

GENERAL TERMS AND CONDITIONS of Raynet

§ 1 Scope

1. The following General Terms and Conditions (GTC) apply exclusively to all business-to-business transactions. Unless expressly agreed otherwise in writing, these terms and conditions shall apply exclusively to all goods and services currently provided by **Raynet GmbH, Technologiepark 20, 33100 Paderborn, Germany** HRB 3524 (District Court Paderborn), VAT| ID DE 812 87 19 23, represented by its managing partner, Mr. Ragip Aydin, its branches, and its subsidiaries to its contractual partners. Raynet GmbH shall not acknowledge any terms and conditions of the contractual partner, which contradict or differ from the General Terms and Conditions of Raynet GmbH, unless Raynet GmbH has expressly agreed to these in individual cases.
2. The goods and services to be rendered shall be agreed in individual agreements, which will be subject to these General Terms and Conditions.
3. The contractual partner shall be informed about any amendments and additions to these General Terms and Conditions in writing, by fax or by e-mail. If the contractual partner does not object to the amendments within four weeks of receipt of the information, the changes shall be deemed to have been accepted. In the case of amendments to the General Terms and Conditions, the contractual partner shall be informed separately about his right of objection and the legal consequences of failing to do so.

§ 2 Conclusion of the agreement

1. Any quotes provided by Raynet GmbH are always non-binding and subject to change, unless they contain a certain acceptance period or are expressly marked as binding. The orders and assignments of the contractual partner are deemed to have been accepted only upon written confirmation (email is sufficient) or actual performance of the service by Raynet GmbH.
2. Raynet GmbH reserves the right to make technical and design changes to the products, or to change descriptions and specifications in brochures, catalogues and written documentation due to technical progress or market changes. Such changes and deviations shall not give rise to any claims against Raynet GmbH.
3. Legal relations between Raynet GmbH and the contractual partner shall be exclusively governed by a written agreement, including these General Terms and Conditions. Verbal commitments made by Raynet GmbH prior to the conclusion of the agreement are not legally binding. Verbal agreements between the contracting parties shall be replaced by provisions of the agreement, unless they continue to be valid and binding due to their respective nature.
4. To be effective, any changes and additions to any agreements made including these General Terms and Conditions must be made in writing. Except for managers and authorised representatives of Raynet GmbH, the employees of Raynet GmbH shall not be entitled to make alternative arrangements.

§ 3 Scope of services

1. The supply of goods or services and the procedure required thereto, the type of performance and information provided by the contractual partner as well as work equipment shall be agreed in accordance with § 1 (2) of these General Terms and Conditions.
2. Raynet GmbH reserves the right to select employees and to replace them if this becomes necessary for operational reasons.

§ 4 Data protection

1. Raynet GmbH shall use any personal data provided by the contractual partner (title, name, address, date of birth, e-mail address, telephone number, fax number, bank details) exclusively in accordance with the provisions of German data protection legislation.
2. Raynet GmbH undertakes to observe the provisions of the German data protection legislation and, if necessary, it shall also obligate its employees and vicarious agents to observe such accordingly.

§ 5 The contractual party's duty to cooperate

1. The contractual partner undertakes to treat any information about the delivered goods or services as well as the pre-contractual and contractual correspondence as confidential. The information may not be disclosed to third parties without the prior written consent of Raynet GmbH. The contractual partner shall also obligate its employees and vicarious agents to keep the aforementioned information confidential.
2. The contractual partner undertakes to protect the intellectual property and the supplied products against unauthorised access by third parties, and to obligate its customers and other partners accordingly. Raynet GmbH reserves the title or copyright to any submitted quotes or cost estimates, and to drawings, illustrations, calculations, brochures, catalogues, models, tools, as well as any other documents and resources provided to the customer. The contractual partner is prohibited from making these items or their content available to third parties, from disclosing them, from using them either themselves or through third parties, and reproducing them or have them reproduced, without the express consent of Raynet GmbH. At the request of Raynet GmbH the contractual partner must return all these items, including any copies, to Raynet GmbH or destroy them if they are no longer needed in the ordinary course of business, or if negotiations do not result in the conclusion of a contract.
3. The contractual partner shall be responsible for creating the conditions necessary for the proper performance of services contracted from Raynet GmbH. The contractual partner is obliged to accept target concepts, organisational concepts and software without delay after they have been delivered or created. If the contractual partner starts using the delivered products or four weeks have elapsed since the delivery without any defects being reported, the products or services shall be deemed to have been accepted.

