

STANDARD TERMS AND CONDITIONS

(the “Terms”)

of

MENLO SYSTEMS GMBH

(“Menlo Systems”)

1 SCOPE OF APPLICATION

- 1.1 These Terms shall govern all future individual contracts for the delivery of goods (“**Goods**”) and software (Goods and software jointly: “**Products**”) as well as the provision of services and any other performance (jointly: “**Services**”) by Menlo Systems (the “**Contract(s)**”) to its customers (the “**Customer(s)**”).
- 1.2 Conflicting terms proposed by the Customer are rejected and will not be binding unless approved by Menlo Systems in writing. These Terms shall exclusively apply, save as varied by express agreement in writing. These Terms also apply to any other future performance of Menlo Systems in the business relationship with its Customers.
- 1.3 These Terms shall also apply if Menlo Systems performs unconditionally and despite having knowledge of any differing standard terms and conditions proposed by the Customer.
- 1.4 These Terms are only used for Contracts with businessmen.

2 ORDER, WRITTEN FORM

- 2.1 Offers and price lists by Menlo Systems are subject to Menlo Systems’ confirmation. Orders of the Customer are binding upon Customer for two (2) weeks after reaching Menlo Systems.
- 2.2 Contracts must be made in writing. The same applies to any provision cancelling or altering this provision.
- 2.3 Orders (whether made orally, by telephone, email or fax) are not binding upon Menlo Systems unless confirmed by Menlo Systems in writing or by fax.
- 2.4 Legal declarations by Customers after conclusion of the Contract (e.g. setting of deadlines, notification of defects, withdrawal from the contract, reduction of the purchase price) require written form.

3 PERFORMANCE AND DELIVERY

- 3.1 In absence of a differing indication in the meaning of cl. 3.3 delivery shall be made “ex works” (EXW) (as defined in INCOTERMS 2010) at the manufacturing premises of Menlo Systems in Munich and accordingly the risk of loss shall pass to the Customer; in absence of a deviating agreement this also applies if delivery is effected by employees of Menlo Systems.

- 3.2 Time limits for delivery and performance are exclusively set out in Menlo Systems' order confirmations. The time limits run from the conclusion of the Contract and can be observed by shipment within the time limits, i.e. – depending on the way of delivery – (a) notifying the Customer that the Goods are ready for collection by the Customer or (b) notifying the Customer that the Goods are ready for shipment or (c) start of transport.
- 3.3 Subject to written agreement Menlo Systems will indicate the way of delivery and/or performance.
- 3.4 Menlo Systems is entitled to partial deliveries or partial performance within the time limits after having notified the Customer accordingly. The Customer may object (in writing or by fax) to any unreasonable partial delivery or partial performance before dispatch.
- 3.5 In case of Menlo Systems being in default with deliveries or performance the statutory provisions shall apply, but in any event a reminder by the Customer is required.
- (a) In case of Menlo Systems being in default the Customer may claim fixed damages amounting to 0.5% of the net purchase price (delivery value) per week, at maximum however, 5.0% of the delivery value in total. However, Menlo Systems may prove that the Customer has suffered no or a considerably lower damage.
- (b) Menlo Systems shall not be in default as long as Customer himself is in default with performance.
- 3.6 If (a) Customer fails to accept delivery of the Goods, (b) Customer fails to undertake an action required for Menlo Systems' performance, (c) Customer is in breach of any of his contractual or legal duties or (d) Customer in any other way acting negligently or committing wilful misconduct, Menlo Systems may claim adequate compensation for storage of Goods (sec. 354 German Commercial Code) - even if Goods are stored in Menlo Systems' premises - but at minimum 1.0% of the invoice amount of the stored Goods for every month of default or breach as defined above without prejudice to any other claims or rights due to the default.
- 3.7 Performance of Menlo Systems under any Contract is subject to Menlo Systems receiving supply in time provided that Menlo Systems has entered into an equivalent supply agreement.
- 3.8 The direct or indirect consequences of lacking or delayed supply, strike and labour dispute, war, terrorism, trade restrictions, shortage of energy or resources, measures by public authorities and other incidents beyond the reasonable control of Menlo Systems, including incidents of force majeure, shall entitle Menlo Systems to delay delivery or performance for as long as such delivery or performance is prevented. The same applies if Menlo Systems does not receive necessary official approvals for the sale of Goods or the provision of Software licenses or services. Both parties will inform the other party immediately of any inability to perform, under any Contract and the prospective delay.

