

## **General Terms and Conditions of Business of DRSM GmbH at the Chemnitz, Heidelberg and Vienna Locations**

**Valid from October 2022**

### **§ 1 General – Subject Matter**

- 1) Our General Terms and Conditions shall apply exclusively; we shall not recognize any terms and conditions of the customer which conflict with or deviate from our General Terms and Conditions, unless we have expressly agreed to their validity in writing. Our General Terms and Conditions shall also apply if we unconditionally perform the service to the customer in the knowledge that the customer's terms and conditions conflict with or deviate from our General Terms and Conditions.
- 2) All agreements - including subsequent amendments and supplements - made between us and the customer must be in writing, unless the text form (e-mail, remote data transmission or fax) is permitted in these GTC.

### **§ 2 Offer - Conclusion of contract**

- 1) All our offers are subject to confirmation and non-binding, unless they are expressly marked as binding or contain a specific acceptance period.
- 2) The legal relationship between us and the customer shall be governed solely by the contract concluded in writing, including these General Terms and Conditions. This reproduces all agreements between the parties to the contract relating to the subject matter of the contract in full. Oral promises on our part before conclusion of this contract are legally non-binding and oral agreements of the contracting parties are replaced by the written contract, unless they expressly state that they continue to be binding.
- 3) For all our products we reserve the right of ownership and copyright. Accordingly, all rights of distribution by radio, film, television, photomechanical reproduction, picture and sound carriers of any kind as well as partial reprinting or storage and regeneration in data processing systems of any kind are reserved to us. According to a written agreement, the right of ownership can be transferred in full or in part to the respective customer.

### **§ 3 Non-Binding nature of (re-)presentations**

In particular, documentation templates (process flows, etc.) as well as comics / Quality-Cartoon®s expressly serve to stimulate thought and discussion. Any decisions derived directly or indirectly from it in the entrepreneurial sense as well as confusion with living or deceased persons are not intended and remain without consequences for us. In view of the fact that the services provided are our intellectual property, the right to use them, even after payment of the fee, shall apply exclusively for the customer's own purposes and only to the extent specified in the contract. Any transfer which occurs nevertheless, also in the course of a dissolution of the company or bankruptcy, but also the short-term transfer for reproduction purposes, results in claims for damages. In such a case, full compensation must be paid.

### **§ 4 Consulting, training and coaching services**

- 1) The work of our employees consists exclusively of independent expert advice or training and support services; this expressly excludes any responsibility for any decisions derived from it, furthermore no success and/or specific result is owed.

- 2) We undertake not to pass on to third parties any knowledge of internal interrelationships and technologies acquired at the customer's within the scope of our activities.

#### **§ 5 Support and assistance contracts**

- 1) Support and assistance contracts can be concluded between us and our customers.
- 2) Such agreements can always be individually drawn up as separate contracts and are binding with mutual signature.
- 3) Services which are requested without a separate contractual basis shall be remunerated by the respective customer in accordance with the following general conditions: Minimum service charge per support case = 30 min. Each additional quarter of an hour will be rounded up. The services rendered will be recorded and invoiced at an agreed hourly rate. If no hourly rate has been agreed, an hourly rate of € 223,75 per hour shall apply for invoicing. For customers without a valid iGrafx maintenance contract, € 240.00 / h will be charged.

#### **§ 6 Hosting services**

- 1) Hosting contracts can be concluded between us and our customers.
- 2) Such agreements can always be individually drawn up as separate contracts and are binding with mutual signature.

#### **§ 7 Provision of software, software applications and software installations**

- 1) If customary software tools are resold to customers for their own account (we have an intermediary function), the license conditions of the respective manufacturer shall apply to these software tools.
- 2) We develop and install software applications in the form of our own software solutions and special customizing solutions on the basis of separate contracts with our customers. The services rendered are recorded. At the latest upon payment of the invoice by the customer these services are considered as accepted by the customer.
- 3) If the framework conditions in the customer's software environment change (e.g. change of the operating system, change of the software version or similar), a subsequent adjustment of our software solution and special customizing solution may become necessary. These subsequent expenses are to be reimbursed separately by the customer in each case in accordance with the expenses. Alternatively, you can conclude maintenance contracts or purchase upgrades to our software solutions.

#### **§ 8 Correction proofs**

- 1) Correction proofs must be checked immediately by the customer for typesetting or other errors and returned with declaration of readiness for printing. We are not liable for errors overlooked by the customer.
- 2) In the case of our own products, we – and in the case of third-party products, the customer – shall ensure that the industrial property rights of third parties to lettering, drawings or trademarks are not infringed. The responsibility for possible violations of such rights lies with the respective responsible party.
- 3) Costs incurred for template processing up to the printing stage will be charged on a time and material basis. The additional printing costs shall only be charged for the manufacture of the corresponding printing tools (printing

plates, screens, films, etc.); the printing tools themselves shall remain our property. Proofs are only produced against payment.

