

General Terms and Conditions

§ 1 Validity

These General Terms and Conditions shall apply to all services provided by TechniData GmbH including sales contracts, contracts of services, contracts for work and services and all other services. Services which are not explicitly identified as being part of the services to be delivered by TechniData GmbH shall not be owed. The General Terms and Conditions are deemed accepted upon placement of an order, however, no later than when receiving the goods/services. Any terms and conditions of the customer shall not become a part of the order even if they are not explicitly rejected.

§ 2 Delivery terms and times of performance

All times of delivery and performance mentioned in the offer are approximate and non-binding, unless otherwise specifically agreed. TechniData GmbH is entitled to make partial deliveries and/or carry out partial performance. Events resulting from force majeure which make it considerably more difficult or even impossible for TechniData GmbH to perform, shall entitle to postpone the fulfillment of its obligations for the duration of the impediment plus a reasonable restarting time even if binding delivery dates and performance times were agreed. The same as for force majeure shall apply to strikes, lockouts and similar situations that may affect TechniData GmbH either directly or indirectly and that are beyond its control.

For international business transactions, the following shall apply in addition: In the event of a delay occurring with regard to binding performance and/or delivery times which is in the responsibility of TechniData GmbH and results in damages to the customer, after delivery and/or performance time having been exceeded by more than two weeks, the customer shall be entitled to claim damages caused through delays in accordance with § 8. In deviation of § 8, the amount of compensation for damages shall total a maximum of 0,5% for each full week, but no more than 5% of the part of the delivery or performance for which TechniData GmbH is in delay. § 15 shall apply accordingly. Additional claims of the customer with regard to default are excluded, either with regard to further damages or with regard to any other costs or expenditure.

§ 3 Terms for services under sales contracts

Delivered goods shall be checked immediately by the customer for defects. Ascertained defects are to be announced in writing by the customer immediately. The transfer of risk takes effect after the goods have been handed over to the employee or third party assigned with carrying out the delivery. This also applies should the delivery be carried out by TechniData GmbH or by a company commissioned by it. Transfer of ownership, possession rights and rights to use shall be subject to full payment.

§ 4 Terms for services under contracts for work and services

If no other special arrangements have been made, the customer shall perform the acceptance of the work within two weeks subsequent to the receipt of written notification of acceptance readiness and notify TechniData GmbH in writing of the results and by providing a complete explanation of possible deficiencies within a further week. Should TechniData GmbH not receive such written declaration of the results of the acceptance from the customer within 4 weeks of notification of acceptance readiness, the work shall be deemed as accepted. Acceptance may only be refused in the event of grave defects. Grave defects are only to be defined as such that eliminate or seriously inhibit the functioning of the work. Utilization of the work regardless of whether fully or only in part corresponds to acceptance. The above provisions apply accordingly to partial acceptances.

§ 5 Customer's duty to support

The customer shall support the activities of TechniData GmbH and in particular to create free of charge all the requirements in his operational domain necessary for the proper execution of the obligations assumed by it. In particular, the customer is obliged to provide or to create the system environment that is necessary for the fulfillment of the agreed obligations. This applies accordingly to the procurement of the licenses necessary for the services to be performed by TechniData GmbH in so far that they cannot be procured from TechniData GmbH. Should these licenses not be at hand or not be at hand on time or if they are not fully supported by the system environment, the customer shall release TechniData GmbH from any resulting claims. A technical inspection of the customer's systems environment shall take place not until the start of project activities unless other explicit arrangements have been agreed. In the event this inspection turns out the infeasibility of the project or parts of it, the customer is entitled to termination of the respective agreement.

If the customer is in delay in fulfilling its responsibilities, the obligations of TechniData GmbH for services that cannot be performed without this fulfillment or only with disproportionate additional costs shall

be suspended. Delays caused by the customer's breach of an obligation to cooperate or resulting from events beyond the control of TechniData GmbH shall be subject to separate settlement according § 6 even in the case of fixed-price contracts. The same shall apply with regard to incurred additional costs. In addition, TechniData GmbH may terminate the respective agreement due to an important reason, if the customer did not correct the responsibility for which it is in delay, despite written request, containing a reasonable deadline and threat of termination.