4 PAYMENT, LOC, SET-OFF, RIGHT OF RETENTION

- 4.1 Prices indicated by Menlo Systems are calculated EXW (as defined in INCOTERMS 2010) Menlo Systems manufacturing premises excluding applicable packaging and transport costs and excluding applicable customs and VAT.

- 4.2 In absence of a differing agreement invoice amounts are payable within 30 days from the invoice date and delivery.
- 4.3 Payments are to be effected by wire transfer to the Menlo Systems bank account indicated in the invoice. No cheque or bill of exchange will be considered as fulfilment of the payment obligation if not agreed in writing.
- 4.4 In case of default Menlo Systems is entitled to default interest amounting to 8% p.a. beyond EURIBOR 3-M subject to and without prejudice to any higher claims for damages evidenced by Menlo Systems.
- 4.5 If any payment or down payment is not received by Menlo Systems on the due dates or if after conclusion of a Contract there are indications that the Customer is or will become unable to fulfil its obligations towards Menlo Systems (e.g. due to an application for the opening of insolvency proceedings) then, without prejudice to any other right or remedy available, Menlo Systems shall under applicable law at their discretion be entitled to
- (a) suspend any further deliveries or performance to the Customer; and
 - (b) indicate an adequate period of time for payment of the open invoice amount upon delivery or for Customer providing sufficient security;
- and after expiry of the deadline Menlo Systems may withdraw from the Contract and claim damages or frustrated expenses; the statutory provisions under which the setting of a deadline may be redundant apply.
- 4.6 In case of Customer apparently becoming unable to fulfil its obligations, e.g. due to a deterioration of his financial circumstances, Menlo Systems may also cancel any granted terms of payment and assert legal steps for open invoice amounts.
- 4.7 Customer may only set-off or retain his performance if his counterclaim is recognized by Menlo Systems, undisputed by Menlo Systems or is confirmed by final and binding judgment; in case of defects cl. 6.12 shall remain apply.

5 RETENTION OF TITLE

- 5.1 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Terms, the property in the Goods ("**Retention Goods**") shall not pass to the Customer until Menlo Systems has received payment in full of the price of the Goods and all other Goods and services agreed to be provided by Menlo Systems to the Customer for which payment is then due.
- 5.2 Until the property in the Goods passes to the Customer, the Customer shall keep the Goods properly stored, protected and insured against theft, damage and destruction for their replacement value at Customer's expenses and will extend his business liability insurance to the Retention Goods. Customer already now assigns any future claims under such contract of insurance to Menlo Systems and Customer accepts the assignment. Upon Menlo Systems' request Customer will prove that coverage is sufficient.
- 5.3 The Customer must not pledge or otherwise use the Retention Goods as collateral. Until the property in the Retention Goods passes to the Customer, the Customer shall –

except in a state of default – be entitled to resell or use the Goods in the ordinary course of his business, but shall account to Menlo Systems for the proceeds of sale or otherwise of the Goods, including insurance proceeds, and shall keep all such proceeds separate from any moneys or properties of the Customer and third parties.

