



General Terms of Business

jitel GmbH, Munich, Germany



1. Scope

1.1 These terms of business apply to business relationships and agreements between *jtel* GmbH, Munich, Germany ("*jtel*") with corporations, legal entities and entities in the public and government sectors ("*customer*") based outside of Germany, Austria or Switzerland, for services of *jtel*, in particular:

- supply of hardware
- supply of standard software
- the programming and supply of bespoke software
- the provision of maintenance services and support

These terms of business do not apply to agreements between *jtel* and corporations, legal entities and entities in the public and government sectors based within the legal jurisdiction of Germany, Austria or Switzerland - the *jtel* AGBs (Allgemeine Geschäftsbedingungen) in the German language shall apply to these agreements instead.

1.2 The contractual relationship between *customer* and *jtel* is based solely upon these terms of business. Other terms of business, in particular any terms of business of *customer*, are hereby expressly excluded from the contract. Terms of business of *customer* are excluded even if *jtel* has knowledge of or gains knowledge of conflicting terms of business of *customer* before or during fulfillment of the contract.

1.3 These terms of business apply to future contracts between *jtel* and *customer* even if they are not explicitly mentioned in future contracts.

2. Contract

2.1 Unless otherwise agreed, quotes made by *jtel* for supply of goods and services to *customer* are invitations to treat ("*invitatio ad offerendum*"). *jtel* reserves the right to accept contractual offers made by *customer* within three weeks of receipt of such. *Customer* is bound to their contractual offer for this period of time. Quotes made by *jtel* are, unless otherwise agreed, non-binding.

2.2 *jtel* requires that *customer* be credit worthy. *jtel* reserves the right to require *customer* to provide sufficient guarantees, for example a bank guarantee covering the amount of goods and services to be provided, before accepting a contractual offer made by *customer*.

2.3 All agreements between *jtel* and *customer* are to be documented in writing for verification purposes. Verbal agreements do not form part of any contract between *jtel* and *customer*.

2.4 Agreements between *jtel* and *customer*, which are agreed to by employees of *jtel* who are not documented as legal representatives of *jtel* in the register of companies, must be confirmed in writing by a legal representative of *jtel* before the legally binding status of such an agreement can be asserted.

3. Definition of Contract and Services, License

3.1 The contract is defined by the written order confirmation of *jtel*. In the case of a binding quote made by *jtel* to *customer* and the timely acceptance of the offer by *customer*, the offer made by *jtel* to *customer* constitutes the contract for the case that no written confirmation is made. *jtel* reserves the right to define the contract more precisely in the order confirmation, it is *customer's*

responsibility to object promptly to any changes or refinements made.

3.2 *jtel* may prepare minutes of meetings whose purpose is to specify, refine and / or change the subject matter of the contract. These minutes form a binding part of the contract if they are provided to *customer* and are not objected to by *customer* within two weeks of such provision.

3.3 Software provided by *jtel* is protected by copyright law and international treaties. Copyright and all intellectual property remains with *jtel*.

Customer is granted a non-exclusive license to use the software; this right is granted once full payment of the purchase price for the software license has been received by *jtel*. If payment is not made by the agreed date or within the agreed time period the license to use the software is revoked; use of the software must cease. The rights to use the software allow *customer* to use the software and documentation for internal use on a single machine unless otherwise described in the contract. The use of the software on more than the defined number of machines as stated in the contract is not allowed; *customer* is not allowed to copy or install the program in such a way that a parallel use of the software would be possible beyond the purchased number of licenses. All other rights to the software – either the original software or any copies thereof – in particular the right to copy and distribute the software – remain exclusively with *jtel*. *Customer* is allowed to make one (1) copy for backup purposes. *Customer* is not allowed to reverse engineer, decompile or modify the software. *Customer* agrees not to remove or change logos, marks or copyright notices on the product without prior written agreement by *jtel*. *Customer* is not permitted to grant sub-licenses to use the software or exercise any rights granted herein to any party. All other rights to the software and documentation whether original or a copy remain with *jtel*.

3.4 *jtel* reserves copyright on all calculations, diagrams, images, documents and any other written or electronic material; *customer* is not allowed to copy or make these available to third parties without written consent of *jtel*. *jtel* can request the return or destruction of any printed material supplied or copies thereof unless their retention is required by law or required for purposes connected with the contract.

3.5 *Customer* is not allowed to assign any rights granted in connection with the contract to third parties without express written consent from *jtel*.

