Terms and Conditions

Dr. Li Anchor Profi GmbH

§1 General, content of the contract

(1) For all contracts with enterprises (licensees, buyers), the following terms and conditions apply. In addition, the license agreement enclosed with the products shall equally apply. Deviations from these are only effective if they have been confirmed by us in writing.

(2) Representations in test programs, product and project descriptions do not constitute a guarantee or assumption of liability by us of any kind.

(3) The client has verified that the specification of the contractual objects corresponds to his wishes and needs.

§2 Conclusion of contract, contractual objects

(1) Our offers are non-binding and become so only upon our written order confirmation. Purposely prepared offers are valid for 30 calendar days.

(2) Side agreements, changes and additions are only valid if we confirm them in writing.

(3) The object of the purchase contract for standard products is the provision of standard software and/or databases.

(4) The subject of the service contract is the provision of software and/or database update as well as other associated services.

(5) The object of the work contract is the implementation of individual concepts.

(6) The reciprocal obligations arise exclusively from the following provisions, which are not affected by financing agreements of the principal with third parties. In particular, the payment obligations of the client exist in full.

§3 Prices, price changes

(1) All prices are subject to the legal value added tax. Price changes due to changes in customs duties, import and export charges, exchange rates etc. remain reserved.

(2) The prices for deliveries apply - unless otherwise agreed by Dr. Li Anchor Profi GmbH. Shipping costs and other additional services will be charged separately.

(3) Insofar as there are more than 6 months between the conclusion of the contract and the agreed or actual date of delivery or performance, the prices remain valid at the time of delivery, provision or performance of Dr. Li Anchor Profi GmbH.

(4) For the modification, adaptation and installation of software, we charge for the number of worked hours. If we carry out work on-site at the client's place of business, we are entitled to settle the incurred travel expenses additionally.

§4 Terms of payment

(1) Unless otherwise agreed, invoices are due within 10 days of receipt of the invoice. Discount and bill charges are charged to the client and are due immediately. Discount deductions are only permitted if these are agreed separately. If the contractual partner does not pay the invoice amount within 10 days after receipt of the invoice, he will also be in default without a separate reminder. In case of default of the contracting party, we are entitled to charge interest at the statutory rate, with a minimum rate of 8 percentage points above the base rate (§ 288 para. 2 BGB). The assertion of further damages due to default remains unaffected.

(2) Rights of set-off and retention are only available to the contracting party if its counterclaims have been legally established, are undisputed or acknowledged by us.

(3) If, after the conclusion of the contract, it becomes apparent that our claim to the consideration to be provided by the contracting party is jeopardized due to insufficient capacity of the contracting party, we are entitled to withhold our service until the buyer has rendered the consideration or provided security. If the buyer does not provide the full consideration or adequate security within a period of one week after being requested, we are entitled to withdraw from the contract. § 323 BGB applies accordingly. Our right to claim damages under the statutory conditions remains unaffected.

(4) The assignment of claims of the contracting party from the business relationship is excluded without our written consent. § 354 a HGB remains unaffected.

§5 Delivery of the software

(1) Information on the delivery date are not binding. Binding delivery dates require written confirmation from us. Partial deliveries are permitted.

(2) Delivery and service periods are extended by the period in which Dr. Li Anchor Profi GmbH is prevented through labor disputes, force majeure, non-delivery by suppliers, illness of employees or other unforeseen events without fault, to provide the delivery or service and a reasonable period to restart after the end of the disturbance. The same applies if we wait for information or cooperation of the client.

(3) All reminders and deadlines set by the client must be made in writing to be effective. If Dr. Li Anchor Profi GmbH is in arrears with a delivery, so claims, of any kind, arise only from the fruitless expiry of a grace period, which must be at least 12 working days.

(4) In the event of a delay in delivery, the contractual partner can demand compensation for damages instead of performance only under the legal conditions and under the restrictions of Section §8. In addition, the assertion of damages instead of the performance requires that the contracting partner informs us in writing of the legally required period of grace in writing that he will assert claims for damages in the absence of the delivery/service.

§6 Rights of the customer to software, scope of delivery

(1) The executable program files of the software including the user documentation are delivered. The source code for the software is not included in the delivery.

