

General terms of delivery and payment

- Valid as of September 2004 -

The following terms and conditions only apply to transactions with businesses within the meaning of § 310 (4) of the German Civil Code (BGB), public legal entities and public special funds. They apply to all of our sales, deliveries and other services, including consultation. They apply exclusively. We do not accept the terms and conditions used by the customer that contradict or deviate from our terms and conditions of sale unless we have explicitly consented to their applicability in writing. Our terms and conditions shall also apply when we unreservedly supply goods or services to the customer in the knowledge of contrary or varying terms or conditions used by the customer.

A. General terms and conditions for all services

1. Order placement, order processing:

- 1.1** Our offers are not binding unless they are expressly designated as being binding.
- 1.2** The contract shall first be deemed to have been concluded with our written confirmation and in accordance with the content thereof, or when the customer has employed our services. The same shall apply for collateral agreements or modifications to the contract.
- 1.3** The customer agrees to provide all of the documentation and information necessary for the execution of the order completely and timely. In particular, the customer is to fulfill all of the requirements, which fall within the sphere of the customer's operations and are necessary for the execution of the order. The customer must, inter alia, also
- create tender specifications, in which the customer describes in detail the requirements on the hardware or software to be delivered by us,
 - provide sufficient workspaces for our employees and all necessary work materials,
 - appoint for order processing a contact person, who is authorized to make legally binding declarations necessary in the processing of the order,
 - provide trained personnel to support us,
 - allow us sufficient and unhampered computing time with the necessary priority as becomes necessary, provide the required interfaces with the existing system, provide us with the software for these interfaces, and adjust it so that it is compatible with our service.
- 1.4** Patterns, models, drawings or data media will only be returned upon request by and at the cost of the customer. In the event that an order is not made, we are, in the absence of a timely request, entitled to destroy without fear of legal claims for compensation any patterns, models or drawings left with us one (1) month after dispatching our offer.

2. Delivery period, late delivery:

- 2.1** If a delivery period has been agreed upon, it shall begin with the conclusion of the contract, not however before the performances or contributions due from the customer have been

provided in full. The delivery period shall be extended adequately in the event of force majeure, such as, e.g. strike, black-outs or delays in deliveries to us from our suppliers.

- 2.2** We are not liable for delays caused by force majeure, hindrances that are unforeseen and occur after conclusion of the contract, and in particular if deliveries to us from our suppliers are not made or are delayed. In such cases, we are to inform the customer without delay of when such hindrances begin and end. Furthermore, we are not liable for delays that are caused by the customer's breach of duties to cooperate.
- 2.3** Delivery periods shall be deemed to have been fulfilled if the product has left our works or notification of readiness for dispatch has been made by the expiry thereof. Inasmuch as the delivery of the goods or services is to be accepted, the acceptance date shall apply – except in the case of a legitimate refusal of acceptance – alternatively the notification of preparedness to accept performance.
- 2.4** In the event that we are in default for reasons under our control, the customer is to extend the deadline for subsequent performance. The deadline must be extended for at least 28 days. After expiry of the extended deadline without result, the customer is entitled to rescind the contract and assert claims for damages in accordance with No. 7.
- 2.5** If the customer defaults in accepting goods or services ordered or culpably fails to fulfill other duties of cooperation, then we shall be entitled to demand compensation for the costs incurred thereby including any additional expenditure. We also reserve the right to make additional claims. Inasmuch as the requirements above are fulfilled, the risk of accidental loss or deterioration of the purchased goods shall pass to the customer in the moment that the customer defaults in performance or acceptance.

3. Shipping, passage of risk, packaging:

The products shall be shipped at the risk of the customer even if carriage-free delivery was stipulated.

Packaging shall be invoiced additionally inasmuch as nothing to the contrary has been stipulated.

In the event that the customer desires to return the packaging used to transport our products, i.e. transport packaging within the meaning of sec. 3 subsec. 1 no. 1 of the German Packaging Ordinance (VerpackV), the customer is to return it to our headquarters or an authorized third-party within the meaning of § 11 of the VerpackV (cf. § 4 VerpackV and § 269 BGB) at the customer's expense. The customer is also entitled to return such transport packaging to us at the site where

the goods were delivered. This right of return shall only exist if we receive a fee, which shall be agreed upon separately, from the customer for the return at the delivery site. Furthermore, we reserve the right to determine the time and the modalities of the return at the delivery site.

The returned transport packaging must be clean, free of foreign material and sorted according to the different types of packaging. Otherwise, we are entitled to charge the customer for the additional costs incurred in the disposal thereof.

