



## General Terms and Conditions (As of: July 15, 2019)

These general terms and conditions, comprising the General Terms and Conditions of Contract ("GTCC") and the General Terms of Use ("GTU"), apply to all contractual relations between the commercial customer and M&M Software GmbH ("M&M") as well as to all enterprises affiliated with M&M in terms of § 15 of the German Stock Corporation Act (Aktiengesetz – AktG); they do not apply to consumers in terms of § 13 of the German Civil Code (Bürgerliches Gesetzbuch – BGB). German law applies, excluding the UN Convention on Contracts for the International Sale of Goods. The customer's general terms and conditions apply only if this is expressly agreed to in writing and they do not contradict these provisions.

### **Part One General Terms and Conditions of Contract**

#### **A. General provisions**

1. *Offer documents.* M&M reserves all proprietary rights and any copyrights to binding and non-binding offers, estimates, calculations, samples, models, drawings and other documents of a tangible or intangible nature ("Offer Documents" herein). The customer is obligated to use the Offer Documents only for evaluating the offer and to otherwise keep them strictly confidential; they may only be disclosed to third parties with the express consent of M&M (in written or text form). If the order is not placed with M&M, the offer documents must be immediately or ultimately destroyed or deleted.
2. *Order confirmation.* If no written individual agreement is executed, the contractual relationship with the customer comes into being through a written, electronic or implied order confirmation by M&M. Statements in the order confirmation have priority over the offer documents. The right to make changes which only immaterially modify or improve the contractual performances of M&M remains reserved, even after contract formation, as far as they are reasonable for the customer.
3. *Confidentiality.* The customer is obligated to keep all confidential information received from M&M strictly confidential; such information may be disclosed to third parties only upon the express consent of M&M. The customer shall obligate its employees accordingly. Information that is not generally accessible at the time it is imparted is confidential, particularly including the offer documents and the prices and miscellaneous conditions that are agreed to between the parties.
4. *Performance.* M&M shall execute the contractual performances based on the agreements made, according to the state of the art and on schedule, and engage agents and subcontractors as needed. However, the agreed performances are subject to the express condition that there are no obstacles to contract performance based on national or international regulations. If M&M experiences delay, the customer may—provided that it substantiates that it has suffered a loss therefrom—demand compensation of 0.5% of the invoice value for each completed calendar week of performances affected by the delay, but not more than a maximum of 5% of the invoice value. Additional claims are excluded (except for intentional acts).
5. *Cooperation.* The customer shall provide all requirements within its area of responsibility in order to facilitate M&M's performance as contracted; in particular, the customer shall undertake all necessary cooperative measures for this in a timely



manner, and shall especially provide, in a timely manner and without being asked, all internal information that is needed for the proper rendering of the performance on the part of M&M. If it is required or useful for the rendering of the agreed performances, M&M shall be supplied workstations in the business of the customer without charge, as well as the required informatics structure.

6. *Invoicing.* Product prices, compensation for performances and incidental expenses (the "prices") follow the written agreements, otherwise M&M's current price list or the customary rates if the price list contains no relevant provision. Prices quoted are net prices unless otherwise expressly regulated. Invoices are payable at the M&M cashier's office, without deduction and free of charges, within 14 days of invoicing and delivery to the customer. The customer is entitled to retention and offset rights only for the same contractual relationship and only with respect to those claims which are undisputed or legally established.
7. *Non-solicitation clause.* The customer undertakes to refrain from soliciting any employees of M&M in its own interest or in the interest of a third party for a period of two years from the formation of the engagement. In the event of a breach, a contract penalty of €50,000 shall be forfeited in favor of M&M. The claiming of greater loss remains unaffected by this.

#### **B. Creation of individual software**

For the creation of individual software, the special provisions of this section B, as well as sections E (liability for material defects), F (liability for defects of title) and G (litigation), apply in supplement to and simultaneously take priority over foregoing section A (General Terms and Conditions of Contract); the remaining sections of Part One do not apply.

