

General Terms and Conditions for Delivery and Services
of BA Services GmbH
(version: July 2014)

I.

General provisions

The following regulations in points 1 up to and including 6 apply to all of our deliveries and services.

The regulations under Item II. apply in addition to purchase agreements and contracts for work and materials, and the provisions under Item III. are applicable to contracts for the delivery and licensing of software.

Special regulations related to contracts for work and labour can be found under Item IV. and the provisions under Item V. must additionally be observed for service agreements.

The final provisions under Item VI. apply in turn to all of our deliveries and services, irrespective of the agreement type.

1. Scope

- 1.1. The following terms apply exclusively to all of our deliveries and other services; they only apply in relation to business customers according to Section 310 sub-section 1 in conjunction with Section 14 of the German Civil Code (BGB).
- 1.2. Divergent terms and conditions of the customer which are not expressly accepted by us shall be non-binding, including in those cases in which we do not expressly object to them.

2. Offers and quotes, scope of service and formation of a contract

- 2.1. Our orders, offers to enter into agreements and purchase orders are hereafter referred to collectively as "orders". They are without obligation.
- 2.2. Orders must be placed in writing. Orders placed verbally will only become effective if a written order confirmation follows our written confirmation within a reasonable review period of at least 10 days. Amendments or additions to agreements shall also be set out in writing for documentation purposes. Verbal agreements with our employees who are not authorised to represent the company shall only become effective following written confirmation.
- 2.3. Our order confirmation alone is the crucial document which determines the scope of the service to be provided by us under the agreement.
- 2.4. We reserve the right to make changes to the design, choice of materials, specifications and construction type, including after an order confirmation is sent, provided that these changes do not contradict either the order confirmation or the customer's specifications. Further the customer will confirm its agreement with proposed changes from our side, provided that these changes are reasonable for the customer.
- 2.5. Partial deliveries and services are permissible.

- 2.6. The underlying documents for the quote or the order confirmation, such as illustrations, designs and dimension and weight details, are generally only intended as approximate values unless they are expressly designated as binding. Our quote documentation, designs, samples and similar information in both physical and intangible format are subject to proprietary rights and / or copyright and they may not be made available to third parties without our consent.

3. Prices and payment terms

- 3.1. If there are more than 4 months between the formation of the contract and our service or delivery and we are not responsible for the delay, we may reasonably increase the price with due regard to subsequent material, salary and other auxiliary costs incurred by us. In such a case the prices applicable on the date of despatch will be routinely charged.
- 3.2. Unless there is a particular agreement in place, the payments made must be cashless immediately upon invoice receipt, ex paying agent of the supplier and without any discounts. Our representatives or our other sales staff are not authorised to collect payments.
- 3.3. If a set payment term is not met then the payer shall be in default without an official reminder being required (Section 286 sub-section 2 BGB). In this event we shall be entitled to demand interest for default within the scope of Section 288 BGB at the amount of 8 % points p.a. above the base interest rate (Section 247 BGB), unless we provide evidence of loss or damage which justifies a higher claim for interest.
- 3.4. Bills of exchange and cheques will only be accepted pending full discharge of the debt. If they are made out to secondary centres then we shall not be liable for the timely lodging of a protest. The customer shall be responsible for discount, exchange and collection costs.
- 3.5. The purchase price shall be due for payment immediately without a reminder in the following cases:
- the agreed bills of exchange or cheques are not provided on time or cannot be cashed on time,
 - the customer discontinues payments,
 - an application has been made to open insolvency proceedings in relation to the customer's assets, or
 - proceedings are initiated to foreclose on the customer's assets.

Provided that our claims against the customer are reduced to a share within the framework of insolvency proceedings in relation to the customer's assets, the customer's claims to agreed discounts and / bonuses shall cease to apply.

- 3.6. In the cases designated in point 3.5 above we shall also be entitled at the customer's expense to take back the item delivered, to the exclusion of any rights of retention, for the purposes of collateral or best possible disposal of the item on the open market for the account of and at the risk of the customer, without this representing a withdrawal from the contract on our part. In the cases designated in point 3.5 above we may also demand compensation in lieu of performance without setting a particular deadline and after taking back the item delivered. The compensation shall be 10 % of the purchase price unless the customer demonstrates that less damage or we demonstrate that greater damage was suffered.

- 3.7. In the event that we receive unfavourable information regarding the customer's creditworthiness which the customer is unable to refute, then we shall be entitled to demand advance payment or collateral or cash on delivery or to raise the defence of uncertainty in accordance with Section 321 BGB.
- 3.8. If we incorporate change requests from the customer then the additional costs incurred through this will be charged to the customer.

4. Offsetting and rights of retention

The assertion of rights to offset claims and/or of rights of retention on the part of the customer is excluded, unless these claims of the customer are undisputed by us or have been made legally final and binding.

