terms and Conditions of Sale (hereinafter "Terms") of DATA MODUL shall apply for all agreements on deliveries and products and/or services by DATA MODUL.

1.2 These Terms shall have exclusive validity. Any terms of the customer that deviate, have a different wording from these Terms, or contradict these Terms do not form part of the Agreement. This shall also apply in the event that DATA MODUL knows about such terms of the customer and renders delivery and/or provides products and/or services to the customer, unless DATA MODUL expressly confirmed their validity in writing.

1.3 These Terms shall also apply for all future business relationships and agreements on deliveries and products and/or services between DATA MODUL and the customer.

1.4 All agreements on deliveries and products and/or services that are made between DATA MODUL and the customer shall be recorded in writing in the respective agreement and any additional agreements.

1.5 These Terms shall also apply to companies, legal persons under public law and special funds of public law within the meaning of § 310 par. 1 of the German Civil Code, BGB.

2. Conclusion of agreement

2.1 If one of the customer's orders is to be qualified as an offer pursuant to § 145 German Civil Code, BGB, DATA MODUL shall accept the customer's offer within four weeks of receipt.

2.2 Offers by DATA MODUL are without engagement.

2.3 An agreement between DATA MODUL and the customer shall only result if and when DATA MODUL confirms the order in writing. Sending of an invoice or making delivery of a product and/or a service by DATA MODUL are equivalent to an express order confirmation.

2.4 DATA MODUL shall reserve rights of ownership and copyrights for illustrations, drawings, calculations, films, templates, slides, reproductions, blueprints and other materials. These may not be made accessible to third parties or used by the customer for the customer's own purposes or those of third parties without DATA MODUL's written agreement. Otherwise, DATA MODUL is entitled to demand compensation for damages without prejudice to other rights.

3. Remuneration, payability, default in payment, offsetting, right of retention

3.1 DATA MODUL's prices are ex works.

Packaging costs and the costs of taking back the packaging shall be billed separately as shown in the respective agreement. The same shall apply for shipping costs if the customer requests shipping.

Unless agreed otherwise, selection of the shipping mode and the shipping route shall be at DATA MODUL's discretion.

3.2 If the object of the agreement constitutes an import, the prices quoted in the order confirmation shall be based on the exchange rate of the foreign currency applying the day that the order confirmation is prepared and signed.

3.3 DATA MODUL reserves the right to change its prices accordingly if costs should rise during the time between the conclusion of the Agreement and delivery of the goods or product and/or services, in particular with respect to wage or salary increases, increases in freight costs, including customs, import and export fees and the prices of DATA MODUL's upstream suppliers, as well as to cost increases resulting from changes in the exchange rate.

3.4 DATA MODUL's prices do not include value-added tax. The respective VAT amount is shown separately in the invoice.

3.5 The respective charges are payable immediately upon receipt of the delivery of the products and/or services by the customer.

3.6 The customer defaults in payment automatically after 14 calendar days after payability and receipt of the invoice, or 14 days after payability and receipt of the products or services at the latest. No reminder shall be required.

3.7 If the customer defaults in its obligation to pay, DATA MODUL is entitled to interest on the defaulted payment of 12% per year, insofar as it relates to payment claims. If the default does not relate to payment claims, DATA MODUL is entitled to interest on default of 9 % per year.

3.8 DATA MODUL is entitled to prove higher damages due to default in a given case.

3.9 DATA MODUL accepts checks and bills of exchange. However, such acceptance shall be subject to payment by the drawee bank. Any fees or taxes levied on bills of exchange shall be for the customer's account.

3.10 The customer is only entitled to offset payment or retain products if its counterclaim has been legally established, is uncontested or if it is acknowledged by DATA MODUL.

4. Time of delivery or performance, default

4.1 DATA MODUL is entitled to delivery and performance by installments, provided that this is not unacceptable for the customer.

4.2 Delivery deadlines and dates are only binding if they were agreed explicitly and in writing. Deadlines for delivery shall be deemed to have been met if the object of the agreement has left the plant or if notice of readiness for shipment has been given by expiration of the deadline.

4.3 If delivery is delayed upon the customer's request, DATA MODUL shall store the goods the customer's cost and risk.

4.4 In case of force majeure situations, the parties are entitled to delay the delivery of products and/or services by the length of time such situation persists, including such situations arising during a default period. Force majeure on DATA MODUL's part shall mean all circumstances for which DATA MODUL cannot be held responsible, and as a result of which it becomes impossible or unacceptably difficult for DATA MODUL to render the delivery or provide the products and/or services, in particular lawful strike action or lockout, war, import and export prohibitions, shortages of energy and raw materials, measures taken by the authorities, untimely delivery to DATA MODUL for which DATA MODUL is not responsible. In case such hold-up should last longer than two months, the customer is entitled to withdraw from the Agreement after setting an appropriate grace period and if the customer proves that the complete or partial performance of the agreement that is still due is no longer of interest to the customer due to the delay. Termination of the Agreement for a different than the above reason shall not be affected by the foregoing.

