



GENERAL TERMS AND CONDITIONS

**FOR DELIVERIES AND SERVICES OF THE COMPANY
ERGONEERS GMBH
MITTERSTR. 12, D-85077 MANCHING
AS PER: JANUARY 2012**

I. GENERAL CONTRACT PROVISIONS

1. Structure, scope of application

1.1 We have divided the following General Terms and Conditions into four sections:

- I. General Contract Provisions
- II. Specific Provisions for Sales Contracts and Contracts for Work and Services
- III. Specific Provisions for Software Contracts
- IV. Specific Provisions for Consultancy Agreements

The “General Contract Provisions” of this section shall apply to any and all contracts and contractual performance concluded with us. In addition hereto, the content of the “Special Provisions” set forth in the following sections II. – IV. shall apply to the respective contractual items named therein.

1.2 Our contractual performance shall take place exclusively based on these General Terms and Conditions. Any terms and conditions of the Customer shall be hereby explicitly contradicted.

Our General Terms and Conditions shall also apply if we, being aware of deviating terms and conditions of the Customer, execute the contract without reservation. Any general terms and conditions of the Customer deviating herefrom, e.g. in enquiries, orders, offers, order confirmations, order forms or other documents, shall only apply if they are expressly acknowledged by us in writing.

1.3 These General Terms and Conditions shall apply only vis-à-vis entrepreneurs within the meaning of § 310 (1) of the German Civil Code [**BGB – Bürgerliches Gesetzbuch**].



- 1.4 Our General Terms and Conditions shall apply within the scope of continuing business relations to any and all similar future contractual relationships as well even if they are not explicitly agreed upon again.

2. Offer, quotation documents, order

- 2.1 Our offers shall, at all times, be subject to change and non-binding to the extent that no intent to be legally bound results from our written declarations. We shall be entitled to make amendments and/or additions to the offer and interim dispositions with respect to the services offered. The prices named by us are net prices in euros plus the value-added tax legally applicable at the time of invoicing respectively.
- 2.2 We reserve, without limitation, any and all rights of ownership and exploitation as well as all copyrights with respect to any and all illustrations, brochures, plans, drawings, calculations, cost estimates and drafts and other documents – including those in electronic form. They – as well as any information and documents identified as confidential by us - may be made accessible to third parties only with our prior consent.
- 2.3 The Customer shall be bound to any and all orders placed by him – independent of whether such orders are made verbally or in writing – for two weeks as of receipt by us.

3. Confirmation of orders

- 3.1 The contract shall be deemed as concluded upon our written confirmation of the order, however, no later than when we commence execution of the Customer's order without reservation.
- 3.2 Should our order confirmation deviate only marginally from the order of a Customer engaged in commercial activity, the contract shall be deemed to have been concluded in accordance with our order confirmation if the Customer does not object hereto within a time limit of one week calculated from the date of order confirmation.

4. Terms of payment, right of rescission

- 4.1 The price invoiced for our contractual performance shall fall due for payment in full and free of charges as of the date shown on the pertinent invoice issued to the Customer to the extent that we do not agree upon conditions with the Customer which expressly deviate herefrom. We reserve the right to progress billing. Checks shall only be accepted for the sake of fulfillment without the acceptance of any liability for prompt presentation and protest. Payments of the Customer may be offset against other outstanding claims at our discretion.



