

## KLIPPEL GmbH Standard Business Terms

### Section 1 General terms

(1) These Standard Business Terms apply to all contracts for the delivery of hardware and/or software including all components and accessories (hereinafter also collectively referred to as a "good" or "goods") as well as for commissioned services, if applicable, from KLIPPEL GmbH, Mendelssohnallee 30, 01309 Dresden (hereinafter referred to as "KLIPPEL"), such as consulting, installation, configuration, updates, maintenance, instruction and training, in the context of transactions with businesses, legal persons under public law or special funds under public law. They apply to likewise to all future transactions even if they are not again expressly agreed. To the extent the terms "performance" or "performances" are used hereinafter, they refer collectively to the supplies of goods and services referred to above.

(2) The customer must provide KLIPPEL written notice in advance in the event the application of these Standard Business Terms is refused. Purchasing or other business terms of the customer or third parties at variance with the terms set out herein are not accepted. Thus any standard business terms of the customer or third parties will not be applied even if KLIPPEL does not expressly object to their application in a specific case, or if KLIPPEL refers to a letter containing or referring to customer or third party standard business terms.

### Section 2 Offer and conclusion of contract

(1) A contract is concluded upon KLIPPEL's written order confirmation, by conclusive action, in particular if KLIPPEL begins performance in accordance with the contract, or by the customer accepting a binding offer from KLIPPEL. Art. 15 and 16 CISG (Revocability of the offer until acceptance) remain unaffected. The application of Art. 19 (2) CISG (Implicit acceptance of immaterial changes) is excluded.

(2) Before conclusion of a contract, the customer has examined whether the specification for the goods meets its wishes and needs. It is aware of the primary functions and system requirements of the hardware and/or software.

(3) An order may be amended only by conclusion of an amendment or supplemental agreement.

(4) **Product descriptions, images, test programs, etc. represent service descriptions, but not guarantees.** A guarantee requires a written declaration on the part of a managing director or authorised representative of KLIPPEL. No other KLIPPEL employees are authorised to give guarantees.

(5) Solely managing directors and authorised representatives of KLIPPEL are authorised to make ancillary agreements on a verbal basis or to provide verbal assurances which extend beyond the terms of a written agreement.

### Section 3 Scope of performance

(1) The scope of KLIPPEL's duty to perform is defined by the order confirmation, otherwise from KLIPPEL's quotation and, if applicable, agreed contract amendments and supplements.

(2) The customer will be provided a user manual in English in cases of the supply of hardware. Where software is delivered, the user manual including an installation guide will be provided in English in a common file format. The customer has no right to receive the source code, models or other input products. The grant of a license to use the software is governed by Section 5.

(3) To the extent not expressly otherwise provided in the contract, services exceeding the delivery of the good, such as consulting, installation, configuration, updates, maintenance, instruction and training, do not fall within the scope of performance.

### Section 4 Delivery and transfer of risks

(1) Subject to other arrangements in specific cases, delivery of the good is made Ex Works (EXW Incoterms 2010).

(2) The means of delivery for software that is not installed on hardware delivered by KLIPPEL is governed by the parties' individual agreement; if no such agreement exists software and user documentation will be delivered on CD-ROM or DVD-ROM or provided for download on a server designated by KLIPPEL and installed by customer itself in accordance with the installation guide contained in the user documentation. In the case of a download, customer bears the risk of malfunctions and interruptions occurring on the part of customer and in the publicly-accessible Internet up to the point at which KLIPPEL feeds data into the publicly-accessible Internet in the course of contractual performance. Therefore in case of download the risk passes to customer when the last data packet belonging to the software data has left the transfer point.

(3) Customer bears the costs for transport as well as for a transport insurance possibly desired by customer. In the case of software downloads, customer therefore in particular bears the telecommunication and provider costs related to Internet access.

### Section 5 Customer rights to software; Scope of license granted

(1) The software and user manual are legally protected. As between the contracting parties, KLIPPEL is exclusively entitled to copyright, patent rights, trademark rights and all other ancillary copyrights to the software and other items KLIPPEL licenses or makes available to customer as part of contract negotiations and performance. In lieu of the provisions of Section 5 contained herein, the respectively applicable license terms apply in the event Open Source Software or other third-party software is used; KLIPPEL has the corresponding licenses.