1. *Statement of task.* The customer specifies the statement of task. This statement of task is the basis for the development of the software solution. If the requirements are not completely found in the statement of task, M&M shall, with support from the customer, prepare a specification for approval by the customer. This specification is a binding guide for the order and includes the qualities of the software owed. The basis for the development of individual software or similar performances is exclusively the final version of the requirements specification agreed to or approved by the customer. Additional performances of M&M shall be remunerated separately. If a fixed price or maximum remuneration according to time and expense is provided for performances and, following preparation of the requirements specification, it is already apparent that realization will result in time and expense that exceed what was originally intended, M&M may request an appropriate adjustment of the remuneration.
2. *Subsequent changes.* If after the contract is entered into, the customer desires changes that affect the content of the performance, M&M shall review them and, if they can be realized, submit a change offer. Performance deadlines are extended accordingly. Performances are rendered on the basis of the content of the present contract until the change offer is accepted. If no agreement on the change offer can be reached within twenty-one calendar days, the stipulated content of the performance remains as is. The parties can agree to suspend the performances affected by the change until completion of the review or submission of the offer. The foregoing provisions apply accordingly when M&M proposes changes to the customer.
3. *Delivery and acceptance.* The contracted software may also be delivered through electronic transmission. In such case, the customer is obligated to download the



software following appropriate notification. The criteria and procedure for acceptance shall be specified by mutual agreement in the course of the project. The specification is the exclusive standard for the quality check. Appropriate test data or test models for the acceptance shall be provided and utilized by the customer in a timely manner. If no agreement is reached on the acceptance criteria or procedure, the statutory provisions apply. Unless otherwise agreed in writing, the customer shall promptly, but within no more than four weeks, inspect and accept the software solution created for the customer. Any defects hindering acceptance must be alleged in understandable, written form. For this, all information required to evaluate the defect, particularly the precise description of the defect and its effects, must be mentioned. Insignificant defects are not an obstacle to acceptance. The software solution is also deemed accepted if the customer fails to perform the acceptance within the stipulated period or uses the software productively without waiting for the formal acceptance.

4. *Rights of use.* Upon full payment of the remuneration, M&M grants the customer the right to use the software solution for the stipulated purpose without limitation as to time and place. The stipulated purpose appears in the order documents. If assignability is expressly stipulated, the customer can only transfer the right of use granted to it by completely waiving its own rights of use. Existing rights of M&M to incorporated software, tools and the like remain in place. The same applies to procedures, methods and general concepts that have been incorporated in the software solution.
5. *Payments.* Unless otherwise agreed,
  - in the case of a fixed price of up to €10,000, the remuneration is payable upon delivery;
  - in the case of a fixed price over €10,000 and up to €25,000, 90% of the remuneration is payable upon delivery and 10% upon acceptance;
  - in the case of a fixed price over €25,000, 40% of the remuneration is payable upon intermediate delivery, 50% upon delivery and 10% upon acceptance.

If the remuneration is billed according to time and expense, it shall be billed at the end of each month, plus agreed out-of-pocket costs and travel expenses. Payment in advance may be required of customers domiciled outside Germany. If the customer fails to meet payment due dates, M&M is entitled to suspend performance or rescind the contract at any time following the expiration of a thirty-day grace period without payment; the customer accrues no claims of any kind against M&M from the rescission.

### **C. Maintenance of software**

For software maintenance, the special provisions of this section C and of section G (litigation) apply in supplement to and simultaneously take priority over foregoing section A (General Terms and Conditions of Contract). The remaining sections of Part One do not apply.

