

General Business Terms and Conditions of NORIS-IB GmbH

Part 1 - General Provisions

§ 1 Applicability and Diverging General Terms and Conditions

The following general business terms and conditions of the company NORIS-IB GmbH (hereafter referred to as NORIS-IB®) apply to all contractual relationships with companies, legal persons or a special fund governed by public law as defined by § 310 paragraph 1 of the German Civil Code (BGB) (hereafter referred to as "customers"), where not otherwise specifically agreed through individual understandings between the parties to the contract. These general business terms and conditions of the company NORIS-IB® apply exclusively, any contrary or deviating business terms and conditions on the part of the customer shall not be recognised unless NORIS-IB® has previously agreed in writing to their application. These General Business Terms and Conditions also apply if NORIS-IB® unconditionally renders the contractually required services having been informed of contrary or different terms and conditions of the customer.

§ 2 Coming into Being of Contracts

1. A contract between NORIS-IB® and the customer takes effect if either the customer accepts an offer from NORIS-IB® unconditionally and without any amendment or NORIS-IB® confirms an offer from the customer in writing or NORIS-IB® supplies or provides the items or services ordered by the customer within two weeks of receipt of the order.
2. Both parties shall be bound by each of their offers for a period of four weeks from receipt of the offer at the other party unless otherwise individually agreed.

§ 3 Scope of Supplies and Services

1. The content of the services to be provided by NORIS-IB® is primarily derived from the written contractual document, and where no such document exists, from the written order confirmation from NORIS-IB®. All amendments and supplements must be made in writing.
2. NORIS-IB® shall have the right to perform partial services.

§ 4 Liability

1. The liability of NORIS-IB® for breaches of contractual duty and for those derived from tort shall be restricted to intent and gross negligence. This shall not apply to claims in accordance with the German Product Liability Act, in a case of injury to life, body or health of the customer, claims due to a breach of cardinal obligations and compensation for damages due to delay (§ 286 of the German Civil Code (BGB)); in such cases NORIS-IB® shall be fully liable. In a case of a minor negligent breach of a cardinal obligation the liability of NORIS-IB® shall be limited to typical and foreseeable damage. The liability in a case of delay in delivery which is not intentional nor due to gross negligence shall be limited within the terms of a lump-sum compensation for delay of 0.5 % of the value of the items supplied for each full week of the delay, to a maximum of no greater than 5 % of the value of the items supplied.
2. Should NORIS-IB® despatch goods via third parties on behalf of the customer (e.g. via freight forwarders or other transportation companies), the risk of loss or deterioration of the goods shall be transferred to the customer on passing to the third party. Any of its own claims against third parties shall be assigned by NORIS-IB® to the customer or submitted in its own name; further claims on the part of the customer on NORIS-IB® shall be excluded.

§ 5 Retention of Title and Rights

1. Until full payment NORIS-IB® shall retain the ownership of the items purchased and of the absolute transfer of rights of usage to the extent that contained within the contract. A sale, pledging, renting, loaning or any other manner of making available to a third party shall not be permitted until the transfer of title and rights to the customer has been completed.
2. The exercising of the retention of title and rights shall not be considered as a withdrawal from the contract. NORIS-IB® shall, however, have the right to otherwise dispose of the items purchased for which the right of title was claimed after an appropriate notice period.

§ 6 Prices and Terms of Payment

1. All prices given are net plus the legally applicable rate of VAT and shipping costs ex the headquarters of NORIS-IB® unless expressly otherwise given. Any additional special packaging and forms of delivery desired by the customer are not included.
2. Bills, cheques and other non-cash means of payment shall only be accepted by NORIS-IB® as conditional.
3. All monetary claims by NORIS-IB® on the customer shall be due immediately if the customer has not maintained payment conditions without any justifiable reason or if a significant deterioration in the financial situation of the customer has become known to NORIS-IB® after conclusion of the contract. NORIS-IB® shall also then have the right to only carry out additional deliveries and services if the customer has previously made an advance payment appropriate to the further delivery and performance or if he has provided a security by means of a directly enforceable bank guarantee.

§ 7 Duration of Continuing Obligations

Unless otherwise agreed, continuing obligations (the temporary provision or transfer of deliveries and services) between NORIS-IB® and the customer shall last twelve months from conclusion of the contract. The continuing obligation shall be extended in each case by a further twelve months if it is not terminated in writing by one of the parties to the contract with a period of notice of three months until the expiry of the maturity period.

