

## General Terms and Conditions

GMG GmbH & Co. KG  
Moempelgarder Weg 10  
72072 Tuebingen  
Germany

### § 1 Scope

- (1) Our General Terms and Conditions shall govern all our present and future contractual relationships, legal acts (contract) and transactions. For any existing continuing obligations the rules and provisions set forth hereafter shall be applicable as from January 1, 2010. Until this date, the previous General Terms and Conditions shall continue to be valid.
- (2) These General Terms and Conditions are exclusive. We shall not recognize any conditions by the Contractual Partner opposed to or differing from these General Terms and Conditions unless we have expressly and individually agreed to in writing.
- (3) Subsequent conditions brought forward by the Contractual Partner shall have no influence on the contract.
- (4) Upon the Contractual Partners request, we will explain the contract and our General Terms and Conditions in detail.

### § 2 Form

- (1) There shall be no supplementary verbal agreements.
- (2) Amendments to and the cancellation of the contract and of this form clause must be made in writing and are subject to mandatory statutory provisions.
- (3) The Contractual Partner may not refer to any statement made to us as a text transmitted in electronic or telecommunicative form, unless he confirms it in writing without undue delay.

### § 3 Conclusion of Contract

- (1) Our offers are not binding and subject to change. We are free to either accept, by sending a confirmation of order or by making the Supplies ordered available, or to decline any offers submitted to us within a period of two (2) weeks.
- (2) A contract, including our General Terms and Conditions as integral part, shall only be concluded between the Contractual Partner and us when accepted by us. The acceptance shall only be effective if made

in writing or if we have provided one major Supply due under the contract.

#### § 4 Scope of the Agreement

- (1) We reserve the right to effect technical and structural changes and modifications of the form with regard to the Supplies provided under the contract, insofar as these do not unreasonably interfere with the Contractual Partner and insofar as they do **not** unreasonably impair **Supplies** under the contract
- (2) The Contractual Partner may only claim any rights arising from a violation of the contract basis, if the respective circumstances on which the claim is based have been reported to us in writing prior to the conclusion of the agreement. Detectability is not enough.
- (3) Non mandatory rights of the Contractual Partner to terminate the agreement shall be excluded. Notice must be given in writing to our legal representatives. There shall be no other persons authorized by us to receive the notice of termination, even if these other persons are in charge of the agreement.
- (4) We shall be entitled to resign from the contract if the Contractual Partner proves not to be creditworthy and if this could put our claims towards this Contractual Partner at risk.

#### § 5 Obligations of the Contractual Partner

- (1) In the event that our expenses exceed our internal calculations by more than 20%, we shall be entitled to refuse performance in conformance with Section 275 no. 2 of the German civil code (BGB).
- (2) The Contractual Partner shall inform us about:
  - a) Any individual rights, objects and interests of legal protection affected by the agreement.
  - b) Any circumstances known or detectable to him that could sustain any rights against us as a consequence of the agreement.
  - c) A claimed position as a consumer by him. Should the Contractual Partner intend to deliver the Supplies purchased from us to a consumer or to an entrepreneur who himself provides such supplies to consumers, Contractual Partner shall inform us about this.
  - d) Other subjective or objective attributes in his domain that lead to special legal protection for him or third parties.

- e) Any messages including advertising messages made by us or third parties he trusts in.
  - f) Any intended use that affects the statute of limitation of rights in case of defects.
  - g) Any legal relationship between Contractual Partner and third parties – in particular consumers - which could substantiate rights of recourse action or other rights against us.
  - h) His intended proceeding for the fulfillment or subsequent performance within a term to be fixed by us, of at least two (2) weeks.
- (3) Contractual Partner shall:
- a) Inform us in writing within two (2) weeks about any transport damages and apparent defects to contractual items.
  - b) Pay compensation for any deterioration following the commencement of use of the contractual item, even if used according to the specifications, in the case of a reversal of the agreement.
- (4) Contractual Partner shall observe our recommendations for the use of our hardware and operational systems and shall use the software for the intended purpose only. In addition, Contractual Partner shall accept hardware and software provisions which we take for copy protection purposes and which do not considerably impair the use of the software. Contractual Partner shall take adequate measures to safeguard his data, hardware and other software corresponding to their value and the cost of replacement, in order to exclude, to the extent possible, any possible damage or impairment which might result from the use of the purchased software.