1. *Scope of performance.* M&M shall perform maintenance for the software as services. Only the current version of the software released for distribution on systems approved for this software is subject to maintenance and support. Noncurrent versions are maintained only for remuneration on a time and expense basis. M&M will offer the following services for the agreed flat maintenance price: e-mail service (support on



questions of the software application to the extent stipulated in the individual agreement), information service (M&M informs of innovations and improvements of the software), error correction (M&M will, at its option, correct software defects that have appeared by supplying new updates, patches or reasonable workarounds), update service (M&M will update the software with due regard given to the current state of the art and the interests of the users; M&M shall supply to the customer, for download from the Internet, the standard updates that have been developed and released for distribution, on-site support (if it is not possible to correct defects in another manner, they will be analysed on-site. Working and travel costs are billed at M&M's current list prices in each case).

2. *Remuneration.* For the maintenance services in number 1 above, a flat maintenance fee is charged in the amount shown in the order. An adjustment of the flat maintenance fee to demonstrably increased costs is possible, but not more than once per year. The flat maintenance fee is billed once annually in advance at the beginning of the year. Initially, it is billed pro rata for the current maintenance year. If maintenance is ordered at a later time than upon purchase of the software, in order to install the current version of the software in this manner, the maintenance fees will be billed retroactively from the time of entry into the purchase contract.
3. *Rights of use.* The customer's right to use new software versions is determined according to the rules of the respective initial licensing.
4. *Cooperation.* The customer shall follow the instructions for use contained in the user manuals. The customer shall supply the technical and organizational requirements to the extent needed to enable M&M to perform its services under the maintenance contract. This particularly includes support from M&M with the analysis and correction of errors.
5. *Contract term.* Unless otherwise provided, the maintenance contract begins when the order is placed. The maintenance contract runs for an indefinite period. It may be terminated by either party as of the end of the year upon three months' notice, for the first time as of December 31 of the calendar year following the date of contract execution. The right to summarily terminate for cause remains unaffected. Cause for termination by M&M expressly exists when the customer is in default of its payment obligations for longer than three months. If maintenance of the software is discontinued by M&M, M&M may terminate this contract upon six months' notice.
6. *Optional additional services.* The following individual services are not covered by the flat maintenance fee and are billed as an option according to time spent at the respectively applicable M&M list prices of the M&M price list: (i) instruction in the use of the software, (ii) on-site maintenance services at the customer, (iii) handling inquiries that are not based on software errors, but on alleged failures or improper use.

#### **D. Development and consulting services**

For development and/or consulting services, the special provisions of this section D and of section G (litigation) apply in supplement to and simultaneously take priority over foregoing section A (General Terms and Conditions of Contract). The remaining sections of Part One do not apply.

The object of the development and/or consulting is the performances of such services in the nature of a service contract that are described in detail either in the offer of M&M or in



a specification of services. Services are billed on a time and materials basis unless otherwise provided. In other respects, the respectively applicable prices of the M&M price list apply. Upon full payment for the development and consulting services, the customer receives the nonexclusive right, unrestricted as to time and location, to use the work results internally within the scope of the stipulated purpose. M&M's existing rights to contributed documents, tools, know-how and methods, etc. remain with M&M.

**E. Warranty for defects of quality**

1. *Warranty provisions.* A defect exists when, to the detriment of the customer, the quality of the software deviates materially from the product description in the available documentation at the time of contract formation. Statements as to quality or possible applications of the software do not constitute guarantees in terms of §§ 443, 444 BGB—even if they as characterized as guarantees—unless the statements are expressly characterized as guarantees in writing or in text form ("Textform" – § 126(b) BGB), making reference to the statutory provision. M&M shall be liable for defects as follows:

M&M shall, at its option, repair or replace, without charge, defective software for which the causes already existed at the time of the passing of risk. In the case of software defects where M&M is in possession of the source code and is authorized to modify it, M&M shall cure any defects, at its option, either by providing a new version of the software, in which only the defect is cured, or by providing an update in which the error is also cured. In the case of software defects where M&M is not in possession of the source code or is not authorized to use it, M&M will cure the defect as follows: if M&M is in possession of an update or if M&M can supply an update with proportionate effort, M&M will cure the defect by providing the update.

