

GENERAL TERMS AND CONDITIONS

1. Scope of application

1.1

The following general terms of contract of Rottmann Group GmbH "manufacturer") shall apply for all contractual relationships with B2B (business to business) customers and shall be considered as part of the contract unless otherwise agreed in writing in an individual agreement between the manufacturer and the customer.

1.2

These General Terms and Conditions shall, until their explicit revocation, also form the basis for subsequent contracts. Other conditions, especially contradictory conditions of the customer, shall not be part of the contract, even if these are not explicitly objected to. Additions, changes, subsidiary agreements or deviating conditions shall become part of the contract only if they are explicitly accepted by us in writing.

2. Offers and order confirmations

2.1

If the order is to be qualified as an offer pursuant to § 145 BGB [German Civil Code], the manufacturer can accept it within 3 weeks.

2.2

Orders shall be considered as accepted if they are confirmed by us in writing or if they are executed at short notice upon their receipt. The execution, the delivery note or the invoice should then be considered as acceptance of the order. The contracting partner must carefully check an order confirmation for completeness and correctness immediately upon its receipt. Two changes before release shall be free; after that, further desired changes must be paid for according to actually incurred additional expenses, but at least with a lump-sum fee of € 50.00.

2.3

We shall reserve all property rights and copyrights to all documents, such as calculations, drawings etc., provided to the customer in connection with the order placement. These documents may be copied or made accessible to third parties only with our explicit written consent. If the order is not placed, they must be returned immediately.

2.4

The manufacturer's offers shall be non-binding unless otherwise agreed in writing.

2.5

The order confirmation shall be decisive for the scope of delivery.

2.6

The manufacturer may make changes in the design and shape as long as these changes are not fundamental and the contractual purpose is restricted only negligibly due to these changes.

3. Prices and terms of payment

3.1

A certain purchase price shall be payable for the purchase of a tablet. A certain amount shall be due per month per license. The unit prices specified by us in the offers and order confirmations shall apply on priority.

3.2

Any required data carriers, packaging and the dispatch shall be invoiced separately. Any provision of services at the customer's location must be paid for separately.

3.3

Our prices shall be subject to change until the delivery / performance. If pricing bases change between the conclusion of the contract and the contractual performance, especially due to an increase in raw material prices, wages, etc., we shall be entitled to make an appropriate price adjustment, about which we shall inform the customer immediately. If the price changes by more than 10%, the customer shall be entitled to withdraw from the contract within 10 days from the notification of the price change, unless the contract has already been fulfilled. After that, the new prices shall be deemed approved.

3.4

The deduction of discount shall require explicit prior written agreement.

3.5

Unless otherwise stated in the order confirmation, the invoice amount shall be due for payment net (without deduction) within 8 days from the invoice date.

3.6

In the event of default of payment, the default interests and other costs incurred due to the delay must be reimbursed. The default interest rate shall be 9 percent over the respective applicable basic interest rate, § 288 para. 2 BGB.

3.7

If quantities or measurements change or the customer wants design changes after the conclusion of the contract, the agreed prices as well as the total price shall be reduced or increased according to the change. If taxes, fees or duties are increased or introduced anew between the conclusion and fulfilment of the contract, we shall be entitled to increase the purchase price to the same extent. The same shall apply in case of a collective agreement-related or legal increase in wage costs and incidental wage costs. Price increases in other costs in connection with the contract processing can also be charged to the purchaser. Freight reimbursements for collection shall not be granted. You must dispose of packaging material (transport packaging on site at own costs. For non-returned pallets, a lump-sum fee of € 15.00 per pallet shall be charged.

3.8

Exchange payments shall be allowed only upon special agreement. Bills of exchange and cheques shall always be accepted only on account of performance, but not in lieu of performance. Bill of exchange charges and note tax shall be borne by the customer. In the event of a cheque or bill protest, the contractor can demand immediate payment step by step against return of the cheque or bill of exchange, even for papers that are due later.

3.9

If the delivery or performance takes place 3 months from the conclusion of the contract or later, we shall be entitled to assert additional costs.

