

# General Terms and Conditions

## § 1 General/Scope

For sales and potential installation of our goods apply terms given below (hereafter referred to as General Terms and Conditions) and license agreement that has to be concluded (also for testing licenses), which advances the General Terms and Conditions as more particular regulation.

Deviating General Terms and Conditions of the buyer that we do not expressly accept are hereby disagreed.

Deviations of this General Terms and Conditions and testing license agreement and/or amendments as well as changes and supplements of signed contracts must be in written form.

## § 2 Offer and Contract Conclusion

- 1 Our offers are subject to change without notice. The contract is completed by our order confirmation.
- 2 By request of the buyer, it can be agreed that the goods are installed on the machines of the buyer. Details (e.g. installation date and location, installation price, machines, on which the goods have to be installed, etc.) must be stated within the order.
- 3 We reserve to ourselves the right to change products [changes of construction, selection of components, specification, design and software] even after order confirmation, as far as this is reasonable for the client under consideration of our interests.
- 4 Part deliveries are allowable as far as not unacceptable for the buyer in individual cases.

## § 3 Prices and Payment Conditions

- 1 The prices apply ex works excluding packaging and other shipping and transport fees. In Countries which are no members of the EU we only deliver ex works excluding packaging and other shipping and transport fees, we also do not pay any taxes and customs duties. The goods/software is packaged in a way that is usual in trade and will be provided by us uninsured for collection. If required by the buyer we will select the transporter at our best discretion. Packaging is charged at cost price and only taken back, if we are forced hereto by mandatory legal regulation.
- 2 As far as installing of goods/software at the buyer is agreed, the prices listed on the order apply. Other shipping and transport costs are not charged.
- 3 If the goods/software shall be delivered/installed after more than 4 months after contract completion or between contract completion and delivery/installation is more than 4 months of reasons the buyer is responsible for, we can suitably rise the price for the goods/software and/or installation under consideration of occurred costs for material, salary and other additional expenses that have to be borne by us. If the purchase price rises more than 20 %, the buyer can resign the contract.
- 4 If we consider requests of change by the buyer, the buyer is billed additional costs arising through this.
- 5 Bills for goods are payable within 14 days with 2% deduction or within 30 days without deduction. In case the buyer delays payment, 5 % interest above respectively applicable prime rate is claimed under reserve of assertion of further demands.
- 6 Bills for services (e.g. training, installations, etc.) must be paid without deduction within 10 days. In case the buyer delays payment, 5 % interest above respectively applicable prime rate is claimed under reserve of assertion of further demands.

#### **§ 4 Charging and Retention**

Charging and retention by the buyer is excluded, unless charging demand is accepted and recognized by declaratory judgment.

#### **§ 5 Terms of Delivery**

If the buyer delays or refrains cooperation required or agreed by him, the stated delivery time is applicably extended. The same applies to activities within labor disputes, especially strikes and lockouts as well as unexpected barriers that are out of our range of action, e.g. traffic congestion and operational disturbances, lack of materials or energy, etc. Changes of goods/software required by the buyer after order confirmation also cause applicable extension of delivery time.

#### **§ 6 Transfer of Risk and Acceptance**

- 1 The risk is transferred to the buyer, when we released the goods/software to the transporter; in case of goods/software installation at the buyer the risk is transferred to the buyer when the goods/software are released to him.
- 2 In case we install the goods/software the buyer must accept the installation within five working days from completion. Article 8.1. applies to goods/software. After the expiration of the period the installation is classified as accepted, unless the buyer does not claim legitimately substantial deficiencies before. The acceptance must not be refused because of deficiencies that are not substantial. If the buyer accepts a deficient installation, although being aware of the deficiency, he may only claim because of deficiencies, if he reserves them at acceptance.

#### **§ 7 Retention of Title**

We reserve us the proprietary rights of the delivered goods/delivered software (hereafter referred to as reserved goods/reserved software) until complete payment. Retention of title is also applicable, until all, also future and limited claims arising from business connection between buyer and us are fulfilled.

The buyer must not transfer by way of security or give the reserved goods/reserved software in mortgage, but is allowed to resell the reserved goods/reserved software in proper course of business. Claims arising from reselling the reserved goods/reserved software against his business partners are already now transferred to us. If the value of the transferred claims exceeds the practicable value of the reserved goods/reserved software by more than 20 % we release the exceeding part. The buyer may collect the claims arisen from reselling until canceled.

#### **§ 8 Warranty Claims**

If the sale is a trade business for both parties, the buyer must check the goods/software immediately after receipt, as far as it is doable according to proper business course and if a deficiency appears, he must notify us immediately. If the buyer fails to notify us within two weeks after receipt, the goods/software apply as accepted, unless the deficiency was not identifiable when it was checked. If such a deficiency appears later, it has to be notified immediately after detection (within two weeks at the latest); otherwise the goods/software apply also in consideration of this deficiency as accepted.

