

General Delivery and Payment Terms and Conditions for the Purchase of Hardware and Software License as well as the Provision of Services

1. Subject Matter

These terms and conditions apply to any equipment or licensed software as well as services, supplied and/or rendered by CSB to Purchaser/Licensee now and in future, the quantity, exact designation, purchasing price, license fee, and other costs of which are to be derived exclusively from the order confirmations.

2. Offers

2.1 Offers are valid for up to twelve (12) weeks from the offer date. However, CSB reserves the right to written cancellation at any time. Should vendor conditions to CSB change during this or any other validity period, any expressly stipulated validity period is deemed invalid.

2.2 Documents relating to the offer (such as product fact sheets, sample documentation) remain the property of CSB and may not be reproduced or distributed to third parties without prior permission of CSB.

2.3 CSB shall own and retain all right and title and intellectual property rights inherent therein, to all offer documentation.

3. Conclusion of Contract

3.1 The Contract is effectively entered into upon signature of the product sheet or the delivery of ordered Hardware and/or Software and in case of Service upon performance of such service. Upon signature of the updated product sheets by CSB and/or the Purchaser/Licensee, these are valid as new offer and become integral part of the contract upon order confirmation only. Contract closing by means of a product sheet signed by both parties shall be deemed to be effective only if confirmed by an order confirmation signed by an authorized representative of CSB.

3.2 The product description of the hardware components are merely general product specifications. There is no claim for delivery of the specified hardware product. In the event that, upon signature of the product sheet, individual hardware components are no longer available, CSB shall be entitled to replace such components by ones of an equivalent nature. If the Purchaser/Licensee disagrees with the alternative delivery, partial cancellation is possible exclusively with reference to the components that cannot be delivered. CSB will provide Purchaser/Licensee with an updated order confirmation for the changed hardware components. Purchaser is aware of the fact that hardware manufacturers constantly add technical modifications to their products. In addition, Purchaser agrees that CSB shall deliver the products in the technical state of the art at the time of delivery.

3.3 An obligation of CSB to visualize business processes of the software previously used by the customer must be agreed in writing. There is no contractual obligation for the visualization of inquiries in the Business Process Management System.

4. Subject Matter and Licenses

4.1 Standard and Extended Standard Software are subject to leased license to Licensee according to the Terms and Conditions of Lease, provided that a valid lease contract under the terms and conditions is in place. Lease payment shall be effected either in the form of monthly license fees or in the form of a single license fee at the start of utilization. In the case of monthly payment, the lease shall terminate upon cancellation in accordance with the Terms and Conditions of Lease. The one-time license fee shall comprise the period of useful life expectancy of 5 years for the basic modules purchased in the original order; the license right for modules purchased in addition shall depend on the right of use of the basic modules and is subject to the facts of termination that apply to the basic modules.

4.2 If a software maintenance agreement is closed upon order closing according to the Software Maintenance Agreement Conditions, then the right of use of the supplied Software is subject to the existence of the Software Maintenance Agreement. However, the right of use shall exist for at least 5 years after contract closing. Furthermore, upon software maintenance agreement closing according to the maintenance agreement conditions, the Purchaser/Licensee acquires the right to opt for the purchase of an upgrade.

In case an upgrade is acquired, the period of utilization is extended by five (5) years, provided that a software maintenance agreement is in place during this time.

In the event that the licensee does not exercise the right to purchase an upgrade, CSB shall be entitled to terminate the Software Maintenance Agreement and the Software Lease Agreement and to terminate the right of use of the Purchaser/Licensee of the supplied Software. The above mentioned right to opt expires with the cancellation of the Software Maintenance Agreement.

4.3 CSB shall grant Licensee the non-exclusive and non-transferable (to third parties) right of internal use for all programs and their respective documentation. "Third parties" shall encompass also such parties that acquire the company of Licensee within the framework of a sale of property. Licensee shall be entitled to use the licensed programs on a data processing unit. "Use" shall encompass the full or partial saving of the programs and data records on to the designated data processing unit, the execution of the programs, the processing of the data records, and the creation of additional copies of such material in machine-readable form, where required for use according to this agreement.

4.4 CSB shall retain all further rights to the programs – both in original and copied form. Licensee shall have the obligation to ensure that programs and documentation are inaccessible to third parties. Licensee is only entitled to make copies for own use, especially for purposes of back-up and archiving. In the event that the designated data processing unit is temporarily incapacitated, Licensee shall be entitled to use the programs and data records on another data processing unit during that time.