(2) We grant the customer non-exclusive and non-transferable right to use the software specified in the contract for an indefinite period of time within the scope of the contract.

(3) As of the installation of a new program version or an updated data base, the right of use for the previous program version and data base shall be canceled.

(4) If the software is used on a multiprocessor with simultaneous access for multiple users, an additional license fee is payable.

(5) Insofar as the subject matter of the contract is a trial version, the client receives only a limited right of use in accordance with the information in the license conditions. The restrictions may concern the area of use, the duration and the content.

(6) The production of copies of the software is permitted only for the purpose of the contractual use and for data backup. If the originals bear a copyright-protecting endorsement, the customer must also include this on the copies.

(7) The duplication of the software for other reasons, in particular for passing on to third parties, is not permitted. The resale of the software as well as a data medium containing the software program is only permissible if the name and address of the acquirer are communicated to us and a written agreement is given by us. All copies of the data carrier must then be handed over to the buyer.

(8) The customer is obligated to store the software in a manner which prevents the unauthorized duplication of the software by third parties in the best possible way. In the case of culpable violation of this obligation, the customer is obliged to pay a contractual penalty in the amount of ten times the list price.

(9) The customer is not entitled to decompile, disassemble the software or to use parts of the software to create separate applications.

(10) The customer hereby recognizes us as the sole licensor of the software and the owner of all copyrights associated therewith. Our rights as sole licensor also apply to extensions of the software that we deliver to the customer, unless otherwise agreed in writing.

(11) The customer hereby acknowledges our trademark, name and patent rights with regard to the software and the associated documentation. The customer must not change or remove our copyright information in the programs and related documentation.

§7 Warranty

(1) The warranty period by us is 6 months for software. It begins with the delivery of the software and includes the defect diagnosis and treatment.

(2) Without prejudice to other statutory requirements, the client has to complain about obvious defects within a reasonable period in writing with a detailed description of the error. Delayed, inadequate or unfounded complaints free Dr. Li Anchor Profi GmbH from its performance obligations. As far as we still take the relevant action, we charge the expense.

(3) In the case of timely and justified complaint of the goods, we will take back the defective goods and replace them with goods in accordance with the contract or alternatively, if this is possible and can be reasonably expected of the buyer, repair the delivered goods. The reworking takes place at Dr. Li Anchor Profi GmbH's choosing, e.g. through troubleshooting, by leaving a new program or data base or by the fact that Dr. Li Anchor Profi GmbH shows ways to avoid the effects of the error. The client will take over a new program or data base after this leads to an acceptable adaptation or conversion effort.

(4) The client supports us with the removal of defects (leaving error descriptions and test data, information from employees, access to installation, etc.). The client will take reasonable precautions in the event that the software does not work properly in whole or in part, in particular through data backup, fault diagnosis, ongoing inspection, etc.

(5) If the rectification has finally failed, the client has the right to reduce the remuneration or to cancel the contract. For damages, §8 applies. Expenses for remedy of defects by third parties or contract costs, Dr. Li Anchor Profi GmbH owes in no case. Other warranty claims are excluded.

(6) We will assist the client in troubleshooting even if a defect in the deliveries and services of Dr. Li Anchor Profi GmbH is not known. If the deliveries and services of Dr. Li Anchor Profi GmbH do not turn out to be defective, we charge the expense.

(7) We do not guarantee the fulfillment of the individual requirements of the customer by the software named in the contract. This applies in particular to the failure to achieve the desired economic success.

(8) We are only liable for the loss of data and programs and their restoration in the scope of §8 and also insofar as this loss is not covered by reasonable precautionary measures by the purchaser, in particular the daily production of backup copies of all data and programs, would have been avoidable.

§8 Liability

(1) Dr. Li Anchor Profi GmbH indemnifies, for whatever legal reason (e. g. non-performance, impossibility, delay, warranty, culpa in contrahendo, secondary liability or tort) only
- in case of intent and gross negligence according to legal regulations;
- in the case of ordinary negligence, from delay, impossibility and from the fact that a material duty is violated and thereby the achievement of the purpose of the contract is endangered, compensation for the damage which was typical and foreseeable, limited to the contract volume, unless it is in the individual case agreed otherwise in writing.