Claims of the buyer because of deficiencies at the goods/software become time barred after one year from release i.e. receipt of the full version of the software and goods receipt. Claims of the buyer because of installation deficiencies become time barred after one year from acceptance of the installation.

We will either repair or replace the goods by new goods/new software according to own choice in case of a substantial deficiency notified in time within the aforementioned warranty period according to article 8.1. The same applies accordingly to installation deficiencies.

If the supplementary performance within appropriate period of time finally fails, the buyer can resign from contract or reduce the price.

Further claims of the buyer because of deficiencies of the goods/software or installation are excluded subject to article 9.

### **§ 9 Liability**

1 We are liable without restraints only for injury of body, health or life as well as in cases of intention and gross negligence also of our legal agents, managing officers and auxiliary persons. We are only liable for slight negligence, as far as a duty is violated that is of particular importance to attain contractual use (cardinal obligation).

If a cardinal obligation is violated by slight negligence we are only liable for damages, that appearance is typically anticipated within the sales of the goods.

2 The liability according to Product Liability Act will remain unaffected.

### **§ 10 Surrender of Software**

1 We transfer the simple and not assignable right, to use the work performed, in form of goods and/or software within the contractual use, by delivery of the goods/software to the customer.

2 The transfer of exclusive rights of use is carried out only in cases, in which it was expressly agreed in written. Also the customer may only transfer exclusive rights of use to third parties with our prior written agreement, though.

3 Transferring rights of use is subject to complete payment owed by the customer. If the customer delays owed payment, we are entitled to cancel the transfer of rights of use after unsuccessful expired extension of time set for the customer to correct delay.

4 The customer must not reproduce, change and/or extend our goods/software. Especially he is not allowed to enhance development, to decompile, to disassemble or regress development.

### **§ 11 Customer Duties**

1 The customer commits himself against us to save computer data affected by our goods/software as complete as possible to enable reconstruction with justifiable effort in case of damage.

2 The customer will keep all information about our goods/software, our used methods and our methods for their creation including appendant written or otherwise embodied documents made available within contract initiation and/or contract procedure during the entire usage period and after their completion in confidence and will not access them to third parties without our prior acceptance. The customer commits himself to entail suchlike commitment also to his staff.

3 The customer will meet all necessary precautions to exclude usage by concession of rights of usage not allowed by third parties. In case the customer is on an individual contract basis allowed to transfer rights of usage that he was granted, he will entail this commitment also to his own contract partners.

- 4 The customer is committed to create all preconditions free of charge that are required to provide our services (in terms of our goods and/or software). Under this precondition he will especially provide on our first demand:
- make sufficient workspaces including all related work equipment available for our staff,
  - concede unrestricted and sufficient computing time including required priority,
  - provision of test data and required comparable utilities necessary for service provision,
  - Refer a competent contact person for coordination.
- 5 If the customer does not comply with his obligations to operate according to article 4 in time, his delivery and performance periods will extend accordingly. If the customer delays in fulfilling his obligations to operate, we can refuse further fulfillment contracted about goods and/or services after unsuccessful process of an extension of time for fulfillment of obligations to operate. In this case we are entitled to claim all charges arisen until refuse as well as loss of profit due to abnormal termination.
- 6 The customer grants us the right to copy the software delivered by us any time during usual business hours to review contractual usage.
- 7 The customer commits himself not to entice our staff members known during contractual performance away neither by himself nor by third parties.

## **§ 12 Property Rights**

- 1 The customer may copy our software and/or parts of the software only for purposes of security. Simultaneous usage of our software on multiple computers must be agreed by contract for its legitimacy.
- 2 The customer will not remove designations in our software, especially property rights endorsements, but also take them over to backup copies.
- 3 We are not bound to check components or parts hereof that were given to us by the customer for potential property rights of third parties. We assume no liability for claims of third parties due to components or parts of components that the customer determined to integrate into our software.
- 4 The customer will inform us immediately and in written, if third parties claim against him due to violation of commercial property rights and/or copyrights caused by software delivered by us.
- 5 We are entitled to carry out changes on our cost, if it seems doable to him due to property right claims of third parties and no reduced value of the software arises.

## **§ 13 Assignment of Rights**

- 1 The customer can cede contractual rights only with our prior agreement.
- 2 Our right to provide contractual duties by third parties as assistants will remain unaffected.

## **§ 14 Place of Fulfillment and Jurisdiction**

- 1 Place of fulfillment is for all indirect and direct duties arising from this contract including duty of payment the principle office of Comara GmbH (78112 St. Georgen).
- 2 The contract and these General Terms and Conditions are subject to the right of the Federal Republic of Germany to the exclusion of the UN-Sales Law of 1980 (CISG).
- 3 The courts at the principle office of Comara GmbH (78112 St. Georgen) are exclusively competent for all legal disputes in relation with the contract and these General Terms and Conditions, as far as the buyer is a tradesman. Comara GmbH is also entitled to sue at the court at the location of the principle office or a branch office of the buyer.