

AGB YAKINDU Requirements

IMPORTANT: The English version is merely for the purpose of information. The legally binding text is the german text.

§ 1 Validation of the terms and conditions

(1) For the sale of the software product YAKINDU Requirements Personal Edition of ITEMIS AG, Am Brambusch 15-24, 44536 Lünen, only these general terms and conditions shall apply in business dealings, unless otherwise stipulated. Other terms and conditions are not the content of contract, even if ITEMIS AG does not expressly object to them.

(2) Even if the conclusion of similar contracts subsequently not referred to, only the general terms and conditions of ITEMIS AG shall apply at the declaration of the buyer under www.itemis.de/agb retrievable version, unless the parties agree otherwise in writing.

(3) For the supply of standard software additionally apply §§ 433 et seq. German Civil Code (BGB).

§ 2 Conclusion of the contract

(1) ITEMIS AG imposes a one-time payment on buyer of the software product for permanent use, which is generally available for download. The buyer initially receives a free, fully functional version of the software product for a trial period of 30 days. After paying through the available payment method (direct bank transfer, paypal, credit card) before the end of the trial period, the customer will receive an unlock code via email.

(2) For deliveries and payments of other types (e.g., software maintenance, setup and installation of the software, training), separate agreements should be concluded.

§ 3 Subject matter of the contract, scope of services

(1) Under this contract, the delivery of standard software and the granted usage rights is according to § 4.

(2) The buyer has checked before concluding the contract that the specification of the software meets their needs and wishes. The main functional characteristics and requirements of the software are known to him.

(3) Determinative of the extent, type and quality of the deliveries and payments, the product description is under www-yakindu.de/requirements

Further details or requirements are only integral parts of the contract if the contractual partner agrees it in writing or ITEMIS AG confirms it to them in writing. Subsequent changes to the scope of services require a written agreement or a written confirmation from ITEMIS AG.

(4) Product descriptions and graphics in test programs are service descriptions, but not any guarantees. A guarantee requires a written clarification by the executive board of ITEMIS AG.

(5) The buyer receives the software consisting of the executable machine program and the user guide. The technique of delivery of the software is based upon the agreements; unless otherwise agreed, the program and manual are available for download on the website of ITEMIS AG. The buyer is not entitled to transfer the source program.

(6) ITEMIS AG provides all deliveries and services according to the status of the technology.

(7) ITEMIS AG offers the buyer of the Personal Edition a fee-based update at regular intervals (normally once a year) and informs him about this via the provided e-mail address. The right to the permanent use of the purchased version in the long run remains unaffected.

§ 4 Rights of the buyer of the software

(1) The software (program and user manual) is protected by law. The copyright, patent, trademark rights and any other related rights to the software as well as other items which ITEMIS AG cedes the buyer as part of the contract negotiations and implementation or makes available, ITEMIS AG stand in relation to the contractual partner unless otherwise expressly mentioned in § 4 paragraph 2. If the rights belong to third parties, ITEMIS AG has corresponding exploitation rights.

(2) ITEMIS AG uses Apache POI. Insofar as Apache POI is used, this software is provided under the terms of the Apache License, Version 2.0 which is downloadable from www.apache.org/licenses/LICENSE-2.0.

The software is "as is" without warranties or conditions of any kind, expressed or implied, made available to the extent as legally permissible. (3) For the rest, the buyer acquires the continuous rights of use for the software on his own firm for his own purposes (non-exclusive non-transferable right of use). Usage may only be made available to not more than the contractually agreed number of workstations. ITEMIS AG hereby concedes the buyer the authority to the program, which are necessary for its usage, as well as the right to copy the program to virtual memory and hard disks. The buyer may create necessary backup copies of the programs for safe operation. The backup copies must, as far as technically possible, be provided with the copyright notice of the original data medium. Copyright notices may not be deleted, modified or suppressed.

(4) The user manual and other documentation ceded by ITEMIS AG may only be copied for internal purposes.

(5) ITEMIS AG will agree to the redistribution of the software (in whole or in part) to a third party under the following conditions:

- The buyer hands over the original disks to the third party (if/when provided) (cf. § 3 paragraph 5), deletes all other copies, especially on data storage devices, in hard drives or virtual memory, gives up its use and confirms with ITEMIS AG in writing over the compliance with these obligations.
- The third party confirms in writing to ITEMIS AG that he immediately complies with the regulations of this contract towards ITEMIS AG, especially § 4.
- There are no important grounds contrary to.

The approval of ITEMIS AG must be in writing in order to be effective.

(6) The buyer may decompile the interface information of the software only within the limits of the § 69 e (German) copyright act and only then when he has informed ITEMIS AG in writing of his intentions and has asked with a period of at least two weeks to transfer the necessary information. For all the knowledge and information that the buyer receives in the course of the decompile, § 14 applies. Before any intervention by a third party, he provides ITEMIS AG with a written statement of the third party that it is directly committed towards ITEMIS AG to comply with the established rules in §§ 4 and 14.

