C.O.S Group

General terms and conditions for sales, rent and services

§ 1 Sales of software

(1) The contract partner acquires the right of use for the software and services as listed on the order confirmation. The contract consists solely of the attachment and the order confirmation.

(2) The software under (1) is protected under the intellectual property laws of the EU. This contract is about the transmission of this right for the purpose of usage.

(3) For those parts of the software, for which C.O.S does not hold the respective rights, C.O.S holds the rights to transfer them to third parties.

(4) Transfer of rights for third party's software are not affected.

(5) Services such as support, analysis and consultancy include the listed items of the order confirmation. If the content and type is not specified, C.O.S will determine them with due respect to quality, time and cost.

§ 2 Specifications, requirements, changes and training

(1) If the contract includes adaptions of the software, C.O.S will produce them. The respective requirements will be developed under due consultancy of C.O.S as far as this consultancy has become part of the contract. Once the requirements have been documented in written, the corresponding document will become part of the contract. C.O.S is not obliged to consider other than the written and reconciled requirements.

(2) C.O.S has to respect only those requirements as defined under (1). Change requests of the user regarding the functionality, the program structure or the user interface or other attributes must be implemented by C.O.S, if they do not differ from the original object of the contract and/or the specification.

(3) C.O.S is free to ask an adequate fee for the associated effort of a change request, based on the time consumed and the price level as agreed for the order. C.O.S cannot be forced to disclose her internal calculation.

(4) C.O.S will instruct the users and the employees on the usage of the software as agreed. If such a measure is not part of the order it is explicitly excluded. Additional training measures will be invoiced separately.

(5) Documentation of the software can take the form of online-help, written documents, oral instruction or video.

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§ 3 Copies and access control

(1) The user can produce copies of the software, if the usage requires this. This includes the installation, transfer from the original media to the mass storage or from the mass storage to the random access memory.

(2) Furthermore, the user can produce one backup copy.

(3) The user is obliged to restrict the access to the user community the software is licensed for. He has to take adequate measures to avoid not authorised usage. Neither program nor documentation are to be opened up to third parties. Physical access to original media or backup copies must be stored at a safe place. The user will instruct his employees accordingly.

(4) Other copies or print outs of the program code are not permitted, unless approved by C.O.S in writing.

(5) A transfer of cloud licences to on-premise installation or vice versa is not permitted, unless the porting of the software and licenses is accepted by C.O.S in written requiring an adequate transfer fee or exchange of components.

§ 4 Multiple usage and network operation

(1) The user can run the software on any of his hardware. If the user changes the hardware, he is obliged to delete the software on the replaced hardware, if unauthorised usage by third parties or the agreed license volume could be exceeded.

(2) The user has to take adequate measures to avoid exceeding the license volume.

(3) If the right of usage is lost or redrawn by C.O.S due to contractual breaches, the user must delete the software within five working days. All copies and media are to be returned to C.O.S.

§ 5 De-compilation and code changes

(1) De-compilation of the transferred program code or any other means to reverse-engineer the source code including own changes of the program are permitted, only if the source code was acquired from C.O.S beforehand for the own usage. Own usage includes private, commercial or usage by third parties.

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(2) Deletion of copy protections or other measures undermining the intellectual property rights of C.O.S can only be authorised by the executive body of C.O.S in writing. If a copy protection disturbs the usage, the user carries the onus of proof. Also refer to § 11 paragraph. 3.

(3) Modifications of the transferred software can only be accepted to be carried out by third parties if that third party is not a potential competitor of C.O.S and if C.O.S has definitely refused to carry out the required modifications. C.O.S has to approve this in writing after an adequate period to check the request has been granted and the third party was named.

(4) It is by no means allowed to remove or change serial numbers or other program identifiers.

(5) If the user breaks any of the rules of this paragraph, he loses all rights under this contract instantly. He agrees to pay a fine of twice the contract volume within 14 days after the breach has happened or been detected.

