

General Terms and Conditions **Last updated: November 2012**

1. General – Scope

- 1.1 The following General Terms and Conditions apply exclusively to all supplies and services provided by us, including in those cases in which we do not make specific reference to them.
- 1.2 Our General Terms and Conditions only apply to business enterprises, legal persons under public law and government owned funds under public law within the meaning of section 310(1) of the German Civil Code (BGB).
- 1.3 The application of these General Terms and Conditions can only be excluded, in whole or part, if agreed in writing in connection with specific transactions.
- 1.4 General terms and conditions of the customer which deviate from these General Terms and Conditions shall not apply to our supplies and services, even in those cases in which such general terms and conditions have not been contradicted by us in specific instances. We hereby reject application of all such deviating general terms and conditions.
- 1.5 Our General Terms and Conditions shall also apply to all future transactions with the customer.

2. Offer – Offer documents – Prices – Shipment

- 2.1 Our offers shall not be binding. A contractual relationship with the customer is only created after we have confirmed an order in writing or shipment has been made. This also applies to changes or additions to contracts.
- 2.2 We retain title and copyright to diagrams, drawings, calculations and all other documents. This shall also apply in particular to written documents which are designated "confidential". The customer shall only transfer such documents to third parties with our explicit written consent.
- 2.3 All prices are quoted as "net" prices; the applicable statutory value added tax will be stated separately in all invoices.
- 2.4 Prices apply ex-works and do not include the costs of packaging, shipment, insurance, installation or instruction on use.
- 2.5 We shall only be able to demand a binding statement of acceptance for call forward orders for which a term and acceptance date have not been agreed three months following confirmation of order at the latest. If the customer fails to meet its obligation to accept within three weeks, we shall be entitled to stipulate a final two-week period of grace and, if such period of grace expires without acceptance being made, to withdraw from the contract and to demand compensation to the extent permitted by law.
- 2.6 Shipment is made at the risk of the customer. Mode of shipment and route will be chosen at the supplier's discretion unless the customer expresses specific requirements for which the additional costs shall be borne by the customer.

Wir sind zertifiziert nach: DIN EN ISO 14001, DIN EN ISO / IEC 27001, DIN EN ISO 9241 und DIN EN ISO 9001

Geschäftsführende Gesellschafter: Sabine Dörr, Michael Gruber · HRB-Nr. 351776 Stuttgart · USt.-Id.Nr. DE 146 481 390
Kreissparkasse Reutlingen · BLZ 640 500 00 · Kto. 59 604 · IBAN DE30 6405 0000 0000 059604 · BIC SOLADES1REU
Volksbank Reutlingen · BLZ 640 901 00 · Kto. 138 006 008 · IBAN DE70 6409 0100 0138 0060 08 · BIC VBRTDE6R
Commerzbank Reutlingen · BLZ 640 400 33 · Kto. 421 758 400 · IBAN DE71 6404 0033 0421 7584 00 · BIC COBADEFFXXX
Allen Angeboten, Auftragsbestätigungen und Rechnungen liegen unsere Allgemeinen Geschäftsbedingungen zugrunde.



3. Delivery

- 3.1 The scope, type and timing of delivery are subject to our confirmation of order.
- 3.2 The period of delivery specified by us shall only begin to run subsequent to clarification of all technical queries.
- 3.3 The period of delivery shall be deemed to have been complied with if the delivery item has been shipped or collected within the specified period or if readiness for delivery has been notified if delivery or collection has, for no fault of our own, not yet taken place.
- 3.4 If performance is delayed beyond the point in time assured by us, we shall be granted a reasonable period of grace in writing. Upon expiry of this period of grace, the customer shall be entitled to declare written withdrawal from the contract if the delivery item has not been shipped or readiness for shipment has not been notified by the time the period of grace expires.
- 3.5 Events for which we bear no responsibility and which cast doubt on the smooth performance of the order, including but not limited to force majeure, industrial disputes, delays in delivery by our own suppliers or operational disruptions, shall entitle us to withdraw from the contract in whole or part or to delay delivery without the customer thereby acquiring any claims for compensation. The customer shall be entitled to demand that we issue a written declaration within a period of two weeks in which we state whether we intend to withdraw from the contract or to fulfil the contract within a reasonable period of time.
- 3.6 Partial deliveries and performance shall be permitted, provided that they are compatible with the reasonable interests of the customer.
- 3.7 Delivery obligations and periods of delivery shall be suspended for as long as the customer fails to meet its acceptance or other obligations, including but not limited to substantial payment obligations, without thereby affecting our rights arising from delay on the part of the purchaser.

