

General Terms and Conditions of Sale and Delivery
for
Michael Rac GmbH
Am Hirtenfeld 51, 91522 Ansbach
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1. General

Michael Rac GmbH is a company registered in Germany, which means that German law is applicable without restriction.

Michael Rac GmbH develops and markets software and hardware products exclusively for commercial applications. Therefore, the product range offered by Michael Rac GmbH is aimed only at commercial customers in Germany, in Europe with a valid European value-added tax registration number and in Switzerland. Unfortunately, the company is unable to deal with non-commercial customers or customers outside Europe.

2. Purchase of hardware and software products/software user licenses

These general terms and conditions of sale and delivery shall be an integral part of all quotations and contract acceptance declarations and shall provide the basis for all sales transactions by Michael Rac GmbH. Any contrary terms and conditions of business issued by the customer shall be excluded, even if they are not expressly rejected.

The general terms of business for contracts for work and services issued by Michael Rac GmbH shall apply to contracts for work and services.

The licensing conditions for the software packages shall be set out in separate terms and conditions which are supplied with the product concerned. The customer shall receive a separate licence agreement depending on the software product involved.

3. Right of return

Companies purchasing/ordering the goods shall have no right of return under the provisions of the German Civil Code. Sales shall not be made to private individuals and consumers in the sense of Section 13 of the German Civil Code.

4. Warranty/Liability

The warranty laws of the Federal Republic of Germany shall apply.

The customer acknowledges that there is no software which does not contain errors and that errors may occur if work/programming is carried out with extreme care. Reported errors shall be rectified as quickly as possible. The customer's warranty claims shall only exist if the customer has properly complied with its duties relating to the inspection and notification of defects as set out in Section 377 of the German Commercial Code.

4.1. Priority of re-fulfilment

If the goods are affected by a defect which is the responsibility of Michael Rac GmbH, Michael Rac GmbH shall be entitled to cancel the contract and exclude the rights of the purchaser or to reduce the purchase price (reduction), to re-fulfil the order or to rework the goods, unless Michael Rac GmbH is entitled to refuse to re-fulfil the order or rework the goods on the basis of statutory provisions.

The purchaser must provide a reasonable period of time for such re-fulfilment or rework. The defect may either be rectified (rework) or new goods may be supplied (re-fulfilment) at the discretion of Michael Rac GmbH.

In the event that the defect is rectified, Michael Rac GmbH shall pay the costs of any such work as long as they are not increased because the contract goods are in a location other than the fulfilment location.

Other claims relating to the defect may only be lodged by the purchaser if the re-fulfilment or rework fails.

The rework shall be deemed to have failed after the second unsuccessful attempt unless, due to the nature of the contract item, it is reasonable to make additional rework attempts and the customer may reasonably be expected to accept this. The right of the purchaser to lodge additional compensation claims shall not be affected by this.

4.2. Liability

Michael Rac GmbH shall accept liability under the statutory provisions for death, physical injury and health impairment caused by a negligent or malicious breach of duty on the part of Michael Rac GmbH, its legal representatives or their agents, and for damages covered by liability under the Product Liability Act.

Michael Rac GmbH shall accept liability under the statutory provisions for damage not covered by the previous sentence and caused by malicious or grossly negligent contract breaches or fraud on the part of Michael Rac GmbH, its legal representatives or their agents.

In this case, however, its liability shall be limited to the foreseeable, typical damage unless Michael Rac GmbH, its legal representatives or their agents have acted maliciously. If a properties and/or durability guarantee was given for the software or hardware or parts thereof, Michael Rac GmbH shall also accept the liability linked to this guarantee.

Michael Rac GmbH shall only accept liability for damages based on the lack of a guaranteed property or durability, but not directly linked to the goods if the risk of such damage is clearly covered by the properties and durability guarantee.

Michael Rac GmbH shall also accept liability for damages caused by it through simple negligence in the event of a breach of duties, compliance with which is particularly important to achieve the objective of the contract (cardinal duties).

However, Michael Rac GmbH shall only accept liability if the damages are typically linked to the contract and foreseeable.