4.5 In case DATA MODUL has already defaulted and in case the customer has set an appropriate deadline for delivery of the products and/or services and has simultaneously declared that it will refuse such products and/or services after the deadline has expired, the customer is entitled to withdraw from the Agreement if DATA MODUL fails to meet the grace period. The grace period must be at least four weeks.

4.6 Compensation claims against DATA MODUL as a result of default shall conform to Point 8.

4.7 Compliance with the duty of delivery and performance by DATA MODUL presupposes the timely and proper satisfaction of all contractual duties by the customer.

4.8 If the customer defaults in acceptance or violates other duties to cooperate, DATA MODUL is entitled to take action in accordance with § 280 ff. German Civil Code, BGB. In this case, the risk of accidental destruction or accidental deterioration of the object of the Agreement shall also pass to the customer at such point in time when same defaults in acceptance.

5. Passing of the risk, transport insurance

5.1 Unless something different follows from the order confirmation, the parties are agreeing delivery ex works.

The risk passes to the customer when the object of the Agreement is transferred to the person carrying out the transport. This shall also apply for transport by DATA MODUL.

5.2 In the event of shipping, DATA MODUL shall take out transport insurance upon the customer's request and at the customer's cost. DATA MODUL and the transport company performing shipment must be notified of transport damages immediately, but no later than within 5 days of delivery.

6. Third-party industrial property rights

6.1 The customer shall inform DATA MODUL immediately if and when third parties assert the infringement of patents or other industrial property rights.

6.2 If and when there is a corresponding contractual obligation, DATA MODUL shall indemnify the customer from third parties' claims, provided that the customer fully conveys to DATA MODUL the arrangements for the legal defense.

7. Warranty for defects

7.1 The following customer's warranty rights presuppose that same has duly complied with its duty of examination and its duty to give notice of defects in accordance with § 377 German Commercial Code, HGB. During the examination, the goods must be inspected according to the specifications agreed with DATA MODUL in writing. If these do not exist, the specifications of the manufacturer of the delivered goods shall be used as a standard. In the event of obvious defects, the customer must notify DATA MODUL in writing immediately and no later than within eight calendar days after receipt of the goods.

7.2 Advertising statements or other public statements and declarations by third parties do not give grounds for material defects. DATA MODUL's warranty is excluded in this respect.

7.3 Goods that turn out to be defective at the time of the passing of the risk shall be delivered subsequently or repaired (subsequent performance) at DATA MODUL's discretion. DATA MODUL may refuse the selected form of subsequent performance or the subsequent performance as a whole if same is only possible at a disproportionate cost. Subsequent performance shall be deemed failed if three attempts at subsequent performance by DATA MODUL have failed or if DATA MODUL has refused subsequent performance in accordance with Point 7.3, Sentence 2.

7.4 Return deliveries of defective goods to DATA MODUL for the purpose of subsequent performance may only be effected after DATA MODUL's written consent. The customer shall bear the transport costs incurred in this case. The risk of accidental destruction and accidental deterioration of the returned goods do not pass to DATA MODUL until the goods are delivered to DATA MODUL at its place of business. In case that DATA MODUL delivers a product free of defects for the purpose of subsequent performance, the customer must return the previously delivered product.

7.5 In case that DATA MODUL is not willing or able to correct defects/deliver a replacement, particularly if same is delayed beyond reasonable deadlines for reasons, for which DATA MODUL is responsible, or if the correction of defects/delivery of replacement pursuant to Point 7.3 fails otherwise, the customer shall be entitled to demand withdrawal from the agreement or a reduction of price and compensation for damages at its discretion within the framework of legal regulations. The correction of defects/delivery of replacement shall not be deemed failed until three attempts have been unsuccessful.

7.6 The period of limitation for claims for defects including damage claims is one year from the legal start of statutory limitation. This shall not apply in the event of deliberate intention and gross negligence. Otherwise, Points 8.1 to 8.4 shall apply for the damage claim.

7.7 In the event of changes to the object of the Agreement, which the customer carries out or has third parties carry out without DATA MODUL's prior consent, the warranty shall lapse unless the customer proves that there is no causal relationship between the change and the defect.

8. Joint and several liability

8.1 DATA MODUL carries unlimited liability for deliberate intent and gross negligence. DATA MODUL is only liable for ordinary negligence and with a limitation to foreseeable damages that might typically occur under the agreement if a duty is violated, the compliance with which is of special importance for the achievement of the purpose of the agreement and which the customer can normally trust in.

8.2 In the event of ordinary negligence, the amount of DATA MODUL's liability is limited to the damage which might typically occur under the agreement and which could be foreseen when the Agreement was concluded.

8.3 DATA MODUL shall only be liable for cases of initial impossibility if it was aware of the impediment to the product and/or services or if the lack of awareness is due to gross negligence.

8.4 The foregoing liability limitations or exclusions, as applicable, do not apply for claims pursuant to German product liability law and to damages arising from violation of life, body or health.

8.5 Insofar as DATA MODUL's liability is excluded or limited, this shall also apply for the personal liability of its employees, contractors, agents and vicarious agents.