§ 6 Terms of payment and cost estimates

All prices are quoted net in Euros and, if no other arrangement is made, are based on the offer supplemented by the currently applicable price list of TechniData GmbH. Unless otherwise agreed, TechniData GmbH shall charge for any incidental expenses separately as incurred, in particular for traveling expenses and traveling time. Traveling expenses and traveling time shall be calculated on the basis of the currently applicable price list of TechniData GmbH. Invoices are due for payment upon receipt. If the customer has fallen into arrears with payments, TechniData GmbH is entitled to its legal rights. The customer shall immediately check the invoice and within 14 days from the date of invoice inform TechniData GmbH of any objections regarding the invoice itself or the accompanying documents (e.g. calculation of traveling expenses or proof of services rendered) in writing stating the reasons. Should no objection be lodged within this period (the receipt of a fax suffices) or no reasons are stated for the objection, the invoice including the accompanying documents shall be deemed accepted. Should the payment owed be based on a cost estimate, TechniData GmbH will immediately announce a foreseeable exceeding of the said costs of more than 15%. Exceeding of less than 15% is payable without consent from the customer. Excessive costs beyond this shall only be invoiced if agreed with the customer. The customer is entitled to terminate the contract should he be advised of impending excessive costs to the cost estimate of more than 20%.

For international business transactions, the following shall apply in addition: As far as it is not otherwise stated, prices do not include customs duties, taxes and other levies. This also applies to taxes, social security contributions or other contributions for employees of TechniData GmbH, who participate in the execution of the contract at any given site of the customer. In so far as customs duties, taxes or other levies are liable and payable in the country in which work/services shall be carried out on behalf of the customer these shall be remunerated by the customer within 14 days of receipt of the TechniData GmbH invoice covering these costs.

§ 7 Claims resulting from defects

TechniData GmbH is obliged to remedy free of charge any defects for which it is responsible and of which it has been immediately notified in writing, free of charge within a time limit of 12 months from completion, delivery or acceptance of the respective service performance. Claims can only be asserted based on defects which can be reproduced or which become otherwise apparent. In particular, TechniData GmbH is not responsible for defects resulting from the lack of or insufficient cooperation by the customer or which result from the incorrect use and or alteration of a performed service by the customer itself or by third parties commissioned by it. In such cases, the defect correction shall be compensated in accordance with § 6. In the case of a defect, TechniData GmbH is always entitled to remedy within reasonably fixed time periods. Should the reasonably final attempt of remedy fail, despite the fact that the customer provided TechniData with an adequate additional deadline with the declaration that the remedy will be rejected after the deadline expired; the customer is entitled to decrease payments for the deficient performance or optionally to terminate the contract.

The customer may terminate service contracts under the same conditions instead of these rights. Damage claims are subject to § 8.

Customer's recourse claims that arise from §§ 478, 479 BGB (German Civil Code) remain unaffected by the above restrictions.

§ 8 Liability and Compensation of Damages

TechniData is excluded from any liability regardless of the reason, except if

- TechniData is charged with intent or gross negligence;
- the products or services are not consistent with a guarantee agreement;

- the damage occurred is due to the breach of a cardinal obligation, this means a principal and integral contractual obligation of TechniData, the fulfillment of which is a prerequisite to achieve the objectives intended by the customer with the conclusion of the contract provided the customer has trusted or may have trusted in its fulfillment.
- TechniData based on provisions defined in the product liability law is liable for personal and material damages that may have occurred due to defects upon using the TechniData product.
- TechniData is responsible for damages that rest on injuring life, body or health. If TechniData is, by exception, liable according to the aforementioned subsections, and if TechniData has only been negligent then the liability is limited to the foreseeable damages at the time of agreement closing, unless the customer is not a merchant as defined in the German Commercial Code. TechniData is not liable for consequential damages and lost profit. TechniData is not liable for the loss or destruction of data, unless such has occurred due to gross negligence or willful injury of contractual or legal obligations. As far as a liability of TechniData remains, the compensation for damages is limited to the value of the products and services to be rendered under the contract in which the damage occurs.

