

**§ 1 Subject of Contract**

1. The General Trading Conditions (GTC) of Filosof GmbH (hereinafter "Filosof") apply exclusively. Other terms do not become part of any contract even if Filosof does not explicitly reject them.
2. The respective valid version of the GTC as made known to the Customer apply to every contract.
3. Alternative provisions in individual contracts prevail over these terms.
4. The Customer has checked that the specification of the contractual items meets his wishes and needs. In cases of doubt the Customer must seek expert advice before conclusion of contract.

**§ 2 Implementation of Contract**

1. In addition to these terms and the individual contract, statutory law applicable to the type of performance also applies to every performance rendered by Filosof. The same also applies to other types of ancillary performances.
2. The Customer is obligated to fulfil his cooperative duties necessary for implementation of the contract and resulting explicitly from the contract, law and the type of contractual relationship properly and punctually.
3. Filosof is entitled to reasonable partial performance and to have performances rendered by subcontractors.

**§ 3 Copyright and Rights of Use**

1. The software (including add-ons, descriptions and explanations) delivered by Filosof is protected by copyright. In the relationship between the parties to the contract all rights to the software lie exclusively with Filosof. Where rights belong to third parties, Filosof has corresponding rights of use.
2. Filosof cedes the Customer a right of use to the software. The scope is defined from contract to contract. If not agreed otherwise, the Customer receives the non-exclusive rights he needs in order to use the software in his business as described in the following provisions and in the manuals.
  - a) The Customer may load the software to the main memory and hard disks of the contractually defined type and number of computers and use it according to the contractually defined type and number. He may make the backup copies of the software necessary for safe operation. The Customer may only duplicate the software for this purpose. The manuals may only be copied for internal company purposes. § 11 applies to all copies.
  - b) Modification of the software to establish interoperability of the software with other programs is only permitted as allowed by the provisions of the German Copyright Act and only if Filosof does not make the information and documents necessary for this available within a reasonable period and at reasonable charge in spite of a written request by the Customer.
  - c) All other types of use, especially decompilation, translation, editing, arrangement and other re-engineering, are prohibited. Leasing and lending of the software as well as provision through ASP (Application Service Providing), distribution and computer centre operation of the software are prohibited without the prior written consent of Filosof.
  - d) Before third parties are consulted (e.g. pursuant to § 69 e, par. 1, no. 1, par. 2, no. 2 of the Copyright Act) the Customer must obtain a written declaration for Filosof in which the third party undertakes directly vis-à-vis Filosof to comply with the rules contained in § 3 and § 11.
3. Any use of the software extending beyond the provisions in these General Trading Conditions and the respective contract requires the prior written consent of Filosof. Filosof shall charge the Customer for this further use.
4. Filosof may revoke the rights of use for good cause. Good cause exists especially if the Customer is in default of payment, does not comply with the restriction on use or breaches the secrecy obligation in § 11 and does not refrain from this action immediately even after receiving a written warning containing a threat of revocation. If the rights of use are revoked, the Customer must surrender the original software and any copies in existence and delete stored programs. He must assure Filosof in writing of surrender and deletion. Filosof is entitled to the normal compensation for use due for the period of use.

**§ 4 Time of Performance, Delays**

1. Agreements or details on the time of performance or delivery are only binding if effected in writing. All warnings and setting of deadlines by the

Customer must also be made in writing. All extensions of deadlines must be reasonable. They may not be shorter than 10 work days. Filosof is entitled to make partial deliveries if the parts delivered may be used meaningfully in isolation. All times of performance are conditional upon the availability of supplies to Filosof. The periods for delivery and performance shall be extended accordingly for the period in which Filosof waits for information or assistance from the Customer. The same applies if Filosof is hindered in properly executing the contract by circumstances for which neither Filosof or an agent of Filosof is responsible. Such circumstances are to be assumed especially in the case of strikes or lock-outs due to industrial disputes and unforeseeable impediments beyond the control of Filosof. Filosof shall advise the Customer immediately of the start and end and type of impediment.

2. Should Filosof be in default or not render its performances or not render same as due and should the Customer have the option to delivery, rescission and/or compensation for damages, the Customer must exercise this option vis-à-vis Filosof in writing within one week of the option coming into effect. Should the Customer fail to exercise the option in writing, it shall be assumed that Filosof is entitled to effect further performance and the Customer is not claiming any rights from the disturbances in performance.
3. Should the Customer be responsible for the delay, Filosof shall charge for the additional costs incurred.

**§ 5 Payment, Prices, Set-Off and Assignment**

1. Payments are due immediately after receipt of invoice strictly net.
2. Filosof charges travelling expenses, other expenses, data media, shipping and telecommunication costs according to its respectively valid price list. If the parties to the contract have not agreed prices for deliveries and services individually, the current price list of Filosof at the time of delivery and performance shall always apply. If the parties to the contract agree on a change or extension to the deliveries and services, the price shall be adjusted according to the price list.
3. All prices exclude that respectively valid rate of statutory value added tax, which shall be charged additionally.
4. The Customer may only set off payments against undisputed or legally established claims. Payments by the Customer shall always be settled according to § 366, par. 2, § 367 of the German Civil Code. He may only assign claims from this contract to a third party with the prior written consent of Filosof. He may only base a right of retention on claims from this contract.

