

Terms of Delivery and Payment GÖRLITZ AG

1 Scope

The terms and conditions hereafter shall apply to any delivery and services provided by GÖRLITZ for contracts with entrepreneurs. GÖRLITZ does not accept any contrary conditions, even if orders have been executed without explicit prior objection of such contrary conditions. Deviating conditions become effective exclusively after both parties have signed a contract.

2 Offers, Individual Contracts

Unless the offer explicitly determines otherwise, all offers of GÖRLITZ are subject to change. Contracts and agreements are only consolidated by written confirmation of GÖRLITZ.

GÖRLITZ reserves the right to undertake technical deviations from the offer which do not impair the actual performance.

The customer shall ensure, that the offer submitted may not be published either in total or in parts, or also in a revised version without prior written consent of GÖRLITZ.

Content and scope of the services to be performed such as specifically definitions of the tasks, duration, time limits, duty of the customer to cooperate, remuneration are particularly determined in accordance with the individual contract.

3 Implementation of the Individual Contract

Within the framework of the specific contract agreements, GÖRLITZ holds responsibility and determines the way the individual contract is implemented.

The customer does not have the right to issue instructions, however GÖRLITZ will endeavour to meet with the customer's demands.

4 Duty of the Customer to Cooperate

The customer ensures any cooperation required by the customer or vicarious agents is provided free of charge and in good time.

The customer grants GÖRLITZ employees every useful support for their activities in the company.

The customer shall provide data carriers which are error-free with regard to technology and content.

If this is not the case, the customer shall compensate GÖRLITZ for any damages caused by the usage of these data carriers and hold GÖRLITZ harmless from all claims by third parties.

The customer retains copies of all documents and data carriers which GÖRLITZ may request at any time without charge.

After performance of the service, GÖRLITZ is entitled to destroy all documents made available by the customer. GÖRLITZ returns the documents on demand of the customer.

5 Confidentiality

The customer and GÖRLITZ shall mutually undertake to treat all documents and information as confidential which have expressly been identified as such or which are obviously not dedicated to third parties. The customer shall impose this obligation also to its employees.

6 Liability

GÖRLITZ shall be liable exclusively for damages caused by gross negligence or intent. On breach of essential contractual obligations, GÖRLITZ shall also be liable for minor negligence. Liability in this case is restricted to the damage that could reasonably be foreseen upon concluding the contract.

The liability of GÖRLITZ due to delayed service is limited to 5 % of the order sum in case of minor negligent breach of obligations.

GÖRLITZ shall not be liable for consequential damages such as loss of profit. In general, the liability of GÖRLITZ is limited to the respective order value.

The aforementioned liability limitations shall apply to contractual and non-contractual claims.

Liability due to compulsory legal provisions, contractual agreements, assurances or due to personal damages and the consequences hereof remains inviolate.

7 Preconditions for Order Processing

The customer provides all required documents and system components (hardware/software) without charge unless subject to the order.

GÖRLITZ requires that the system components (hardware and software) are provided in a technically perfect and fully functional condition by the customer. Error analysis, troubleshooting and timeouts due to functional defects are subject to billing in accordance with the valid cost rates.

GÖRLITZ shall use the provided documents and system components exclusively in the framework of the ordered service.

The customer supports contacts between GÖRLITZ and own development services provided the contracting parties consider such developments appropriate.

8 Scope and Rights

The scope of service exclusively comprises the order confirmation in writing, specific delivery items for hardware and standard software, application software developments and services.

GÖRLITZ AG shall grant the customer - as far as the customer is not a distribution partner of GÖRLITZ - the non-exclusive and non-transferable right of use for software products acquired from the GÖRLITZ AG as stipulated in the specific contract according to the order confirmation.

GÖRLITZ AG shall grant the customer the right to install and use the software products to the acquired extent, to make 1 (one) copy exclusively for backup purposes, provided the GÖRLITZ AG copyright note is affixed on the copy.

Explicitly NOT included in the rights of use are:

- installation and use of software products exceeding the acquired extent (specifically the number of users),
- reproduction of software products except one back-up copy,
- rent, lease or lend the software products,
- reverse engineer or further develop, decompile or disassemble the software products,
- all rights in the source-code („Quellcode“) of the software products,
- any other rights of use not explicitly stated in the present terms.

Upon termination of the usage right, the customer shall return at its own expense to GÖRLITZ the standard software on the original data medium and application-specific software including all copies and objects issued by GÖRLITZ. The software and any files created by it on the customer's computers shall completely be erased to prevent further recovery. The customer shall affirm on oath to do so upon request of GÖRLITZ.

