

General Terms and Conditions of Delivery - enorise GmbH

§ 1 Application

(1) These General Terms and Conditions of Delivery apply vis-à-vis entrepreneurs, public-law entities and public-law funds.

(2) All supplies, services and quotations (including all and any consultancy services and provision of information) by Enorise GmbH (hereinafter enorise) are exclusively based on these General Terms and Conditions of Delivery. They are an integral part of all contracts which enorise concludes with its customers (hereinafter Client) concerning the supplies or services offered by enorise. They shall also apply to all future supplies, services or quotations to Client insofar as it is a question of legal transactions of the same or a related nature, even if they are not agreed separately again. Additional software license and software maintenance terms and conditions shall further apply to the licensing of software products of enorise. Furthermore, the charging rates for service personnel shall apply to assemblies and service work.

(3) Client's or third parties' terms and conditions shall not be applicable, even if enorise does not separately contest their applicability. Even if enorise makes reference to a document which contains or makes reference to Client's or a third party's terms and conditions, this shall not portray agreement with the applicability of such terms and conditions.

§ 2 Quotation, conclusion of contract, written form

(1) All quotations from enorise shall be subject to change without notice and non-binding, to the extent that they have not expressly been marked as confidential or contain a certain period for acceptance. enorise can accept orders or commissions within (14) days of receipt by transmission of a written confirmation or implementation of the contractual supply or service within the same period.

(2) The contract concluded in writing, including these General Terms and Conditions of Delivery, shall alone be decisive for the legal relationships between enorise and Client. It shall completely reflect all agreements between the contracting parties on the subject matter of the contract. Oral assurances by enorise before the conclusion of this contract shall be legally non-binding and oral agreements of the contracting parties shall be superseded by the written contract to the extent that it cannot expressly be seen from them that they bindingly continue to apply.

(3) Addenda and amendments to the agreements made, including these General Terms and Conditions of Delivery, shall require written form in order to take effect. With the exception of Managing Directors and holders of a limited commercial power of attorney, the employees of enorise shall not be entitled to make oral agreements deviating from the written agreement.

(4) Written form shall be fulfilled by telecommunication transmission, in particular by fax or e-mail, insofar as the copy of the signed declaration is transmitted.

(5) Statements by enorise on the subject matter of the supply or service (e.g. weights, dimensions, load-bearing capacity,

tolerances and technical data) as well as portrayals of the same (e.g. diagrams and illustrations) shall only be approximately binding to the extent that usefulness for the contractually planned purpose does not presuppose precise correspondence. They are not guaranteed property features, but descriptions or identifications of the supply or the service. Deviations customary in the trade and deviations on the basis of legal directives or portraying technical improvements as well as replacement of components by equivalent parts shall be admissible to the extent that they do not impair the usefulness for the contractually planned purpose.

(6) enorise reserves ownership or copyright to all quotations and estimates of costs made by enorise as well as diagrams, illustrations, calculations, brochures, catalogues, models and other documents and ancillaries provided to Client. Client may not make these documents, either as such or as regards the contents, accessible to third parties, disclose them, use or reproduce them itself or through third parties without prior consent from enorise. The documents shall be kept secret towards third parties.

§ 3 Prices and payment

(1) The prices shall apply to the scope of supply and service stated in the order confirmations. Additional or special services as well as necessary expenditure shall be charged separately. The prices shall be understood in EUR ex works excl. of packaging, the statutory value added tax (at the time of supply), customs for export supplies as well as fees and other public dues.

(2) Costs of payment transactions shall be charged to Client.

(3) Invoice amounts shall be paid without any deduction within thirty days to the extent not agreed to the contrary in writing. Receipt by enorise shall be decisive for the date of payment. Payment by cheque has been ruled out to the extent not agreed separately in the individual case.

(4) enorise shall be entitled to offset payments against Client's older debts to start with. If costs and interest have already originated, enorise shall be entitled to offset the payments against the costs to start with, then against the interest and finally against the main payment.

(5) If Client does not pay upon maturity, the outstanding amounts shall bear interest at 9 percentage points above the base rate of interest from the day of maturity; the right to claim higher interest and further damage in the event of arrears shall remain unaffected.

(6) enorise shall be entitled only to provide outstanding supplies or services against advance payment or provision of collateral if enorise obtains knowledge of circumstances following conclusion of the contract which are suited to a considerable reduction of Client's creditworthiness and by which payment of enorise's open claims from the contractual relationship in question by Client is jeopardized.

(7) Each contracting party may only offset with undisputed or legally effective claims.