3.10

In order to secure our claim to remuneration, we shall be entitled to demand a security up to an amount of the work wage remuneration / the purchase price from the customer through submission of a directly enforceable, unlimited bank guarantee (performance bond) or an equivalent security. The request from us in this regard shall be made in text form and shall give the purchaser the opportunity to provide the security within a period of 2 weeks. If the purchaser does not provide the required security within the set time limit, we shall be entitled to withdraw from the contract. In any case, we shall be entitled to a right to withhold performance until the provision of security in the required amount.

3.11

The manufacturer shall be entitled to increase the rent for the first time at a month end after the expiry of twelve (12) months after conclusion of the contract with a written notice of three (3), if and as long as the costs incurred by it for maintaining the contractual condition of the contractual software have increased. The customer shall be entitled to terminate the software lease agreement within a period of six weeks from the receipt of the notice about a rent increase.

4. Lieferung

4.1

The agreed products must basically be collected by the customer from the contractor. If a dispatch of the product by the contractor has been agreed upon, the dispatch shall take place ex works for the account and at the risk of the customer. If a dispatch to a certain place has been agreed upon, the customer must ensure navigability of the unloading point with a truck and also ensure appropriate unloading options. Any waiting times can be charged by us, at a rate of € 90.00 per started half an hour (unless there is a demonstrably higher claim).

Any unloading must be carried out by the customer immediately and properly.

4.2

Partial deliveries shall be permitted to a reasonable extent.

4.3

No delivery date shall be agreed upon without a written delivery note. Any telephonic information shall be ineffective and non-binding.

4.4

The start of the delivery period specified by the manufacturer shall require clarification of all technical questions. Subsequent requests by the customer for changes or additions shall extend the delivery period to a reasonable extent. The same shall apply in the event of occurrence of unforeseen events beyond the control, such as force majeure, export and import bans, strike and lockout.

4.5

The compliance with the delivery obligation shall also require timely and proper fulfilment of the customer's obligation. The objection of non-performance of the contract shall remain reserved.

4.6

If the customer is in default of acceptance or if it culpably violates other obligations to cooperate, the manufacturer shall be entitled to demand compensation for the damage incurred by it in this respect, including any additional expenses. Further claims shall remain reserved.

4.7

If the conditions from para. 4.3 exist, the risk of accidental loss or accidental deterioration of the contractual object shall go over to the customer at the time when it gets into default of acceptance or into debtor's delay.

4.8

The manufacturer shall be entitled to partial deliveries or partial performances at any time, as long as this is reasonable for the customer.

4.9

A written notification about readiness for delivery shall be sufficient for the default of acceptance.

5. Transfer of risk, acceptance and packaging costs

5.1

The agreed products must basically be collected by the customer from the contractor. If a dispatch of the product by the contractor has been agreed upon, the dispatch shall take place ex works for the account and at the risk of the customer. If a dispatch to a certain place has been agreed upon, the customer must ensure navigability of the unloading point with a truck and also ensure appropriate unloading options. Any waiting times can be charged by us, at a rate of € 90.00 per started half an hour (unless there is a demonstrably higher claim).

5.2

No delivery date shall be agreed upon without a written delivery note. Any telephonic information shall be ineffective and non-binding.

5.3

In case of a contract for work, the risk of accidental loss shall go over with the acceptance, but at the latest after 30 days from the productive use or completion of the agreed performance, unless the customer proves that a significant defect exists and justifies this to the manufacturer in writing.

5.4

The acceptance of the delivered performance and/or the provided software shall take place in writing from the customer, but not later than 30 days after the notification of completion by the manufacturer, unless the customer proves that a significant defect exists and justifies this to the manufacturer in writing.

5.5

Transport and all other packaging according to the packaging regulations shall not be taken back, except for pallets. The customer must ensure disposal of the packaging at own costs.

5.6

If requested by the customer, the manufacturer shall secure the delivery with transport insurance; the costs incurred shall be borne by the customer.

5.7

In the grinding and mixing operations, our performance shall be limited to the handover of the system to the operating personnel. The supplied grinding and mixing materials shall be processed in accordance with the instructions, under the supervision and under the responsibility of the customer.

