YWORKS SALES & DELIVERY TERMS

Dated Jan 01, 2016

All sales and deliveries performed by yWorks GmbH ("yWorks") for you as customer or for the entity you represent (referred to as "you" or "customer" as identified in more detail on the applicable purchase or service order) are exclusively governed by the terms and conditions as laid out in these Sales And Delivery Terms ("Terms") and any terms incorporated by reference herein and any written extensions or modifications hereto signed by both parties (together, "the Agreement"). If you are entering into this Agreement on behalf of an entity, such as your employer, you represent that you have the legal authority to bind that entity.

This Agreement constitutes the entire agreement between you and yWorks, and supersedes all prior representations and agreements. Save with yWorks' prior written approval, any additional, different, or conflicting terms proposed by you in any offer, acceptance, confirmation or otherwise, regardless of the time at which they may have been brought to yWorks' attention, are hereby rejected and objected to, it being understood that this Agreement shall prevail notwithstanding any such additional, different or conflicting terms.

All modifications or extensions of this Agreement need to be in writing signed by both parties. In the event of conflict or inconsistency among incorporated terms and stipulations within the Agreement, the following order of precedence shall apply:

(1) Individual agreements, signed by both parties
(2) yWorks product-related specific Software License Terms
(3) yWorks Sales and Delivery Terms
(4) Other documents (e.g. service specifications, statements of work, exhibits, attachments)

1. Offers and Quotations.

Any price quotation provided by yWorks to you shall be valid for the period stated in the quotation. If no time period is stated, then they shall be valid for thirty (30) days from the date of the offer.

2. Order Processing and Orders.

Orders are typically processed within two business days after receipt. Orders placed are not binding until accepted by yWorks via (i) email order confirmation, (ii) otherwise in writing, or (iii) by processing your order.

3. Conflicting Purchase Orders.

In the event of a conflict or inconsistency among the provisions of a purchase order or other ordering document and any of the provisions of the Agreement covering the subject matter of the purchase order or other ordering document, the provisions of the Agreement shall govern and supersede any such conflicting or inconsistent provisions of the purchase order or other ordering documents.

4. Prices and Taxes

Prices shown do not include any duties, sales, use, excise or similar taxes. Depending on your location yWorks may be obligated to withhold taxes on the purchase price or you might be obligated to pay such taxes at your location, and you agree to pay same. Tax exemption certificates, as required by federal, state, or local laws or regulations, must accompany all orders to which same apply or be on file with yWorks.

5. Charges and Payment Terms.

Invoices are due upon receipt of invoice and without deduction. Amounts are payable as specified on the invoice or the transaction document. You agree to pay accordingly, including any late payment fees like court and lawyer's fees or administration costs. Any costs incurred because of delayed payment are charged to your account.

6. Delivery.

The software will be delivered to you via Internet delivery at no cost for you. If not agreed upon otherwise in writing, yWorks delivers after receipt of payment. Title to the invoiced goods and license grant will only pass to you when full payment of the invoice is received by yWorks.

7. Incorporation of Software License Terms.

Any software delivered by yWorks to you or any software downloadable from yWorks' website ("Software") is the copyrighted work of yWorks or one of its suppliers.

Any use of the Software is subject to its related Software License Terms, and the Software is made available to you exclusively for use in accordance with these Software License Terms, contained herein by reference. In case of any inconsistency between these Terms and the specific Software License Terms, the stipulations within the Software License Terms shall have priority.

COPYING OR REPRODUCING THE SOFTWARE EXCEPT AS MAY BE EXPRESSLY PROVIDED OR PERMITTED IN THE SOFTWARE APPLICABLE SOFTWARE AGREEMENT LICENSE TERMS IS EXPRESSLY PROHIBITED AND MAY RESULT IN SEVERE CIVIL AND CRIMINAL PENALTIES.

Violations will be prosecuted to the maximum extent possible.

8. Liability and Indemnification.

yWorks, its employees or its subcontractors, is liable for direct damages out of (deliberate or gross) negligence, whereas yWorks total, cumulative liability to you is limited to the equivalent value of the service provided, up to a maximum amount of 27500 EURO in the aggregate. Any further liability is excluded.

yWorks accepts no liability for losses arising from delay of services, if no deadline has been agreed upon in writing, nor for any indirect, incidental, consequential, exemplary, special or punitive damages, arising from or relating to these Terms, including any loss of profit or anticipated savings, loss of revenue, business opportunity or data.

yWorks shall not be liable for any failure of or delay in performance of orders or contracts directly or indirectly caused by fire, flood, accident, riot, war, labor trouble or strike, embargo, shortage of labor, material, fuel or power, lack of transportation, compliance with governmental requests, laws, orders, or regulations, or any other damages due to force majeure and causes beyond yWorks' reasonable control.

Any claims for damages against yWorks shall be subject to the applicable statutory limitation periods.

Third party claims for damages cannot be forwarded against yWorks.

The liability of yWorks exclusively pursues the paragraphs above. Any further claims not explicitly granted therein are excluded. Deviations thereof solely apply if after the applicable mandatory law the liability may not be excluded or limited.

By submitting a complaint, you will not be exempt from your payment obligation for disputed matters.

9. Non-Solicitation.

yWorks and you each agree that, for so long as yWorks renders services for you and for two (2) years thereafter, neither it nor its officers, directors, employees, subsidiaries, affiliates or agencies shall, without the express prior written consent of the other, directly or indirectly employ, solicit the employment of, or (independent of the companies' relationship with one another) engage or seek to engage as a consultant or independent contractor the services of any of the other's officers, directors, employees, agents or subcontractors.

10. Independent Contractor.

yWorks is an independent contractor of customer, and nothing under these Terms or the course of the parties' dealings shall establish a relationship of employer/employee, principal/general agent, master/servant, franchisor/franchisee, joint venturers, or partners.

11. Miscellaneous Terms.

(a) These Terms are made and shall be construed in accordance with the laws of Germany. Legal domicile is Tübingen, Germany. yWorks also reserves the right to start legal action at the court of jurisdiction at your legal business domicile or place of residence. The parties agree that the United Nations Convention for the International Sale of Goods shall not apply in any way to this Agreement and/or the services contemplated herein.

(b) Waiver of any breach or failure to enforce any section of these Terms shall not be deemed a waiver of any breach or right to enforce which may thereafter occur.

(c) Failure of either party to insist on strict compliance with any of the terms and conditions of these Terms shall not be deemed a waiver of such terms and conditions, or of any similar right or power hereunder at any subsequent time.

(d) You shall not be entitled to assign any rights under this agreement to any third party without yWorks' prior written consent, and any assignment in violation of this provision shall be null and void.

(e) Any term herein found by a court of competent jurisdiction to be illegal or unenforceable shall be reformed automatically as necessary to cure the offending term, and the remainder that can be given effect shall be given effect.

yWorks GmbH