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(8) If Client is obliged to withhold taxes (withholding tax), it shall pay the amounts in question to the competent financial authority. The client agrees to transmit all proofs and documents proving such a payment and required by enorise in order to achieve a reimbursement to enorise and to support enorise in avoidance or reduction of such withholding taxes to a suitable extent without charging costs to enorise for this. In countries with which the Federal Republic of Germany has not concluded a double taxation treaty and enorise cannot receive a reimbursement of the withholding tax, the price to be paid by Client shall automatically be increased by the amount which is necessary in order to compensate the difference between the amount of the agreed payment and the amount payable to enorise following deduction of the withholding tax.

§ 4 Supply and supply period

(1) Supplies shall be ex works (EXW *Incoterms* 2020) according to order confirmation.

(2) Periods and dates for supplies and services held out as a prospect by enorise shall always only be approximate unless a fixed period or a fixed date has expressly been assured or agreed. If dispatch has been agreed, delivery dates and delivery periods shall relate to the time of the hand-over to the haulier, freight forwarder or third parties otherwise commissioned with the transport.

(3) enorise shall not be liable for impossibility of service or delays in supply to the extent that they have been caused by force majeure or other incidents not foreseeable at the time of the conclusion of the contract (e.g. operational disturbances of any kind, difficulties in procurement of material or energy, transport delays, epidemics and pandemics, strikes, lawful lock-outs, lack of workforce, energy or raw materials, difficulties in the procurement of necessary official approvals, official measures or lack of, incorrect or unpunctual delivery by suppliers) and for which enorise is not answerable. Insofar as such incidents make supply or service considerably more difficult or impossible for enorise and the prevention is not only of a temporary duration, enorise shall be entitled to withdraw from the contract. With obstacles of a temporary duration, the supply or service periods shall be extended, or the supply or service dates shall be postponed by the period of the prevention plus a suitable run-up time. If acceptance of the supply or service cannot reasonably be expected of Client as a result of the delay, it can withdraw from the contract by a prompt written declaration towards enorise.

(4) enorise shall be entitled to part supplies if

- the part supply is useful for Client within the framework of the contractual purpose of use,
- supply of the remaining goods ordered has been ensured, and
- Client does not incur considerable additional expenditure or additional costs as a result (unless enorise declares its willingness to bear these costs).

(5) If enorise falls into arrears with a supply or service or if supply or service becomes impossible for enorise, regardless of the reason, enorise's liability shall be limited to damages according to the provisions of § 12 of these General Terms and Conditions of Delivery.

(6) enorise shall be entitled to make use of third parties for rendering of the service or parts of the service.

§ 5 Co-operation duties

(1) Client shall support the rendering of the service in all phases by active and suitable cooperation. It shall in particular provide enorise with the information, documents and data, computer programs and other means necessary for proper performance of the rendering of the service and, to the extent necessary, enable employees of enorise to access its business premises and computers at customary working times to the extent that this is necessary for fulfilment of the contractual purpose.

(2) If Client fails to comply with its cooperation duties and enorise cannot conclude the supply or the rendering of the service in part or in total within the agreed time as a result, the period set in the schedule shall be extended; accordingly, additional costs and expenditure caused by this shall be borne by Client.

(3) Client shall take all the necessary and reasonable measures in order to prevent or to limit damage by software supplied by enorise. In particular, Client shall ensure regular back-ups of programs and data. To the extent that Client culpably breaches this obligation, enorise shall not be liable for consequences resulting from this, in particular not for the reprocurement of lost or damaged data or programs. A change of the onus of proof shall not be connected with the above regulation.

§ 6 Export and import control

(1) The contracting parties are aware of the fact that supplies and services may be subject to import and export limitations. In particular, approval duties may exist, or the use of software or technologies connected therewith may be subject to limitations in foreign countries.

(2) Client shall comply with the applicable export and import control directives of the Federal Republic of Germany, the European Union and the United States of America as well as all other relevant directives.

(3) Performance of the contract by enorise shall be subject to the reservation that fulfilment is not contradicted by obstacles as a result of national and international directives of export and import law or any other statutory directives.

§ 7 Place of performance, dispatch, passage of risk

(1) Place of performance for all duties from the contractual relationship shall be enorise's registered office to the extent

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that nothing to the contrary has been stipulated. If enorise also owes installation, the place of performance shall be the place at which installation is to take place.

(2) The form of dispatch and packaging shall be subject to enorise's dutiful discretion.

(3) Risk shall pass to Client no later than hand-over of the object of supply (the start of the loading process being decisive) to the haulier, freight forwarder or other third party stipulated for performance of dispatch. This shall also apply if part supplies are made or if enorise has also taken on further services (e.g. dispatch or installation). If dispatch or hand-over is delayed as a result of a circumstance, the cause of which is with Client, risk shall pass to Client from the day on which the object of supply is ready for dispatch and enorise has notified this to Client.