- 4.2 Should the price invoiced for the contractual performance as agreed upon not be received by us within 14 calendar days as of the date shown on the pertinent invoice issued to the Customer, the Customer shall be in default of payment upon lapse of this time limit without the need for a prior dunning notice to this effect. Time limits for payment shall be deemed as having been complied with if the amount in question is at our disposal within the aforementioned time limit. Any and all deviating payment conditions agreed upon with the Customer shall take precedence. To the extent that we issue separate dunning notices in writing, a fee of €5.00 shall be charged by us for every dunning notice. This shall not entail an obligation on our part to issue separate dunning notices to the Customer.
- 4.3 We shall be entitled to charge interest on arrears for payment claims in the amount of eight percentage points above the respective base rate per annum as minimum compensation in accordance with § 247 of the German Civil Code [**BGB – Bürgerliches Gesetzbuch**]. We reserve the right to furnish evidence relating to the occurrence of further damage, such as borrowing costs which exceed the legally stipulated interest on arrears.
- 4.4 Should the Customer be in default of payment, we shall, at our discretion, be entitled to make any and all outstanding contractual performances based on the business relationship with the Customer conditional on the prior payment of the outstanding invoice amounts or the provision of a security corresponding to the value of the contractual item by the Customer – further rights notwithstanding.
- 4.5 In the event of repeated failure by the Customer to comply with the payment conditions agreed upon, reasonable doubt with respect to the creditworthiness of the Customer, insolvency and/or over-indebtedness on the part of the Customer, cessation of payments on the part of the Customer, or the initiation of insolvency proceedings with respect to his assets, we shall be authorized, via written declaration, to rescind the contract or parts thereof , and/or to terminate any continuing obligations without notice. In the abovementioned events, we additionally reserve the right to make the rendering of any and all contractual performances conditional on payments on account for orders which have not been invoiced by us yet. The Customer shall inform us without undue delay of the occurrence of the afore-mentioned circumstances. In the event of insolvency proceedings by a creditor of the Customer with respect to his assets, the application for such proceedings shall be conclusively substantiated. § 321 of the German Civil Code [**BGB – Bürgerliches Gesetzbuch**] and § 112 of the German Statute on Insolvency [**InsO – Insolvenzordnung**] shall not be affected hereby.



5. Off-setting, right of retention, partial payments

- 5.1 The Customer may offset our claims only with matured counter-claims which are uncontested by us or have become *res judicata*, and/or enforce a right of retention only *visà-vis* such claims. We shall be entitled to avert the enforcement of such right of retention via collateral security- including via surety. Moreover, the Customer may retain payments to us only for reasons which are based on one and the same contractual relationship. Item 13.6 of these General Terms and Conditions shall not be affected hereby.
- 5.2 We reserve the right to demand partial payments from the Customer in accordance with a payment plan to be agreed upon with the Customer in writing. Any partial payments offered by the Customer shall not be accepted without our express written consent. With respect to maturity and the consequences of delayed payment of the partial payments, the provisions hereinbefore, in particular Item 4.1. et seq. of these General Terms and Conditions shall apply *mutatis mutandis*.

6. Time of performance / partial performances

- 6.1 We shall render performance as soon as possible in accordance with the deadlines and/or time limits communicated to the Customer by us. However, these shall only be binding if they – subject to express pertinent indication as such – are agreed upon in writing by us. In addition to the written confirmation, any and all fixed deadlines shall also require the express designation as such to apply. We shall, nonetheless, render performance to the extent possible in compliance with the deadlines and /or time limits.
- 6.2 Compliance with deadlines and/or time limits which are agreed upon to be binding shall, at all times, be subject to the condition that any and all applicable import and export regulations are independently complied with and processed by the Customer, and that the Customer makes payments in due time. We shall reserve the right to rescind this contract if the necessary import and export documentation, particularly documentation pertaining to the United States of America, are not available for reasons for which we are not responsible.
- 6.3 Events of force majeure – in conjunction with the respective primary suppliers as well – such as labor disputes, suspension of operations, operational disruptions, transport hindrances, shortages of raw material, administrative measures and other circumstances independent of the will and influence of the parties shall extend the deadlines and/or time limits for performance in an appropriate manner, however, not less than by the duration of the delay in question in addition to a proportionate recovery phase. Upon the occurrence of the aforementioned events, we shall inform the Customer without undue delay of the non-availability of the contractual performance in question and of the anticipated duration of the delay. Our deadlines and/or time limits for performance shall also be extended in an appropriate manner if the Customer delays and/or fails to render the acts of co-operation



necessary or agreed upon, or makes amendments to the contractual performance after conclusion of the contract. We reserve the right to the defense of non-performance of contract to this extent.

- 6.4 Deadlines and/or time limits shall be deemed as complied with when we make the contractual item ready for dispatch for the Customer and send a pertinent notification to the Customer.
- 6.5 Appropriate partial rendering of performance and/or the advance rendering of performance shall be admissible and may not be rejected by the Customer.