4.5 Transfer of granted rights of use, or a granting of sub-license for the licensed material is expressly excluded, both to protect the fitness of the Software and to safeguard the user. This shall apply also in the event of full or partial sale of property of Licensee's company. Upon termination of use, the licensed programs and the documentation including all copies shall be returned immediately and without prompt.

4.6 In the event that Licensee passes on programs or copies thereof to third parties, Licensee shall pay a flat-fee in damages amounting to two (2) times the single license fee for the Software. The same applies for continued use of the Software without valid lease contract. Damages are determined in this case by the programs listed in the enclosed exhibits (delivered items respectively), valued in accordance with the current Software License Fees, derivable from the current price list.

4.7 CSB shall hold harmless Licensee in the event of infringement of third party rights, in so far as Licensee has advised CSB without delay of such infringement and under reservation of all defense and settlement measures. CSB shall in such event either provide Licensee with the right to continued use of the Software or modify or exchange the Software in such manner, that no property rights shall be infringed, or retract the

Software under reimbursement of the license fee to CSB minus an amount deductible as a result of usage of the Software. In this case, a time of use of five (5) years is applicable. The above-mentioned obligations shall not apply in the event that Licensee alters any of the licensed material by CSB, or utilizes them in a manner not provided for according to CSB documentation, or uses it in conjunction with products not supplied by CSB.

4.8 Licensee shall allow CSB to inspect the compliance with the provisions of the Licensee by means of an on-site inspection in the business premises of Licensee once per calendar year (software auditing).

5. Installation Preparation, Installation, Maintenance and Connection of Third-Party Manufacturers

5.1 Purchaser/Licensee shall be responsible for appropriate and professional installation preparations, which Purchaser/Licensee will perform at his own expense in good time prior to delivery, without previous request on the part of CSB.

5.2 Installation shall be carried out by CSB. The required materials for installation and the installation shall be invoiced separately in accordance with the prices for Services, Deliveries, and Performances of CSB. CSB shall be entitled to invoice Purchaser/Licensee with any extra expenditure should the location of installation not be accessible by regular means of transport.

5.3 Maintenance service on the part of CSB shall become effective immediately upon installation, unless otherwise agreed upon in the Maintenance Contract. For the rest, the Terms and Conditions of the Hardware and Software Maintenance Contract apply in this respect.

5.4 CSB assumes no liability for technical and/or legal option for connection of third-party equipment to Hardware delivered or Software supplied by CSB.

5.5 CSB assumes no liability for the operability of Software of other providers on Hardware delivered by CSB or Hardware provided by Customer for the operation of the CSB-System.

5.6 CSB assumes no liability for the compliance of any non-compulsory, statutory and non-legislative regulations, provided that the compliance is not explicitly agreed.

6. Pricing and Payment Terms

6.1 All prices contained in the offer or the contracts are exclusive of any taxes applicable at the time of delivery.

6.2 If accessories and fixtures are shipped, prices apply ex dispatch center, plus postage, packaging, insurance fees, and applicable tax.

6.3 In such event that delivery and installation is delayed as a result of reasons caused by Purchaser/Licensee and this delay exceeds the delivery date stipulated by the product sheet by four (4) months, CSB shall be entitled to charge the list prices valid at the time of installation.

6.4 All payment of invoices to CSB is due net cash within eight (8) days of invoice date. This also applies in such event that CSB is prepared to deliver, but that delivery has been suspended as a result of reasons caused by Purchaser/Licensee. In this case Purchaser/Licensee shall only be entitled to retain ten (10) percent of the invoice amount, including applicable tax until the actual delivery.

6.5 Purchaser/Licensee shall otherwise have no right of retention. Purchaser/Licensee may only offset legally binding or uncontested claims.

6.6 In the event that Purchaser/Licensee fully or partly fails to make payment, CSB shall be entitled to charge interest at a rate of one (1) percent per thirty (30) days.

6.7 If Purchaser applies for a financing framework for the purchased object/license for the Software from a financing company through mediation of CSB, the closing of the Contract is not conditional upon the acceptance of such leasing application. The Contract is executed independently; the acceptance of the leasing application is at the sole risk of the Purchaser/Licensee.

7. Passing of Risk

7.1 In the event of installation by CSB, all risk to deliverables is passed to Purchaser/Licensee upon such installation also in the case of a partial installation.

7.2 If deliverables are shipped to Purchaser/Licensee, passing of risk is executed at the moment of shipment, also in such event that carriage-paid shipping is agreed upon. Freight and insurance cost as well as packaging shall be at the expense of Purchaser/Licensee.

