

DATASOUND

Gesellschaft zur Entwicklung und Vermarktung digitaler Informationssysteme mbH

General Terms and Conditions

(As of 31 January 2003)

1 Object and application of the General Terms and Conditions

- 1.1 These General Terms and Conditions constitute the basis of all contracts between DATASOUND and its customers in respect of transactions entered into via this DATASOUND Internet shop.
- 1.2 The General Terms and Conditions shall apply as amended at the time contracts are concluded. Deviating conditions imposed by the customer shall be of no effect and shall not constitute any part of the contract even if not expressly repudiated by DATASOUND.

2 Formation of contract

Offers presented via the Internet shop are without obligation. By clicking on the Order button, the customer makes a binding declaration to DATASOUND of his or her intent to purchase the contents of the shopping basket. A contract exists only following a corresponding declaration by DATASOUND after the order has been sent.

3 Password, confidentiality, loss

- 3.1 Insofar as the customer receives a password and user ID, the rules contained in this Section 3 shall apply.
- 3.2 In this event the user ID and password will be required in order to place an order. Once the user ID and password have been issued, no further registration procedure will be required to make further purchases.
- 3.3 The user ID and password also enable the customer to inspect and modify his or her data and to revoke or extend approval given for data to be processed.
- 3.4 The customer is obliged to keep both user ID and password in safe custody and to treat them in such manner as to prevent them from being lost or becoming known to third parties.
- 3.5 In the event of a password being lost, the customer is obliged to inform DATASOUND forthwith. This can also be done by e-mail. Immediately upon receipt of such notification, DATASOUND will block access by the customer to the password-protected area. The block will not be lifted until such time as written application is made by the customer to DATASOUND. This does not affect the possibility of the customer re-registering.
- 3.6 Should a third party acquire knowledge of the user ID and/or password as a result of any lack of care in the way these are handled, the customer shall be liable in full for all orders placed under this user ID and password until such time as a report of their loss is received.
- 3.7 Should the customer not be responsible for the user ID and password becoming known to a third party, liability shall be limited to EUR 50.00.

4 Duty to provide information

- 4.1 To order products the customer must enter the data required to fulfill the order. When registering the customer is obliged to provide truthful information. In the event of any change in the requisite data provided by the customer, and in particular in the event of any alteration in the rights of representation vested in persons authorized by the customer to place orders, the customer is obliged to notify DATASOUND in writing immediately.
- 4.2 Should the customer fail to provide information or should false information be provided at the outset, DATASOUND may withdraw from any contract which may already exist. Notice of withdrawal may be given by e-mail.
- 4.3 The customer must ensure that any e-mail account specified is reachable with effect from the time that it is specified and that receipt of e-mail messages is not impeded by forwarding, closure of the account or an overfilled mailbox.
- 4.4 Information provided within the meaning of the above Section 4.2 will be presumed erroneous if an e-mail addressed to the customer is returned three times in succession or contact cannot be made due to an incorrect address.

5 Consumer contracts: right of cancellation

- 5.1 If the customer is a private individual (a consumer), he or she has the right to cancel the contract without specifying reasons within a period of two weeks after receipt of the goods or services by making a corresponding declaration to DATASOUND in written form (by letter or by e-mail) and/or returning the items to DATASOUND in their original condition. In order to comply with the deadline it is sufficient to send notification in good time to

DATASOUND GmbH, Rheinuferstr. 9, 67061 Ludwigshafen, Germany

- 5.2 In the event of cancellation DATASOUND will refund the purchase price in full as soon as the items are returned by the customer in their original packaging, identified with the name and address of the customer. Returns are in all cases made at the customer's risk. For orders with a value of up to EUR 40.00 the cost of returning the items must be borne by the customer; for orders valued at over EUR 40.00 DATASOUND will bear the cost of the return shipment. This shall not apply to defective goods or goods supplied in error; in such cases the return costs will always be borne by DATASOUND. When damaged or used goods are returned, DATASOUND reserves the right to demand compensation for any reduction in value over and beyond that incurred in due and proper utilization and for the value represented by the use of the goods. Where appropriate, claims for compensation will be set off against the purchase price paid.
- 5.3 The right of cancellation shall not apply in the following cases:
 - contracts for goods specially made to the customer's requirements or goods which by their nature are not suitable for return;
 - contracts for software products where the product packaging seal has been broken.
- 5.4 An unrestricted right of return within the meaning of § 356b of the German Civil Code is not accepted.

