

# GENERAL TERMS OF BUSINESS

**CLARITY & SUCCESS SOFTWARE Ltd**

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- hereinafter referred to as **COMPANY** -

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### § 1. Scope, tenders/ordering

- 1) Tenders, supplies and services are only provided on the basis of these terms of business. They therefore also apply to all future business relationships, even if they are not expressly agreed once more. These conditions will be regarded as having been accepted when the order confirmation is sent, whether in paper form or electronically, but no later than the date of receipt of the goods or service. Confirmations to the contrary from the CUSTOMER, making reference to his terms of business and purchasing conditions, are herewith explicitly rejected.
- 2) The use of software, maintenance and support, consulting and leasing of hardware shall always be on the basis of separate conditions that take precedence over these terms of business.
- 3) Should individual provisions of these general terms of business be or become invalid, this shall not affect the validity of the remaining provisions. Any invalid provisions must be replaced jointly by the parties, within the limits of what is reasonable and in good faith, by provisions which come closest to fulfilling the economic purpose of the contract without this substantially altering the content of the contract. The same shall apply if there is no express provision covering a situation that requires regulation.
- 4) All agreements which are reached between the COMPANY and the CUSTOMER for the purpose of executing a contract must be made in writing. This shall also apply to the withdrawal of this requirement regarding the written form. In connection with electronic or telephone orders, text form (Email, fax) is sufficient.
- 5) Tenders are subject to change and non-binding. Declarations of acceptance and all orders require, for their legal validity, to be confirmed in writing, by fax or electronically by an authorised representative of the COMPANY. A contract shall be regarded as having been concluded if the COMPANY sends a declaration (e.g. order confirmation) in text form, which then will be relevant to the scope of the performance obligations. If no such declaration is made the scope of supply is determined on the basis of the tender

which has been accepted by the CUSTOMER in a timely manner. The delivery shall replace the written order confirmation.

- 6) The CUSTOMER must check the accuracy and completeness of the order confirmation without delay and inform the COMPANY of deviations from his order immediately, but no later than within 5 working days. If no notification is received of any deviations within 5 working days, the delivery shall be deemed to be completed and accepted.
- 7) The performance characteristics, such as figures, drawings etc., indicated on the website of the COMPANY, must only be regarded as approximate. Drawings, figures, dimensions, weights or other performance data are only binding if this is expressly agreed in writing. The COMPANY reserves the property rights and copyrights, without limitation, to preliminary cost estimates, drawings, connection diagrams, designs, descriptions of the relevant software and individual software and similar documents (referred to in the following as: documents). These documents may only be made available to third parties subject to the prior consent of the COMPANY and must be returned immediately on request if the order is not placed.
- 8) The CUSTOMER shall be liable for the correctness, accuracy and completeness of the order documents and order data supplied by him, in particular quantity data, and for technical data and files delivered. Verbal data, including data on amendments and supplements to the documents and data made available, require the written confirmation of the authorised representative.

## **§ 2. General, court of jurisdiction**

- 1) The COMPANY shall be entitled to request partial deliveries and partial services at any time if this is reasonable for the CUSTOMER.
- 2) The agreement of delivery periods or dates, which can be agreed as binding or non-binding, require to be in writing. Compliance of the supply and service obligations on the part of the COMPANY presupposes the proper fulfilment of the obligations of the CUSTOMER.
- 3) The risk of accidental loss or accidental damage to property shall be transferred to the CUSTOMER when the COMPANY has handed over the object of supply to the forwarder, carrier or third party otherwise designated to make the shipment (the decisive date being that on which the loading process commences) or when the goods have left the warehouse for shipment. This shall apply irrespective of the question of takeover of the costs of shipment or transport. Delivery shall be deemed to have been made on completion of the loading process. The delivery shall only be insured against theft, breakages, damage in transit, fire and water damage or other insurable risks by special agreement at the request of the CUSTOMER and at the expense of the latter.
- 4) If the CUSTOMER is in default of acceptance, the COMPANY shall be entitled to request compensation for the damages incurred; the risk of accidental damage shall be transferred to the CUSTOMER on commencement of the default of acceptance.
- 5) If the contract is initiated by a general or commercial representative, the latter shall not be an authorised contracting party but only an authorised commercial representative. The exclusive contracting party at the time of acceptance of a tender from a general or commercial representative shall be the COMPANY. The general and/or commercial representative is entitled to bind or commit the COMPANY legally outside tenders.