## § 9 Prices /Terms of payment/Change of price

- 1) The prices do not include value added tax and, if applicable, packaging and shipping costs ex works.
- 2) If samples are enclosed with the offer, these must be returned after a reasonable period of time, at the latest within 14 days, without the need for a separate request, unless otherwise agreed. If the samples are not returned within the specified period, the sample price stated in the offer will be charged.
- 3) Insofar as we provide sketches, drafts, sample typesetting and other services for the customer against payment as part of the preparation of the offer, which have been commissioned by the customer, these will also be invoiced if the order is not placed in relation to the offer prepared by us.
- 4) Unless otherwise agreed, invoices are due for payment immediately, without any deduction, unless expressly agreed otherwise.
- 5) We are entitled to adjust our prices at our discretion in the case of recurring remuneration (e.g. for hosting services and SaaS products), subject to the following principles:

- if cost changes occur after the offer has been made or the contract has been concluded that are beyond our control and for which we are not responsible, in particular an increase in procurement costs (e.g. in the event of a pandemic and/or war-related change in wage costs and/or material prices), a price adjustment may be made.

- if a price increase is rejected, the customer must prove that the increase in costs is influenced by us and is our fault (reversal of the burden of proof).

We shall notify the customer of intended price changes in text form (e.g. by e-mail) at least one (1) month before they take effect. In this case, the customer shall have a **special right of termination** at the time the changes take effect. If the customer does not give notice of termination in text form within two (2) weeks after receipt of the change notification, the changes shall become part of the contract at the time they take effect and the contract with us shall be continued under the changed conditions. In our notice of amendment, we shall point out the special right of termination and the consequences of non-exercise of the special right of termination.

## § 10 Delivery/Delay

- 1) Unless otherwise agreed in writing, we shall deliver without being bound by delivery periods. If a delivery period is agreed, this period shall be understood to begin at the time the order is received, or the printing approval (for printed products) is given by the customer. Partial deliveries are permissible. If a delay in delivery occurs on our part, the customer may withdraw from the contract, but only if they grant us a reasonable grace period. The customer shall not be entitled to damages in the event of delay in delivery or withdrawal from the contract, except in cases of intent and gross negligence. In the case of products with advertising imprints, an excess or short delivery of 10% must be accepted for technical reasons, invoicing shall be made per quantity delivered.
- 2) If non-compliance with agreed dates is due to force majeure or other events which make the delivery or service significantly more difficult or impossible, the deadlines shall be extended appropriately by the period of the delay and by a reasonable start-up time, regardless of whether the delay occurred at our premises or at those of our suppliers. This includes in particular war, strike, lockout, official orders, delays in the procurement of raw materials or other components as a result of war and/or sanctions issued in this respect and/or as a result of the effects of the Covid pandemic or other pandemics. If such circumstances for which we are not responsible significantly change the economic importance or the content of the delivery or service or have a significant effect on our operations, we shall also be entitled to demand the reasonable adjustment of the contract in terms of both time and price. If the hindrance to the performance of the service lasts longer than three months, we shall be entitled to withdraw from the contract in whole or in part on account of the part not yet performed

(contractual right of withdrawal). If we make use of this right of withdrawal, the customer must be informed of this after recognizing the significance of the event. If the delivery time is extended due to such events or if we are released from our obligation, the customer may not assert any claim for damages as a result thereof. However, we may only invoke the aforementioned circumstances if we have notified the customer thereof.

