

General Terms and Conditions

June 2017

These General Terms and Conditions shall govern the delivery of Products and related services. The services may include training, installation and other services related to the delivery of Products. These General Terms and Conditions constitute an appendix to an agreement entered into by the parties. In the event of any conflicting information in the Agreement, the parts of the Agreement prepared by the parties shall take precedence over these general terms and conditions. Future deliveries pursuant to a supplementary agreement shall constitute separate deliveries, unless specifically stated to the contrary.

Definitions

Unless the context or the circumstances clearly suggest otherwise, the following words and concepts shall be deemed to have the meanings stated below:

Agreement

The agreement, including appendices, entered into between the parties.

Agreed Specifications

Means the requirements set forth in clause 1.

Contract Sum

Means in these General Terms and Conditions the agreed price for Products and services, exclusive of value added tax. Where annual fees are to be paid for the right to use Software Products, the Contract Sum includes the fee for one year.

Delivery

The Products to be delivered pursuant to this Agreement, including documentation and services.

Product(s)

The hardware, network components or other equipment and Software Products to be delivered by the supplier pursuant to this Agreement.

Software Products

The standard software products to be delivered by the supplier pursuant to this Agreement.

In writing

Where the expression “in writing” is used in these provisions, the meaning is a document signed by both parties or a letter, email or other form agreed upon by the parties.

1. Agreed Specifications

Agreed Specifications means the agreed scope of the Delivery, as well as functional and other requirements specified below:

- a) The Delivery requirements specifically agreed upon by the parties;
- b) Product descriptions of the Products and services included in the Delivery as issued by or on behalf of the supplier or used in marketing at the time of execution of the Agreement;

c) Generally applied norms for corresponding supplies

In case of a conflict between a), b) and c), these terms shall apply in their stated order.

2. Documentation

The Delivery shall include necessary user documentation for the Products in the form of handbooks or other instructions. User documentation shall be written in English.

3. Preparation and installation

- 3.1 The customer shall carry out agreed preparations and take other steps necessary for installation in accordance with the supplier's instructions. Instructions shall be given in good time.
- 3.2 The Parties shall provide each other with information on preparations made and other details relevant to the installation.
- 3.3 The supplier shall carry out installation at agreed premises and in accordance with generally applicable German regulations.
- 3.4 The first installation day is the day on which the supplier shall have access to the agreed premises and equipment in order for installation to be completed by the time of the commencement of the delivery inspection period.

4. Delivery date and inspection of delivery

- 4.1 Agreed delivery date is the date upon which the Delivery shall meet Agreed Specifications. It shall be possible for the customer to have checked the products during a delivery inspection period which, unless otherwise agreed, shall be seven working days before the agreed delivery date. Where installation is delayed, the delivery inspection period shall instead be calculated from the time when installation is completed. If the parties so agree, delivery inspection may take place in accordance with the attached delivery inspection form. The customer shall approve Delivery when it meets the Agreed Specifications.

- 4.2 The actual delivery date is the day
- a) Delivery is approved by the customer; or
 - b) the delivery inspection period expires without the customer having raised justified complaint in respect of the Delivery; or
 - c) the Delivery meets Agreed Specifications following rectification by the supplier of matters which were the subject of justified complaint by the customer with respect to the Delivery during the delivery inspection period. Training and assistance which is to be provided after Delivery shall not otherwise affect the determination of the actual delivery date.
- 4.3 Deviations from Agreed Specifications which are insignificant for the intended use of the Delivery and which do not inconvenience the customer shall not affect the determination of the actual delivery date. Notwithstanding any such deviation, the Delivery shall be regarded as having met Agreed Specifications.
- 4.4 During the delivery inspection period the customer may, at his own risk, use the Delivery for the intended purpose. If the customer subsequently uses the Delivery or part thereof in his business without the written consent of the supplier before the actual delivery date has occurred, the actual delivery date shall be the date upon which the Delivery or part thereof were used.
- 4.5 If the Delivery does not meet Agreed Specifications at the time of delivery inspection and this is not due to the customer or conditions on customer's side, the supplier shall remedy such failure without undue delay. If the supplier is unable to meet Agreed Specifications through rectification, the supplier shall suggest other action to be taken, including replacement with corresponding products. The customer shall thereupon accept the measures proposed by the supplier if the Delivery will thereby meet Agreed Specifications and the measures taken do not inconvenience the customer. Following remedy, a further delivery inspection shall be carried out in order to determine the actual delivery date.
- 4.6 The liability of the supplier for deviations from Agreed Specifications after the actual delivery date is addressed in clause 12.
- 4.7 In the event the customer is to collect the products or be responsible for the installation thereof, the specific regulations in clause 19 shall apply in lieu of the above regulations in clause 4.
- 4.8 The supplier shall attend to, and bear the cost of, transport to the customer's designated address in Germany.

