

General Terms and Conditions of VRmagic GmbH (VRmagic)

Status as per 27.04.2011

§ 1. General

(1) The following General Terms and Conditions shall apply exclusively to all deliveries and other work and services irrespective of the contract type. In cases of uncertainty or conflict between this English translation and the German original, the German version shall prevail.

(2) Conflicting conditions of the Buyer or conditions that differ from the General Terms and Conditions of VRmagic shall be recognized by VRmagic only if VRmagic expressly agrees to their validity in writing.

(3) Inclusion and interpretation of these General Terms and Conditions as well as conclusion and interpretation of legal transactions with the Buyer shall be governed exclusively in accordance with the law of the Federal Republic of Germany under exclusion of the UN Convention on Contracts for the International Sale of Goods.

(4) If any of the provisions of this Contract or its parts is or becomes invalid, this shall not affect the validity of the remaining provisions. The parties to the contract shall be obliged within reasonable bounds and in good faith to replace any invalid provision by a provision that comes closest to the economic purpose of the original provision, insofar as this does not result in any material change to the content of the contract. The same shall apply if circumstances requiring regulation are not expressly covered.

(5) Assurances, guarantees, ancillary agreements and amendments to the contract shall be made in writing.

(6) The place of fulfillment for all obligations arising indirectly or directly from this contractual relationship, including the obligation of payment, shall be the seat of VRmagic.

(7) The place of jurisdiction is the German Regional Court responsible for the corporate seat of VRmagic. Each party shall also be entitled to institute legal proceedings before a court that has jurisdiction for the seat of the other party to the contract.

§ 2. Offers, scope of performance and contract conclusion

(1) If offers or orders are submitted to VRmagic or if an order can be deemed to constitute an offer in accordance with § 145 BGB (German Civil Code), VRmagic may accept these within two weeks.

(2) All offers made by VRmagic are subject to change and non-binding, unless they are expressly identified as binding or contain a specific acceptance deadline.

(3) Exclusively the order confirmation of VRmagic shall be decisive for the scope of the contractually owed performance.

(4) VRmagic reserves the right to make changes in construction, material and component selection, specification and design even after sending an order confirmation if these changes do not contradict either the order confirmation or the Buyer's specification. The Buyer shall furthermore agree to change proposals over and beyond this from VRmagic insofar as these can be deemed reasonable for the Buyer.

(5) Information about the object of the delivery (e.g. weights, dimensions, etc.) as well as representations (e.g. drawings and illustrations) shall therefore be deemed as only approximately authoritative unless usability for the contractually intended purpose requires precise agreement. Said information and representations shall not be deemed as assured properties and characteristics but as descriptions or identification of the delivery. Customary deviations and deviations that are stipulated by legal regulations or that constitute technical improvements shall be permitted, insofar as they do not impair usability for the contractually intended purpose.

(6) Partial deliveries shall be permitted. VRmagic shall be entitled to use third parties for contract fulfillment.

§ 3. Prices and terms of payment

(1) Prices are ex works exclusive of the applicable statutory turnover tax. Packaging and other shipping and transport expenses shall be reimbursed separately. Packaging will be invoiced at cost and its return will be accepted only if VRmagic is obliged to do so by mandatory legal regulations. In the case of multiple deliveries, VRmagic shall be entitled to invoice any additional amount in the event of an increase in turnover tax that comes into effect after contract conclusion.

(2) Payments by check shall be permitted only subject to prior agreement.

(3) If VRmagic takes into account change requests by the Buyer, any additional costs incurred will be invoiced to the Buyer.

(4) Unless otherwise agreed, all invoices shall be payable within fourteen days after invoice receipt. If the Buyer defaults on payment, interest at a rate of 8% above the applicable base interest rate announced by the German Federal Bank shall be charged, subject to enforcement of further claims.

§ 4. Offset, retention of payment, assignment

(1) Offset by the customer with counter-claims or retention of payments due to such claims shall be permitted only if the counter-claims are undisputed or determined without further legal recourse.

(2) VRmagic shall be entitled to execute or perform still outstanding deliveries only subject to advance payment or provision of security if VRmagic becomes aware after conclusion of the contract of circumstances that significantly reduce the creditworthiness of the Buyer and that endanger the payment of outstanding claims of VRmagic by the Buyer from the respective contractual relationship (including from other individual orders covered by the same general agreement) or if the Buyer is in default with payments.

