

General Terms & Conditions of Stress & Strength GmbH

Deliveries and services (hereinafter: Deliveries) of Stress & Strength GmbH (hereinafter: Stress & Strength) to companies within the meaning of Section 14 German Civil Code (BGB) (hereinafter: the Customer) are provided on the basis of the following conditions, insofar as Stress & Strength and the Customer do not make any deviating agreements in writing:

I. Conclusion of the Contract

1. The General Terms and Conditions of the Customer only apply to Stress & Strength subject to Stress & Strength's express written consent.
2. All Stress & Strength quotes are made on a non-binding basis. Stress & Strength is entitled to accept the Customer's offers within two weeks of receipt.
3. Ancillary and supplemental agreements, quality specifications regarding the delivery objects, quality or durability guarantees and other agreements that were made before, during or after the conclusion of a delivery agreement must be made in writing in order to be effective.

II. Scope and Subject Matter of Delivery

1. Should the subject matter of the delivery be software, Stress & Strength may carry out the delivery at its discretion as follows, provided that this is practical and reasonable for the Customer: either in the form of delivery on an electronic data carrier on which the software is saved, through delivery via email or by directing the Customer to download options online.
2. Should installation and use of the software provided be dependent upon the possession of a license key, Stress & Strength shall also provide a license key that enables the software provided to be executed to the agreed extent. Clause 1 above applies to this delivery accordingly.
3. Should the subject matter of the delivery be an accompanying material to software (e.g. user manual, datasheets etc.), Stress & Strength shall effect the delivery of the accompanying materials in printed form or provide delivery in accordance with Clause 1 above at its discretion.
4. Until delivery to the Customer, Stress & Strength reserves the right to make changes to the delivery objects, particularly within the context of further developments, provided that the agreed service data and qualities have been reached.
5. All deliveries are carried out ex-works (EXW) in accordance with Incoterms 2010.
6. Part deliveries are permissible, provided that this is reasonable for the Customer.
7. Items delivered for testing and demonstration purposes remain the property of Stress & Strength. The Customer undertakes to ensure the items are stored properly and are protected from access by third parties and may only use the items beyond testing and demonstration purposes subject to separate agreement with Stress & Strength.

III. Delivery Deadlines and Delay

1. Delivery deadlines are non-binding, unless they have been expressly agreed to as binding in writing. In the case of binding delivery deadlines, Stress & Strength is only in default once the delivery is due, a reasonable, written grace period granted to Stress & Strength by the Customer has expired fruitlessly and Stress & Strength is at fault for the delay.
2. Compliance with binding delivery deadlines by Stress & Strength requires the timely provision of all necessary cooperation by the Customer as well as compliance with all agreed payment terms and the Customer's other obligations. Should these requirements not be met on time, the binding delivery deadlines shall be delayed accordingly.
3. Should the non-compliance with delivery deadlines be a result of force majeure, e.g. mobilization, war, riots or similar events, e.g. strike or lockout, the delivery deadlines shall be delayed by the duration of the aforementioned delivery obstacles accordingly.

4. In the event of slight negligence, the Customer's claims for compensation due to default in delivery are excluded, but otherwise limited to the amount of the foreseeable damage, but up to a maximum of 5% of the value of the delivery affected by the default. The Customer is entitled to withdraw from the contract in accordance with legal provisions only insofar as Stress & Strength is responsible for the delay in delivery. The Customer undertakes, at the request of Stress & Strength, to declare within a suitable period whether it is withdrawing from the contract due to the default in delivery or insisting upon delivery. The existing limitations of liability do not apply in the case of intent or gross negligence on the part of Stress & Strength.