(7) For the start and end of the rights of the buyer, § 13 shall apply.

(8) All other acts of sale, particularly the rental, lease and distribution in tangible or intangible form, are not allowed without the prior written agreement of ITEMIS AG.

(9) Contract items, documents, proposals, test programs, etc. that ITEMIS AG made available to the buyer before or after the completion of the contract will be regarded as the intellectual property and business and trade secrets of ITEMIS AG and are kept secret according to § 14.

§ 5 Time of performance, delays

(1) Information on delivery dates and times of performance are nonbinding, unless they are agreed to be binding by ITEMIS AG in writing. ITEMIS AG may provide partial performance, so far as the parts delivered to the buyer are isolated meaningfully of use.

(2) Delivery dates and times of performance extend the period of time in which the buyer is in default on payment under the contract and by the time period, in which ITEMIS AG is prevented by circumstances which it is not responsible, for the delivery or performance and at a reasonable starting time after the end of such an obstacle. These circumstances include acts of God, labor disputes and the absence or inadequacy of cooperation of the buyer.

(3) If the contractual party subsequently stipulates additional services that affect agreed deadlines, then it extends these deadlines for an appropriate time period.

(4) Reminders and deadlines of the buyer shall only be effective in writing. A grace period must be reasonable. A period of less than two weeks is only appropriate in urgent cases.

§ 6 Contract commitment and termination of contract

(1) The termination of the further exchange of performance services (e.g., resignation, termination for cause, performance reduction or compensation instead of services) must always be threatened with naming the reason and set a deadline for the elimination (usually at least two weeks) and can only be explained within two weeks after deadline expiration. In the case of § 323 paragraph 2 of the German Civil Code (BGB), can the setting of a deadline be inapplicable. Whoever took responsibility for the disorganization or overbalancing cannot demand the reverse transaction.

(2) All explanations in this connection need to be in writing to be effective.

§ 7 Remuneration, payment

(1) Prices of services arise from the respective individual contract. All prices are net prices, plus VAT.

(2) The buyer may only be offset with undisputed or legally established claims by ITEMIS AG. Except in the area of § 354 a German Commercial Code (HGB), the buyer can transfer claims under this contract only with prior written consent of ITEMIS AG to third parties. The buyer may only argue a right of retention with the respective contract.

§ 8 Obligations of the buyer

(1) The buyer is obliged to inspect all items delivered by ITEMIS AG immediately after delivery in accordance with the commercial law (§ 377 German Commercial Code (HGB)) and notify defects recognized in writing with an exact description of the error. The buyer thoroughly tests each module on usability in the specific situation before he starts with operational use. This also applies to programs for which the buyer receives under warranty and as the case may be, a maintenance agreement.

(2) The buyer shall make appropriate arrangements for the event that all or part of the program does not work properly (e.g. through backup, troubleshooting, regular examination of the results). It is his responsibility to ensure the operation of the working environment of the program.

§9 Defects

(1) The software has the agreed configuration, suits for the contractual suppositional, otherwise the ordinary application and has the ordinary quality for software of such, but the software is not faultless. A disturbance of function of the software which results of hardware deficiencies, environmental conditions, operating error or similar, isn't considered as a deficiency.

(2) In case of a defect as of quality/material defect ITEMIS AG has the right to pre-fulfill at first. The pre-fulfillment occurs of choice through ITEMIS AG by remediation of the defect, by delivery of a program which has not this defect or thus, that ITEMIS AG demonstrates the possibility to avoid the impact of the defect.

(3) The buyer will support ITEMIS AG with the analysis of the fault and the remediation of the defect by giving a concrete description of the problem, by informing ITEMIS AG extensively and by warranting the necessary time and occasion to ITEMIS AG for the remediation of the defect. ITEMIS AG can fulfill the remediation of the defect according to its choice of place or on the business

premises of ITEMIS AG. ITEMIS AG can even fulfill the performance by remote maintenance. The buyer has to take care of the required technical conditions at its own expense and give access to their computer system to ITEMIS AG after previous announcement.

(4) ITEMIS AG can charge for extra costs for the following reasons, software has been changed, software has been implemented outside of the predetermined environment, software has been wrongly operated. ITEMIS AG can request reimbursement of expenses in case no defect is found. The buyer has the onus of proof. § 254 German Civil Code (BGB) applies accordingly.

(5) In case that ITEMIS AG refuses the pre-fulfillment definitely or that the pre-fulfillment definitely fails or it is not reasonable for the buyer, the buyer can withdraw from the contract referring to the rules of § 6 of the contract or reduce the compensation adequately and referring to § 11 request indemnity or reimbursement of expenses. Claims prescribe referring to § 12.

§ 10 Defects of title

(1) ITEMIS AG guarantees that no rights of a third party are opposed to the contractual use of the software by the buyer. In case of deficiencies in title, ITEMIS AG performs guarantee by supplying the buyer per its choice, with a legitimate acceptable possibility of use of the software or of similar software.