4. Prices

4.1 If not otherwise specified in the order confirmation, all prices are net prices without sales tax, import taxes, transport, and delivery or packaging charges. In addition to items quoted in the order confirmation the *jtel* price list at the time of confirmation applies.

4.2 In the event of price increases over which *jtel* has no control (for example currency fluctuation or the increase in employer contributions for personnel) *jtel* has the right to increase prices accordingly if delivery is more than four weeks after contract agreement, or in the case of a continuing obligation by *customer*. For these purposes 75% of the costs of software are assumed to be personnel costs.

4.3 Rebates which are agreed to as part of the contract are agreed to under the prerequisite that the contract is fulfilled smoothly. Rebates are revoked if any of the following applies:

- *Customer* enters into bankruptcy proceedings or the legal equivalent thereof (e.g. U.S. Chapter 11)
- *Customer* does not make payment in full within the agreed payment dates or according to the agreed payment schedule
- *Customer* and *jtel* enter into legal proceedings regarding the contract

5. Payment

- 5.1 *Customer* must pay for deliverables supplied by *jtel* – subject to statutory rights – immediately and without deduction. The deduction of a cash discount requires a written agreement.
- 5.2 Payment should be made by bank transfer. Cheques and drafts are only accepted by *jtel* if agreed to in writing and payment is considered fulfilled only when they are cashed and the proceedings are credited to a *jtel* account.
- 5.3 Unless otherwise agreed payment is to be made free of any bank charges to *jtel* as follows:
- 50% on the fourth working day after the order confirmation is received by *customer* from *jtel*, the remainder on the fourth working day after delivery, for contract works or software development on the fourth working day after delivery and acceptance.
- 5.4 Payment is determined to have been made when the funds are at the full disposal of *jtel*. In the case of a cheque this means the amount must be credited to *jtel* unconditionally and without restriction.
- 5.5 The right to set-off is granted to *customer* only in the event that his counterclaim is final and legally binding, uncontested by *jtel* or approved in writing by *jtel*. *Customer* does not have the right to set-off or withhold payment in the event of not legally binding counterclaims.
- 5.6 *jtel* has the right to credit payments made by *customer* to older debts first. If *jtel* exercises this right, *jtel* agrees to inform *customer* accordingly. If additional costs and / or interest have been accrued, *jtel* has the right to credit the payment to the additional costs, then the interest and finally the principal in that order.

6. Interest

Interest on amounts receivable by *jtel* which are in arrears will be charged at 6% over the basic lending rate from the agreed due date.

7. Default of Payment

Customer is deemed to be in default of payment 14 days after the due date of an invoice, or 14 days after receipt of the invoice if a due date is not explicitly stated or the invoice is received after the due date.

8. Rights on Deterioration of Financial Situation

jtel reserves the right to request pre-payment of up to 100% of the amount due or request the provision of security up to 100% of the due amount, and / or refuse supply, if after contract agreement substantial deterioration in the financial situation of *customer* occurs, in particular if an execution is levied or a seizure or garnishment is served against *customer*.

9. Compensation Obligations of Customer

- 9.1 If *customer* gives software or copies thereof to third parties without written authorization by *jtel*, *customer* forfeits compensation payable to *jtel* to the amount of 20 times the contractual price of the software, unless *customer* can prove that damages to a lesser amount have been caused. *jtel* reserves the right to claim for further damages on an individual basis.
- 9.2 In cases in which *jtel* is entitled to compensation other than cases covered by the previous clause the level of compensation shall be 25% of the agreed price without regard to deliverables already supplied; *jtel* reserves the right to claim for damages in excess of this amount on an individual basis. *Customer* has the right to prove that no damages have been caused, or that the damages caused are less than the amount claimed.