5. The preceding provisions do not imply a change in the burden of proof to the detriment of the Customer.

IV. Prices, Payment Conditions and Reservation of Title

1. The agreed prices are ex-works, excluding packaging, in addition to the applicable statutory value added tax.
2. At the request of Stress & Strength, the Customer will make every reasonable effort to assist Stress & Strength in the assurance of all Stress & Strength's payment demands against the Customer at a credit insurance company selected by Stress & Strength.
3. Deliveries without insurance coverage in line with Clause 2 above may be made at the discretion of the Customer against advance payment (potentially via credit card) or cash on delivery.
4. Deliveries with insurance coverage in line with Clause 2 above are made with a payment goal of 14 days from the date of invoice.
5. All Deliveries are subject to retention of title until the complete fulfillment of all of the Customer's payment obligations in relation to the delivery concerned. Despite this retention of title, the Customer is entitled to distribute the delivery objects in the ordinary course of business, unless this contract contains a ban on transfers. The Customer assigns to Stress & Strength all claims from such a sale transaction in the amount of the price for the delivery object agreed with Stress & Strength. Stress & Strength may disclose this assignment at any time in order to secure its payment demands. At the request of Stress & Strength, the Customer shall inform Stress & Strength of the name and address of the buyer concerned, as well as the type and extent of its claims against it. In the case of pledges, seizures or other disposals or interventions by third parties, the Customer must inform Stress & Strength immediately.
6. The Customer may only set off in the case of claims that are undisputed or have been legally established. The Customer may only exercise a right of retention due to counterclaims that are based on the delivery agreement itself. Clause VI. 8. remains unaffected.

V. Rights in Software and Accompanying Material

1. Against payment of the agreed license fee, Stress & Strength guarantees the Customer a non-exclusive transferable right, in accordance with Sections 10 and 11 of Section V, to install the software and use it for internal purposes along with the associated accompanying material and the license key. The rights are either (i) granted to software created by Stress & Strength itself and/or marketed under this brand (Stress & Strength software); or (ii) to software that is not Stress & Strength software (third-party software).
2. A Stress & Strength system is the entirety of software components that are technically or logically connected to each other and which are managed as such within an administration instance. Each Stress & Strength system consists of one or more end user organization (companies, authorities, associations). The individual Stress & Strength software products and modules, which can be installed on a Stress & Strength system, include licenses for installation and use. Each of these licenses is set up specifically for the end user organization that purchased the software. Unless otherwise described, the license is only valid for the members of this organization.
3. A purchased single user license may be used to install and use

Stress & Strength software on a workstation. A purchased concurrent license may be used to install Stress & Strength software on an unlimited number of workstations within an end-user organization. The latter applies under the condition that, through suitable technical measures, the multi-station or network system limits the number of users that can work with this Stress & Strength software at the same time to the total number of available concurrent licenses. All workstations, especially all mobile PCs, which are constantly or occasionally operated independent from the network (offline), on which the Stress & Strength system is installed, require a single user license.

4. If the Customer has acquired a site license, the software may be installed and used on any desired number of workstations within a business premises. Business premises are defined as a single building or a group of buildings that are not separated by a public road. The software or parts thereof may temporarily, but not constantly, be used outside the business premises if it is installed on a mobile computer (notebook, laptop etc.) and this mobile computer is maintained by the business premises.

5. If the Customer has purchased a server license, the software may be installed and operated on a single server that is maintained by or for the Customer. If the software requires or enables the installation and operation of part of the software on multiple servers, it may be installed and operated on multiple servers, subject to the condition that no identical parts of the software are installed and operated on multiple servers at the same time. Stress & Strength server software installed in such a way may also be used by all other end-user organizations within the same Stress & Strength system, despite the fact that it was acquired by a single end user organization.

6. Upon the purchase of an additional module or additional licenses for an existing system, it must be ensured that the current version of all other Stress & Strength components is used.

7. Should the delivery object be third-party software, Stress & Strength reserves the right to limit the existing usage rights of the Customer in accordance with the existing contractual stipulations for the third-party software with Stress & Strength.

8. The names and brands used for the software as well as the commercial property and copyrights for the software and accompanying materials are held exclusively by the manufacturer, Stress & Strength GmbH, and/or its licensors, provided that nothing is regulated to the contrary in these General Terms & Conditions.

