

## **1. Scope, subject matter of the Agreement, other regulations**

**(1) Parties and subject matter.** The following Terms and Conditions shall apply for all contracts concluded between Matrix42 AG, Elbinger Strasse 7 in 60487 Frankfurt am Main (“**Matrix42**”) and you as the customer (“**Customer**”) for the supply of software (“**Supplied items**”) for permanent use by the Customer. They shall also apply for all future supplies even if they are not expressly agreed again. These Terms and Conditions shall not apply for the provision of software for use via the Internet; for this, the special Matrix42 General Terms and Conditions of Business for Software as a Service (T&C SaaS) shall apply. For the temporary transfer of software, the Matrix42 Software Rental T&C shall apply.

**(2) No differing regulations.** The application of differing provisions or provisions going beyond these regulations shall be excluded. This applies in particular for general terms and conditions of business of the customer, even if Matrix42 accepts a customer's order, in which the customer indicates its general terms and conditions of business and/or the general terms and conditions of business of the customer are attached and Matrix42 does not reject these.

**(3) Obligations in electronic commerce.** Section 312g (1) Nos. 1, 2 and 3 as well as Section 312g (1) sentence 2 of the BGB (German Civil Code), which provide for certain obligations of the entrepreneur in the case of contracts in electronic commerce, shall be waived.

## **2. Binding period / setting of deadlines**

**(1) Binding period.** The Customer and Matrix42 shall, unless expressly stipulated otherwise in the offer, be bound by the offer for three (3) weeks.

**(2) Partial deliveries.** Partial deliveries and services shall be allowed, insofar as the provision of partial deliveries for the Customer does not involve disproportionate effort. Partial deliveries can be invoiced by Matrix42 individually at the respective time of the delivery.

**(3) Reasonable deadline.** Where it is legally necessary to set Matrix or the Customer a reasonable deadline, this shall be at least 2 weeks.

## **3. Prices and payment terms**

**(1) Prices.** The prices shall be valid for delivery EXW Matrix42 in Frankfurt am Main (Incoterms 2010) and shall be determined according to the general price list of Matrix42 applicable on the date of conclusion of contract. The price list shall be sent by Matrix42 upon request. For delivery of goods, the prices are understood to be exclusive of packaging and other shipping and transport charges and insurance; these shall be charged at cost.

**(2) Net prices.** Prices shall be quoted exclusive of the respective statutory value-added tax (VAT).

**(3) Payment period.** Unless expressly agreed otherwise, all payments shall be settled free of charge by bank transfer to our payment office in Frankfurt a.M. 14 days after delivery without deduction.

## **4. Default in payment / set-offs and retention**

(1) In the case of default in payment or if there is reasonable doubt as to the solvency of the Customer, Matrix42 shall be entitled - without prejudice to our other rights - to demand advance payment for deliveries of Supplied items not yet performed, to revoke any payment periods granted and to make all claims from the business relationship due immediately. Matrix42's obligation to supply shall cease for as long as the Customer is in default with a payment. The Customer in default shall compensate Matrix42 for all reasonable dunning, collection and information costs.

(2) The Customer may only offset or assert a right of retention with a claim other than its contractual counterclaims from the respective legal transaction concerned, if this claim is recognised by Matrix42 as undisputed or is legally established.

## **5. Supply disruptions / fixed date transactions / consequences of default**

(1) Operational disturbances, insofar as they were not foreseeable, and strikes, lockouts, official orders and cases of force majeure shall release Matrix42 from its supply obligation for the duration of the disturbance and to the extent of its effect. If as a result the supply is delayed by more than 1 month, either party shall be entitled, under the exclusion of all further claims, to terminate the contract with respect to the supply disruption concerned.

(2) If the delivery date has not been expressly agreed as "fixed" in writing, delivery shall be made according to contract, if it is received by the Customer within one week of the non-binding delivery date.

(3) The Customer may only withdraw from the contract in accordance with legal provisions, where Matrix42 is responsible for the delay in the supply. This regulation shall not lead to any change in the burden of proof to the detriment of the Customer. The Customer shall be obliged, when requested by Matrix42, to state within 2 weeks whether, due to the delay in the supply, it wishes to withdraw from the contract or continue with the supply and/or demand compensation.

