

**Terms and Conditions of
sbc soptim business consult GmbH
for the provision of software and
delivery of services**

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- hereinafter sbc -

1 Scope of application and additional agreements

- 1.1 These terms and conditions apply to all software and services delivered now and in the future by sbc to the Customer.
- 1.2 The Customer's contrary or supplementary conditions as well as any additional agreements or amendment of these terms and conditions are only validly agreed if confirmed in writing by sbc.

2 Offers, Conclusion of contract

- 2.1 sbc is only bound by its written offers. The binding period is 30 days unless otherwise specified in the offer.
- 2.2 The contract will only become binding if sbc confirms the order in writing or has already delivered the contractual performance.
- 2.3 The scope of service is defined in the offer issued by sbc and the product and service description contained therein. In the event that such an offer is accepted, the Customer accepts that sbc's scope of performance documented therein is suitable for its purposes. Characteristics of customised developments are only then deemed agreed, if the agreement has been made in writing.
- 2.4 In case there is a need for additional customised development after conclusion of the contract, sbc is ready to develop customised software for special tasks of the Customer, provided this is feasible at that point in time and is reasonable to expect of sbc.
- 2.5 Possible subsequent changes to the scope of performance must be made in writing in order to be binding.
- 2.6 Additional services and additional deliveries over and above that which was contractually agreed, the necessity of which become apparent during the course of preparing the performance specifications or during the realisation phase or which are requested by the Customer, will be charged at sbc's applicable rates as may be amended from time to time. Unless otherwise agreed in specific cases, travel costs and per diem expenses will likewise be billed at sbc's applicable rates for all activities performed outside of sbc's operating locations.

- 2.7 Offer documentation (product descriptions and similar materials) remains the property of sbc and may not be reproduced nor passed on to any other parties without the consent of sbc. sbc reserves all copyright-based rights of exploitation to all offer documentation.

3 Right of use

- 3.1 Provided that complete payment of the contractually agreed fee has been made, sbc will grant the Customer the non-exclusive, non-assignable right to use the software as provided. "Use" encompasses the complete or partial storage of the software and the data stock, the execution of the software, the processing of the data stock and producing copies of these materials - particularly for the purpose of making back-ups and copies - in machine-readable form, provided this is necessary for the contractually defined use.
- 3.2 The assignment of the granted rights of use or any granting of sub-licenses is not permitted. The Customer may not make the software (completely or partially) accessible to any other party.
- 3.3 sbc reserves the unlimited right to modify and exploit the developed software. In this regard it particularly reserves all rights to new findings and results made on the basis of the works performed and the products developed in performing the contract, particularly to the future exploitation of these insofar as this is legally permissible.
- 3.4 All other rights to the software – both in original and in copy form – are reserved to sbc or the relevant licensor. For services rendered all rights that may occur, especially to methodological principles and results made on the basis of the works performed, remain with sbc also.
- 3.5 sbc will indemnify the Customer in relation to the infringement of any third-party property rights, provided the Customer informs sbc promptly in writing as to any such claims and provided the conduct of all defence measures and settlement negotiations is reserved to sbc. sbc moreover will either procure the right of the Customer to continue to use the software and other affected services of sbc or it will modify or replace the software in such a way that the property right is not infringed or it will take back the software and repay the license fee paid to it less an amount in consideration of the time that the software has been used. In this case the assumed period of use will be 5 years. The aforementioned duties of sbc are extinguished in the event that the Customer modifies the license material or other services delivered by sbc or if it uses them in a way not described in sbc's documentation.