6 Delivery, prices, transfer of risk, reservation of ownership

- 6.1 In the event that the promised goods or services are not available either because DATASOUND has not received the same from its suppliers/producers or because DATASOUND's stocks of the product concerned have been exhausted, DATASOUND shall be entitled to supply items which are equivalent in quality and price. Should it not be possible to supply items which are equivalent in price and quality, DATASOUND may disengage from the contract and need not supply the promised goods or services. In such event DATASOUND undertakes to notify the customer immediately of the non-availability of the items and refund any payment made by the customer forthwith.
- 6.2 In the event that delivery dates cannot be complied with due to force majeure, e.g. mobilization, war, civil unrest or similar occurrences, e.g. strikes, lock-outs, etc., the deadlines shall be extended accordingly.
- 6.3 DATASOUND will deliver the products ordered to the address in Germany specified in the order.
- 6.4 Product list prices are inclusive of turnover tax at the respectively applicable rate.
- 6.5 Even where goods are delivered freight paid, the risk transfers to the customer at the time goods are dispatched or collected. If dispatch or delivery is delayed for reasons for which the customer is responsible or if the customer for any other reason delays in accepting the goods, risk will transfer to the customer at the time of onset of the delay.
- 6.6 Title to products supplied transfers to the customer upon payment in full of the purchase price. Should DATASOUND exchange products in implementation of a customer order, title to the returned products shall transfer to DATASOUND upon exchange and title to the products supplied in replacement shall transfer to the customer upon satisfaction of claims on the part of DATASOUND against the customer.

7 Permission to use software, software licensing agreement

- 7.1 Permission to use software is granted to the customer in return for a one-off payment.
- 7.2 Where permission to use software is granted the legal relationship between DATASOUND and the customer shall be governed exclusively by the DATASOUND Software Licensing Agreement as amended at the time permission is granted.

8 Payment

- 8.1 Where purchase prices are payable c.o.d., payment will be due forthwith following supply or performance and receipt of invoice by the customer. Where payments are made by credit card the purchase price will be due as soon as the order has been picked and the goods have left the warehouse.
- 8.2 Customers shall only have the right to set off counterclaims provided that these are legally valid or undisputed.
- 8.3 Customers may only exercise a right of retention provided that their counterclaim pertains to the same legal relationship.

9 Warranty, elimination of software defects, duty to inspect and register complaints

- 9.1 In the event of product defects which occur within 24 months following the transfer of risk as a result of circumstances which existed prior to the transfer of risk (e.g. design errors or material defects, lack of assured characteristics), DATASOUND offers a warranty as required by law. It is incumbent on the customer to report defects in existence at the time the purchased goods are received no later than two weeks after receipt (dispatching notification in good time will suffice). Failure to report defects in good time will render warranty claims invalid. Information contained in brochures, advertisements, documentation and similar publications is intended for descriptive purposes only and constitutes no guarantee of the nature of products.
- 9.2 DATASOUND must eliminate software defects which arise within 24 months following receipt of the software. Software defects shall exclusively comprise reproducible deviations from the relevant software description. For as long as it is liable for the elimination of software defects, DATASOUND will fulfill this duty by supplying a new software release. Until such time as the new software release is supplied DATASOUND is required to provide an interim workaround solution, provided that this is possible at reasonable expense and provided also that the customer is no longer able to process tasks which cannot otherwise be postponed. The customer must provide DATASOUND with all documents and information needed to eliminate software defects.
- 9.3 Should the elimination of defects not prove successful within a reasonable period, the customer may demand a reduction in the price or cancellation of the contract. This shall not affect Section 10 (Liability of DATASOUND).
- 9.4 If the customer is a commercial entity, the warranty period pursuant to Sections 9.1 and 9.2 shall be twelve months. In this case inspection of the goods and notification of possible defects shall be subject to the provisions of § 377 of the German Commercial Code.
- 9.5 If the customer resells the goods, the customer shall have a right of recourse against DATASOUND pursuant to § 478 of the German Civil Code (recourse by a commercial entity) only insofar as the customer shall not have entered into any agreement with his purchaser which goes beyond the entitlements provided for by law.