10. Delivery Schedule

- 10.1 The delivery schedule begins – unless otherwise agreed – when the order confirmation is sent to *customer* by *jtel*. Delivery dates are approximate and may be dependent on the timely delivery of parts and components ordered with third parties. The delivery schedule is deemed to have been met if up to and including the agreed date the items have been delivered or have been shipped.
- 10.2 Compliance with the delivery schedule requires the timely and correct fulfillment of any responsibilities *customer* has in connection with the order, in particular the provision of any relevant documents and information required to complete the order or the pre-payment of any agreed amounts.
- 10.3 The delivery schedule will be protracted by the amount of time of unforeseeable events which occur, over which *jtel* has no control and which have considerable impact on the delivery date or completion of works. This applies also if they occur at *jtel* or at one a supplier *jtel*. In particular the following events apply: disruption of business, worker strikes or lockouts at *jtel* or suppliers of *jtel*. *Customer* has the right to withdraw from the contract if such protraction exceeds three months.
- 10.4 In case of protraction of the delivery schedule due to causes stated in the previous two clauses, over which *jtel* has no control, for a period of more than three months, *jtel* reserves the right to withdraw from the contract.
- 10.5 In the case of non-compliance to the delivery schedule with consideration of a protraction as defined in sub-clauses 2 and three above *customer* may withdraw from the contract after having given *jtel* written notice of such and after allowing *jtel* a final 14-day period of grace in which to fulfill obligations according to the contract.

Damages claims by *customer* due to delays in the delivery schedule are limited to 0,5% of the agreed price for the delayed components or deliverables per week and limited in total to 10% of the order price of the delayed components or deliverables, in all cases involving only slight negligence by *jtel*.

11. Partial Delivery

Unless otherwise agreed *jtel* reserves the right to supply the ordered items and deliverables in parts.

12. Performance, Passing of Risk

- 12.1 Unless otherwise agreed the place performance is the offices of *jtel*.
- 12.2 The risk of loss or deterioration is passed to *customer* at the very latest when delivery occurs, or deliverables are handed over to a

shipping agent for delivery to the customer. If shipping or delivery is delayed at the wishes of *customer*, the risk is passed to *customer* as soon as *jtel* declares the delivery ready for handing over to *customer* or a shipping agent. This applies also in the event of the retention of goods by *jtel*, for example due to a non-paid but agreed pre-payment. If *customer* wishes, *jtel* will apply for shipping insurance; the costs of this will be borne by *customer*.

13. Agreed Condition of Goods and Services

- 13.1 The agreed condition of the goods and services supplied is governed by the contract and by associated product data sheets and at a lower priority by the product documentation (manuals / online help). Unless expressly agreed *jtel* is not responsible or liable regardless of negligence or fault with respect to the product description, this also applies to the coverage of DIN, ISO or other norms. *Customer* and *jtel* agree that even if software is meticulously programmed using state-of-the-art technology and practices, errors cannot be excluded completely.
- 13.2 Information such as pictures, diagrams, colors, weight and size specifications are only approximate unless expressly designated otherwise. The particulars in brochures, catalogues and other product information regarding technical product properties and appearance are non-binding. *jtel* reserves the right to technical product changes and / or changes in appearance in the course of upkeep with technical advancements.
- 13.3 Variations in the implementation, the color and the size of the contractual subject matter do not qualify as grounds for claim on guarantee or warranty, so long as the suitability to perform the task specified in the contract or the usual task performed by the item in question is only insignificantly lessened.
- 13.4 *jtel* is not liable for defects and shortcomings which are attributable to actions or requirements which *customer* expressly requested or which occur in materials or products *customer* supplied. *jtel* is in no case liable for defects, errors or shortcomings which arise by reason of: improper or inappropriate use; improper setup or bringing into service by *customer* or third parties; normal or abnormal wear and tear; improper, careless or neglectful care and handling; chemical, electrochemical or electrical influences; so long as the cause is not attributable to a fault made by or caused by *jtel*.

14. Acceptance

- 14.1 Unless another mode of acceptance is agreed, the deliverables must be inspected by *customer* or a person which *customer* appoints upon receipt without delay. Once inspected by *customer* any retrospective claim regarding external defects to goods and deliverables is void. Defects which require a more detailed inspection may be claimed for up to 14 days after delivery, all other defects must be claimed for within 4 days after they are discovered. Partner companies of *jtel* are not authorized to accept claims on the behalf of *jtel*.
- 14.2 Insofar as the law requires an official acceptance of the deliverables of *jtel*, the functionality of the deliverables must be checked during a test run, if necessary following the installation of any software supplied. An employee of *customer* and *jtel* shall document the results of the test run in an acceptance document which is to be signed by both parties. A test run which is countersigned by a sub-contractor of *jtel* or supplier acting on behalf of *jtel* is also acceptable. If *customer* does not sign the acceptance document two weeks after the supply of deliverables, then acceptance is deemed to have been declared by *customer* without reservation. In the event of completion of contract, or the assembly or installation or bringing into service

of any deliverables by *customer* or his associates, acceptance is deemed to have been made 14 days after delivery; this does not apply if *customer* makes a reasonable claim in writing stating why the delivery was not made according to the terms of the contract.

