

1. **Scope**
  - 1.1 All our deliveries and performances (“deliveries”) are rendered exclusively in accordance with the following terms and conditions of Peer Software GmbH (“Supplier”). The customer’s terms which are contrary to or deviate from our terms are not recognized.
  - 1.2 The terms and conditions apply, even without repeated recitation, to all future agreements with the customer as well as to future deliveries and other services to be rendered to the customer.
2. **Contract formation**

Our offers are without obligation. They do not become binding until our order confirmation. Orders, contract amendments and addenda directed to us must be in written form. Orders placed by telephone or in another form are considered accepted when the order is confirmed by us in writing or the goods are shipped or handed over.
3. **Special technical requirements of the customer**
  - 3.1 If the customer has special technical requirements with respect to our products, it must communicate them to us by the time the order is placed.
  - 3.2 If the contract includes installation of the delivery item and/or training at the customer’s premises, the customer is obliged to inform us of the technical and local requirements. If the contract includes installation of the delivery item at the customer’s premises, the customer shall, in particular, provide the requisite material and personnel for this at its expense.
  - 3.3 If we incur additional costs from the breach of the customer’s obligation under sections 3.1 and 3.2, we are entitled to charge them to the customer at our then applicable prices according to the then applicable price lists, but for no less than the cost price, plus a markup of 20% for administrative and personnel costs and expenses.
- 3.1 We are not responsible for defects in installation when they are caused by defective products that have been provided by the customer.
4. **Scope of the rights of use**
  - 4.1 The Supplier grants customers a license to use the computer programs that are the subject of the contract. The programs are delivered under license, not sold. The license comprises the right to use the programs for a limited or unlimited time, but it is non-exclusive and non-transferable. Use of the license on computers or networks other than those named in the contract is not included.
  - 4.2 Belonging with the program is application documentation, which, together with the program, is denoted as “license material”. This may only be duplicated with the consent of the licensor. However, the making of backup copies of the programs supplied and the databases included therein also falls within the scope of use under the contract.
  - 4.3 The customer is not authorized to transfer the said license rights to third parties or to grant third parties corresponding rights of use.
5. **Transfer of possession / delivery and transfer of risk**
  - 5.1 The place of performance for all our obligations is Munich, irrespective of the site or branch from which the access code, or data carrier with access code, is sent.
  - 5.2 Our deliveries are made at the risk of the customer.
  - 5.3 If shipment is delayed as a result of circumstances for which we are not responsible, risk passes to the customer upon receipt of the notification of readiness for shipment.
  - 5.4 Partial deliveries are permitted as long as they are according to custom and usage.
6. **Delivery time**
  - 6.1 The delivery time mentioned in the order confirmation is strictly nonbinding, unless it was expressly denoted as binding. Furthermore, the beginning of the delivery time indicated by us presupposes timely and proper performance of the customer’s obligations.
  - 6.2 Unforeseeable circumstances not falling within our area of influence (such as strikes, lockouts, etc.) or force majeure entitle us to postpone delivery by the duration of the hindrance, including a reasonable startup time, or to rescind the contract because of the unfulfilled element of the contract. No right of rescission exists if the events constitute merely a brief disruption to our delivery capacity.
7. **Prices and payment terms**
  - 7.1 Our prices are ex works, i.e. exclusive of shipping, packaging, customs duties and insurance costs as well as statutory value-added tax; if a price is not specially agreed, the actual price list applies. Discounts for cash or early payment that have been separately agreed are inapplicable if our account is not paid in full.
  - 7.2 Unless otherwise agreed, payment is due after 10 days have passed following delivery or the invoice date, whichever is earlier. Payments must be made without deduction; bills of exchange and checks are accepted only contingent upon final settlement. Bill of exchange and discount charges are borne by the customer. The acceptance of bills of exchange does not signify a deferment of the claim; we remain entitled to demand cash payment of the claim when due in exchange for the simultaneous return of the bill of exchange. Interest for late payment accrues at 8% above the base interest rate, with the right to assert greater damages for delay remaining reserved.
  - 7.3 If our costs increase due to circumstances over which we have no influence, we are entitled to claim a reasonably higher price upon written notice to the customer. In such case, we are obligated to disclose to the customer what the price increase arises from.
  - 7.4 The customer may offset only with undisputed or legally established counterclaims or exercise a right of retention by referring to such claims. The customer may not exercise a right of retention that is not based on the same contractual relationship.
  - 7.4 If, after contract execution, we become aware that bills of exchange of the customer are protested, levies of execution have been initiated against it or there has been some other deterioration in the customer’s financial condition, we may also immediately claim receivables that are not yet due as well as such receivables arising from the business relationship for which a bill of exchange or check has been tendered, if and to the extent to which the circumstances described above indicate that the consideration owed us is in jeopardy.
  - 7.5 Failure to comply with our payment terms entitles us to stop any delivery and to continue to deliver only for advance payment or cash until the arrears have been settled.
8. **Retention of title**