- 5.4 The Customer already now assigns to Menlo Systems all his claims out of the resale of Retention Goods up the invoiced amounts including VAT. Menlo Systems accepts the assignment.
- 5.5 Notwithstanding the assignment of claims under cl. 5.4 above, the Customer remains authorised for and Menlo Systems will refrain from a collection of the assigned claims. Menlo Systems reserves the right to collect the claims independently when the Customer gets is default, an application for the opening of insolvency proceedings over Customer's assets is made or there are indications that Customer will become unable to fulfil his obligations towards Menlo Systems. In this case the Customer must on Menlo Systems' demand indicate the assigned claims and the respective debtors to Menlo Systems, must transmit all information and documents required for collection and must immediately indicate the transfer of claims to the debtors.
- 5.6 In case of damages to the Retention Goods or if third parties undertake steps to damage, pledge or otherwise dispose of the Retention Goods, the Customer shall immediately notify Menlo Systems by fax or email, in particular in order to enable Menlo Systems to seek a court injunction, and Customer shall notify third parties that Menlo Systems is the legal owner of the Retention Goods. In case of damage to and in case of third parties interfering with the Retention Goods Customer will be held liable for any damages caused including costs for the replacement of the Retention Goods and reasonable legal costs, as far as such costs cannot be recovered from the third party.
- 5.7 Menlo Systems shall on demand of the Customer release any part of the collateral if the realisable value of the collateral held in favour of Menlo Systems exceeds 110 % of the value of the claims secured. In this case Menlo Systems decides at its sole discretion which parts of the collateral are released.
- 5.8 Customer is expressly not allowed to change or process the Retention Goods or other Goods, in particular by physical or technical amendments; for clarification, this shall not prevent the Customer from installing the complete Retention Goods, as delivered, in other technical machinery and devices as agreed with Menlo Systems.

6 **WARRANTIES**

- 6.1 The Customer shall examine the Goods delivered as required by German Law (secs. 377, 378 of the German Commercial Code) and in doing so check every delivery in any respect and notify Menlo Systems of any defect in writing immediately after the examination; immediately shall mean within 14 days with the posting of the notification being sufficient for the keeping of the deadline. Notwithstanding the above, apparent defects (including false and short supply) must be notified to Menlo Systems at the latest within 14 days after delivery in writing, with the posting of the notification being sufficient for the keeping of the deadline. In case of Customer omitting the examination or timely notification of defects, warranty claims are excluded.

- 6.2 If delivery is not effected by Menlo Systems, but directly by their supplier or another contractor instructed by Menlo Systems (so-called "distance deal"), Customer shall indicate immediately and in writing any defects or false deliveries to such contractor according to the above provisions. If Customer can prove that the supplier or contractor is not known to the Customer, cl. 6.1 applies.
- 6.3 Customer shall have the burden of proof for all requirements of the warranty claim including the existence of the defect, the time of the defect becoming apparent, the notification pursuant to cl. 6.1 being made in time and the fact that the Goods have been stored properly.
- 6.4 Menlo Systems warrants the specifications of the Goods, Software and Services. Technical data and product information provided do not qualify as a guarantee or confirmation of product features. In case an agreement has not been reached the existence of a defect shall be determined pursuant to statutory law. However, we do not accept any liability for public information provided by suppliers, producers or third parties (e.g. for advertisements).
- 6.5 If the Customer is in breach of his obligations under cl. 6.1 and 6.2 warranty claims regarding the respective defect are excluded. This does not apply to defects which are fraudulently concealed by Menlo Systems or in case Menlo Systems has provided a guarantee with respect to the products or services.
- 6.6 Slight deviations within the scope of technical product tolerance regarding material, colour, weight, dimension or similar characteristic features do not qualify as defects and do not entitle the Customer to deny acceptance of the Goods. Delivery is subject to any reasonable technical or constructive improvements and amendments on the basis of new technical or scientific knowledge and advancements. Menlo Systems does not render any warranties for the Goods, Software or Services beyond the state of technology subject to cl. 6.5 sent. 2.
- 6.7 This warranty does not cover defects in or damage to the Goods or Software which are due to improper installation or maintenance, misuse, negligence by the Customer or any parts not supplied by Menlo Systems or any modifications made by the Customer or Customer's customers without prior written approval of Menlo Systems.
- 6.8 Warranty with respect to defects existing at the passing of risk - subject to cl. 6.1 to 6.7 - is initially provided by remedy of defects or replacement, subject to Menlo Systems' option.
- 6.9 In case of Goods being replaced Customer must upon request return the defective Goods to Menlo Systems professionally packed.
- 6.10 In case replacement or correction of defects,
- (a) have failed;
 - (b) have been rejected by Menlo Systems;
 - (c) have not been effected despite an adequate deadline set by the Customer; or
 - (d) if a deadline is redundant under applicable law,

the Customer may make use of his statutory rights. However, in cases of immaterial defects, the Customer may not withdraw from the Contract.

