

General Conditions of Contract

for the supply and maintenance of the MailStore product range

1. Scope, General

- (1) These General Conditions of Contract (“GCC“) are applicable to all contracts between MailStore Software GmbH (“Vendor“) and customer firms (“Customer/s“), in so far as the subject of these contracts is the supply and maintenance of standard software including user documentation and other accompanying material from the MailStore product range (in the following also referred to as “Software“) for payment. In addition, the GCC apply to the temporary supply of test versions of the Software as appropriate.
- (2) Where new program versions of the Software (e.g. patches, bug fixes, Updates and upgrades etc.) are available and supplied to the Customer by way of subsequent performance or software maintenance, these GCC shall also apply, unless otherwise agreed for that specific case.
- (3) The GCC apply exclusively. Divergent, contrary or supplementary general terms and conditions of the Customer only form part of the contract if and to the extent that the Vendor has expressly agreed they shall apply. This consent requirement applies at all times, for example even if the Vendor begins performance of the contract without reservation despite being aware of the Customer’s general terms and conditions.
- (4) Individual agreements formed with the Customer in specific cases (including collateral agreements, supplementary agreements and amendments) will always take precedence over these GCC. The content of such agreements is to be determined by reference to a written contract or the Vendor’s written confirmation.
- (5) Material statements and notices which the Customer is required to give to the Vendor subsequent to formation of the contract (e.g. setting deadlines, defect notices, cancellation, reduction of payment) must be in writing to be valid.
- (6) References to the applicability of statutory law are for purposes of clarification only. Statutory provisions still apply in the absence of such clarification, unless directly amended or expressly excluded by these GCC.

2. Contract Formation

- (1) Offers by the Vendor are subject to change without notice and are non-binding. This also applies where the Vendor has provided the Customer with service or product specifications, user documentation (User Manual, Quick Start Guide etc.) or other documents concerning the Software – including in electronic form.

(2) An order placed by the Customer has the effect of a binding offer, regardless of the form in which it is transmitted to the Vendor. Unless otherwise clear from the order, the Vendor is entitled to accept an offer within 14 calendar days.

(3) Acceptance by the Vendor may be in writing (e.g. by order confirmation) or by supply of the Software or the product key necessary for use of the Software.

3. Supply of Software, Delayed Delivery

(1) The Software is delivered via remote data transfer (“Download“). The product key required for use of the Software will be supplied to the Customer via email. User documentation (User Manual, Quick Start Guide, etc.) will be available for Download from the Vendor’s website. Supply of the Software is complete at the latest upon delivery of the product key. Provision of the Software or product key on data storage media or the supply of user documentation in paper form will only occur where specifically agreed with the Customer in writing.

(2) During transfer of Software and user documentation via Download the Customer assumes the risk as soon as the purchased copy of the Software/user documentation leaves the Vendor’s sphere of influence, i.e. as soon as it has completely left the server controlled by the Vendor. The Vendor is obliged only to ensure the due availability of Software/user documentation for downloading. For other deliveries EXW (Ex Works MailStore Software GmbH) pursuant to INCOTERMS 2000 apply.

(3) Software is only supplied in executable form (object code). The source code of the Software is not the subject of the contract and will not be provided.

(4) Delivery deadlines for the supply of Software, the product key or the user documentation will be individually agreed with the Customer or indicated by the Vendor upon acceptance of the order. Where the Vendor is unable to meet delivery deadlines for reasons beyond its control, the Vendor will inform the Customer without delay and at the same time provide the new estimated delivery date. If the item is still not available by the new delivery date, the Vendor is entitled to partially or completely rescind the contract; the Vendor will reimburse without delay any consideration already advanced by the Customer.

(5) Whether delivery is in default will be determined according to statutory law. In all cases, however, a written warning from the Customer will be necessary. In case of default in delivery the Customer is obliged upon request of the Vendor to inform the Vendor within a reasonable period of time whether it is rescinding the contract due to the delay in delivery, continues to insist on delivery and/or which of the rights and claims it is entitled to it intends to assert.

4. Prices and Payment Terms

(1) Unless otherwise agreed in writing in the individual case, supply and maintenance of the Software will be charged as per the Vendor’s price list current at the time of contract formation.

(2) Payment in full is due immediately upon receipt of the invoice.