For all third-party software components acquired by GÖRLITZ, the customer shall receive usage rights in accordance with the conditions of the respective manufacturer.

If, due to a separate partner contract, the customer is a distribution partner of GÖRLITZ and thus entitled to allocate licences for the standard software of GÖRLITZ AG, the distribution partner shall obtain written consent of the end-user with respect to the delivery and payment conditions of GÖRLITZ AG as sole licensor of such standard software. The distribution partner may fulfil this obligation by (a) including the condition in its sale offer to the end-user (i); by the consent of the end user when accepting the offer to be bound to the delivery and payment conditions of GÖRLITZ AG as sole licensor for the standard software and (ii) either adds the present delivery and payment conditions of GÖRLITZ AG or makes a note where they can be downloaded on the GÖRLITZ website; the obligation is also fulfilled when (b) the distribution partner ensures that the conditions in the respective offer are subject to application.

Scope of Use for Embedded Software:

GÖRLITZ shall provide both system software on servers and clients (standard software), as well as so called embedded software and firmware installed in end devices particularly in data loggers, converters, modems and meters. In addition to the right of use as mentioned above, supplementary terms of use for embedded software apply as follows:

With the installation or activation/use of the embedded software, a licence contract is concluded between GÖRLITZ and the licensee.

The licence contract shall authorise the licensee to use the embedded software within the scope specified below. Any further utilisation shall be excluded. The correct and appropriate use of the embedded software is a prerequisite for the rights of use granted in the licence contract. The licensee shall bear the risk of the economic usability of the embedded software.

The embedded software is bound to the respective end device and may not be transferred. In the event that a licence key is used to activate the embedded software installed in an end device, the licensee must request an additional licence key, if the embedded software is to be installed in another end device. In the event that a licence key is not required for the embedded software, the licensee must acquire a separate licence to utilise the embedded software on every additional device.

9 Acceptance

Acceptance of the order is based on the delivery items specified in the written order confirmation for hardware, standard software and software functionality of the user software.

Provisional acceptance is effected by the customer before initial operation.

The user software is exclusively developed on the basis of specifications that are binding for both contracting parties.

If, after expiry of the two weeks-period of presenting the written order confirmation/the specifications, no objection has been raised, the order confirmation/specifications shall be deemed accepted even without signature and applied as the sole basis for implementation of the order.

Changes are only valid in writing and after countersignature by GÖRLITZ.

The complete system is deemed as accepted, even if two months after readiness of delivery by GÖRLITZ, acceptance by the customer has not been completed.

Upon acceptance the customer accepts the order as mainly agreed by contract.

If formal acceptance has not been granted, acceptance is automatically deemed completed through the handover of the contract item to the customer or utilisation of the contract item by the customer.

Upon elapse of the formal acceptance date of 4 weeks after the handing over of the order matter to the customer, without issuance of an acceptance declaration of such, automatically constitutes an acceptance (deemed acceptance).

10 Initial Operation

Initial operation defines all activities executed on the installation site in relation to the order e.g. system tests, performance, etc.

Initial operation of hardware, standard software and user software is separately calculated on the basis of valid cost rates against evidence of travel, standby and labour periods, travel expenses, and material.

Excluded from this are expenses incurred by discrepancies on the part of GÖRLITZ and deviation between executed works and contractual specification (order confirmation/specifications) has been proven by the customer.

11 Retention of Title

GÖRLITZ reserves the title to delivered items until any claims arising from the existing business relation with the customer have been settled. The customer is revocably entitled to utilise the goods subject to retention within the scope of the ordinary course of business as stipulated in clause 8.

Concerning the resale of reserved goods in the usual course of business, unless excluded by Nr. 8, the customer transfers to GÖRLITZ the receivables from the resale of the reserved goods to the amount of the agreed sum of the final invoice (including value-added tax legally valid at the time of invoicing). This act of transfer remains valid irrespective of whether the reserved goods have been resold by agreement or not. The customer retains the authorisation to collect the receivables even after the act of transfer. The authority of GÖRLITZ to collect the receivables in its own right remains unaffected. GÖRLITZ will, however, not collect the receivables, as long as the customer fulfils his payment obligations from the sales revenue generated, is not in any default of payment and, in particular, has not filed any petition for insolvency proceedings or for suspension of payment.

12 Delivery Period

Delivery dates are principally non-binding and shall be regarded only as approximations, unless otherwise expressly agreed and bound in writing.

If the failure to comply with a binding deadline is due to obstacles which have not been caused by GÖRLITZ; a reasonable extension period shall be agreed.

GÖRLITZ is only in default if a letter of reminder has been submitted in written form.

