

General sales and delivery terms and conditions for Epoke A/S

(Applies from 20 May 2019)



1. Application

These general sales and delivery terms and conditions ("Terms and Conditions") apply to every sale from Epoke A/S, Central Business Register (CVR) no. 14125345 ("Vendor") of services and products, including software ("Products") to the customer ("Purchaser").

2. Basic Agreement

2.1 The Terms and Conditions together with the Vendor's offer and order confirmation constitute the basic Agreement for the Vendor's sale and delivery of the Products to the Purchaser ("Basic Agreement"). The Purchaser's eventual purchasing terms and conditions printed on the order or in any other way notified to the Vendor do not constitute a part of the Basic Agreement, unless the Vendor's explicit Agreement has been given hereto. Exemptions from the Terms and Conditions must be stated by the Vendor explicitly in writing in the offer or in the order confirmation.

2.2 Changes and amendments to the Basic Agreement only apply if the Parties agree to these in writing.

3. Licence for software, etc.

3.1 The Purchaser acquires a non-exclusive right of use for the software contained in the Product subject to the terms and conditions that are stated in the licence Agreement, which is included with the Product.

3.2 The Vendor retains all intellectual property rights, including copyright of the licensed software and other versions, modules, upgrades, documentation, patches, bug fixes, updates, derived works or other modifications to the software.

4. Changes to the order

4.1 Changes to the order. The Purchaser can within five working days make changes to a submitted order, including make changes to the specification, amount and time of delivery, only if the Vendor provides written consent hereto.

4.2 Costs. If the Vendor gives consent to the changes, the Purchaser must cover the costs associated with this for the Vendor.

5. Price and payment

5.1 The price for products are those that apply in the list price at the time of the order, unless otherwise agreed in writing by the Parties. All prices exclude VAT, unless otherwise explicitly stated.

5.2 An environmental fee of 1.2 % of the invoice amount is added to all invoices.

5.3 Payment is due on the time of delivery. Payment must be received net, cash 14 days at the latest after delivery, unless otherwise agreed in writing.

5.4 The payment must be effective payment, and no amount may be withheld or deducted from the payment.

6. Overdue payment

6.1 Interest rates. If the Purchaser fails to make prompt payment due to causes that the Vendor is not liable for, the Vendor is entitled to charge default interest in accordance with at all times the current Danish Late Payment of Commercial Debts (interest) Act, unless another interest rate has been agreed in writing by the Parties.

6.2 Annulment. If the Purchaser has failed to pay the due amount after two months, the Vendor after notifying the Purchaser in writing, is entitled to:

(i) Annul the sale of the Products to which the overdue payment applies and require the return delivery of the Products from the Purchaser if the delivery has taken place

(ii) Annul the sale of Products that have not yet been delivered to the Purchaser, or require pre-payment for these products

(iii) Annul the Agreement made between the parties

(iv) In addition to charging default interest, the Purchaser is liable for compensation for the loss the Vendor has suffered, and/or

(v) Seek remedy for breach of contract.

7. Retention of title

7.1 The retention of title for the goods remains with the Vendor or to the party that the Vendor has transferred its rights to, until the entire purchase sum with interest rates, costs, etc., are fully paid by the Purchaser.

7.2 To the extent that it may be validly agreed, the Vendor is entitled to take back what has been sold if the Purchaser does not fulfil its obligations.

7.3 The Purchaser is obligated to insure the Product against accidental destruction, until the ownership of the Product is transferred to the Purchaser.

8. Insurance premiums, charges, etc.

8.1 Prices, which include marine and war insurance, freight rates, currency charges, transfer charges, import and export duties, tariffs, etc. are calculated on the basis of the premiums, interests rates, charges, etc. applicable on the date of the purchase.

8.2 With regard to the invoicing, the Vendor is entitled to regulate the purchase sum for any changes in the costs stated below and 8.1 additional costs due to new duties, deposit schemes and similar, which are accrued (came into force) after the purchase Agreement was entered into.

9. Delivery

9.1 Terms and conditions of delivery. If a delivery clause has been agreed, this will be interpreted in accordance with the INCOTERMS applicable at the time the Agreement was entered into with the changes resulting from these Terms and Conditions.