(2) For the recovery of data, Dr. Li Anchor Profi GmbH is liable only if the client has ensured that these data from data stocks hold in machine-readable form are reproducible with reasonable effort.

(3) For consequential damages resulting from the use of unverified results of our software, Dr. Li Anchor Profi GmbH is not liable. The legal liability for personal injury and under the Product Liability Act remains unaffected.

(4) At the request of the client, a corresponding insurance against additional payment may be agreed.

(5) Dr. Li Anchor Profi GmbH can object that the client is jointly responsible for the damage.

§9 Rights of third parties

(1) We assure that the transfer of rights in accordance with the present contracts does not conflict with the rights of third parties. If third parties assert opposing property rights against the client, the client will inform us immediately in writing. We can defend or satisfy the claims for the client or reimburse the expenses of the client to defend the claims of third parties. Alternatively, we may replace the affected deliveries and services with equivalent ones within a reasonable period of time.

§10 Secrecy and safekeeping

(1) The Contracting Parties undertake to keep secret all information, documents and data which become known to them during the performance of the contractual services, and to neither make them available to third parties nor otherwise use them. The contracting parties shall inform their employees who have official access to the subject matter of the contract in writing about the obligation to maintain secrecy. The client stores and secures contractual objects in such a way that misuse by third parties is prevented. Upon request, we will delete the data provided to us by the client and return or destroy the documents provided.

§11 Retention of title

For all transactions involving the delivery of goods, the following retention of title applies.

(1) The delivered goods shall remain our property until the payment of the remuneration and until the repayment of all receivables already existing from the business relationship and ancillary claims existing in close connection with the delivered goods (default interest, damages caused by delay etc.) as reserved goods. The cessation of individual claims in a current account or the balance and their recognition do not cancel the reservation of title. In the event of default of payment by the purchaser, we are entitled to rescind the reserved goods after resignation and the purchaser is obliged to surrender.

(2) If reserved goods are sold by the purchaser, alone or together with goods not supplied by us, the purchaser hereby assigns to us the claims arising from the resale in the amount of the value of the reserved goods with all ancillary rights. We accept the assignment. If the resold reserved goods are in our co-ownership, the assignment of the claims extends to the amount that corresponds to our share in the co-ownership.

(3) The purchaser is entitled to resell or use the goods subject to retention of title only in the normal, orderly course of business and only with the proviso that the claims assigned in advance are actually transferred to us. The purchaser is not entitled to other dispositions of the reserved goods, in particular pledging or transfer by way of security.

(4) The purchaser is authorized, subject to the revocation, to collect assigned claims. We will not make use of our own collection authority as long as the purchaser meets his payment obligations. Upon request, the purchaser must name the debtors of the assigned claims and notify them of the assignment. We are also authorized to inform the debtors of the assignment.

(5) The purchaser must notify us immediately about the execution of third-party foreclosures in the reserved goods or the assigned claims by submitting all necessary documents.

(6) With the cessation of payment or with application or opening of insolvency proceedings or execution of an out-of-court settlement procedure with the creditors concerning the debt settlement, the right to resell, use or install the reserved goods, but also the authorization to collect the assigned claims, expires. In a check or bill protest, the direct debit authorization also expires.

(7) If the value of the granted securities exceeds the claims to be secured from delivery transactions by more than 10%, the purchaser can demand retransfer or release up to this limit. With the repayment of all our claims against the purchaser from delivery transactions, the ownership of the reserved goods and the assigned claims are transferred to the purchaser.

§12 Applicable law, place of jurisdiction, place of fulfillment, data protection, severability clause

(1) For these terms and conditions and the entire legal relationship between the parties, the law of the Federal Republic of Germany with the exception of international private law and the UN Sales Convention.

(2) The place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our place of business, provided that the contractual partner is a merchant, a legal entity under public law or a public law special fund.

(3) Unless otherwise agreed in the contract, the place of performance is also our place of business.

(4) The data of the contracting party are necessary for business and in the framework of the federal data protection law (§ 26 BDSG) and the General Data Protection Regulation (GDPR) stored with us and processed.

(5) Should individual provisions of this contract be or become ineffective or contain a gap, the remaining provisions shall remain unaffected. The parties undertake to replace the ineffective provision with such legally permissible provision that comes closest to the economic purpose of the invalid provision or fills in this gap.