

# General Standard Terms and Conditions of EIDOLOGIC GmbH (Status 01/2002)

## 1. General Standard Terms and Conditions

1.1 The following General Standard Terms and Conditions are valid for all deliveries, services and offerings of EIDOLOGIC GmbH.

1.2 General Standard Terms and Conditions of customers being opposed to the General Standard Terms and Conditions of EIDOLOGIC GmbH will not be part of the contract, even without explicit contradiction and in the case of delivery.

1.3 Any amendments, variations and/or additions of the terms of these General Standard Terms and Conditions and/or of closed contracts with EIDOLOGIC GmbH are to be in written form.

1.4 Amendments of these General Standard Terms and Conditions will be notified to the contract partner in written form. They are valid if the contract partner does not contradict in written form. In the publication, EIDOLOGIC GmbH will particularly point out this consequence to the contract partner. The contract partner has to send his/her contradiction within 6 weeks after publication of the amendments to EIDOLOGIC GmbH.

## 2. Offering and Conclusion of Contract

2.1 Offerings of EIDOLOGIC GmbH are not binding regarding the price, the quantity, the terms of delivery, the possibilities of delivery and other services until the acceptance of order.

2.2 The basic licensee is an artificial person in form of a single person or the legally effective agent of a registered company.

2.3 The explicit confirmation of features has to be done in a written acceptance by EIDOLOGIC GmbH.

2.4 The size of order and the number of services to be adduced by EIDOLOGIC GmbH will be determined only by the written contracts. In case of conclusion of contract, the sales partner contracts, the single licence contracts for EIDOLOGIC GmbH Software, the software support contract and these General Standard Terms and Conditions are valid.

2.5 The offering documents and/or the acceptance of order documents may be subject to alterations due to mandatory, legally binding norms or technical norms.

## 3. Installation, Training, and Consulting

3.1 The customer himself/herself is responsible for the adequate and orderly installation of the delivered software. The installation of the software, the briefing, and the training of the staff of the customer by EIDOLOGIC GmbH for the operating of the delivered software does not belong to the volume of services. These services will only be delivered on the basis of a corresponding agreement and will be charged separately.

3.2 In the case that EIDOLOGIC GmbH delivers training, consulting or installation services, the customer has to take care for providing the customer-sided prerequisites, especially regarding rooms, infrastructure, documents, and staff. If the customer does not satisfy his/her cooperation duties according to sentence 1 of this paragraph, the contractual stipulated execution periods will be extended adequately. EIDOLOGIC GmbH can charge the additional expenses due to the delay, especially due to the extended needs of its own staff or to its own non-personnel costs. Claims from EIDOLOGIC GmbH according to German law § 643 BGB are pristine.

3.3 Binding information is only valid in written agreements.

## 4. Volume of Services

4.1 To fulfil the owed services, EIDOLOGIC GmbH is entitled to cooperate with third parties.

4.2 EIDOLOGIC GmbH is entitled to deliver in a reasonable volume partial shipment and partial services.

4.3 Products delivered for testing purposes (hardware, software, data carrier, documents etc.) continue to be the ownership of EIDOLOGIC GmbH. EIDOLOGIC GmbH may equip its software in a way that after the stipulated date of expiration the programs are not fully usable anymore. The customer cannot derive any claims hereof.

■ EIDOLOGIC GmbH  
Im Reitwinkel 61  
D-45661 Recklinghausen  
Germany  
VAT-ID: DE204041692

■ Phone. +49(0)2361/ 9600059  
Fax +49(0)2361/ 9600058  
<http://www.eidologic.com>  
<http://www.patmonitor.com>  
[info@eidologic.de](mailto:info@eidologic.de)

■ Bank: Kreissparkasse Koeln  
D-51429 Bergisch Gladbach  
SWIFT COKSDE33  
IBAN DE54 3705 0299 0389 0043 61

■ District court:  
Amtsgericht Recklinghausen,  
Germany  
HRB 5018  
CEO: Dipl.-Ing. Michael Knust

## 5. Term of Delivery

5.1 Terms of delivery given by EIDOLOGIC GmbH are not binding. In the case that the expected date of delivery given by EIDOLOGIC GmbH is exceeded by more than 4 weeks, the customer is entitled to set an adequate additional respite of delivery for EIDOLOGIC GmbH.

5.2 Amendments of orders lead to the cancellation of formerly agreed dates and terms, if no other agreements have been made.

5.3 Terms of delivery and services are extended adequately, if circumstances are beyond EIDOLOGIC's control which influence the delivery and services considerably, especially in case of strikes and lockouts at EIDOLOGIC GmbH, its suppliers or its sub suppliers.