§ 5. Delivery period

(1) Indication of a delivery deadline takes place according to our best judgment and said deadline shall be extended appropriately if the Buyer for his part delays or omits to perform required or agreed cooperative actions. The same shall apply to measures within the scope of labor disputes, particularly strike and lockout as well as in the event of unforeseen impediments that lie outside the sphere of influence of the Seller, e.g. delivery delays from a supplier, transport and plant interruptions, lack of materials, components or energy, etc. Changes in the goods to be delivered requested by the supplier shall also lead to an appropriate extension of the delivery period.

(2) If the Buyer defaults on acceptance or culpably violates other obligations to cooperate, VRmagic shall be entitled to demand compensation for losses incurred as a result, including any additional expenses. If the above preconditions exist, the risk of accidental loss or accidental impairment of the purchased goods shall be transferred to the customer at the time of his default on acceptance or culpable violation of his obligations to cooperate.

§ 6. Passage of risk

The risk shall pass to the Buyer as soon as VRmagic has made the goods available to the Buyer and notifies the Buyer of this fact. If the delivery is made by shipment, the risk shall already be transferred upon handover of the goods to the shipping company.

§ 7. Retention of ownership

(1) VRmagic shall retain ownership of the delivered goods until complete payment of all claims from the contract. This shall also apply to all future deliveries, even if VRmagic does not always expressly state this. VRmagic shall be entitled to request return of the delivered goods if the Buyer acts in contravention of the contract.

(2) As long as ownership has not been transferred, the Buyer shall notify VRmagic immediately in writing if the delivered goods are attached or exposed to other interference by third parties. If the third party is not in a position to reimburse VRmagic for the judicial and extra-judicial costs of a legal action in accordance with § 771 ZPO (German Code of Civil Procedure), the Buyer shall be liable for the loss incurred by VRmagic.

(3) The Buyer shall be entitled to resell the goods subject to retention of ownership as part of normal business operations. The Buyer hereby assigns to VRmagic the claims of the Buyer from resale of the goods subject to retention of ownership corresponding to the amount of the agreed final invoice sum (including turnover tax). This assignment shall apply irrespective of whether the delivered goods have been resold with or without further processing. The Buyer shall remain entitled to collect the claim even after assignment. This shall not affect the right of VRmagic to collect the claim itself if the Buyer does not fulfill his payment obligations from the received revenue, defaults on payment and particularly if an application is made for opening of insolvency proceedings or in the event of stoppage of payments.

(4) Processing or transformation of the object of the contract by the Buyer shall always take place in the name of and on behalf of VRmagic. In this case, the expectant right of the Buyer with respect to the object of the contract shall be carried forward to the transformed goods. If the object of the contract is processed together with other objects that do not belong to VRmagic, VRmagic shall acquire, without obligation, co-ownership in the new goods in a share corresponding to the objective value of the object of the contract in relation to the other processed objects at the time of processing.

(5) VRmagic shall be obliged to release the securities to which it is entitled at the request of the Buyer if their value exceeds the amount of the claims to be secured by more than 10%.

(6) VRmagic shall be entitled to assert the rights of retention of ownership without withdrawing from the contract.

(7) VRmagic shall retain the rights of ownership and copyright with respect to all documents provided to the customer in relation to contract conclusion, e.g. calculations, drawings, etc. These documents shall not be made accessible to third parties or copied unless VRmagic agrees to this expressly in writing.

(8) At the request of VRmagic, the Buyer shall return these items to VRmagic completely and immediately and shall destroy any copies made if they are no longer needed by the Buyer in the ordinary course of business or if negotiations do not lead to conclusion of a contract.

§ 8. Warranty, liability

(1) If the purchase is a commercial transaction for both parties, the Buyer shall inspect the goods immediately after receipt insofar as this is feasible in the ordinary course of business and shall notify the Seller immediately if a defect is evident. If the Buyer omits to perform this notification, the goods shall be deemed to be approved, unless the defect is such that it was not recognizable during the inspection. § 377 HGB (German Commercial Code) shall apply in all other respects.

(2) Warranty claims shall be restricted to rework or replacement delivery at the option of VRmagic. If the rework or replacement delivery is unsuccessful, the Buyer shall be entitled, at his option, to reduce the remuneration or cancel the contract.

