

# Standard Terms

Standard terms of the DeskShare GmbH  
(01/2005)

## 1 General Condition – Extent of Validity

- 1.1 The DeskShare GmbH concludes contracts only on the basis of these standard terms which shall be applicable to all deliveries, services and offers of the DeskShare GmbH.
- 1.2 These terms shall also be the basis for all future services and deliveries, even if their inclusion is not again agreed on expressly. The version of these standard terms which is each valid on the date of the conclusion of contract shall be definitive. These terms shall be deemed to be agreed on at latest in case of the first use of the services, products and/or deliveries of the DeskShare GmbH.
- 1.3 Entrepreneur, for the purposes of these terms and conditions, are natural or juridical persons or judicable partnerships, with whom trading relations are established and which act in practice of a commercial activity or of activities of a self-employed person.
- 1.4 Consumer, for the purposes of these terms and conditions, are natural persons with whom trading relations are established, and to which a commercial occupation or a self-employment cannot be allocated.
- 1.5 Customer, for the purposes of these terms and conditions, are as well consumers as entrepreneurs.
- 1.6 Even in case of the delivery, adverse, divergent or supplementary terms and conditions of the customer will not be part of the contract, even without expressive counter-notice.
- 1.7 The DeskShare GmbH is entitled to amend these standard terms by informing the customer in detail about the amendments in writing. The amendments enter into force one month after notice. In case the amendments are to the customer's disadvantage, the customer may terminate the contract within one month after receiving the modification notice.
- 1.8 Derogations from these terms and conditions and/or supplements and supplements of concluded contracts and of the thereof applicable terms and conditions of the DeskShare GmbH shall be in writing and for their validity they shall be signed by a managing agent, a procurator or an Executive Director of the DeskShare GmbH.

## 2 Offer and Conclusion of Contract

- 2.1 Offers of the DeskShare GmbH are not binding, especially regarding the prices, quantities, terms of delivery, delivery facilities, services and additional services.
- 2.2 The scope of services to be rendered by the DeskShare GmbH shall be determined only by the written contracts. Subject to the conclusion there are applicable in the following order the marketing agreement, the terms for ASP (application service providing) -services, the terms of a licence for the DeskShare GmbH software, the software support contract and supplementary these standard terms.
- 2.3 The expressive warranty of product qualities shall be confirmed in writing by the DeskShare GmbH.
- 2.4 A purchase order of goods deliveries, software deliveries or other services, signed by the purchaser, shall be binding. The DeskShare GmbH is entitled to agree to the contractual offer therein within four weeks by sending an acknowledgement of the order, which in this case determines the scope of obligations accepted by the DeskShare GmbH. Delivery and invoicing shall be treated as equal to a written acknowledgement of the order.
- 2.5 The text of the contract shall be saved by the DeskShare GmbH and shall be served to the customer after the conclusion of contract – either by normal mail or by e-mail.
- 2.6 The DeskShare GmbH shall immediately confirm in writing orders to one of its online-shops. This confirmation of receipt shall not constitute the binding acknowledgement of the order. The confirmation of receipt can be connected to the declaration of acceptance or the acknowledgement of the order.
- 2.7 The customer undertakes to make full and true statements when placing an order. If the customer does not meet this obligation – especially by giving a wrong postal address, banking details or e-mail address – the DeskShare GmbH is entitled to withdraw from the contract and if applicable to raise a claim for compensation for damage.
- 2.8 At all times the DeskShare GmbH is entitled to refuse the acknowledgement of an order without giving reasons or to make the conclusion of contract conditional upon a prepayment, a written suretyship declaration of a German major bank and/or the submission of a written power of agency.
- 2.9 The pure handing-over of software, the rendering of maintenance or support services or other services or the delivery of accessory shall not be deemed to constitute the acknowledgement of an order and do not replace the acknowledgement of an order.
- 2.10 In the case of an acknowledgement of a written offer of the DeskShare GmbH within time the prices shall result from this offer, otherwise without a

derogating written agreement from the prices & products list of the DeskShare GmbH, which is valid at the date of the acknowledgement of an order by the DeskShare GmbH and can be amended at all times.