4. Customer's duties

- 4.1 The customer must supply us with the documentation and information which we require in order to provide the due supplies and services, including but not limited to existing plant, equipment, programs and program components to which the supplies and services due from us relate or with which the supplies and services due from us will work together.
- 4.2 If performance is made at the customer's place of business, the customer must grant us full and comprehensive access to those areas in which the work is to be performed. The customer shall also ensure that sufficient qualified and trained personnel - and to the extent necessary - test data material and workstations, as requested by us, are made available at no charge for installation and, where applicable, programming until the order has been performed in full. We undertake to treat all information relating to the customer's operations with confidentiality.
- 4.3 If the customer fails to co-operate as stated in 4.1 and in 4.2 in good time or in full, and if this consequently leads to delays and/or additional outlay, we shall be entitled, without prejudice to any further legal rights, to demand that changes be made to the schedule and prices.
- 4.4 If the customer fails to cooperate as stated, despite a reasonable period of time for such cooperation being set by us, we shall be entitled to terminate the contract with immediate effect, to demand payment for actual work completed as well, as compensation for any expenditure not included in such payments and, where fault lies with the customer, to demand damages for non-performance.

5. Terms of payment, delayed payment, offsetting, assignment

- 5.1 Payment of prices, remuneration and licence fees shall be subject to the terms in our confirmation of order. If, in exceptional cases, no explicit agreement has been made in this respect, the prices, remuneration and licence fees which are payable are stated in the current price list of tisoware Gesellschaft für Zeitwirtschaft mbH.
- 5.2 Unless stated otherwise in the confirmation of order, payments shall be made within 30 days of the invoice date at no discount.
- 5.3 Prompt payment discounts are not granted. Exceptions are only possible if agreed in writing.
- 5.4 The date of performance for all forms of payment shall be the day on which we are able to dispose of the applicable amount.
- 5.5 If payments are deferred, or if the customer defaults on prompt payment of its obligations, the customer shall pay interest of 8% above the base rate at that time from the moment the applicable agreement begins or the customer defaults. We reserve the right to claim further damages for delay.
- 5.6 The customer shall only be entitled to exercise the right to set off subject to section 354a of the German Commercial Code (HGB) if the customer's counterclaims are recognised by non-appealable declaratory judgement, are undisputed or have been recognised by us. This also applies analogously to the customer's right to refuse performance and rights of retention, although the customer may only assert such rights if they arise from the same contractual relationship.
- 5.7 In an ongoing business relationship, we shall be entitled to demand immediate settlement of all outstanding receivables if the customer should default on not inconsiderable amounts, and such default persists over a longer period of time, or if we should become aware of circumstances which provide reasonable grounds for believing that payments are at risk and that, in the latter case, suitable additional collateral is not provided on request or, if insolvency proceedings are instituted against the customer's assets or the institution of such proceedings is rejected for lack of assets, or the customer goes into liquidation.

We shall also be entitled to make the performance of outstanding deliveries contingent on advance payment or provision of collateral, or after setting a reasonable period of grace with a notice of refusal for the settlement of all due receivables to withdraw from all contracts or claims damages for non-performance. We shall also be entitled to prohibit resale and processing of the delivered goods and to demand their return at the customer's cost. The customer herewith authorises us to enter the customer's premises and to retrieve the delivered goods in such cases.

6. Software licence - Rights of use

- 6.1 We retain all copyrights, including but not limited to those within the meaning of sections 69a to 69g of the German Copyright Act (UrhG), to software supplied by us, including subsequent updates.
- 6.2 The customer shall receive a time unlimited - in the case of demo or test installations, limited to one month - non-exclusive and non-transferable right to use the same for their own purposes within the contractually agreed scope. Software need only be provided in object code.
- 6.3 The right of use shall include but not be limited to the loading, display, running, transfer and storage of programmes, including any copies which may be required for backup purposes.

- 6.4 The rights of use granted to the licensee/customer are subject to the condition precedent of full payment of the agreed licence fee.
- 6.5 Transfer of the rights of use as granted to third parties in exceptional cases, shall be subject to our prior written consent.
- 6.6 Trademark and copyright notices to and in software may not be removed and must be retained in and on permitted copies in particular.

