

Germany
Terms and Conditions
AND INSTRUCTION OF REVOCATION RIGHTS

Last updated: January 17, 2017

Please read these Terms and Conditions carefully. By placing an order for a product, you agree to abide by them.

1.

SCOPE AND APPLICATION

1.1

These Terms and Conditions apply to all sales of products (including, without limitation, hardware and/or software) ("**Products**") and the provision of services by Digital River GmbH, which has its registered office at Scheidtweilerstr. 4, 50933 Cologne, Germany and is registered with Cologne District Court, HRB 56188, Managing Director: KT Schmidt (references to "**us**", "**we**" or "**our**" being construed accordingly), via this website ("**Website**") to you, the purchaser (references to "**you**" or "**your**" being construed accordingly).

1.2

These Terms and Conditions apply both to entrepreneurs according to Section 14 of the German Civil Code ("**BGB**") and to consumers according to Section 13 of the BGB. A consumer as defined in the legislation is any natural person who enters into a legal transaction for a purpose that is outside his trade, business or profession. Where expressly indicated in bold type, individual stipulations of these Terms and Conditions shall not apply or shall only apply in modified form to consumers; the validity of these Terms and Conditions shall otherwise remain unaffected by this both for entrepreneurs and for consumers.

1.3

By placing an order you agree to abide by these Terms and Conditions.

1.4

These Terms and Conditions also apply to future contractual relationships. **With respect to consumers, these Terms and Conditions apply to future contractual relationships where these relate to sales agreements.**

1.5

With regard to the provision of services, we do not provide any services ourselves but instead offer those of our contractual partner (whose logo appears in the order process) or a third party. You therefore do not acquire the actual Service from us but rather the right to use this Service. Our contractual partner or the third party is the Supplier who provides or performs the Service. The Supplier may ask you to agree to its terms and conditions before providing the service.

2.

EXPLANATION OF REVOCATION RIGHTS (ONLY FOR CONSUMERS)

2.1

RIGHT TO REVOCATION: As a consumer, you may revoke your contractual declaration within 14 days, without providing a reason, in written form, e.g. letter, fax, e-mail, or, if the item was delivered before this period expires, by returning the item. This period commences upon receipt of this explanation in written form, but not before the goods are received by the recipient in the case of the delivery of goods (in the case of recurring deliveries of the same type of goods, not before the receipt of the first partial delivery), in the case of the provision of services, not before the conclusion of the contract, and both for the provision of services and for goods deliveries, not before we have fulfilled our duty to supply information in accordance with Article 246 Section 2 in conjunction with Section 1 (1) and (2) of the Introductory Act to the German Civil Code ("EGBGB") as well as our obligations according to Section 312e (1) Sentence 1 of the BGB in combination with Article 246 Section 3 of the EGBGB. The right to revocation will be treated as exercised on the date of posting the notice of revocation or the date of dispatching the returned Product.

The revocation must be addressed to:

Digital River GmbH, Scheidtweilerstr. 4, 50933 Cologne, Germany

Fax: +49 (0) 221 310 88 29

E-mail: enquiriesemea@digitalriver.com

You can also contact us using the following link:

<http://ccc.shareit.com/ccc/index.html>

2.2

LEGAL CONSEQUENCES: If you exercise the above right to revocation, each party shall return to the other party the services received under the agreement, including benefits thereof (e.g. interest). If you are not able to return the Products, in whole or in part, or if the Products are defective, you are required to pay compensation. In the case of the provision of services, this can lead to a situation where you must still fulfill your

contractual payment obligations for the period up to the date of revocation. This does not apply to Products, the deterioration of which is due solely to their inspection, as would occur in shops. You may avoid having to pay compensation for Products damaged as a result of their being used as intended, by not making use of the Products as if they were your property and by taking reasonable care of the Products. Items that can be shipped by parcel post are to be returned at our risk. You must bear the costs of returning the Products if the supplied goods correspond to those ordered and if the price of the items to be returned does not exceed forty (40) euro or, where your order has a higher value, if you have not yet rendered payment or a contractually agreed part payment by the time of revocation. Otherwise, returns are free-of-charge for you. Items that cannot be shipped by parcel post will be collected from you. Obligations to reimburse payments must be met within thirty (30) days. The period commences for you upon dispatch of your declaration of revocation or the item; for us it commences upon receipt of the same.