5. Delay in delivery

- 5.1 Delays in delivery occur when the date of actual delivery date occurs after the agreed delivery date.
- 5.2 If the delay in delivery is caused by the supplier or conditions on the supplier's side the customer shall be entitled to receive liquidated damages. However, such liquidated damages shall not be payable for the period during which the supplier placed other products at the customer's disposal without inconveniencing the customer. Such products shall

meet Agreed Specifications.

- 5.3 Liquidated damages shall be payable in the amount of 0.5 per cent of the whole Contract Sum per commenced week of delay, however not exceeding a total of 10 per cent of the whole Contract Sum. If the actual delivery date has occurred in accordance with clause 4.4, the Contract Sum shall be reduced by the agreed price/annual leasing fee for the Products for which the actual delivery date has occurred.
- 5.4 If the delay in delivery caused by the supplier or conditions on the supplier's side extends for more than 90 days, the customer may rescind the entire Agreement through written notice to the supplier in accordance with clause 21. If the customer rescinds the Agreement the customer shall also be entitled to damages.
- 5.5 If the delay in delivery has been caused by the customer or conditions on customer's side, the supplier may postpone the date of installation and agreed delivery date to a date justified in the light of the circumstances. In such case the customer shall compensate the supplier for direct losses arising from such delay and shall pay interest on the Contract Sum at the European Central Bank's reference rate in force from time to time plus 8 percentage points, for the time from the originally agreed delivery date until the new one. If such delay in delivery extends for a consecutive period in excess of 90 days, the supplier may rescind the Agreement in its entirety through written notice to the supplier in accordance with clause 21.
- 5.6 If it becomes known to either party that a delay will occur or seems likely to occur, such party shall without delay notify the other party thereof in writing, stating the reason for the delay and, as far as possible, the time when it is anticipated that delivery or receipt of delivery can take place. If either party fails to provide such notice within a reasonable time, the other party shall be entitled to compensation for any loss which could have been avoided if the notice had been given in time.

6. Risk associated with the Delivery

The risk associated with the Delivery shall pass to the customer on the actual delivery date.

7. Prices, payment

- 7.1 Prices, fees and charges specified in the contract documents do not include value added tax and other taxes introduced after the execution of the Agreement. The prices are fixed and given in Euro, unless otherwise stipulated.
- 7.2 Payment shall be made within 30 days of either the invoice date or the actual delivery date, whichever is the later.

8. Overdue Payment

- 8.1 In the event the customer fails to make timely payment, default interest and other compensation shall be paid in accordance with law, and, where appropriate, shall be entitled to withhold delivery or part thereof.
- 8.2 If the customer fails to pay within 30 days of a demand

by the supplier to pay the sum due, the supplier may rescind the Agreement in its entirety through written notice to the supplier in accordance with clause 21. If the supplier rescinds the Agreement the supplier shall also be entitled to compensation for work performed and to damages.

- 8.3 The term “overdue payment” also includes delay in providing a letter of credit, a bank guarantee or other security, or delay in taking other agreed measures necessary to enable payment to be made.

9. Retention of title regarding hardware

- 9.1 Hardware shall remain the property of the supplier until such time as it has been fully paid for.
- 9.2 Until such time as title has passed to the customer, the customer undertakes to take good care of the hardware and not to carry out modifications thereto without the written consent of the supplier.

10. Use of Software Products

- 10.1 The supplier grants the customer the right to use the Software Products specified in the Agreement in accordance with the terms and conditions of the Agreement.
- 10.2 If reference has been made in the Agreement to a third party’s special provisions with respect to certain Software Products, such provisions take precedence over the provisions stated below with respect to the use of The Software Products. If the Delivery includes open source software, the supplier’s use shall be regulated by the licensing terms for such open source software instead of the provisions of clause 10. The supplier shall in the Agreement or otherwise state if open source software is included in the Delivery. The supplier shall assist in providing the licensing terms for any open source software included in the Delivery.
- 10.3 Unless otherwise agreed, the customer shall be entitled to use the Software Products for an indefinite period subject to 3 months’ written notice of termination by the customer. However, notice of termination may not be given before the entire lump-sum/initial fee has been paid. In the event of termination, the customer shall not be entitled to a refund of fees paid.
If there is a contractual right of use for a certain term, the Agreement shall be terminated no later than 3 months before the expiry of such stated term, failing which the agreement shall be extended for the specified extension term or for an indefinite period. If the customer is in material breach of his obligations when using the Software Products, the supplier shall be entitled to notify the customer in writing of the immediate termination of the right of use.
- 10.4 The customer may not copy Software Products or software documentation other than, with respect to the copying of Software Products, for the approved use or for backup or security purposes.
The customer shall not be entitled to alter Software Products without the supplier’s consent. However, the customer shall be entitled to adapt Software Products after the expiry of the liability period stipulated in clause 12.
- 10.5 The customer may not lend or hire out the

