

I Basic principles

A. General

1. These General Terms and Conditions ("*GTC*") apply to all contractual relations between the commercial developer ("*Vendor*") and M&M Software GmbH ("*M&M*") which have as their object the procurement (contract for work and services, service contract or purchase agreement) of software products or individual components thereof (referred to together as "*Contractual Performances*" herein).

German law, with the exception of the UN Convention on Contracts for the International Sale of Goods, applies to these contractual relations and the rendering of the Contractual Performances. If other than the German legal system is declared to be applicable, these terms and conditions nevertheless apply to the extent permitted under the chosen law. The GTC of M&M have exclusive application. Vendor's terms and conditions that are contrary to or that deviate from the GTC of M&M are not recognized unless their applicability is expressly consented to in writing or in text form. These GTC apply even if Vendor's terms and conditions of contract are accepted by M&M without reservation.

2. Individual agreements have priority, particularly if they are documented in writing. Apart from that, these GTC apply to all future transactions with Vendor, even when they are not expressly referred to again in a given case.
3. In no event is a contract formed between the parties under the German Temporary Employment Act (Arbeitnehmerüberlassungsgesetz).

B. Engagement and confidentiality

1. M&M retains, without limitation, all proprietary rights and any copyrights to the images, drawings, calculations, requirements profiles (e.g. specifications) and other documents upon which the engagement is based (the "*Order Documents*") unless the order documents have already been protected by a third party. In such case, the respective rights of the third party are to be observed. Vendor is obliged to use the Order Documents only for review and for processing the Contractual Performances in accordance with the contract.
2. In this framework, Vendor is also obligated to maintain the strict confidentiality of all confidential Information received from M&M. "*Confidential Information*" is all information, facts, records, data and/or knowledge—particularly technical and/or economic Information, design records, specifications, drawings, models, prototypes, test results and/or miscellaneous know-how—which is not generally accessible at the time it is passed on. Confidential Information expressly also includes the Order Documents and the prices, compensation and miscellaneous conditions that are agreed on between the parties. Confidential Information may be disclosed to third parties only with the express consent of M&M (in written or text form). The duty of confidentiality ends only if and when the know-how contained in the confidential Information has become generally known and also extends to the employees of Vendor and other agents and assistants. They must be obligated accordingly.



3. The Order Documents must be returned to M&M without prompting after the Contractual Performances have been concluded, unless their return has been waived in writing or in text form; the same applies when an engagement is not accepted by Vendor or is canceled by M&M.

C. Contract formation

1. Subject to the last sentence of this item 1, the engagement by M&M is the offer in the legal sense, which requires order confirmation by Vendor for a contract to be formed. Engagements must be accepted within five days through order confirmations in writing or text form. In the case of order confirmations that are received later, the contract is formed if M&M does not object within a period of ten business days. Notwithstanding this, the engagement is the acceptance in a legal sense if a binding offer of Vendor precedes the engagement; in such cases, an order confirmation by Vendor is not required.
2. M&M reserves the right to make changes, even after contract formation, which only insignificantly modify the engaged or contractually stipulated Contractual Performance, unless they are not reasonable for Vendor. If they are not reasonable for Vendor, the consequences—particularly in regard to cost overruns and reduced costs as well as the completion date—are to be appropriately regulated by mutual agreement.

II Terms**D. Price and remuneration**

The net prices or net remuneration shown or contractually agreed to in the engagement are fixed prices, including all additional charges, plus statutory value-added tax. If remuneration is agreed to be according to expenditure of time, the times spent are to be recorded and countersigned by M&M.

E. Completion date

1. *On-schedule completion.* The completion date indicated in the engagement is binding, with the deficiency-free receipt of the Contractual Performance at the stipulated place being determinative of whether the completion date has been met. If the Contractual Performance is provided by download, Vendor's duty to perform (subject to acceptance) is not satisfied until successful download by M&M. The Contractual Performance also includes detailed documentation of a code scanning, which must be conducted by Vendor for quality purposes. If Vendor is also obligated to deliver other documents, they, too, must be provided as an essential component of Vendor's obligation to perform. If documents or information which M&M has not delivered to Vendor should be required for contract performance, Vendor may claim contributory fault only if Vendor has demanded the documents and information in writing or in text form and not received them within a reasonable time.
2. *Late completion.* If Vendor recognizes that, for any reason whatsoever, a stipulated date cannot be adhered to, Vendor shall immediately notify M&M of this in writing or text form, stating the reasons and estimated duration of the delay. At the outset of the cooperation, M&M and Vendor shall already agree on a process that will take effect in the event of a delay. If Vendor exceeds the completion date