(2) KLIPPEL grants customer a non-exclusive, indefinite licence to use the software subject to a limited right of assignment. Upon delivery of the software KLIPPEL will provide customer a licence key for the use of the software with a limited duration of three months. The acquisition of an unrestricted license and the corresponding licence key is subject to the condition precedent of full payment remuneration owed. Prior to that point, customer merely has a preliminary contractual usage right in the form of a license that may be revoked at any time pursuant to Section 5 (9).

(3) If KLIPPEL adapts the software by order of customer, the same applies to the rights of use to the resulting work products as to the rights of use to the software. In particular, customer is entitled to a non-exclusive license pursuant to Section 5 (2) and KLIPPEL retains an exclusive right to further exploitation of the work products.

(4) Customer may make copies of the software exclusively to exercise its rights of use and for backup purposes. Backup copies must be kept in a safe place and, as far as technically possible, must include notice that they are subject to KLIPPEL's copyright. Customer is entitled to create copies in the main memory as part of the intended program run. Copies no longer required must be deleted or destroyed. The manual and other documents received from KLIPPEL may be copied only for internal purposes. Transmission to third parties is prohibited subject to Section 5 (6).

(5) In addition to the hardware, KLIPPEL includes notice of KLIPPEL's copyrights in the software code, the user interface and the documentation. The customer may not alter or adulterate these notices without the consent of KLIPPEL. In the event of a permissible modification or integration of the software or documentation, the customer will, to a reasonable extent, label the software code, the user interface and documentation with notice of KLIPPEL's copyright.

(6) In the case of software KLIPPEL has placed on the market, customer is only entitled to transfer software, or parts thereof, to a third party in accordance with the following rules and after having completed the following process:

- a) Customer provides the third party (if available) the original data media (cf. Section 4 (3)).
- b) Customer deletes all other copies of the software (regardless of the version), in particular on workstations, servers, data media and other storage systems, definitely ceases its use and affirms in writing to KLIPPEL that it has fulfilled these obligations.
- c) The transfer to a third party is made permanently, i.e. without claim to return or option to repurchase.
- d) Customer affirms in writing to KLIPPEL that it notified the third party of agreements between the parties on the ability to assign the license rights to the software, in particular these Standard Business Terms.
- e) There is no good case (e.g. non-competition clause) for the benefit of KLIPPEL that would contradict the assignment to a third party.

(7) All other acts of exploitation, in particular renting and use of the software by and for third parties (e.g. by outsourcing, computer centre operations, application service providing, cloud services) are not permitted without previous written approval by KLIPPEL.

(8) The software including the software pre-installed on a hardware unit may not be examined in a laboratory setting for purposes of determining how the system functions and/or attached to analytical equipment for such purposes and/or connected to analytic programs for such purposes. Reverse engineering and disassembly of hardware and software are prohibited.

(9) KLIPPEL may revoke the customer's license for good cause subject to the conditions of Section 14 (2). In particular, the good cause requirement is satisfied if customer commits a significant breach of its obligations under the previous paragraphs despite written warning. If a license is not granted, or if it terminates, KLIPPEL may, at its election, demand the return of all objects and software as well as the destruction of all copies of objects and software or may request the written assurance of the customer that the objects and software, including all copies, have been completely and permanently destroyed.

## **Section 6 Support contract**

(1) Except as otherwise provided in a separate contract, the provisions of this Section 6 apply in the event a support contract is concluded.

(2) KLIPPEL provides brief consultation by phone, e-mail or remote maintenance in case of defects, installation or application problems, malfunctions or other difficulties in connection with hardware and software processes. Consultation is provided in English or German during the general service hours (Monday to Friday from 8:30 am to 5:00 pm CET, except for public holidays in the Free State of Saxony).

(3) KLIPPEL provides all updates released by KLIPPEL to the customer if support comprises delivery of updates. The number of updates is at the reasonable discretion of KLIPPEL. A new software version is considered as upgrade if the new version includes a considerable functional expansion. Delivery of upgrades is not included in programme maintenance. Upgrades are delivered solely against separate payment on the basis of a separate order. KLIPPEL will regularly summarise functional expansions in modules and offer these for separate purchase against separate payment.

