

Terms and conditions of Graphisoft Deutschland GmbH (Graphisoft) for the supply of DDScad software and product catalogs as well as software maintenance and training performance

General information

The following terms and conditions of Graphisoft Deutschland GmbH (hereinafter referred to as Graphisoft) are constituent of the contract. Opposing or deviating conditions or other restrictions of the licensee are not recognized, unless Graphisoft has agreed their validity in writing. These terms of sale also apply if Graphisoft executes, in the knowledge of conflicting or of differing conditions of the terms of sale of the licensee, the delivery of services. These conditions are valid for all future business.

Further agreements, between Graphisoft and the licensee for the performance of the contract, are to be laid down in writing.

Offers, prices

Offers from Graphisoft are not-binding. For an offer to qualify as an order, Graphisoft should receive within 14 calendar days an order confirmation or accept delivery of the goods. After the expiry of the deadline the offer will be deemed rejected. If Graphisoft does not create an order confirmation, the invoice is considered as confirmation. Shipping costs are calculated separately, if requested by the licensee, Graphisoft will add shipping insurance at additional cost.

If there is more than 6 months between conclusion of the contract and the agreed delivery date, or if the delivery is delayed by the customer after the expiry of this period, then the prices will be based on the time of delivery. Notwithstanding, Graphisoft reserves the right to increase licensee prices due to increases in cost. If a resulting price increase is more than 5% of the original net purchase price, the licensee has the right to cancel the contract. VAT is not included in our prices, it will be included separately at the statutory rate on the date of invoicing.

Payment, late payment

The deduction of discount requires a special written agreement. Unless stated in the order confirmation, the purchase price is due without deduction within 14 days from the date of invoice. If the customer does not pay within the agreed time period, Graphisoft is entitled to claim the statutory default interest. Proof of a higher damages remains unaffected. Where Graphisoft has agreed payment by installments, it is conditional on the individual rates that are to be paid monthly in advance, before the 5th of each calendar month. This concerns not the date of the statement, but the date the money is received by Graphisoft. The total settlement amount is immediately and without restriction payable and due, if the customer has more than 10 days imprisonment for debt in arrears. Offsetting claims are entitled to the licensee only if its counterclaims are undisputed or legally binding. Retention can only be made from the same contractual relation.

Deadlines for delivery and services

The commitment by Graphisoft to a delivery date is dependent on the clarification of all technical issues, the timely receipt of all customer supplied documents and the timely and proper performance of other obligations of the clients. The agreement of delivery and performance must be in writing.

Liability

Graphisoft is liable in accordance with statutory provisions, if the delay is due to a representative of Graphisoft through intentional or grossly negligent infringement, or fault of our representatives or agents. Graphisoft is also liable in accordance with the statutory provisions, as far as Graphisoft are representing delivery delay on the culpable violation of a contractual obligation. In this case, however, the payment of damages liability is limited to the foreseeable, typically relief damage.

Graphisoft excludes any liability for slightly negligent obligation injuries, provided these are not contractual or cardinal obligations, damages resulting from injury to life, body, which concerns health or warranties or claims affected under the Product Liability Act. As far as the liability is excluded or limited, this also applies to personal liability and obligation injuries by employees, representatives and other agents.

The limitation period for claims directed against Graphisoft, which are not based on intentional conduct attributed to Graphisoft, is one year.

Warranty claims

Within the boundaries of current technology, it is not possible to design software so that it work completely without error in all applications and combinations and in all conditions. This is especially true when used with different hardware and operating system components. Subject of the contract is therefore always only the software that is fit for the purpose of the program description. The program is being tested by Graphisoft to the latest state of technology and tested for general compatibility regularly.

Graphisoft indicates that each contracting party has to provide, as part of its duty to mitigate damages, for regular backup of data on suitable backup media (external hard-disk, streamers, etc).

The warranty rights of the customer for defects presuppose that if within five weeks of receipt in writing of notice of the shortcoming, the defect remains, and are easily visible damage to the goods and deviations from the contractually agreed functionality. Furthermore, delivering a different item or product in too small quantity falls under it.