stipulated in the particular individual agreement ("Delay"), Vendor shall pay M&M lump-sum damages of 0.5% of the value of the Contractual Performance per commenced calendar day beyond the deadline, but aggregating not more than a maximum of 5% of the value of the Contractual Performance, unless Vendor is not accountable for the Delay and/or Vendor can prove a more modest or no loss. The assertion of additional loss (loss caused by delay) remains unaffected. In such case, the lump-sum damages are counted toward the damage claim for Delay in excess of this. Any further legal claims arising from Delay (including the right of rescission and damages) remain unaffected; this also applies in the case of acceptance or payment, without reservation, of the late Contractual Performance.

3. *Early completion.* If Vendor completes the contracted items before the stipulated completion date, M&M reserves the right to refuse to accept them. If, in case of early completion, there is no refusal to accept, the payment period does not begin until the agreed completion date.
4. *Agile development.* The provisions of this article E apply analogously to engagements of agile developments—that is, to engagements where it becomes clear only in the course of the performance which individual performance must be rendered.

F. Invoices and accompanying provisions

1. Vendor's invoices are paid in the customary manner—that is, within 14 calendar days with a 3% discount for early payment or 30 calendar days strictly net, calculated upon full acceptance. For this, the invoices are to be submitted to M&M, complete with all associated documents and data, in accord with the respective statutory provisions and in proper form. For clarification, it is additionally stipulated that, where the Contractual Performance is deficient, M&M is entitled to withhold the proportionate value of the payment until proper performance.
2. In the case of prepayments, Vendor is obliged, even where there is no individual agreement on this issue, to provide, upon M&M's first request, adequate security in the form of an absolute prepayment or performance guarantee—at M&M's option—for an indefinite period from a gilt-edged large bank in the amount of the prepayment to be made.
3. Vendor is entitled to offset only such undisputed counterclaims which arise from the same contractual relationship or which have been legally established.

G. Vendor's duties during contract performance, acceptance

1. If it is only possible for Vendor to render the Contractual Performance with access to systems of M&M, this is permitted exclusively with the use of M&M technology and M&M processes and express written approval. In addition, Vendor shall acquaint itself with the applicable security guidelines at M&M and comply therewith and especially check the Contractual Performance for computer viruses in an appropriate manner. In addition, Vendor shall inform M&M at an early stage of any risks.
2. Vendor is obligated to perform preparatory work, such as planning and installation of the Contractual Performance.
3. Vendor shall render the Contractual Performance with Vendor's own hardware and software and on the premises of M&M only if this was expressly agreed to.



4. M&M is entitled to ask Vendor for information on the status of the work at any time. Vendor is obligated to continually maintain appropriate documents and provide information to M&M. In addition, M&M and Vendor shall agree on an appropriate reporting system.
5. The prerequisite to legal acceptance is Vendor's written notification of readiness for acceptance. M&M shall coordinate with Vendor on the time frame and scope of acceptance.
6. If there are no or only negligible deficiencies, M&M shall declare acceptance. Here Vendor shall prove in a suitable manner that the Contractual Performance exhibits no critical flaws. If M&M accepts partial performances, this shall not affect the right of M&M to claim deficiencies during final acceptance in partial performances that have already been accepted if they are only manifest through the combined action of system parts. Apart from acceptance, Vendor shall offer support services on customary terms.

H. Transfer of rights of use, ownership

1. For Contractual Performances, Vendor grants M&M the exclusive, assignable, worldwide, permanent and irrevocable right
 - (a) to use, copy, translate, process and refine the Contractual Performance in its original form or to integrate it into other products in the processed or refined format and to distribute it worldwide (also through the granting of sublicenses)—particularly to sell, rent, or lease it, provide it for download or make it publicly available, for or without a charge, and to copy the Software to the extent required for this;
 - (b) to sublicense the above rights of use to affiliates of M&M within the meaning of §§ 15ff. of the German Stock Corporation Act (Aktiengesetz – AktG), to other distributors and to end customers. Affiliates of M&M within the meaning of § 15ff. AktG and other distributors are additionally authorized to permit end customers to transfer the software licenses.
2. If legally possible, ownership of the Contractual Performance passes to M&M immediately upon delivery/handover (in the case of work and services with acceptance). The expanded or extended reservation of ownership of Vendor is excluded.