- 6) The CUSTOMER is entitled to offset or retain payments only if his counter claims have been established in court or are not in dispute.
- 7) The CUSTOMER is liable for all customs duties, taxes, fees and penalties which are levied by a national, federal, state or local authority in connection with this contract, except all taxes levied for turnovers, incomes or profits of the COMPANY. This applies particularly when the hardware/software supplied by the COMPANY is transferred to a location other than that of delivery.
- 8) A party shall not be liable for the non-fulfilment of its obligations (if they are not payment obligations) if the reason for the non-fulfilment is an event that is beyond the control of the obligated party by reasonable standards. Each party shall take every care to ensure that the effects of such an event are kept to the minimum. If such an event lasts longer than three calendar months, each of the parties may terminate in writing the applicable contract in respect of the services not yet performed or the products not yet delivered.
- 9) CLARITY & SUCCESS is a trademark of the COMPANY. Windows is a trademark of the Microsoft Corporation. All other product names are trademarks of the respective owners.
- 10) If the CUSTOMER is not a consumer, the law of the Federal German Republic, with exclusion of the international contract law and the conflict of law rules, shall apply to the contract and its execution.
- 11) If the CUSTOMER is not a consumer, the competent court for all disputes arising from this contract is that of Halle in Westphalia Germany.

### **§ 3. Value added tax, methods of payment, due date**

- 1) All the prices mentioned by the COMPANY are understood to be net of statutory value added tax if the service is subject to VAT for the CUSTOMER.
- 2) All prices are exclusive of packing and delivery to the CUSTOMER. The COMPANY shall be entitled to charge a fee for the delivery according to the valid price-list of the COMPANY.
- 3) Any price increases must be borne by the CUSTOMER if the product is delivered later than four months after the contract is signed, according to an agreement or for reasons which are not attributable to the COMPANY
- 4) The due date for the fees to be paid according to this contract is indicated in the General Terms of Business for software, support and updates and/or the hardware lease contract and/or in the corresponding order confirmation.
- 5) If no due date is indicated separately above or in the relevant invoice, invoices shall fall due within 10 days after receipt (by post, fax, Email or making available for download) to the CUSTOMER, and payments must be made electronically to the account mentioned in the invoice.
- 6) If the customer defaults on a payment the COMPANY shall be entitled to request the interim release of the goods in the possession of the COMPANY, even without exercising the right of withdrawal and without agreeing an extension, at the expense of the CUSTOMER.
- 7) If the CUSTOMER defaults on payment of the fee, interest shall be charged at the rate of 9% per annum above the base rate of the European Central Bank. In the case of return

debit notes, the COMPANY shall automatically switch to the prepayment method and any processing costs must be borne by the CUSTOMER.

- 8) The CUSTOMER is entitled to offset or withhold payments only if the counter claims have been established in court or are not in dispute. However, the CUSTOMER shall also be entitled to retain the goods on the basis of counter claims arising from the same contractual relationship.

#### **§ 4. Term of contract / Termination**

- 1) Unless otherwise individually agreed, contracts shall be signed for the term of 1 year between the CUSTOMER and the COMPANY. At the end of the 1st year the contract shall be extended by a further year. The CUSTOMER may terminate the contract at any time to the end of the quarter unless otherwise individually agreed. Any right to extraordinary termination for a valid reason shall remain unaffected.
- 2) Any notice of termination of this contract must be in writing.

#### **§ 5. Return, surrender and revocation**

- 1) If the CUSTOMER is not a consumer, legal rights of revocation and return are excluded.
- 2) A reliable/agreed return must be made to the address of the COMPANY. The return shall be made at the risk and expense of the CUSTOMER. Returns made on a freight forward basis will not be accepted by the COMPANY and shall be at the expense of the sender.
- 3) The goods must be returned in perfect condition and in the original packaging.
- 4) If the goods arrive with the CUSTOMER damaged, or if they show defects, the Rules for Material and Legal Defects shall apply according to § 9 of these General Terms of Business.

#### **§ 6. Price adjustment**

- 1) Unless otherwise individually agreed, the COMPANY shall determine, at the end of each contractual year, whether the agreed fees are still customary locally or are otherwise reasonable. If there is a change in fees the COMPANY shall establish the higher or lower amount to be paid to its reasonable discretion and shall inform the CUSTOMER of the amount of the usage fee to be paid in future. If this increases the usage fees to be paid by more than 3% per contractual year (cumulatively if no increase has taken place in a particular contractual year), the CUSTOMER shall be entitled to terminate the contractual relationship extraordinarily with notice to the end of the contractual year within 2 weeks of the announcement of the price adjustment.