9. The software, the license key and the accompanying materials (user manual, datasheet etc.) may not be amended further nor revised, disassembled, decompiled, reconstructed, redesigned or used in any other way than the intended use. The above does not apply for delivered software and the license key, provided that such actions are permissible in accordance with mandatory applicable statutory provisions of copyright law on an exceptional basis, and the seller or the manufacturer, Stress & Strength GmbH, has refused free of charge support or replacement services with regard to the software or the license key concerned.

10. The Customer may sell or gift the most recent version of the software permanently to third parties, provided that (i) the software is granted along with the accompanying material; and (ii) the purchasing third party declares to the Customer that it consents to the continuation of the license conditions, the usage and confidentiality conditions of which are at least as restrictive as the relevant provisions in these General Terms & Conditions; and (iii) the purchasing third party declares that it is prepared to acquire a new license key from Stress & Strength at its expense. In the event of transfer, the Customer must hand over all (backup) copies of the software, the license key or the accompanying material to the acquiring third party or dispose of the copies not handed over. As a result of the forwarding, the relinquishing customer loses the right to use the software, the license key and/or the accompanying material.

11. The Customer may transfer the most recent version of the software including accompanying materials to third parties, provided that (i) this does not occur as part of renting for commercial purposes (e.g. leasing, ASP service); and (ii) the third party declares to the Customer that it consents to the continuation of the license conditions, the usage and confidentiality conditions of which are at least as restrictive as the relevant provisions in these General Terms & Conditions; and (iii) the third party declares that it is prepared to acquire a new license key from Stress & Strength at its expense; and (iv) the Customer hands over all copies of the software and accompanying materials, including any backup software, or destroys copies not handed over. The Customer is not entitled to use the software during the period of transfer of the software to the third

party. The temporary transfer of delivered software to third parties for commercial purposes (e.g. leasing, ASP service) requires the prior written approval of the manufacturer, Stress & Strength GmbH.

12. Should the Customer intend to run the software in a country outside of the EU, it must be informed about the valid export regulations (Federal Office For Export, 65760 Eschborn/Taunus) and to obtain the necessary approvals.

13. Any usage rights in software, the accompanying material and the license key end with immediate effect should the Customer exceed its usage rights in accordance with Section V or violate the provisions above.

VI. Material Defects

Stress & Strength is only liable for material defects in accordance with the following clauses:

1. The Customer must carry out an inspection in line with commercial practice of the delivery objects for completeness, compliance with the delivery papers and defectiveness. Should a written notification not be made within five days of the delivery note date, the delivery object is regarded as having been properly and completely delivered, unless this is a defect that was not recognizable during customary inspection. Should the delivery object be software, the inspection requires the software to be installed and used, unless this is not in line with commercial practice.

2. Stress & Strength guarantees that the delivery objects do not contain significant defects and are suitable for the utilization set out in the individual delivery agreement. Should the subject matter of the delivery be software, Stress & Strength guarantees that the software does not deviate significantly from the service data and quality information on the datasheet published on the software (e.g. at www.s-and-s.de).

3. At the discretion of Stress & Strength, deliveries, which display a material defect within the limitation period, must be rectified free of charge, redelivered or re-provided, provided that the cause for the defect existed at the time of delivery. Stress & Strength may also satisfy its obligation for supplementary performance in the event of material defects, by Stress & Strength

a. Providing an updated or advanced version of the software, or
b. Providing circumventive measures, provided that this is reasonable for the Customer in this individual case, and that the agreed delivery data and qualities for the software have been achieved.

Should the supplementary performance not succeed, the Customer may, regardless of any claims for expenses and compensation in accordance with Clause VIII, withdraw from the contract or reduce remuneration. In the event of withdrawal from the contract, the Customer undertakes, at the request of Stress & Strength, to destroy the original data carriers including the written accompanying materials.

4. Claims for material defects lapse twelve months following delivery. This does not apply should the law provide for longer periods (Section 479 Para. 1 BGB) as well as in cases of injury to life, limb or health, in the case of the intentional or grossly negligent violation of obligations by Stress & Strength and in the event of the fraudulent concealment of a material defect. The statutory requirements regarding the suspension, stay and recommencement of the periods remain unaffected.