5 Retention of title

- 5.1 We reserve the title to all items delivered or sold by us (hereafter also referred to as "**goods subject to retention of title**") until all of our claims against the customer from the business relationship, including future and contingent claims, are settled including interest and costs. This also applies if individual or all claims by us are managed in an ongoing account and the balance has been drawn and acknowledged.
- 5.2 We shall be entitled to inspect and record the goods subject to retention of title at the customer's premises during standard business hours.
- 5.3 In the event of conduct on the part of the customer which is in breach of contract, in particular in the event of default of payment, we shall be entitled to take back the goods subject to retention of title after giving written warning, and the customer shall be under an obligation to surrender them. Assertion of the retention of title as well as seizure of the item by us shall not be deemed to be a withdrawal from the contract. The application to open insolvency proceedings in relation to the customer's assets shall entitle us to withdraw from the contract and to demand an immediate return of the goods subject to retention of title.
- 5.4 Notwithstanding the customer's payment obligations we shall be entitled to sell the goods subject to retention of title that we have taken back on the open market and either to credit the proceeds from the sale or to credit the contractual price minus discounts, deductions and other allowances. Compensation amounting to 10 % of the contractual price shall become due for the expenditure incurred by us in taking the goods back and reselling them.
- 5.5 The customer may not mortgage the goods subject to retention of title or assign them as collateral. The customer must inform us without delay in the event of seizure or other interventions from third parties. The retention of title shall not be cancelled through third-party payments, in particular payments by endorsers of a bill. To this extent our rights shall pass to the payer.
- 5.6 The customer shall be under an obligation to insure the goods subject to retention of title adequately against fire, burglary, theft and water damage. The insurance claims are hereby assigned to us for the value of the goods.

- 5.7 The customer shall be entitled to resell the goods subject to retention of title in the ordinary course of business and subject to terms and conditions which correspond with these terms and conditions of sale. However, if the customer is in financial difficulties or has not settled its debts with us, then it may only dispose of the goods subject to retention of title with our express permission. Disposals made without this permission shall be invalid unless they are subsequently approved.
- 5.8 The customer hereby assigns all claims and consideration to which it has become entitled as a result of the sale or based on other legal grounds in relation to the goods subject to retention of title. The customer remains entitled to collect the claims following this assignment, although we are also entitled to collect claims directly from the customer's own purchasers. We shall refrain from doing this provided that the customer duly meets the obligations incumbent upon it. We may demand information from the customer related to all assigned claims and the debtors of these as well as disclosure and surrender of all further documentation required for collection. The assignment must also be communicated to the third-party debtors upon request (absolute assignment). If the goods subject to retention of title are resold with other goods which do not belong to us then the customer's claim against its own purchaser shall be considered to have been assigned at the amount of the price agreed between us and the customer.
- 5.9 Processing of goods subject to retention of title shall be completed by the customer for us in all cases. If the goods subject to retention of title are processed with other items which do not belong to us then we shall acquire co-ownership in the new item at the ratio of the goods subject to retention of title to the new item.
- 5.10 We undertake to release the collateral to which the customer is entitled if its value exceeds the claims to be collateralised by more than 20 % provided that these have not yet been settled.
- 5.11 Despite the retention of title the customer bears the risk of destruction or deterioration of the items delivered.

6 Liability

We shall be liable for compensation in the following cases:

- 6.1 We shall be liable without limitation for damage or loss caused by us, our legal representatives or executive employees through wilful intent or gross negligence, as well as for damage or loss caused intentionally by other vicarious agents; in the case of gross negligence of other vicarious agents the liability is determined in accordance with the regulations for slight negligence stated below in point 6.4.
- 6.2 We shall be liable without limitation for damage or loss through injury to life, limb or health caused intentionally or negligently by us, our legal representatives or vicarious agents.
- 6.3 We shall be liable for damage based on product liability in accordance with the regulations in the German Product Liability Act.
- 6.4 We shall be liable for damage or loss from the breach of cardinal obligations by us, our legal representatives or vicarious agents; cardinal obligations are those essential obligations which form the basis of the contract and which were a decisive factor in entering into the contract and which the customer is able to trust will be fulfilled. If we have breached these cardinal obligations with

slight negligence then our liability shall be limited to the amount which was foreseeable for us at the time of the relevant performance.

6.5 Our liability shall otherwise be excluded unless expressly regulated above.

II.

Special provisions for purchase agreements/contracts for work and materials

The regulations below under point 7. up to and including point 14. apply exclusively to performance on our part which is to be categorised as a purchase agreement or a contract for work and materials. These include in particular all quotes, sales and/or deliveries e.g. of CNC systems, tools, equipment, special machinery and linkages.

7. Prices

Prices are ex factory, including loading on the carrier, exclusive of packaging and other shipping and carriage expenses. Packaging will be charged at cost and will only be taken back if we are obliged to do this by virtue of mandatory statutory regulations. Turnover tax and customs charges shall be added to the prices / any advance payment amounts at the relevant statutory amount at the time of invoicing along with any transportation costs incurred.