### **§ 11 Warranty - Defects as to quality**

- 1) The warranty period shall be 1 year from delivery or, if acceptance is required, from acceptance.
- 2) The delivered products must be carefully inspected immediately after delivery to the customer or to the third party designated by the customer. They shall be deemed approved by the customer with regard to obvious defects or other defects which would have been recognizable in an immediate, careful examination if we do not receive a written notice of defect within 7 working days of delivery. With regard to other defects, the products shall be deemed to have been approved by the customer if we do not receive the notice of defect within 7 working days of the time at which the defect became apparent; if the defect was already recognizable to the customer at an earlier point in time under normal use, this earlier point in time shall, however, be decisive for the commencement of the notice period. At our request, a product complained about shall be returned to us carriage paid. In the event of a justified notice of defect, we shall reimburse the costs of the most favorable dispatch route, this does not apply if the costs increase because the product is located at a location other than the location of the intended use.
- 3) In the event of material defects of the delivered products, we shall initially be obliged and entitled to remedy the defect or deliver a replacement at the customer's discretion within a reasonable period of time. In the event of failure, i.e. impossibility, unacceptability, refusal or unreasonable delay of the repair or replacement, the customer may withdraw from the contract or reasonably reduce the purchase price.
- 4) If a defect is based on our fault, the customer may claim damages under the conditions specified in § 12 (liability for damages due to fault).
- 5) In the event of defects in products of other manufacturers which are part of our delivery and which we cannot remedy for licensing or actual reasons, we shall, at our discretion, assert warranty claims against the manufacturers or suppliers for the account of the customer or assign them to the customer. Warranty claims against us for such defects or the other prerequisites and in accordance with these General Terms and Conditions shall only exist if the judicial enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or is futile, for example due to insolvency. During the duration of the legal dispute, the statute of limitations of the relevant warranty claims of the customer against us shall be suspended.
- 6) The warranty does not apply if the customer changes the delivery item or has it changed by a third party without our consent and if this makes it impossible or unreasonably difficult to remedy the defect. In any case, the customer shall bear the additional costs of remedying the defect arising from the change.
- 7) A delivery of used products agreed with the customer in individual cases shall be made to the exclusion of any warranty for material defects.

### **§ 12 Liability for damages due to fault**

- 1) Our liability for damages, irrespective of the legal grounds, in particular impossibility of performance, delay, defective or incorrect delivery, breach of contract, breach of duties during contract negotiations and tortious acts, shall be limited in accordance with the provisions of this paragraph to the extent that this depends on fault.
- 2) We shall not be liable in the event of simple negligence on the part of our executive bodies, legal representatives, employees or other vicarious agents, insofar as this is not a breach of essential contractual obligations. Essential to the contract are the obligations to deliver and install the products on time, their

freedom from defects that more than insignificantly impair their functionality or fitness for use, as well as obligations to provide advice, protection and care, which are intended to enable the customer to use the products in accordance with the contract or to protect the life and limb of the customer's personnel or to protect the customer's property from considerable damage.

- 3) Insofar as we are liable for damages on the merits pursuant to § 8 (2), this liability shall be limited to damages which we foresaw at the time of conclusion of the contract as a possible consequence of a breach of contract or which we should have foreseen if we had exercised due care. Indirect damage and consequential damage resulting from defects in the product are also only eligible for compensation if such damage is typically to be expected when the product is used as intended.
- 4) In the event of liability for simple negligence, our liability for damages to property and other financial losses resulting therefrom shall be limited to an amount equal to one daily rate per case of damage (unless otherwise contractually agreed or this is part of our liability insurance - here limited to € 1 million per case of damage), even if it is a breach of material contractual obligations.
- 5) The above exclusions and limitations of liability shall apply to the same extent for the benefit of the executive bodies, legal representatives, employees and other vicarious agents of us.
- 6) Insofar as we provide technical information or act in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by us, this shall be done free of charge and to the exclusion of any liability.
- 7) The limitations of this paragraph do not apply to liability on our part for intentional conduct, for guaranteed characteristics, for injury to life, limb or health or under the Product Liability Act.

### **§ 13 Retention of title**

- 1) We reserve title to the product until receipt of all payments under the contract.
- 2) In the event of breach of contract by the customer, in particular default in payment, we shall be entitled to take back the goods after issuing a reminder and the customer shall be obliged to surrender the goods.
- 3) The customer is entitled to resell the product in the ordinary course of business; however, they hereby assign to us all claims in the amount of the price agreed between us and the customer which accrue to the customer from the resale, irrespective of whether these products are resold without or after processing. The customer is authorized to collect these claims after this assignment. Our authority to collect the claim ourselves remains unaffected; however, we undertake not to collect the claims as long as the customer duly meets their payment obligations and is not in default of payment. If this is the case, however, we may demand that the customer discloses the assigned claims and their debtors, provides all information required for collection, hands over the relevant documents and notifies the debtors (third parties) of the assignment.

### **§ 14 Final provision**

- 1) The place of jurisdiction for any disputes arising from the business relationship between us and the customer shall be our place of business. Mandatory statutory provisions on exclusive places of jurisdiction shall remain unaffected by this provision.
- 2) The relations between us and the customer are subject exclusively to the law of the Federal Republic of Germany to the exclusion of the Convention on the International Sale of Goods (UN Convention on Contracts for the International Sale of Goods).

- 3) Unless otherwise specified in the contract, our place of business shall be the place of performance.
- 4) Insofar as the contract or the General Terms and Conditions contain loopholes, those legally effective provisions shall be deemed to have been agreed for filling these loopholes which the contracting parties would have agreed according to the economic objectives of the contract or the purpose of these General Terms and Conditions, had they been aware of the loophole.