4 Delivery, Start-up, Acceptance

- 4.1 The place of performance is any of sbc operating locations.
- 4.2 The installation and start-up will be performed by sbc by way of a separate contractual assignment. Unless otherwise agreed, these works and the material required in this respect will be separately billed in accordance with sbc's applicable rates for services and supplies. This may also be delivered by remote access.
- 4.3 The Customer, at its own cost, will ensure that the start-up requirements as well as the requirements for all other services sbc has to render are fulfilled in good time. For work to be performed on-site the Customer will provide a workplace with system, internet and telephone access. The Customer will in particular also provide:
- a) fully functionally operating conditions in relation to the required electrical connections, environmental conditions and room size,
 - b) functional and operationally-ready equipment (processes and device system),
 - c) operationally-ready interfaces to the equipment with the defined characteristics,
 - d) operating and service personnel.
- 4.4 Software and service results will be demonstrated to the Customer and it will be required to accordingly and promptly confirm in writing that these conform to the agreed characteristics. If, despite having been requested to, the Customer fails to issue this confirmation but uses the software nevertheless, the said confirmation is deemed issued four weeks following notification of operational readiness, unless the Customer issues prior written notification of significant programme defects and expressly refuses to issue said confirmation by referring to the defect in question.
- 4.5 Formal acceptance is to be performed if agreed in writing or is required by way of statutory provisions. In this case the following provisions apply:
- 4.5.1 The formal acceptance will be performed on the basis of a standard test or on the basis of the test plan presented by sbc. Following the successful performance of the test plan the overall system is deemed accepted. This formal acceptance must be confirmed by the Customer in writing by way of a memorandum of acceptance.

4.5.2 Minor defects, which do not significantly impair the operational-readiness and operational security, will not impede a formal acceptance. Such defects are to be documented in the memorandum of acceptance with the time of their subsequent elimination to be defined. If a test cannot be successfully performed due to a defect, following the elimination of the defect only the non-successful tests will be repeated.

4.5.3 If the Customer refuses or delays the performance of the formal acceptance or if it uses sbc's software, the overall system will be deemed accepted 4 weeks following the declaration of readiness for acceptance.

5 Prices and conditions of payment

5.1 All the prices set out in the offer or in the contract do not include the VAT payable at the time of delivery. Unless otherwise agreed, the prices of items are quoted for shipment carriage paid to the Customer's delivery acceptance point.

5.2 Unless otherwise agreed, payment is due without deduction within 21 days of the date of invoice.

5.3 Services payable on a time and materials basis will be invoiced monthly. The billing of standard software is performed following delivery, or after the installation where agreed.

5.4 The set-off of claims is not permitted unless these are not in dispute or have been confirmed by a final court judgement. Any right of retention in favour of the Customer is excluded unless it is based on the same contractual arrangement.

5.5 If the Customer is in default of some or all of its payments, sbc will be entitled to demand interest at the rate of 3 percentage points over the statutory rate of interest applicable for commercial entities charged on the outstanding sum to which the Customer's default relates.

5.6 Taxes, charges, social insurance contributions and other deductions levied against sbc or its personnel in connection with the delivery of services abroad, will be borne by the Customer and therefore are not contained in the prices set out in the offer.

6 Delay

- 6.1 Delivery dates or periods will be deemed agreed if these have been confirmed by sbc in writing and are conditional upon the Customer fulfilling all of its duties of cooperation in good time. They commence with this confirmation and must be agreed anew in the event that the contract is subsequently amended.
- 6.2 Compliance with periods and deadlines by sbc is always conditional on the Customer, fully and in good time, fulfilling its contractual obligations (especially the duties in relation to the installation preparations and in relation to payment) and its duties of cooperation. Otherwise the agreed time periods will be extended and deadlines will be automatically postponed for a period equivalent to the time of the delay. This particularly also applies if the Customer raises subsequent demands in relation to the sbc's contractual performance, where such demands were not contained in the agreements made.
- 6.3 If sbc fails to meet agreed and confirmed delivery dates or period for its service provision by a period of six weeks or more, the Customer may demand that provision takes place within a reasonable additional period stipulated by it. In the event that sbc fails to meet this additional period for reasons for which it is responsible, the Customer may demand – where it is able to prove that it has sustained loss/damage as a result of the delay – default compensation for each full week of delay following the expiry of a reasonable additional period, the said compensation being at the rate of 0.5%, but only up to a maximum of 5% of the value of the part of the contract which could not be put into operation on time due to the delay. This does not affect the right of the Customer to cancel the agreement following the fruitless expiry of an additional period granted for contractual performance.