2.3

PLEASE NOTE: In the case of a service, your right to revocation expires prematurely if the contract was completely fulfilled by both parties at your express request before you exercised your right of revocation.

2.4

PLEASE NOTE: You have no right to revocation:

2.4.1

If audio or video recordings or software have been supplied and you have broken the seal on the data carrier.

2.4.2

If Products have been supplied that have been manufactured in line with your specifications or personal requirements, or which cannot be returned because of their nature.

END OF EXPLANATION OF REVOCATION RIGHTS

Notwithstanding the rights granted to you above, you may have additional rights arising from the return conditions offered by the publisher. If you require more information on your rights, you should contact [customer service](#).

3.

OFFER, ACKNOWLEDGMENT AND ACCEPTANCE

3.1

The prices, price quotations and descriptions made or referred to on the Website **do not constitute an offer.**

3.2

While we make every effort to ensure that items appearing on the Website are available, we cannot guarantee that all items are in stock at the time of your order. The same applies for services that we render ourselves, when preparations dependent on the nature of the service have to be made. If we provide services by identifiably creating access for you to a third party, the specifications of that third party shall apply. If we are unable to process or fulfill your order, we shall duly and immediately inform you of this by e-mail. If the period between the placement of your order and the forecasted availability is more than two weeks, you shall be entitled to cancel your order within one week of receiving the availability information from us. The date the cancellation is received by us shall determine its punctuality. If one or more of the items ordered by you is/are permanently unavailable, we will likewise inform you by e-mail.

3.3

An order submitted by you constitutes an offer by you to us to purchase Products or order services subject to these Terms and Conditions and is subject to our subsequent acceptance. We are under no obligation to accept your order. Subsection 3.2 of these Terms and Conditions remains unaffected.

3.4

Prior to our acceptance, an automatic e-mail acknowledgement of your order is generated. Please note that any such automatic acknowledgement does not constitute a formal acceptance of your order.

3.5

Our acceptance of your order only takes effect and the contract is only concluded when we dispatch the Products you have ordered or start rendering the service. Downloadable Products are delivered upon or immediately after receipt of payment. The delivery periods for physical Products are listed on the Website, in the order confirmation or in our acceptance. In the case of services, our specifications apply or, if we rendered the services through a third party to which we identifiably grant you access, the specifications of that third party shall apply.

3.6

We can retain documents regarding incoming orders, confirmations, acceptances, and other contractual documents for an appropriate duration after declaration of our acceptance. We are under no obligation to do so however. We may be able to provide you with copies of such documents on written request; the costs of a copy and its delivery shall be borne by you.

However you must make sure you print or save a copy of all such documents and these Terms and Conditions for your own records.

4.

YOUR DATA

4.1

You represent that all information provided by you when placing your order is up-to-date, materially accurate, and sufficient for us to fulfill your order.

4.2

You are responsible for maintaining, promptly updating, and completing your account information with us. You must secure against unauthorized access all passwords and data provided to you by us for the purpose of accessing the web-based customer service and purchasing Products.

5.

PRICES AND TERMS OF PAYMENT

5.1

Prices payable for Products are those detailed for the relevant Products or services. The following stipulations shall apply.

5.2

We have the right at any time prior to our acceptance to withdraw any discount and/or to revise prices to take into account increases in costs, including, without limitation, costs of any materials, carriage, labor or the increase or imposition of any tax, duty or other levy and any variation in exchange rates. We shall notify you of this immediately and refer you to the relevant conditions. In such event, if you choose to continue with fulfillment of the order, you acknowledge that the Product will be provided at the corrected price. We shall likewise inform you that this is the case.

5.3

Prices (unless stated otherwise) are in the currency quoted on the Website.

5.4

The places to which we deliver physical Products (Products on data carriers) ("**Territory**") are listed on the Website. Unless otherwise specified, prices quoted are

5.4.1

exclusive of the costs of shipping or carriage to the agreed place of delivery within the Territory (costs are stated on the Website); and

5.4.2

inclusive of VAT, goods and services tax and any other tax or duty which (where applicable) must be added to the price payable.