## **Section 7 Remuneration**

(1) The amount and due date of remuneration are as provided in respective contract, or alternatively based on the KLIPPEL price list valid at the time the respective supply of goods or services is agreed. If delivery is made, as agreed upon, more than four months after contract conclusion, the general prices indicated in the KLIPPEL price list valid on the day of delivery apply, provided no other agreements have been made in the individual case.

(2) The prices stated are understood to exclude statutory VAT to the extent it applies, as well as taxes and customs due in international transactions, and incidental bank charges.

(3) Partial deliveries, if permitted, may be invoiced immediately. However, in the event of complete performance or an advance payment requirement on the part of the customer, partial payments and instalments are permitted solely if agreed upon in the contract.

## **Section 8 Payment and default**

(1) Unless otherwise agreed, invoices from KLIPPEL are due and payable 14 days after the invoice date without deduction.

(2) If customer defaults, it will be charged interest in the amount of 9 percent above the base rate as of the respective date. KLIPPEL reserves the right to assert claims for additional damages in the event of default.

(3) Other terms and conditions of the customer notwithstanding, KLIPPEL is entitled to credit payments first to its older debts and will inform the customer about the manner of allocation. If costs and interest have already accrued, KLIPPEL is entitled to credit the payment first to the costs, then to the interest and last to the primary obligation.

(4) A payment is first considered to be made once KLIPPEL may dispose of the funds. In case of cheques, payment is considered to be made when the cheque is honoured.

(5) If KLIPPEL becomes aware of circumstances that objectively cast doubts on customer's creditworthiness, in particular if customer suspends payment or a cheque is returned for lack of sufficient cover, KLIPPEL is entitled to declare due immediately the whole residual debt, even if KLIPPEL accepted cheques. In this case KLIPPEL is also entitled to demand advance payments or security.

### **Section 9 Time of performance; Delays**

- (1) Statements about delivery and performance dates are non-binding unless confirmed in writing as binding by KLIPPEL.
- (2) KLIPPEL is not liable in the event impossibility of delivery or delays in performance caused by force majeure or other events that were not foreseeable at the time of contract conclusion – including particularly stoppage of any kind, difficulty in obtaining materials or energy, delays in transport, strike, lawful lockout, official orders or lack of, incorrect or unpunctual delivery by suppliers, even if they occur at suppliers of KLIPPEL or their sub-suppliers – for which KLIPPEL is not at fault. If such events make delivery or performance considerably more difficult or impossible for KLIPPEL and if the obstruction and the hindrance are not merely temporary in nature, KLIPPEL shall be entitled to rescind the contract. In the case of temporary impediments, the delivery or performance periods will be extended or the delivery or performance dates will be postponed for the duration of the impediment, plus an adequate start-up period. If the hindrance lasts more than two months, customer is entitled to withdraw from the contract with respect to the yet unfulfilled part after an appropriate extension of time. These periods are also deemed to be extended by the period in which customer fails to comply with its contractual duties of cooperation, e.g. by not providing information, not providing access, not delivering a supply or not providing employees, or if customer is in default of the contract.
- (3) If the parties subsequently agree to other or additional services that affect agreed periods, such periods will be extended by an appropriate time-frame.
- (4) Reminders and the granting of periods for additional performance on the part of the customer must be made in writing to be effective. The electronic form is excluded. A grace period must be appropriate. A period of less than two weeks is appropriate solely in case of particular urgency.
- (5) KLIPPEL may render partial performance to the extent the parts delivered are of use to the customer and customer does not incur any significant additional expense as a result, unless KLIPPEL agrees to pay these costs.

### **Section 10 Retention of title**

KLIPPEL retains title to goods that have been delivered, in particular in hardware that has been supplied, firmware installed thereon, if applicable data media provided and other moveable components and accessories, until the complete payment of agreed remuneration.