(4) The consignment shall only be insured against theft, breakage, transport, fire and water damage or other comparable risks by enorise by express request of Client and at the latter's expense.

(5) To the extent that the service requires acceptance, Client shall be obliged to accept a service rendered by enorise. Client may not reject the acceptance on account of inconsiderable defects of the service. In this context, inconsiderable defects shall in particular be those which do not or only inconsiderably limit the usefulness of the service for Client. Insofar as enorise is entitled to render part services, Client shall also be obliged to accept part services.

(6) To the extent that the service requires acceptance, it shall be deemed accepted if

- supply and, to the extent that enorise also owes the installation, the installation has been completed,
- enorise has informed Client and requested acceptance by it with reference to the implied acceptance according to this § 7 subsection (6),
- twelve working days have passed since supply or installation or Client has commenced use of the object of purchase (e.g. has commissioned the supplied system) and in such a case (six) working days have passed since supply or installation, and
- The client has refrained from acceptance within this period for a reason other than a defect notified to enorise which makes use of the object of purchase impossible or considerably impairs it.

§ 8 Warranty, defects in quality

(1) As a deviation from § 438 subsection 1 no. 3 German Civil Code, the general period for barring by limitation of claims from defects in quality and title is one year from supply. To the extent that the service requires acceptance, barring shall commence upon acceptance and shall likewise be one year (in deviation from § 634a subsection 1 German Civil Code). § 438 subsection 1 no. 2 German Civil Code, § 634a subsection

1 no. 2 German Civil Code and further statutory special regulations on limitation (in particular § 438 subsection 1 no. 1, subsection 3, § 479 German Civil Code) shall remain unaffected. The aforementioned limitation periods shall also apply to contractual and extra-contractual claims to damages by Client based on a defect to the extent that application of the regular statutory barring pursuant to §§ 195, 199 German Civil Code would lead to shorter limitation in the individual case. Client's claims to damages on account of malice aforethought, deceit or gross negligence and/or on account of injury to life, limb or health and also according to the Product Liability Act shall exclusively be barred according to the statutory barring periods. The statutory barring periods shall also apply to the extent that enorise has deceitfully failed to disclose a defect or has assumed a guarantee for properties (§§ 444, 639 German Civil Code).

(2) The supplied objects shall be examined carefully without delay following supply to Client or the third party stipulated by it. They shall be deemed accepted by Client with a view to obvious defects and other defects which would have been recognizable in a prompt, careful examination if a written notification of defects is not received by enorise within (seven) working days. With a view to other defects, the objects shall be deemed accepted by Client if the written notification of defects is not received by enorise within (seven) working days of the point in time at which the defect manifested itself; if the defect was already obvious in normal use at an earlier point in time, this earlier point in time shall however be decisive for the start of the notification period. By request of enorise, an object of supply giving rise to complaint shall be returned to enorise carriage paid. If the notification of defects is justified, enorise shall bear the costs of the most favorable form of dispatch; this shall not apply to the extent that the costs have increased because the object of supply is located at a place other than the place of intended use.

(3) Claims from defects shall not exist

- in the event of only inconsiderable deviation from the agreed property,
- in the event of only inconsiderable impairment of the usefulness,
- for damage caused as a result of defective or negligent treatment,
- for damage caused as a result of specific external influences which are not presupposed according to the contract,
- for amendments or extensions carried out by Client or third parties and the consequences resulting therefrom,
- for the fact that the software provided is compatible with the data processing environment used by Client.

(4) For defects in quality, enorise shall be obliged and entitled to after working or replacement supply at its choice to be made within a suitable period. In the event of failure, i.e. impossibility, unreasonableness, rejection or unsuitable delay of

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the after-work or replacement supply, Client can withdraw from the contract or reduce the purchase price suitably.

(5) If a defect is based on enorise's culpability, enorise's liability shall be limited to damages according to the provisions of § 12 of these General Terms and Conditions of Delivery.

(6) Warranty shall not apply if Client changes the object of supply or has it changed by third parties without enorise's consent and remedying the defect is made impossible or unreasonably more difficult as a result. In any case, Client shall bear the additional costs of the remedying of the defect caused by the changes.

(7) Claims from defects against enorise shall only accrue to Client and are not assignable.

§ 9 Retention of title

(1) The retention of title agreed hereafter serves to secure all the existing current and future claims of enorise against Client from the supply relationship in existence between the contracting parties (including balance claims from a current account relationship limited to this supply relationship).