§ 8 Offsetting and Right of Retention

1. The customer can only offset any claims from NORIS-IB® with legally binding or undisputed counterclaims.
2. NORIS-IB® shall only have the right to the retention of services which are owed to the customer as a result of a contract with it as a result of such mutual claims which occur in connection with this contract and which are indisputable or legally binding.

§ 9 Assignment of Claims

The customer shall not have the right to assign claims on NORIS-IB® which are not of a monetary nature to third parties.

§ 10 Form

1. All modifications and additions, supplementary agreements and other, also unilateral, declarations to this contract must be made in writing in order to become effective. The written form requirement shall also apply to agreements through which the written form is waived.
2. The written form requirement in accordance with these General Business Terms and Conditions shall be satisfied by communication in electronic form if the issuer of the declaration adds his name to it and the electronic document carries a qualified electronic signature in accordance with the German Digital Signature Act (§ 126 a of the German Civil Code (BGB)). In addition, the written form shall be satisfied by the transmission by telefax if the original follows without delay.

§ 11 Data Protection

NORIS-IB® stores and processes all data relating to the customer in strict compliance with all relevant data protection provisions. The customer shall declare his explicit agreement that NORIS-IB® may store all master customer data even after the ending of the business relationship and use them in compliance with existing data protection provisions.

§ 12 References

The customer hereby declares his explicit agreement that NORIS-IB® may make reference to him in its promotion or to third parties as a reference address.

§ 13 Applicable Law

1. The law of the Federal Republic of Germany shall govern the legal relationship of the contractual parties.
2. Should the customer make use of products or other supplies and services of NORIS-IB® outside the Federal Republic of Germany or outside the area of application of the law of the Federal Republic of Germany, the responsibility for the observance either of the foreign laws in relation to this or German export provisions shall lie exclusively with the customer.

§ 14 Severability Clause

Should individual provisions of these General Business Terms and Conditions or parts thereof be ineffective, the validity of the remaining provisions shall remain unaffected as a result. The customer and NORIS-IB® shall replace the invalid provision with an effective provision which comes closest to the business objective of the invalid provision. This shall appropriately apply to a gap in the contract and its interpretation.

§ 15 Multi-lingual Documents

Should documents exist within the framework of the contract which are additionally in other languages other than the German version, the German language version shall be decisive in any cases of doubt.

§ 16 New Version of the General Business Terms and Conditions

NORIS-IB® shall have the right to unilaterally amend its General Business Terms and Conditions within the terms of continuing obligations. The amended General Business Terms and Conditions shall become the object of the current contract if the customer does not revoke their validity within a period of four weeks from their receipt.

§ 17 Place of Jurisdiction and Place of Performance

Nuremberg shall be the place of jurisdiction and the place of performance for both parties with regard to each of the contractual obligations.

Part 2 - Special Provisions

§ 18 Applicability

The following provisions have priority over the general provisions in Part 1 of these General Business Terms and Conditions. The priority of individual understandings remains unaffected by this.

§ 19 Software

1. If the supply by NORIS-IB® of standard software from a third party manufacturer is the object of the contract, the granting of rights to the software for the customer and the guarantee rights of the customer shall conform to the relevant provisions of the software manufacturer where they are applied in the relationship between NORIS-IB® and the customer. NORIS-IB® shall make these provisions available without delay to the customer on request.
2. NORIS-IB® shall grant the customer a simple, non-exclusive right of use for an unlimited period on software developed by itself. The customer shall have the right to use the software on only one computer for each licence (single licence). The software shall be considered as being used on a computer if it is loaded into the working memory or is installed on a fixed storage device. The mandatory provisions of the copyright business (§§ 69 a ff. of the Copyright Act) shall otherwise additionally be applied in relation to rights of use.
3. Unless otherwise agreed, NORIS-IB® shall grant for software which is individually produced for the customer or for individually supplemented parts of standard software a simple, non-exclusive right of use for an unlimited period. The customer shall have no claim for a transfer of the source code of individual software as defined above where this is not of absolute necessity for the meeting of legally binding or undisputed warranty claims on the part of the customer. The customer shall not have the right to make use of or otherwise modify for further development individual software produced by NORIS-IB®.
4. The above items 2. and 3. shall apply as appropriate for software which NORIS-IB® provides to the customer as an application service provider (ASP) on its own servers for temporary online use providing that a right of use is granted simply for the contractually agreed period of time. § 19 Item 1 shall apply for the availability as appropriate.
5. Unless otherwise agreed, NORIS-IB® shall not be obliged to subsequently further develop software as defined in the above items 2 to 4 or to provide the customer with updates.
6. The customer shall have the right to create a backup copy of software as defined in the above items 2 to 4 exclusively for his own purposes. He shall not be permitted to make further reproductions.
7. The customer shall not have the right to transfer the rights to software as defined in the above items 2 to 4 to third parties, whether it be for a charge or free-of-charge, temporarily or permanently, completely or partially or in any other form.
8. Software which is (jointly) developed by NORIS-IB® employees together with third parties which are not contracted by NORIS-IB® during the course of projects, in which the software development-related management lies with the customer or a third party contracted by him, shall not be considered as having been produced by NORIS-IB®. In such a case NORIS-IB® shall not be responsible for any specific success but solely for the employment of appropriately technically qualified staff.