7. Liability for damage

- 7.1 Any and all limitations of liability included in these General Terms and Conditions shall not apply in the event of injury to life, limb or health for which we bear responsibility. These limitations of liability shall also not apply to any claims of the Customer based on product liability and in the absence of a warranted characteristic. Liability for damages caused by intent or in gross negligence shall also not be affected hereby.
- 7.2 Contractual or tortuous liability on our part, on the part of our legal representatives or agents – including their personal liability - shall be excluded in the event of slight negligence to the extent that no essential contractual obligation is affected thereby. In the event of an infringement of cardinal obligations in slight negligence, the liability for material damage and pecuniary loss shall be limited to average damages which, based on the type of performance, are reasonably foreseeable and typically provided for in contracts. This shall also apply to loss of profits and savings not realized. The liability for remote consequential damage shall be excluded. In every case, the liability shall be limited to a maximum of 10% of the net order volume per claim and to 25% of the net order value for all damage incurred within one year of contract. The parties may agree upon additional liability which shall be remunerated separately.
- 7.3 Any and all claims to damages of the Customer which are not excluded shall become statute- barred after one year commencing upon the accrual of the claim.
- 7.4 With respect to claims for compensation of expenses and other liability claims of the Customer, the Items 7.1 to 7.3 hereinbefore shall apply mutatis mutandis.



8. Place of performance, place of jurisdiction

- 8.1 To the extent that no alternative agreement is concluded, our registered offices in D-85077 Manching shall be the place of performance and place of payment.
- 8.2 The place of jurisdiction for any and all disputes arising from this contractual relationship between us and businessmen, legal persons under public law, or special funds under public law shall be Ingolstadt/Danube. We shall, however, be entitled to bring action at every court with jurisdiction over the Customer.

9. Governing law, final provisions, severability clause

- 9.1 The law of the Federal Republic of Germany shall apply to the contractual relationship at hand. The application of the UN Sales Convention shall be excluded. The German version of contract text shall be authoritative. This shall also apply if the Customer is provided with a version of these General Terms and Conditions which has been translated into another language.
- 9.2 Any and all agreements which are concluded between the Customer and us for the purpose of the execution of this contract shall be set down in the written contractual records. Any and all additional declarations or warranties, in particular information pertaining to pricing and performance, shall be deemed to be binding only upon written documentation by us. Declarations and notifications of legal relevance which are to be made by the Customer to us or third parties shall be carried out in writing.
- 9.3 The requirement of the written form as agreed upon between the parties to this contract shall be deemed as having been complied with by, for example, facsimiles or e-mails even if these do not include a separate signature.
- 9.4 We shall be authorized to store the personal data of customers which is necessary for business in our data processing system.
- 9.5 Should a provision of these General Terms and Conditions be or become invalid or ineffective, the effectiveness of the remaining provisions shall not be affected hereby. The parties shall undertake to replace the invalid or ineffective provision with an effective provision which comes closest to its economic intent.



II. SPECIFIC PROVISIONS FOR SALES CONTRACTS AND CONTRACTS FOR WORKS AND SERVICES

10. Prices

- 10.1 Our prices are valid ex works to the extent that no other delivery condition has been explicitly agreed upon. Transport and delivery costs etc. as well as packaging shall be invoiced separately unless a deviating regulation has been expressly confirmed by us in writing in individual cases.
- 10.2 In the event of substantial price increases until the rendering of performance for reasons for which we are not responsible, particularly increases in costs of material, labor and auxiliary materials as well as taxes etc., we reserve the right to adjust the prices accordingly. Should the higher price resulting herefrom exceed the price agreed upon by 5 % or more, the Customer shall be entitled to rescind the contract. This right shall be asserted by the Customer by delivery of the contractual item, however, no later than one month after notification of the price increase.