2. *Exclusions.* Claims of the customer lapse twelve months after the legal limitation period commences. No claims for defects may be made for natural wear and tear incurred after the passing of risk as a result of improper use (including failure to observe the specifications in the product manual, or other product information), or of incorrect or careless handling or excessive stress or for losses based on exceptional external influences which are not anticipated in the agreement. Claims for defects are excluded in particular if functional restrictions were referred to in the release notes associated with the product. Moreover, claims for defects are available only when they are reproducible. If the customer or a third party undertakes improper modifications to the software or extends the software over interfaces, no claims are available for such modifications or extensions and the ensuing consequences.

**F. Warranty for defects of title**

The scope of liability for defects of title appears in the individual agreements. Unless individual agreements were entered into, the following provisions apply.

1. *Warranty provisions.* M&M shall provide the software to the customer free from third-party industrial property rights ("protected rights" herein) in the country of the place of delivery, but M&M is obligated to conduct patent research in return for separate reimbursement of all costs and expenses only on the basis of a written agreement. If a third party makes justified claims against the customer for the infringement of protected rights through software which is used as contracted, M&M shall provide a warranty to the customer as follows:



M&M shall, at its option, obtain at its own cost a right to use the software in question, modify the software in such a way that the protected right is not infringed, file a petition for cancellation or revocation, or replace it. If this is not possible on reasonable conditions, the legal rights to rescind the contract or reduce the price shall be available to the customer. The above obligations shall exist only if the customer has immediately informed M&M in writing or in text form concerning the claims asserted by the third party, does not acknowledge any infringement and all defensive measures and settlement negotiations remain reserved for M&M.

Further claims of the customer against M&M and its agents for defective title or other than those regulated in this section 1 are excluded.

2. *Exclusions.* Claims of the customer lapse twelve months after the legal limitation period commences. Claims of the customer are excluded if the customer is responsible for the infringement of the protected right. Claims of the customer are also excluded if the infringement of the protected right is occasioned by special instructions of the customer—such as specification book, requirements specification, functional description, instructions or other documents—or by a use that is not authorized by M&M. Claims of the customer are also excluded if the software is modified by the customer or just utilized in an infringing manner together with products not supplied by M&M.

#### **G. Litigation**

The statutory judicial venue applies.

### **Part Two General Terms of Use**

Subject to differing individual agreements, M&M grants the customer (also referred to in the following as "user") the right to use the software products of M&M in accordance with the following licensing rules:

#### **§ 1 Scope of license**

1. *Basic content of the right of use.* In accordance with the license model referred to, M&M grants to the user the rights of use set forth therein. If a need exists and it has not been otherwise agreed, the user shall assume responsibility for installing and configuring the software (see § 3). The software may not be modified and the rights of use associated with the respective license model may not be transferred to third parties (including by way of sublicensing) unless otherwise expressly regulated in this license agreement or in an individual agreement.
2. *Test versions.* Test versions that can be downloaded and installed for free from the M&M website without ordering or that can be used online without installation include the right to use the software for test purposes, which is normally limited to 30 days; additional rights are excluded. Download, installation and use of test versions occur at the user's own risk. If the user decides on a specific license model following the expiration of the evaluation period, the user can purchase the required license for this for a fee and activate the full version by entering the corresponding license key. The provisions of this license agreement apply to the full version upon its activation.
3. *Usage restrictions.* Subject to mandatory statutory requirements or other provisions in this license agreement, the user is not allowed to (i) copy or otherwise duplicate any



part of the software (except to the extent provided by law for backup purposes), (ii) publicly reproduce or make the purchased software available, either wired or wirelessly, (iii) translate, analyze, decode, convert or disassemble the source code of the software or otherwise modify it in any way, (iv) create improperly derivative works based entirely or in part on the software, (v) modify or remove notes or references to copyrights or other protected rights, (vi) improperly pass the software on to other persons (such as through rental, lending or leasing) or (vii) use the software in areas with special risk which require flawless continuous operation and in which a failure of the software can result in immediate risk to life, limb or health or in significant damage to property or the environment (such as the operation of nuclear power plants, weapons systems, aircraft and motor vehicles).