- 2.11 Not depending on date and form of the agreement the agreements of rights of the customer of the software (terms of a license for DeskShare GmbH software), the upkeep and maintenance thereof (software support contract) and the familiarisation in the use of the handed-over software as well as deliveries of accessory and other services shall be each legally self-governing, and regarding the mutual rights and obligations, legal consequences and warranty they shall be separate contracts.
- 2.12 The DeskShare GmbH reserves the right of derogating from the offer documents or from the acknowledgement of an order by consideration of obligatory and derogations caused by legal and technical standards.

## 3 Power of revocation

- 3.1 In case of a contract, concluded by exclusive use of long-distance-communication-media, the consumer is entitled to withdraw his or her expression of will, bent on the conclusion of a contract, within a period of two weeks, whereby the period of revocation starts in case of the delivery of goods on the date of its arrival receipt at the consignee's site, in case of the periodic delivery of similar goods on the date of their arrival receipt of the first instalment and in case of services on the date of the conclusion of contract. The revocation must not contain a statement of reasons and shall be declared to the DeskShare GmbH in form of a text or by return of the goods. For compliance with the agreed time limit the dispatch in due time shall be sufficient.
- 3.2 The power of revocation shall also expire in case of a service, if the DeskShare GmbH has started to render the service with the express approval of the consumer before the expiration of the period of revocation or the consumer has caused and procured the start of the service by himself.
- 3.3 The power of revocation shall not exist in case of
  - i) contracts for delivery of goods, which are made according to the specifications of the consumer or which are clearly tailor-made to the personal needs of the consumer or which are not suitable for a return consignment because of their nature;
  - ii) contracts for online delivery of files and software products via the Internet (download, dispatch by e-mail, etc.);
  - iii) contracts for delivery of audio- or video records or of software, provided that the supplied data carriers were unsealed by the consumer.
- 3.4 In case of contract, the scope of which is a delivery of goods, the consumer is obliged to the return consignment in case of the exercising the power of revocation, if the delivered goods can be sent by means of a parcel. The customer shall bear the costs for the return consignment when exercising his or her power of revocation and the contract value is up to 40€, unless the delivered goods do not comply with the ordered goods. The consumer shall not bear the costs of the return consignment if the contract value exceeds the amount of 40€.
- 3.5 The consumer shall pay compensation for the value of an impairment which is caused by the initial operation of the goods in accordance with the instructions. The consumer is allowed to check the goods carefully. The consumer shall bear the costs for the loss of value, which is caused by the use exceeding the pure examination, and which leads to the consequence that the goods cannot be sold again as "new".

## 4 Installation, Training and Consultation

- 4.1 The customer himself is responsible for the proper installation of the delivered software. Both the installation by the DeskShare GmbH and the training and instruction of the customer or of his operators into the operating of the delivered software are not part of the scope of services. Such services shall only be rendered by virtue of an according agreement and will be charged separately.
- 4.2 Provided that the DeskShare GmbH renders the services of training, consulting or installation, the customer shall ensure that the necessary conditions on part of the customer are fulfilled, especially that the necessary premises as well as the infrastructure, documents and staff are provided. In case the customer fails to fulfil his or her duties to co-operate properly and in accordance with sentence 1, the contractually agreed times for completion of the DeskShare GmbH shall be extended appropriate. The SoftFactory shall be entitled to charge the additional expenditure especially for the extended providing of the own personnel or of the own physical recourses, which is caused by the delay. Claims of the SoftFactory from paragraph 643 Civil Code (BGB) shall not be affected.
- 4.3 Information shall be confirmed in writing.

## 5 Scope of Services

- 5.1 The SoftFactory is entitled to call on assistance from a third party for the purpose of rendering its legally due services. Provided that the DeskShare GmbH calls on assistance from a third party for rendering of its performances and services, this party shall not become party of a contract of the customer.