By placing an order, you agree to pay for the shipping or carriage of Products at the prices specified by us at the time of your order. We reserve the right not to dispatch Products to countries or persons if a delivery to such countries or persons is prohibited by law.

5.5

Payments shall be made prior to delivery and by such methods as are indicated on the Website. Payment types that deviate from this description require our prior consent.

5.6

The payment types available for your order are displayed to you on the Website.

5.7

We charge credit cards immediately upon receipt of your order. We reserve the right to verify credit card payments prior to accepting your order.

5.8

No offset may be deducted from any payment due, unless the counterclaim has been recognized by declaratory judgment, is ready to be decided or is undisputed. **For entrepreneurs** this also applies to rights of retention.

5.9

If you default, we are entitled to demand default interest. **If you are a consumer**, the interest rate is five (5) percentage points above the base interest rate. **If you are an entrepreneur**, the interest rate is eight (8) percentage points above the base interest rate. We reserve the right to claim higher damages due to your default.

5.10

If you assert your right to revocation in accordance with Subsection 2.1 of these Terms and Conditions, you must bear the standard costs of returning the Products if the supplied goods correspond to those ordered and if the price of the items to be returned does not exceed forty (40) euro or, where your order has a higher value, if you have not rendered payment or a contractually agreed part payment by the time of revocation. Otherwise, returns are free of charge.

6.

DELIVERY AND RISK

6.1

The following applies for entrepreneurs: The sale and delivery of goods shall depend on us receiving correct and punctual supplies.

6.2

Delivery shall be to a valid address within the Territory submitted by you ("**Delivery Address**"). You must check the Delivery Address on any acknowledgement or acceptance we provide and notify us without delay of errors or omissions. We reserve the right to charge you for any extra costs arising from changes you make to the Delivery Address after you submit an order.

6.3

If you refuse or fail to take delivery of Products provided in accordance with these Terms and Conditions, any risk of loss or damage to the Products shall nonetheless pass to you without prejudice to any other rights or remedies we have:

6.3.1

We shall be entitled to attempt to complete delivery of the Product by ways and means we deem suitable and appropriate, at your risk and expense, or to store the Product at your risk and expense.

6.3.2

You shall be liable to pay on demand all appropriate costs of Product storage and any other appropriate costs for the unsuccessful offer and retention of the Product due, incurred as a result of such refusal or failure to take delivery.

6.4

Where we deliver Products by installments, each installment constitutes a separate contract; **this does not apply to consumers**. We are only entitled to make delivery by installments where reasonable. **If you are an entrepreneur**, any defect in any one or more installments shall not entitle you to cancel any subsequent installments.

6.5

If you are a consumer, the risk of accidental loss of or accidental damage to the Product passes to you on delivery of the Product. **If you are an entrepreneur**, the risk of accidental loss of or damage to the Product passes to you when the Product is placed in the possession of the carrier, but no later than when it reaches your possession.

7.

DUTY TO EXAMINE AND TO MAKE COMPLAINTS

If you are an entrepreneur, you are responsible for checking Products to the customary extent immediately upon delivery and verifying that they are in a satisfactory condition, in accordance with their description, and complete. You can only assert rights arising from defective Products or short delivery, if you notify us of the situation in writing no later than five (5) working days after the receipt of the Products or, if the defect or short delivery was not identifiable, as soon as it has been noticed.

8.

SOFTWARE

Where any Product supplied by us is or includes software, this software is licensed by us or by the relevant licensor subject to the relevant end-user license agreement or other license terms included with the software and/or the Product ("**License Terms**"). Such software may not be copied, adapted, translated, made available, distributed, modified, disassembled, decompiled, reverse engineered or combined with any other software, save to the extent that (i) this is permitted in the License Terms, or (ii) applicable law, in particular Section 69 d (2) and (3) as well as Section 69 e of the German Copyright Act, expressly mandates such a right.

9.

LIABILITY LIMITATION

9.1

We shall be liable for intent and gross negligence on the part of our institutions and agents, and, regardless of the level of liability, for damages arising from death, personal injury or damage to health.

9.2

We shall furthermore be liable for ordinary negligence on the part of our institutions and agents in the event of impossibility, performance default, non-adherence to a warranty, or the infringement of any other fundamental contractual obligation. Fundamental contractual obligations are those which must be fulfilled for the contract to be duly executed and for which compliance can be relied on as a matter of course. In such cases our liability is limited to the compensation amounts typically foreseeable upon entering into the relevant contract.