I. Promised qualities contract performance and duties to complain of defects

Vendor is responsible for ensuring that all Contractual Performances are consistent with the state of the art, the relevant worldwide legal provisions, standards, ordinances, regulations and guidelines of public authorities as well as of the European Union, professional and trade associations. Moreover, Vendor warrants compliance with all environmental and safety provisions. During programming work, Vendor shall observe the rules of current programming standards and adhere to the Contractual Performances and the (quality) standards and internal processes for software development of M&M. In addition, Vendor shall observe the current level of information security and protect the Contractual Performance against unauthorized access by third parties (e.g. by hackers). If Vendor should nevertheless become aware of corresponding security flaws, accesses or access attempts by third parties, Vendor shall promptly inform M&M. In such a case, Vendor undertakes to engage in

intensive collaboration and problem-solving without creating any costs for M&M. The same shall apply if Vendor is hindered from rendering its Contractual Performance.

J. Open source software

1. Vendor is obligated to indicate to M&M in a timely manner, but at the latest by order confirmation, whether its deliveries and services contain "open-source software," which must be approved by M&M in each individual case.

"*Open-source software*" in terms of this provision is software that is supplied by the rights holder to any users free of license fees with the right to process and/or distribute it on the basis of a license ("*OSS License*") (e.g. GNU General Public License (GPL), GNU Lesser GPL (LGPL), BSD License, Apache License, MIT License) or other contractual arrangement.

2. If Vendor's Contractual Performance contains open-source software, Vendor must deliver at least the following to M&M no later than order confirmation:
 - The source code of the open-source software used, even when the applicable open-source license terms do not expressly require disclosure of such source code;
 - A schedule of all open-source packets used (indicating the version) with a reference to the applicable license in each case (indicating the version) as well as a copy of the full license text.

If, in individual cases, the relevant OSS license imposes additional requirements (such as MPL v.1.1 regarding the specification of patent licenses), Vendor must also satisfy these additional requirements.

With the delivery of updates, Vendor is also obligated to document any changes with respect to the previous version in a clear and easily discernible manner without the need for a special request for this on the part of M&M.

3. In addition to the obligations in above item 2, Vendor shall submit a binding declaration in writing or in text form no later than with the order confirmation, stating that the open-source packages were used in accordance with the applicable OSS license and that use of the open-source software as intended does not subject either Vendor's deliveries and services or M&M's products to a "copyleft effect" (in other words, does not require that certain Contractual Performances of Vendor and of works derived therefrom may be further distributed only under the terms of the OSS License, e.g. through disclosure of the source code).
4. If Vendor does not indicate until after receipt of the engagement that its Contractual Performances include open-source software, M&M is entitled to cancel the engagement within thirty (30) days after receipt of the notification and submission of all information mentioned in item 2 above.
5. In case Vendor makes an inaccurate statement for which it is at fault, Vendor forthwith undertakes to reimburse M&M to the full extent for all resulting losses and to indemnify M&M to the full extent for any third-party claims, namely, upon M&M's first request in each case. This obligation expressly includes all losses which M&M may sustain if the object code of the M&M software must be disclosed based on the OSS License.



6. The foregoing provisions on open source software apply accordingly to the use of proprietary third-party software.

III Rights relating to defects

K. Limitation periods

The warranty period runs thirty-six months from acceptance unless something different was expressly agreed to in writing or the law provides longer periods.

L. Claims on liability for defects

1. Upon request, Vendor shall cure defects which are complained of during the warranty period—as well as the failure to adhere to warranted qualities—through repair or replacement (referred to together herein as "cure"); the cure shall be effected promptly and without charge, including all incidental costs; the right to elect between repair or replacement resides with M&M. When cure proves to be unsuccessful, M&M is entitled to the statutory rights, particularly rescission, reduction in price, reimbursement of expenses and damages in lieu of performance.
2. Where Vendor is at fault for defects, as part of its liability it must reimburse all expenditures required to effect a cure. Costs incurred in the course of cure therefore also include losses to legally protected interests of M&M or third parties that have been incurred through defective Contractual Performances. Unless M&M claims greater loss, Vendor's warranty obligates it to reimburse the lump-sum net cost of materials and labor according to the current price list of M&M in each case. M&M shall supply the price list to Vendor upon request.
3. It is additionally agreed that, in lieu of cure, M&M may require Vendor to provide a credit note in the amount of the remuneration for the Contractual Performance. In addition, it is also agreed that, in urgent cases—in other words, in cases where, due to special urgency, it is no longer possible to notify Vendor of the defect and of the impending loss and give Vendor a period, however short, to provide its own corrective action (especially to ensure capacity to deliver to the end customer)—M&M may also execute any possible cure by itself or have it executed by a third party without thereby limiting the rights arising from the liability for defects. In such a case, M&M is entitled to bill Vendor for reasonable costs incurred in the course of effecting the cure.
4. Apart from that, Vendor is obliged to reimburse M&M for all losses caused by the defective Contractual Performance.