## **§ 6 Supplies, Quality, Delay**

- (1) The place of performance and implementation shall be the registered domicile of our company. We shall be entitled to use third party services, completely or in part, for the performance of contractual services.
- (2) Any drawings, figures, numbers, measures, weights, applications and other data used to describe the Supplies under the contract and its real and legal qualities shall only be decisive for the volume and the quality of the contractual performance if expressly stated in the agreement. Specific requirements and applications shall require explicit contractual agreements. The qualities stated in our public

statements, such as catalogues, brochures, mailings, advertisements, pictures, advertising and price lists shall only be part of the quality if explicitly mentioned as integral part of the agreement. Public statements made by third parties shall only be part of the Quality of the Supplies, if explicitly agreed in the Agreement, or if we have explicitly adopted these as our own in our public statement in writing.

- (3) We shall assume no guarantees, warranties and special risks unless otherwise explicitly agreed by contract in writing. The specification of times of performance shall be approximative and not binding unless their binding character has explicitly been agreed. Specification of the Quality of the Supplies in our contractual statements, public or non-public statements of public statements made by third parties shall contain no guarantee (warranty).
- (4) Software covered by the contract is designed for the average requirements of the user and cannot accommodate every individual requirement. The Contractual Partner shall acknowledge that best available technologies do not allow the development of error-free software for all service conditions. The Contractual Partner shall therefore assure himself that the software package he chooses meets his expectations. We only supply inspection or consulting services if this is expressly agreed. If not otherwise agreed, we shall deliver the software in a version to be used with the operating system Microsoft Windows (Windows 98 or higher). If software is delivered, we shall be obliged to hand out the object code on a data carrier. However, there is no right to claim the delivery or disclosure of the source code.
- (5) Permanent operability of the software supplied is subject to the regular installation of updates. If the Contractual Partner does not conclude any support or update agreement with us, we shall not be obliged to enable the permanent operability without further updates by supplying the relevant software to the Contractual Partner or his successor in title in case of a permissible resale.
- (6) In the case that we deliver or modify any Supplies according to the instructions of the Contractual Partner, we shall not be obliged to test these instructions if this is not specifically agreed. The Contractual Partner shall not be entitled to assert any claims for defects based on such instructions or on hardware and software that has been delivered by third parties.
- (7) Should we be in default, Contractual Partner shall be entitled to withdraw from the contract after expiry of an adequate cure period, in case of impossibility of performance Contractual Partner shall have

this right without granting a cure period. Default shall be considered as impossibility of performance when the performance is past-due for more than two months of the agreed time of performance.

Entitlement to compensation of losses (including possible consequential damage) and reimbursement of expenses shall be excluded – except for the cases specified hereafter. The limitation of liability shall not apply if an agreement of the parties making time of the essence of the contract has been reached..

- (8) In the event of unforeseeable events which are beyond our control and which we could not avert despite reasonable diligence applied according to the circumstances of the relevant case, such as, for example, force majored, delayed supply of commodities, strike and similar events, even if occurring with our pre-suppliers, we shall be entitled to completely or in part withdraw from the contract or to extend the time of performance for the duration of the impairment.

## **§ 7 Ownership and Copyrights**

- (1) The transfer of ownership of the items supplied is subject to the condition precedent that payment of all our claims resulting from the business relationship with the Contractual Partner are paid in full.
- (2) The right of use of the computer program comprised by the software is subject to the condition precedent that payment according to section 1 has been made in full. The right of use is subject to the condition subsequent of the effectivity of the agreement.
- (3) We shall remain the exclusive holder of ownership and copyrights for the software (computer program) which shall not be influenced, not even indirectly, by the above rules.

## **§ 8 Right of Use, Copies, Modifications and Decompiling**

- (1) The Contractual Partner shall be granted the permanent, neither transferable nor exclusive right of use of the software (computer program) covered by the contract. Contractual Partner shall be entitled to install, load, display, run and store the computer program.
- (2) The right of use shall not allow the translation, modification, leasing, multiplication and other ways of use or application, in particular through new technologies or forms of distribution. Distribution or transfer of the computer program outside the area of the European Communities or any other member states of the Treaty on the

European Economic Area shall not be permissible. Mandatory statutory provisions shall remain unaffected thereby.