The customer shall be solely responsible for the quality and purity of the grinding and mixing materials supplied. The customer must ensure that the grinding and mixing materials provided by it are free from impermissible admixtures, especially from drugs / residues. It shall be liable for all damages and consequences arising from any contamination of the system through its grinding and mixing materials.

6. Restrictions of the right of use, overuse

6.1

The customer shall not be entitled to edit and/or reproduce the contractual software beyond the contractual use.

6.2

Even individual components of the software may not be used for purposes other than those specified by the manufacturer.

6.3

The customer shall also be prohibited from analysing or reassembling the software or from editing or modifying it in any way. Reverse translation into other code forms ("decompilation") as well as other types of reconstruction of the various production stages of the contractual software ("reverse engineering") shall be prohibited for the customer.

6.4

The customer shall be prohibited from removing or modifying the property and copyright references, serial numbers, version numbers, stickers, labels or trademarks of the manufacturer or other manufacturers contained in the contractual software as well as in the user manual or other documentation or making these illegible.

6.5

The customer may use the software only for the purpose of processing its internal business transactions and those of such companies that are associated with it within the meaning of § 15 AktG [Companies Act] ("Group companies"). In particular, (1) data centre operations for third parties or (2) temporary provision of the software (e.g. as Application Service Providing) for companies other than Group companies or (3) use of the software for training persons, who are not employees of the customer or its Group companies, shall be allowed only upon prior written consent of the manufacturer. Commercial subletting shall be generally prohibited.

6.6

The customer shall be authorised for modifications, extensions and other type of reworking of the software within the meaning of § 69 c no. 2 UrhG [Copyright Act] only to the extent that the law allows this absolutely. Before the customer rectifies errors by itself or through a third party, it shall allow the manufacturer to rectify the error. The customer shall not have its own usage and exploitation rights to the processing – beyond the rights of use granted according to this contract. The manufacturer can however – against appropriate remuneration – demand granting of a non-exclusive, spatially and temporally unlimited right of use with the right to sub-license.

6.7

Duplication or reworking of the application documentation shall not be allowed.

6.8

The software and documentation may not be made accessible to third parties or used for purposes of third parties or third parties may not be granted an insight into the documents.

6.9

The source code of software shall not be part of the contractual objects.

6.10

For every infringement of the license conditions, a contractual penalty of Euro 50,000.00 shall be forfeited. The manufacturer shall reserve the right to assert a higher damage.

6.11

Until payment of the full remuneration arising from the contractual relationship, the transfer of rights of use of the contractual objects shall take place only subject to the condition precedent. Until then, the use by the customer shall be agreed upon under the law of obligations. The permission to use shall end if the customer falls behind with the payment of the remuneration.

6.12

Commercial use of the contractual software for third parties by way of the so-called “Application Service Providing (ASP)” or “Software as a Service” (SaaS) shall not be allowed. Furthermore, any use of the contractual software beyond the contractually defined extent, e.g. in case of non-approved, simultaneous multiple use by several users, shall be a use contrary to contract. For the period of non-agreed overuse, the customer must pay the rent for the contractual software subsequently on the basis of the actual scope of use according to the manufacturer’s price list immediately upon receipt of the corresponding invoice. If the customer hides the overuse and if the manufacturer discovers this otherwise, the customer must pay the manufacturer flat-rate compensation for the unauthorised overuse in the amount of three times the rent that would have been payable for an authorised use of the contractual software according to the manufacturer’s price list. The customer shall be free to prove that the manufacturer has incurred only lesser damage.

6.13

If the manufacturer provides additions (e.g. patches, supplements to the operating manual) or a new edition of the contractual object (e.g. update, upgrade), which replaces the previously provided contractual objects (“old software”), to the customer within the scope of subsequent improvement or maintenance, these shall be subject to the regulations of this agreement. If the manufacturer provides a new edition of the contractual object, the customer’s authorisations in relation to the old software according to this contract shall expire even without explicit return request of the manufacturer as soon as the customer uses the new software productively. The manufacturer shall however grant the customer a three-month transition phase, in which both versions of the contractual objects may be used in parallel.

7. Resale and subletting

The customer may not transfer the contractual objects to a third party without prior written consent from us.

