

1.0 Applicability

- 1.1 All contracts and agreements relating to our provision of goods and services are subject to the following conditions. They are recognised by the Client at the time of placing the order or when the contract is signed, not later than the acceptance of the first delivery of goods or services and they apply throughout the duration of the commercial relationship. Any other conditions are invalid even if we do not expressly refute them to you; other conditions are only valid if we have recognised them specifically in writing. Our Conditions of Sale apply also to future contracts with the Client. We do however reserve the right to change these conditions.
- 1.2 The following Conditions of Sale apply exclusively to businesses as defined in § 14 BGB (German Civil Code).
- 1.3 All agreements arrived at by ourselves and the Client for the purpose of performing a concluded contract shall be recorded in writing in the said contract. Verbal agreements with any of our employees who do not have legal powers of representation either before or at the time of conclusion of the agreement are not valid except with our written confirmation. After the contract has been concluded any verbal changes or extensions shall be confirmed in writing.

2.0 Quotations, contract conclusion, contract contents

- 2.1 Our quotations are subject to change without notice. A contract only exists when we confirm it in writing. If we do not confirm the contract in writing it shall come into effect at the latest when delivery is executed and in this case the delivery note shall be deemed confirmation of the contract. Our written confirmation of contract applies strictly to the type and scope of performance.
- 2.2 All content in our printed materials, catalogues and pricelists concerning weights, prices, dimensions and other technical specifications are only for the purposes of description and identification and should not be regarded as definitive. Industry standard deviations are permissible except in cases where there is an agreement to the contrary and provided this does not affect the use defined in the contract, normal use or the quality. We reserve the right to make changes which are normal in the industry or which are unavoidable, in particular through technical advances or batch changes from our suppliers inasmuch as these changes are not unreasonable from a client perspective.
- 2.3 If during the performance of the contract differences of opinion arise between the parties to the contract on matters such as the content of IT technical terms and symbols, quality requirements, format demands etc. then adherence to the EN European Standards valid at the time of the conclusion of the contract shall be taken as agreed. If an EN standard changes after contract conclusion but before completion of contract performance, we shall take account of the provisions of the new standard provided it is reasonable under the circumstances.
- 2.4 Inasmuch as there is nothing agreed to the contrary the sale and supply of hardware and/or software is not dependent on the installation of these products by ourselves or third parties. This applies both to developing standard software to meet the needs of the client and also to the creation of bespoke software for the client.

3.0 Prices and Conditions of Payment

- 3.1 Our prices are quoted in Euros (EUR) and are net. Any charges for transport and packing are charged separately. The prices are subject to VAT at the statutory rate. Changes in the statutory rate of VAT will only be taken into account with regard to the Client if a period of longer than 4 months has expired between the conclusion of the contract and the agreed date of delivery or performance.
- 3.2 We calculate the prices agreed at the conclusion of the contract on the basis of cost factors prevailing at the time. If between the conclusion of the contract and the agreed date for delivery/performance these cost factors including materials, salaries, energy, outgoings, freight etc change, we shall be entitled to update the price accordingly, provided there is a period of at least 4 months between contract conclusion and the agreed date for delivery/performance.
- 3.3 Our installation and maintenance work is charged by time unless an inclusive charge has been agreed specifically. Invoicing shall at our discretion be monthly, quarterly or at the end of the contractual performance. If requested by us so to do, the Client shall make appropriate advance payments. If the contractual products or performance are inadequate sentences 2 and 3 shall not apply before the contractual products or performance have been accepted.
- 3.4 The Client shall certify the time and performance of our installation and maintenance staff on the template supplied. The necessary travel time and any waiting time shall be included in the working time.
- 3.5 The travel costs of the installation and maintenance staff and in particular costs of travel and accommodation and additional costs for subsistence shall be charged to the Client.
- 3.6 Our invoices are due for payment net within 30 days of the invoice date or within 8 days with 2% discount. The date of receipt of payment shall be defined as the day on which we have received the sum or it has been credited to our bank account. Bills of exchange and cheques only count when payment has been honoured. Payment by bill of exchange is acceptable only if agreed in advance. Bill of exchange costs and discounts are the responsibility of the Client and shall be paid immediately in cash. The risks involved in the payment route shall be the responsibility of the Client.
- 3.7 The Client shall be entitled to offset or retain payments only we do not dispute their claim or if it has been legally established. The offsetting of Client's counterclaims which we have disputed or which are not legally established is not permissible.