#### **§ 7. Retention of title**

- 1) Until the fulfilment of all the requirements arising from the business relationship, and even future and conditional requirements (including all outstanding balances from current accounts) that are assigned to the COMPANY against the CUSTOMER for any legal reason, now or in future, the following securities are provided which the COMPANY will release at its discretion, on request, provided that their value consistently exceeds the requirements by more than 10%. This shall apply even if payments are made in respect of specially designated claims.
- 2) The goods shall remain the property of the COMPANY until full payment is made. Processing or transformation shall always be carried out for the COMPANY, but without any obligation to the COMPANY. If the (co-)ownership of the COMPANY is dissolved by

combination of the supplier, it is herewith agreed that the (co-)ownership by the CUSTOMER of the common property is transferred to the COMPANY in proportion to its value (invoice value). The CUSTOMER shall store the (co-)owned property of the COMPANY at no charge. Goods to which the supplier is assigned (co-)ownership shall be designated in the following as reserved goods.

- 3) The CUSTOMER shall be entitled to use, process and sell the reserved goods in the course of ordinary business transactions as long as he is not in default. Mortgages or chattel mortgages are not permitted. The claims arising from the resale or other legal basis (insurance, impermissible action) relating to the reserved goods (including all outstanding balances from current accounts) shall now be transferred in full by the CUSTOMER to the COMPANY for the sake of security. The COMPANY shall irrevocably authorise the CUSTOMER to collect the claims transferred to the COMPANY for its invoice in its own name. This collection authorisation can only be revoked if the CUSTOMER does not properly fulfil his payment obligations.
- 4) If third parties have access to the reserved goods, particularly mortgages, the CUSTOMER will refer to the property of the COMPANY and inform the latter immediately so that the COMPANY is able to enforce its proprietary rights. If the third party is unable to reimburse the COMPANY with the judicial or extrajudicial costs incurred in this connection, the CUSTOMER shall bear these costs.
- 5) In the event of behaviour on the part of the CUSTOMER which infringes the terms of the contract – particularly default on payments – the COMPANY shall be entitled to withdraw from the contract and demand the surrender of the reserved goods. The CUSTOMER shall be obliged, until full payment is made for the reserved goods, to keep the COMPANY informed of the location of the reserved goods at all times. The CUSTOMER declares his agreement to grant to the COMPANY or the collector access to the location of the reserved goods. The CUSTOMER shall bear the costs incurred in connection with the collection or return of the reserved goods in the originally packed condition.

#### **§ 8. Confidentiality, data protection**

- 1) The entity entitled to confidentiality, according to the provisions set out below, is the party who passes on information to one or more other parties. The entity obliged to maintain confidentiality, according to the provisions set out below, is the party who receives information from one or more of the other parties.
- 2) The entity obliged to maintain confidentiality, including all the associated companies, undertakes, in respect of confidential information from the entity entitled to confidentiality, to keep this confidential information secret for an unlimited period, and not to use this information either in its own company, including all associated companies, or through other natural persons or corporate bodies/allow it to be used by them, or otherwise to use the information or allow it to be used by third parties. In particular, all the passwords and their encoding algorithms made known to the COMPANY within the framework of this contract shall be treated in the strictest confidence.
- 3) As part of this declaration the following, in particular, given by way of example but not intended as an exhaustive list, shall be considered confidential information: any business secret, any information and all data or other information not publicly available or confidential information relating to products, processes, know-how, design, formulae, developments, research, computer programs, databases, other copyright protected works, customer lists, business plans, marketing plans and strategies, financial plans

and information, or any other information which relates to any business activity of the entity entitled to confidentiality and of its employees, consultants, associate companies or other persons who are to be assigned to the entity entitled to confidentiality, which is notified to them or is otherwise communicated in written or verbal form and is described as confidential.

- 4) Information is regarded as confidential if it
  - a) was already known to the receiving party before it was communicated to it by the disclosing party without the imposition of the confidentiality obligation;
  - b) was publicly available at the time of the disclosure or became publicly available after this disclosure without this happening as a result of a violation of a confidentiality obligation by the receiving party or third parties;
  - c) a party has received in good faith from third parties who were not subject to the confidentiality obligation towards the disclosing party in respect of this information; or
  - d) must be disclosed according to the applicable law or on the basis of a court decision.
- 5) The parties to this contract undertake not to process or otherwise use personal data for a purpose other than required to perform the relevant asks. In particular, the parties are not permitted to notify or make available such data to third parties. However, in the relationship between the parties, third parties are not the companies used by the COMPANY to process payments or perform other contractual or technical services.
- 6) If there are legal storage obligations, however, the COMPANY is also entitled, for their duration, to continue to store data otherwise assigned for deletion, and if it is necessary to use and process the data in order to comply with the legal obligation.