Software Products or assign his right of use without the supplier’s approval.

11. Maintenance

The supplier guarantees access to maintenance and spare parts for hardware for a period of 3 years and maintenance of Software Products supplied for 2 years from the actual delivery date. Maintenance by the supplier shall be carried out in accordance with the supplier’s rules and prices in force from time to time.

12. Liability for faults

- 12.1 In accordance with the provisions below and with the promptness demanded by the circumstances, the supplier shall be responsible for rectifying faults in the Delivery which consist of a Delivery failing to meet Agreed Specifications.
- 12.2 If reference has been made in the Agreement to a third party’s special provisions with respect to certain Software Products, such provisions shall take precedence over the provisions stated below. However, unless otherwise agreed the supplier shall ensure that such third party meets his obligations. The supplier is responsible for faults in an open source software included in the Delivery, unless otherwise agreed.
- 12.3 The liability of the supplier does not extend to faults which are immaterial to the intended use of the Delivery and which do not inconvenience the customer.
- 12.4 The supplier’s liability does not extend to:
- a) faults caused by the customer’s use of the Delivery with equipment, accessories, or software other than approved by the supplier in a manner which affects the working of the Delivery;
 - b) faults resulting from alterations or interference with the Delivery by the customer without the supplier’s consent or through the customer’s negligence;
 - c) faults resulting from viruses or other external assaults insofar as such were not introduced through the supplier’s negligence, or faults caused by a third party in any other manner or through circumstances beyond the supplier’s control such as faults in equipment, accessories or software which is not included in the Delivery;
 - d) normal wear and tear or the necessary replacement of limited-life components.
- 12.5 In order to fulfil his obligations the supplier may carry out modifications of a Product as may prove necessary as a result of updating of another Product. However, such modifications must not cause the Delivery to fail to meet Agreed Specifications
- 12.6 In order to be able to claim that the Delivery is faulty, the customer must notify the supplier within a reasonable time of having noticed such fault. The customer shall specify the fault and, where necessary, show how it is manifested.
- 12.7 The supplier shall only be liable for faults reported to him within one year of the actual delivery date.
- 12.8 Rectification of faults shall take place at the customer’s premises unless the supplier deems it to be more appropriate for the affected parts of the Delivery to be sent for rectification to the supplier or a service center nominated by the supplier. In such

case the supplier shall arrange and pay for transport. If the customer has moved the relevant part of the Delivery from the original installation address, the customer shall bear the excess costs occasioned thereby. However, if the customer elects to engage a carrier, the customer shall bear the risk, as well as the costs of the transport. In the case of fault rectification on the customer's premises the relevant parts thereof shall be made available to the supplier for the time necessary for rectification. Such rectification shall be carried out during the supplier's normal working hours. At the supplier's request, a representative from the customer shall be present while the supplier carries out the work.

- 12.9 Rectification of faults in Software Products shall take place through correction where such is possible for the supplier, or through instructions regarding circumvention of the fault which cannot be deemed to cause the customer inconvenience that is more than insignificant. If the supplier is unable to meet agreed specification by means of rectification, the supplier shall suggest other measures, including replacement by other equivalent products. The customer shall accept measures suggested by the supplier if, in the light of the provisions of clause 12.3, the products will thereby meet Agreed Specifications and the measures do not inconvenience the customer.
- 12.10 If the customer has given notice of a fault not attributable to the supplier, the customer shall pay the supplier in accordance with the supplier's price list for services carried out from time to time in force.
- 12.11 If the supplier fails to rectify the fault with the promptness demanded by the circumstances, the customer may, in writing, set a reasonable final deadline for rectification. If the fault has not been rectified when the deadline has expired or if a third party fails to meet his obligations pursuant to clause 12.2, the customer shall be entitled to a reduction of the price/fee corresponding to the fault. If the fault is of substantial significance for the customer's use of the Delivery and the supplier knew or should have known of this, the customer shall be entitled after the expiry of the deadline to notify the supplier in writing of the rescission of the entire Agreement. If the customer rescinds the Agreement the customer shall be entitled to damages.
- 12.12 Other than in the event of gross negligence, the provisions of this clause 12 exhaustively regulate the supplier's liability for faults.