- (3) The right will only be granted for a single use. In case of a network license the right of use shall cover the declared single licenses for the contractual local network. The Contractual Partner shall prevent any autonomous use by third parties. Third parties are also companies affiliated with the Contractual Partner, shareholders or business units belonging to the same business if really or organizationally separated
- (4) The Beneficiary shall be allowed to create one operational copy of the computer program by installing it properly on a mass storage device from the original data carrier and the original files. This shall be done using the installation program which may have been supplied. He shall only be allowed to make back-up copies of the installed computer program if these are exclusively intended for archiving purposes and external access to these is not possible, in particular not from public networks. Back-up copies shall be marked with copyright notes. It is not allowed to make copies of the original data carrier.
- (5) Before rectifying unauthorizedly a defect, the Beneficiary shall inform us in writing about the defect and grant us an adequate deadline for voluntary rectification of the defect without any statutory duty arising for us or touching warranties and liabilities. Should we fail to rectify the defect in accordance with the above clause, the Beneficiary may initiate rectification of the defect at his own expense, however, limited to the pure correction of the defect. Defects are only objective defects.
- (6) Before decompiling according to the German copyright act, Beneficiary shall request the needed information from us in writing stating the purpose of application. Incidentally, decompilation shall be excluded in conformance with mandatory statutory provisions. Similar techniques shall be considered as decompilation.
- (7) With the transfer of the software the rights of the Beneficiary shall cease. Throughout the transfer of the software, the original data carriers, documentation and copy protections shall be passed to the recipient, and the program code of the software at the transferring party shall be permanently destroyed. Recognition and acceptance of the software license agreement by the recipient is a precondition for the transfer of the software. This does not entitle to any claims for maintenance of the software.
- (8) Existing copyright notices and registration marks, such as, in particular, registration numbers within the software may neither be deleted nor modified.

- (9) In the case of violation of the present clauses by Contractual Partner, we shall be entitled to claim a penalty of EUR 10,000 for each individual breach of contract and to withdraw the right of use granted hereunder with immediate effect and to request restitution of all copies of the program and information on the documents containing the software, without prejudice to any other or further reaching rights. Contractual Partner's right to prove an inferior damage shall therefore remain unaffected.

## **§ 9 Installation of the Software, Training**

- (1) Contractual Partner shall be responsible for installing and updating the software. Contractual Partner shall assure that all requirements to the hardware and the other environment be met, such as, in particular, the connection to the computer network including wiring before the installation.
- (2) We shall neither be responsible nor shall we examine the installation of appropriate workstations and in particular the observance of the provisions under labor protection law.
- (3) During installation and test run, Contractual Partner shall arrange the presence of competent and skilled staff members and shall shut down any other operation of the computer system, if necessary. Contractual Partner shall be responsible for backing up all his data before each installation.
- (4) Staff members shall exclusively be trained at our training facilities or the training facilities of our Contractual Partners; the scope of the training is to be agreed by the contract. Contractual Partner shall assure, in case of need through previous training programs, that staff members manage the operation of computers, operating systems (in particular MS Windows), application software and the network installed.  
Contractual Partner shall provide appropriate training facilities and a installed workstation for demonstration purposes.

## **§ 10 Maintenance of the Software (Update/Support)**

- (1) Maintenance of the software shall only be obliged due to remuneration and a written support services agreement.
- (2) Updates shall assure the current adaptation of existing program versions to the development of the technology, in particular with regard to the operational system environment of other technical devices and applications, which at the time when the program

version was launched had not been foreseeable and which could therefore not be included in the basic license fee. To our own equitable discretion we shall only be obliged to maintain the software and to develop updates. In this context especially our expense in relation to the update fee on a long term basis is mandatory.

- (4) Distinction must be made between Updates and Upgrades, which is the development of a new program version and the supply of which must separately be remunerated. Depending on the relevant product and the basic license, Upgrades shall be optional or mandatory. The provisions of the individual license agreement have to be observed.
- (5) Updates include:
  - a) The executable program code of the Update which can build on the program code of software covered by the license, modify it or replace it by a new version. The program code of the Update shall be made available to the Beneficiary in a reasonable way, such as transfer of ownership of customary data carriers or availability of downloads via internet or mailbox. Computer program shall be the executable program code including the program codes of updates arising, as explained above, from the scope of the existing program code license.
  - b) Individual rights of use of the computer program in conformance with the provisions set out in § 8. This right of use shall replace the previous right of use, which shall become void.
  - c) Updates shall not comprehend a print or a printable documentation.
- (5) Upgrades include:
  - a) The integration of new features.
  - b) The adaptation to current product requirements.
  - c) The adaptation to the latest PC technologies and operating system requirements.

## **§ 11 Prices, Terms of Payment**

- (1) Our prices are subject to change. Prices quoted for cost estimations shall not be binding; an overrun of cost estimations by 25% shall be deemed insignificant. Our prices shall only include the items of performance explicitly stated, and shall not include, in particular, any

expenses, transport and packaging expenses and (value added) taxes that are to be borne by the Contractual Partner.

