

Terms and Conditions

Please read carefully.

Issued July 15th, 2004

To ensure security of the data it is in your best interest to produce backup copies regularly!

§ 1 Scope

- 1) All contracts entered into by infoWERK multimedia GmbH (hereafter referred to as infoWERK) are exclusively governed by the terms and conditions as laid out in these Terms and Conditions.
- 2) These Terms and Conditions also form the basis of any subsequent services and deliveries, even if they are not explicitly mentioned. In the event that any of the terms and conditions contained herein conflict with the client's General Terms of Business, infoWERK's General Standard Terms and Conditions take precedence.
- 3) Consumers, in these Terms and Conditions, are persons with whom infoWERK enters into business relations and who do not pursue freelance or commercial professional activities.
 - a) Contractors, in these Terms and Conditions, are natural persons or legal entities or unincorporated firms having legal capacity with whom infoWERK enters into business relations and who pursue commercial or freelance professional activities.
 - b) Customers, in these Terms and Conditions, are both consumers and contractors.

§ 2 Formation of contracts

- 1) Specifications given in brochures, advertisements, documentation and any other written notices are descriptive only and do not constitute any guarantees regarding the condition of the products. Guarantees regarding the condition of the products require the explicit, written form. This applies equally to any indication of price or the release of add-ons and extensions. Technical data, specifications and functional design specifications in the software product descriptions do not constitute guarantees regarding the condition of the products unless this was expressly confirmed as such by infoWERK.
- 2) Written offers from infoWERK are legally binding for a 30-day period, unless another term has been arranged in writing. This period starts with the date of the offer.
- 3) A contract comes into force either by the timely acceptance of infoWERK's offer or through written confirmation from infoWERK, in which case this defines the scope of the obligations that infoWERK undertakes.
- 4) If the customer places his order in electronic form, infoWERK will immediately confirm the receipt of the order. The receipt of the order does not constitute a binding acceptance of the order. The confirmation of the receipt of the order can be combined with the declaration of acceptance. The contract text is stored by infoWERK and sent to the customer electronically upon request or can be called by the customer electronically.
- 5) The sole delivery of software, performing maintenance work or other services, or the delivery of accessories does not constitute a confirmation, nor are they placement for one.
- 6) Regardless of the time and the form of the agreement, agreements on the customer's rights to the software (software license agreement), its support and maintenance (maintenance contract), and any training in the use of the software, as well as deliveries of accessories and other services are legally independent and form a separate contract with regard to rights and obligations, legal consequences and warranties.
- 7) Ancillary agreements, modifications and additions require the signature by a holder of commercial authority, a holder of general commercial power of attorney, or a manager.

§ 3 Prices

Prices are determined, in the case of a timely acceptance of a written offer by infoWERK. Otherwise, in the absence of a divergent written agreement, they are taken from infoWERK's price and product list valid at the time of acceptance of the order, which is subject to change at any time.

§ 4 Terms of payment

- 1) Payments are due on receipt of the goods in full. If payment is not received within 14 days, the customer is in default. In this case infoWERK shall be entitled to charge default interest at a rate of 7% per year.

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- 2) As a rule, bills of exchange, checks and other payment orders are not accepted. If they are accepted, this is done on account of performance only.
- 3) infoWERK has the right to make deliveries on advance payment.

§ 5 Delivery and service not rendered according to contract

- 1) Terms of deliveries and services are legally binding only if they are contained in a written offer or a written order confirmation from infoWERK. When contractually agreed delivery and service terms have elapsed, the customer shall grant infoWERK a 30-day extension period in which to perform, in writing. If this period elapses without result, the customer may withdraw from contract. This period is calculated from the time the goods leave infoWERK's site.
- 2) A reasonable period of extension for delivery and performance is allotted when unforeseeable events or force majeure such as strikes, lockout, transportation disruption, governmental authority actions, etc. have a significant impact on infoWERK's ability to deliver and/or perform. If such impediments persist for longer than a month or if such an impediment may render delivery or performance of service permanently not or not according to contract, both parties are entitled to revoke the contract.
- 3) In the event of incomplete orders or modifications demanded by the customer, the customer shall not insist on agreed fulfilment dates.

§ 6 Retention of title

- 1) Until such time as all claims resulting from this contract and any other claims by infoWERK against the customer that exist at the time of signing the contract are fulfilled, infoWERK reserves the title for the delivered products (hereinafter called conditional merchandise).
- 2) The customer may use conditional merchandise within the framework of its business. Any integration, merging, processing or conversion of the conditional merchandise may be carried out solely on infoWERK's behalf, who acquires co-ownership of the finished goods or the new product, in proportion to the value of the conditional goods to the finished goods or the new product.
- 3) The customer is entitled to resell the conditional merchandise and products in which infoWERK is a co-owner, in the course of the proper conduct of its business, with ownership of title conditional. The customer assigns future claims resulting from resale in the amount of the invoice value of the conditional merchandise until complete settlement of all claims listed under (1) as a security to infoWERK, who accepts such assignment. If infoWERK has only partial co-ownership in the sold goods, these claims are assigned to the value of the selling price of that part, but with priority above any other claims.
- 4) The customer has to inform infoWERK immediately of a change of ownership of the conditional merchandise as well as a change of residence or business seat.
- 5) When conditional merchandise is seized, the customer shall point out infoWERK's ownership and notify infoWERK without delay in writing. 6) In case of a breach of contract on behalf of the customer, infoWERK is entitled to withdraw from the contract and reclaim the conditional merchandise.