5.2 The DeskShare GmbH is entitled to instalments and part performances in an acceptable scope.

5.3 Products, supplied for test purposes (hardware, software, data carriers, documents, etc.) shall remain property of the DeskShare GmbH. The DeskShare GmbH reserves the right to equip software in such way that programmes cannot be used to their full extend after expiration of the agreed testing period. The customer is not entitled to raise any claims here from.

## **6 Delivery, Term of Delivery and Consignment**

6.1 Terms of delivery given by the DeskShare GmbH shall be not binding, unless otherwise agreed in writing. In the case that the designated date of delivery will be exceeded by more than four weeks by the DeskShare GmbH, the customer shall be entitled to grant the DeskShare GmbH an acceptable additional respite for the delivery.

6.2 Changes of order shall lead to the abolition of agreed deadlines and terms, unless otherwise agreed.

6.3 In case of consignment of goods the delivery shall take place ex-stocks to the delivery address given by the customer first come first served.

6.4 Provided that the customer does not give special instructions for the consignment (express delivery, express parcel etc.), the consignment will be carried out by the DeskShare GmbH to the best of its judgement and subject to the most favourable mode of transport.

6.5 Terms of delivery and services shall be extended reasonably in case of force majeure and in case of all other hindrances not covered for by the DeskShare GmbH, and which considerably affect the delivery or the performance, especially in case of strikes and lock-out at the DeskShare GmbH, its suppliers or their sub-suppliers.

## **7 Remuneration**

7.1 The prices of the on the date of placing the order current price list shall prevail. Additionally the each statutory turnover tax will be charged, if the consumer is a company.

8 If the customer is a consumer the statutory VAT will be added to the price and it shall be accordingly shown separately to the consumer.

8.1 Unless otherwise agreed in writing, the prices shall be exclusive accessory, costs for packaging and freight, charges for installation, trainings and maintenance services.

8.2 Other deliveries and services, for which no price was agreed on the date of placing the order, will be charged according to the list prices valid on the date of rendering.

8.3 Performances of training, installation and other services shall be charged according to the price lists each valid on the date of acceptance of the order, unless a fixed price was agreed on.

8.4 If the agreed delivery term exceeds four months from the date of the written acknowledgement of order, the DeskShare GmbH is not bound to the stated prices. In this case the prices valid on the date of the delivery prices shall be charged.

8.5 Possible claims for reimbursements of the customer, i.e. because of overpayment, double payments, etc. shall be credited with the customer's charge account and if possible shall be set off against the next due claim.

## **9 Payment**

9.1 Unless otherwise agreed in writing, the charged amounts shall fall due for payment immediately and shall be payable without deduction.

9.2 If cash in advance is agreed, the customer shall transfer the charged total amount of invoice under giving the invoice number immediately after receipt of the invoice. In case of deliveries on cash in advance as well as in case of payments by credit cards, the consignment of goods, rendering of services and disconnecting of software user licenses and admissions to online-services of the DeskShare GmbH shall only be carried out from the date of receipt of payment.

9.3 Provided that cash in advance and anything otherwise is not agreed in writing, the customer undertakes to pay the total amount of invoice immediately after receiving the service, but at latest within 14 days after receipt of the invoice. After expiry of this period the customer makes default in payment.

9.4 In case of default in payment of the customer the DeskShare GmbH shall be entitled to charge interest for default to the extent of 5% over the basic interest rate of the European Central Bank, as long as the customer does not prove a smaller damage or the DeskShare GmbH does not prove a bigger damage.

9.5 If the customer makes default in payment or if it is applied for commencement of insolvency proceeding over his or her assets, the DeskShare GmbH shall be entitled to withhold any deliveries and performances and to assert the rights from the reservation of title.