4.0 Late payment, deferred payment, deterioration in financial position

- 4.1 If the Client is late making payment we shall be entitled to charge interest at 8% above base rate for the duration of the delayed payment. This shall not limit our right to claim for consequential damages.
- 4.2 In case of delayed payment we shall be entitled to charge interest at 4% above base rate.
- 4.3 If the Client is late in making a payment or if there are grounds for believing that the Client will become incapable of paying then we can stop work on current jobs and demand the immediate payment in advance of all payments not yet due including bills of exchange and also sums overdue or we can demand appropriate securities. If the Client does not meet our demand for payment in advance or for securities we shall be entitled to withdraw from the contract or contracts and to charge the Client for the costs arising to that point and also lost profits.
- 5.0 Leadtime
- 5.1 The specially to be agreed lead time begins when the contract is concluded but not until the Client has provided all necessary documentation, authorisations, clearances etc and not until any agreed advance payment has been received. Our observing the time for delivery or performance is in all cases dependent on the Client having fulfilled their contractual duties.
- 5.2 The delivery date shall be deemed honoured if on or by the delivery date the contrac-

tual goods have left our works or they have been announced ready for despatch. Requests for changes or additions shall extend the delivery date appropriately. The same shall apply in the event of unforeseeable circumstances which are not our responsibility, such as force majeure, industrial disputes, strikes, lock-outs, late delivery of supplies of essential raw materials, materials or components. Equally the same shall apply if our subcontractors find themselves in similar unforeseeable circumstances.

6.0 Request for Installation and Maintenance, time for performance

- 6.1 Installation and maintenance should be requested not later than 10 days before the start of work.
- 6.2 All temporary delays to our performance of the contract caused by force majeure shall also free us for the duration of such delay from the obligation to install and maintain, especially sending staff at the right time and in the right numbers. The same shall apply in the case of other delays to our performance which are not our responsibility such as fire, flood, industrial dispute measures or measures taken by the authorities.
- 6.3 The deadline shall be deemed to have been met if by that date the installation or maintenance is ready for acceptance by the Client or in the case of a contractually foreseen test, ready for the test. Fig. 5.1 applies accordingly.

7.0 Delivery, dispatch, transfer of risk and insurance

- 7.1 We deliver ex-works, not free, and costs of delivery are the responsibility of the Client. Packing is charged at cost. If the Client has not given appropriate instructions we shall be entitled but not legally bound to insure the delivery against damage in transit and loss in his name taking into account our costs so incurred. Part deliveries are permissible to a reasonable degree.
- 7.2 Transport of the goods is at the risk of the Client. The danger of accidental loss transfers to the Client at the latest on despatch of the goods even if we have undertaken other performances e.g. transport costs or installation. This also applies to part deliveries.
- 7.3 If despatch is delayed by circumstances which are the fault of the Client the risk transfers to the Client on day when readiness to despatch was communicated to the Client.
- 8.0 Acceptance in the case of installation and maintenance
- 8.1 If the subject of our contractual performance is installation or maintenance then acceptance follows provision of the contractually agreed performance. In the absence of any agreement to the contrary our installation and maintenance work is independent of any obligation to transfer or hand over hardware or software.
- 8.2 After software installation we demonstrate, if this is contractually agreed, the guaranteed characteristics and the main program functions in accordance with the agreed specifications by means of appropriate acceptance tests.
- 8.3 The client is obliged to accept the installation and maintenance work as soon as completion is shown and the acceptance tests in 8.2 have been carried out successfully. Acceptance shall be confirmed and documented in an acceptance report to be signed by both parties.
- 8.4 Acceptance shall not be declined for minor faults. We can set a fair deadline for submitting the declaration of acceptance after which our performance shall be deemed to have been accepted.
- 9.0 Delay in acceptance
If the Client does not accept the contractual goods or services by the deadline, we shall be entitled to charge 10% of the agreed price plus VAT as compensation for any losses. The Client shall be entitled to prove that we have suffered losses on a smaller scale or no losses at all. We retain the right to claim higher losses if incurred.