4. Price and payment:

4.1 Our services are invoiced according to the contractually stipulated prices. The prices are calculated for the delivery “ex works” plus the costs of freight, packaging, transport insurance and the respective statutory value-added tax (VAT). Should transport insurance not be desired, this is to be stipulated in writing.

In the event that the invoicing is to occur on the basis of time spent and hourly rates have not been stipulated, the billing rates shall apply that are contained in the price lists used by us at the time the service is performed.

In addition to the prices, the customer is to compensate us separately for the traveling costs, per diem allowances and out-of-pocket expenses incurred in the performance of our services.

4.2 We reserve the right to reasonably alter prices on the grounds of changes in the costs of wages, material and distribution for services that are to be performed four or more months after conclusion of the contract.

4.3 Our invoices are payable without deduction 14 days within receipt thereof. No discount shall be granted. Credits by way of bills of exchange and checks shall be granted subject to the receipt minus the expenses upon validation on the day, on which the proceeds are at our disposal.

4.4 We are authorized to demand installment payments for our services. This shall also apply if the remuneration becomes due upon acceptance of performance. In the event that installment payments are not stipulated in the contract, we are entitled to invoice monthly installments amounting to the time and material spent respective to the state of performance. This shall apply in particular for orders, the processing of which takes longer than three months, for ongoing works on the basis of flat-rate time as well as for incidental costs and expenses.

- 4.5** In the event that the customer is in default with a payment due, we shall be entitled to demand immediate payment of the entire remuneration without regard to whether it is payable and stop performance of our services. Furthermore, we are entitled to demand default interest amounting to 8% over the respective base interest rate (interest rate set by the European Central Bank). We are entitled to claim a higher default damages, provided we demonstrate that these were sustained. The customer is, however, entitled to demonstrate that no or less damages were caused as a result of defaulting on payment.
- 4.6** The customer only has a right to offset counterclaims when these have been determined by final declaratory judgment, are uncontested or have been acknowledged by us. The customer may only exercise a right of retention if the customer's counterclaim is based upon the same contractual relationship.

5. Retention of title:

We reserve title to the goods or objects delivered by us until all of our claims against the customer resulting from the business relationship and also including those claims resulting in the future from contracts concluded simultaneously or later are settled. This shall also apply in the event that individual or all claims were included in an account current and the balance has been drawn and acknowledged.

In the event of attachments or other interferences by third parties, the customer is to notify us without delay in writing. The customer is entitled to resell the goods in the course of normal business, provided that the claims from the resale are pass to us as follows: With immediate effect, the customer assigns to us all claims, including all incidental rights, which accrue against the recipient or third parties from the resale, regardless of whether the retained goods are resold without or after being processed. The customer is also authorized to collect these accounts receivable after such assignment. Our authorization to collect the accounts receivable ourselves shall remain unaffected hereby; we agree, however, to forego collecting the accounts receivable as long as the customer fulfills its payment obligations in an orderly fashion. We may demand that the customer disclose the assigned claims and the corresponding debtors, provide the information necessary for collection, make available the corresponding documentation and inform the debtors of the assignment. In the event that the goods are resold together with goods that do not belong to us, our claim against the recipient shall be deemed to be assigned to the price agreed upon between the us and the customer. Processing and conversion of the goods subject to retention of title shall be deemed performed on behalf of the seller, as *Hersteller* [manufacturer] within the meaning of § 950 BGB without obliging us. The processed goods are deemed to be retained goods within the meaning of these terms and conditions. In the event that the retained goods are

processed together with other objects not belonging to us, we shall receive joint title to the new object in relation of the invoice value of the retained goods to the invoice value of the other goods used at the time of the processing. The joint titles created are deemed to be retained goods within the meaning of these terms and conditions.

If our goods are connected with other moveable objects to create a uniform object and the other object is considered to be the main object, it shall be deemed to be agreed upon that the customer transfers pro rate joint title inasmuch as the main object belongs to the customer. In addition, the same shall apply to the object created by processing or connection as applies to the retained goods.

We agree to release the collateral due us inasmuch as their value exceeds the claims to be secured by more than 20% and inasmuch as these have not yet been settled.

6. Liability for defects:

6.1 Defects in quality

6.1.1 The customer's warranty rights presuppose the orderly fulfillment of the customer's duties of inspection and duties to disclose nonconformities. In the event that the customer claims the existence of defects, the customer is to notify us without delay and in writing, including all necessary documentation, how the defects became known.

6.1.2 The customer is entitled to demand subsequent performance on the grounds of defects that were brought to our attention within due time, whereby we may, at our discretion, remedy the defect or delivery a replacement. Several attempts at subsequent performance are admissible.