§ 6 Retention of title

1. Raynet GmbH shall retain title to any products delivered until all current or future claims arising from the business relationship with the contractual partner have been settled in full. This retention of title shall extend to products that are delivered on a disk or transmitted online and shall also apply to materials pertaining thereto. The products or any other goods replacing them under this retention of title clause shall be hereinafter referred to as reserved goods.
2. The contractual partner shall store the reserved goods for Raynet GmbH free of charge.
3. The contractual partner shall be entitled to dispose of the reserved goods in the ordinary course of business, until such time as an enforcement event occurs. Goods which are subject to reservation of title may not be pledged or assigned as collateral security.
4. The contractual partner hereby assigns any resulting claims against the purchaser by way of security to Raynet GmbH. The same shall apply to other claims, which may replace the reserved goods or arise in connection with the reserved goods.
5. In case of attempts by third parties to seize the reserved goods, in particular, by means of assignment, the contractual partner shall immediately inform them of Raynet GmbH's reservation of title and notify Raynet accordingly in order to enable them to enforce their intellectual property rights. If the third party is not in the position to reimburse Raynet GmbH for the judicial and extrajudicial costs, the contractual partner shall be liable to Raynet GmbH in this respect.
6. Should Raynet GmbH rescind the agreement (enforcement event) due to breach of contract by the contractual partner, in particular due to late payment, it shall be entitled to request the reserved goods.

§ 7 Intellectual property rights of Raynet GmbH

1. Raynet GmbH is and shall remain the holder of all rights to the products provided to the contractual partner. This shall also apply to parts of the products or derivative products developed, in whole or in part, from these products, including related materials.
2. The contractual partner shall be obliged to send a written notice to Raynet GmbH if a claim is asserted by third parties on grounds of infringement of intellectual property rights.
3. The contractual partner may only use Raynet GmbH products for its own purposes, and to the extent agreed in the respective agreement. The contractual partner shall only be liable to Raynet GmbH for any damage suffered as a result of the breach of the aforementioned obligations of the contractual partner.

§ 8 Liability

1. In terms of culpability, the liability of Raynet GmbH for damages, irrespective of the legal basis, shall be limited to damage that was foreseeable as a possible consequence of a breach of contract at the time of concluding the agreement or should have been foreseeable when applying due care and attention. Claims for indirect or consequential damage as a result of defects in the delivered item shall be limited to damage which can be typically expected when using the delivery item as intended.
2. Raynet GmbH shall not be liable for simple negligence of its bodies, legal representatives, employees or other vicarious agents insofar as this does not constitute a breach of material contractual obligations. Material obligations include the obligation to deliver and install the delivery item free of any significant defects and in a timely manner as well as the duty to provide advice and protection, and the duty to exercise proper care, which should enable the contractual partner to use the delivered item in accordance with the terms of the agreement.
3. The liability of Raynet GmbH for data loss shall be limited to the typical data recovery cost which would have been incurred if regular backups were carried out.
4. The above exclusions of liability shall not apply to damage suffered as a result of injury to life, body or health. Liability under the product liability law shall remain unaffected.
5. Raynet GmbH shall be liable for impossibility of deliveries or services only in cases of intent or gross negligence on the part of its statutory representatives or vicarious agents. Section 4 above shall apply accordingly. In the case of gross negligence, the liability of Raynet GmbH shall be limited to foreseeable, typical damage. In all other cases, the liability of Raynet GmbH for damages and reimbursement of futile expenses due to impossibility shall be limited to 10% of the value of goods or services. Any further claims by the contractual partner due to impossibility of delivery shall be excluded. The contractual partner's right to withdraw from the agreement shall remain unaffected.
6. A change in the burden of proof to the detriment of the contractual partner is not connected to the above provisions.
7. Given the current state of technology, it cannot be guaranteed that data communication over the Internet is free of errors and/or available at all times. Raynet GmbH cannot, therefore, be held liable for the continuous and uninterrupted availability of online services.

§ 9 Delivery and service delays

1. The time limits and dates proposed by Raynet GmbH for the supply of goods and services shall always be deemed approximate, unless a fixed date or period has been expressly agreed.
2. The liability of Raynet GmbH for damages due to delays shall be limited to 10% in total for compensation in addition to performance (including the reimbursement of the futile expenses) and, for compensation in lieu of performance, to 10% of the value of the product or service in question. Any further claims of the contractual partner shall be excluded - even after the expiry of a possible time limit imposed upon Raynet GmbH for performance. The limitation shall not apply in cases of a culpable breach of material contractual obligations. A change in the burden of proof to the detriment of the contractual partner is not connected to the above provisions.
3. Events of force majeure, which would significantly impede the performance or make it impossible, as well as the failure of the contractual partner to comply with its duty to cooperate under § 5 (2) of these

General Terms and Conditions, shall entitle Raynet GmbH to postpone the fulfilment of its obligations for the duration of the impediment plus a reasonable lead time. Cases of force majeure shall also include other circumstances, which could not have been foreseen at the time of concluding the agreement, in particular operational faults of any kind, strikes and lockouts, difficulty in obtaining materials or energy, transportation delays, shortage of labour, difficulties in obtaining necessary regulatory approvals, governmental actions, burglary, vandalism and other criminal acts on the part of third parties, and similar events, which affect Raynet GmbH directly or indirectly, and for which it is not responsible.