8. Use of software protection mechanisms, Internet connection

8.1

The manufacturer shall deliver the contractual software with a technical protection mechanism in the form of electronic licensing. For this purpose, the customer must establish an Internet connection with the contractual software. Otherwise, the contractual software cannot be used.

8.2

The circumvention of the technical protection measures shall violate the manufacturer’s rights and shall, under certain circumstances, also be liable to prosecution. In particular, the removal and/or circumvention of the software protection programme routine shall be prohibited.

9. Data protection, confidentiality and order processing

9.1

The manufacturer has appointed a person responsible for data protection. The contact information of the person responsible can be found on the manufacturer’s homepage.

9.2

The manufacturer shall keep only such personal data of the customer, which it absolutely requires for error analysis and for maintaining the business relationship. All data of third parties (e.g. customers and suppliers of the customer) shall be promptly deleted after the end of the analysis.

9.3

Data, which is transferred to the manufacturer for back-up, shall be protected from third party access according to the state-of-the-art and shall be properly deleted after the end of the contractual relationship.

9.4

The contracting partners, manufacturers and customers must mutually treat all the knowledge of business secrets and data security measures of the contracting partner obtained within the framework of the contractual relationship as confidential. This obligation shall remain applicable for an indefinite period even after the end of this contract.

9.5

The manufacturer shall provide an order processing contract to the customer upon its demand. This must be separately requested and shall regulate the order processing.

10. Customer's obligations to cooperate and to exercise care

10.1

The customer basically agrees that personal data of its employees shall, as long as this is necessary for maintaining the business relationship, be stored in the manufacturer's systems and shall be used for this purpose.

10.2

The customer has obtained information about essential functional features of the software and shall bear the risk as to whether the software corresponds to its wishes and requirements; in cases of doubt, it must seek advice from the manufacturer's employees or from knowledgeable third parties before the conclusion of the contract.

10.3

The customer shall be solely responsible to set up a functional – and, even under consideration of the additional load from the contractual objects, adequately sized – hardware and software environment for the contractual objects.

10.4

The customer shall provide the manufacturer with all the information that is necessary for proper and contractual operation, e.g. about the accessibility of its infrastructure (IP addresses, names, port releases and access data) and shall ensure access to its infrastructure via the Internet for maintenance and support purposes.

10.5

The customer shall name contact persons of its company for the functional and technical support of its systems and of the software provided by the manufacturer and shall ensure the availability and expertise of these contact persons.

10.6

Prior to the use of the contractual object, the customer shall test it (hardware, tablet and software) thoroughly for flawlessness and usability in the existing hardware and software configuration. This shall also apply for software, which it receives within the framework of the warranty and maintenance.

10.7

If it installs the software by itself, it must observe the instructions given by the manufacturer for the installation and operation of the software.

10.8

If more performance obligations are incumbent on the manufacturer beyond the provision of the contractual objects, the customer must cooperate free of charge to the necessary extent e.g. by providing employees, working spaces, hardware and software, data and telecommunication facilities and being helpful. The customer must ensure that all the necessary preparatory work that is incumbent on the customer has been completed before the further performance obligations, so that the manufacturer can render the performance immediately upon arrival at the customer's site.

10.9

For error search and rectification, the customer shall grant the manufacturer access to the contractual objects, either directly and/or via remote data transmission as per the manufacturer's choice. The manufacturer shall be entitled to check as to whether the contractual objects are being used in compliance with the regulations of this contract. For this purpose, the manufacturer may demand information from the customer, especially about period and scope of use of the contractual objects, as well as have an insight into the accounts and records and the hardware and software of the customer. For this purpose, the manufacturer must be granted entry into the business premises or access to the software systems at the usual working hours and, upon request, even beyond the working hours.

10.10

The customer agrees that the manufacturer shall get an insight into its database for analysis purposes and shall, if necessary, transfer copies of the data required for the analysis onto devices and into the infrastructure of the manufacturer.

10.11

The customer must take reasonable precautions in the event that the software does not work properly in full or in parts (e.g. due to daily data back-up, error diagnosis, regular checking of the data processing results).

10.12

Unless the customer explicitly points out in advance, the manufacturer may assume that all data of the customer, with which it may come in contact, has been backed up.