8.6 The customer's compensation claims, for which liability is limited according to this point, shall be struck by the statute of limitation in one year, calculated from the legal start of statutory limitation, with the exception of claims from unlawful acts.

9. Assurance of retention of title

9.1 DATA MODUL retains the title to the delivered goods until all claims, which exist against the customer based on the business relationship at the time that the Agreement is concluded, have been satisfied. This shall also apply for future claims that DATA MODUL acquires from the ongoing business relationship with the customer.

9.2 In case that the customer culpably violates the agreement, particular in the event of default in payment, DATA MODUL is entitled to take back the object of the agreement. Taking back the object of the agreement does not constitute withdrawal from the agreement, unless DATA MODUL explicitly declared a withdrawal in writing.

9.3 The customer is entitled to resell the object of the agreement in the course of ordinary business transactions as long as it does not default in payment. Hereby, the customer immediately assigns all receivables to the amount of the total sum of the respective invoice of DATA MODUL's claim (including value-added tax), which it acquires against its buyers or third parties from reselling the goods to DATA MODUL, with this applying irrespectively of whether the object of the agreement was resold without processing or after processing. DATA MODUL accepts this assignment. The customer shall continue to be authorized to collect this receivable after the assignment. DATA MODUL's authority to collect the receivable itself shall in no way be affected. DATA MODUL undertakes to not collect the receivable as long as the customer meets its payment obligations arising from the respective contractual relationship, does not default in payment and, in particular, has not filed for bankruptcy or has not ceased payment. However, if this should be the case, DATA MODUL can request that the customer disclose the assigned claims and the respective debtors, provide all of the information required for collection, hand over the corresponding papers and inform the debtors (third parties) of the assignment.

9.4 Any processing or reconstruction of the goods by the customer shall always be performed for DATA MODUL. If the goods are processed with other objects that do not belong to DATA MODUL, DATA MODUL shall acquire joint ownership of the new object, with such value being the value of the goods in proportion to the other processed objects at the time of the processing. Otherwise, the same shall apply for the object resulting from processing as for the goods delivered subject to reservation. If the goods are inseparably intermixed with other objects that do not belong to DATA MODUL, DATA MODUL shall acquire joint ownership of the new object, with such value being the value of the goods in proportion to the other intermixed objects at the time of intermixing. If the intermixing is such that the customer's object must be deemed the main object, the parties agree that the customer shall assign DATA MODUL proportional joint ownership. The customer shall hold the sole property or joint property resulting in this manner in safe custody for DATA MODUL.

9.5 In the event of attachment or of other recourse claims by a third party to the sold goods, the customer shall point out DATA MODUL's ownership and inform same immediately in order to give DATA MODUL an opportunity to initiate third party proceedings pursuant to § 771 German Code of Civil Procedure, ZPO. The customer shall be liable insofar as the third party is not able to reimburse DATA MODUL for the court fees and out-of-court fees incurred while asserting its rights of ownership.

9.6 DATA MODUL undertakes to release the securities it is entitled to upon the customer's request if the realizable value of the securities exceeds the claims to be secured by more than 20 %. Selection of the securities to be released shall be to DATA MODUL.

10. Export

The customer undertakes to only export the goods and technical information supplied by DATA MODUL while observing the pertinent export regulations and to impose the same obligations on its buyers.

11. Indication of the place of origin

Every change in the delivery of products and/or services of DATA MODUL, particularly their labeling, which comprises an indication of the origin of the customer or a third party or which make it appear that the product was produced by the customer or a third party, is inadmissible, unless DATA MODUL has given its prior written consent.

12. Probationary purchase

12.1 In case that the delivery of sample devices or devices for testing purposes is agreed, the customer can withdraw from the agreement by the agreed deadline by declaring disapproval.

12.2 These General Terms and Conditions of Sale shall apply for probationary purchase. In particular, the risk shall pass to the customer in accordance with Point 5.1.

12.3 If the disapproval is declared by the agreed deadline, § 346 ff. German Civil Code, BGB, shall apply.

12.4 The customer shall bear the costs of return delivery of the object of the agreement. DATA MODUL shall be given prior written notice of all return deliveries. The risk of accidental destruction and accidental deterioration of the returned goods does not pass to DATA MODUL until the goods are delivered to DATA MODUL at its place of business.

13. Traceability

If the customer passes the goods delivered by DATA MODUL on to third parties, it shall ensure the traceability of the goods by appropriate measures. In particular, the customer shall ensure that, in the case of measures to be undertaken for purposes of product liability (e.g. recall of the product, product alert), the delivered goods can be found and that their last buyer can be reached immediately by such measures. If the customer does not pass the goods delivered by DATA MODUL on to third parties and instead uses/consumes such goods in the course of its own business operation, it shall also ensure that the goods can still be found either in storage or in use in the event of a measure required pursuant to Point 13 Sentence 2.

14. Place of fulfillment, place of jurisdiction, applicable law

14.1 DATA MODUL's place of business in Munich shall be the place of fulfillment.

14.2 Munich is being agreed as the place of jurisdiction for all disputes arising from the business relationship.

14.3 The law of the Federal Republic of Germany shall apply. The provisions of UN purchase law are excluded.