§ 9 Termination

In the case of a temporally unlimited agreement a notice of termination is permissible under observation of a period of notice of four weeks to the end of a quarter. A termination for cause with immediate effect is permitted at any time for both temporary limited and unlimited agreements if a valid cause justifying the termination exists. Besides the reasons explicitly mentioned in the agreements itself, the commencement of insolvency proceedings of the other party's assets and likewise a payment stop that endangers the duly execution of the agreement shall entitle to termination for cause.

§ 10 Rights for Work Results and Know-how

Unless otherwise agreed, all rights of the work results created for the customer, in particular regarding software, that is created or modified by TechniData GmbH shall remain the property of TechniData GmbH. This also applies to the software created under a commission from TechniData GmbH or software used under license provided that these rights are not legally entitled to another holder. This applies in particular to copyright, proprietary rights, rights of use and rights of exploitation, licensing and sublicensing rights and the underlying know-how. The same applies for other intellectual property. The customer is entitled, as far as not otherwise arranged in writing, to the non-exclusive right to use the work results for the purposes agreed, including the right to copy, to process, to edit and to publish it. Except as expressly otherwise agreed the right to use is not transferable and not sub-licensable.

§ 11 Breach of Third Party Property Rights

TechniData GmbH is liable for its services within the European Union being free of third party property rights and indemnifies the customer from claims from third parties. If a third party claims against the customer that its rights are being infringed, the customer shall immediately inform TechniData GmbH in writing and leaves with it the defense against the claims lodged. Should services infringe the rights of third parties, TechniData GmbH shall at its own discretion and at its own cost: Provide the customer with the right to utilize the service or make the service free of property rights. If TechniData GmbH is not able to facilitate this within a reasonable time period to be stipulated by the customer, the customer is entitled to request compensation according to § 8.

§ 12 Confidentiality

The parties agree to use confidential verbal and written information acquired from the other party or a third party in connection with the execution of the arrangements only for its performance and to keep it confidential regarding third parties. The obligation to confidentiality shall also apply to the agreed terms and conditions. The obligation to confidentiality shall survive the agreement after its termination for 3 years. The disclosure and the use as a reference is permitted regarding the name of the other party (including its actual logo), the subject of the project and the order volume may be disclosed or used as a reference.

§ 13 Loyalty

For the duration of the agreement and an additional period of 6 months after its termination, the parties agree to refrain from actively poaching employees of the other party in an anti-competitive way.

§ 14 Setting off, Assignment, Retention

Only uncontested or legally enforceable claims shall entitle a party for retention or setting off rights. Assignment of claims by the customer shall only be possible with the prior consent of TechniData GmbH. TechniData GmbH is entitled to reserve its services should the customer be completely or partially in default with its assumed obligations.

§ 15 Statutory Period of Limitation

Any and all claims resulting from or in connection with the agreement, except warranty claims stipulated in § 7, shall be subject to a statutory period of limitation of 12 months after they arise, however no later than 12 months after termination of the agreement, if the other legal requirements are fulfilled.

§ 16 Requirement for Written Form

Alterations and amendments of the agreement including the change of the requirement for the written form must be in writing. Oral agreements are not valid. Hand-written alterations and amendments to offers and contracts require initialization from both parties to validate the changes.

§ 17 Rules of Interpretation

The invalidity of a clause does not affect the validity of the remaining clauses. Should a clause be or become invalid, the parties are under obligation to replace the invalid clause with a valid clause, under consideration to what is legally permissible, economically aimed and approaching as closely as possible the purposes and intentions of the invalid clause. This shall also apply in the event of loopholes. Repeated infringements by TechniData GmbH against the provisions of its business conditions shall not detract in any way from their validity or need to comply with them.

§ 18 Miscellaneous

Agreed is the exclusive applicability of German Law under exclusion of UN sales rights (CISG). Place of fulfillment of any and all assumed obligations and exclusive place of jurisdiction shall be the courts competent for the place of business of TechniData GmbH. Notwithstanding the foregoing, TechniData is entitled to apply to the courts competent for the headquarter of the customer for legal action.

If TechniData GmbH is granted access to personal data within the performance of its services, TechniData GmbH is obligated to store and process such data according to the German Data Protection Law (BDSG) and shall use the data only for the business relationship.

For international business transactions, the following shall apply in addition: The agreed provisions shall be applicable for all disputes resulting from and in connection with the contractual relationship even if the agreement is terminated whether by expiration, termination or fulfillment.