§ 20 Internet / Intranet

1. For all services of NORIS-IB®, whose object is the saving and provision for calling up via the internet of programs and data of the customer on servers of NORIS-IB®, NORIS-IB® shall provide a minimum availability of the programs and data of 98% of the agreed duration of the contract. NORIS-IB® shall make efforts to eliminate malfunctions in server operations without delay. NORIS-IB® shall carry out any necessary interruptions to server operations where possible outside the main business hours (between 9 pm and 6 am and on Sundays and public holidays). The servers of NORIS-IB® are fitted with equipment which, at the time of conclusion of the contract, is of the normal state of the art with security equipment against data loss, unauthorised access and virus contamination.
2. Programming services from or for the internet presence of the customer shall be provided by NORIS-IB® exclusively in conjunction with the conclusion of a web-hosting contract. The right of use of the customer to such programming services is limited in terms of time to the duration of the web-hosting contract § 19 Item 3 shall otherwise apply as appropriate. § 19 Item 3 shall otherwise apply as appropriate.
3. The customer has exclusive responsibility for the content and correctness of the transferred data. NORIS-IB® shall not be obliged to check the facts and content of the customer data. Data, whose publishing or provision would violate a law, shall not be processed by NORIS-IB® if this condition is detected by NORIS-IB®. This shall not represent any obligation on the part of NORIS-IB® to the customer to examine the data provided for any possible unlawfulness.
4. Where there is a delay in payment amounting to a not inconsiderable amount of the due invoice amount or an endangering of the payment entitlement of NORIS-IB® exists due to a significant deterioration in the financial situation of the customer as given in § 321 of the German Civil Code (BGB), NORIS-IB® shall have the right to discontinue the contractual services until the customer has satisfied his due payment obligations. NORIS-IB® shall not forfeit its claim for consideration as a result.
5. NORIS-IB® shall have the right to partially or completely exclude data for provision as defined in item 1. above which violate a law or contravene common decency.

§ 21 Guarantee

1. The guarantee period for all services and products provided by NORIS-IB® shall be limited to 12 months.
2. Where a defect exists in in-house developed standard software, NORIS-IB® shall retain the choice for the type of remedy.
3. For any possible defects in individual software NORIS-IB® warrants the provision of its own choice either of remedial action or re-performance. Where NORIS-IB® seriously and ultimately refuses to carry out performance or the elimination of the defect and remedy due to unreasonable costs or this action may be objectively regarded as having failed, the customer may, at his discretion, demand merely a decrease in remuneration (reduction) and possibly damages within the framework of the liability in accordance with § 4.
4. Warranty claims of the customer are, however, excluded for software products if he has amended the software himself or has had it amended by a third party unless the customer is able to prove that an amendment does not significantly hinder the analysis and processing efforts of NORIS-IB® and the defect in the software was included at the time of transfer or acceptance.
5. If the rights of usage to be granted by NORIS-IB® to the customer in accordance with the contract be hampered by property rights of a third party, NORIS-IB® shall have the right, notwithstanding the claims granted to the customer, to amend the performances provided in the contract to an extent deemed reasonable by the customer at his discretion in such a way that they fall outside the area of protection but at the same time meet the contractual provisions or has die authorisation to ensure that they are able to be used in accordance with the contract without restriction and without additional cost for the customer.
6. The customer shall not receive any further guarantees in the legal sense from NORIS-IB®.
7. If the supply by NORIS-IB® of hardware from a third party manufacturer is the object of the contract, the guarantee rights of the customer shall conform to the relevant provisions of the hardware manufacturer where they are applied in the relationship between NORIS-IB® and the customer. NORIS-IB® shall make these provisions available without delay to the customer on request.