4. Should such events render the supply of goods or services difficult or impossible, and if the impediment is not only of a temporary nature, Raynet GmbH shall be entitled to rescind the agreement.
5. If the contractual partner cannot be reasonably expected to accept the delivery or performance, he may rescind the contract by sending a written notice to this effect to Raynet GmbH without undue delay.
6. If Raynet is in default with provision of the services under this agreement, the contractual partner may terminate the agreement after setting a reasonable time limit in writing. If the delay is not due to a fault on the part of Raynet GmbH, the entitlement to claim damages for delay shall be excluded.

§ 10 Default of acceptance

1. If the contractual partner is in default with acceptance of services, or if he neglects or defers his duty to cooperate under § 5 or under any other duty to cooperate, Raynet GmbH may demand the agreed remuneration for services not rendered as a result (excluding ancillary costs) without being obliged to provide supplementary performance.
2. This shall not affect the rights of Raynet GmbH with respect to compensation for any additional expenses incurred.

§ 11 Place of performance, transfer of risk, acceptance

1. Unless expressly stipulated otherwise, the place of performance for all obligations arising from the agreement is Paderborn, Germany. In the event that the scope of services to be rendered by Raynet GmbH also includes installation, the place of performance is the location where the installation is to take place.
2. The delivery method and packaging are at the due discretion of Raynet GmbH.
3. When goods are delivered, the risk passes to the contractual partner upon handover of goods to the carrier. If the delivery is delayed due to circumstances attributable to the contractual partner, the risk shall pass to the contractual partner as soon as Raynet GmbH has made the goods ready for despatch or handover and has notified the contractual partner to that effect.
4. If products are delivered via download, the risk is transferred when the last packet belonging to the software is transferred via the data port of the Raynet server.
5. If acceptance is required, the item shall be deemed to have been accepted if
 - a) the delivery and, to the extent that the scope of services to be rendered by Raynet GmbH includes installation, the installation is complete;
 - b) Raynet GmbH has informed the contractual partner of the aforementioned deemed acceptance and has requested him to accept the performance;
 - c) four weeks have elapsed since the delivery or installation, or the contractual partner has started to use the item and in this case, 14 working days have passed since the delivery or installation;
 - d) the contractual partner has not accepted the performance during this period for a reason other than having notified Raynet GmbH of a defect, which makes the use of the item impossible or which significantly affects it.

§ 12 Warranty

1. The warranty period is 1 year from delivery or if acceptance is required, from acceptance.
2. The contractual partner must examine the delivered goods immediately after delivery and inform the company of any identified defects, otherwise the delivery shall be deemed to have been accepted.
3. The contractual partner shall not be entitled to make warranty claims for defects that represent only a minor deviation of the goods and services from the agreed quality or a minor impairment of usability.
4. In all cases, Raynet GmbH shall be entitled to choose between rectification of the defect and replacement delivery. The request of the contractual partner for corrective action must be made in writing. Raynet GmbH should be given a period of three weeks to perform corrective action. If the delivery or performance is to be remedied, the rectification of defects shall be deemed to have failed only after an unsuccessful second attempt. If the supplementary performance fails, then the contractual partner shall have the right to reduce the agreed fee or rescind the contract. The statutory cases in which no additional period (grace period) is required shall remain unaffected. The application of Sections 478, 479 of the German Civil Code (BGB) remains unaffected.
5. Without prejudice to any further claims of the contractual partner, Raynet GmbH shall, in the case of an unjustified complaint, pay the expenses for performing necessary checks and - if required - the costs of rectifying the defect.
6. The warranty is void if the contractual partner makes changes itself or engages a third party to modify the contract item without the consent of Raynet GmbH and, as a result, it becomes impossible or unreasonably difficult to rectify the defect. In all cases, the contractual partner shall bear the additional costs of rectifying the defect incurred as a result of modifications.
7. Raynet GmbH warrants that the delivery item is free of third party intellectual property rights or copyrights or that these rights have been transferred to Raynet.
8. Should the delivery item infringe a third party intellectual property right or copyright, Raynet GmbH will, at its own discretion and at its own expense, replace or modify the delivery item to such an extent that it will no longer infringe any third party rights, whereby the delivery item shall continue to fulfil its agreed function, or provide the contractual partner with a usage right upon concluding a license agreement. If he can do so within a reasonable time period, the contractual partner shall be entitled to rescind the contract or reduce the remuneration agreed at his own discretion.
9. In the case of infringements caused by products from other manufacturers supplied by Raynet GmbH, Raynet GmbH shall use its discretion to assert claims against manufacturers or preliminary suppliers for the account of the contractual partner or to assign them to the contractual partner. Under the terms of this agreement, claims against Raynet GmbH shall only exist when asserting the claim against the supplier before the courts was unsuccessful or was likely to be unsuccessful due to insolvency.