#### **§ 9. Liability for defects (Warranty)**

The liability for defects (warranty) is based on the German legal warranty obligation subject to the following provisions:

- 1) The defect liability period is 12 months from the date of delivery to the CUSTOMER (see § 1, para. 6). Exceptions to this are consumable materials and wearing parts such as printer heads, print wheels etc. where the warranty period shall only last the period of intended use for the relevant consumable material or wearing part, but in no case shall exceed 12 months.
- 2) If the CUSTOMER does not follow the operating and maintenance recommendations of the manufacturers or the CUSTOMER, makes modifications to the systems, replaces parts without release, opens devices even though opening the device is not specified, or uses consumables which do not conform to the original specifications, the warranty for these systems will lapse.
- 3) The following shall apply to software supplied: The liability for defects shall lapse in respect of such programs or program parts which have been modified or extended by the user or by the CUSTOMER himself, unless the CUSTOMER demonstrates that such modifications or extensions are not the cause of the defect. Nor shall the COMPANY be liable for faults or errors which are due to improper operation due to other hardware, that was not present at the time of installation of the basic program or hardware which has not been adapted.

- 4) Complaints will only be considered if they are made in writing within 8 days of receipt of the goods – in the case of hidden defects after their discovery, but at the latest 6 months after receipt of the goods. The warranty obligation of the COMPANY shall be limited, at its election excluding other subsequent performance claims of the CUSTOMER, to a replacement delivery or repair. If the repair is not successful, after a reasonable period, the CUSTOMER may, at his discretion, request a reduction in the fee or rescinding of the contract. Goods about which complaints are made may only be returned with the express agreement of the COMPANY.
- 5) In the event of a notice of defect and release for repair by the COMPANY, the CUSTOMER shall be obliged to send the defective device or parts to the workshop of the COMPANY or a company commissioned by it at his own expense and risk, together with a description of the fault and an indication of the model and serial number, as well as a copy of the delivery note or invoice with which the goods were delivered.
- 6) It is expressly pointed out that before returning devices for repair to the COMPANY, the CUSTOMER back up the data on the hardware because the COMPANY undertakes no liability for the loss or incorrect processing of data.
- 7) In the case of damage to the hard disk or data carrier, only the repair of the hardware, but not the re-installation of the software or data is part of the services. An installation of the software and recovery of the data is charged separately to the CUSTOMER. The CUSTOMER shall be responsible for regularly backing up the data.
- 8) It is also expressly pointed out that the CUSTOMER has no claim to the free handover of a rental device. If the COMPANY makes a rental device available, this shall only be done at a monthly fee.
- 9) Except in the case of malicious intent and gross negligence, no further claims of the CUSTOMER are permissible, particularly claims for compensation for damage which has not occurred to the object of the contract (e.g. in the case of loss and incorrect processing of data). Claims arising from culpable behaviour on conclusion of the contract, defective performance or non-contractual liability are not allowable either.
- 10) In the case of redhibitory action the CUSTOMER must compensate the COMPANY with benefits of use or applications for the systems handed over.

#### § 10. Liability

- 1) In the case of malicious intent and gross negligence the COMPANY shall be liable according to the applicable legal provisions, and the limitations of liability below shall not apply in these cases.
- 2) In the case of simple negligence, liability is excluded if neither an essential contractual obligation (i.e. an obligation on the part of the COMPANY without which the CUSTOMER would not have concluded this contract, also called cardinal obligation) has been violated, nor life and limb have been injured, or in the case of impossibility or default.
- 3) In the case of simple negligence, and if a major contractual obligation has been violated, or in the event of impossibility or default, the liability for damage not due to the injury of life or limb shall be limited to damage which was foreseeable at the time of signing the contract and after the normal contract process, but in any case to the amount of the industrial liability insurance reserved by the company with the following amounts:
  - Personal injuries                      GBP 10,000,000.00

- Material damage            GBP 5,000,000.00
  - Property damage            GBP 5,000,000.00
- 4) The COMPANY will maintain the industrial liability insurance described above for the term of this contract.
  - 5) The COMPANY shall be liable to the CUSTOMER or a third party, regardless of whether this third party is associated with the CUSTOMER or not, for all indirect losses or damage which arises directly or indirectly from the rights and obligations granted/imposed according to this contract, but only in the event of gross negligence.
  - 6) The limitation of liability agreed in para. 3 shall also apply in the case of the initial incapacity of the COMPANY or the supplier. In this case the liability is limited to the amount paid for the goods delivered or the user fee (lease) indicated in the invoice issued for this.
  - 7) The above limitations of liability shall also apply, in the case of simple negligence, in favour of salaried and other employees of the COMPANY and in favour of the manufacturer of the software/hardware.
  - 8) The above limitations of liability do not, however, restrict any legal claims according to the Product Liability Act. The liability for damages arising from injury to life, limb or health resulting from a negligent violation of obligations on the part of the COMPANY or a deliberate or negligent violation of obligations of a legal representative or assistant of the COMPANY shall not be affected by the above-mentioned limitations of liability. The liability for the characteristics guaranteed in writing by a COMPANY's authorized representatives shall not be limited, if the guaranteed characteristic was intended to protect the CUSTOMER for the damage that has occurred in particular.