13. Safety, confidentiality

- 13.1 The supplier shall take necessary steps to comply with the safety regulations stated by the customer. Where safety regulations which are provided by the customer after the execution of the Agreement result in increased costs, the supplier shall be compensated therefor or entitled to adjust the terms and conditions. Where maintenance is carried out through remote service, remote service routines shall be established jointly by the customer and the supplier.
- 13.2 During a period of three years from the actual delivery date or the termination of the Agreement, whichever occurs first, neither party may, without

the approval of the other party, use or otherwise divulge to a third party information concerning the internal affairs of the other party which may be regarded as a business or professional secret or information which, according to law, is covered by a duty of confidentiality. Unless otherwise follows from law, the supplier's pricing information or other information that a party specifies as confidential shall always be regarded as a business or professional secret. The duty of confidentiality does not extend to information which a party can show has become known to the party otherwise than in connection with the execution or performance of the Agreement, or which is in the public domain. Nor shall the duty of confidentiality apply where a party is obligated to disclose such information by law, court or government order or binding stock exchange regulations. Where a party is required to disclose information in such way, it shall notify the other party to this effect prior to disclosure.

- 13.3 A party shall, through confidentiality undertakings with personnel or other appropriate measures, ensure compliance with the above duty of confidentiality. A party shall also ensure that retained subcontractors and their employees sign corresponding confidentiality undertakings

14. Action for infringement

- 14.1 The supplier undertakes at his own expense to defend the customer if claims are made or legal proceedings are instituted against the customer for infringement of patent, copyright, right to circuit design in semi-conductor products or other right resulting from use of the supplied Products in Germany or other agreed countries. Clause 14.3 shall apply in respect of such Software Products regarding which reference is made in the Agreement to a third party's special provisions. The supplier further undertakes to reimburse the customer for compensation and damages payable by the customer as a consequence of settlement or a judgment. The supplier's undertaking only applies on condition that the supplier has received written notice from the customer within a reasonable time of the claim being made or the proceedings being instituted and that the supplier may, at his sole discretion, make decisions concerning the defense offered in such proceedings and conduct negotiations regarding an agreement or settlement.
- 14.2 If it is ultimately held that there has been an infringement and the supplier has been allowed to participate in litigation and settlement in the manner described above or if in the opinion of the supplier, it is likely that there has been such an infringement, the supplier shall at his own expense either ensure the customer's right to continue to use the Product or parts thereof, or replace such Product with another equivalent product the use of which does not cause infringement, or modify it so that there is no infringement or take back the product and, in the case of a purchased Product, credit the customer with a sum corresponding to the value of the Product in the light of the time during which it has already been used and normal depreciation period. If the

supplier fails to fulfil his obligations pursuant to the above within a reasonable time, the customer shall be entitled to a reduction of the price corresponding to the reduced value of the Delivery resulting from the infringement. If the infringement causes substantial inconvenience to the customer, the customer shall be entitled to notify the supplier in writing of the re- scission of the Agreement in its entirety. If the customer rescinds the Agreement the customer shall be entitled to damages.

- 14.3 Where reference is made in the Agreement to a third party's special provisions governing particular Software Products, the special provisions governing infringement shall apply to such Software Products. The supplier shall only be responsible for making claims against the sup- plier of such Software Products. The supplier's liability under clause 14 does not include open source software included in the Delivery according to sub-clause 10.2.
- 14.4 The supplier shall not be liable to the customer for infringement claims based on the fact that the Product has been used in combination with another product not included in the Delivery or that the Product has been modified or used in a manner for which it was not designed.
- 14.5 In the absence of intent or gross negligence, the supplier's liability for the customer's infringement of a third party's right is limited to that stipulated above. The customer shall not be entitled to bring any other claims against the supplier as a consequence thereof.