8. Delivery, transfer of risk

- 8.1. Deliveries are ex factory. Unless expressly agreed otherwise, risk shall be transferred to the customer no later than at the time that the item to be delivered is dispatched or the notification of readiness for acceptance is provided, including in those cases where partial deliveries are made or where we are responsible for other performance, such as shipping costs and delivery and installation. Goods will be shipped at the customer's risk, including where delivery is carriage paid, unless an agreement has expressly been made to the contrary.
- 8.2. At the customer's request and expense the shipment will be insured against theft and damage through breakage, transportation, fire and water as well as other insurable risks.
- 8.3. If the shipment is delayed as a result of circumstances for which the customer is responsible or of force majeure events, then risk shall be transferred to the customer as of the date that the goods are ready for shipment.
- 8.4. The customer must take delivery of or accept the items delivered, including where these items feature negligible defects, without prejudice to the rights arising from point 11 of these terms and conditions below (Warranty).

9. Delivery periods

- 9.1. Delivery periods and deadlines are non-binding unless a particular delivery deadline has been agreed.
- 9.2. The delivery period shall be deemed to have been met if the item to be delivered has left our factory/warehouse or readiness for shipment has been communicated before the period expires. The execution period for performance which is to be accepted shall be met once the readiness for

acceptance has been communicated. The delivery period shall be reasonably extended in the event of measures within the scope of industrial disputes or of unforeseeable obstacles which occur (such as disruptions to business operations, delivery blocks, transportation defects or official actions) and with force majeure events which are beyond our will, provided that it can be demonstrated that these types of obstacle have a crucial impact on the production or delivery of the item to be delivered. This shall also apply if these circumstances occur with our sub-suppliers. We will notify the customer of the start and end times of circumstances of this type as soon as possible.

- 9.3. The meeting of delivery deadlines is dependent upon timely contractual fulfilment and cooperation by the customer, e.g. in relation to the provision of documentation, calculations, overall load configurations, approvals, releases as well as payments of any agreed advance payments or the provision of payment collateral. Subsequent changes to the scope of the order which are accepted by us shall result in a reasonable extension to the delivery period.
- 9.4. The customer may withdraw from the contract without setting a deadline if the entire performance becomes conclusively impossible for us prior to the transfer of risk. The customer may also withdraw from the contract if the execution of a part of the delivery becomes impossible for an order and the customer has a justified interest in rejecting the partial delivery. If this is not the case then the customer must pay the purchase price applicable to the partial delivery. Point 12.2 of these terms and conditions apply in all other respects.
- 9.5. To the extent that we are in default of delivery/performance and the customer suffers loss or damage as a result of this, then it shall be entitled to demand flat-rate compensation for default. This shall be 0.5 % for each full week of the delay, although shall amount in total to no more than 5 % of the value of that part of the overall delivery which cannot be used in time or in accordance with the contract as a result of the delay. If with due regard to the statutory exceptions the customer grants us a reasonable period for performance at any time during which we are in default, and if this period is not adhered to, then the customer shall be entitled to withdraw from the contract within the scope of the statutory regulations. Any further claims arising from default of delivery shall be determined exclusively in accordance with point 12.2 of these terms and conditions.
- 9.6. If the shipment is delayed at the customer's request, then the customer shall be charged for the storage costs incurred starting one month following notification of the readiness to ship if the goods are stored in our warehouse, although this shall amount to at least 0.5% of the invoice amount for each month calculated, unless the customer demonstrates that the costs incurred were lower than this. However, we shall be entitled to dispose of the items to be delivered elsewhere after setting a reasonable deadline which expires without result, and to supply the customer with a deadline that has been reasonably extended.

10 Withdrawal from the contract

Without prejudice to any claims for compensation we shall be entitled to withdraw from the contract through a written declaration in the event of force majeure, non-fulfilment of the contractual obligations by the customer despite a deadline being set or in the event of default of payment. The same shall apply if fulfilment can no longer be reasonably expected as a result of unforeseeable events according to point 9.2 of these terms and conditions or if the customer is in default of acceptance of the item one month after notification of the readiness to ship.

11 Warranty

We shall provide a warranty to the customer for material defects and defects of title in the goods sold and/or delivered (hereafter also referred to as the "**subject matter of the contract**") as follows, to the exclusion of any further claims and subject to the regulations in point 12 below (Liability):

Material defects:

- 11.1 To the extent that the subject matter of the contract is designated for the production of systems or parts of systems or for installation in the customer's machinery and equipment and has not been developed and/or designed by us for this, no warranty will be provided by us in relation to the adequacy of its suitability, strength or durability. The customer alone shall be responsible for verifying the subject matter of the contract for the customer's purposes in the absence of any agreement to the contrary. The following provisions only apply under these provisions.

All of those items that form the subject matter of the contract or parts thereof and that transpire to be defective as a result of circumstances prior to the passing of risk shall at our discretion be repaired or a new item shall be supplied. We must be notified in writing without delay if any such defects are identified. Replaced parts shall become our property.

- 11.2 Following agreement with us the customer must provide us with the time and opportunity required to complete all of the repairs and replacement deliveries which appear necessary for us. Otherwise we shall be released from liability for the consequences arising from this. Provided that the complaint transpires to be justified, we shall be responsible for the following costs incurred from the repair or the replacement delivery:

costs for the replacement unit including shipment to the place of contractual fulfilment and the reasonable costs for installation and removal or for repair, including reasonable travel costs within the Federal Republic of Germany in the case of repair away from the customer's workshop, unless there is an agreement to the contrary in place, and additionally the costs of any required provision of our own expert staff in the event that this can be reasonably requested in the individual case.