(2) The buyer informs ITEMIS AG immediately in written form in the case that a third party claims trademark rights (e.g. copyright or patent right) against them. The buyer authorizes ITEMIS AG to manage the contention with the third party alone. In the case that ITEMIS AG makes use of this authorization, the buyer will not be allowed to accept claims of the third party without the allowance of ITEMIS AG. ITEMIS AG refuses the claims of the third party at its own expense and deliberates the buyer from all costs related to this refusal of claims as far as they are not based on behavior contrary to duty by the buyer (e.g. use of the program contrary to contract).

(3) § 9 paragraph 2 to 5, 7 apply accordingly. For the interruption of the performance exchange applies § 6. For liability § 11 applies, for the limitation period, § 12 applies.

§ 11 Liability

(1) ITEMIS AG provides indemnity or refund for unavailing expenditures, disregarding the legal foundation (e.g. legal transactional or similar legal transactional obligation, neglect of duty and illegal action) just in the following coverage:

a) The liability for premeditation and for guarantee is unlimited

b) In the case of gross negligence, ITEMIS AG is liable for the amount of the typical and at the contract conclusion predictable damage.

c) In case of a negligent act of a very basic duty, that the attainment of the purpose of contract is put at risk, ITEMIS AG is liable for the amount of the typical predictable damage at the time of contract conclusion, at the utmost € 200,000.00 per claim and € 400,000.00 for all claims of one buyer overall.

(2) ITEMIS AG keeps the objection of the contributory negligence. The buyer has especially the duty for data-saving and virus defense related to the latest state of the technology.

(3) In case of loss of life, body or health and in case of claims related to the Product Liability Act the law regulations are applicable.

§ 12 Statute of limitations

(1) The statute of limitations amounts to

a) claims for repayment of the purchase price from resignation or reduction of the software one year after delivery, but not less than three months after submission of the valid letter of resignation or reduction;

b) for other claims arising from defects as to quality one year;

c) for claims arising from defects of title one year, if the defect of title is not in rem of a third party, on the basis of which he may reclaim the said items referred to in § 3 paragraph 5;

d) for other claims for damages or reimbursement of wasted expenditure one year, starting from the date in which the buyer becomes aware of the circumstances giving rise to or had without gross negligence.

The statute of limitations eventuates at the latest with expiry of § 199 German Civil Code (BGB) maximum periods specified.

(2) For damages and reimbursement of expenses of intent, gross negligence, warranty, fraud, and in the cases referred to in § 11 paragraph 3, said cases nevertheless always apply the statute of limitations.

§ 13 Start and end of the rights of the buyer

(1) The rights related to §4 subrogates with full payment of the purchase price to the buyer. Beforehand the customer just has a preliminary, only contractual right and according to paragraph 2, a revocable right of use and exploitation.

(2) ITEMIS AG is eligible to revoke the rights related to §4 for an important reason and under the premise of the §6. An important reason is especially given in case that the buyer does not pay the compensation or in case the buyer does contravene against § 4 in considerable manner despite a written warning.

(3) In the case that the right of use and exploitation does not come into existence or is ending, ITEMIS AG can request the return of the disposed objects or can request a written assurance that they are destroyed, furthermore the deletion and destruction of all copies and the written assurance that this has happened.

§ 14 Confidentiality

(1) The contractual partner commits to keep confidentially even after contracts end, all received or known objects from the other contract partner (e.g. software, documents, information) which are protected by law or include business or trade secrets or are designated confidentially unless they are without contempt against the obligation of confidentiality published facts. The contractual partner stores and protects those objects in a way that access by a third party is excluded.

(2) The buyer makes the contractual objects only accessible to the employees and other third parties who need the access regarding their designated task. The buyer teaches those people about the need of confidentiality of the objects.

(3) ITEMIS AG saves the required data of the customer which are necessary for business processing in observance to data protection regulations.

§ 15 Final provisions

(1) Changes and amendments to the contract need to be in written form to be effective. The written form is also sufficient as a transmission in textual form, in particular by means of fax or email.

(2) The buyer agrees that ITEMIS AG, for the purposes of business processes, stores and processes data of the buyer. ITEMIS AG observes the specifications of data protection law.

(3) The law of the Federal Republic of Germany applies, excluding the UN-CISG. Place of performance and jurisdiction for all disputes arising from and in connection with this contract in agreement with business people is the registered office of ITEMIS AG.

(4) The contractual partner agrees that all differences of opinion from or in connection with this contract, contract extensions or amendments which they cannot settle among themselves, to call the arbitration board of the German Association of Law and Informatics (Deutschen Gesellschaft für Recht und Informatik (www.dgri.eu)), to settle the dispute according to their valid arbitration rules in force at the time of initiation of the arbitration process as amended in whole or in part, provisionally or finally. The statute of limitations for all claims arising from the disputed facts of life is blocked from the arbitration request to the end of the arbitration process; § 203 German Civil Code (BGB) shall apply accordingly.