9.6 If the customer makes default in payment for two successive months regarding the considerations for software rent or maintenance or of a non-irrelevant part of these considerations or within a period, which extends over more than two months, to the extent of the amount of in total two monthly rents, the DeskShare GmbH shall be entitled to terminate the contractual

relationship on important reason without notice. The legal action to enforce further claims because of default in payment shall not be affected hereby.

9.7 The customer shall only be allowed to offset against unquestioned or valid claims or to set these against the claims of the DeskShare GmbH. The customer shall only be allowed to exercise his or her rights of retention, when his or her counter-claim was proved to be unquestioned or valid.

9.8 In case the customer owes to the DeskShare GmbH several payments at the same time, and provided that the customer has not determined redemption terms, at first the due debt, amongst several due debts the each oldest debt shall be paid off.

9.9 The customer shall refund the DeskShare GmbH all expenses incurred by each unpaid or returned debit or each unpaid cheque.

9.10 In case of software deliveries as well as single, recurrent or regular online-services the DeskShare GmbH shall be entitled to realise the forwarding of the invoice at its own discretion – unless otherwise agreed in writing – by normal mail, courier service, e-mail or by download from a website of the DeskShare GmbH by the customer. In case of download by the customer the DeskShare GmbH shall be obliged to send the customer by e-mail a corresponding contemporary notice of deposit.

## **10 Default in acceptance of the Customer**

10.1 In case a customer defaults to accept the ordered goods, after granting an acceptable respite of maximum 14 days, the DeskShare GmbH shall be entitled to withdraw from the contract and to claim compensation for damage. If the DeskShare GmbH claims compensation for damage, it shall amount 30% of the contract value, unless the customer proves a smaller or the DeskShare GmbH proves a bigger damage.

## **11 Acceptance of Performances**

11.1 Products installed by the DeskShare GmbH as per order shall be tested promptly by the customer in co-operation with an employee of the DeskShare GmbH. If the products essentially function as per order, the customer shall declare the acceptance promptly in writing.

In case the customer refuses the acceptance, he or she shall inform the DeskShare GmbH promptly, but not later than within 10 workdays after installation, about actual defects with an exact description in an error list. In case the DeskShare GmbH does not receive a declaration of acceptance or an error list within the aforesaid period of time, the work shall be deemed to be accepted.

11.2 In case of non-essential faults, the customer shall not be allowed to refuse the acceptance.

## **12 Passing of the risk**

12.1 In case of consumers the risk of incidental loss and the incidental impairment of the sold goods, also in case of sales shipment, shall pass to the consumer at the delivery of the goods.

12.2 In case of entrepreneurs the risk of the incidental loss and the incidental impairment of the goods shall pass to the entrepreneur at the delivery, in case of sales shipment at the delivery to the carrier, to the contract carrier or to any other person or company in charge of the execution of shipment.

12.3 In case of the online-delivery of files and software products via the Internet (download, e-mail dispatch, etc.), the risk of loss and changes in data shall pass to the customer when crossing the network interface.

12.4 The delivery shall be tantamount to the customer's default in accepting.

## **13 Warranty**

13.1 By quality assurance measures the DeskShare GmbH makes considerable efforts to achieve that its software products are extensively free from defects. However, the DeskShare GmbH points out that according to the current state of technology it is not possible to manufacture software which is completely free from defects.

13.2 Entrepreneurs must inform the DeskShare GmbH about obvious defects within a period of one week from the date of receipt of the goods in writing. In the absence thereof the raising of a warranty claim shall be excluded. For compliance with the time limit the dispatch in due time shall be sufficient. The burden of adducing evidence shall be completely with the entrepreneur, who shall prove any prerequisites of a claim, especially for the defect itself, for the date of determination of the defect and for the timeliness of the letter of complaint.

13.3 If the customer is an entrepreneur, the warranty shall take place at the DeskShare GmbH's option at first by subsequent improvement or replacement.