10.0 Reservation of title, assignment

- 10.1 We retain title of all goods supplied by us until all claims against the Client arising from our contractual relationship, including challenged claims and subsidiary claims, have been paid and any bills of exchange and cheques received in payment have been honoured. This applies also to future claims.
- 10.2 Acquisition of ownership on the part of the Client to goods subject to reservation of ownership is excluded if the goods are processed into a new product as defined in § 950 BGB (German Civil Code). If there is a connection or mixing with other goods which do not belong to the Client then we shall be co-owners in the proportion of the invoiced value of our goods relative to the other goods at the time of processing, connecting or mixing.
- 10.3 The client may only dispose of our goods subject to reservation of ownership through the usual commercial channels and only provided there are no late payment issues. The Client shall not be entitled to dispose of the goods subject to reservation of ownership in any other way, in particular transfer of ownership by way of security or assignment. Charges by the Client for products and labour arising from the onselling of our goods subject to reservation of ownership shall be allocated in advance to us to the extent of our invoiced totals up to the point where all outstanding debts have been paid to us. The Client is irrevocably entitled to collect these receivables. The Client undertakes to communicate to us on demand the names of third party debtors and the amounts owing, and all other information and documentation so that we are in a position to collect such assigned debts.
- 10.4 We undertake to release securities to which we are entitled at the request of the Client inasmuch as the realisable value of such securities exceeds the secured debts by more than 10%.
- 10.5 We are entitled to retrieve the supplied goods in case of delayed payment, threat of cessation of payments, insufficient information relating to an incapacity to pay or the financial situation of the Client, if there are distrains or bills are noted or if there is an application for the opening of insolvency proceedings. The Client undertakes to make restitution. The Client shall be responsible for all costs arising from the retrieval and disposal of the goods. The disposal costs shall be deemed to be 10% of the normal selling price without obligation to provide evidence. These costs may be set higher or lower if we can prove higher ones or the Client lower ones. In case of late payment or payment difficulties through a significant worsening of the Client's financial situation we also entitled to cancel with immediate effect the authorisation for the Client to sell on the goods subject to reservation of ownership and to call in the assigned debts.
- 10.6 The Client must inform us immediately in case of distraint by third parties or other situations affecting the goods supplied. The Client shall bear any costs arising from the distraint.

11.0 Software goods and services

- 11.1 In the absence of any contractually agreed variation the Client shall be granted a limited duration software licence which is non exclusive and non transferable for company use with the products for which the programs and customising are supplied.
- 11.2 In the absence of a special written licence agreement with us any use outside the contractually agreed use of the software, customisations and circuitry is expressly excluded.