**§ 6 Acceptance and Approval of Deliveries and Services**

1. After every delivery or service Filosof may demand a written declaration from the Customer stating that the delivery or service is correct, complete and free of obvious defects. The declaration must be submitted within a month of delivery.
2. The declaration is also deemed as submitted if the Customer has used the contractual items for more than a month since delivery without complaint or has expressed his approval in some other way, e.g. by remaining silent to a demand for acceptance or approval or by payment of the remuneration and the Customer was informed of the legal consequences at the start of this period.
3. The same applies to partial performances. In this case the approval does not extend to cover such properties of the delivery and service that can only be checked together with the later deliveries and services.
4. The obligations to give notice of defects pursuant to § 377 of the German Commercial Code shall remain unaffected by this.

**§ 7 Defects**

1. Filosof warrants competent and careful execution of the contract. The Customer is aware that software is generally never completely free of errors. Software is free of defects in quality if it corresponds to the contractually agreed quality on delivery.
2. Filosof may first eliminate a defect through remedy or replacement delivery. Software services may be remedied at the discretion of Filosof

- by delivery of a new program revision or in that Filofof shows possibilities how the effects of the error may be avoided. Complete elimination of a software error by remedy is not possible in every case. The Customer must accept delivery of a new program revision even if this means a reasonable amount of adjustment work for him.
3. If the remedy for a certain defect fails finally after two attempts in spite of a reasonable written deadline having been set, the Customer has the right to reduce the remuneration to a reasonable extent or to cancel the contract. In the case of maintenance and care contracts the Customer is entitled to a right of extraordinary termination instead of a reduction in remuneration. § 8 shall apply to claims for compensation for damages. The Customer has no other rights due to the defect, e.g. compensation for expenses incurred to have the defect eliminated by a third party, new delivery, contract costs.
  4. The Customer shall take all necessary measures within the bounds of what is reasonable to ascertain, isolate and document the defects. He shall in the case of a defect provide Filofof with all information available and support the elimination of the defect within the framework of his contractual cooperative duties.
  5. If Filofof works on faults caused by the environment surrounding the contractual software and hardware, changes to it by the Customer or deficient operation, Filofof shall charge for the costs incurred. The same applies if the Customer has not fulfilled his obligation to give notice of defects pursuant to §§ 377 of the German Commercial Code.
  6. Warranty claims for products manufactured by Filofof lapse after 24 months after delivery of the item.
2. Every notice of termination must be made in writing to be effective.
  3. In the case of termination for good cause by the Customer Filofof is entitled to a pro rata share of the remuneration for its performances to date.
  4. On termination of the contractual relationship the Customer is obligated to return all contractual items as well as the complete documentation and other documents delivered. Correct and proper return also includes the complete deletion and destruction of all and any copies that might exist. Filofof may waive the return and order deletion of the program and destruction of the documentation.

#### § 11 Final Provisions

1. Additional agreements and amendments to the contracts must be made in writing. The same applies to cancellation of this requirement for the written form. A confirmed e-mail suffices for compliance with the written form.
2. The place of performance is Cologne.
3. The contract shall be governed and construed exclusively according to the law of the Federal Republic of Germany. Application of the United Nations Convention on Contracts for the International Sale of Goods is explicitly rule out.
4. If not agreed otherwise contractually and if the customer is a registered merchant or equivalent, the exclusive place of jurisdiction for disputes arising from this contractual relationship shall be the registered seat of Filofof.

All previous GTC herewith become void.

#### § 8 Liability

1. Claims for compensation for damages by the Customer are precluded no matter what the legal reason, especially due to breach of duties from the obligation and from unlawful actions save compulsory product liability exists, especially according to the Product Liability Act, in cases of malice or gross negligence, injuries to life, body or health, warranty of the absence of a defect or breach of significant contractual duties.
2. Filofof shall only be liable for the recovery of data if the Customer has ensured that these data are reproducible from data stocks kept in machine-readable form at reasonable expense. This liability is restricted to the recovery work save the data losses were caused by Filofof maliciously or with gross negligence.
3. The above provisions apply analogously to the personal liability of the legal representatives and people used by Filofof to fulfil its obligations.
4. In the event of a breach of significant contractual duties compensation for damages shall be restricted to foreseeable losses typical for such a contract save malice or gross negligence exists.
5. The total liability for all losses resulting from an individual contract, a project or business relationship as such and to be compensated according to this provision may further be defined individually in a separate agreement.
6. All claims of the Customer from the contractual relationship have a limitation period of one year. It commences at the end of the year in which the claim arose and the Customer became aware of the damaging event.

#### § 9 Secrecy and Safekeeping

1. The parties to the contract undertake to treat all information and documents learnt about or received from the respective other party to the contract confidentially unless already in the public domain by some other means. This obligation shall persist even after execution of the contract. The parties to the contract shall keep and protect these items safely so that misuse by third parties is ruled out.
2. The employees of the parties to the contract and third parties engaged in execution of the contract who have official access to the items named in paragraph 1 are to be instructed in their secrecy obligation in writing. For the employees of the Customer this also applies to the legal rights to the software and the rights of the Customer pursuant to § 3.

#### § 10 Cancellation of Contract

1. Termination for good cause must be threatened beforehand in writing stating the reason for termination and setting of a reasonable deadline for elimination of the reason for termination. Good causes for termination are inter alia:
  - default in payment;
  - breach of duties incumbent upon the Customer, especially the contractual cooperative duties and duties from § 3, § 9;
  - when insolvency proceedings are instituted against the Customer or such proceedings are rejected for want of assets.