We reserve the right to adapt our prices to cost changes that are beyond our control, for any orders with more than three (3) months delivery time agreed.

- (2) We shall be entitled to request partial payments of a total of 50% of the overall remuneration upon conclusion of the contract, after beginning of performance and after completion of a part of the order.
- (3) Our invoices are payable net on receipt.
- (4) Default by Contractual Partner and our rights regarding default of payment shall be governed by the statutory provisions. Contractual Partner shall be in default two weeks after due date, at the latest, and
  - a) Upon receipt of a request to pay, an invoice or any similar statement of performance, or
  - b) Upon receipt of consideration.
- (5) The Contractual Partner can only assert setoff rights if his counterclaims have become res judicata are undisputed or have been acknowledged by us.

## **§ 12 Acceptance, Transfer of Risk**

- (1) Shipment shall only be made upon Contractual Partner's request. Partial performance shall be possible to the extent tolerable by Contractual Partner. Contractual Partner shall accept Supplies even if showing immaterial defects. The Supplies shall be deemed unconditionally accepted in accordance with the contractual provisions, if Contractual Partner does not inform us in writing about possible defects within two (2) weeks after delivery.
- (2) In the case that the contractual items are shipped, we shall be entitled to insure the items at the expense of the Contractual Partner.

## **§ 13 Damages and Reimbursement of Expenses**

- (1) Any claims for damages or reimbursement of vain expenditure Contractual Partner may have, based on infringement of duties, or in case we should fail to supply at all, or to supply in due form, or based on late supply or defects, shall only be admitted for

- 1.1 Damages resulting from the violation of life, body and health, which are provoked by, at least, negligent breach of duty on our part, or by the intentional or negligent breach of duty by one of our legal representatives or vicarious agents.
  - 1.2 Other damages, which are due to, at least, grossly negligent breach of duty on our part or to, at least, grossly negligent breach of duty on the part of one of our legal representatives, executives or vicarious agents, or due to, at least, negligent breach of an obligation which goes to the root of the contract (cardinal obligation) on our part, or, at least, negligent breach of an obligation on the part of one of our legal representatives, executives or vicarious agents, and
  - 1.3 Damages, which are covered by a guarantee acc. to Sec. 276 no. 1 of the German Civil Code or by a guarantee of quality or durability acc. to Sec. 443 of the German Civil Code.
- (2) In so far as our liability for negligent and for grossly negligent acts committed by our vicarious agents who are not our legal representatives or executives, is not excluded by Section 1, our liability shall be limited to the damage typically foreseeable at the conclusion of the contract and to reimbursement of vain expenditures up to the benefit that Contractual Partner would have received from the fulfillment of the contract. In the case of a loss or damage of data, our limitation shall be limited to the costs arising for the recovery of the data provided that appropriate back up copies are available.
- (3) The foregoing shall also be applicable for any claims for damages the Contractual Partner may have from legal relationships resulting from the commencement of contract negotiations, preparation of a contract or similar business contacts. Should a contract be concluded between us and the Contractual Partner, any claims for damage the Contractual Partner may have that are not justified under the foregoing provisions shall be deemed accepted.
- (4) The foregoing provisions shall also apply for any claims the Contractual Partner may make on the basis of subrogated rights. Contractual Partner may only quote foreign legislation in so far as the claim would also be justifiable under the foregoing provisions and this General Terms and Conditions.

#### **§ 14 Warranty for Defects in Title and Quality**

- (1) Upon delivery, Contractual Partner shall examine the services and products supplied by us without undue delay, and give us

notification of any defects detected without undue delay, but, at the latest, within a period of two weeks. In default thereof, acceptance is deemed to have taken place, unless the defect could not be detected through the examination. Should such a defect be detected later, notification must be given within a period of two weeks upon detection, in default thereof Supplies are deemed to be accepted in consideration of the defect. Should we have intentionally misrepresented the defect by silence, this provision shall not be applicable.