- 11.3 The customer shall have a right to withdraw from the contract within the scope of the statutory regulations if with due regard to the statutory exceptions we allow a reasonable extension period that has been set for repair or for a replacement delivery on account of a material defect to expire without fulfilling this obligation. If the defect is merely a negligible one then the customer shall only be entitled to a reduction in the purchase price. Otherwise any right to a reduction in the purchase price shall remain excluded.
- 11.4 In the event of defects in essential third-party products that we have used in the subject matter of the contract, we shall be entitled to refer the customer initially to the relevant manufacturer's service organisation based on the claims for repairs and replacement delivery, without this being associated with a restriction to the warranty assumed by us.
- 11.5 The warranty shall cease to apply for obvious defects (including incorrect or short deliveries) that have not been communicated to us in writing within 10 days following receipt of the subject matter of the contract by the customer, as well as for damage or loss that is suffered through natural wear and tear, particularly to sealing gaskets, insulation elements and springs, and for unsuitable or improper use, for changes or repair work not approved by us, defective assembly or commissioning by the customer or third parties, failure to observe the operating and maintenance regulations, use of operating equipment or replacement parts which do not correspond with original spare parts, or damage or loss that has arisen through biological, chemical, electrochemical or electrical influences and for which we are not responsible.

Defects of title:

- 11.6 If the use of the subject matter of the contract results in a breach of industrial property rights or copyrights in Germany, we shall at our own expense procure a right for the customer to continue using the item or modify the item delivered in a way that is reasonable for the customer and in such a way that there is no longer a breach of the property right. If this is not possible under reasonable economic conditions or within a reasonable period then the customer shall be entitled to withdraw from the contract. We shall also be entitled to withdraw from the contract under the prerequisites as

stated. Furthermore we shall indemnify the customer in the internal relationship against undisputed claims of the owner of the property right or of the latter's claims which have been determined by force of law.

11.7 Our obligations stated above in point 11.6 of these terms and conditions are conclusive in the event of a breach of a property right or copyright, subject to the regulations below in point 12.2 of these terms and conditions. They only exist if

- a) the customer informs us without delay of breaches of property rights or copyrights that have been asserted and
- b) the customer supports us to a reasonable extent in our defence against the claims asserted and allows us to implement the modifications in accordance with point 11.6 of these terms and conditions if applicable and
- c) all defence measures are reserved for us, including out-of-court settlements and
- d) the defect of title is not based on an instruction from the customer and
- e) the breach of the right has not been caused through the customer changing the subject matter of the contract of its own accord or in a manner which is not in accordance with the contract.

11.8 The warranty is excluded for second-hand items under the contract.

12 Liability

12.1 If as a result of fault on our part the item delivered cannot be used by the customer in accordance with the contract on account of a failure to implement or of a defective implementation of proposals and advice from before or after the formation of the contract or through the breach of other secondary contractual obligations, in particular instructions for operation and maintenance of the item delivered, then the regulations in point 11. above (Warranty) and point 12.2 of these terms and conditions shall apply accordingly to the exclusion of further claims of the customer.

12.2 We shall be liable in accordance with the following provisions for damage or loss which does not occur to the item delivered itself:

- (a) We shall be liable without limitation for damage or loss caused by us, our legal representatives or executive employees through wilful intent or gross negligence, as well as for damage or loss caused intentionally by other vicarious agents; in the case of gross negligence of other vicarious agents the liability is determined in accordance with the regulations for slight negligence stated below in (d).
- (b) We shall be liable without limitation for damage or loss from injury to life, limb or health caused intentionally or negligently by us, our legal representatives or vicarious agents.
- (c) We shall be liable for damage based on product liability in accordance with the regulations in the German Product Liability Act.
- (d) We shall be liable for damage or loss from the breach of cardinal obligations by us, our legal representatives or vicarious agents; cardinal obligations are those essential obligations which form the basis of the contract and which were a decisive factor when entering into the contract and which the customer is able to trust will be fulfilled. If we have breached these cardinal obligations with slight negligence then our liability shall be limited to the amount which was foreseeable for us at the time of the relevant performance.

12.3 Our liability shall otherwise be excluded unless expressly regulated above.

13 Limitation

- 13.1 All of the customer's claims based on any legal grounds whatsoever shall expire in 12 months from the transfer of risk to the customer. The customer's claims under warranty related to the subject matter of the contract shall expire in 12 months at the earliest from surrender of the subject matter of the contract to the final purchaser, however no later than 15 months from delivery to the customer itself.
- 13.2 The statutory periods apply to intentional or malicious conduct as well as to claims under the Product Liability Act.

14 Use of software

If the items delivered include software then the provisions under Item III. below also apply for the software which is also sold (Special provisions for the delivery and licensing of software products).

III.

Special provisions for the delivery and licensing of software products

The following provisions in point 15 up to and including point 27 also apply in addition to the regulations under Item I. above and Item VI. below to performance on our part which includes the delivery and/or licensing of software products.