M. Product liability

1. Vendor shall indemnify M&M, at the first request, for product liability claims of third parties to the extent they are based on Contractual Performances of Vendor and third parties could take recourse against Vendor itself.

In this context, Vendor is obligated to reimburse M&M for any expenditures—particularly the cost of retrofitting and repair, replacement and the installation and removal of the corresponding Contractual Performances—that are incurred from or in association with a recall campaign conducted by M&M. M&M is entitled to conduct a recall in its own discretion at Vendor's expense, even without Vendor's



consent. M&M shall, as far as possible and reasonable, inform Vendor of the content and scope of the recall measures that are to be conducted and give Vendor an opportunity to comment. In all cases of third-party product liability claims, M&M has the right to enter into settlements with third party claimants, which shall not affect Vendor's obligation to pay damages as long as the settlements are commercially necessary and reasonable.

2. Vendor undertakes to maintain a reasonable amount of business liability and extended product liability insurance, including product recall insurance, and to give M&M a copy of the insurance policies and associated certificates of insurance at the first request.

N. Property right

1. Vendor is responsible for ensuring that the Contractual Performances do not infringe any third-party property rights throughout the world; excepted from this are deliveries based on M&M's specifications (in writing or text form). If Vendor is aware that the written, textual or oral specifications of M&M will result in infringement of property rights, Vendor must immediately inform M&M of this. Vendor shall indemnify M&M and its customers, upon the first request, for third-party claims arising from any culpable infringement of property rights through the Contractual Performances and shall bear all costs and expenses which M&M and its customers incur in this context. The same applies in the case of an indirect patent infringement if the Contractual Performances manifest the required elements of the patent claim.
2. If inventions are created during Vendor's work which can give rise to intellectual property rights, the inventor shall immediately inform M&M about the inventions and obtain M&M's decision on whether or not to register them. If M&M decides in favor of registration, Vendor shall assign all rights in the inventions to M&M. M&M shall be entitled to register, or to have registered, the inventions in its own name and on its own account. For an assignment of an invention which is registered as an intellectual property right, M&M shall pay Vendor a lump sum purchase amount of EUR 500. In such case, M&M shall assume both the costs for registering the intellectual property right and for maintaining it. If M&M decides against registration or maintenance, Vendor may pursue registration at its own expense. However, M&M shall retain a free, nonexclusive right of use in such case, with the right to award sublicenses.
3. Vendor shall, at its own expense, defend M&M against claims about the infringement of property rights of third parties.
4. If there are infringements of property rights in terms of above item 1, M&M shall be immediately entitled, at its option, to: (i) obtain a license from the beneficial owner to use the contracted items at issue at Vendor's expense; or (ii) modify the particular Contractual Performances or have them modified in such a way that they fall out of the area of protection of the property right; or (iii) rescind the contract.
5. Additional legal claims (asserting damages) remain unaffected.
6. If Vendor is the holder or licensee of property rights, with regard to such property rights, Vendor shall grant M&M and its customers a worldwide, perpetual license to use the Contractual Performance for all types of use, particularly usage, sale, import and export and other types of sublicensing, provided such license is



relevant for the particular Contractual Performance. A license fee is included in the net prices.

O. Joint and several liability

Unless otherwise expressly regulated in these GTC, Vendor shall be liable in the statutory amount for all forms of culpable breach of contract. Vendor shall be liable for any fault of third parties it engages to render the performance as though it were personally at fault.

P. Burden of proof

No change in the burden of proof to the disadvantage of Vendor is intended or associated with the provisions on disruptions in performance set forth in these GTC.

Q. Special provisions for purchase agreements

The following provisions for purchase agreements between M&M and Vendor apply in supplement to the other provisions of these GTC.

1. In deviation from the provisions of article H, upon the sale of standard software (software manufactured for a large number of customers on the market and not specially customized or developed for the requirements of M&M), Vendor grants M&M nonexclusive, transferable, worldwide, permanent and irrevocable rights to the standard software.
2. If legally possible, Vendor shall provide a durability warranty for the Contractual Performances pursuant to § 443 (2) of the German Civil Code (BGB), through which it warrants the Contractual Performances against defects in materials and title for a period of three (3) years. It is likewise stipulated that, as far as permissible, the incoming goods inspection by M&M under § 377 of the German Commercial Code (HGB) is limited to checking whether the Contractual Performances are identical with the engagement. A one (1) week period for complaints is agreed to; this is met when the notice of defects is sent within this period. For all other obvious defects, the above complaint period applies from the time of discovery of the defects. For latent defects, a complaint period of two (2) weeks from the time of discovery applies. Further obligations to complain and examine are expressly excluded.
3. In addition to the provisions in article K, the limitation period is 36 months from the time of delivery to M&M or, in deviation therefrom in supply chains (that is, configurations in which the Contractual Performances of Vendor are resold to customers of M&M without change or as a component of the products of M&M), 36 months from the time of delivery to the end customer, but not more than 48 months after delivery to M&M.