7 Liability for defects

- 7.1 sbc warrants that, provided it is used in compliance with the contract, the supplied software and the other services delivered by sbc have the characteristics specified in the contractual scope of performance.
- 7.2 In identifying and eliminating faults, the Customer will cooperate by providing sbc with verifiable documents detailing the nature and occurrence of deviations from the contractual scope of performance and by coherently describing the fault in writing. In relation to significant deviations, sbc will attempt to eliminate the deviation within a reasonable period of time or to work around it in such a way that the Customer is able to use the software in accordance with the contract and it will ensure, that in the event of a workaround, that the purpose of the software can be achieved. In this respect sbc will, at its own choice, either provide the Customer with a new, fault-free software release or it will eliminate the fault. An

elimination of the fault is also achieved if sbc shows the Customer reasonably achievable options for precluding the effects of the fault.

- 7.3 The warranty is excluded in the event that the fault occurs due to the Customer modifying the software or other services delivered by sbc without the prior written consent of sbc.
- 7.4 With respect to all supplies and services made in relation to the warranty, sbc warrants these to the same extent as the original supplies and services and but only up to the expiry of the warranty period of said originals.
- 7.5 If sbc delivers services in connection with fault identification or elimination, without being obligated to do so, it may demand payment for this based on its usual rates. This applies in particular if a fault is not proven or cannot be attributed to sbc. sbc will also be compensated for its additional time and effort incurred as a result of the Customer's failure to satisfy its obligations pursuant to 4.2.
- 7.6 The Customer may only derive rights from other breaches of duty on the part of sbc if it has raised a written complaint to sbc and if it has granted sbc a reasonable additional period to remedy the issue. This does not apply if a remedy is not practical given the nature of the breach of duty. Compensation for damages/loss and the reimbursement of costs are subject to the limits set out in Paragraph 8.
- 7.7 The limitation period for all warranty claims is one year and commences with the delivery or, where applicable, with the formal acceptance; the same period applies for all other claims against sbc irrespective of their nature. In the case of deliberate acts and gross negligence on the part of sbc, in relation to the fraudulent concealment of defects, in relation to personal injury as well as in relation to guarantees, and for claims under the German Product Liability Act, the statutory limitation periods will apply.

8 Liability/disclaimer

- 8.1 Unless otherwise provided for in these terms and conditions, for all cases of contractual and non-contractual liability sbc will only pay compensation in accordance with the following limits:
- a) up to the full amount for deliberate acts and in the case of gross negligence, as well as for the absence of characteristics guaranteed by sbc;
 - b) in other cases: only by way of a breach of a significant contractual duty, if this jeopardises the contractual purpose, but only ever up to the amount of the foreseeable and typical damage.

- 8.2 The indemnity limits set out in 8.1 do not apply in relation to the liability for personal injury and for liability in connection with the German Product Liability Act.
- 8.3 sbc is entitled to raise the defence of co-liability.
- 8.4 The limitation period for all warranty claims is one year, with the proviso that claims pursuant to 8.1 a) and in relation to the liability for personal injury as well as for liability in connection with the German Product Liability Act are subject to the statutory limitation period.

9 Product modifications

Until the end of the warranty period, sbc reserves the right to implement ongoing technical improvements and redesigns of the delivered items and software within the limits of the intended purpose.

10 General

- 10.1 For other services and supplies which sbc delivers over and above its contractual duties, where applicable, the provisions and disclaimers apply accordingly even if no express reference is made to them.
- 10.2 sbc reserves the right to perform supplies and services itself or to arrange for a contractor to do so.
- 10.3 In the event that any of these provisions are infective, this will not affect the effectiveness of the remaining provisions.
- 10.4 This agreement is governed by the law of the Federal Republic of Germany to the exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG). Disputes arising from or in connection with this agreement will be heard before the appropriate court in Aachen. sbc may also assert claims before that court with jurisdiction for the Customer's registered business address.