- 6.11 The Customer supports Menlo Systems with the determination and correction of defects as far as possible and reasonable.
- 6.12 Menlo Systems can make replacements or corrections conditional on the Customer paying the price for the purchase/delivery if due; however, Customer may retain an amount that is adequate for the value of any defects.
- 6.13 Substitute parts of Retention Goods become part of the Retention Goods and as such become the property of Menlo Systems. The Customer will grant Menlo Systems a reasonable amount of time to undertake the remedies and upon Menlo Systems' request will return the defect part properly packed. Costs of transport, labour and material are borne by Menlo Systems; however, if a defect does not exist, Menlo Systems may claim compensation for such costs from Customer. In case of Customer deviating from sentences 1 and 2 of this provision warranty claims are excluded.
- 6.14 For claims for damages and compensation for expenses as a result of defects cl. 8 shall apply.

7 SOFTWARE LICENSE

- 7.1 With respect to Software delivered to the Customer, Menlo Systems grants the Customer a license on the respective Software provided by Menlo Systems as follows.

7.2 Definition of Software

“Software” includes all software products made available by Menlo Systems to the Customer under any Contract in object code including the complementary documentation in the language provided for in the Contract.

7.3 Grant of Rights, Object of License

- (a) For the term as provided for in the Contract (**“License Term”**) the Customer receives the non-exclusive, non-transferable non sub-licensable right, to use the Software for the purposes of the Contract. The permitted use of the Software includes the installation, the booting, display and running of the installed Software.
- (b) The Customer may produce a security copy of the Software, provided the Customer indicates Menlo Systems' copyright with respect to the Software by an according annotation on the security copy. The use of such security copy shall be limited to replace the original Software if the installation of such Software or the data carrier on which such Software was delivered is inoperable.
- (c) Beyond the above paras. (a) and (b) the Customer is not entitled to reproduce, rework, translate, reverse engineer or decompile the Software as far as required to ensure interoperability of the Software with other programs or to correct defects of the Software and provided that Menlo Systems has, upon request, refused to undertake such performance under the Contract or in absence of existing contractual agreement at reasonable terms to be negotiated in good faith

and provided that the Customer has notified Menlo Systems with adequate notice period in advance.

- (d) Beyond the provisions in paras. (a) to (c) the Customer is not entitled to reproduce or copy or make available the Software or the security copy to third parties.
- (e) In case of a material violation of the licensing provisions or in case a violation of the licensing provisions has not been cured within 30 days following a written reminder (fax sufficient) by Menlo Systems, all rights of use pertaining to the Software can be cancelled and withdrawn by Menlo Systems by extra-ordinary termination for cause. In this case Customer will immediately and completely cease the use of the Software and delete the Software and all copies from his system or, upon Menlo Systems' option, hand over such copies to Menlo Systems.
- (f) Installation and configuration services are only provided by Menlo Systems if expressly agreed by the parties to the Contract in writing.

7.4 Protection of Software

The Customer will adequately secure the Software against unpermitted use by third parties. In particular, the Customer will safely store any Software copies.

7.5 Maintenance, Specific Warranties

- (a) Menlo Systems warrants the specifications of the Software pursuant to the Contract in accordance with applicable German law. In particular Menlo Systems warrants that the Software is free of third party rights that may hinder or restrict the contractual use of the Software.
- (b) The Customer will notify Menlo Systems of any defects of the Software immediately after their discovery in writing (fax sufficient). In case of defects as to quality the Customer will immediately describe the time and circumstances of discovery of the defect.
- (c) With respect to the Software Sec. 6 of these Terms shall apply mutatis mutandis.

8 LIMITATION OF LIABILITY

- 8.1 Menlo Systems is liable for all damages caused by gross negligence or wilful acts of Menlo Systems, their officers, legal representatives, employees and auxiliary persons according to applicable law.
- 8.2 In cases of simple negligence Menlo Systems shall only be liable for damages in cases of a violation of essential contractual duties (cardinal obligations, i.e. obligations which – if complied with – form the basis for a fulfilment of the contract and the fulfilment of which the Customer confides in or may confide in under regular circumstances) the liability of Menlo Systems is limited to the typical foreseeable damage.
- 8.3 Subject to cl. 8.1 and 8.2 Menlo Systems is not liable for any damages caused under any contractual or legal provision, including violation of a pre-contractual relationship. The

exclusions/limitations of liability pursuant to this cl. 8 also apply to a potential personal liability of Menlo Systems' officers, representatives, employees and auxiliary persons.