IV Other provisions

1. *Data protection law.* Both contracting parties are permitted to gather, process, use and disclose personal data of the other contracting party and its employees in the course of contract performance to the extent such is required for the proper performance of the contract, taking into consideration the applicable data protection provisions (particularly data secrecy and the principle of the sparing use of data).



2. *Foreign trade law.* Vendor is responsible for ensuring that there are no obstacles to contract performance based on national or international regulations, particularly export control requirements as well as embargoes or other sanctions.
3. *Quality assurance agreement.* If requested by M&M, Vendor shall enter into a written quality assurance agreement with M&M with customary content.
4. *Force majeure.* "Force majeure" includes all external events that are caused from the outside by unforeseeable elemental natural forces or acts of third parties which render it impossible or at least intolerably difficult for the affected party to perform its contractual obligations. In the event of force majeure, the affected party shall be exempt from its contract obligations for the duration of the disruption and to the extent of its impact, and M&M is entitled to rescind if by reason of the delay the Contractual Performances are no longer commercially exploitable; in this case, Vendor's claims for damages and other compensation are barred.
5. *Naming of contact persons.* M&M and Vendor shall each name responsible contact persons who will coordinate the cooperation.
6. *Travel Costs.* Travel expenses will be reimbursed by M&M only after a corresponding agreement and prior approval.
7. *Reference.* Vendor may name M&M as a reference only after prior approval by M&M.
8. *Audits.* Vendor consents to auditing by M&M during standard business hours.

V Final provisions

1. *Written form and text form.* If a declaration is to be submitted "in writing" or "in text form," such declaration must be signed, by hand in a manner that represents the name of the signer, by the person or persons authorized by the duly acting representative of the respective contracting party, and the original thereof delivered personally or via fax to the other contracting party, unless written form is otherwise contractually regulated in an individual agreement. If a declaration is to be submitted "in text form," such a declaration in accordance with the statutory requirements is also effective without the declarant's personal signature.
2. *Subcontracting.* Vendor is not authorized to assign rights and duties under the respective individual agreement, entirely or in part, to third parties without M&M's prior consent in writing or text form and shall render the Contractual Performances through its own carefully selected employees. If Vendor should replace one of its employees, it must notify M&M of this in writing. In each case, the new employee must have at least the qualifications of the replaced employee. Even with corresponding consent, Vendor remains solely responsible for the contract performance.
3. *Cessation of payments, insolvency.* If Vendor discontinues its performances, a temporary insolvency administrator is appointed, insolvency proceedings are initiated concerning its assets, or drafts or checks have been protested against it, M&M is entitled to rescind the contract, in whole or in part, without compensation and without giving rise to the ability to make claims against M&M. If M&M rescinds the contract, the Contractual Performances shall be billed at the contract prices only insofar as the Contractual Performances can be used by M&M as intended without additional cost. Loss incurred by M&M is deducted in the billing.



4. *Non-solicitation clause.* Vendor 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.
5. *Succession.* Vendor shall promptly notify M&M of any transfer of the contract that occurs by operation of law and of any legal succession.
6. *Contract language.* The exclusive contract languages are German and English. In the case of bilingual documents, the German language version has priority.
7. *Jurisdiction over legal disputes.* Subject to item 8 below, the general courts of law shall have jurisdiction over disputes that arise in connection with these general terms and condition or their validity for amounts in controversy up to 100,000 euros. The exclusive judicial venue is St. Georgen if the customer is a merchant. For disputes in which the amount in controversy exceeds 100,000 euros and for all disputes for breach of confidentiality obligations, the arbitration clause in item 8 below applies.
8. *Arbitration clause:* Disputes in which the amount in controversy exceeds 100,000 euros as well as all disputes for breach of confidentiality obligations shall be finally decided according to the rules of arbitration of the German Institution of Arbitration (Deutsche Institution für Schiedsgerichtsbarkeit e.V. — DIS) without resort to the general courts of law. The arbitration proceedings shall be sited in St. Georgen (Germany).