13.4 If the customer is a consumer it shall be at first his or her option whether the subsequent completion shall take place by subsequent improvement or replacement. The DeskShare GmbH, however, shall be entitled to refuse the type of the subsequent completion, if it is only possible with disproportionate costs or if a derived product exists, which is now free from this defect and if the other type of subsequent completion remains without substantial disadvantages for the consumer.

13.5 If the DeskShare GmbH's attempts of remedying defects remain unsuccessful, whereby two attempts of remedying defects shall be allowed, or if the DeskShare GmbH does not offer a faultless new programme version, the customer shall be entitled to cancel the contract (withdrawal) or he or she has the right to an appropriate reduction of remuneration (reduction).

- 13.6 In case of an only minor breach of contract, especially in case of only minor defects, the customer shall not be entitled to withdraw from the contract.
- 13.7 If the customer chooses the withdrawal from the contract on the grounds of a defect of quality or a legal imperfection in title after failed subsequent completion, he or she shall not be entitled to additional damage claims on the grounds of the defect.
- 13.8 The warranty period for consumers shall be two years from the date of delivery of the goods. The warranty period for entrepreneurs shall be one year from delivery of the goods.
- 13.9 The warranty claim shall not be applicable concerning such programmes or parts of programmes, which were changed or expanded by the customer himself, unless the customer proves to the DeskShare GmbH that such modifications or extensions are not causal for the defect. Furthermore the warranty claim shall not be applicable for defects, failures or damages, which derive from improper handling, defects of hardware, the operating systems, non-observance of the data protection regulations or other operations, which are outside the sphere of responsibility of the DeskShare GmbH or if the customer denies the DeskShare GmbH the possibility to examine the cause of the reported defect.
- 13.10 If the result of an examination of a letter of complaint is that no warranty claim exists or that an incomplete return consignment of the product has taken place, the costs hereby occasioned shall be charged with a lump sum of 40€, unless the customer proves that little or no expenses incurred.
- 13.11 The guarantee of condition of the products requires in any case an express agreement in writing. Statements contained in brochures, advertisements, documentations, so-called whitepapers, technical data sheets, specifications, websites, online-shops and other writings shall only be descriptions and shall not constitute guarantees, warranties of quality or quality descriptions, unless they were confirmed expressly as such by the DeskShare GmbH. Explanations and clarifications of the contents of information, functions, and possible uses shall also constitute only a description. The same is also applicable to quotations or statements of releases of supplements and extensions.
- 13.12 The DeskShare GmbH shall accept no responsibility therefore, that the offered products and services are suitable for certain purposes intended by the customer.
- 13.13 The customer shall not receive guarantees in the legal meaning from the DeskShare GmbH, unless the same is agreed in writing.

#### **14 Reservation of Title**

- 14.1 The DeskShare GmbH reserves the title of the delivered programme media as well as the right of use and enjoyment of the software contained thereon until the complete payment of the purchase price. In case of companies the aforesaid reservations shall be applicable until the complete payment of all claims arisen or arising from the trade relation. The same shall apply if single or all claims of the DeskShare GmbH were included into the open account and if the accounts were cast and the statement of account were accepted. The customer shall not be permitted to pledge or to transfer the ownership for security of the products, programme media or rights of use and enjoyment, which are under reservation of title, in whole or in part to a third party.
- 14.2 With the complete acquisition of title of the programme media the customer shall acquire the rights of use and enjoyment specified in the product's license.

#### **15 Data Protection**

- 15.1 The customer was informed in detail by the DeskShare GmbH about type, scope, place and purpose of the collection, processing and use of the personal data, required for the execution of the order, as well as about his or her right to object regarding the use of his or her estranged user profile for the purposes of promotion, market research and for the tailored to suit the needs of the market shaping of the service. At the DeskShare GmbH data will be collected in principle only for internal business purposes for the execution and improvement of the offer and will not be transmitted to a third party.
- 15.2 The customer agrees to the collection, processing and use of personal data expressly. He or she shall be entitled to the right of revocation of the consent at all times with effect for the future.