- 8.4 The foregoing exclusions and limitations of liability do not apply in cases of a negligent violation of life, body or health, mandatory product liability, in cases of agreed guarantees including guarantees regarding product features and in cases of Menlo Systems fraudulently concealing defects.
- 8.5 Menlo Systems does not accept any liability for damages occurring without negligence of Menlo Systems, in particular, but not limited to, cases of force majeure or unlawful acts of third parties, such as criminal or terroristic influence on delivered Products, except in cases of mandatory product liability law.
- 8.6 Menlo Systems' liability for a recovery of Customer's data is limited to the amount that is required to recover the data which have been secured and stored adequately according to the dangers involved in the handling of such data or which can otherwise be reconstructed out of the machine language with reasonable effort.
- 8.7 Cl. 8.1 to 8.6 shall apply correspondingly to claims for compensation of frustrated expenses.
- 8.8 The above limitations of liability shall also apply with respect to any personal liability of representatives, employees and auxiliary persons of Menlo Systems.

9 LIMITATION

- 9.1 The general limitation period for defects shall amount to one year after delivery. In case acceptance of delivery being agreed by the parties under a Contract, the limitation shall begin with acceptance.
- 9.2 The above limitation period shall also apply to contractual and other claims for damages of the Customer based on a defect of the Goods, Software or Services except if the application of the statutory limitation period (secs. 195, 199 German Civil Code) would result in a shorter limitation period in the individual case. The limitation periods pursuant to the German Product Liability Act shall remain unaffected. Apart from the aforesaid the statutory limitation periods shall apply.

10 RIGHT OF WITHDRAWAL

- 10.1 In case of any violation of the Contract by Menlo Systems not consisting of a defect, Customer may withdraw from the Contract only if the violation has been committed at least negligently by Menlo Systems or its auxiliary persons.
- 10.2 Customer's right to withdraw from the Contract is furthermore excluded if the incident forming the base for the termination occurs during the Customer's default with payments.
- 10.3 Menlo Systems is entitled to withdraw from the Contract (a) if insolvency proceedings (in court or otherwise) or comparable proceedings under foreign law are initiated over Customer's assets, (b) if an order for the opening of insolvency proceedings is placed or (c) if the opening of such proceedings is rejected due to lacking assets or (d) if the Customer ceases its payments or has entered into a moratorium with its creditors.

11 INDUSTRIAL PROPERTY RIGHTS

All industrial property rights with respect to the contractual performance, the Goods and with respect to documents and other items which Menlo Systems provides to the Customer within the business relationship, in particular, but not restricted to, patent, trademark and copyrights remain the property of Menlo Systems. The Customer must not change the marks attached to the Goods and any marks used by Menlo Systems in providing the Goods Software and Services and Customer must not add any additional designation other than the ones provided by Menlo Systems.

12 CHOICE OF LAW, PLACE OF JURISDICTION

12.1 Each party agrees to submit to the jurisdiction of the courts in Munich, Germany, having exclusive jurisdiction for disputes arising from the business relationship and any Contract. However, Menlo Systems shall also have the right to bring a claim before a court at the Customer's principal place of business or at Menlo Systems' discretion before any other court being competent according to national or international law.

12.2 The Contracts and agreements within the business relationship shall be exclusively governed by and construed in accordance with German law excluding the Convention on Contracts for the International Sale of Goods (CISG) and excluding the German provisions on the conflict of laws. However, prerequisites and consequences of the retention of title pursuant to cl. 5 are governed by the law applicable at the place where the object is located in so far as the application of German law under these Terms is legally inadmissible or ineffective.

I have fully understood and I agree with the above Terms and Conditions of Menlo Systems.

_____ [place], this _____ [date]

Signature: _____

[Name]

For: the Customer

Function: [Director]