7.3 Passing of risk with reference to standard software and extended standard software is simultaneous with the transfer to Purchaser/Licensee.

8. Terms of Delivery, Delay and Impossibility

8.1 Delivery dates and terms are only deemed agreed upon if confirmed in writing by CSB and are subject to the timely performance of the obligation to cooperate on the part of Purchaser/Licensee. They commence upon such confirmation and shall be renegotiated in the event of later contractual amendments. In particular, this applies also in the event of contract adaptations according to item 3.2 due to the change of single Hardware components.

8.2 Compliance with terms and schedules on the part of CSB always presupposes that Purchaser/Licensee adheres to Purchaser/Licensee's obligations under Contract, particularly with respect to timely installation preparations and payment, as well as Purchaser/Licensee's obligation to cooperate. If this is not the case, agreed deadlines shall be extended and the schedules deferred automatically by at least the length of time of the delay. This expressly applies in such event Licensee makes additional requirements on CSB or programming by CSB that are not evident from Target Specifications or makes changes to its contents.

8.3 In the event that CSB exceeds delivery terms or deadlines that have been agreed and confirmed in writing by six (6) weeks or more, Purchaser/Licensee shall be entitled to request – in writing – delivery within a reasonable additional term. With this reminder, CSB shall be deemed to be in default. After the additional delivery term has expired without satisfaction, Purchaser/Licensee shall be entitled to waive the Contract with reference to the deliveries and services with which CSB is in default. Partial deliveries/services with which CSB is not in default are not subject to the right of cancellation.

8.4 CSB shall in no case hold any other liability with the limitation of section 10.1, also in the case of impossibility of delivery.

9. Change of Construction and Form

Construction and form of hardware and software shall be subject to change up to the time of delivery, as far as the Object Purchased/the Software shall not have been changed significantly and if, in addition, such changes are deemed to be reasonable or beneficiary to Purchaser/Licensee.

10. Warranty

10.1 CSB shall warrant for the term of one year upon delivery the absence of defects of Hardware and Software. Purchaser is obliged to report in writing any defects upon