15. Warranty

- 15.1 Notwithstanding damages which *customer* may claim for as detailed under clause 16, *jtel* is allowed to choose whether warranty for defects, which substantially decrease the value or the suitability for a particular use of a deliverable item, shall be provided for by rectification of the defect, or by replacement, according to the following rules:

Customer agrees to give *jtel* the necessary time and the required chance to find the cause of the defect, and to resolve it.

Customer is required to send back the defective items to *jtel* as *jtel* may require, the shipping costs will be borne by *jtel*. Defective items and deliverables can only be sent back with prior consent of *jtel* and by a method designated by *jtel*. *jtel* is allowed to refuse acceptance of any items sent back without consent.
- 15.2 Measures to provide warranty by *jtel* are carried out solely in fulfillment of warranty commitments for the original initial deliverables. Without prejudice to the warranty rights of *customer* with respect to the initial deliverables, the replacement or repair of an item does not mark the start of a new warranty period; the warranty period is based solely on the delivery of the original item.
- 15.3 The customer cannot claim under warranty if a third party has undertaken the setup or bringing into service of equipment or made changes, modifications or corrections to the deliverables without the prior consent of *jtel*. *Customer* may only undertake to repair defects to deliverables if *jtel* is in delay repairing the defect and only to avoid a disproportionately large otherwise unavoidable loss. *jtel* must be informed immediately of any such repair or attempted repair.
- 15.4 In the event a replacement is made, *customer* can only claim for a reduction in price or withdraw from the contract after the second failed attempt at replacement to solve a particular problem. If only a negligible defect remains, the customer only has the right to a price reduction.
- 15.5 If the customer supplies the hardware and operating system for use with software supplied by *jtel*, then the customer is responsible solely for the error free operation of the hardware, peripherals and the operating system and the presence of the required characteristics to run the software supplied by *jtel*.
- 15.6 With the exception of the right to claim damages according to clause 16, and unless stated otherwise in the contract, the term of warranty is 12 months, so long as no deliberate violation of obligations is made by *jtel*.

16. Liability

- 16.1 The liability of *jtel* is strictly limited to damages caused by *jtel* or their representatives which are deliberate or grossly negligent. *jtel* is only liable for slight negligence in the case of damages to life, body or health or damages related to the breach of significant obligations of duty which are explicitly associated with the completion of the contract.
- 16.2 If *jtel* is deemed liable for slight negligence, damages are limited to the typical damages associated with contracts of a similar nature and which were foreseeable at the time the contract was made; at the latest at the time the damages were incurred.

Claims for lost profit, lost cost savings, claims resulting due to claims from third parties, damage which is indirect, consequential or secondary cannot be made, unless an agreed characteristic of the product or delivered items is to explicitly protect *customer* from such damages. This clause does not apply in the case of damages to life, body or health.

- 16.3 The liability for the loss of data is limited to the typical cost of restoring the data from a regular backup made according to an adequate backup strategy for the type of data involved (clause 18.2).
- 16.4 Damages, which according to law do not require the appropriation of fault, are excluded from clauses 16.1 to 16.3 above.

17. Limitation of Time

All claims of *customer*, without regard to the legal basis on which they are made, with exception of claims made under clause 16, are limited by time to 12 months after delivery or acceptance.

18. Obligation to Co-operate

- 18.1 If the provision of deliverables requires the provision of an infrastructure such as electrical outlets, ISDN or other telephony connections, network connections and so on, it is the responsibility of *customer* to provide these. If required and if not otherwise specified, it is the responsibility of *customer* to provide the system environment (e.g. hardware, operating system, other software) upon which the deliverables of *jtel* are based.
- 18.2 In case *jtel* performs work on the IT or telecommunications systems or *customer*, *customer* is required to perform an adequate backup of data before *jtel* is allowed access to the equipment to commence work. *Customer* is required to take the necessary precautions for the case that any software provided by *jtel* does not work partially or as a whole; this includes performing regular system checks, doing diagnosis on system results and by implementing contingency plans in case of failures.
- 18.3 If *customer* is legally permitted to on the one hand request fulfillment of the contract or repair or replacement and on the other hand withdraw from the contract and claim damages instead of fulfillment of contract, *jtel* has the right to require *customer* to decide how to use his rights and to require their actual use within a reasonable period of time.