15. Limitation of liability, force majeure

- 15.1 If a party is prevented performing its obligations under this Agreement as a result of circumstances beyond his control, for example lightning, labour conflicts, fire, natural disaster, changed provisions issued by public authorities, intervention by public authorities, as well as faults or delays in services provided by subcontractors due to the aforesaid circumstances, such shall constitute force majeure and result in a postponement of the agreed time for performance and release from damages and any other sanctions. The aforesaid shall apply regardless of whether the cause of the delay occurs before or after the agreed delivery date. If performance of the Agreement is materially hindered for more than 3 months as a result of any circumstance stipulated above, either party shall be entitled to terminate the Agreement in writing without incurring any liability in damages.
- 15.2 The supplier shall be liable for damage to property caused by negligence on the part of the supplier or his employees. The supplier's liability in damages to the customer for such property damage shall only cover compensation for direct loss and shall be limited, per occasion of loss, to not more than 35 times the price base amount pursuant to the German Social Insurance Act in force at the time of the loss. The supplier shall not be liable for loss of data.
- 15.3 A party's liability in damages shall be limited to an amount to a total of 15 per cent of the whole Contract Sum. This limitation does not include price deductions, interest and liquidated damages. A

party's liability does not in any event include damages for loss of profit or any other indirect damage or loss of data. Furthermore, a party is not liable for the other party's liability towards a third party, other than as stated in clause 14.1. The limitation of liability in this clause 15.3 does not apply in the event of personal injury, liability in accordance with clause 14 or 15.2, or in the event of intent or gross negligence

16. Principles of business ethics

- 16.1 The supplier undertakes to apply in their business the principles of business ethics that are in accordance with the European Code of Ethics.

17. Assignment of the agreement

- 17.1 The supplier may, without the consent of the customer, assign the right to receive payment pursuant to this Agreement.
- 17.2 This Agreement may not be assigned without the consent of the other party.

18. Special provisions applying to successive and separate deliveries

- 18.1 This clause 18 relating to deliveries of goods in stag- es (successive delivery) or supplies of goods where the Products are to be delivered separately from each other (separate delivery), shall apply only where the parties are agreed thereon.
- 18.2 The actual delivery date shall be determined for each part of a successive delivery or for each separate delivery when included Products fulfil their respective parts of Agreed Specifications. If it has been stipulated that no delivery inspection shall take place in the case of separate delivery, the actual delivery date is the date when the Products are installed.
- 18.3 The provisions in the General Terms and Conditions with respect to the Contract Sum, the Delivery and the Agreement relate to each part of a successive delivery or to each separate delivery, with the exception of that stipulated in clauses 18.4 - 18.6 below.
- 18.4 If the customer is entitled to rescind the Agreement with respect to a delayed or faulty part of a successive de- livery, the customer shall also be entitled to rescind the Agreement in its entirety if the delay or fault is material in relation to the Delivery as a whole.
- 18.5 If the supplier is entitled to rescind the Agreement on the grounds of delay in payment by the customer, the sup- plier shall also be entitled to rescind the Agreement with regard to subsequent parts of the successive Delivery if there is no reason not to assume that delay in payment will occur again.
- 18.6 In the case of successive delivery the customer shall become entitled to adapt Software Products pursuant to 10.4 above at the time of expiry of the liability period for the last part of the successive Delivery.

19. Special provisions applying where the supplier is not responsible for installation

- 19.1 In those cases where the customer shall collect or be responsible for the installation of the Products, the above General Terms and Conditions shall apply where appropriate, subject to the supplements below.
- 19.2 The customer shall install the Products in accordance with the instructions provided by the supplier.
- 19.3 In those cases where the customer shall collect the Products the actual delivery date shall be the day the Products leave the supplier's warehouse. In the case of delivery free the customer the actual delivery date shall be the day the Products arrive at the customer's premises. If the customer does not collect or take delivery of the Products at the agreed time, the actual delivery date shall be the day when the Products became available for collection. If the supplier does not make the products available at the agreed time, the rules on delayed delivery shall apply correspondingly.
- 19.4 If the Products are collected by the customer, rectification of faults shall take place on the supplier's premises or at a service center in Germany nominated by the supplier. The customer shall arrange, and defray the cost of, transport and bear the risk associated therewith.

20. Governing law, Disputes

- 20.1 This Agreement shall be governed by German law, without application of its conflict of laws principles.
- 20.2 Any disputes arising out of the Agreement shall be settled in the general courts.

21. Notice of rescission

Rescission shall take place by courier, registered mail, or electronic notice to the address, provided by the parties. The notice shall be deemed to have reached the other party:

- a) where provided by courier, upon delivery; or
- b) where sent by registered mail, 5 days after being left at the post office for dispatch; or
- c) where sent as an electronic message, upon receipt where the electronic message has been received at the recipient's email address.