If GÖRLITZ has fallen behind, the customer shall set an appropriate extension period of at least four weeks for subsequent performance. This shall not apply in case of a fixed date transaction or if GÖRLITZ has seriously and definitely refused performance.

Deadlines must be set in writing.

13 Warranty

The warranty period for software products, service and product services from GÖRLITZ AG is 24 months.

The customer shall be aware, that in line with the technological stand, it is not possible to manufacture error-free software. Consequently, warranty is not granted in this respect, as errors do not or only marginally influence the intended usability of the software.

The customer shall inspect the goods delivered immediately after receipt for defects and deviation in quantity. The customer is obliged to submit information in writing in case of defective delivery immediately after detection. The notification period for defects which are visible on careful examination ends not later than one week. Other defects shall immediately be notified after identification. If the customer fails to immediately notify the defect in due time and form, goods are considered as correct in consideration of the defect.

In the event a correctly notified defect is justified, GÖRLITZ is entitled to repair the defect instead of a replacement delivery. GÖRLITZ is obliged to implement the choice within a delay of 10 days after receiving notification of defects in due form. Otherwise, the choice shall pass over to the customer.

If rectification of the defect or replacement delivery fails, the customer shall be entitled to choose between withdrawal from the contract, rescission (cancellation) of the contract or reduction of the price agreed, with respect to that, provided statutory conditions are fulfilled, customer can demand compensation in line with the restrictions set forth in clause 6.

In the event of rectification by GÖRLITZ, GÖRLITZ can demand that

- a) the defective product (hardware, software) is dispatched for correction (repair) and afterwards returned to GÖRLITZ;
- b) the customer keeps the defective product (hardware, software) available for correction by a GÖRLITZ service engineer.

If the customer requires warranty related corrections to be completed at a specific place, though these can be executed by remote access, GÖRLITZ shall meet with this requirement; whereby parts covered by warranty and working time are not charged. Travel time, time-outs and travel costs shall then be paid at the valid cost rates of GÖRLITZ.

Warranty shall lapse, if operating and application conditions or maintenance are not respected, modifications executed or consumables are used which do not comply with the original specifications.

Warranty for services of third-party manufacturers is expressly determined by their terms.

14 Price

Prices are quoted in euros exclusive of freight, packaging and transport insurance costs. The added-value tax is applicable in addition at the date of delivery.

15 Terms of Payment

Payment shall be effected within 10 days net after invoice date. Invoicing is set up for projects as follows:

- 30% upon placing the order
- 30% upon installing the software
- 30% upon testing operation
- 10% upon final acceptance

Services exempt of projects, travel and accommodation expenses are calculated 100% net immediately on occurrence.

16 Cost Rates

The current cost rates (one man-day = eight hours) plus surcharges for working periods, timeouts (time in which the GÖRLITZ service engineer is on customer's site but cannot act in the interest of such) and travel time (time required to arrive on customer's site and the destination of the next working place. Travel expenses by car are charged as follows: travel time in hours is calculated from the number of kilometres driven to the working place and to next destination divided by 70. Minimum charge is one hour.) are added to the order confirmation. The 40-hour-week is used as a calculation basis, 8 working hours per day from Monday to Friday. Additional hours, working and travel time before 7:00 h and after 18:00 h are considered as overtime.

The customer shall be liable for expenses as follows:

Daily rates for each day of absence in accordance with the legally defined per diem.

Expenses for accommodation upon verification (evidences) or the legally defined per-diem allowance.

Travel expenses: any order related travel by car, €/km 0.45; expenses for flight or train tickets and special expenses upon verification (evidences).

17 Data Protection

Order processing is serviced by automatic data processing.

The customer shall grant explicit consent for the processing of the data, which is established in the framework of the contractual relations and necessary to process the order.

The customer shall also concur that GÖRLITZ is permitted to use the data acquired in the course of the business relationship with the customer for business purposes within the GÖRLITZ Group in compliance with the German Data Protection Act.

18 Miscellaneous

Exclusive place of jurisdiction for any occurring litigation is Koblenz. However, GÖRLITZ is entitled to bring an action against the customer on its general place of jurisdiction.

With respect to contractual and non-contractual claims, German law shall exclusively be applicable, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the German conflict of laws.

Set-off against counter-claims shall be permitted, if counter-claims are acknowledged by GÖRLITZ or have been legally established.

Rights of retention for the customer only apply if based on the same contractual relationship.

Assignment of a claim against GÖRLITZ is only valid with written consent.

The legal ineffectiveness or infeasibility of one condition shall not affect the remaining conditions.

The entire or partially ineffective condition shall be replaced by mutual consent with a provision that is similar in legal or economic intent.