### **Section 11 Offset, retention and assignment**

- (1) Customer has a right of offset and retention only if counter-claims which have come due have been finally determined by a court or are undisputed. However, without the further conditions of Sentence 1, the customer is
- Also entitled to offset if it intends to set off a claim against a claim on the part of KLIPPEL that has a reciprocal relationship to the customer's claim (e.g. offset a claim for compensation for damages resulting from non-fulfilment or default against the claim to payment of remuneration owed);
  - Likewise entitled to retention if the right of retention is asserted for counter-claims from the same contractual relationship.
- (2) A customer who is a merchant may assign rights under this contract to third parties only with prior written approval of KLIPPEL, except where § 354a German Commercial Code (HGB) applies. By contrast, consumers are not subject a prohibition on assignment and may assign their rights to third parties without consent on the part of KLIPPEL.

### **Section 12 Duty to inspect and object; Notice of defects**

- (1) The customer is obliged to inspect all goods delivered, including documentation provided by KLIPPEL immediately upon delivery by KLIPPEL to the extent feasible in the normal course of business. The customer is obliged to notify KLIPPEL in writing without delay in the event a defect is discovered. If the customer fails to provide such notice, the respective merchandise is deemed to have been accepted, unless the defect is one that was not identifiable upon inspection. If such a defect is subsequently discovered, notice must be provided without delay following discovery. In all other cases, the respective merchandise, including documentation, is deemed to have been accepted despite the respective defect.
- (2) Notice of a defect given by the customer must be provide without delay and must include an exact description of the defect as well as all relevant information, in particular a description of the system and hardware environment.

### **Section 13 Secondary customer obligations**

- (1) The customer is obliged to following the notes on operating the hardware and software provided in the documentation. Relevant safety guidelines for handling KLIPPEL products may also be found at <http://klippel.de/support/safety-first.html>. The customer is required to test the hardware and software thoroughly as to its usability for a specific application prior to commencing productive use.
- (2) Customer will make appropriate arrangements for the case that the software fails to work properly in whole or in part (e.g. by data backup, error diagnosis, regular checking of results, emergency planning). It is responsible for ensuring operation of the software system environment.
- (3) In the event of agreements related to adaptations and other services based on the custom specifications of the customer, the customer will provide KLIPPEL all information necessary and designate an appropriate contact person at the customer's company.

### **Section 14 Binding contract term and termination**

- (1) If the parties have agreed to a continuing obligation (e.g. software maintenance agreement), the provisions of the respective contract govern the contract term and methods of termination. In the event such provisions are not included, the contract is deemed to have a term of one year and is automatically extended for additional one year terms if three months' notice of termination is not given prior to the end of the initial contract term or the end of a respective renewal period. The right to extraordinary notice of termination for cause shall remain unaffected.

(2) In cases other than ordinary termination pursuant to Section 14 (1) sent. 1, termination of the continued exchange of goods and services (e.g. in the event of revocation, termination for good cause, reduction or compensation in lieu of performance) must always be threatened subject to a description of the grounds therefore and the grant of a reasonable grace period in order to provide a remedy (normally at least two weeks) and may only be declared within two weeks following expiry of the grace period. No grace period need be granted under the circumstances described in § 323 (2) German Civil Code (BGB). The party entirely or primarily at fault for a disruption cannot demand reversal of performance.

(3) All declarations in this regard must be in writing in order to be effective.

#### **Section 15 Material defects**

(1) Goods supplied or manufactured by KLIPPEL, and work product, will have the agreed characteristics, in particular as described in the specifications and other documentation, are suitable for the contractually-agreed use, or otherwise for customary use, and evidence the level of quality standard to items of this type.

(2) **Claims for material defects are precluded in particular in the event of**

**a) Minor deviations from agreed characteristics and in the event of immaterial impairments of usability;**

**b) Functional impairments of software that do not result from defects in hardware supplied by KLIPPEL, from environmental conditions, user error, etc.;**

**c) A breach of the contractual duties of inspection and notice of defects pursuant to Section 12 (1);**

**d) A breach of the statutory duty of inspection and notice of defects pursuant to §§ 377 and 381 (2) HGB;**

**e) Defects of which the customer was aware upon conclusion of the contract. In the event a defect is not discovered by the customer on grounds of gross negligence, it may only assert a claim based on such defect if KLIPPEL has fraudulently concealed such defect or has assumed a guarantee for the characteristics of the respective item;**