15. Scope of delivery and licensing of software products

- 15.1. A licence agreement for the provision of software is entered into between us and the customer as licensee. The licence agreement authorises the customer to use the licensed software stated in our order confirmation in accordance with the following provisions. The software may be downloaded from the data carrier in accordance with the format in which it is provided (CD, DVD, USB stick, FTP, Webserver etc.). The customer must ensure that the hardware interface specified by us is provided. The customer accepts the terms and conditions of this licence agreement through installing or using the software delivered – irrespective of which of these occurs first.
- 15.2. Software for the purposes of the licence agreement refers to the content of the file(s), data carrier and documentation delivered in association with the licence agreement.
- 15.3. With the formation of the licence agreement the customer accepts these terms and conditions in relation to the delivery of licensed software by us.
- 15.4. Our General Terms and Conditions shall also apply to later versions (updates) and expansions of the software (upgrades) which we provide to the customer during the licence period, unless divergent agreements are made upon provision of the relevant later version or expansion.
- 15.5. The software is protected by law. We are entitled exclusively to the copyrights, patent rights, trademarks and all other ancillary copyrights in the software and to other items which we provide or make available to the customer within the scope of the initial stages and implementation of the contract.
- 15.6. Items which form the subject matter of the contract, documentation, proposals and test programmes belonging to us which become accessible to the customer before or after formation of the contract shall be deemed to be our intellectual property and business and trade secrets of our company. They may not be used in any way whatsoever without our prior written permission and

must be kept secret in accordance with the regulations in point 25. of these terms and conditions below (Confidentiality).

16. Licence types

16.1. A distinction is made below between single licences and floating licences. The type of licence delivered must be designated by the parties when entering into the licence agreement.

The licence types are distinguished as follows:

a) Single licence / named licence:

The licence is tied to a designated data-processing unit. The data processing unit is determined as a result of the first use of the licence, unless the data processing unit is expressly designated in the licence agreement. The licensed software may only be installed and used on the data processing unit designated for this. Any subsequent change to the data processing unit used may only be implemented in accordance with the regulations in point 18.5. below.

b) Floating licence / concurrent user licence

The licence is made available by a server for the purposes of running the software and may be installed on any desired number of data processing units within the local network. If an authorised user wishes to use the software then the data processing unit queries the licence availability from the central server. If a licence is available then the server permits usage of the software. Once the software usage has been terminated the licence is then available again for further authorised users within the local network.

16.2. The licence may only be used for the riveting system designated in the licence agreement. Any extended use of existing licence for additional riveting systems requires a corresponding licence extension.

17. Subject matter of the licence, installation

17.1. The licence relates to the software developed and produced by us and provided to the customer for the term of the agreement and the associated documentation together with granting of the rights required to use this in accordance with the contract. Precise specification of the software provided can be found in the licence agreement.

17.2. The licensing conditions of the relevant producer apply to third-party software delivered separately from other producers, subject to any regulations to the contrary in the agreement.

17.3. In the absence of regulations to the contrary in the licence agreement the customer shall receive the software on a machine-readable data carrier in object code format in order to install this on its systems itself.

17.4. All data-processing equipment (all types of storage media and central units) upon which the software is stored in whole or in part and in the short or long term shall be located on the customer's premises and be in its direct possession. Additional contractual usage rules (e.g. restriction to a number of work stations or people) must be established from a technical point of view and adhered to in practice.

- 17.5. We must be notified of any installation of single licences on other data-processing equipment than that defined by the licence agreement or through the initial installation and this shall require our prior written approval.

18. Usage rights

- 18.1. The customer shall receive a simple, i.e. a non-exclusive right to use the software and the associated documentation for its own purposes; this right is limited in time to the term of the contract, is non-transferable and cannot be sub-licensed. Software for the purposes of these regulations means the content of the file(s), data carriers and documentation which is supplied by us as part of the order. The customer must ensure that the hardware interface specified by us is provided. The customer accepts these terms and conditions through installation or use of the software supplied.
- 18.2. In the case of a floating licence the software may only be used on one data-processing unit at the same time.
- 18.3. If the right of usage is terminated or expires on other grounds, the customer must return the software, the backup copies created by it as applicable and the documentation to us. In the event that the software and the copies cannot be surrendered for technical reasons, the customer will delete these from its systems and confirm this to us in writing.

19. Restrictions on usage

The customer shall not be entitled to copy or develop the software except to the extent stated below.

The customer shall

- a) be entitled to create a backup copy of the software. The customer must attach a visible note stating that this is a "backup copy" together with a copyright notice of the producer.
- b) *not* be entitled to transfer the software or the right to use it to third parties, unless this has been expressly authorised by us in writing.
- c) *not* be entitled to lend, lease, sell or relicense the software to third parties, or to sub-license it in any other form without our express written approval, or allow the software to be used by or for third parties in any other way by distributing it in physical or intangible format.
- d) *not* be entitled to amend, reverse engineer or compile the software or separate components from the software except to the extent that this is absolutely permissible in accordance with the German Copyright Act.