§ 13 Duration and termination of the agreement

1. The agreement shall expire at the end of the agreed term. It may, however, be terminated earlier in writing with a four-week period of notice, should operational reasons on the part of the contractual partner necessitate such action, and if no alternative notice period has been stipulated in the agreement.
2. In the event of termination, the remuneration of Raynet GmbH shall be as follows:
 - a) full remuneration (excluding ancillary costs) shall be payable for services rendered by Raynet GmbH until the termination of the agreement;
 - b) no remuneration shall be payable for services no longer required due to the early termination of the agreement to the extent that Raynet GmbH saves costs or can use the freed resources to generate income elsewhere or has maliciously refrained from generating such income.
3. The foregoing shall be without prejudice to the right of termination for important reasons.
4. Notice of termination must be served in written form in order to be valid.

§ 14 Payment terms

1. The payment for the products and services of Raynet GmbH shall be calculated on the basis of time spent by Raynet GmbH and its employees or vicarious agents on their respective activities, including travel times (time-based fees), unless stipulated otherwise for individual cases.
2. Fee amounts are based on fee schedules of Raynet GmbH that are applicable to the respective order. Additional or special services shall be charged separately.
3. Due dates shall be agreed separately.
4. The remuneration is payable in full upon delivery or acceptance. Without any further notice from Raynet GmbH, the contractual partner will be in default of payment if no payment is received within 15 days after the due date.
5. In the event of delayed payment, Raynet GmbH shall be entitled, after issuing a reminder to no effect, to charge interest at a rate of at least 8% p.a. above the base rate (Section 247 (1) of the German Civil Code (BGB)) unless the contractual partner can prove that the actual damage suffered is demonstrably lower. Raynet GmbH shall be entitled to assert higher damages, if it can prove that it suffered a higher damage as a result of the delay.
6. Raynet GmbH shall be entitled to supply any outstanding goods and services only against advance payment or collateral if after the conclusion of the agreement, it becomes aware of any circumstances that are likely to have a substantial adverse effect on the creditworthiness of the contractual partner and due to which the payment of outstanding claims of Raynet GmbH arising from the agreement by the contractual partner is exposed to a risk (including other individual contracts, which are subject to the same framework agreement).
7. Fees and other invoiced amounts (e.g. travel costs, expenses, ancillary costs, etc.) are exclusive of VAT.

§ 15 Set-offs and the right of retention

1. In the products are defective, the contractual partner shall not be entitled to withhold payment unless the delivery is obviously defective or the contractual partner is clearly entitled to refuse acceptance. In such a case, the contractual partner shall only be entitled to withhold payment if the withheld amount is in proportion to the potential costs of supplementary performance (in particular, the cost of remedying the defect). The contractual partner shall not be entitled to assert any claims and rights due to defects if he has failed to make payments when due, and the payable amount is proportional to the value of the defective goods or services.
2. Set-offs are only permitted in the case of undisputed or legally established claims.

§ 16 Non-assignment clause

The contractual partner may only assign claims arising from this agreement with the express consent of Raynet GmbH.

§ 17 Final provisions

1. Should one or more provisions of these General Terms and Conditions or further agreements based thereupon be or become invalid or prove to contain an omission, the validity of the remaining provisions shall remain unaffected thereby. Such invalid provision or omission shall be replaced by a provision that, to the extent permitted by law, shall approximate as closely as possible the original intent or in the case of an omission, the presumed intent of the contracting parties.
2. The place of jurisdiction for both parties is the place of business of Raynet GmbH (Paderborn, Germany).
3. This agreement shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on the Sale of Goods (CISG).

NOTE

Raynet GmbH would like to point out that, pursuant to Section 28 of the Federal Data Protection Act, it stores data from the contractual relationship for data processing purposes and reserves the right to transfer the data to third parties to the extent necessary for the fulfilment of this agreement.