10.13

The customer must treat all the knowledge of business secrets and data security measures of the manufacturer obtained within the framework of the contractual relationship as confidential. This obligation shall remain applicable even after the end of this contract.

10.14

The customer shall bear the disadvantages and additional costs arising from a breach of these obligations.

10.15

Prior to the commissioning of the contractual software, the customer must test all functions of the contractual software in the customer's hardware and software environment and check the provided documentation. If defects are discovered by the customer, these must be immediately notified to the manufacturer. To this end, the customer shall forward to the manufacturer all the information available to it that is necessary for eliminating the defect.

10.16

The customer must prevent unauthorised access to the contractual software and to the user manuals or other documentation by taking appropriate precautions.

10.17

Upon demand of the manufacturer, the customer shall inform it in writing within a reasonable period as to whether the contractual software is being used by the customer according to the contract, especially whether the customer is complying with the contractually agreed scope of use (e.g. regarding the number of installed licenses) as well as with the conditions of use.

10.18

The customer must inform the manufacturer about errors occurring during the use of the contractual software immediately and in writing and also specify and describe as to how the defect manifests itself, what its effects are and under which circumstances it occurs.

11. Warranty for material defects and defects of title

11.1

For the customer's rights in case of material defects and defects of title (hereinafter referred to as "defects"), the legal provisions shall apply unless otherwise regulated in the following.

11.2

The manufacturer warrants that the contractual software, when used according to the contract, shall comply with its performance description and does not have defects that impair the suitability of the contractual software for the contractually agreed use more than insignificantly. Minor deviations from the performance description shall not be considered as defects.

11.3

A defect properly reported by the customer shall be rectified by the manufacturer by way of supplementary performance, i.e. through rework or replacement. In the first instance, the manufacturer shall have the right to choose in what form and manner of supplementary performance a defect shall be rectified. The manufacturer's right to refuse the chosen form of supplementary performance according to statutory requirements shall remain unaffected.

The manufacturer shall be entitled to rectify the defect by supplying the customer with a new version of the contractual software (e.g. as an "update" or "maintenance release/patch") that no longer contains or eliminates the rebuked defect.

11.4

We shall not be liable for slightly negligent infringement of immaterial contractual obligations. In case of slightly negligent infringement of obligations, our liability shall otherwise be limited to the damage that can be foreseen and is typical to the contract based on the type of the product. This shall also apply in case of slightly negligent infringement of obligations on the part of our representatives or vicarious agents. These limitations of liability shall not apply in case of an agreed guarantee or in case of claims of the customer arising from product liability. Moreover, the Limitations of liability shall not apply if the conditions according to 11.6 of this agreement exist.

11.5

The customer must examine the product immediately upon its arrival. Evident defects, of any kind whatsoever, must be rebuked by the customer - if it is an entrepreneur - immediately upon acceptance of the product. For the purpose of review, it must leave the product untouched. We must be given the opportunity for joint determination of the reported complaints and to be present during removals for material checks - removals shall otherwise be unusable and inadmissible.

Evident complaints in the grinding and mixing performance of the system or any deliveries must be immediately notified to us or to the driver. Subsequent notices of defects shall be excluded.

11.6

Warranty claims shall become statute-barred after 12 months from the transfer of risk. Further claims shall be excluded irrespective of the legal basis, unless these are based on intent or gross negligence and unless there is an injury to life, limb or health.

11.7

If the liability for compensation vis-à-vis the manufacturer is ruled out or limited, this shall also apply with respect to the personal liability for compensation of the clerks, workers, employees, representatives and vicarious agents of the manufacturer.

11.8

The manufacturer shall, in particular, not be liable for the recovery of data unless it is recoverable with reasonable effort. The customer shall be responsible for data back-up.

11.9

The manufacturer shall not be obligated to provide warranty, if errors have occurred in the contractual software after

- (1) change in the usage and operating conditions,
- (2) installation and operating errors
- (3) interventions in the contractual software, such modifications, adjustments, connections with other programmes and/or
- (4) use contrary to the contract

unless the customer proves that the errors already existed at the time of hand-over of the contractual software or do not have a causal connection with the afore-mentioned events. The above shall not apply if the customer is entitled to make changes in the contractual software, especially by exercising the right of self-rectification of defects pursuant to § 536 a para. 2 BGB, and these are executed professionally and are documented traceably.