10 Liability of DATASOUND

- 10.1 Warranty and compensation claims by the customer in excess of the entitlements specified in this contract, in particular claims for interruption of operations, loss of profit, loss of information or data or consequential claims resulting from defects are excluded irrespective of legal grounds.
- 10.2 This shall not apply in the event of mandatory liability, e.g. pursuant to product liability legislation or in cases of willful intent, gross negligence, loss of life, physical injury or impairment of health, or a breach of essential contractual duties. Compensation for a breach of essential contractual duties is however limited to typical, foreseeable loss or damage, provided that there was no willful intent or gross negligence involved and no liability exists for loss of life, physical injury or impairment of health. The above provisions entail no variation in the onus of proof to the detriment of the customer.

11 Liability of DATASOUND for breaches of the proprietary rights of third parties

- 11.1 Should claims be made against the customer by third parties on the grounds that products supplied by DATASOUND are in breach of industrial property rights or copyright (hereinafter referred to as proprietary rights) and should the use of the said products hereby be impaired or prohibited, DATASOUND at its discretion and at its expense will either modify or replace the products so that they do not breach proprietary rights but nevertheless essentially correspond with the agreed specifications, or indemnify the customer for license fees payable to third parties for the use of the products. Should it not be possible for DATASOUND to do so on reasonable terms, it must take back the product and refund the price paid. DATASOUND may demand reasonable reimbursement from the customer for the value constituted by the use of the products.
- 11.2 Liability on the part of DATASOUND pursuant to Section 11.1 is subject to the customer notifying DATASOUND forthwith of any third party claim for breach of proprietary rights; the customer must not acknowledge the claim, and no settlements including extra-judicial settlements must be reached without the agreement of DATASOUND. Should the customer cease to use the product in the interests of minimizing the claim or for any other reason, the customer shall be obliged to notify the third party that such cessation of use does not constitute an acknowledgement of a breach of proprietary rights.
- 11.3 Insofar as the customer is responsible for the breach of proprietary rights, claims against DATASOUND pursuant to Section 11.1 are excluded. This shall likewise apply insofar as the breach of proprietary rights results from special requirements specified by the customer or from an application not foreseeable by DATASOUND, or is occasioned by the product being modified by the customer or used in conjunction with products not supplied by DATASOUND.
- 11.4 More extensive claims by the customer as a result of a breach of the proprietary rights of third parties are excluded. However, the right of the customer to withdraw from the contract and the provisions contained in Sections 10.1 to 10.3 remain unaffected.

12 Export authorization, the written form, transfer of contractual rights and duties, confidentiality, data protection, jurisdiction, severability

- 12.1 The export of products and documentation may – for example due to their nature or intended purpose – require official approval (see also the notices contained in delivery notes and invoices). If the purchaser intends to export the goods, the purchaser undertakes to obtain and comply with authorization under German, EU and US export control legislation.
- 12.2 To the extent that personal data are stored or otherwise processed, DATASOUND will fulfill the requirements of the data protection legislation. DATASOUND will in particular heed the instructions given by the customer and take the necessary technical and organizational steps to safeguard data against misuse.
- 12.3 German law applies exclusively with the exclusion of the UN Sales Convention and the provisions of International Private Law. Provided that the customer is a commercial entity, the place of jurisdiction shall be Mannheim. DATASOUND is however also entitled to bring suit at the principal place of business/domicile of the customer.
- 12.4 Should individual terms of this contract be legally ineffective, the remainder of the contract nevertheless remains binding. This shall not apply, however, if adhering to the contract would impose unreasonable hardship on either party.