5. The Customer must inform Stress & Strength of any material defects immediately in writing.

6. There are no claims for compensation for material defects, especially
a. In the case of a merely inconsiderable deviation from the agreed quality, or
b. In the event of a merely inconsiderable impairment of usability, or
c. In the case of written notification of material defects not being made or being delayed, or
d. If, in the case of software, the material defect is not reproducible or cannot be displayed using computer-generated output, or
e. The delivery of software is part of a (maintenance) service provided by Stress & Strength, provided that such software is not greatly comparable with the software to be maintained.

7. The Customer's rights of recourse against Stress & Strength in accordance with Section 478 BGB only exist insofar as the Customer has not made any agreements with its buyer that go beyond

statutory claims for material defects.

8. In the event of notifications of material defects, the Customer's payments can be withheld to an extent that is suitably in relation to the material defects that arose. The Customer may only retain payments if a notification of material defects is asserted, for which there is no doubt with regard to authorization. Should the notification of material defects lead to injustice, Stress & Strength shall be entitled to request the replacement of any expenses incurred by the Customer.

9. Clause VIII otherwise applies for claims for damages and compensation.

VII. Legal Defects

Stress & Strength is only liable for legal defects in accordance with the following clauses:

1. Stress & Strength shall provide the delivery objects so that it can be used at the time of delivery free of existing commercial protective and copyrights of third parties (hereinafter: copyrights) at the agreed delivery location.

2. Insofar as is reasonable for the Customer in the specific case, Stress & Strength shall be entitled in the event of a considerable violation of property rights to give the Customer a delivery object, which does not violate property rights and which significantly displays the performance data and qualities stated in the datasheet attached to the software violating property rights, in exchange for the delivery object in violation of property rights within a suitable period.

3. Claims for legal defects lapse twelve months following delivery.

4. Stress & Strength's liability for legal defects is excluded if and insofar as the violation of property rights has not been caused by the delivery object itself, but rather through the use of the delivery object, unless the written accompanying material expressly provides for such use. Furthermore, any liability of Stress & Strength is excluded should the Customer not inform Stress & Strength immediately and in writing upon being away of a potential violation of protective rights.

5. Clause VIII otherwise applies for claims for damages and compensation.

VIII. Other Claims for Compensation

1. The Customer's claims for damages and compensation (hereinafter: claims for compensation), regardless of the legal basis, in particular as a result of the violation of obligations from the delivery agreement and of tortious liability, are excluded. In particular, claims for compensation are excluded for the loss of saved data, should the damage not have occurred during reasonable and proper data backup.

2. This shall not apply in so far as liability is mandatory, e.g. under the Product Liability Act, in cases of intent or gross negligence, injury of life, body or health, or breach of essential contractual obligations. The claim for compensation for the violation of considerable contractual obligations is however limited to damages that are foreseeable and typical for the contract, provided that there is no intent or gross negligence or liability due to injury to life, body or health. The preceding provisions do not imply a change in the burden of proof to the detriment of the Customer.

3. Furthermore, Stress & Strength shall not be liable for the data output generated through use of Stress & Strength software, in particular with regard to their technical accuracy, or should this arise in conjunction with third-party software.

4. Insofar as the Customer has claims for compensation in accordance with Clause VIII., these shall expire upon the expiry of the limitation period valid for claims for material defects in accordance with Clause VI. The statutory limitation rules in force apply in the event of claims for compensation in accordance with the Product Liability Act.

IX. Other Conditions

1. The delivery agreements with the Customer and their adoption are subject to the law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods does

not apply. The sole court of jurisdiction for all disputes arising from or in connection with these contracts shall be Darmstadt, provided that the Customer is a trader.

2. Should a provision of this contract be or become void, this shall not affect the effectiveness of this contract, unless adherence to the contract would represent an unreasonable hardship for one of the parties. The parties will replace the void provision by a provision that comes as close as possible to the desires of the parties upon the conclusion of the contract.