§ 7 Assignment of risks and dispatch

- 1) If the customer is a contractor, the risk of accidental loss and accidental deterioration of the product passes onto the customer upon deliverance, in case of shipment purchases to the forwarding agent, the carrier or any other person or facility commissioned for dispatch to the customer upon deliverance.
- 2) If the customer is a consumer, the risk of accidental loss and accidental deterioration of the product first passes onto the customer upon deliverance. This also applies to shipment purchases.
- 3) It is equal to deliverance when the customer defaults the acceptance of the goods.
- 4) As long as the customer did not specify any particular way of shipment (express delivery, express package, etc.), infoWERK will ship the goods by means of the most inexpensive delivery method.

§ 8 Software Licenses

Software licenses are governed by infoWERK's current Software License Agreement.

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§ 9 Intellectual Property Rights

Unless otherwise stated, infoWERK owns the intellectual property rights on the developed courseware under these terms and conditions.

§ 10 Training

- 1) Services for standard training sessions: infoWERK offers seminars for its software products that contain the following services: Provision of the necessary hardware, software and rooms, qualified trainers, training contents according to the training agenda and the level of experience of the participants, beverages during breaks, personal participation certificate.
- 2) Services for individual training sessions: services according to training contents. The number of training days and participants as well as the location needs to be agreed on beforehand.
- 3) Copyrights: The training documents as well as the provided software may not be copied.
- 4) Others:
 - a) The training contents communicated during training sessions do not constitute guarantees regarding the condition of the products.
 - b) infoWERK is entitled to engage subcontractors in order to fulfil the contractual obligations.

§ 11 Warranty

- 1) infoWERK makes every effort through the implementation of quality assurance measures to keep software free of defects, but points out that with current technology it is not possible to guarantee that software is completely free of defects.
- 2) infoWERK may initially fulfil the warranty by remedying the defect or provide a replacement delivery.
- 3) The warranty is void for any programs or parts of programs that were modified or extended by the customer, unless the customer can furnish proof to infoWERK that such modifications or extensions are not the cause of the defect. The warranty claim is also void in case of defects, suspensions, interruptions and damages that are a consequence of incorrect operation, hardware and operating system failures, non-compliance with data security regulations or other processes outside of infoWERK's responsibility, or if the customer denies infoWERK the opportunity to investigate the cause of the defect.
- 4) The period of limitation for contractors is one year as of the receipt of the goods. For consumers, this period is 2 years as of the receipt of the goods.
- 5) If the investigation of a notice of defects establishes that there is no warranty case or that the product was returned incomplete, a cost of EUR 40 shall be levied unless the customer proves that no or fewer expenses were incurred.

§ 12 Notice of defects

If the customer is a contractor, he shall immediately check the product for completeness and quality upon receipt. Evident defects must be communicated in writing to infoWERK within 14 days as of the receipt of the product; otherwise the assertion of the warranty claim is excluded. The dispatch of the notice in due time is sufficient to adhere to the limitation period.

§ 13 Liability

- 1) In case of a slightly negligent breach of obligations, infoWERK's liability is limited to the foreseeable, typical and direct average damage depending on the type of product. This also applies in case of slightly negligent breaches of obligations on behalf of infoWERK's legal representatives or vicarious agents. This does not apply for damages caused by delay.
- 2) infoWERK is not liable to contractors in case of a slight breach of insignificant contractual obligations.
- 3) Claims for compensation on behalf of a customer due to a defect expire after a period of 1 year as of the delivery of the product. This does not apply in case of gross negligence or fraud on behalf of infoWERK.
- 4) infoWERK is liable for the absence of guarantees to the extent of the scope of the guarantees.

§ 14 Final clauses

- 1) The place of performance is Zirl, Austria.
- 2) If the customer is a merchant according to the Austrian Book of Trade Law (Handelsgesetzbuch), a legal entity of public law or legal special funds, it is agreed that any legal actions arising from this or in connection with this contract will be settled at infoWERK's business seat. This also applies if the customer does not have a general place of jurisdiction in Austria or if his place of residence or usual abode is unknown at the time the proceedings are brought forth.
- 3) This contract is subject to the laws of the Republic of Austria.
- 4) Any subsequent additions or changes to contracts require the written form. This also applies to a waiver of the written form requirement.