## 6. Prices

6.1 The prices are net prices excluding fees for packaging and freight. The prices of the actual price list are authoritative plus the respective legal sales tax (VAT). Other deliveries and services for which no price was agreed upon at the date of order, will be charged with list prices valid at the date of delivery.

6.2 Training, installation and other services will be charged according to the price list being valid at the date of order acceptance, as far as no fixed price was agreed upon.

6.3 EIDOLOGIC GmbH is not bound to the stated prices in case that a term of delivery was agreed upon which is longer than 12 months beginning from the date of the written order acceptance. In this case, the prices being valid at the date of delivery will be charged.

6.4 Possible claims of recompense of the customer will be credited to the account of the customer and – if possible – will be cleared with the next book account, for example in case of excess payment, double payment, etc.

## 7. Payment

7.1 As far as nothing else is agreed upon, the goods supplied are to be paid within 30 days without any discount, in case of payment within 10 days with a discount of 1%. In case of delay of payment of the customer, EIDOLOGIC is entitled to charge an interest for delay of 5% more than the base lending rate of the European Central Bank, as far as the customer does not prove an inferior damage or EIDOLOGIC GmbH proves a higher damage.

7.2 The customer may only count up with undisputed or valid accounts receivable or the customer may reckon up these accounts receivable of. The customer may exercise rights of retention only in case that his/her claims are undisputed or valid.

7.3 If the customer owes more than one payment to EIDOLOGIC GmbH at the same time and as far as the customer and EIDOLOGIC GmbH have not agreed on an amortization, the oldest due payment will be amortized first.

## 8. Delayed Acceptance of the Customer

If a customer accepts the ordered software delayed and in this case after having set an adequate additional respite of 14 days at maximum, EIDOLOGIC GmbH is entitled to rescind the contract and to claim for compensation. In case EIDOLOGIC GmbH claims for compensation, it amounts to 30 % of the order value as far as the customer does not prove an inferior damage or EIDOLOGIC GmbH proves a higher damage.

## 9. Passage of Risk; Acceptance of Services or Goods, Warranty; Rework of Services

9.1 The warranty period is two years.

9.2 If the customer is no consumer, the customer has to take all costs and risks for the deliveries.

9.3 By EIDOLOGIC GmbH installed products according to the order will be tested by the customer together with a staff member of EIDOLOGIC GmbH without delay and after having finished the installation. If the products perform according to the contract in essence, the customer will make the declaration of acceptance legally effective without delay. In case of installation by the customer and in case of denial of the declaration of acceptance, the customer has to notify EIDOLOGIC GmbH the concrete errors with a detailed description in an error log without delay or within 10 workdays at the latest. If in the named period EIDOLOGIC GmbH receives neither a declaration of acceptance nor an error message, the works are considered to be accepted. In case of inessential defects the customer is not entitled to deny the acceptance.

■ EIDOLOGIC GmbH  
Im Reitwinkel 61  
D-45661 Recklinghausen  
Germany  
VAT-ID: DE204041692

■ Phone. +49(0)2361/ 9600059  
Fax +49(0)2361/ 9600058  
<http://www.eidologic.com>  
<http://www.patmonitor.com>  
[info@eidologic.de](mailto:info@eidologic.de)

■ Bank: Kreissparkasse Koeln  
D-51429 Bergisch Gladbach  
SWIFT COKSDE33  
IBAN DE54 3705 0299 0389 0043 61

■ District court:  
Amtsgericht Recklinghausen,  
Germany  
HRB 5018  
CEO: Dipl.-Ing. Michael Knust

9.4 As far as no other special agreements have been arranged, EIDOLOGIC GmbH is liable for defects of its software and services according to the relevant and valid special agreements and assignments.

9.5 In each case of a culpable breach of duties under the contract, first of all the customer has to request reworks or compensation deliveries at no charge from EIDOLOGIC GmbH.

## 10. Ownership on Provisio

10.1 EIDOLOGIC GmbH owns the delivered software carriers and the rights of use of the thereon comprised software until the full purchase price is paid. If the customer is a merchandiser, these provisos are valid until all claims of the business relationship which have been incurred or will incur are fully paid. This is also valid in case that single or all claims of EIDOLOGIC GmbH are part of an open account and the account balance is accredited. With the full purchase of the ownership of the software carriers, the customer acquires the rights of use specified in the product license.

10.2 In case of test installations, the customer has to keep the delivered hardware – being proviso goods – with mercantilistic carefulness and to insure it at his/her expense adequately against fire, water, theft and other damage risks.