Further liability shall be excluded regardless of the legal nature of the claim lodged. This shall particularly apply to criminal claims and claims for compensation for futile costs rather than the agreed service; this shall not affect the other liability of Michael Rac GmbH governed by these general terms of business.

If the liability of Michael Rac GmbH is excluded or limited, this shall also apply to the personal liability of its legal representatives or agents.

The provisions set out above relating to the guarantee, warranty and liability shall apply exclusively in relationships with companies in the sense of Section 14 of the German Civil Code.

5. Place of fulfilment and place of jurisdiction for contracts

The place of fulfilment for goods and services and the place of jurisdiction for all liabilities and disputes arising from the contract relationship shall be the location of the head office of Michael Rac GmbH.

The relations between the contract parties shall be based exclusively on the laws of the Federal Republic of Germany. The contract language shall be German.

6. Terms of payment

6.1. Due date

Unless otherwise agreed, invoices issued by Michael Rac GmbH shall be payable on a strictly net basis immediately on receipt.

6.2. Setting off by Michael Rac GmbH

Michael Rac GmbH shall be entitled to set off payments initially against older accounts receivable if any such accounts exist. If costs and interests have already been incurred, Michael Rac GmbH shall be entitled to set off the payment firstly against costs, then against interest and finally against the main account receivable.

6.3. Suspension

If payments are suspended or made after the due date, interest at the statutory rate for default interest shall be due from the due date of the payment without the customer having to be notified separately that it is in default.

6.4. Setting off by the customer

Setting off against any counter-claims on the part of the customer shall not be possible unless the customer has accounts receivable which are not disputed or have been established by a court of law.

6.5. Right of retention

The right of retention for payments due to any counter-claims on the part of the customer shall not be possible unless these counter-claims are based on the same contract relationship.

6.6. Pricing

The specified prices shall be understood to be exclusive of statutory value-added tax unless this has been expressly included in the price. If the statutory value-added tax or other taxes on the products are increased after the contract has been concluded, Michael Rac GmbH shall be entitled to demand the increased tax rate.

7. Refusal to accept the goods

If the customer refuses to accept the goods it has ordered and Michael Rac GmbH incurs costs as a result, the customer undertakes to pay these costs in full.

8. Subject to technical changes

We reserve the right to make technical product changes resulting from the technological developments, as long as they do not make the intended use of the product unreasonably difficult, and changes to the design, colour and/or weight of hardware products within reason.

9. Delivery

A binding delivery date shall expressly not be provided and can only be agreed effectively by means of a separate written declaration.

Michael Rac GmbH shall be entitled to make part deliveries.

10. Shipment, transfer of risk

The goods shall be shipped at the customer's risk and expense. The same shall apply to any returns unless the customer is entitled to return the goods. The risk of accidental loss and accidental impairment of the goods shall be transferred to the customer when the goods are handed over to the forwarder, freight driver or other person or organisation engaged to complete the shipment process. This shall apply even if part deliveries are made. At the request of the customer, Michael Rac GmbH shall ensure the shipment against theft, breakage, transport, fire and water damage and other damage at the customer's expense.

11. Data protection

The customer is hereby notified that its data shall be collected, saved and processed as required on the basis of the current data protection regulations. The data shall not be forwarded to third parties.

12. Waste disposal under the Electrical Devices Act

If hardware devices which are covered by the Act on Marketing, Return and the Environmentally Friendly Disposal of Electrical and Electronic Devices (ElektroG) are sold, the customer undertakes to treat, dispose or recycle them in compliance with the statutory regulations. The customer shall indemnify Michael Rac GmbH of all claims made against Michael Rac GmbH on the basis of a breach of these duties.

13. Reservation of title

Until all accounts receivable have been settled, including balances on current accounts which are payable to Michael Rac GmbH by the customer now or in the future, the supplied goods (reservation of title goods) shall remain the property of Michael Rac GmbH.

In the event that the customer breaches the contract, for example in the event of being in default with payments, Michael Rac GmbH shall be entitled to take back possession of the reservation of title goods after it has set a reasonable deadline.

14. Severability

If a provision in these terms and conditions should be or become invalid, this shall not affect the validity of the remainder of the contract or the other provisions in these general terms and conditions of business.

The invalid provision shall be replaced by the statutory regulation.