- their first occurrence. CSB shall be entitled to three (3) additional attempts to satisfy its obligation of warranty per individual defect. In such event that a third attempt to satisfy fails, Purchaser shall be entitled to exercise additional warranty rights.
- 10.2 The display of CSB products for the purpose of advertisement or mere information shall not encompass product specifications or guarantees with reference to the subject matter. The regulation of § 434 para. 1 clause 3 BGB (German Civil Code) shall be ruled out, provided that CSB is not liable for the defect according to the regulation of § 444 BGB (German Civil Code). Product specifications and additional properties beyond such specification shall only be deemed as agreed upon or warranted if such agreement or warranty has been explicitly concluded in writing on the part of CSB.
- 10.3 CSB warrants compliance of Extended Standard Software with the specifications agreed upon in writing at the time of passing of risk.
- 10.4 Licensee shall cooperate in the limitation of and removal of defects. Licensee shall be obliged to provide CSB with verifiable documentation concerning type and appearance of deviations from product specifications, or the guidelines in the Target Specifications, and to comprehensively describe the defect in writing. CSB will try to eliminate any significant deviation from product specifications or provide a work-around within an appropriate period so that Licensee is able to use the program in accordance with the Contract, or will ensure the availability of the function of the program in case of the work-around. The right to removal of defects and the legal consequences and effects from existing defects not reported to CSB by Purchaser/Licensee acc. to item 10.1 end six (6) months after the transfer of the Software. CSB accepts no liability for defects occurring after such period.
- 10.5 In the event that during a CSB inspection a defect of the Hardware/Software cannot be ascertained, Purchaser/Licensee shall pay all costs of the inspection, especially in the event of faulty usage, or other interference beyond the scope of CSB liability.
- 10.6 No warranty shall apply to defects resulting from erroneous or neglectful treatment, excessive strain, unsuitable operating resources, fixture of additional equipment not expressly approved by CSB, repair work or modification performed by third-parties without authorization by CSB, or relocation of equipment to a location not approved by CSB. Also no warranty shall apply to any operating resources subject to natural wear and tear, as well as accessories, and the consequences of chemical, electro-technical, or electric influences, not provisioned for according to Contract.
- 10.7 In the event that Hardware and/or Software delivered by CSB is connected to any third-party software, CSB shall assume no warranty for the fitness of such third-party software installed on Hardware delivered by CSB, or the compatibility of such software to Software delivered by CSB.
- 10.8 In no case shall CSB be liable for any additional claims by Purchaser/Licensee, no matter what cause in law, including but not limited to breach of duty or illicit act, any claim for indemnity for damage outside of the Purchased Object or Licensed Software, meaning all consequential harm caused by defect, such as lost or ill-processed data, particularly damage caused by operational outage or lost profits, beyond the limitations apparent under section 11.1.
- 10.9 Warranty shall only be given to original buyer. Claims to Warranty are non-transferable. In the event that Purchaser/Licensee relocates the Purchased Object/Licensed Software, Purchaser/Licensee is liable for any additional costs arising thereof with respect to the removal of defects.
11. **Liability**
- 11.1 Liability by CSB shall be limited to all cases regulated by these Terms and Conditions. CSB's liability shall be limited to such damages resulting from non-availability of an agreed-upon or guaranteed condition, as well as damages caused by deliberate action or gross negligence. In the event of fatal injury or bodily harm, CSB shall also assume liability for negligence. In no event shall CSB be liable for damages caused by lesser negligence. However, CSB shall be liable in the event of lesser negligence causing infringement of obligations under this agreement for direct damages; such damages shall be limited and not exceed the single license fee payable for the CSB program module (item number), or the purchasing price of the object which caused the damage.
- 11.2 In no case shall CSB be liable for nonperformance or delays caused by acts of God, or other events beyond its control, including but not limited to riots, disruptions in operation, strikes, lockout, or delays in delivery caused by the manufacturer.
12. **Software**
- 12.1 Pursuant to the License Agreement, CSB releases two versions:
– Standard Software is encompassed in the current version ("Closed Version")
– Extended Standard Software (e.g. all software extensions according to Product Sheets) are realized in and delivered as part of the follow-up version ("Open Version"). Delivery of the follow-up version shall only be effected upon receipt of payment-in-full of the Standard Software, delivered Hardware and performed services (consulting, installation).
- 12.2 The scope of coverage and functionality of the Standard Software are described in the product specifications as exhibited in the offer made to Licensee by CSB. Licensee accepts the scope of coverage of CSB applications that is exclusively specified in the product specifications and acknowledges its fitness for his purposes.
- 12.3 Delivery of the software is carried out exclusively via remote data transmission (modem).
- 12.4 For tasks specified by Licensee that cannot be covered by Standard Software, CSB shall develop real, practical, and reasonable solutions (Extended Standard Software) according to the state of the art at the time of contract closing. Licensee shall produce target specifications accordingly. Properties of Extended Software shall only be deemed as agreed upon if such agreement has been concluded in writing. Individually developed programs will be demonstrated to Licensee and have to be confirmed in writing as being in conformance with agreed-upon properties by Licensee. In the event that individually developed programs notwithstanding request are not confirmed correspondingly, but are utilized anyhow, they will be deemed to be confirmed four (4) weeks after delivery, in so far as no significant program defects are reported to CSB and such confirmation is expressly declined with advice of such defects. In order to limit possible defects, Licensee has particular obligations to cooperate and inspect. Licensee agrees to install the Open Version in a separate directory. Licensee agrees to visualize all critical procedures and business processes in the Workflow Management System, and to compare the results of the Open and Closed Version. CSB shall retain all rights to developed programs, with the exception of the following provisions.