**f) A transaction under Art. 1 to 3 CISG if the goods infringe technical norms or statutory or other state regulatory measures applicable in the country in which the customer is located, or in another territory outside of Germany, in which the goods are intended to be re-sold or used as intended, and of which KLIPPEL was neither aware nor should have been aware. KLIPPEL is not obliged to review the particular features of foreign law.**

(3) KLIPPEL is initially entitled to attempt a cure in the event of a material defect. The customer is required to grant KLIPPEL a reasonable grace period for this purpose in writing. At KLIPPEL's discretion, cure may be effected by delivering non-defective goods or by having KLIPPEL demonstrate options for avoiding the effects of the defect. At least three attempts at cure must be accepted. In cases involving software, the customer is required to accept an equivalent new version of the software or an equivalent prior version of the software that does not include a defect if this may reasonably be expected of the customer.

(4) The customer will support KLIPPEL in error analysis and cure in that customer will specifically describe problems that have occurred, provide KLIPPEL complete information and provide the necessary time and opportunity for correction. At its election, KLIPPEL may remedy a defect on-site or at KLIPPEL's business premises. KLIPPEL may also provide services via remote maintenance. In cases of remote maintenance, the customer is required to provide the required technical prerequisites and to grant KLIPPEL electronic access to the software following appropriate advance notice.

(5) If an error reported by customer cannot be detected, is caused by an operating error or is otherwise the result of circumstances outside of KLIPPEL's scope of responsibility, customer shall bear KLIPPEL's costs in accordance with the agreed or customary rates.

(6) If KLIPPEL definitively refuses to cure or cure has definitively failed or may not be reasonably expected of the customer, the customer may either revoke the contract as provided in Section 14 (2) or reduce remuneration appropriately. The limitations set out in Section 17 (Liability on the part of KLIPPEL) apply to additional claims for damages.

#### **Section 16 Defects of title**

(1) KLIPPEL guarantees that the use of goods supplied or manufactured by KLIPPEL, and its work product, by the customer in accordance with the contract do not infringe any third party rights. In the case of a transaction pursuant to Art. 1 to 3 CISG, a defect of title only exists subject to the requirements of Art. 43 CISG. **KLIPPEL is only obliged to investigate contrary industrial property rights or other intellectual property rights for the territory of Germany. In the event of a defect in title, KLIPPEL will satisfy its warranty obligations by, at KLIPPEL's discretion, providing the customer an option for using the relevant object in a legally-compliant manner or by providing it with an equivalent object.**

(2) The customer will immediately inform KLIPPEL in writing if third parties assert property rights (e.g. copyrights or patent rights) in the respective object. Customer authorises KLIPPEL to resolve the conflict with the third party by itself. If KLIPPEL avails itself of this authority, customer may not acknowledge the rights of such third party on its own without the consent of KLIPPEL. KLIPPEL will defend against such third party claims at its own expense and will indemnify and hold customer harmless from all costs related to the defence of such claims, provided these are not based on a breach of duty by customer (e.g. use of the object contrary to contract).

(3) Section 15 (2) alt. c) to f) and (3) to (6) apply accordingly.

#### **Section 17 Liability on the part of KLIPPEL**

(1) **To the extent liability requires fault on the part of KLIPPEL, KLIPPEL's liability for compensation for damages, on whatever legal grounds (e.g. impossibility, delay, non-conforming or incorrect delivery or performance, breach of contract or tortious acts) is limited as follows:**

**a) Liability on the part of KLIPPEL for simple negligence is excluded to the extent not related to the breach of a material contract obligation, the performance of which first renders the proper performance of the contract possible and the performance of which the customer may reasonably be expected to rely upon and the non-performance of which endangers the achievement of the purpose of the contract (so-called "cardinal obligation"). In the event of the breach of such a cardinal obligation, liability on the part of KLIPPEL in the case of simple negligence is limited to damages typical to the contract foreseeable at the time the contract was concluded. In any event, KLIPPEL will only assume liability for simple negligence at no more than the amount of the liability limits agreed in the individual contract.**

**b) In the case of gross negligence, liability on the part of KLIPPEL is limited to damages typical to the contract foreseeable at the time the contract was concluded.**

