

Terms and conditions of Adapted Solutions GmbH for commercial customers

§ 1 General

These terms and conditions govern the legal relationships of Adapted Solutions GmbH with its commercial customers (clients). Different agreements or ancillary agreements are only valid if they are confirmed by Adapted Solutions GmbH. Confirmation must be made in written form. This also applies to an amendment or annulment of the written form agreed above.

These terms and conditions also apply to all future business deals. Conflicting terms and conditions of the client do not oblige Adapted Solutions GmbH, even if Adapted Solutions GmbH does not expressly contradict them.

§ 2 Offer Terms and Conditions / Order Confirmation

Offers and cost estimates are subject to change in principle if they are not expressly designated as binding on a case-by-case basis. An order will be valid only by a written order confirmation of the Adapted Solutions GmbH. The written confirmation of the order of Adapted Solutions GmbH or, if such a delivery has not been carried out, the written order of the client is decisive for the scope of the delivery or service.

§ 3 Prices

Prices are generally net in EURO from the point of delivery of Chemnitz, exclusively packaging, transport, other ancillary costs (e.g. installation), plus the statutory VAT applicable at the time of delivery. Separate contracts must be concluded for the maintenance of hardware and software, support and services.

§ 4 Payment Terms

All payments must be made without deduction within 14 calendar days of the invoice issue date, unless otherwise agreed.

If Adapted Solutions GmbH accepts payment by cheque and exchange, the payment is deemed to have been effected only with redemption. Discount and bank expenses come at the expense of the principal.

In the event of late payment, Adapted Solutions GmbH is entitled to charge interest equal to the statutory default interest, but at least five percentage points above the applicable base interest rate, without prejudice to further default damage.

The client can only offset undisputed or legally determined receivables in relation to the payment claims of Adapted Solutions GmbH. If the payment terms are not complied with or there are reasonable doubts as to the creditworthiness of the client, Adapted Solutions GmbH may demand advance payment and immediate payment of all outstanding invoices, goods not yet delivered to be retained, as well as to retrieve goods not yet paid for and delivered under retention of title after the threat and time limit, and to stop continuing to work on orders that are still in progress. Adapted Solutions GmbH also has these rights if the client does not make a payment despite reminders and deadlines.

If the client is in default of acceptance of the subject-matter of the contract, Adapted Solutions GmbH is entitled to set a reasonable grace period and to withdraw from the contract after its expiry or to demand compensation. Adapted Solutions GmbH may demand a lump sum compensation of 20 percent of the purchase price without special proof if the client does not prove that damage has not occurred at all or substantially lower than the lump sum.

§ 5 Delivery and Performance Time

Appointments for deliveries and services must be arranged in writing. The delivery period begins with the sending of the order confirmation and, if necessary, is extended if the client does not provide any documents or permits, does not make an agreed down payment or violates other obligations to cooperate. In the event of subsequent change or supplementary requests from the client, the deadlines begin to run anew from the effective agreement of the change.

A binding agreed delivery period is extended by up to 2 weeks if Adapted Solutions GmbH itself is not supplied in due time and this is immediately reported to the client in writing.

§ 6 Shipping and Transfer of Danger

All deliveries are made from Chemnitz on account and the risk of the client in accordance with the written order confirmation.

If, exceptionally, collection has been agreed, the risk passes with the singling out of the goods and informing the client about the possibility of collection created by them.

In the absence of other agreements, Adapted Solutions GmbH chooses packaging and shipping method at its best. Insurance against transport damage of all kinds is only made at the request of the client, calculating the amounts spent.

§ 7 Retention of Title

The delivered goods remain the property of Adapted Solutions until the purchase price is paid in full and other remuneration claims. The client will store the reserved goods for Adapted Solutions GmbH properly at his own expense and insure them properly. He is not entitled to pledge or transfer the goods subject to retention of title. In the case of the remodelling or processing of the goods supplied by Adapted Solutions GmbH, this is done for Adapted Solutions; Adapted Solutions GmbH acquires ownership or co-ownership of the new item, which the client undertakes to preserve free of charge for Adapted Solutions GmbH.