- 12.5 Software shall be released in German and/or English. Not all documentation, particularly manual and help texts, are available in the official country language. Purchaser/Licensee therefore is provided with a full software documentation (excluding interface description) in either German or English.
13. **Acceptance Procedure**
Pursuant to the agreements of this contract, the acceptance procedure is to be carried out according to the following regulations:
- 13.1 If a contractually detailed plan for the acceptance procedure is available, it shall be carried out directly before production run.
- 13.2 In case of errors or deficiencies arising during the acceptance procedure, these shall be recorded and divided into two categories:
Category A: Errors impending production run
Category B: Deficiencies not considerably impairing production run
- 13.3 Errors of category B shall not prevent acceptance. Purchaser/Licensee shall immediately declare acceptance. These errors shall be resolved by the project consultants and hotline employees of CSB in the time after acceptance by means of appropriate process controls. After the resolving of an error of category A, acceptance shall be declared within fourteen (14) days.
- 13.4 If the project or the individual project steps have been in production run for more than six weeks, the project or sub-project shall be considered accepted. Any recorded errors or deficiencies shall be dealt with in line with the maintenance contract.
14. **Retention of Title**
- 14.1 CSB shall retain title of the Purchased Object until the entire purchasing price has been paid. CSB shall retain title of Purchased Object also after full payment of the purchasing price has been made until all supplementary claims towards Purchaser, incurred with regard to Purchased Object as a result of repair work, replacement deliveries, or other services, have been paid in full. Where the value of the existing securities for CSB exceeds the claims by over twenty (20) percent on a long term basis, CSB shall free such securities accordingly by choice.
- 14.2 In the event of default of payment, CSB shall be entitled to claim issue of the Purchased Object; Purchaser shall immediately return the object. All costs incurred by recall and processing of the Purchased Object are at the expense of Purchaser/Licensee. During the time of retention of title, Purchaser/Licensee additionally is obliged to safeguard the Purchased Object's mint condition, and to advise CSB immediately, in such event that third-parties, e.g. in the case of execution, claim the Purchased Object. If Purchaser/Licensee refuses return of the delivery item, CSB is entitled, after a further deadline of seven (7) weekdays, to technically disable the operability of the software for the period of payment default.
- 14.3 Licensee understands that sub-lease of the Software and sale to third party of the Purchased Object prior to full payment may not be effected without the prior written permission of CSB. In any such event the claim of Purchaser/Licensee out of such sale shall be assigned irrevocably to CSB.
15. **Validation of these Terms and Conditions**
- 15.1 The Terms and Conditions apply, unless otherwise agreed upon in writing by both Parties. In no event shall any terms and conditions by Purchaser/Licensee apply.
- 15.2 Any modification to or deviation of the content of this Agreement shall not be valid, unless such modification or deviation has been confirmed in writing by CSB.
- 15.3 In addition, the Terms and Conditions of Lease and Maintenance, as well as the price list for Service, Delivery and Performance of CSB apply.
16. **Arbitrator's Award Agreement**
Should differences arise between the contractual parties concerning the delivery and services due on behalf of CSB or the degree of fulfillment of owed deliveries and services that cannot be resolved by the parties themselves, an arbitrator's award by an authorized referee for IT matters shall be required as far as one of the party's requests. This does not apply if the parties disagree on the due date of the deliveries and services. Each party may initiate an arbitrator's award by informing the other party in writing. The arbitrator's award is binding for both parties and shall be appointed by the IHK Aachen (Chamber of Industry & Commerce Aachen) if the parties cannot agree on an arbitrator within three days after receipt of said written letter. The arbitrator has to grant due process of law to both parties. The arbitrator shall, as far as is disputed between the two parties, determine which deliveries and services are due by CSB in line with the underlying contracts and which of these services and deliveries have already been performed by CSB. Should the arbitrator determine that CSB has not entirely fulfilled its contractual obligations and that these are due, he shall determine a suitable period in which CSB shall have the opportunity to perform the deliveries and services that have been ascertained by the arbitrator as unfulfilled. Upon CSB's request, at the latest upon expiration of said period, the same arbitrator shall determine whether CSB has fulfilled his contractual due deliveries and services, should this still be a matter of dispute between the parties. Should the arbitrator determine that CSB has not yet entirely fulfilled its contractual obligations, he shall determine a suitable period of grace in which CSB shall have the opportunity to perform the deliveries and services that have been ascertained by the arbitrator as unfulfilled. Upon CSB's request, at the latest upon expiration of said period of grace, the same arbitrator shall determine whether CSB has fulfilled his contractual due deliveries and services, should this still be a matter of dispute between the parties. Should the arbitrator again determine that CSB has not entirely fulfilled his contractual obligations, §§ 281, 323 BGB (German Civil Code) apply and the licensee shall waive any requirement to fix further period of time. In the event of an arbitrator's award, compensation cannot be enforced prior to this time. The findings of the arbitrator are binding for both parties. Costs for the arbitrator's award shall be borne by the parties in line with the principles of section §§ 91, 92 of the ZPO (German Civil Process Order). The arbitrator shall make a binding decision as to the payment of the involved costs.
17. **Applicable Law, Place of Fulfillment and Jurisdiction, Severability Clause**
- 17.1 The contractual obligations of both parties are applicable to German Law exclusively. However, German international civil law applies exclusively for § 27 para. 1 and 3 and § 34 EGBGB.
- 17.2 Place of fulfillment and jurisdiction for all matters arising from current and future business dealings of both parties, for any reason, is Düsseldorf, Germany. However, CSB reserves the right to pursue claims at a valid jurisdiction of the Purchaser/Licensee.
- 17.3 Should individual provisions of this agreement become completely or partially invalid or lose their enforceability, the validity of the remaining agreement will not be affected. In such a case, CSB and Purchaser/Licensee shall replace the invalid clause with a valid clause that bears closest resemblance to the economic purpose of the invalid clause.