## **6. Transfer of risk / transport damage**

(1) Risk, even in the case of freight-free deliveries, shall pass to the Customer as follows:

- a) for deliveries without installation, when the goods are delivered or collected;
- b) for deliveries with installation, on the day of transfer to the Customer's own premises or, if agreed, after a fault-free trial run.

If the shipment, delivery, start, installation, transfer to the Customer's own premises or test run is delayed for a reason for which the Customer is responsible or if the Customer is in default of acceptance for other reasons, risk shall be transferred to the Customer upon the occurrence of default of acceptance.

(2) Complaints regarding transport damage must be lodged by the Customer directly with the carrier within 7 days.

## **7. Guarantee / notification of defects / claims for defects**

**(1) Obligation to inspect and notify.** The Customer must immediately check whether the Supplied items conform to the contractually agreed quality and are suitable for the intended purpose. Obvious defects must be notified immediately, hidden defects, immediately upon discovery, stating the order data and invoice number. The Customer may not refuse receipt of Supplied items on account of minor defects.

**(2) Quality.** Matrix42 guarantees that the Supplied items shall conform to the agreed quality at the time of transfer of risk. The quality of the goods shall be determined from the offer and the service specification referenced in the offer. The quality of the software, in particular the specification, the enabled operating environment, and the range of applications of the software for the Customer - unless otherwise agreed in writing – shall be derived exclusively from the respective program specification and in addition the service manual.

**(3) Notification of defects.** The Customer must report defects in the software in writing in comprehensible and detailed form, giving all information relevant for the detection and analysis of the defect. The steps that have led to the appearance of the defect must, in particular, be specified as well as the manifestation and the effects of the defect. The Customer shall support Matrix42 in the rectification of defects to the extent necessary, in particular by sending Matrix42 a data carrier with the relevant software and providing work devices.

**(4) Supplementary performance.** Matrix42 may at its choice remedy defects in the Supplied item through the replacement delivery of a non-defective item or by removing the defect.

**(5) No Defect Found.** If the Customer has claimed a defect in the Supplied item without there actually being a defect, or if a defect present is not attributable to Matrix42, Matrix42 shall be entitled to demand a flat rate sum of EUR 100 for inspection expenses.

**(6) Withdrawal and price reduction.** If the replacement delivery or removal of the defect fails, is not possible, is refused by Matrix42, is unacceptable for the Customer or is not performed by Matrix42 within the reasonable period set by the Customer, the Customer may withdraw from the contract or demand a

price reduction. The Customer may also immediately withdraw from the contract if there are special circumstances that justify this in the consideration of the interests of both parties.

**(7) Statute of limitations.** Any claims for defects submitted by the Customer shall become statute-barred 12 months after the delivery of the Supplied items to the Customer. This shall not apply for fraudulently concealed defects.

**(8) Third parties as software producers.** In the case of standard software which has been produced by third parties, and this has been indicated in the offer, the Customer shall assert any potential claims for defects initially against the producers of the software in question. Only where such claims against the producer remain unfulfilled due to circumstances that are not the responsibility of the Customer may the Customer assert a claim for defects against Matrix42.

## 8. Liability

- (1) Matrix42 shall be liable for damages, insofar as these
- a) are caused by the wilful or gross negligence of Matrix42, or
  - b) are caused by slight negligence by Matrix42 and result from significant breaches of obligations that jeopardise the achievement of the purpose of the contract, or from the breach of obligations, the fulfilment of which is a prerequisite to enable the proper implementation of the contract and upon compliance of which the Customer should be able to rely.

In all other respects, the liability of Matrix42 shall be excluded, irrespective of the legal basis thereof, unless Matrix42 is liable as mandated by law, in particular on account of injury to life, body or health of a person, the assumption of an express guarantee, fraudulent concealment of a defect or in accordance with product liability law. Guarantees from Matrix42 shall be made in writing and shall be designated as such.