(2) The object of supply supplied by enorise to Client shall remain enorise's property until complete payment of all secured claims. The object of supply and the goods covered by the retention of title and replacing it according to the following provisions are hereinafter referred to as "conditional commodities".

(3) Client shall keep the conditional commodities free of charge for enorise.

(4) Client shall be entitled to process and to sell the conditional commodities until the occurrence of the case of exploitation according to subsection (9) in ordinary business dealings. Pledging and transfer by way of security shall be inadmissible.

(5) If the conditional commodities are processed by Client, it is agreed that processing is done on behalf and for the account of enorise as manufacturer and that enorise directly acquires ownership or – if processing is done from materials of various owners or the value of the processed object is higher than that of the conditional commodities – co-ownership (fractional ownership) of the newly created object in the ratio of the value of the conditional commodities to the value of the newly created object. In the event of no such acquisition of ownership by enorise occurring, Client here and now assigns its future ownership or – in the aforementioned ratio – co-ownership of the newly created object to enorise by way of security. If the conditional commodities are combined or inseparably blended with other objects to form a single object and if one of the other objects is to be regarded as the principal object, enorise assigns pro rata co-ownership to the single object to Client in the ratio stated in sentence 1 to the extent that the principal object belongs to enorise.

(6) In the event of resale of the conditional commodities, Client here and now assigns the claim against the acquirer resulting here from – in co-ownership of enorise of the condi-

tional commodities pro rata according to the share of co-ownership – to enorise by way of security. The same shall apply to other claims taking the place of the conditional commodities or otherwise originating with a view to the conditional commodities, for example insurance claims or claims from tort in the event of loss or destruction. enorise revocably authorizes Client to collect the claims assigned to enorise in its own name. enorise may only revoke this collection authorization in the case of exploitation according to subsection (9).

(7) If third parties attack the conditional commodities, in particular by seizure, Client shall immediately make reference to enorise's ownership and inform enorise about this in order to enable enorise to assert its ownership rights. Insofar as the third party is not in a position to reimburse enorise for the judicial or extrajudicial costs incurred in this context, Client shall be liable here for.

(8) enorise shall release the conditional commodities or the objects or claims taking their place to the extent that their value exceeds the amount of the secured claims by more than 20%. The selection of the objects to be released accordingly shall be a matter for enorise.

(9) If enorise withdraws from the contract in the event of Client's conduct in breach of contract – in particular in arrears in payment – (case of exploitation), enorise shall be entitled to demand return of the conditional commodities.

(10) As long as Client keeps the conditional commodities on enorise's behalf, Client shall be obliged to insure the conditional commodities at its own expense to a suitable extent against damage of all kinds. Further, Client shall be obliged to treat the commodities gently.

§ 10 Property rights

(1) Making use of the care customary in the branch, enorise shall endeavor to ensure that the service does not breach any industrial property rights or copyrights of third parties (hereinafter property rights) in the country of the place of performance but also does not carry out any research into property rights in connection with the performance of the commission. Anything to the contrary shall only apply if the performance of such research has been expressly agreed in writing. Therefore, enorise shall only vouch for freedom of protective rights of the service if and insofar as research has been carried out.

(2) Insofar as research into property rights has been agreed, enorise shall be obliged to supply free of protective rights merely in the country for which the research has been agreed. Insofar as a third party makes justified claims against Client on account of a breach of protective rights through supplies rendered by enorise which have been used contractually, enorise shall be liable towards Client within the period of barring by limitation agreed for defects in quality in the event of software provided without a time limitation and within the statutory period of barring for software provided with a time limitation as follows:

(a) enorise shall at its choice and expense either obtain a right of use for the supplies in question, amend them such that the

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property right is not impinged or replace them. If this is not possible for enorise at suitable terms and conditions, the statutory rights of withdrawal and price reduction shall accrue to Client.

(b) Apart from this, enorise's duty to pay damages shall be based on § 12.

(c) enorise's aforementioned duties shall only exist to the extent that Client notifies enorise without delay in writing about the claims made by third parties, does not acknowledge a breach and all defensive measures and composition negotiations remain reserved for enorise. If Client ceases use of the supply for damage reduction or other important reasons, it shall be obliged to inform the third party of the fact that no acknowledgment of an impingement of the property right is connected with the cessation of use.

(3) To the extent that enorise supplies the object of supply according to drafts, diagrams, models, plans, samples or other requirements of Client or the impingement of the property right is caused by the fact that the object of supply is changed by Client or used together with products not supplied by enorise, any kind of liability of enorise for the impingement of copyrights, trademarks, patents or other property rights has been ruled out. To this extent, Client shall completely indemnify enorise against any claims.