(3) Where payment by the Customer is delayed, interest at the rate of the applicable statutory default interest rate will be charged during the period of default. The right to claim additional damages for delay is

expressly reserved. Claims against commercial customers for interest on arrears (Section 353 HGB - German Commercial Code) are not affected.

(4) In the event that payment is not made despite delay in payment and expiry of a reasonable extension of time, the Vendor is entitled to rescind or terminate the contract with immediate effect and at its own discretion demand damages at a fixed sum of 20% of the outstanding portion of the agreed payment, damages in lieu of performance or restitution of futile expenses pursuant to Section 284 BGB - German Civil Code. The Customer retains the right to produce evidence that no loss or only negligible loss has been incurred.

(5) The Customer is only entitled to offset or retain payment on the basis of a court judgment or where a claim is not in dispute.

(6) If it becomes evident after a contract is formed that the claim for the agreed charges is jeopardised by deficiencies in the Customer's ability to pay (e.g. through an application to open insolvency proceedings), the Vendor is entitled to withdraw from the contract in accordance with the statutory provisions concerning refusal of performance and – if necessary, after specification of a period of time – (Section 321 BGB).

5. Rights of Use

(1) All rights to the Software are held exclusively by the Vendor and his licensors. The Software is protected by copyright law and international agreements for the protection of intellectual property.

(2) The Vendor grants the Customer a non-exclusive right unlimited in time to use the Software supplied in the object code to the agreed extent, or in the absence of such agreement, to the extent appropriate for the purpose of the contract.

(3) The right to use the Software is limited to the extent that the Software may only be used for archiving the emails of the number of email users agreed in the contract ("User Licences"). Exceeding the scope of user licenses purchased is not, under any circumstances, permitted without the prior consent of the Vendor. Where the Customer intends that the Software be used by more email users than the number initially agreed in the contract, it is required to extend its rights of use by purchasing additional User Licences.

(4) Unless otherwise agreed, under the terms of the contract the Customer is only permitted to use the Software in its own business, for its own internal purposes or to allow use by third party service providers on its behalf ("outsourcing"). Archiving of emails of natural persons not employed in the Customer's business is not permitted. Purchasing the Software entitles the user to install and use the Software on one of the Customer's systems at any one time. Additionally, the Customer may create a copy of the Software for back-up purposes. However, as a general rule, strictly one back-up copy only may be created and stored. This back-up copy must be labelled as such and protected from unauthorised access by third parties. The Customer is not permitted to carry out further copying, including the creation of a print-out of the program code (source or object codes).

(5) The Customer may only revise the Software, and in particular carry out modifications and extensions, where this is expressly permitted by mandatory law or provided in the contract. The Vendor advises that even minor alterations can lead to significant, unpredictable errors in the running of the Software.

(6) The Customer is not permitted to reconvert or decode the Software or extract any program elements. It will not decompile or disassemble the Software, carry out reverse engineering or otherwise attempt to derive the source code. Where the Customer is permitted by mandatory law to undertake reverse engineering or decompilation to achieve full functionality or interoperability with other Software programs the Customer must inform the Vendor in advance of the nature and scope of the intended activity. Decompilation is only permitted if the Customer establishes a legal, legitimate interest in carrying out these activities.

(7) Copyright notes, serial numbers, version numbers, trademarks or other identifying features of the Software must not be modified or removed. The same applies to suppressing the display of such features on the screen.

(8) Upon request by the Vendor the Customer is obliged to inform the Vendor in writing and without delay of the extent of use of the Software and produce appropriate evidence that use has not exceeded the extent specified in the contract. In case of reasonable suspicion that the contractually permitted extent of use has been significantly exceeded, the Vendor is entitled to examine whether the Customer has complied with the scope of use specified in the contract. For the purposes of checking this information the Customer will allow the Vendor or an examiner appointed by the Vendor access to the Customer's property and buildings as well as administrator access rights to the hardware and software in which the Software is installed, during normal business hours, to the extent required to examine the scope of use. The Vendor undertakes to maintain confidentiality of all information concerning the Customer's business not already in the public domain obtained by the Vendor in the course of the examination.

(9) The rights and obligations referred to in Clause 4 above apply to product key and user documentation as appropriate.