20. Term of the licence

- 20.1. The licence granted shall be a permanent licence unless determined otherwise in the contract. The term shall otherwise be determined in accordance with our relevant order confirmation.
- 20.2. If the customer breaches the regulations contained in the licence agreement and/or these General Terms and Conditions, we shall be entitled to an extraordinary right of termination without any

requirement to comply with a notice period. The extraordinary right of termination must be declared in writing. The regulations in point 18.3. shall apply accordingly in this event.

21. Fees

- 21.1. The amount of the licence fee shall be based on the relevant agreement in the licence agreement, or will otherwise be in accordance with terms that are standard for the market.
- 21.2. Unless otherwise agreed in the licence agreement, the fee shall be payable immediately upon provision of the software.
- 21.3. Any maintenance of the software performed by us will be carried out by way of a separate order. Separate fees will be charged for the software maintenance.

22. Damage or loss

In the event that the software, data carrier, documentation or licensing medium become damaged or lost, we shall only be able to replace these provided that the licensee provides evidence of the damage or loss or provides an affirmation in lieu of oath in this regard. The customer shall be responsible for the costs of procuring the replacement.

23. Open Source

- 23.1. The software may potentially include freeware, shareware or open source software. No licence fee will be charged by us for use of this freeware, shareware or open source software.
- 23.2. The licensee accepts that we are not liable for defects with the freeware, shareware or open source software, and that we otherwise assume no liability in relation to freeware, shareware or open source software. In relation to these software components the customer accepts the specific terms and conditions which are part of the software documentation (open source terms and conditions). We will provide a copy of the source code for the open source software to the customer at the customer's request. If and to the extent that the regulations in these terms and conditions and the open source terms and conditions contradict, then the open source terms and conditions shall have priority over the regulations in these terms and conditions in relation to the open source software.

24. Condition of the software, warranty and limitation

- 24.1. We shall provide all deliveries and services in accordance with state-of-the-art technology. It is not possible to develop complex software products that are entirely free from faults in accordance with this state-of-the-art technology. The agreed condition of the software provided by us is therefore not aimed at ensuring that no programme faults of any kind are allowed to arise, but rather at ensuring that the software does not feature any programme faults which result in anything other than a mere negligible impairment for the intended use.
- 24.2. The software is in the agreed condition and is suitable for the use as specified in the agreement or for usual use in the absence of an agreement. It meets the criterion of practical suitability for use and is of the usual quality for this type of software; however, it is not flawless. Any functional impairment in the programme which is the result of hardware defects, ambient conditions, incorrect operation, etc. is not a defect. A negligible reduction in quality is not taken into account.

- 24.3. If the software features a defect then we shall repair it or provide a replacement delivery at the customer's option under the warranty ("supplementary performance"). We may refuse the type of supplementary performance selected or supplementary performance as a whole if this is only possible at disproportionate costs. The customer's right at its option to a reduction in the purchase price or to withdraw from the contract in the event of two failures in relation to repair or to providing a replacement delivery remains unaffected. There is no right of withdrawal for negligible defects. If we deliver the software in perfect condition for the purposes of supplementary performance, then the defective software must be removed entirely from all of the customer's data carriers.
- 24.4. With the exception of claims for compensation, claims under warranty based on material defects shall expire in one year. Otherwise sections 433 et seq. BGB shall apply in addition.
- 24.5. The customer shall be under an obligation to support us with fault analyses and defect rectification, in particular by providing a concrete description of problems that arise, providing comprehensive information to us and granting us the time and opportunity required to rectify the defect. At our discretion we may carry out the defect rectification on site at the customer's premises or at our company premises. We may also provide the service via remote maintenance. At its own expense the customer must ensure that the required technical requirements are met and grant electronic access to the software to us following corresponding prior notification.
- 24.6. The customer shall be responsible for installation and use of the software as intended in accordance with the instructions provided with the software delivery.

25. Liability

- 25.1. We shall be liable for damage and loss in the case of deliveries and licensing of software products in accordance with the following provisions:
- (a) We shall be liable without limitation for damage or loss caused by us, our legal representatives or executive employees through wilful intent or gross negligence, as well as for damage or loss caused intentionally by other vicarious agents; in the case of gross negligence of other vicarious agents the liability is determined in accordance with the regulations for slight negligence stated below in (d).
 - (b) We shall be liable without limitation for damage or loss from injury to life, limb or health caused intentionally or negligently by us, our legal representatives or vicarious agents.
 - (c) We shall be liable for damage or loss on account of the lack of pledged features up to the amount that was covered by the purpose of the pledge made and which was discernible for us when making the pledge.
 - (d) We shall be liable for damage based on product liability in accordance with the regulations in the German Product Liability Act.
 - (e) We shall be liable for damage or loss from the breach of cardinal obligations by us, our legal representatives or vicarious agents; cardinal obligations are those essential obligations which form the basis of the contract and which were a decisive factor in entering into the contract and which the customer is able to trust will be fulfilled. If we have breached these cardinal obligations with slight negligence then our liability shall be limited to the amount which was foreseeable for us at the time of the relevant performance.
- 25.2. We shall only be liable for the loss of data up to the amount which would have been incurred to recover it if the data had been properly backed up on a regular basis.