4. *Intellectual property.* Ownership, property rights and industrial property rights in the software remain with M&M and are under the protection of international laws and treaties in the area of copyright and industrial property rights. All rights of usage which are not expressly granted in the scope of this agreement remain reserved to M&M. Statutory rights of usage remain untouched.

## § 2 Third-party software components

1. *Open source software.* If the M&M software solution contains open source software (also referred to as "OSS" herein), this is listed in the Readme\_OSS file of the software (or in the file that corresponds to this); alternatively, the corresponding file is also made available online, by download link or by e-mail for a period of up to three years after purchase of the product. The same applies to the associated source code. Provided the user entered into a OSS licence agreement with the respective holder of rights, the user is authorized to use the open source software beyond the normal use in accordance with the OSS license terms that are applicable in each case. Such OSS license terms are enclosed with the software and, relative to the holders of rights, have priority over this license agreement and the general terms and conditions of sale and delivery of M&M. The OSS license terms also have priority to the extent that, based on the combination of OSS components with proprietary components, they grant the user certain rights of use also in relation to the proprietary components or such rights of use are to be granted according to the OSS license terms of M&M. If requested by the user, M&M will provide the OSS source code to the user in exchange for corresponding reimbursement of expenses, provided that the license terms for OSS provide for such delivery of the source code. A corresponding request is to be submitted to:

Technical Support

Phone: +49 (7724) 9415-0

Fax: +49 (7724) 9415-23

Email: [info@mm-software.com](mailto:info@mm-software.com)

2. *Third party software.* Along with OSS, the software may also contain proprietary third-party license software—in other words, software which was not developed by M&M itself, but which M&M obtained by license from third parties. If in such case, together with the software and the Readme\_OSS file, the user receives the terms and conditions of the respective licensor of the third-party license software ("third-party



*license terms*" herein), or if, alternatively, such third-party license terms are available on the hard disk after installation, they apply with respect to the licensor's liability toward the user.

3. *Warranty and liability.* The statutory and contractual warranty of M&M is limited to those software components that are not OSS, but for which M&M is either the author or entitled to proprietary rights of use.

### § 3 Installation of the software

1. *Software installation.* According to the agreement, M&M delivers the software to the user either on storage media, via download, as a product component or provides online access. The user is responsible for installation and configuration (if necessary). During activation, the software sends M&M information on the software and, as appropriate, on the user's computer; details on this are found at <https://mm-software.com/en/privacy>.
2. *Data use.* M&M uses the data that it collects through the software features to update or correct the software and to otherwise improve its own products and services. The user declares its agreement that M&M is entitled to use and disclose this data as described in the privacy policy at <https://mm-software.com/en/privacy>.
3. *Updates.* When the user installs the software covered by this agreement as an update of existing software or when the web portal is updated, the update replaces the original software being updated. Unless the OSS license terms expressly provide otherwise, the user retains no rights in the original software after having executed the update, nor is the user authorized to continue to use or transfer it in any manner.
4. *License control rights.* Upon request, the user shall permit M&M to verify the proper use of the software, particularly whether the user is using the software within the scope of the licenses the user purchased; this does not apply if such a verification would be prohibited under the relevant OSS license terms or the user, upon request, bindingly informs M&M within a reasonable time of the results of a self-audit.

### § 4 Warranty and liability

The liability of M&M for material defects and defects of title as well as the total liability of M&M are governed by the corresponding provisions in the General Terms and Conditions of M&M Software GmbH, which are set forth in Part One of this document.

### § 5 Final provisions

This license agreement is subject to German law, with the exception of UN Convention on Contracts for the International Sale of Goods. Amendments and supplements to this agreement, including notice of the termination of this agreement, must be in written form to be legally effective. This license agreement is available in various language versions. In case of conflicts or ambiguities, the German language version has exclusive application.