11. Performance deadlines, transport, packaging

- 11.1 The deadlines and/or time limits for performance shall be deemed as observed if the contractual item is stored in our delivering plant ready for dispatch and transfer by the expiry of such deadline and/or time limit. To the extent that acceptance of the contractual item is necessary, the acceptance date shall – except in the event of legitimate non-acceptance - be decisive, alternatively the notification to the Customer that the contractual item is ready for acceptance.
- 11.2 The transport shall be carried out without insurance, for account and at the risk of the Customer without any liability on our part for destruction, damage, theft etc. This shall also apply to the acceptance of carriage-paid deliveries. Transport insurance may be concluded by us at the expense of the Customer if separate, written instructions to this effect are issued to us by the Customer in due time prior to the execution of the transport. Should damage to or loss of the consignment be ascertained upon arrival of the same, the scope of the damage incurred shall be recorded without undue delay. This report shall be signed by the recipient and the delivering party. The conditions of the insurer shall be decisive for any and all compensation in this regard.
- 11.3 The Customer shall be obliged to ensure that the contractual item can be unloaded properly at the location agreed upon without causing injury to himself or third parties. The Customer shall ensure at his own expense that the means of transport and unloading which are customary or necessary for the transport of the contractual item are able to reach the unloading site without difficulty.



11.4 To the extent that no express alternative agreement has been concluded with the Customer, we shall be authorized to select the mode of packaging and dispatch as well as the dispatch route and the forwarding or transport company.

12. Risk of loss, acceptance, breach of duty by the Customer

12.1 To the extent that no alternative regulation has been agreed upon by the parties, contractual performance shall be rendered *ex works*. The risk of incidental destruction and of incidental deterioration of the contractual item shall devolve upon the Customer as soon as the contractual item is stored in our delivering plant ready for dispatch or transfer. This shall also apply if delivery by us has been agreed upon, in the event of sale by delivery or upon acceptance of carriage-paid deliveries.

12.2 Should acceptance of the contractual item be legally provided for, this shall be decisive for the time of the transfer of risk. Such acceptance shall be carried out without undue delay as per the acceptance date, alternatively without undue delay after our notification that the contractual item is ready for acceptance. The Customer may not refuse acceptance in the event of an insignificant defect. A defect of work performance within the afore-mentioned meaning shall, for example, be immaterial if the usability thereof is possible without serious constraints.

12.3 In the event of breaches of duty for which the Customer is responsible, such as cancellation of orders already confirmed, default of acceptance etc., we shall be entitled to demand lump-sum compensation in lieu of performance in the amount of 15% of the order value as well as reimbursement for any performance already rendered. In this event, the Customer shall bear the onus of proof that no or substantially less damage has been incurred than the lump-sum compensation. We shall, at all times, reserve the right to enforce further statutory rights, in particular claims for higher damages.

13. Liability for defects, statute of limitations

13.1 Merely slight variation of the contractual item from the quality agreed upon or only marginal impairment of its usability shall not substantiate claims for defects. With respect to the quality of the contractual item and/or the scope thereof as well as to the approved operational environment, the respective product description shall, in principle, be decisive in addition to the operating manual – to the extent available. We reserve the right, in particular, to insignificant variations from illustrations, technical drawings, brochures etc. as well as from the data included therein with respect to dimensions, weight etc. – this shall also apply to any and all deliveries which are oriented to a standard sample. This shall apply *mutatis mutandis* to marginal changes to form, design and color. In other respects, the pertinent DIN regulations or other pertinent technical norms shall be deemed as agreed upon.

13.2 The Customer may no longer give notice of any defects on the contractual item existing at the time of the transfer of risk which are discernible upon careful inspection if we are not informed of such



defects in writing without undue delay. The inspection shall, in every case, be carried out prior to installation and/or further processing of the contractual item. No liability for defects shall be assumed with respect to contractual items which are installed and/or processed further regardless of the discernible defects. The Customer shall inform us in writing of any other defects already existing at the time of the transfer of risk without undue delay after the discovery of the same. Any complaints of defects which are not lodged in due time shall lead to the exclusion of the liability for defects. Obligations of the Customer beyond this arising from § 377 of the German Commercial Code [**HGB – Handelsgesetzbuch**] and § 381 (2) of the German Commercial Code [**HGB – Handelsgesetzbuch**] shall not be affected hereby.