If the client is in default of more than 14 days in arrears with the fulfilment of his payment obligations, Adapted Solutions GmbH is entitled to demand the surrender of the delivered reserved goods at the customer's expense or to remove them from foreign premises at the expense of the client and take it into own possession. In this case, the client is obliged to provide Adapted Solutions GmbH with access to third-party premises by agreement with the respective recipient of the reserved goods. Adapted Solutions GmbH is then only obliged to deliver against the customer's prior fulfilment of all outstanding receivables. The same is the right of Adapted Solutions GmbH, if the customer despite prior reminder of his obligation to treat the reserved goods does not comply or if he has another, not insignificant breach of duty of care. The assertion of damages by Adapted Solutions GmbH remains unaffected.

In the event of third-party access to the reserved goods, the client must draw attention to the property of Adapted Solutions GmbH and notify Adapted Solutions GmbH immediately in writing. In the event of a breach of the notification obligation, Adapted Solutions GmbH is entitled to assert all claims against the client immediately.

Adapted Solutions GmbH undertakes to release the securities to which it is entitled at the request of the client at its discretion, insofar as the realizable value of these securities not only temporarily exceeds the claims to be secured by more than 20%. Adapted Solutions GmbH is reasonably responsible for selecting the securities to be released.

§ 8 Software Delivery

In the case of the supply and sale of software, the client simultaneously acquires a simple, indefinite, non-one-sided revocable and not transferable right of use on the computer program. Furthermore, the enclosed license terms of Adapted Solutions GmbH and § 69a et seqq. UrhG apply.

If Adapted Solutions GmbH provides further services in addition to software sales, in particular training, adaptation and maintenance, a separate contract must be concluded for each of these areas. The contracts are independent, they should also exist individually and do not stand or fall together.

§ 9 Guarantee

Adapted Solutions GmbH assumes that the goods it supplies are not subject to errors at the time of the transfer of risk, which cancel or significantly reduce the value or suitability to the ordinary use or the use required by contract. The use of the goods required by the contract is based on the contractual agreement and documentation, the manuals and specifications. The warranty period for purchase is 24 months from the delivery of the goods, in accordance with the legal regulations. The client must immediately complain to Adapted Solutions GmbH within 14 days.

In the event of a warranty, the defect is rectified at the discretion of Adapted Solutions GmbH by rectification or replacement delivery. Improvements to the product by Adapted Solutions GmbH are limited to the reasonable burden. If a defect is not to be rectified, Adapted Solutions GmbH is entitled to develop a reasonable alternative solution or to withdraw from the contract. In the event of a resignation, the client must pay an appropriate usage fee for the duration of the use. If the defect is not remedied even after the second attempt at rectification, the customer may withdraw from the contract or demand a pro rata reduction in the purchase price.

If warranty work is to be carried out at the request of the client in a location other than the contractual place of delivery, the client must bear the resulting costs.

Adapted Solutions GmbH can also bring in third parties for the purpose of troubleshooting. Adapted Solutions GmbH is acting on its own behalf and at its own expense. However, third parties may only be introduced if they have previously undergone the same obligation to maintain secrecy as is regulated in paragraph 12.

No warranty exists after alteration or damage to the delivery item due to intervention, repairs or improper treatment by the client or by third parties not authorized by Adapted Solutions GmbH; in the event of natural wear and tear; failure to comply with installation instructions or faulty installation; in the event of transport damage due to inadequate packaging by the client; in the event of damage caused by lightning and similar external influences; direct and indirect damage caused by faulty hardware or software from other manufacturers or caused by computer damage software (viruses etc.) or caused by improper use or treatment by the client or by other external environmental conditions and influences on the product beyond the control of Adapted Solutions GmbH.

If the customer has received unsolicited goods or too many goods, overpaid amounts will be refunded upon return of the original packaged goods.

§ 10 Guarantee when supplying Software

Contrary to § 9, the following applies to the sale or supply of software.