(3) VRmagic shall be liable for material defects in accordance with the applicable legal regulations, particularly §§ 434 ff. BGB. The warranty obligation towards entrepreneurs shall be 12 months for goods supplied by us.

(4) Claims for compensation by the Buyer shall be excluded. Excepted from this, however, shall be liability for losses due to violation of such contractual obligations that are essential for attainment of the contract purpose, due to defective products (Product Liability Act) and in the event of intent and gross negligence on the part of the organs, employees and vicarious agents of VRmagic corresponding to the amount by which they have contributed to the loss. Liability for simple negligence shall be possible only in the event of injury to life, body and health and in the case of violation of important contractual obligations, whereby liability shall be limited to the foreseeable and directly resulting loss.

(5) The limitations of Section 4 shall also apply in favor of the legal representatives and vicarious agents of VRmagic if claims are asserted directly against the latter.

(6) Claims for defects shall not exist in the case of only immaterial deviation from the agreed properties, only immaterial impairment of usability and natural wear and tear as well as defects that occur after the passage of risk due to incorrect or negligent handling, excessive load, unsuitable operating materials or due to particular external influences that are not a precondition in accordance with the contract. If repair work or modifications are performed improperly by the Buyer or third parties, no claims for defects shall exist based on these and the subsequent consequences.

(7) Any claims on the part of the Buyer based on costs required for the purpose of subsequent fulfillment, particularly transport, travel, working and material costs, shall be excluded insofar as the costs increase because goods delivered by VRmagic have been subsequently taken to a location other than the respective branch operation of the Buyer.

(8) Claims under rights of recourse on the part of the Buyer as an entrepreneur against VRmagic shall exist only insofar as the Buyer has not made agreements with his customer that go beyond the mandatory statutory claims for defects. Paragraph 7 shall further apply correspondingly to the scope of the recourse claims on the part of the Buyer against VRmagic.

§ 9. Warranty for software developed by VRmagic

(1) Software developed by VRmagic in the sense of this paragraph is software that has been developed by VRmagic or by third parties on behalf of VRmagic. Software from third manufacturers that has not been developed specifically on behalf of VRmagic (standard software) is merchandise to which the general warranty in accordance with § 8 shall apply.

(2) VRmagic hereby guarantees that the software developed by VRmagic will meet the contractual requirements and binding performance descriptions when used in accordance with the contract and does not include defects that make it unsuitable or reduce its suitability with respect to these specifications. Legal regulations and similarly mandatory requirements for the customer shall be observed. Any immaterial impairment in this respect shall not be taken into account.

(3) The Buyer shall be entitled to warranty claims only if notified defects are reproducible or can be demonstrated by system-produced outputs. The Buyer shall notify defects in an understandable form in writing, specifying any information that is useful for detection of the defect. The Buyer shall assist VRmagic in rectification of defects, insofar as required, and shall at the request of VRmagic in particular send a data medium with the corresponding program and make available any necessary work resources.

(4) VRmagic shall have the right to rectify any defects. In this respect, rectification of defects that do not significantly impair use of a software shall be necessary only through delivery of a further-developed version. If necessary, VRmagic will elaborate workaround measures, insofar as this can be deemed reasonable.

(5) The warranty shall be void in respect of such programs that the Buyer changes or otherwise manipulates, unless the Buyer proves in the context of the defect notification that the defect was not caused by this intervention.

(6) VRmagic shall be entitled to demand reimbursement of its costs if it has performed work due to a defect notification without a defect being present.

(7) § 8 shall apply in all other respects.

§ 10. Rights of use for software developed by VRmagic and VRmagic know-how

(1) The Buyer shall receive a non-exclusive right of use with respect to the supplied software in the sense of § 9 Para. (1), said right being limited to use at only one workplace (hardware). If the Buyer wishes to change the hardware, he shall notify VRmagic about this. The software will be registered by VRmagic for the new hardware as soon as it is ensured that use on the previous hardware is excluded.

(2) Reproduction of the software shall be permitted only to produce necessary backup copies and for required data transfer operations as part of software use.

(3) The Buyer shall obtain only derivative rights of use with respect to the software and other know-how. VRmagic shall be entitled to use the objects of the contract itself and to further develop, modify and otherwise use or exploit said objects.