25.3. Any further liability on our part shall basically be excluded.

26. Confidentiality

26.1. "Confidential information" is all information and documentation of the relevant other party which has been designated as confidential or must be viewed as confidential based on the circumstances, in particular information regarding company processes, business relations and know-how.

26.2. The parties agree that they shall maintain secrecy in relation to confidential information.

26.3. This obligation shall not apply to confidential information which

- a) was provably known to the customer when entering into the agreement or which it became aware of subsequently from a third party which did not involve breach of any confidentiality agreement or of the statutory regulations or official orders;
- b) was publicly known when entering into the agreement or subsequently became known publicly, provided that this was not based on a breach of this agreement;
- c) had to be disclosed based on statutory obligations or on an order of the courts or authorities. If permissible and possible the party under an obligation to disclose the information will inform the other party beforehand and provide it with an opportunity of taking action against the disclosure.

26.4. The parties will only grant access to confidential information to those advisers who are subject to professional secrecy or who have had obligations which correspond with the confidentiality obligations under this agreement imposed upon them beforehand. Furthermore the parties will only disclose the confidential information to those employees who need to know it for the purposes of implementing this agreement and will place these employees under an obligation of confidentiality, including for the period after they leave the company to the extent permitted under employment law.

26.5. Every culpable breach of these regulations shall result in a contractual penalty amounting to EUR 100,000 EUR. Further claims on the part of the party who has suffered the breach remain unaffected.

27. Security measures, right to carry out an audit

27.1. The customer will secure the software which is the subject matter of the agreement as well as the access data for online access where applicable against access by unauthorised third parties using appropriate measures. In particular all copies of the software under the agreement as well as the access data must be kept safely at a protected location.

27.2. Following a request from us the customer will allow us to check proper use of the software under the agreement, particularly for the purposes of reviewing in terms of quality and quantity whether the customer is using the programme within the scope of the licences acquired by it. For this purpose the customer will provide information to us, grant us access to inspect relevant documents and other records and permit a review of the hardware and software environments in use. We may carry out the audit or have it carried out at the customer's premises during its regular business hours by third parties who have been placed under an obligation of confidentiality. We will ensure

that the customer's business operations are subject to minimum disturbance as a result of our on-site activities.

IV.

Special provisions for contracts for work and labour

The following regulations under points 28. up to and including 29. apply exclusively to services on our part the content of which consists in creating specified work and therefore fall under the provisions of a contract for work and labour.

28. Acceptance

- 28.1. Through acceptance the customer makes a declaration to us that the work conforms with the service specification.
- 28.2. With the request to provide acceptance we shall provide an inventory of the work sections to be accepted and shall hand over the work sections to be accepted at the time of provision. The four-week acceptance period shall begin with the provision for the purposes of acceptance.
- 28.3. During the acceptance test the customer will compile a log of any defects identified, stating the appropriate information used to identify the defects. Defects will be allocated to the defect categories in accordance with point 28.5. below in coordination between us and the customer. The decision on stating or refusing acceptance is reserved to the customer. The customer will report the defect to us in writing without delay following discovery of it.
- 28.4. The customer will hand the acceptance report over to us by the end of the acceptance period at the latest; this report will contain the declaration of acceptance, the subject matter of the acceptance, the defect log and the reasons for refusal in the event that acceptance is refused.
- 28.5. Defects determined with the work section during the acceptance test will be assigned to the following categories:
 - Category 1: No significant effects on functionality and usability. Use of the work section is not restricted or any restriction is merely negligible.
 - Category 2: Use of the work section is not impaired to the extent that it cannot be used. The defect can be circumvented using organisational or other economically reasonable means.
 - Category 3: The work section cannot be used. The defect cannot be circumvented using organisational or other economically reasonable means.
- 28.6. If defects are determined during the acceptance test which prevent acceptance then the acceptance period shall be extended for the duration of the defect rectification along with a reasonable test period. The acceptance period shall not be extended if implementation of the acceptance test is not obstructed significantly or does not have to be deferred through the defects which prevent acceptance.
- 28.7. Acceptance of the work section must be declared by the customer in the form of an acceptance report as soon as we have demonstrated the functioning of the work section in accordance with the service specifications or its compliance with the service specifications and therefore that no defects in category 3 have arisen.
- 28.8. Defects in category 2 shall be rectified during the acceptance test wherever possible. Defects in categories 1 and 2 remaining after the acceptance will be rectified within the framework of the warranty provisions.

- 28.9. The acceptance/partial acceptance of the work section shall be deemed to have been declared if the customer does not state its acceptance within the acceptance period of 4 weeks or refuses it even though there is no defect in category 3 present.
- 28.10. We may demand partial acceptance for usable service components which can be delimited and are economically independent. In this event the entire performance shall be deemed to have been accepted following the final partial acceptance (final acceptance). Partial acceptance which has already been provided shall remain unaffected by the success of the final acceptance.