Deficiencies in the delivery of goods are resolved by Graphisoft within the statutory time limit for delivery notification to the user. This occurs after the statutory warranty rights of the buyer. Graphisoft is committed to all subsequent performance necessary to pay expenses to the extent that these are not increased, that the goods are supplied to a place other than the place of delivery. In case of the replacement the licensee is obligated to return the defective product.

If the rectification fails within a reasonable time or fails a second time, the licensee is entitled at his option to rescind the contract or reduce the remuneration (reduction). The rectification is to be applied only if Graphisoft is granted reasonable opportunity for the replacement or repair, without obtaining the desired result, if it were refused or deferred, if reasonable doubt about the chance of success exist, or if it is unreasonable for other reasons.

Software maintenance and training services

If software maintenance is also a contractual item, it is valid that Graphisoft takes over the maintenance of and maintenance work on the software, required for the organizational functional capacity of the program, for the duration of the servicing contract. This refers in particular to the supply of updates (revised and improved versions) in non-specified time intervals and the use of DDScad support. Training services will be charged according to tariffs or effort. A specific training success cannot be guaranteed.

The settlement of software maintenance fees is from the first of the following month in which the order has been concluded up to the end of the year. The fee is calculated according to the full scope of the program and is always due for the calendar year in advance. The software maintenance contract is valid first up to the end of the following calendar year and extends automatically one year, if it is not terminated less than three months before the end of the year. Graphisoft is authorized, at the earliest after the expiry of one year, to unilaterally increase the maintenance fee for the year. The increase takes up to the maximum payment, which is valid for new clients. In case of an increase of more than 5%, the licensee is given an extraordinary termination right within four weeks after receipt of the declaration adjustment.

Scope of use

The software distributed by Graphisoft is protected by Section 69a of the German Copyright Act. The licensee will not transfer usage and exploitation rights that go beyond the use of the software package received. Any further use and recycling, but also change, adaptation and reproduction, as well as any kind of (alleged) debugging is in breach of the contract and makes the licensee liable to pay damages. All types of programming activity, in particular the further technical adaptation of the computer program to specific purposes of the licensee as well as the development of the software, going beyond permissions of the scheme mentioned in the Copyright Act, is exclusively carried out by Graphisoft. The contracting party can use the operating functions of the software without reservation and adjust it to its operational interests. The transfer of usage rights is forbidden. The licensee has simple non-exclusive right of use on the software delivered in the contract, and its technical data catalogs. The customer is entitled to use the supplied programs and data catalogs in accordance with condition of the contractual scheme in form so-called single user license or as multi-user license. With a multi-user license it is valid that this is permitted in the context of a network system up to the contractually determined number of users. For instance, the supplied printed documentation may not be copied, also not in part. During the use of the software the original disk must be available. Demo programs and versions may be used only for the purpose of demonstration or to test purposes and not under any circumstances for commercial purposes.

Retention of title

All supplies are executed under retention of title. In the event of actions contrary to the terms of the agreement, in particular with delay of payment, Graphisoft will be justified to take the supplied products back. The withdrawal is also the resignation statement from the contract and result in seizure of the supplied products. In the case of attachment or other interference by third parties, the customer must immediately notify Graphisoft in writing. The transfer of title of the subject of the contract cannot be used as security.

Intellectual property rights

Graphisoft assumes that for the area of the Federal Republic of Germany and Austria that the contractual use of the software does not infringe rights of third parties. The licensee is obligated to inform Graphisoft immediately of any third party rights violations. Graphisoft exempts the licensee from claims resulting from alleged infringement of intellectual property rights.

Data processing

Graphisoft is authorized to store or process any data associated with the business relationship received from the licensee within the terms of data protection.

Applicable law

In respect of all claims and rights under this contract the non-unified law of the Federal Republic of Germany applies. The application of the UN Sales Convention (CISG) is expressly excluded.

Jurisdiction

Exclusive jurisdiction is competent for our registered place of business for contracts with buyers, legal persons under public law or public law special funds.

Severability

If any provisions of these terms and conditions, in whole or in part, not be part of the contract or become wholly or partially invalid, void or voidable, this shall not affect the validity of the remaining provisions of the contract itself. The scheme in question is then to be replaced in accordance with the mandatory statutory provisions by a valid provision that comes closest to the intended economic purpose of the invalid, void or contestable provision. The same is applies for possible loopholes.