6. Leasing and Transfer

(1) Leasing of the Software, in particular by way of "Application Service Providing" (ASP) or "Software as a Service" (SaaS), is not permitted.

(2) Transfer of the Software requires the written consent of the Vendor in all cases. The Vendor will consent if the Customer provides the Vendor with a written statement by the new user in which the new user undertakes to the Vendor that it will comply with the terms and conditions of use and transfer contained within these GCC, and if the Customer guarantees the Vendor in writing that it has transferred all copies of the Software to the new user and deleted the copies in its possession. The Vendor can refuse consent where the use of the Software by the new user would be contrary to the legitimate interests of the Vendor.

(3) The Customer will inform the Vendor of each transfer without delay and supply the name and complete address for service of the new user to the Vendor in writing.

7. Third-Party Software, Open Source Software

The Software can contain elements of third party software and/or open source software, to which separate licence terms apply respectively. The applicable third party or open source software licence terms will be attached to the respective License Terms and Conditions, if required for the lawful use of the Software. The Customer undertakes that it will only install the Software if it agrees to the licence terms of this third party or

open source software, which take precedence over the terms of use of the Vendor. The Customer will refrain from installing and using the Software if it does not agree to those licence terms. In such a case subject to the exclusion of all further claims the Customer is entitled to withdraw from the contract in regard to the affected Software.

8. Test Versions

(1) Where the Vendor grants the Customer the opportunity to use a test version of the Software free of charge for a limited time, the Customer is granted a non-exclusive right to use the Software to the extent defined in Clause 5 of these GCC for the agreed period of time. The limited test period commences when the Customer downloads the Software.

(2) During the test period the Customer will not use the test version of the Software productively but rather will operate it solely with test data and for test purposes. During the test period the Vendor will only be liable for intentional acts and gross negligence. Further claims by the Customer for damages and costs arising from any other cause are excluded, particularly claims arising out of breaches of contractual duties and tort law. The Vendor is only liable for material and legal defects in the Software if the Vendor has made an intentional misrepresentation by silence to the Customer. Any further liability or guarantee that test versions of the Software are free from material or legal defects is excluded.

(3) If the Customer decides not to purchase the Software when the test period expires, the Customer will completely and finally cease using the Software and irretrievably delete all copies of the Software. Where Software has been supplied to the Customer on data media, the Vendor will elect to have the media either returned to the Vendor or destroyed.

9. Software Maintenance

(1) The details of the Maintenance Services to be performed by the Vendor is determined by the Customer's choice in the course of the ordering process (e.g. on the website <https://my.mailstore.com/Store>). In this respect the Vendor offers a "Standard Update and Support Service" (included in the purchase price) as well as a "Premium Update and Support Service" at a surcharge (referred to together in the following as "Update and Support Service").

(2) Unless otherwise agreed the "Standard Update and Support Service" includes making available new revised program versions or program elements ("Updates") as well as a technical user support via email. Unless otherwise agreed the "Premium Update and Support Service" includes further Services such as access to non-public hotfix versions, prioritized Customer support with a maximum initial response time of 24 hours on working days and technical user support over the telephone ("Hotline"). Further services (e.g. on-site service, training, installation of Updates) are not offered by the Vendor.

(3) On the Vendor's website the Vendor will notify the Customer of the availability of new Updates and make them available there for downloading. The Customer is responsible for installing these Updates.

(4) The Hotline offers assistance in using the Software and in case of malfunctions to the Customer over the telephone in German and English. The Hotline is available during the Vendor's normal business hours, Monday to Friday from 08:30 to 17:30 CET, except on public holidays in North-Rhine Westphalia, Germany.

(5) The Vendor only provides Update and Support Services for the respective current version of the Software.

(6) The term of the Update and Support Services begins with the forwarding of the product key. Unless otherwise agreed the minimum term of the Update and Support Services is one year. At the expiry of the term the Vendor will cease to provide Update and Support Services, unless the Customer extends these Services at a separate fee.

10. Guarantee

(1) The Software is free from material defects if at the time the risk passes the Software essentially fulfils the functions and features contained in the product specification applicable to the relevant Software at the time of contract formation. Software errors must be reproducible. Defect claims do not arise from insignificant deviation from the agreed quality, insignificant impairment of serviceability, damage arising from improper or negligent handling following passing of the risk, from unsuitable equipment or from special external factors which are not anticipated in the contract, nor for irreproducible software errors.