- 9.2 If there is no delivery clause, the delivery is considered to take place "Ex Works".
- 9.3 The Vendor notifies the Purchaser when the products are ready for collection.
- 9.4 Extra costs that result from strikes, lockouts or similar in the port of destination, are the Purchaser's risk, if the risk for the delivery moreover has been transferred to the Purchaser before the products arrive at the named port.
- 9.5 Delivery time. The Vendor delivers all of the sold products on the date and time that is stated on the Vendor's order confirmation. The Vendor is entitled to make the delivery before the agreed date and time, unless otherwise agreed by the Parties.
- 10. Delayed delivery**
- 10.1 Delays. If the delayed delivery has been caused by a circumstance that in accordance with section 13, constitutes exemption from liability or is caused by the Purchaser's action or failure to act, the delivery time shall be extended to the degree that is reasonable in accordance with the circumstances.
- 10.2 Notification. If the Vendor expects the delivery of the products will be delayed, the Purchaser will be informed of this. At the same time, the Vendor will notify the cause of the delay and the new expected delivery time.
- 10.3 Claims. If the Vendor does not deliver the goods to the agreed time, the Purchaser is entitled in a written notification to the Vendor, to set a final, reasonable deadline (at least 30 days) for the delivery and hereby state that he intends to annul the Agreement if the delivery does not take place within this deadline.
- 10.4 Annulment. If the delivery does not take place within the (reasonable) set deadline, the Purchaser is entitled to notify the Vendor in writing that the Agreement is annulled.
- 10.5 Specially made products. In the case of specially made Products, the Purchaser, regardless of the above, cannot annul the Agreement on the basis of delays unless this can be done without loss to the Vendor.
- 10.6 Damages. If the Purchaser annuls the Agreement in accordance with section 10.4, the Purchaser can claim damages from the Vendor for the additional costs that have been imposed on him with the acquisition of corresponding material from other sources. However, damages may not exceed 25% of the invoice value of the delayed delivery.
- 10.7 Apart from that stated in section 10.6, the Purchaser is not entitled to damages or other rights in regards to the Vendor's delay. This applies regardless of whether the Purchaser annuls or retains the purchase.
- 11. Operation and maintenance of the products**
- 11.1 The Vendor refers to its user manuals, manuals, operating instructions etc., which must be followed at all times. In addition, the use of the Product is dependent upon the concrete conditions, such as the materials and machines the Purchaser uses the Product on. Therefore, the concrete circumstances must be treated with caution with regard to all instructions in the Product's operation and maintenance, including also instructions in user manuals, manuals, operating instructions etc. The Vendor will also help with instructions in the correct use and maintenance of the Product. If the Purchaser is unsure about the Product's correct operation or maintenance, the Purchaser should contact the Vendor.
- 11.2 Apart from cases of deliberate harmful conduct, under no circumstances is the Vendor liable for any form of direct or indirect financial or non-financial damage, which is caused by the Product or its use, including but not limited to, loss as a consequence of disruption, computer failure or computer error, loss of data and other commercial losses, and not even if the Vendor has been made aware of the possibility of such damages. However, the Vendor is liable in accordance with legislation on product liability to the extent that it applies in the concrete situation, cf. section 13.2.
- 12. Liability for defects**
- 12.1 Defects. If some of the Vendor's Products are defect, the Vendor undertakes to repair or replace the defective Products if the Purchaser complains to the Vendor within 12 months from the date of delivery.
- 12.2 Exceptions. Section 12.1 does not cover wearing parts or defects that are caused by: (i) General wear, (ii) Storage, installation, use or maintenance in violation of the Vendor's or manufacturer's instructions or general practice, (iii) Repairs or changes carried out by anyone other than the Vendor, and (iv) Other conditions that the Vendor is not liable for.
- 12.3 Duty to examine the goods - Purchaser. Immediately after delivery, the purchaser is obligated to examine the goods to ascertain whether the goods have obvious defects or faults. The Vendor is entitled to reject any complaint about defects, if the defects should have been ascertained during such an examination.
- 12.4 Notification. Complaints relating to defective deliveries, must be submitted in writing and without undue delay and no later than eight days after delivery. If the Purchaser fails to do this, he forfeits the right to a replacement delivery, cf. section 12.1 and to invoke other remedies.
- 12.5 Complaint form. The Purchaser's complaint form must contain comprehensive information about:
- The extent of the defect
 - The nature of the defect
 - Documentation of the defect
 - Proposal for a solution/formulation of requirements
 - Date of delivery and invoice number
- 12.6 Annulment. If the Vendor fails to repair or deliver replacement goods within a reasonable period of time after the Purchaser has complained in accordance with section 12, the Purchaser after having submitted to the Vendor a written claim with a deadline of at least 20 working days for the goods' repair or replacement, is entitled to annul the Agreement with regards to the defective part of the delivery.
- 12.7 Damages. If the Purchaser annuls the Agreement, he is entitled to demand damages from the Vendor for the additional costs that have been imposed on him with the acquisition of corresponding material from other sources.
- 12.8 Regardless of the aforementioned, the Vendor's liability for defects is always limited to 25% of the invoiced value of the defective good(s).
- 12.9 The Vendor is not liable for defects or for the failure to deliver replacement goods other than those prescribed in section 12.1, 12.7 and 12.8. This applies to any loss that the fault or defect may cause, including operating losses, loss of profits, freight costs, assembly costs and other consequential losses. The Purchaser's costs for wages and costs in connection with the replacement of goods under a valid complaint are not covered.