9.3

Liability on our part beyond that set out in 9.1 and 9.2 of these Terms and Conditions shall be excluded. This applies to all claims arising from an infringement of contractual obligations and claims resulting from tortious acts.

9.4

All limitations of liability according to 9.1. through 9.3 of these Terms and Conditions shall apply in favor of our institutions and agents.

9.5

Claims under the Product Liability Act remain unaffected.

9.6

Sections 478 and 479 of the BGB remain unaffected.

10.

RETENTION OF TITLE

10.1

Title to Products shall not pass from us to you until payment in full of the price in respect of the order, including any interest or other payments due in respect of those Products, is made. Until that time, you shall store the Products in such a way as to enable them to be readily identified as our property at any time, and keep proper and accurate records to enable us to distinguish Products for which payment has been made in full from those Products for which payment is

outstanding. You shall not seize the Products or transfer the Products by way of security. **As a consumer, you are not entitled to resell Products until you have paid the order price in full.**

10.2

As an entrepreneur you are allowed to sell Products as part of your normal business activities before the title is passed. In this case, you shall hold (on a fiduciary basis) all proceeds of such sales or of other legal grounds in trust for us and in a separate account. You undertake immediately upon being so requested by us to assign to us all rights in respect of those proceeds and that separate account and/or all rights and claims which you may have against any customers arising from such sales until payment is made in full. You further undertake not to assign such rights and claims to any third party without our prior written consent.

10.3

We reserve the right to repossess the Products in the event of default and the presence of the prerequisites justifying rescission, and thereafter to resell the same. Repossession by us simultaneously constitutes a declaration of rescission.

11.

THIRD PARTY RIGHTS

You shall indemnify us against any and all liabilities, claims, and costs incurred by or made against us as a direct or indirect result of us performing services or carrying out any work on or to the Products where this has been done to your or your representative's specific requirements or specifications causing an infringement or alleged infringement of any proprietary rights of any third party. This shall not apply if and insofar as the infringement of the third party property rights is not attributable to you.

12.

YOUR RIGHTS IN CASE OF DEFECTIVE PRODUCTS OR SERVICES

12.1

All details provided on the Products and any services merely constitute descriptions of the same and not a warranty.

12.2

A Product is defective if it does not have the agreed specifications, is unsuitable for the intended use as set out in the contract, is unsuitable for customary use and does not feature the specifications which would be usual for Products of this type and which buyers can expect due to the nature of the item or if it violates intellectual property rights or other third party rights. The technical and legal rules applicable in Germany shall be authoritative, unless otherwise agreed. A Service is defective, if it does not comply with the contractual agreements.

12.3

In the event that a Product contains a defect, you shall set a reasonable period for us to remedy the defect. In this case, we may, at our discretion, either repair the defective Product or deliver a replacement for it. An appropriate term for renewed performance need not be set if this is unnecessary in accordance with Section 323 (2) of the BGB, in particular if we finally and irrevocably refuse renewed performance, if the performance is critically dependent on its timeliness or other special circumstances exist, which, after due consideration of the interests of both parties, justify an immediate rescission or an immediate demand for compensation.

Consumers shall have the choice between repair of the defective Product or replacement. In the case of a service which does not comply with the contract, you shall set a reasonable period for us to render the service again, unless this is unnecessary in accordance with Section 323 (2) of the BGB. Subsections 12.4 through 12.7 do not apply to services.

12.4

In the event of a defective service, consumers shall have, without limitation, the statutory rights due to them, with the exception of the limitation of compensation in accordance with Section 9 of these Terms and Conditions; Subsections 12.4.1 through 12.4.3 shall not apply. If the renewed performance fails, you are entitled to assert your legal warranty rights as follows:

12.4.1

Your right to lower the purchase price (reduction) shall be excluded.

12.4.2

Your right to rescission only extends to the relevant order.

12.4.3

If you have the right to demand compensation instead of performance or to withdraw from the contract, or to demand further renewed performance, we can request that you exercise your rights within an appropriate period. You must inform us of your decision in writing. If you do not exercise your rights in the relevant timeframe, the right to compensation instead of performance can only be asserted or your rescission declared if a new appropriate period for renewed performance determined by you has expired fruitlessly.