6.1.3 In the event of subsequent performance, the customer is obliged to return the defect object to our delivery warehouse without delay. We shall bear the costs of returning the defects goods as well as the costs of shipping the repaired or replacement item.

6.1.4 If the subsequent performance related to a defect for which we are liable irreversibly fails or we culpably fail to meet a reasonable extension of the deadline, the customer shall be entitled to demand reduction of the stipulated remuneration and compensation for expenditures or to rescind the contract. All other claims of the customer against us and our vicarious agents are excluded. This shall only apply to the extent provided for in No. 7, inasmuch as the customer's claims to damages are excluded hereby.

6.2 Defects of title

6.2.1 In the event that the use of delivered goods runs contrary to intellectual property rights or copyrights, we shall provide the customer with the right to continue use or reasonably modify the delivered goods in such a way that intellectual property rights are no longer violated.

If we are unable to fulfill this obligation at economically feasible conditions or within a reasonable period of time, both parties are entitled to rescind the contract.

Furthermore, we shall release the customer from claims of holders of such intellectual property rights determined by final declaratory judgment.

6.2.2 The rights referred to under No. 6.2.1 shall only exist if

- the customer has notified us without delay of asserted violations of the intellectual property rights or copyrights;
- the customer provides a reasonable amount of support in defending against the asserted claims;
- the rights to take all defensive measures, including settlements out of court, remain reserved for us;
- a defect of title is not the result of an instruction by the customer;
- the legal violation was not the result of the customer altering the delivered goods by self-given authority or used the goods in a manner contrary to purpose provided for in the contract.

6.2.3 The customer's right to assert claims on the grounds of defects shall in all cases become time-barred one (1) year after the passage of the risk or acceptance.

7. Liability

7.1 The customer's claims for damages, regardless of their legal basis, in particular also on the basis of torts, extended manufacturer's liability, faulty or lacking consultation, culpa in contrahendo (negligence in the course of contracting), breaches of contract, are excluded subject to the provisions under no. 7.2.

7.2 The exclusion of liability in accordance with no. 7.1 shall not apply

- (1) for the culpable breach of material contractual obligation, the non-performance of

which put at risk the achievement of the contractual purpose;

- (2) in the event of negligence or intent;
- (3) in the event of death and injury to body and health;
- (4) in the event of claims asserted pursuant to §§ 1, 4 of the German Product Liability Law (ProdHaftG);
- (5) in the event that a representation regarding the properties and condition of the performance.

In the cases of nos. (1) to (3), our liability is limited to the compensation for typical and foreseeable damages, inasmuch as our liability not excluded accordingly. In the cases of nos. (1) to (3), our liability is also limited to the respective insured sum, inasmuch as insurance exists for premises and operations liability with a reasonable insured sum for personal injuries, physical loss and pecuniary damages. We are disposed to provide the customer with an opportunity to view the insurance policy.

8. Software:

- 8.1** The title to software produced and delivered by us, including derived programs or parts of programs, and the corresponding documentation, procedures, circuits and constructions, as well as the copyright thereto, including all rights of publication and reproduction, and all other rights shall remain with us. The customer receives a non-exclusive, non-transferable, temporally unlimited right of use on the software the corresponding documentation for the purpose stipulated or presupposed in the contract. The right of use is limited to the use of the software on the computer system implied or specified in the contract. The use of the software on another computer system, in particular multiple uses or use in connection with an alteration or expansion of the computer system by the customer, is only admissible upon our prior consent given in writing.
- 8.2** A separate user license is required for every computer system, on which the software is to be used.
- 8.3** We shall provide the customer with the object code on suitable data media, but not however the source code. The customer is not authorized to back-translate the object code into source code without our prior written consent.

9. Applicable law, place of jurisdiction, place of performance

- 9.1** The law of Germany, excluding the CISG, as applies to inland parties, shall apply to all legal relationships between us and the customer exclusively.
- 9.2** The place of jurisdiction and performance is Stuttgart, Germany.

B. Special terms and conditions for individual services

The following special terms and conditions for individual services shall only apply if a valid contract is concluded for the respective service. They shall have priority inasmuch as they differ from the stipulations provided for by the general terms and conditions for all services (A.).

I. Individual software

1. Requirement specifications:

On the basis of the tender specifications / task description provided by the customer, we shall prepare requirement specifications with the detailed design that is provided to the customer for inspection and is to be signed by the customer signaling approval thereof. Should the signature omitted, the requirement specifications are deemed to be approved if the customer has not objected in writing within a period of two weeks as of the delivery. The requirement specifications apply solely to the type and scope of the services to be performed by us, in particular for the production of the programs. The content of the requirement specifications is not deemed to be a guaranty for the properties and condition of the software or of the system as construed by § 639 BGB, nor an agreement on the properties and conditions as construed by sec. 633 subsec. 2 sentence 1 BGB. Upon our request, the customer is obliged to actively contribute to the preparation and the detailing of the requirement specification as well as in all phases of testing the program.