- 13.3 As long as the Customer does not grant us a reasonable opportunity to convince ourselves of the actual existence of a defect, the Customer may not claim relief by reason of defectiveness of the contractual item. Upon our request, the Customer shall provide a detailed, written description of the manifestation and the effects of the defect, including in particular reproducible details of the working steps which have lead to the occurrence of the defect.
- 13.4 Legitimate claims for defects for which written notification has been made in due time shall be limited, at our discretion, to subsequent improvement or the delivery and/or manufacture of a new contractual item (subsequent performance). To this end, the Customer shall grant us the necessary time and opportunity – calculated from the time of our written notification -, failing which we shall be released from the liability for any consequences resulting therefrom. We shall carry out the delivery and/or manufacture of a new contractual item in return for the unprocessed, defective contractual item. Any and all replaced contractual items shall become our property.
- 13.5 Should the subsequent performance definitively fail after the lapse of an appropriate time limit granted to us, or should we refuse subsequent performance, the Customer may, at his discretion, demand a reduction of the remuneration or the rescission of the contract. In the event of an insignificant non-conformity of the contractual item with the contract, the Customer shall not be entitled to rescind the contract. Should the Customer choose to rescind the contract after failed subsequent performance due to a defect of quality or title, he shall not be entitled to any additional claims for damages due to the defect. The possibilities of use available to the Customer with respect to the contractual item shall be deducted within the scope of the reversal of the contract. Item 7.1 of these General Terms and Conditions shall not be affected hereby.
- 13.6 The Customer shall be entitled to a right of retention or the right to refuse performance with respect to the remuneration agreed upon only in the event of performance showing an unequivocal, substantial defect, and, in this case, only to the extent that the amount withheld is appropriate in relation to the anticipated costs of remedying the defect. In other, respects, the Customer shall not be entitled to enforce claims and rights due to defects if he has not rendered any due payments and the amount due is in appropriate relation to the value of the performance – in the defective condition.



13.7 The statute of limitations for claims for defects with respect to new contractual items shall be one year as of delivery and/or acceptance. This shall also apply to claims for damages of the Customer due to a defect. §§ 478, 438 (1) no. 2 of the German Civil Code [**BGB - Bürgerliches Gesetzbuch**] as well as Item 7.1 of these General Terms and Conditions shall not be affected hereby. Any and all used goods shall be sold by us to the Customer subject to a comprehensive exclusion of liability for defects. The Customer shall not receive from us independent guarantees within the legal sense.

13.8 The Customer shall be entitled to rights of recourse pursuant to §§ 478, 479 of the German Civil Code [**BGB – Bürgerliches Gesetzbuch**] only to the extent that he has not concluded any agreements with his customer which go beyond the statutory claims for defects at his expense.

14. Reservation of title / security interests

14.1 The contractual item shall remain our property until the fulfillment of any and all claims to which we are entitled arising from the business relationship with the Customer – including, for example, qualified claims or claims arising only in the future based on further contracts. This shall apply mutatis mutandis to items which have been provided by the Customer or third parties and refined by us.

14.2 To the extent that our claims pursuant to Item 14.1 of these General Terms and Conditions are not settled in full, the Customer shall be obliged to safekeep the contractual item in trust for us separately from his property and that of third parties. He shall store and safeguard the contractual item properly and, upon our separate request, label it as our property and /or security, as well as treat it with care in other respects. The Customer shall, in particular, be obliged to insure the contractual item against damage by fire, water and theft at replacement value at his expense, and to assign to us the claims against the insurer and responsible third party upon request.

14.3 In the event of conduct in breach of the contract by the Customer – particularly in the event of default of payment and/or breach of his obligations pursuant to Item 14.2 sentences 2 and 3 and/or Item 14.4 et seq. -, we shall be authorized to demand the surrender of the contractual item and, after fruitless expiry of a grace period set by us, to rescind the contract, and to otherwise sell or dispose of the item in question. In the event of payment in arrears for which the Customer is responsible, the mere assertion of the reservation of title shall not be deemed as rescission of the contract. Any and all sales proceeds – minus appropriate costs of disposal – shall be charged to the liabilities of the Customer. The assertion of further rights to which we are entitled shall not be affected hereby.