19. Retention of Title

- 19.1 All deliverables are provided under retention of title: deliverables remain property of *jtel* until complete payment of all payable items at the time of execution of contract has been made. If further payable items result from the business relationship between *customer* and *jtel* before full payment of all outstanding items has been made, then title on all deliverables remains with *jtel* until all payable amounts relating to items and deliverables, including any new ones, have been settled. This applies even if some items on an invoice are off-set by the current account balance; the retention of title is then applied as security for the remaining outstanding balance.
- 19.2 *Customer* is granted the revocable right to rent or sell the deliverables according to the following rules and within the bounds of normal operation of business so long as these rules do not contradict the license of the software provided. *Customer* is not granted the right to hypothecate or impawn the deliverables or to transfer ownership as a security.

In the case of sale of items under retention of title, *customer* assigns the rights to receivables from the purchaser to *jtel*, without respect to whether the items were sold as delivered or further work was carried out upon them before delivery to the purchaser. If items under retention of title are sold or rented together with other items, without an itemized price having been explicitly agreed upon for the items under retention of title by *jtel*, then *customer* assigns the rights to receivables to *jtel* with priority over the rest of the receivable amount, up to the outstanding amount due to *jtel*. *jtel* hereby agrees to accept the assignment. If it is not possible for *customer* to assign the rights to receivables to *jtel* as defined in this clause, then the deal is deemed to have been struck outside of the bounds of normal operation of business in terms of this contract.

Customer is granted the revocable right to recover the outstanding amount for the receivables assigned to *jtel*. The rights of *jtel* to recover the debt independently are not prejudiced by this revocable right. *jtel* does however agree to not attempt to recover the debt from the purchaser so long as *customer* adheres to their responsibilities according to the contract, pays outstanding receivables in a timely fashion as laid out in the contract, is not in default of payment, and has not entered bankruptcy proceedings or had bankruptcy proceedings applied for or payment has been stopped according to law, for example U.S. Chapter 11. If any of these are the case, then *jtel* can require that *customer* informs *jtel* in writing and without delay of the purchasers and associated receivables, provides *jtel* with all relevant documentation and information and informs the purchasers in writing that *jtel* of the assignment of the right to recover the debt. *jtel* is authorized to inform the purchaser of these rights by itself if required.

If *customer* is in default of timely payment, *jtel* reserves the right to exercise retention and request return of deliverables; *customer* is required to turn over the deliverables to *jtel*. The assertion of retention of title and seizure rights does not construe withdrawal from the contract. *jtel*, however, reserves the right to withdraw from the contract according to the previously defined rules. If *jtel* makes use of rights in this respect, then all costs pertaining to the recovery of deliverables including the costs of shipping back to *jtel* are borne by *customer*; notwithstanding further rights of *jtel* *customer* is required to pay compensation for any use of the deliverables which may have made up to this point.

- 19.4 *Customer* is required to inform *jtel* in writing of any enforcement of law or other intervention by third parties regarding any items which are under retention of title or with respect to any dues receivable by *customer* which have been assigned to *jtel* according to the previous rules and provide *jtel* with any documents required by *jtel* with respect to legal proceedings. If the third party is not capable of paying or not liable for the costs incurred by *jtel* in this respect, then *customer* is liable for any costs incurred.
- 19.5 The right to sell or rent any deliverables and to recover the outstanding amount for the receivables which are assigned to *jtel* is revoked if *customer* enters bankruptcy proceedings or has bankruptcy proceedings filed for against it or payment of debts is temporarily or permanently stopped according to law, for example U.S. Chapter 11.
- 19.6 *jtel* is required to return rights to collateral which has an appraised value in excess of 150% of the sum of debts payable to *jtel*. In this case *jtel* has the right to decide which items of collateral should be returned.

20. Place of Execution

Unless otherwise agreed, the place of execution of the contract and place of performance is the registered office of *jtel*.

21. Governing Law

This contract and all agreements between *customer* and *jtel* in connection with this contract is governed by the law of the Federal Republic of Germany under exclusion of the Uniform Law on the International Sale of Goods (CISG).

22. Court and Place of Jurisdiction

The Court and Place of Jurisdiction for any disputes between *customer* and *jtel* pertaining to the contract is the registered office of *jtel*, or at the choice of *jtel* a court at the location of *customer*, as long as *customer* is a corporation, businessman, trader, merchant, or legal entity in the public and government sectors and the dispute does not apply exclusively to another place of court according to the applicable law. The same is applicable to disputes with persons and entities whose place of business is not known at the proceedings are opened.

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