7. Software modifications and development

- 7.1 Any software modifications or development work shall be subject to the written specifications acknowledged by both parties to form part of the contract. Any additions or modifications shall only be valid if made under a written agreement which also covers the financial implications of any such modifications or additions.
- 7.2 At the request of the customer we shall demonstrate, using defined tests, the existence of the application assumed in the contract and the key program functions.
- 7.3 After successfully performing functional tests, the customer shall provide written confirmation that the supplies and services comply with contractual requirements. Any smaller defects shall be recorded in the declaration in writing. Submission of such declaration shall not be refused on the grounds of insubstantial defects.
- 7.4 We shall be entitled to set a period of 4 weeks within which the customer must submit the declaration confirming provision of supplies and services which comply with contractual requirements (functionality) upon expiry of which the declaration shall be deemed to have been made, unless the customer has legitimately and in advance asserted in writing that the delivery does not comply with contractual requirements.
- 7.5 Continuous use of the software shall have the same effect as the submission of a declaration of functionality.
- 7.6 If deviations from the description of services in the specifications or defective performance are determined by the customer during the tests, we shall rectify such defects within a reasonable period of time, either by remedying such defects themselves or by making substitute delivery of fully functional software.
- 7.7 If the first attempt at subsequent improvement fails, the customer shall be entitled to set us a period within which the defect must be rectified.

8. Complaints and notifications of defects

- 8.1 Complaints relating to incomplete or incorrect delivery or notifications of defects concerning recognisable defects shall be notified to us in writing without delay, but no later than 2 weeks following delivery. Other defects shall be notified in writing without delay, no later, however, than within two weeks of their discovery. Timely dispatch of such notification shall be sufficient for observation of the deadline. If complaints or notifications of defects are not made in good time, the relevant claims for defects shall be excluded.
- 8.2 A defect concerning a part of the delivered good shall not justify an objection to the entire delivery, unless the partial delivery is of no interest for the customer.
- 8.3 In the event of transport damage, the customer shall procure an establishment of damage from the railways or the post office or such evidence from the carrier, forwarding or shipping agent.

9. Claims for defects

- 9.1 If the customer justifiably claims that the delivery is defective, we shall make subsequent performance within a reasonable period of time. Subsequent performance may, at our discretion, take the form of the remedying of such defects or substitute delivery whereby we shall be entitled to alternate between the two every time we make renewed subsequent performance.
- 9.2 Defects may also be remedied by telephone, in writing or by providing instructions electronically to the extent that this may be considered reasonable for the customer.
- 9.3 The necessary costs of subsequent performance shall be borne by us. Any additional costs resulting from the fact that the customer relocates the goods to a place other than the place of performance shall be borne by the customer.
- 9.4 The customer shall only be entitled to withdraw from the contract or to reduce the price if subsequent performance should fail, or if we fail to remedy the defect within a reasonable period of grace set for subsequent performance in writing by the customer. Subsequent performance shall only be deemed to have failed after a second attempt has been made without success to the extent that we insist upon making such second attempt.
- 9.5 We disclaim liability for all defects or damages arising from improper changes made or maintenance work performed by the customer or a third party.
- 9.6 Claims for defects shall become statute barred within 12 months of the passage of risk. If the defects concern supplies which, in accordance with their usual purpose, have been used in and have caused the defective nature of building work, defects in such supplies shall only become statute barred after two years subsequent to the passage of risk.
- 9.7 In the case of essential purchased components, our liability to third parties as well as for the type, extent and quality of their services is excluded. The customer shall first bring a claim against the third party before turning to us. If supplies and services provided by third parties should cause damage to the customer, we shall surrender any claims we may have against the third party to the customer.
- 9.8 The customer is aware that, despite taking the greatest possible care, it is not possible to develop software in such a way that it will operate without error in all applications and constellations. We provide up-to-date specifications for all the software offered by us; these specifications describe the designated use of the programme. Any claims held by the customer for not insignificant defects shall therefore ordinarily be regarded as already having been met if the customer is informed about a reasonable method of avoiding errors or of working around such errors. If a software error cannot be rectified in this way and requires a program correction, the claim for defects shall be limited to the provision of complementary software, where applicable by download with installation instructions. It is the responsibility of the customer to download and install such software. Furthermore, the stipulations of sections 9.1 to 9.7 shall apply mutatis mutandis.

10. Limitation of liability

- 10.1 We shall bear statutory liability for intentional acts and gross negligence, claims asserted under the Product Liability Act (Produkthaftungsgesetz) and injury to life, limb or health.
- 10.2 We disclaim liability in cases of simple negligence not involving breach of specific contractual terms ("material obligations") or default in performance or impossibility.