The software supplied by the Adapted Solutions GmbH has the agreed character, is suitable for the contractually required, usual use and has the usual quality of such software. However, it is not faultless. Adapted Solutions GmbH is therefore also entitled to correct the software several times.

A functional impairment of the software resulting from hardware defects, environmental conditions, misuse, etc., is not a defect. A significant reduction in quality is not taken into account.

In the event of defects, Adapted Solutions GmbH can first rework. The repair will be performed by Adapted Solutions GmbH at its sole discretion by providing a program that does not contain the defect or by demonstrating ways in which the effects of the defect can be avoided. An equivalent new version of the program or the corresponding previous version of the program that did not contain the error must be accepted by the client if it is appropriate.

The client will assist Adapted Solutions GmbH in the analysis of errors and rectification of defects by describing any problems that arise in concrete terms, by providing Adapted Solutions GmbH with comprehensive information and by providing it with the time it takes to rectify the defect. Adapted Solutions GmbH may rectify the defect as it chooses on site or in its premises. Adapted Solutions GmbH can also provide services through remote maintenance. The client must take care of the necessary technical requirements at his own expense and to grant Adapted Solutions GmbH access to its computer system after an announcement has been made in advance.

The contractors agree on the following error classes and reaction times:

- a) Error class 1: Malfunction. The error prevents the customer from doing business and there is no workaround available: Adapted Solutions GmbH will immediately begin troubleshooting, but no later than four hours after the error notification, and will continue working vigorously until the error is resolved. If appropriate, this work will be carried out outside normal working hours.
- b) Error Class 2: Impairing defects. The error significantly impedes the client's business operations. However, it is possible to tolerate it with bypass solutions or with temporarily acceptable restrictions or difficulties: Adapted Solutions GmbH begins troubleshooting on the same day if the error is reported before 10 a.m., at later error message at the beginning of the next working day. Troubleshooting continues within normal working hours until the error is rectified. Adapted Solutions GmbH can first identify a workaround solution and later correct the error if this is reasonable for the client.
- c) Error Class 3: Other defects: If it is acceptable for the client, Adapted Solutions GmbH begins troubleshooting within a week or does not correct the error until the next program version is delivered.

The deadlines begin with the notification of the client. In the event of disagreement over the assignment of an error to the classes, the client may request the classification into a higher error class. The customer shall reimburse Adapted Solutions GmbH for the expenses if he does not prove that his classification was correct.

The Adapted Solutions GmbH may claim additional costs if the software was changed, used outside the given environment or was operated incorrectly. It may demand reimbursement of expenses if no defect is found. § 254 BGB applies accordingly.

If Adapted Solutions GmbH finally refuses to remedy the defect or if rectification fails finally or is not reasonable for the client, he may withdraw from the contract according to the rules of § 6 or reduce the remuneration accordingly and demand damages or reimbursement of expenses according to § 11. The claims lapse in accordance to § 12.

§ 11 Infringement of Property Rights of Third Parties

The Adapted Solutions GmbH warrants that the contractual use of the software by the client does not conflict with the rights of third parties. In case of defects in title, Adapted Solutions GmbH warrants at its discretion the possibility of a legally perfect use of the software or equivalent software. Adapted Solutions GmbH is entitled and obliged to make changes to its products or to replace the products if this is necessary to eliminate the infringement of property rights and does not impair the functionality.

The client immediately informs Adapted Solutions GmbH in writing, if third parties assert property rights (e.g. copyrights or patent rights) against him. The client authorizes Adapted Solutions to conduct the dispute with the third party on its own. If Adapted Solutions GmbH makes use of this authorization, the client may not, on its own, recognize the claims of the third party without the consent of Adapted Solutions GmbH. The Adapted Solutions GmbH defends the claims of the third party at its own expense and indemnifies the client from all costs associated with the defence of these claims, as far as these are not based on unlawful conduct of the client (e.g. the use of programs contrary to the contract).