12.10 If it is ascertained that the Purchaser's complaint is not valid, the Vendor is entitled to claim for the costs that were imposed on the Vendor as a result of the Purchaser's complaint.

13. Liability

13.1 Liability. Each Party is liable for their own actions and failures in accordance with Danish law with the limitations that follow from the Basic Agreement.

13.2 Product liability. If the supplied goods have a defect and thereby cause injury to a person, personal effects or property, the Vendor alone is liable for the Purchaser's or third party's damages or losses to the extent such liability follows from compulsory regulations.

13.3 The Vendor is not liable for indirect damages, consequential damages, operating losses, interruption of business or any other consequential losses resulting from damages that originate from the Product or originate from the use of the Product.

13.4 To the extent that compulsory regulations do not hinder such, the Purchaser must keep the Vendor indemnified to the extent that the Vendor may be held liable by a third party in regards to damage or losses caused by the delivered goods on the third party's person, personal effects or property.

13.5 Exemption from liability. The following circumstances entail exemption from liability, if they hinder the Agreement's compliance or render compliance unreasonably burdensome: Industrial conflicts and all other circumstances the Parties have no control over, including, but not limited to fire, war, mobilisations or unforeseen military mobilisations of the same degree, requisitioning, commandeering, currency restrictions, riots and civil unrest, means of transport deficiencies, shortage of everyday goods, power restrictions, and delayed or faulty deliveries from subcontractors.

13.6 Circumstances which, as mentioned section 13.5, only entail exemption from liability if their influence on Agreement's compliance could not have been foreseen on the signing of the Agreement.

13.7 It is incumbent upon that Party who wishes to invoke a certain exemption from liability as mentioned in section 13.5, to without delay inform the other Party in writing as regards its inception and cessation.

13.8 If an exemption from liability does not cease within three months, either of the Parties can annul the Agreement via written notice to the other Party.

14. Disputes and venue

14.1 This Agreement and all supplements hereto are subject to Danish law.

14.2 Any dispute that arises in connection with this Agreement, including disputes relating to the Agreement's existence or validity, must be sought accompanied by mediation at the Danish Institute of Arbitration in accordance with the Danish Institute of Arbitration's recognised rules about this, which apply when the request for mediation is made.

14.3 If mediation is ended without the dispute being resolved, the dispute must be settled at the Danish Institute of Arbitration in accordance with the Danish Institute of Arbitration's recognised rules about this, which apply at the introduction of the arbitration case. Unless the Parties can reach Agreement that the arbitration tribunal shall only consist of a single arbitrator, each of the Parties appoints an arbitration person, and the arbitration tribunal's chairperson will be appointed by the Danish Institute of Arbitration.