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- 11.3 We reserve all other rights to the programs, customisations and documentation and circuitry including copies and subsequent extensions. In the absence of our written agreement in advance, the Client shall ensure that these programs, customisations, circuitry and documentation are not accessible to third parties.
- 11.4 The granting of the software licence does not include the acquisition of any rights. In particular we reserve all rights to publication, duplication, processing and sale.
- 11.5 The Client is prohibited from modifying or translating our software without our written agreement in advance. Reverse engineering the programs provided into other code forms (decompiling) and any other form of reverse engineering the various stages of the software are permissible exclusively for the purpose of error rectification or extending the program functionality but only with our written authorisation in advance.
- 11.6 The Client may only make copies of the program to the extent that this is necessary for the use of the program. Necessary copies of the program include installation of the program from the original data media to the hard drive of the hardware where it will be used and loading the program into the working memory. Otherwise copies may only be made for archiving purposes as backup or for troubleshooting. Only a single backup copy may be made and retained and this shall be clearly identified as a backup copy of the said program. Removing the copy protection or other protection routines is only permissible inasmuch as smooth operation of the program is affected by these protection arrangements. The Client shall have the burden of proof.
- 11.7 Source program licences require a special written agreement.
- 11.8 Copyright notices, serial numbers and other program identifying features shall not under any circumstances be removed or modified. If the originals of the software bear copyright notification this notification shall be included by the Client in any copies of the software.
- 11.9 In the absence of anything agreed to the contrary, the rights to use the software shall be deemed to have been granted with contract confirmation and supply of the programs, documentation and later customisations.
- 11.10 The Client shall be responsible as a substantial contractual obligation for backing up existing data and programs in a machine-readable form before installation of the software or modification of the software, in order to ensure that they can be replaced reasonably easily and at reasonable cost.
- 11.11 The Client may only sell or give long-term the software which has been customised or specially written for him including User Manual and other material on condition that the Recipient declares himself to be in agreement with these Conditions of Sale continuing to be valid with regard to the Recipient. If such transfer takes place the Client must give the new user all program copies and backup copies and destroy any remaining copies not transferred. The Client shall have no right to use the program after such transfer. The same restrictions shall apply with regard to the transfer of the software to a third party for a limited duration. Any commercial leasing or rental of the software is expressly excluded. The Client shall not transfer the software to a third party if there are reasonable grounds to suspect that the said third party would violate the contractual conditions. If transfer to a third party occurs the client shall be obliged to communicate the name and full address of the third party.
- 11.12 Multiple use and use across a network**
- a) The Client may use the software on any available hardware. If the software is transferred to different hardware then the software on the first hardware location must be deleted. Simultaneous saving, storing or using of the software on more than one item of hardware is not permitted.
- b) The use of the said software on a network or other multi-workstation computing system is not permitted if such arrangements allow for simultaneous multiple use. In such a case the Client must use access arrangements to prevent such multiple use; otherwise the Client shall be obliged to pay us a network fee, the cost of which shall reflect the number of users connected to the computer system. Such use on a network is only permitted after payment in full of the network fee to be agreed separately.
- c) The Client is obliged to inform us in advance and in writing of any change in hardware or the intention to use the software on a network.
- 11.13 We shall be free to allocate program creation and/or maintenance in whole or part to a subcontractor. If a subcontractor is used we shall be responsible for the subcontractor just as we would be responsible for our own employee carrying out the task.
- 11.14 On termination of the business relationship the Client is obliged to return all original data media and complete documentation, materials and other paperwork inasmuch as these items were provided on a non-permanent basis. This correct return also includes the absolute deletion and purging of any existing copies of the software. We reserve the right to forego the return and to make arrangements for the deletion of the software and destruction of the documentation.
- 12.0 Client collaboration**
- 12.1 In describing, locating, confirming and reporting errors the Client shall follow the instructions given and use our checklists where appropriate.
- 12.2 The Client shall be as precise as possible in reporting errors and asking questions. The Client shall have competent employees available for this purpose.
- 12.3 The Client shall be personally present at proving tests and shall have competent employees on hand who are authorised to assess and make decisions on errors, increased functionality and reduced functionality and changes in the program structure. Other use of the computer system must be suspended during our maintenance work if we so require.
- 12.4 The above terms apply equally with regard to installation and maintenance work to be performed by us. The Client must assist by ensuring that the installation and/or maintenance work can start immediately on our arrival and continue without interruption or delay until the Client has accepted the work.
- 12.5 If the Client does not fulfil his obligations we shall after giving due notice be entitled but not obliged to carry out the necessary tasks on his behalf and at his expense. Furthermore our legal rights and entitlements shall remain unaffected.
- 13.0 Warranty, Liability, Expiry**
- 13.1 Our goods and services to traders are subject in all events to the legal duties relating to acceptance examination and lodging of complaints.
- 13.2 Contractors who are not traders must inform us in writing immediately of any obvious defects in the contractual goods with 2 weeks of receipt; otherwise claims for defects are excluded. Sending it off in timely manner is sufficient for compliance with the time limit. The contractor has full responsibility for proving all claims and in particular the claim itself, the time the defect was established and the claim being made at the correct time.