(2) Claims under the guarantee further do not arise if errors occur and (i) the Software is not being used under the operating conditions expected and specified in the user documentation (e.g. system requirements), (ii) if during use the instructions and procedures specified in the user documentation are not followed or (iii) if modifications or adjustments have been made to the Software, unless the Customer proves that the errors are not causally related to the events listed in (i) to (iii) above or are attributable to faults in the user documentation.

(3) A fault in the user documentation exists if a knowledgeable user equipped with basic competence in dealing with computer equipment assisted by the user documentation cannot discern how to operate individual functions with reasonable efforts or cannot solve problems which occur with reasonable efforts.

(4) Software defects including in the user documentation are cured within the defect warranty period pursuant to Clause 13 of these GCC after notification by the Customer. This occurs at the Vendor's discretion either by remedying the fault (rectification) or by supplying a non-defective copy of the Software (replacement). The Vendor is entitled to remedy the defect by supplying the Software in a newer version which no longer contains the error or by supplying Updates. The defect is also considered to be cured if the Vendor demonstrates to the Customer how to operate the Software or change the settings on the Software so as to circumvent the error (referred to as a "workaround") and operation and functionality are impaired by such circumvention to an insignificant extent only.

(5) Failure to remedy or replace can only be assumed once the Vendor has been given sufficient opportunity to provide rectification or replacement, but failed to produce the desired result, if rectification or replacement is not possible, if the Vendor refuses or unreasonably delays rectification or replacement or if rectification or replacement would be otherwise unreasonable.

(6) The Customer will make available all documents and information, IT equipment and access rights to the extent reasonably required to carry out a fault analysis and correction. The Customer is obliged to install new versions of the Software or Updates supplied without delay. The Customer and its employees will provide the Vendor with comprehensive information – verbally if necessary – for the purposes of identifying and remedying the defect.

(7) To the extent that software defects reported by the Customer are non-existent, the Vendor is entitled to invoice the Customer for the costs incurred by the error report at the rate usually charged for comparable services (e.g. fault diagnosis in a computer system).

(8) The Vendor does not guarantee that the Software will meet the specific requirements of the Customer. The Customer is solely responsible for selection, installation and use as well as the results intended.

11. Duty to Examine and Notify

(1) The Customer is obliged to test the Software thoroughly for errors and suitability for the precise setting (e.g. operating conditions and purposes) before it commences productive use of the Software. In particular the Customer will use test data to verify essential functions before using the Software productively.

(2) As soon as the Customer is able and permitted to use the Software, it will examine and test the Software with regard to the functionality of basic program functions in particular. The Customer must give notice in writing of defects which are detected or detectable in this process without delay, within two weeks of receipt of the Software at the latest. For defects which are not obvious (hidden), once found the Customer is obliged to give notice in writing, before expiry of the warranty period pursuant to Clause 13 of these GCC at the latest. The defect notice must contain a detailed description of the defect. In case of a breach of the duty to examine and notify the defect, the Software will be considered to be approved with respect to the relevant defect.

12. Third Party Intellectual Property Rights, Legal Defects

(1) Where a third party legitimately claims a breach of intellectual property rights against a Customer using the Software in accordance with the contract terms, the Vendor will at its own discretion either acquire the necessary rights of use in relation to the rights which have been infringed, at its own cost on behalf of the Customer or alter the Software so that the Software is no longer in breach of intellectual property rights but continues to fulfil the requirements agreed in the contract. Where the Vendor is not reasonably able to do this, the Customer can rely on its statutory rights to withdraw or make reduced payment.

(2) The Vendor is only subject to the above duty to the extent that the Customer informs the Vendor of the third party claim without delay in writing does not admit a breach and reserves the Vendor the right to all defences and settlement negotiations. If the Customer ceases to use the Software for purposes of mitigation of damages or for other reasons, it is required to inform the third party that such action does not constitute an admission of breach.

(3) Claims by the Customer are also excluded to the extent that the Customer is responsible for the breach of intellectual property rights. This applies in particular if the breach of the intellectual property rights has been caused by a specific requirement of the Customer, by a use of the Software the Vendor could not foresee or by modifications to the Software carried out by the Customer without coordination with the Vendor.