14.4 To the extent that the Customer does not conduct himself in a manner contrary to the contract, he shall be entitled to re-sell and/or process the contractual item in the due course of business. As a pre-requisite herefor, the claims resulting from the re-sale of the contractual item shall pass to us. The Customer shall here and now assign to us by way of security any and all claims, in particular



claims to the purchase price and compensation for work, in the amount of the total invoiced amount (including value-added tax) as agreed upon with us together with any and all ancillary rights which he accrues vis-à-vis third parties from the re-sale – without or subsequent to combining, mixing and/or processing – or from the use of the contractual item for the fulfillment of a contract for work and services or a contract for work and materials etc.

The Customer shall, until our revocation hereof, be entitled to collect claims against third parties which originate from the contractual item. Our authorization to collect the claim ourselves shall not be affected hereby. We shall assert the right of revocation only in the event that the Customer breaches the obligations incumbent upon him pursuant to this contract, in particular if he fails to comply with his payment obligations towards us from the proceeds earned, is in default of payment, an application is made for the initiation of insolvency proceedings relating to the assets of the Customer, or a cessation of payments takes place.

- 14.5 The Customer shall inform us without undue delay of any enforcement measures with respect to, damage to or loss of the contractual item, or of other interventions by third parties. Irrespective thereof, he shall inform third parties in advance of the rights existing with respect to the contractual item. To the extent that the third party is not able to reimburse us for the costs of averting impairment to the contractual item, the Customer shall be held liable for the loss incurred.
- 14.6 The Customer shall be obliged, upon request, to provide us with any and all information and documents which are necessary to safeguard our rights, in particular to avert claims by third parties which conflict with the reservation of title agreed upon and/or security interests. To this extent, the Customer shall compensate us for any and all costs of intervention incurred by us. In particular, he shall inform us of the names and addresses of the creditors against whom claims have been assigned to us, and to inform these of such assignment upon our request. The Customer shall, upon our request, be obliged to draw up a document for us concerning the declared assignments.
- 14.7 The processing or transformation of the contractual item by the Customer shall always be carried out for us without this resulting in any claims against us. Should the contractual item be processed or inseparably mixed with other objects which do not belong to us, we shall acquire joint ownership of the new item in the ratio of the objective value of our goods (total invoiced amount including value-added tax) to the other processed and/or mixed objects at the time of the processing and/or mixing. In other respects, the same shall apply to the object resulting from the processing and/or mixing as to the contractual item delivered under reservation.
- 14.8 The reservation of title and/or security interests pursuant to the provisions hereinbefore shall continue to exist in the event that our claims are added to a current account; the reservation shall then pertain to the acknowledged balance.
- 14.9 We shall release the securities arising upon the request of the Customer to the extent that the realizable value of our securities exceeds the claims to be secured by more than 10%; we reserve the right to select the securities to be released.

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III. SPECIFIC PROVISIONS FOR SOFTWARE CONTRACTS

15. License

- 15.1 The Customer shall be granted a non-exclusive license for the software with no restrictions in terms of time. He shall be entitled to deploy the software only on one computer for use by one single user at any given time (single license). The software shall be deemed as deployed when it is stored in the main memory (RAM) or installed in a read-only memory (e.g. hard disk). Any extended use deviating herefrom shall, at all times, be contractually agreed upon with us prior to the commencement thereof. The remuneration shall be based on the scope of the right of use granted to the Customer.
- 15.2 The Customer may transfer the right of use per software to one other user only if the Customer forgoes the use of the software at the same time. Transfer of the program via copying shall not be admissible. The Customer may copy the software only to the extent that this is necessary for use thereof as contractually stipulated. In addition, the creation of back-up copy which may be used exclusively for trouble-shooting purposes and is identified as such shall be permissible. In the event of the transfer of the right of use of the software to third parties, any and all authorized back-up copies created by the Customer shall be destroyed.
- 15.3 Should the software delivered by us be mandatory for the functionality of a specific hardware device, the Customer shall simply receive the right of use with the said hardware device.
- 15.4 In other respects, the mandatory provisions of the German Copyright Act (**§§ 69 a et seq. UrhG – Urhebergesetz**) shall apply in addition with respect to other software licenses.