2. Acceptance:

- 2.1** We shall deliver to the customer a coded form of the program created according to the requirement specification in order to test its functionality. The functionality test shall be carried out with test data prepared by the customer. The customer is obliged to carry out the functionality test within one week of receiving the software.
- 2.2** Upon successful completion of the functionality test, the customer is to declare acceptance

without delay and in writing. The functionality test shall be deemed to have been successful, if the program fulfills all of the significant points of the requirements provided for in the requirement specifications. Insignificant program deviations from the requirement specifications that are determined during the functionality test shall not entitle the customer to refuse acceptance. These insignificant deviations shall be recorded in the written declaration of acceptance as defects.

2.3 In the event that, contrary to 2.2, the customer does not declare acceptance the services performed by us shall be deemed to have been accepted inasmuch as the customer does not specify the reasons for the refusal of the acceptance in writing and including the informative documentation (e.g. data inputs and outputs) within four weeks after the functionality test is carried out.

2. Other:

3.1 The customer is to maintain the newest version and an archive of the documentation provided. The customer is to install the changes to the software as provided by us.

3.2 The customer consents to having personal data as construed by the German Data Protection Act (Datenschutzgesetz) stored and processed by us, inasmuch as this is necessary to carry out the project.

3.3 The customer is aware that mistakes in the software can not be completely excluded.

II. Hardware

CE-mark

The hardware developed or manufactured by us shall only be exported in accordance with the EMC-provisions if it is a terminal device within the meaning of § 1 (1) of the German Act on Electromagnetic Compatibility (EMVG). Our hardware shall be given the CE-mark inasmuch as it has passed the corresponding tests. In the event that we deliver hardware for systems without CE-mark (component or replacement parts), the customer shall bear the sole risk for the conformity and usability of these components. The same shall apply to test devices and examples.

III. Services

1. Type of services:

We shall perform the following services, inasmuch as and to the extent that this is contractually agreed upon: System design, such as analysis of problems specific to the customer or the project, development and planning services, project leadership, organization consulting and application consulting. We are entitled to perform the services at the customer's site or in our own place of business. Third parties may be employed in the performance of said services. As user of the of the computer systems of the customer, the leadership and responsibility for the services to be performed shall remain with the customer. Therefore, we assume to warranty or liability for the result of our services.

2. Calculations, estimates:

Calculations and expenditure estimates are not binding. The remunerations invoiced to the customer shall be based on the final scope of the services performed.

3. Work results:

All written and machine-readable work results created directly for the customer shall belong to the customer subject to the following provisions. Each of the parties to the contact may freely dispose of ideas, conceptions, mathematical calculations, plans, know-how and techniques that relate to the order and are developed together with the customer and us. The customer is only entitled to the mere work result, inasmuch as we have developed these ideas, conceptions, etc. independently of the customer; in this case ideas, conceptions, etc. shall remain exclusively with us. The order shall not hinder us from making developments that are similar or comparable to the work results provided to the customer.

IV. Software support

1. Scope of services:

- 1.1** The customer is entitled to download the newest advertised release for use on the computer system specified in the contract.
- 1.2** To a reasonable degree, the customer may demand telephone support in the event of malfunctions and error messages for the program module specified in the respective software support agreement. This, however, presupposes that the operational personnel of the

ordering party is sufficiently trained.

- 1.3 Out service are performed during normal working hours, unless otherwise stipulated in the software support agreement. Our services shall be performed at our place of business, in exceptional cases and after prior arrangement also at the customer's site. We are entitled to employ subcontractors in the performance of our services.
- 1.4 We shall perform our services with the technical means we deem necessary or practical and which are available to us, including remote control by way of a modem connected to the public telephone system, which is to be kept operational by the customer.

2. Remuneration:

- 2.1 A support fee shall be agreed upon for support services in the software support agreement. This fee is to be paid in twelve monthly installments that are specified in the software support agreement.
- 2.2 We are entitled to alter in writing the fees and remuneration agreed upon in the contract within a period of four calendar months to the end of each month, if the material procurement prices or our wages forming a constituent part of the support costs change. In the event that the customer does not agree hereto, the customer may terminate the support agreement at the completion date specified there within a termination period of two weeks after receipt of the notification of alteration.

3. Term:

Subject to other agreements, the support agreement shall run for two years. The term shall be automatically extended for an additional year inasmuch as the agreement is not terminated by one of the parties in writing with a notice of three months before the contract is to end.