29. Warranty

- 29.1. We warrant that the work section complies with the service specifications and does not contain defects which eliminate or significantly reduce the value or the suitability for standard use or use as specified in the agreement.
- 29.2. The warranty period shall begin with acceptance and will last for twelve months.
- 29.3. If defects do appear, the customer will provide notification of these without delay in a comprehensible form, stating the appropriate information in writing used to identify the defects. The customer will support us to a reasonable extent in rectifying defects.
- 29.4. At our discretion we shall primarily rectify defects or produce a new work section under the warranty (supplementary performance). The customer will set reasonable periods for us for the purposes of supplementary performance. If the supplementary performance for the performance due fails in spite of at least two attempts at repair for each defect for which notification has been provided, the customer may at its discretion demand reduction of the price paid or, in the event of culpability on our part, withdrawal from the agreement and compensation or reimbursement for any wasted expenditure.
- 29.5. However, the customer may only demand withdrawal from the agreement and/or compensation in lieu of performance or reimbursement for any wasted expenditure if there has been a significant breach of obligation on our part.
- 29.6. In the case of defects which are limited to service components capable of being accepted in part, the right to withdraw from the agreement is limited to these service components, provided that the remaining service components can be used on their own and this is economically feasible for the customer.
- 29.7. The warranty becomes void in regard to those work components which have been modified or otherwise interfered with by the customer, unless the latter is able to prove that it did not cause the defect.
- 29.8. We shall be responsible for the expenditure required for testing and supplementary performance purposes, in particular transportation, travel, work and material costs, if there is actually a defect present. However, in the event that a request by the customer to rectify a defect turns out to be unjustified, we may demand compensation from the customer for the loss incurred as a result of this. We may demand reimbursement for our expenditure if we have taken action based on a defect report where the customer was ultimately unable to demonstrate any defect in the work section.

V.

Special provisions for service agreements

The following regulations in points 30. up to and including 31. are applicable to contract relations which are for the purposes of providing a service.

30. Order execution

We shall be entitled to appoint third parties to fulfil the order. This shall take place in an individual case to support us in executing the order. We shall remain the customer's sole contractual partner responsible for the service in accordance with the agreement.

31. Service faults

- 31.1. If the service is not provided in accordance with the agreement and if we are responsible for this (i.e. a service fault), then we shall be under an obligation to provide the service in whole or in part in accordance with the agreement at no additional cost for the customer within a reasonable period, unless this is only possible for us with disproportionate effort and expenditure.
- 31.2. Unless otherwise agreed, this obligation of ours only exists if the customer provides notification of the service fault in writing without delay, and no later than by the end of two weeks after becoming aware of the service provision which is not in accordance with the agreement.
- 31.3. If we are responsible for a service which is not in accordance with the agreement and if we do not manage to provide the service in accordance with the agreement within the grace period set for us by the customer, then the customer shall be entitled to terminate the agreement without notice.
- 31.4. In the event of a termination in accordance with the regulations in point 31.3 above, we shall be entitled to claim the charges for the services provided before the termination takes effect.
- 31.5. The limitation period for the customer's claims for a service fault shall be one year from the start of the statutory limitation period. The statutory periods remain unaffected in the event of an intentional or grossly negligent breach of obligation on our part, in particular by our legal representatives or vicarious agents, in the event of fraud as well as in cases of injury to life, limb or health.

VI.

Final provisions

The following regulations in section 32 up to and including section 34 apply to all of our deliveries and services.

32. Other agreements

We shall be entitled to process the data obtained on the customer regarding the business relationship or in association with it in accordance to the German Data Privacy Act, irrespective of whether this data originates from the customer itself or from third parties.

33. Applicable law, place of jurisdiction

- 33.1. The inclusion and interpretation of these terms and conditions along with the conclusion and interpretation of the legal transactions with the Purchaser itself are governed exclusively in accordance with the law of the Federal Republic of Germany. Application of the uniform legislation on the conclusion of international purchase agreements relating to movable goods and the uniform legislation on the international purchase of movable goods in the United Nations Convention on Contracts for the International Sale of Goods is excluded.
- 33.2. The place of fulfilment for all obligations arising directly or indirectly from the contractual relationship with the customer, including payment obligations, is our registered company headquarters.
- 33.3. The place of jurisdiction is the venue for our company headquarters. We shall also be entitled to bring proceedings before a court which is responsible for the customer's headquarters or for one of its branches. If the customer has its registered headquarters outside of the Federal Republic of Germany then we shall be entitled to call upon a court of arbitration which will come to a conclusive decision in accordance with the Rules of Arbitration of the International Chamber of Commerce by one or more arbitration judges appointed in accordance with these Rules, to the exclusion of the ordinary courts. The language of the proceedings shall be German. The venue for the court of arbitration shall be Düsseldorf.

34. Severability clause

The ineffectiveness of individual provisions in this agreement or its components shall not affect the effective nature of the remaining regulations. The partners to the agreement shall be under an obligation within a reasonable scope and acting in good faith to replace the ineffective provision with an effective regulation which is equal to it in terms of its economic success, provided that this does not result in any essential change to the content of the agreement; the same shall apply in the event that circumstances which require regulation are not expressly governed.