#### **16 Extent of Granting of Rights**

- 16.1 The DeskShare GmbH maintains the copyrights and industrial property rights as well as the exploitation rights of the software products of the DeskShare GmbH. The references to the proprietary rights on the programme medium or possibly on the packaging – also those of a third party – shall be observed. Likewise the corresponding references within the documentation

attached to the respective software shall be observed, also in that case, if this is only provided in electronic form. Unless expressly otherwise agreed, the customer acquires a simple right of use and enjoyment of the software. Otherwise the right of use and enjoyment of the customer shall correspond with the terms of license for the DeskShare GmbH software for the respective products.

#### **17 Limitation of liability and Indemnity**

- 17.1 The DeskShare GmbH shall be liable without limitation for intent and gross negligence of the DeskShare GmbH, its legal representatives or servants as well as for damages from injury of life, body or health, based on a breach of obligations and for which the DeskShare GmbH, its legal representatives or servants are responsible.
- 17.2 The DeskShare GmbH shall be liable for other negligent breaches of substantial contractual obligations, for whatever legal reason, according to the reason. The statutory right of cancellation of the contracting party shall remain unaffected, however, the DeskShare GmbH shall be liable otherwise only to an extent of the typically predictable damage or the typically predictable expenses.
- 17.3 Otherwise the liability shall be excluded.
- 17.4 Insofar the DeskShare GmbH is liable according to number 17.2, the liability is limited to the amount covered by the employer's liability insurance of the DeskShare GmbH.
- 17.5 The DeskShare GmbH shall not be liable for damages, insofar as the user could have prevented the occurrence thereof by for him acceptable measures, especially programme and data security.
- 17.6 The aforementioned liability regime shall also be applicable for the benefit of the employees and other servants of the DeskShare GmbH.
- 17.7 The regulations of the products liability act shall remain unaffected.
- 17.8 The customer undertakes to indemnify and to hold harmless the DeskShare GmbH and the connected companies, the managerial employees, authorised agents, partners and employees with regard to any demands or claims, which are raised by a third party on grounds of a harmful act by the customer in connection with DeskShare GmbH products and/or services, regardless whether with intent or negligent.

#### **18 Proprietary Rights of a Third Party**

- 18.1 The customer undertakes to notify the DeskShare GmbH immediately about affects of industrial property rights by a third party with respect to the delivered DeskShare GmbH products and to leave the legal defence with the DeskShare GmbH at its own expense. The DeskShare GmbH is entitled to perform modifications of the software, also in case of delivered and paid goods, which became necessary on the grounds of claims of industrial property rights of a third party at its own expense.

#### **19 Assignability of Claims**

The customer shall not be entitled to assign contracts concluded with the DeskShare GmbH in whole or single rights and obligations thereof or otherwise to assign rights and obligations, arising under the contracts concluded with the DeskShare GmbH, in whole or in part to a third party without the consent of the DeskShare GmbH.

#### **20 Final Provisions**

- 20.1 Place of performance for all deliveries and performances of the DeskShare GmbH shall be the registered office of the DeskShare GmbH.
- 20.2 The law of the Federal Republic of Germany shall be prevailing. In case of consumers, who do not conclude the contract for professional or commercial purposes, this choice of law shall only be applicable insofar the afforded protection is not deprived by obligatory provisions of the law of the state in which the consumer has his or her habitual place of residence. The UN sales law shall not apply.
- 20.3 If the customer is a merchant, a juristic person under public law or special fund under public law, the exclusive place of jurisdiction for all disputes from or in connection with this contract shall be the registered office of the DeskShare GmbH. The same shall be applicable if the customer does not have a place of general jurisdiction in Germany or if the domicile or habitual place of residence is unknown at the date of commencement of an action.
- 20.4 If single provisions of the contract with the customer including these Standard Terms are or will be ineffective in whole or in part, the validity of the remaining provisions shall not be affected hereby. The wholly or partly invalid regulation shall be replaced by a regulation, the economic performance whereof comes preferably close to that of the invalid regulation.