10.3 The customer is not entitled to sell the goods or to license the software.

10.4 In case of the customer's behavior contrary to contract, especially in case of default of payment or in case of an expected suspension of payment, EIDOLOGIC GmbH is entitled to take back the goods on proviso at the customer's expense.

10.5 In case of right of taking back according to fig. 10.4, EIDOLOGIC GmbH is entitled to collect the goods on proviso being still in the customer's possession and to deinstall the software. The customer has to permit the access to the business premises during office hours – also without previous announcement – for the staff members of EIDOLOGIC GmbH being authorized to collect the goods on proviso.

10.6 The exertion of rights with respect to the ownership on proviso or taking back are not understood as rescind the contract.

## 11. Volume of the Granting of Rights

The copyrights, the industrial property rights and the rights of usage for the delivered software stay to be subject to EIDOLOGIC GmbH. The suggestions to these rights being applied to the software carrier or to the packaging, also those of third parties, are to be regarded. As far as nothing else is agreed upon explicitly, the customer purchases simple rights of usage regarding the software. The rights of usage for the customer go by the license terms for the EIDOLOGIC GmbH software for the respective products.

## 12. Liability

12.1 EIDOLOGIC GmbH is liable unlimitedly only for intention and gross negligence of EIDOLOGIC GmbH, its legal representatives or its assistants for fulfilment of contract and for damages from injury of life, the body or the healthiness which follow from a breach of duty which EIDOLOGIC GmbH, its legal representatives or its assistants for fulfilment of contract have to stand for.

12.2 EIDOLOGIC GmbH is liable for other culpable breaches of essential duties independently from the legal argument. The legal right of the contract partner to rescind the contract is unaffected, but EIDOLOGIC GmbH is only liable for the amount of the typically predictable damage or the typically predictable expenditures.

12.3 In other cases the liability is excluded.

12.4 As far as EIDOLOGIC GmbH is liable according to fig. 12.2, the liability is limited to the amount insured of the employer's liability insurance of EIDOLOGIC GmbH.

12.5 EIDOLOGIC GmbH is not liable for damages as far as the customer could have prevented its entry by reasonable measures, especially with regard to software and data backup.

12.6 The regulations of this fig. 12 are also valid for the benefit of the staff and other assistants for fulfilment of contract of EIDOLOGIC GmbH.

12.7 The appointments of the Product Liability Law are unaffected.

## 13. Trademark and Proprietary Rights of Third Parties

The customer is obliged to inform EIDOLOGIC GmbH without delay in case of injuries of trademark or proprietary rights of third parties with regard to the delivered EIDOLOGIC GmbH software and to cede the defence of rights to EIDOLOGIC GmbH at its expense. EIDOLOGIC GmbH is entitled to carry out software

■ EIDOLOGIC GmbH  
Im Reitwinkel 61  
D-45661 Recklinghausen  
Germany  
VAT-ID: DE204041692

■ Phone. +49(0)2361/ 9600059  
Fax +49(0)2361/ 9600058  
<http://www.eidologic.com>  
<http://www.patmonitor.com>  
[info@eidologic.de](mailto:info@eidologic.de)

■ Bank: Kreissparkasse Koeln  
D-51429 Bergisch Gladbach  
SWIFT COKSDE33  
IBAN DE54 3705 0299 0389 0043 61

■ District court:  
Amtsgericht Recklinghausen,  
Germany  
HRB 5018  
CEO: Dipl.-Ing. Michael Knust

modifications at its own expense which are necessary due to claims of third parties' trademark and proprietary rights, also for already delivered and paid software.

#### **14. Assignability of Claims**

The customer is not entitled to cede closed contracts with EIDOLOGIC GmbH as a whole or single rights or duties thereof or other rights and duties from with EIDOLOGIC GmbH closed contracts without approval of EIDOLOGIC GmbH as a whole or single parts thereof and confer them to third parties.

#### **15. Final Terms**

15.1 These terms are also binding in its remaining parts in case of doubt and legal ineffectiveness of single or several terms. If single terms become legally ineffective as a whole or partly, another term or other terms will take its or their place which come(s) close to the economic purpose of the legally ineffective term or terms.

15.2 Only the law of the Federal Republic of Germany is valid, the UN-rights of purchase (UN-agreement on contracts for the international purchase of goods from 11. April 1980) are excluded.

15.3 The place of performance for all deliveries and services of EIDOLOGIC GmbH is Recklinghausen in Germany.

15.4 If the customer is a merchandiser according to legal terms or the customer has his/her residence in a foreign country, the exclusive place of jurisdiction is Recklinghausen in Germany.