16. Specific obligations of the Customer

- 16.1 With respect to the installation of the software, which is to be carried out by the Customer as matter of principle, the installation guidelines provided by us shall be exclusively authoritative. It shall be the responsibility of the Customer to provide the system requirements, hardware or other software necessary for the proper execution of the installation. The installation guidelines and any other operating manuals may also be made available to the Customer in electronic form. If commissioned accordingly, we shall carry out the installation for the Customer and issue a separate invoice for any and all expenditure incurred in this conjunction. This shall apply mutatis mutandis to any further support services rendered by us, such as, in particular, application engineering, demonstration of successful installation, introduction, training, consultation services etc.
- 16.2 The Customer shall acknowledge that the software, together with any and all software handbooks, operating manuals etc. provided by us, - including any future versions – are protected by copyright law. The Customer shall ensure that source programs are not made accessible to third parties without our consent. In the absence of an express agreement to the contrary, the delivery of source programs shall not constitute the subject matter of the contract. The Customer shall not



be authorized to edit the software delivered, in particular to decompile the programs. § 69 d of the German Copyright Act [UrhG – Urhebergesetz] shall also apply with respect to interfaces between our software and software not delivered by us. Prior to decompiling, the Customer shall first obtain the necessary information from the provider.

- 16.3 The Customer shall be obliged to inform us without undue delay of any and all imminent unauthorized access to our software within his sphere, and/or if such unauthorized access has already taken place.

17. Liability for defects

- 17.1 The respective program description, which shall be supplemented by the user documentation, shall be decisive for the quality, scope of performance of the software and its approved operational environment.
- 17.2 The Customer shall inform us without undue delay if a third party claims that the software delivered by us infringes upon his property rights. We shall be entitled to, but not obliged to, avert any action relating to the alleged infringement of property rights at our own expense. The Customer shall not be authorized to acknowledge the claims of third parties before he has given us an adequate opportunity to avert the rights of third parties in another manner. We reserve the right to structure the contractual performance, with respect to delivered and paid goods as well, at our own expense, for example via amendments thereto, such that it no longer infringes upon any rights. To the extent that we are unable to remedy the situation with appropriate time and effort, we shall be entitled to withdraw the delivered software subject to the reimbursement of any remuneration rendered by the Customer minus a proportionate compensation for use.
- 17.3 Items 13.2 to 13.8 of these General Terms and Conditions shall apply mutatis mutandis.

18. Reservation of title

We reserve the title to the software delivered by us until full payment of any and all claims from the on-going business relationship. Item 14 of these General Terms and Conditions shall apply mutatis mutandis.



IV. SPECIFIC PROVISIONS FOR CONSULTANCY AGREEMENTS

19. Subject matter of contract

- 19.1 The agreements concluded with the customers as well as the provisions stipulated hereinafter shall be authoritative with respect to the rendering of our services. The responsibility for the project and its success shall lie with the Customer. The service shall be rendered by us in accordance with the principles of proper professional practice.
- 19.2 Subject to an alternative express agreement, our performance shall be deemed to have been rendered when the analyses necessary within the framework of the consultancy agreement and the conclusions and/or recommendations drawn therefrom by us have been elucidated to the Customer. Depending on the agreement concluded, our service may comprise a single activity or be rendered over an indefinite period of time. In this regard, performance rendered in the form of a single activity may also be divided into separate chronological phases.
- 19.3 To the extent that a tangible work result is to be expressly agreed upon in writing as the subject matter of a consultancy agreement, the provisions contained in Section II. of these General Terms and Conditions shall apply mutatis mutandis.

20. Modalities of service

- 20.1 To the extent that no other agreement to the contrary has been concluded, we shall independently determine the time and location of performance as well as the manner in which such performance shall be rendered.
- 20.2 The Customer shall not have the authority to issue instructions to employees of our company who have been entrusted at our discretion with the execution of the activity.