**(2) In the case of a transaction under Art. 1 to 3 CISG, Section 17 (1) applies accordingly to breaches of contract even if fault is not required in such circumstances.**

**(3) To the extent KLIPPEL is not obliged to perform data backup measures itself, liability for a loss of data limited to the typical costs of data restoration; this is determined based on the loss that would have occurred if reasonable data backup measures had been performed (e.g. creation of backup copies) by customer.**

**(4) To the extent that KLIPPEL provides technical information or advice and this information or advice is not part of the scope of performance owed by KLIPPEL in accordance with the provisions of the applicable contract, such information or advice is free of charge and without recourse to any liability for negligently providing false information or advice.**

**(5) The exclusions and limitations on liability set out in this Section 17 (Liability on the part of KLIPPEL) apply correspondingly to claims for reimbursement of futile expenses.**

**(6) The exclusions and limitations on liability set out in this Section 17 (Liability on the part of KLIPPEL) apply to the same extent in favour of the executive bodies, legal representatives, employees and other agents of KLIPPEL.**

**(7) The limitations set out in this Section 17 (Liability on the part of KLIPPEL) do not apply to liability on the part of KLIPPEL based on intentional conduct, injury to life, limb or health, in cases of bad faith, the assumption of a guarantee or in the case of claims based on the German Product Liability Act (Produkthaftungsgesetz).**

#### **Section 18 Limitations period**

(1) The period of limitation is

a) One year for claims to repayment of the remuneration based on withdrawal or reduction, but not less than three months from submission of the valid revocation or reduction;

b) One year for claims from material defects not related to repayment of the remuneration based on withdrawal or reduction;

c) Two years for claims from defects of title, if the defect of title does not affect an exclusive third-party right for which the third party may demand production or destruction of the items provided to customer;

d) Two years for compensation claims from material or defects of title or compensation for wasted expenditure.

(2) The limitations period starts, subject to specific contractual terms to the contrary, in the cases of Section 18 (1) alt. a) to c) pursuant to the legal requirements of the applicable warranty law, in case of alt. d) from the time when customer became aware of the circumstances justifying the claim or would have become aware of such circumstances absent gross negligence.

(3) The limitation period begins to run at the latest upon the expiry of the maximum periods set out in § 199 German Civil Code (BGB).

(4) The foregoing notwithstanding, statutory limitations periods are applicable to all cases described in Section 17 (7).

#### **Section 19 Disposal**

(1) Once use has ended, the customer must dispose of all devices supplied to it at its own cost and in compliance with applicable laws and regulations. The customer releases KLIPPEL from its duty to accept return of such devices pursuant to § 10 (2) German Disposal of Electronic Equipment Act (ElektroG) and shall hold KLIPPEL harmless as to associated claims asserted by third parties.

(2) The customer is required to subject third party commercial entities to whom it transfers devices originally supplied to the customer to a contractual obligation to dispose of such devices at such party's own cost and in compliance with applicable laws and regulations following use and to impose like obligations on any further transferee. If the customer does not comply with this obligation, the customer is obliged to accept return of the respective devices following the end of use at its own expense and dispose of them in compliance with applicable laws and regulations.

(3) Claims on the part of KLIPPEL to the assumption of the duty of disposal and indemnification from the claims of third parties under Section 19 (1) do not lapse prior to the expiry of 12 months from the final termination of use of the respective device. This limitations period commences at the earliest upon receipt of written notice by KLIPPEL from the customer indicating a cessation of use.

#### **Section 20 Data protection**

KLIPPEL saves customer data necessary for the transaction of business in compliance with laws on data protection.

#### **Section 21 Indication as a reference customer**

KLIPPEL is authorised to list the customer as a reference customer following successful performance of the contract.

#### **Section 22 Final provisions**

(1) Amendments or additions to a contract concluded on the basis of these Standard Business Terms have to be made in writing unless another form is mandatory in the individual case or otherwise provided in the above provisions.

(2) The laws of the Federal Republic of Germany are applicable subject to the inclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) as a part of German law.

(3) The place of fulfilment is Dresden. The exclusive place of jurisdiction for all disputes arising under or in connection with this contract is Dresden. KLIPPEL may additionally file suit against the customer at any other statutory place of jurisdiction.

Current as of: January 2019