- (2) We shall be entitled to remedy the deficiency by repairing it or by supplying the item free of defects (supplementary performance "Nacherfüllung"). If supplementary performance is unsuccessful, the Contractual Partner shall be entitled to reduce the purchase price or to withdraw from the contract Irrespective of any claims for damages he may have.
- (3) If hardware or third party software is concerned we shall be entitled, aberrant from Section 2, to transfer to the Contractual Partner the claims we may have against our suppliers or the manufacturer for the purpose of supplementary performance or the supply of spare parts Before asserting his claims for supplementary performance against us, Contractual Partner shall make a claim, if necessary proceed, against our suppliers or the manufacturer for reimbursement of expenses after self-remedy of defects, indemnification instead of performance, cancellation or reduction of performance, unless this cannot reasonably be expected from the Contractual Partner.
- (4) In the event of supplementary performance, the Contractual Partner shall give us all details required for diagnosing and eliminating the defect, and shall provide a competent and trained member of staff to collaborate in the supplementary performance, if this is executed by phone or by remote data transmission. If supplementary performance is executed on site, the Contractual Partner shall permit us free access to the defective items and, if necessary, interrupt any other activities on Contractual Partner's hardware or network. Should the Contractual Partner claim supplementary performance from us and this claim proves to be unjustified, for example, in the case of user errors or application errors, the Contractual Partner shall reimburse us for all costs arising for the examination of the items and the supplementary performance, unless Contractual Partner is not liable for claiming us.
- (5) In the event of a system failure due to a defect we are liable for, we shall restore the state of the data of the last back-up carried out by the Contractual Partner before the failure. The Contractual Partner shall make this data available in machine-readable form.

- (6) In the event that the Contractual Partner intervenes in the Supplies provided by us, in particular the program code, in a way that is not explicitly permitted by the operating manual or other instructions for use, the Contractual Partner shall not be entitled to any claims based on defects, unless the Contractual Partner can prove that the defect is not a result of his interference.
- (7) The statutory period of limitation shall apply for all claims based on tortious acts. All other claims the Contractual Partner may have due to defects in quality, in particular supplementary performance, indemnification, reimbursement of expenses for self-remedy of defects, cancellation, reduction and reimbursement of vain expenditures shall become time-barred within one year.
- (8) The same applies for claims based on defects of title, with the following exception: Claims due to a defect which is based on a third party's right in rem, and which entitles to claim possession of Supplies, shall become time-barred within five (5) years.

### **§ 15 Passage of Risk**

The risk of loss or deterioration by accident of the item shall pass to the Recipient at the moment the item is handed over to the shipping agent, or, at the latest, when leaving our premises, regardless of from which place the item is sent or which party bears the costs of freight.

### **§ 16 Returns**

All items supplied by us are non-returnable unless otherwise agreed in writing. In any case, we shall only accept returns sent free domicile and shall only credit the purchase price. We are entitled to charge a returns processing allowance of 10% of the purchase price. Notification of complaints must be given within a period of two (2) weeks. Credit vouchers for returns shall not be paid out but shall be set off with our next supply; the amount shall only be paid of in the case that until the end of the following year no new supply has been made.

### **§ 17 Packaging and Dispatch**

Packaging shall be in accordance with customary standards of the industry. Means and route of transport shall be fixed by GMG, unless the Recipient chooses different options and bears the extra costs in full.

## **§ 18 Reservation of Title**

The items supplied shall remain our property until each and every claim, even future and conditional claims, the Supplier has against the Purchaser has been fulfilled.

The Purchaser may sell conditional good in proper business transactions against payment or reservation of title; pledging or transfer by way of security, however, is not allowed. As a precaution, the Purchaser shall subrogate in full all rights arising from the resale of or other legal ground with regard to the conditional goods, in particular claims, to us.

The Purchaser, however, shall revocably be entitled to collect on his own behalf his receivables from his purchasers. Should third parties access the conditional goods, the Purchaser shall point out our ownership rights and inform the latter without undue delay.

In the event of late payment by Purchaser, we shall be entitled to withdraw the conditional goods. Purchaser shall provide our access to the goods still available in this case. Upon request, the Purchaser shall notify us of the third party receivables from the resale of our goods without undue delay and signal the assignment of the claim to the third party without undue delay.

## **§ 19 Place of Venue, Governing Law, Partial Ineffectiveness**

- (1) The contract shall exclusively be governed by the law of the German Federal Republic even if other state laws may be contrary to or not accept this law, to the exclusion of any provisions applicable for international sales, in particular the United Nations law on the International Sale of Goods (CISG).
- (2) The venue within the scope of legal discretionary power shall be the court having jurisdiction at our place of business. Other places of jurisdiction, which are legally available to us for taking legal action against Contractual Partner, shall not be excluded thereby.
- (3) Should a part of this agreement be or become invalid, or should there be a loophole, the validity of the remaining provisions of this agreement shall not be affected thereby.