§ 11 Right of use

(1) Subject to the software licensing conditions valid for the licensing of enorise's software products, Client shall receive the non-exclusive right to contractual use of the services rendered by enorise if it fulfils its contractual duties properly. All copyright, patent or other industrial property rights shall remain with enorise to the extent that nothing to the contrary has been agreed. To the extent that inventions capable of property rights originate with enorise, enorise shall grant Client a non-exclusive right of use thereto, which has been settled with the overall remuneration.

(2) For software for which enorise only possesses a derived right of use and is not open source software (outside software), the terms and conditions of use agreed between enorise and its licensor shall apply additionally and primarily to the extent that they affect Client (e.g. end user license agreement); enorise shall make reference to them to Client and make them accessible to it by request.

(3) For open-source software, the terms and conditions of use to which the open source software is subject shall apply primarily. enorise shall only hand over or provide the source code to Client to the extent that the terms and conditions of use of the open-source software demand this. enorise shall inform Client of the existence and the terms and conditions of use of provided open-source software and make the terms and conditions of use accessible to it or, to the extent necessary according to the terms and conditions of use, hand them over.

§ 12 Liability for damages

(1) enorise's liability for damages, regardless of the legal reason, in particular from impossibility, arrears, defective or false supply, breach of contract, breach of duties at contractual negotiations and tort, has been limited according to the provisions of this § 12 to the extent that culpability is of the essence.

(2) enorise shall not be liable in the event of slight negligence of its executive organs, statutory representatives, employees or other vicarious agents to the extent that it is not a question of a breach of cardinal contractual duties. Cardinal duties shall be the duty to punctual supply or service, freedom of the supply or service from defects in title and also defects in quality which impair the functionality or usefulness more than only inconsiderably as well as consultancy, protection and custody duties which are to enable Client to use the object of supply or the service contractually or have the purpose of protection of life and limb of Client's personnel or protection of its property against considerable damage.

(3) To the extent that enorise is liable for the reason of the damage pursuant to § 12 subsection (2), this liability shall be limited to damage which enorise has foreseen as a possible consequence of a breach of contract at the conclusion of the contract or which it ought to have foreseen in application of the care customary in the trade. Indirect and subsequent damage which is the consequence of defects of the object of supply or the service, shall additionally only be subject to reimbursement to the extent that such damage can typically be expected in the intended use of the object of supply or the service.

(4) The above exclusions and limitations of liability shall apply to the same extent in favor of enorise's executive organs, statutory representatives, employees and other vicarious agents.

(5) To the extent that enorise gives technical information or becomes active in consultancy and this information or consultancy is not part of the scope of service or supply owed by it contractually, this shall be done free of charge and ruling out all and any liability.

(6) The limitations of this § 12 do not apply to enorise's liability on account of malice aforethought, to guaranteed property features, on account of injury to life, limb or health or according to the Product Liability Act.

§ 13 Non-disclosure

Client shall keep secret all oral, written, electronic or visual information which has been transmitted to Client in connection with the cooperation and which has been marked as confidential or is recognizable as confidential in another way, e.g. on the basis of its contents; this shall particularly apply to operational and business secrets. The above regulations shall not apply to the extent that information (i) is or becomes public domain without this resulting from a breach of these non-disclosure regulations; (ii) is already in Client's possession at the time of its disclosure without Client having an obligation to

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non-disclosure of such information to any person; (iii) becomes known to Client after its disclosure from a source other than enorise; and/or (iv) is processed independently by Client. The client shall impose matching non-disclosure duties on its employees who have contact with confidential information from enorise.

§ 14 Place of jurisdiction, choice of law, written form, final provisions

(1) If Client is a merchant, a public-law entity or a public-law fund or if it does not have a general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for all and any disputes from the business relationship between enorise and Client shall be Aachen or Client's registered office at enorise's choice. However, Aachen shall be the exclusive place of jurisdiction for litigation against enorise in such cases. Cogent statutory provisions concerning exclusive places of jurisdiction shall remain unaffected by this regulation.

(2) The relationships between enorise and Client shall exclusively be governed by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the Internal Sale of Goods of 11.4.1980 (CISG) shall not be applicable.

(3) If individual provisions of the contract are ineffective, this shall not affect the validity of the remaining provisions.

(4) To the extent that the contract or these General Terms and Conditions of Delivery contain loopholes, they shall be filled in by agreement of the legally effective regulations which the contracting parties would have agreed according to the commercial objectives of the contract and the purpose of these General Terms and Conditions of Delivery if they had known of the loophole.

Date: April 2026