- 13.3 If there is valid proof of a fault or faults then payments may only be withheld to the extent that they are proportionate to the fault or faults present.
- 13.4 We shall be liable for faults which are notified at the correct time as follows: The Client must give us the necessary time and opportunity to carry out all remedies and replacement supplies which we deem necessary, otherwise we shall be from our liability for defects. A number of attempts at remedy or fresh supplies shall be permissible, provided they are reasonable from the Client's perspective. Our obligation under warranty shall cease if the Client or a third party has without our approval carried out repairs, caused damage or made modifications to which the fault may be attributable or related.
- 13.5 If remedy or replacement is not possible or if it has been deemed to have finally failed or we have delayed to an unreasonable extent, the Client may demand a reduction in the price or cancellation of the Contract.
- 13.6 All further contractual claims are excluded, whether they be against us, our legal representatives and employees, including claims for damages for direct or indirect damage, lost profits and from the remedial work, unless the damage be typical foreseeable damage from the violation of essential contractual duties or the damages relate to wilful or gross negligence. The aforesaid exclusion does not apply to damage in the form of human injury or death or damage to health caused by ourselves, our legal representatives or our employees.
- 13.7 Liability for loss of data shall be limited only to the typical cost of restoring the data, had it been backed up regularly in accordance with the risks involved.
- 13.8 These clauses also apply to our employees.
- 13.9 If our supplies are limited to software or software components or hardware components or subassemblies for use in association with existing hardware then in the absence of any written agreement to the contrary we cannot guarantee the overall functioning of the components supplied by us in coordination with the Client's existing components or components sourced elsewhere.
- 13.10 Our verbal and written technical advice and suggestions, calculations, project planning etc. are intended to explain to the Client the best possible use of our products. It does not free the Client from his obligation to check for himself and convince himself of the suitability of our products for the intended purpose. If by the conclusion of the contract and as a result of our culpable negligence in our incumbent secondary obligations or incorrect instructions the contractual object cannot be used in accordance with the contract then our liability is as defined in Sections 13.4 und 13.5 of these Conditions to the exclusion of any other claims by the Client.
- 13.11 All further contractual and non-contractual claims by the Client are excluded, whatever they may be and whatever their basis in law, e.g. debts at the time of the conclusion of the contract, actual violation of the contract, unauthorised actions, offsetting amongst joint debtors, whether the claims be against us, our legal representatives and employees, unless the damage be typical foreseeable damage from the violation of essential contractual duties or the damages relate to wilful or gross negligence. Claims for damages for injury, death or damage to health caused by ourselves, or legal representatives or our employees remain unaffected by this exclusion of liability.
- 13.12 The warranty period shall extend for 2 years. Sentence 1 does not apply for claims for damages inasmuch as we are liable in accordance with the aforesaid provisions.
- 13.13 The above provisions also apply to our installation and maintenance work.
- 14.0 Warranty and liability for software programs**
- If software programs constitute part of the contractual performance Section 13 applies subject to the proviso that the Client understands that with state of the art software it is not yet possible to create a computer program totally free of errors. In view of this we warrant that the programs and documentation are fit for the usual purpose and are such as is normal in this context and that the Client can expect. A non significant degree of usability or detail is not deemed significant in this respect.
- 15.0 Software confidentiality and duty of care**
- 15.1 The Client shall treat as confidential all information to which he has access during the business relationship and which goes beyond the mere external look and feel of the program. This applies in particular to methods we use, processes and documentation, materials and papers relating to the program.
- 15.2 The Client is obliged to ensure the confidentiality vis-à-vis third parties and his own employees, and in particular to prevent unauthorised third party access to the program by taking appropriate precautions.
- 15.3 The Client shall ensure safe keeping of the supplied data media in a location secure from access by unauthorised third parties and specifically bring to the attention of his employees the duty to maintain confidentiality and exercise proper care as agreed.
- 16.0 Concluding provisions, place of execution, applicable law, place of jurisdiction, partial validity**
- 16.1 German law shall apply. The application of the Convention of Contracts for the International Sale of Goods is excluded.
- 16.2 The place of jurisdiction shall be agreed to be Offenburg, Germany, for all present and future claims arising from the commercial relationship between businessmen, legal persons under public law or a special fund under public law. We are also however entitled to take legal proceedings against the Client in courts having legal jurisdiction over the location of his registered office.
- 16.3 The same shall apply if the Client has no general place of jurisdiction in Germany, changes his place of residence or usual place of abode from Germany to another country or if his address or usual place of abode is not known at the time the legal action is brought. In the case of deliveries to locations abroad we can at our discretion also take legal proceedings against the Client in the capital of the country in which his registered office is located. Furthermore we are in the aforesaid cases in Sentence 1 entitled at our discretion and in accordance with the Rules of Arbitration of the International Chamber of Commerce, Paris to have disputes arising from our commercial relationship settled in final judgment by one or more of the judges nominated by these rules of arbitration to the exclusion of ordinary jurisdiction. The court of arbitration shall be in Offenburg.
- 16.4 If one or more sections of these Conditions of Sale should be or should become ineffective then this shall not affect the validity of the contracts concluded nor the validity of the other sections of the Conditions of Sale.