21. Obligation to provide assistance

- 21.1 With respect to the fulfillment of our contractual obligations, the Customer shall assist us to the best of his abilities and create any and all pre-requisites necessary for the proper performance of the contract. In particular, the Customer shall ensure that any and all documents necessary for the rendering of the service are presented to us in full and in due time at no extra charge.
- 21.2 The Customer shall, upon separate request by us, confirm in writing the accuracy and completeness of the documents made available by him as well as of the information and verbal statements provided by him.



22. Rights of use

The Customer shall be granted the non-exclusive and non-transferable right to use the results of our activities for his own purposes – subject to compliance with the purpose of use as contractually stipulated. This shall, in particular, apply to written expositions which have been rendered in writing and handed over to the Customer by us within the framework of the consultancy agreement. Any and all further rights of use shall remain with us.

23. Period of contract / termination

- 23.1 In the event that the agreement is concluded for an indefinite period of time, it may be duly terminated by either party with a notice period of two weeks to the end of the month. The right of the parties to terminate the agreement without notice for good cause shall not be affected hereby.
- 23.2 Termination of the contract shall be made in writing to be effective.

24. Remuneration

- 24.1 The remuneration for our services shall take place on the basis of the hours worked by us with due regard to the hourly rate communicated to the Customer or which is customary to the sector. The Customer shall undertake to check the evidence presented to him as documentation of the time worked by our employees, e.g. time-sheets, and to confirm the correctness thereof by counter-signing these. The records of the time worked which are presented to the Customer shall be deemed as approved if the Customer does not lodge a written objection thereto including any and all relevant details within three weeks of the receipt of such records. The agreement on a lump-sum remuneration shall require its express designation as such.
- 24.2 To the extent that a separate, express agreement on a lump-sum remuneration is concluded, we shall be entitled to request an adequate increase of the remuneration if it is determined after conclusion of the contract that, due to a circumstance within the sphere of risk of the Customer, the rendering of our services is possible only with a substantially higher financial expenditure. In the event that a settlement on the adjustment of the remuneration cannot be reached with the Customer, we shall be entitled to terminate the contract for good cause without observing a notice period. Item 24.3 of this agreement shall then apply mutatis mutandis.
- 24.3 In the event of a breach of duty on the part of the Customer such as the cancellation of orders which have already been confirmed, or causing us to terminate the contract without notice etc., we shall be authorized to charge the Customer a lump-sum compensation in the amount of a maximum of 15% of the order value, not less than €500.00 plus the legally stipulated value-added tax. In this event, the Customer shall bear the onus of proof that no or substantially less damage has been incurred than the lump-sum compensation. We shall reserve the right to enforce further statutory rights, in particular claims for higher damages. Any efforts rendered on our part until the time of



the breach of duty by the Customer shall be charged to the Customer based on the remuneration agreement concluded.

- 24.4 Any services, goods etc. for which we have commissioned third parties for the purpose of fulfilling this contract as agreed upon shall be invoiced to the Customer separately. In addition, the Customer shall reimburse us for any and all travel costs and allowances as well as for other expenditure in an adequate amount, not less than the applicable flat-rates for tax purposes. Any time spent travelling in this connection shall be deemed work time.

25. Impairment of performance

- 25.1 To the extent that we may not be held responsible for the rendering of services which is not pursuant to the contract, we shall render such performance within an appropriate period at no additional costs for the Customer. This shall not apply if such rendering of services is possible only with an unreasonable amount of effort.
- 25.2 The Customer shall be obliged to lodge a written complaint with respect to an impairment of performance without undue delay, however, no later than two weeks after gaining knowledge thereof. Should the complaint not be lodged in due time, we shall be released from our obligation pursuant to Item 25.1 hereinbefore.
- 25.3 Item 7 of these General Terms and Conditions shall apply mutatis mutandis to any further claims to damages.

26. Duty of confidentiality / non-competition clause

- 26.1 We shall ensure any and all information which comes to our knowledge in connection with the execution of this consultancy agreement is treated with confidentiality. The communication of information to persons who are also obliged to observe confidentiality, in particular to sub-contractors, shall be permitted.
- 26.2 The Customer undertakes, for the period of this contract, not to use any knowledge and skills acquired in conjunction therewith for the service of one of our competitor companies, or to found such a company.