- 10.3 In cases of simple negligence and breach of specific contractual terms, our liability shall be limited to compensation for the foreseeable damage which is intrinsic to the contract not exceeding a maximum of €250,000. The same shall apply to liability for initial inability, liability for lost profits or claims arising from guarantees issued.
- 10.4 To the extent that our liability for damages or compensation is excluded or limited, this shall also apply to the personal liability of our employees, representatives and agents in performance.
- 10.5 The customer is aware of its duty to minimise any damages.
- 10.6 We shall only be liable for the restoration of data if the customer has created data backups with the requisite frequency and care, at least once a day, and if the backed up data can be used to restore the original data. In such cases our liability shall be limited to the cost of restoring unavailable data.
- 10.7 Claims to reimbursement of costs shall be subject to the provisions of this section 10.

11. Reservation of title

- 11.1 We shall retain title to all goods supplied until such time as all main and accessory claims, including but not limited to balance claims, arising from our ongoing business relationship with the customer have been settled.
- 11.2 The customer may, until notified otherwise, sell the goods subject to reservation of title in the ordinary course of its business. The customer shall, however, herewith assign to us all claims arising from the resale of such goods regardless of whether the goods subject to reservation of title have been processed or not prior to their resale. Receivables shall function to the same extent as security for the goods subject to reservation of title. We hereby accept such assignment.
- 11.3 The customer shall be entitled to collect the receivables arising from the resale of goods subject to revocation which may be issued by us at any time. Our power to collect the receivables ourselves shall remain unaffected. We do, however, undertake not to collect the receivables ourselves as long as the customer continues to meet its payment obligations, does not default on payment and, in particular, no application is made for the institution of insolvency proceedings or suspension of payments. However, if this is the case, we shall be entitled to demand that the customer disclose the assigned receivables and the persons by whom they are owed, provide all the information required for collection purposes, surrender the associated documents and notify the debtors (third parties) of the assignment.
- 11.4 The customer may not pledge, assign by way of security or otherwise assign the claims arising from the resale of the goods.
- 11.5 The customer shall, until notified otherwise, be entitled to blend and mix the goods subject to reservation of title in the ordinary course of its business. In such cases we shall hold co-title to the new object based on the ratio of the invoice value of the goods subject to reservation to the invoice value of the other goods. If blending, and mixing leads to the loss of our title, the customer shall herewith transfer to us its property rights of equal scope to the new object. We hereby accept such assignment. The customer shall store the exclusive or jointly-held property on our behalf.
- 11.6 If we become aware of any infringement by the customer of the provisions stated above, we shall be entitled to revoke the customer's rights of disposal, collection and processing with immediate effect. Upon receipt of the revocation, the customer's right to hold the goods subject to reservation title shall also cease.

- 11.7 The customer shall notify us in writing immediately and shall provide attachment records or other documents if our property and receivables are seized or interfered with in any other way by third parties and shall do all in its power to safeguard our rights. If the third party is not able to reimburse to us the court or out-of-court costs of an action brought under section 771 of the German Code of Civil Procedure (ZPO), the customer shall be liable for any losses we may incur.
- 11.8 If authorisation is revoked, we shall be entitled to enter the customer's business premises for the purpose of removing, separating or marking the goods subject to reservation of title.
- 11.9 Our reservation of title is limited to the extent that upon payment of all of our receivables from the customer, title to the goods subject to reservation of title shall pass to the customer and the receivables assigned by the customer shall thereafter be held by the customer. If the value of the existing security exceeds the value of the secured receivables by more than 20%, we shall be obliged at the demand of the customer to release collateral security at our discretion.

12. Miscellaneous provisions

- 12.1 The legal relationships between ourselves and our customers are subject exclusively to German law. The application of the United Nations Convention on Contracts for the International Sales of Goods is excluded.
- 12.2 Unless otherwise specified in the confirmation of order, our place of business shall be the place of performance.
- 12.3 The exclusive legal venue for both parties to the contract as regards all rights and obligations arising from contracts made with us is Reutlingen. We shall, however, be entitled to bring an action before the court with jurisdiction for the customer's domicile.
- 12.4 If one or several provisions of these General Terms and Conditions be or become null and void, this shall not affect the validity of the remaining provisions. Provisions which are null and void shall be reinterpreted in such a way as to enable the legal or commercial purpose to be achieved to the extent that this is possible. The parties to the contract shall replace any provisions which are null and void with legally effective provisions as soon as possible.
- 12.5 The customer's data shall be stored by us in electronic form to the extent required by the purpose of the contractual relationship.
- 12.6 Any additions or modifications to these General Terms and Conditions shall only be valid if made in writing. The same applies to any waiver of this requirement for written form.