13. Limitation of Actions

Warranty claims arising from material or legal defects become statute-barred within one year of delivery of the Software. In all other respects the statutory provisions concerning the statute of limitations apply.

14. Retention of Title and Rights Reserved

Where delivery occurs by way of data media the Vendor retains ownership of the original data media delivered to the Customer until complete payment of all claims arising from the contractual relationship with the Customer is received; for payments by cheque or bill of exchange until they are cashed or discharged.

15. Liability

- (1) The Vendor accepts unlimited liability for intentional or grossly negligent damage and personal injury, i.e. death, bodily injury or injury to health caused by the Vendor.
- (2) Further claims by the Customer for damages and costs (“Damages Claims”) arising from any cause in law, in particular through breach of contract or liability in tort, are excluded. This does not apply to compulsory liability, e.g. pursuant to the German Product Liability Act (Produkthaftungsgesetz), intentional or grossly negligent acts, fraudulent concealment of defects, or culpable breach of essential contractual obligations by the Vendor. Essential contractual obligations are those concerning supply, performance and protection, which are either essential to fulfil the purpose of the contract or where the Customer regularly relies and is entitled to rely upon the Vendor’s compliance and where failure to comply would lead to rights and legal positions of the Customer being removed or limited in such a way that the contractual purpose can no longer be fulfilled. In the absence of intent or gross negligence, however, Damages Claims arising from the breach of essential contractual obligations are limited to contractually typical, foreseeable damages.
- (3) To the extent that liability of the Vendor is limited to contractually typical, foreseeable loss, the Vendor is liable for each damaging event only up to five times the agreed price of the relevant goods and services. Where a significantly higher risk is identifiable in a particular case, the Vendor will offer the Customer a higher liability sum but reserves the right to adjust the price accordingly.
- (4) In case of loss of data the Vendor is only liable to the extent that the Customer has backed up the data at adequate intervals, no less than once per day, secured in a machine-readable format and thereby ensured that the data can be restored at a reasonable cost. Where the Customer fails to carry out such back-up procedures Vendor’s liability is limited to the costs which would have been necessarily incurred in restoring the data from properly backed-up data, as well as loss caused by the loss of current data which would have also been lost had daily backing-up occurred.

16. Compliance with Statutory Regulation

The Customer is solely responsible for compliance with the relevant statutory provisions applicable to the archiving of business records. This applies in particular for data protection provisions, the German generally

accepted principles for computer-aided accounting systems (GoBS), the German generally accepted principles of data access and auditing of digital records (GDPdU), the German generally accepted accounting principles (Sections 238 et seq., Section 257 HGB and Sections 140 et seq. of the German Tax Code (Abgabenordnung) and the provisions of the German Value Added Tax law (Umsatzsteuergesetz) or other comparable provisions of foreign jurisdictions.

17. Reference

The Vendor may make reference to the Customer's trade name and brand for marketing purposes.

18. Applicable Law, Place of Jurisdiction

- (1) The law of the Federal Republic of Germany applies to the supply and maintenance of Software and all legal relationships between the Vendor and the Customer arising therefrom. The UN Convention on the International Sale of Goods (CISG) is excluded.
- (2) The mutually agreed place of jurisdiction for all legal disputes will be Düsseldorf, Germany. The Vendor however reserves the right to commence an action or other court procedure in the general place of jurisdiction of the Customer.

19. Final Provisions, Written Form

- (1) Alterations and amendments to these GCC and likewise material statements and notices which the Customer is required to give to the Vendor subsequent to formation of contract (e.g. setting deadlines, defect notices, notices of cancellation, and reduction of payment) must be in writing. This applies to changes to this written form requirement itself. Email or other electronic communication is not sufficient to fulfil the written form requirement.
- (2) Should individual terms of these GCC be or become invalid or incapable of execution, the remaining terms of these GCC will remain unaffected. In place of the invalid term the provision most closely conforming to the commercial purpose of the invalid term will be considered to have been agreed. The same applies where these GCC are found to be incomplete.
- (3) The Customer is not permitted to assign rights arising from the contractual relationship with the Vendor without the prior consent of the Vendor.
- (4) These GCC are a translation of the legally binding German version. In the event of any conflict or ambiguity, the wording of the German version shall prevail as legally binding.