12.5

By exercising your right to rescission, your right to use the Product expires. In this case, you must immediately uninstall the software from all systems, storage media and other files, and destroy the Products and all copies made of the software. You must also submit a separate written declaration that you will perform the actions above.

12.6

If you are a consumer, your rights hereunder shall expire within twenty-four (24) months after delivery of the Products. **If you are an entrepreneur**, your rights hereunder shall expire within twelve (12) months after delivery of the Products.

12.7

Your rights as listed under Section 12 shall not apply in the following cases, unless otherwise agreed:

12.7.1

If and insofar as Products have been repaired or altered by persons other than the publisher, by us or by any authorized dealer, and the defect is due to this;

12.7.2

If and insofar as defects are due, wholly or partially, to mistreatment, improper use, storage, maintenance or installation, or failure to observe any publisher's instructions or other directions issued or made available by us in connection with the delivered Products.

13.

CONSENTS, CUSTOMS DUTIES & EXPORT

13.1

If any license or consent of any government or other authority is required for the acquisition, carriage or use of the Products by you, you shall obtain such license or consent at your own expense and if necessary produce evidence to us on demand. Failure so to do shall not entitle you to withhold or delay payment for the Product. Any additional expenses or charges incurred by us resulting from such failure shall be borne by you. **For consumers, this does not apply with respect to a consent or other permit for carriage.**

13.2

Products sold to you under these Terms and Conditions may be subject to export control laws and regulations in the Territory or other relevant jurisdiction where you take delivery of or use

them. You shall be responsible for complying with these laws and will not do anything to breach them.

13.3

Items entering the European Economic Area (EEA) from outside over a certain value may be subject to customs charges (e.g. where costs are in excess of your personal import allowance). You may be subject to customs charges, import duties, and taxes, levied when the Product reaches your specified destination. Any such additional charges for customs clearance or import duties or taxes must be borne by you since we have no control over what these charges are. You should contact the local customs office in the relevant jurisdiction for further information on customs policies or duties.

14.

NOTICES

Any notices or other communications in relation to our contract may be issued by hand delivery, pre-paid post, fax or e-mail to the latest address and contact that one party has notified in writing to the other. This will also be the address for service of legal proceedings in the manner prescribed by law.

15.

PERSONAL INFORMATION AND DATA PROTECTION

15.1

We will observe applicable data protection laws and will not use information that will or can be used to personally identify you other than as set out in our Privacy Statement.

15.2

We hereby undertake to only transmit your information, including your personal information, to the relevant publisher, licensor, or supplier of Products and services ordered hereunder if this is necessary in order for them to register the Products you ordered under these Terms and Conditions because such registration is an essential prerequisite for asserting your right to the warranty, technical support, or other services.

16.

GENERAL

16.1

You shall not assign your rights to third parties under these Terms and Conditions.

16.2

All of our Products and services are provided subject exclusively to these Terms and Conditions. Terms and Conditions set out by you that contradict or deviate from these Terms and Conditions shall only apply if they are expressly accepted by a member of the Board of Management, an authorized representative, or a person empowered by us to do so. Your Terms and Conditions shall also be non-binding, even if their validity has not been expressly rejected. Tacit recognition of your Terms and Conditions by implied conduct shall be excluded.

16.3

Any forbearance, delay or indulgence by either you or us to enforce any provision of this Terms and Conditions shall not constitute a waiver of these rights.

17.

GOVERNING LAW AND JURISDICTION, MEDIATION

17.1

These Terms and Conditions shall be governed by the substantive law of the Federal Republic of Germany, to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

17.2

To the extent that you are a merchant, a body corporate under public law or a special fund under public law, the parties submit to the exclusive jurisdiction of the Courts in Cologne for all disputes directly or indirectly arising from this agreement. The official language used in court and the language used in extrajudicial settlement proceedings shall be German.

17.3

Pursuant to Section 36 (1) No. 1 of the German Consumer Dispute Settlement Act (VSBG), we would like to point out that we are neither prepared nor obliged to participate in an out-of-court dispute resolution procedure before a consumer-enforcement agency.