We retain ownership of the license, the item represented through data carriers or other goods until all our claims against the customer have been satisfied, provided that retention of title is effective under applicable law. At our request, the customer shall assist us comprehensively in our efforts to protect our title to the delivery item in the country in question.
8. **Notices of defects and warranty rights**
  - 9.1 Only the statements of the Supplier that are apparent from the documentation and/or operation manual apply as statements on qualities. All other, particularly promotional statements are not to be viewed as statements on qualities in terms of the contract.
  - 9.2 In the case of the transfer of possession or licensing of goods or software that are not manufactured by us, liability is excluded for the qualities of the goods claimed by the manufacturer.
  - 9.3 The software must be inspected immediately after transmission of the access code. Any notices of defects must be submitted immediately in writing, no later than the end of the third day following the day of receipt. If the customer fails to provide the notification, the software is considered to have been approved unless it involves a defect which was not discernible in the inspection. If such a defect becomes evident subsequently, the notification must be given immediately upon discovery; otherwise, the software shall also be considered to have been approved even given such defect.
  - 9.4 In the case of justified and timely notices of defects, we have the option of repair or replacement. If these measures fail, the customer is entitled to demand rescission of the contract only if material defects exist or, in all other cases, to demand reduction of the remuneration.
  - 9.5 Only those limitations which cause the program to fail to perform the functions stated in its technical specifications, to deliver false output, to abort its run uncontrolledly or to act in a manner other than the intended function, resulting in the use of the program’s being prevented or impaired are treated as material defects. Other, immaterial defects are program imperfections which do not impair its function.
- We are not liable for defects
  - a) which arise from the fact that the customer, contrary to its obligation under sections 3.1, 3.2 and 3.4, has made erroneous statements in this regard.
  - b) which result from the customer’s failure to follow our oral or written operating instructions, or for defects resulting from incorrect use of the goods or from repairs by the customer that we have not approved.
  - c) None of the statements on qualities and/or for warranties that we may have made relate to products which were not manufactured by us. In this regard, only warranty claims that we are entitled to bring against the manufacturer of these products are assigned to the customers. Apart from that, the warranties under this section apply.
- 9.6 Warranty claims lapse one year after the passing of risk was transferred, but no later than one year after delivery / handover.
10. **Returns**

Unless otherwise agreed, it is not possible to return delivered goods. If the goods are nevertheless returned, acceptance of the goods is not deemed recognition of a credit item, even if the receipt of goods is signed for.
11. **Termination for cause / cancellation**
  - 11.1 While maintaining other rights, we are entitled to terminate the contract for cause with immediate effect when
    - a) the customer ceases business activity,
    - b) the customer fails to comply with material terms of the contract,
    - c) there has been a material deterioration in the financial condition of the customer, thereby jeopardizing payment of the license fee or performance of the customer’s other obligations.
  - 11.2 Where the contract is reversed due to termination and/or rescission, the customer undertakes to return the software in the form of the data carrier with access codes and to destroy all backup copies and to completely delete license material otherwise stored on data carriers or data processing devices.
12. **Liability**
  - 12.1 Claims that are not expressly allowed in these terms and conditions, particularly the customer’s damages claims for any form of defective performance of the contract, as well as cases of fault in pre-contractual advice and tortious acts, are excluded. The exclusion of liability does not apply to intentional or grossly negligent acts or to negligent damage as a result of loss of life, personal injury or damage to health. We are also liable for slight negligence to the extent this concerns obligations which are essential to achieve the purpose of the contract and strict adherence with which the customer may rely on (“material contractual obligations”).
  - 12.2 The amount of our obligation to pay damages is limited to damages which are typical of the contract and foreseeable; in no event do we assume responsibility for damages that are not typical of the contract and unforeseeable. In particular, the Supplier is not responsible for lack of commercial success, loss of profit, consequential damages and claims of third parties, with the exception of claims arising from the infringement of third party industrial property rights through the license material.
  - 12.3 The amount of damages is limited to the current net license fees for 36 months or the one-time fee for the program which is the subject of the claim or which has directly caused the loss.
13. **Copyright, intellectual property, business secret**
  - 13.1 The customer acknowledges that all copyright and other intellectual property in our products, the product descriptions, other materials delivered with our products and the software remain with us, and the customer acquires no rights of any kind therein. The customer is obligated to treat all knowledge and documents acquired in association with our business relationship as a business secret.
  - 13.2 Notwithstanding the rights of use granted, the Supplier retains, in particular, all rights to the license material, including all copies or partial copies of the same that are made by the customer. The customer undertakes to maintain the proprietary notices contained in the license material, such as copyright or other legal reservations, unamended and to adopt in all copies.
  - 13.3 The customer also undertakes to delete the license material stored on data carriers or data processing devices completely before destroying, selling or otherwise transferring such carriers or devices.
14. **Judicial venue and applicable law**
  - 14.1 If the customer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, or has no general place of jurisdiction within Germany, the courts of the location of our registered offices will have jurisdiction over all disputes arising directly or indirectly from the contractual relationship. We may, at our discretion, also take recourse against the customer through the courts having jurisdiction in the place where it has its registered offices.
  - 14.2 The law of the Federal Republic of Germany applies to these terms and conditions and to all legal relations between us and the customer.
  - 14.3 Should a term in these terms and conditions of business or a term within the scope of other agreements be or become invalid, this shall not affect the validity of the remaining terms or agreements.