12. Term of lease / term of the contract, termination of the contract

12.1

Unless otherwise regulated in the order confirmation, the respective contract shall commence with its conclusion and shall have a term of 12 months. The contractual relationship shall automatically extend by 12 more months unless a contracting partner has terminated the contractual relationship with a notice period of 3 months prior to the expiry of the respective term and the other contracting partner has received the termination.

12.2

In addition, each contracting partner shall have the right to terminate the contract for a compelling reason, if continuation of the contractual relationship is no longer reasonable for it. A termination by the customer due to non-granting of the contractual use pursuant to § 543 para. 2 no. 1 BGB shall be admissible only if the manufacturer has been given ample opportunity for defect rectification and it is deemed to have failed. The manufacturer may terminate extraordinarily and without notice especially if the customer makes pirated copies of the contractual software, forwards the contractual software without being authorised to do so, does not prevent the access by unauthorised persons, decompiles the contractual software without being authorised to do so, is in default of payment with more than two months' rents or continues to use the contractual software in breach of contract in spite of a warning.

12.3

The termination of the respective contract must be in text form in order to be effective (e.g. in writing, by fax or e-mail).

13. Retention of title

13.1

The products, source code and data carriers as well as the programme documentation shall remain property of the manufacturer until the fulfilment of all claims existing against the customer, even of such claims, which the manufacturer is entitled to outside the contract.

13.2

The copyright shall remain fully with the manufacturer.

13.3

The delivered product shall remain our property until the complete fulfilment of our purchase price claims together with all relevant secondary claims. If the purchaser is an entrepreneur, the delivered product shall remain our property until the complete fulfilment of all claims, which we have against the purchaser. The purchaser may neither pledge nor assign our product by way of security.

13.4

Any processing, connection or mixing by the purchaser of our product shall take place by our order without any liabilities arising for us. If we do not already get ownership or co-ownership by law, the purchaser already transfers co-ownership of the resulting product to us in the value of the reserved product and shall safeguard this for us as reserved product with commercial diligence.

13.5

The purchaser must inform the third-party purchaser about the reservation of title that is applicable for the product and inform us immediately about the resale, stating the precise name of the third-party purchaser.

13.6

Under the condition of transfer of co-ownership and the claims as well as subject to revocation, we authorise the purchaser to sell and process the reserved product and to collect the assigned claims in the ordinary course of business. Upon demand, the purchaser must specify the assigned claims and indicate the assignment to the third party; we shall also be entitled to indicate the assignment to the third party.

The customer herewith assigns all claims from sales or from any other legal grounds regarding the product, which it is entitled to now or later, to us by way of security.

13.7

The purchaser shall safeguard the seller's (co-) ownership free of charge; the seller accepts the assignment.



13.8

The purchaser must immediately notify us of any kind of accesses by third parties to the reserved product or the assigned claims, as well as provide us with all the information and documents that are necessary for the prosecution.

13.9

If the value of the securities existing for us exceeds our claims against the purchaser by more than 10% in total, the security shall be released in the amount exceeding 10%.

13.10

The purchaser must pay any of its own collected proceeds immediately to us. Retention or settlement of a payment due to any counter-claims of the purchaser shall be ruled out.

13.11

If the purchaser does not meet its obligations vis-à-vis us or if there are reasonable doubts about its creditworthiness, the purchaser must, upon demand, return the reserved product, disclose the assigned claims and provide us with all the information and documents that are necessary for collecting these claims.

14. Place of performance and legal domicile

The place of performance and exclusive legal domicile for deliveries and payments, even for bill of exchange and cheque liabilities, as well as for all resulting disputes shall be the headquarters of our company at 48683 Ahaus insofar as the contracting partner is an entrepreneur, a legal entity under public law or a special fund under public law.

15. Salvatorische Klausel

If one of these conditions is or becomes ineffective, this shall not affect the validity of the remaining conditions. In such a case, the invalid regulation must be reinterpreted or supplemented such that the economic purpose intended with the invalid regulation is achieved.