If a third party asserts infringements of property rights, the client must inform Adapted Solutions GmbH immediately and in writing about such claims. The client must support Adapted Solutions GmbH to the best of its ability in the defence of such claims.

Further claims of the client are excluded unless Adapted Solutions GmbH has acted deliberately or through gross negligence.

§ 12 Liability

The Adapted Solutions GmbH shall indemnify or reimburse useless expenditures, for whatever legal reason (e.g. from legal transactions and legal transaction-like obligations, breach of duty and tort), only to the following extent:

In case of injury to life, limb and health and in case of claims under product liability law, Adapted Solutions GmbH shall be liable without limitation.

In other cases, Adapted Solutions GmbH is liable for intent and warranty without limitation. In the event of gross negligence, Adapted Solutions GmbH shall be liable to the amount of the typical damage foreseeable upon conclusion of the contract.

In the event of negligent breach of such a material obligation that the achievement of the purpose of the contract is jeopardized (cardinal obligation), Adapted Solutions GmbH shall be liable for the amount of typically foreseeable damage at the time of conclusion of the contract, however, not exceeding EUR 250,000 per claim and EUR 500,000 for all claims in total.

Otherwise, liability for slight and moderate negligence is excluded.

Adapted Solutions GmbH remains open to the objection of contributory negligence. In particular, the client has the obligation to backup data and to defend against viruses according to the current state of the art.

§ 13 Obligations of the Client

The customer is obligated to have all delivery items of Adapted Solutions GmbH inspected immediately after delivery in accordance with the commercial regulations (§ 377 HGB) and to notify defects in writing with a detailed description of the error.

When delivering software, the client must test each module for usability in the specific situation before it starts to operate. This also applies to programs that the client receives under the warranty and any maintenance contract. He must comply with his duty to mitigate damage and, in particular, ensure that his data are regularly and properly secured and that his software and hardware comply with the current state of the art, in particular the updates recommended by the manufacturers of his software and hardware.

§ 14 Official Import and Export license

The import or export of the products and the documentation of Adapted Solutions GmbH may be subject to official approval. The client is obliged to inquire about the respective approval obligations and to obtain the required approvals at his own expense. If the execution of the contract is unreasonably delayed or if the official approval is finally refused, Adapted Solutions GmbH can

withdraw from the contract by refunding advance payments received. In this case, Adapted Solutions GmbH can charge the client a reasonable processing fee on the basis of the time worked.

§ 15 Confidentiality

Both parties must treat confidentially all documents and information concerning the internal business of the other party and received in the course of and in the performance of a contract. The internal business of Adapted Solutions GmbH also includes the structure of the goods of Adapted Solutions. These obligations remain after termination of a contract. The parties are, however, free to designate each other as a reference in the context of commercial advertising.

§ 16 Insurance

Products of the Adapted Solutions GmbH that are stored at the clients premises for testing, renting or loan must be insured against burglary, fire, water and other hazards and stored properly.

§ 17 Privacy

The client agrees that his personal data supplied to Adapted Solutions GmbH within the framework of the business relationship will be stored in the EDP system of Adapted Solutions GmbH and processed automatically. The Adapted Solutions GmbH is entitled to transmit this data to third parties, if this is required by law or necessary for the business process and the transmission is objectively justified.

§ 18 Prohibition of Assignment

The assignment of claims of the client from the transactions made with the Adapted Solutions GmbH is not permitted and requires the prior written consent of Adapted Solutions to be effective.

§ 19 Partial Ineffectiveness

Should a provision of these conditions be or become ineffective, this shall not affect the validity of the remaining provisions. Ineffective provisions shall be replaced by such provisions as may achieve the economic success sought by the parties in a legally effective and practicable manner. The same applies if it turns out that the contract contains a loophole.

§ 20 Place of Performance, Jurisdiction and Applicable Law

Place of performance and place of jurisdiction for all disputes arising from the contractual relationship is the location of Adapted Solutions, provided that the customer is a merchant. It is exclusively German law. In case of doubt, the German contract version alone is binding.