

Generell Terms & Conditions

§ 1 Application

This general terms and conditions of business apply to all present and future deliveries and Services including Consulting Services to customers during the contractual relationship. Changes to these general terms and conditions of business must be agreed to in writing. Details of the contractual relationship will be regulated separately in written individual contracts and its service descriptions together with concepts and functional specifications. In the event of a conflict, the above mentioned documents override these general terms and conditions of business.

§ 2 Conclusion of a Contract

Offers to MTK Software GmbH are not binding. If MTK Software GmbH does not reply within 3 days after the purchase order has been received, the purchase order, and these general terms and conditions of business shall form a binding contract. MTK Software GmbH reserves the right to make technical and creative changes to products and services as described in proposals and other written documents as well as changes required by technical progress or market conditions. The customer has no rights against MTK Software GmbH as a result of these changes.

MTK Software GmbH subjects to technical and creative deviations of descriptions in prospectus and written documents and to modifications by reason of technical progress or movement of selling conditions. The customer is not able to derivate any rights against MTK Software GmbH by reason of modifications or discrepancies.

§ 3 Conditions of Payment

There shall be added to the declared prices the legal value-added tax applicable at time of entering into the contract. If the contract involves future supply of hard- and software and services the legal value-added tax shall be the applicable amount as of completion of the supply.

Invoices include the place of payment and the currency. The payments are, without any other written agreement, to be paid by the due date without deduction.

The customer must notify MTK Software GmbH without delay, but not later than four weeks after date of invoice in writing of any objections to the invoice. The due date of any payment is not affected by any objection. Failure to object shall be deemed to be acceptance of the invoice.

§ 4 Default of Payment

If payment is delayed, MTK Software GmbH is entitled, irrespective of any other rights, to withdraw the hard - and software and to dispose of it. In this event, the customer is obliged to return the hard- and software.

From the due date of payment of the invoice MTK Software GmbH can claim interest amounting to at least 8 % over the current base rate as per § 247 of German Civil Code (BGB) plus the value-added tax. Accrued Interest is due immediately. The contracting parties can supply evidence, that a higher or lower amounts of damage are caused by delays.

§ 5 Reservation of Title

Hard- and software delivered for tests, remains the property of MTK Software GmbH. The customer can use the hard- and software only within the scope of the particular agreement the customer has concluded with MTK Software GmbH.

§ 6 Delivery

Delivery and the passing of the risk occurs, upon hard- and software including the written material being delivered to the customer. If agreed upon between the parties, the risk is transferred from MTK Software GmbH to the customer upon the handing over of the shipment to the forwarder or any other person, who is instructed to ship the hard- and software. If shipment is delayed without any fault of MTK Software GmbH or it becomes impossible to ship the hard- and software, risk is transferred from MTK Software GmbH to the customer upon notification from MTK Software GmbH that it is ready to ship the goods. MTK Software GmbH insures hard- and software against damages in transit only at the request and cost of the customer. If the customer has agreed pick up the hard- and software at the place of business of MTK Software GmbH, the risk is transferred from MTK Software GmbH to the customer upon notification that the hard- and software is available for pick up.

§ 7 Warranty

The warranty is limited to 12 months commencing with delivery. Only the direct customer is allowed to assert warranty claims against MTK Software GmbH and the customer can not assign warranty claims.

If MTK Software GmbH supplies any third party hard- and software to the customer, any warranties of the third party will be transferred to the customer. The customer shall assert claims with respect to third party hard- and software against the third party. MTK Software GmbH shall have no liability nor does it provide any warranty for third party hard- and software.

The customer shall inspect the delivered hard- and software after receipt without delay. Patent defects must be reported in writing with a description of the defects to MTK Software GmbH by the customer within 8 workdays after delivery. If there is a latent defect, the customer must report the defect in writing with a description within 8 workdays after detection. Failure to provide the notice shall void the warranty. The warranty shall also be void, if the customer or a third person makes additions or modifications to the hard- or software.

§ 8 Liability

MTK Software GmbH shall be responsible for its gross negligence and willful acts, delay and for the warranty of quality with regard to material obligations of the contract. MTK Software GmbH shall not be liable for indirect damages regardless of their legal basis or causes in law. Indirect damages include, for example, lost profits, consequential harm caused by a defect and unforeseeable damages. The liability is limited to an amount equal to that to be paid to MTK Software GmbH pursuant to the individual contract. The legal liability for damages to persons and the provisions of the German product liability act (ProdHaftG) will remain unaffected by the above.

§ 9 Training Courses

The customer may cancel a training course without charge provided that they send MTK Software GmbH a written notice within 10 days after registration. No cancellation is permitted, if the customer registers less than 10 days before the training course.

§ 10 Secrecy

The customer is obliged to keep all information about hard- and software as well as the preliminary and contractual correspondence in confidence during and after the whole useful life of the information. The customer is not allowed to grant access to the information to any third person. The customer shall ensure that its employees are contractually bound to comply with these confidentiality obligations.

§ 11 Data Protection

MTK Software GmbH shall only forward the customers data to authorized third parties with the exception of court ordered or legal obligations. The terms of the German Data Protection Act (§ 28 BDSG) form part of the agreement with MTK Software GmbH.

§ 12 Trade Mark Rights

The customer shall not remove notices of ownership trademarks and copyrights of Matrikon Inc, vNode Automation and Control-See Software Solutions Ltd. from the hard- and software. The customer has to include these notices in all copies of the software. Matrikon Inc, vNode Automation and Control-See Software Solutions Ltd. is and remains owner or licensee of all rights to the licensed software. That applies also to all or part of the software, which was derived in whole or in part from the original software. Matrikon Inc, vNode Automation and Control-See Software Solutions Ltd. remains owner or licensee of all rights, even if the customer modifies the software within the contractual scope and couples the software with software of his own or a third person.

§ 13 Contract Period, Notice of Termination

The customer is only allowed to terminate or cancel the contract, if MTK Software GmbH has failed to complete the contract by the agreed date. Furthermore an adequate time limit set by the customer has to be elapsed before the contract may be terminated or cancelled.

§ 14 Place of Performance and Jurisdiction, Applicable Law

Cologne is stated as place of performance and exclusive place of jurisdiction for all contractual performances as well as all disputes between the contracting parties. The privity of contract based upon the German law to the exclusion of international law and the United Nations Convention on Contracts for the International Sale of Goods.

§ 15 General Policy Provisions

Any amendments and additions to the contracts must be in writing. The contract will remain in full force and effect even if parts of the contract are invalid, illegal, or unenforceable. In the event of a conflict between this English translation of the general terms and conditions of business and the German version of the general terms and conditions of business the German version shall prevail. The English translation is a courtesy to assist in understanding the general terms and conditions of business. The customer shall not have any claims against MTK Software GmbH for any errors in translation.