**(2) Limitation in terms of amount.** In the case of paragraph (1) b), our liability shall be limited to € 500.000.

**(3) Employees and representatives of Matrix42.** The limitations of liability set out in paragraphs (1) and (2) shall also apply to claims against employees and representatives of Matrix42.

## 9. Obligations of the Customer

**(1) Provision of information.** The Customer shall provide Matrix42 with all information necessary for the performance of the contract, in particular in terms of the hardware, operating systems and software employed at its business.

**(2) Provision of hardware.** Where the installation of software is covered by the contract, the Customer shall provide the necessary hardware together with accompanying documentation and, if necessary, not undertake any other work/run any other programs on its computer system during the required period, other than those necessary for the fulfilment of the contractually owed obligations of both parties.

**(3) Contact person.** The Customer shall designate a contact person who is authorised to issue information and to submit and receive declarations.

**(4)** The Customer agrees subject to revocation at any time by email to [info@matrix.com](mailto:info@matrix.com) or in writing, that Matrix42 shall be entitled to utilize the Customers name and company logo online and offline for promotional purposes for the software products of Matrix42, in particular in print media and via databases, electronic data networks and online services (e.g. FTP, WWW, email, Youtube, Flickr, Facebook and similar networks), to duplicate them, to distribute them, to make them available for download, to publish them and to present them.

The Customer further agrees to be available for new customers - subject to an appointment in advance - regarding any questions pertaining to the software of Matrix42 that he uses.

## 10. Software

**(1) Protective measures.** Matrix42 shall be entitled to take appropriate technical measures to protect against a non-conforming use of the software. The use of the Software on an alternate or subsequent configuration of the customer may not be significantly affected by this.

**(2) Rights of use.** The Customer shall acquire for the software upon payment of the agreed remuneration a non-exclusive right of use according to Matrix42's Terms of Use for Software that can be viewed at any time at [www.matrix42.de/agb](http://www.matrix42.de/agb) and which are a component of these Terms and Conditions.

## **11. Retention of title**

**(1) Retention of title.** Matrix42 shall retain ownership of the supplied items (retained goods) until all claims of Matrix42 against the Customer arising from this business relationship have been settled. The taking back of retained goods shall only be considered a withdrawal from the contract if Matrix42 has expressly stated this in written form.

**(2) Additional security.** All claims arising from the sale of retained goods, including bills and checks, are assigned by the Customer here and now to Matrix42 to secure our claims for payment for supplies. Matrix42 accepts this assignment. For the sale of Supplied items for which Matrix42 has joint ownership, the assignment shall be limited to the proportion of the claim which corresponds to our ownership share.

**(3) Disposals by the Customer.** As long as the Customer is willing and able to fulfil its obligations to Matrix42 in proper form, it may legally dispose of the supplied items owned or co-owned by Matrix42 in the ordinary course of business and collect the receivables assigned to it itself. Assignments as security, pledges and assignments of claims, including through the sale of receivables may be made by the Customer only with the prior written consent of Matrix42.

**(4) Foreign legal systems.** If the retention of title is not permissible under the statutory provisions applicable in the country of the Customer or is only permissible to a limited extent, our aforementioned rights shall be limited to the extent permitted by law.

**(5) Release.** If the value of the retained goods should exceed the value of the receivable to be secured by more than 20%, Matrix42 shall release the excess security upon request.

## **12. Data protection**

The Customer consents to Matrix42 processing its data, including its personal data, in its own IT system for the fulfilment of the contract and for sales statistics purposes.

## **13. Applicable law / place of performance / place of jurisdiction**

**(1) Applicable law.** The legal relationship between the Customer and Matrix42 shall be subject to substantive German law under exclusion of the United Nations Convention for Contracts for the International Sale of Goods (CISG).

**(2) Place of performance.** The place of performance shall be the registered office of Matrix42.

**(3) Place of jurisdiction.** The place of exclusive jurisdiction for all disputes between the parties arising from or in conjunction with the business relationship shall be Hamburg, insofar as a different jurisdiction is not mandatorily prescribed by the law.