§ 6 Resale or rental agreements

(1) The user is entitled to neither resell nor give away the software or any accessory material, unless C.O.S has permitted this beforehand in writing. A pre-condition is that the third party has accepted all regulations of the contract for his further usage. This also yields for each legal entity in a group of companies. If the licensed usage covers more than one legal entity, all regulations apply to all legal entities. The contract partner of C.O.S guarantees this. In the case of transfer all copies, media and accessory material have to be handed out to the acquiring party. Not transferred material or copies have to been destroyed or eliminated. If the transfer results in a change of the license volume or services, this has to be reported by the previous user to C.O.S. The successor has to respect § 12 Abs. 1.

(2) The user can rent out or lease the software including accessory material to third parties, if C.O.S has agreed in writing beforehand and the third party has agreed to adhere to the regulations as stated here in writing. During the time of third party usage the user loses his right of usage.

(3) The user is not entitled to transfer the software to third parties in spite of a well-founded suspicion of usage, illegal copy or breach of other regulations are likely by the new user or his employees.

(4) In case of liquidations, changes in the shareholding of child companies regarding group licenses or transactions (splits, mergers, …) a continuing usage of the successor in interest is excluded.

(5) The transfer of software, documentation, results and reports from consultancy work to potential competitors of C.O.S requires written permission of C.O.S beforehand.

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(6) For group licenses the definition of fully consolidated companies under IAS 27 is applied.

§ 7 Payment, delays – right of retention, set-off

(1) In case of delayed payments, C.O.S is entitled to invoice interest of default of 4% above the rediscount rate of the European Central Bank p.a. C.O.S holds the right to claim a higher compensation, if she can prove a higher detriment.

(2) The user has the right to set-off, if his debt claim is in force, uncontested or accepted by C.O.S.

(3) The user has the right of retention only, if based on this very contract.

(4) If not stated differently all amounts are due on the day of delivery. Amounts are discounted at the default interest rate as stated under paragraph (1) above.

§ 8 Obligation to examine and complain

(1) The user will examine all delivered components within ten days after delivery or notification of completion – especially regarding the correct functioning of the software. , Deficits have to be reported to C.O.S instantly in a comprehensible manner in writing. The shortcoming must be described with adequate level of detail and with due diligence. This holds for services accordingly.

(2) Other defects that were not detectable during the examination period are reported to C.O.S without hesitation.

(3) The start of operation defines the acceptance of the delivered software. C.O.S has thereby fulfilled her part of the agreement. If the user lets the examination period pass without examination or deficit report, the software is implicitly approved after one month after the day of delivery.

(4) The obligation of examination includes privacy, data protection, legal requirements, ITsecurity incl. virus-cleanliness and response times.

§ 9 Warranty

(1) Deficits of the software including accessory material will be corrected by C.O.S within six month after notification of completion respective delivery. It is up to C.O.S to deliver a higher release or a corrected version or a component. The deficits must be reported as stated under §8 (1).

(2) If C.O.S fails to deliver a correct version of the software trice or refuses to deliver a corrected version, the user can lower the price adequately.

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(3) If the deficit does originate from a third party software component or technical environment like software libraries, drivers, operating system, database management system, network or other application programs lowering of the price is not possible.

(4) Unless not stated differently under §§ 9, 10, C.O.S cannot be held accountable for damages, injuries or disadvantages resulting from the use of the software, deficient or not.

§ 10 Accountability

(1) C.O.S states explicitly that given the status of today's technology it is impossible to develop computer-software without any errors or detail specifications to cover all possible circumstances within a reasonable economic and timely restrictions. C.O.S cannot be held accountable that the software meets the user's requirements, cooperates with the other programs of the users unless agreed in the contract.

(2) C.O.S cannot be held accountable for any consequential losses loss of data, unless intention or wilful negligence are proven.

(3) C.O.S cannot be held accountable for any breach of other non-substantial contractual obligations. Refer to § 9.

§ 11 Obligation to cooperate and custodial care

(1) The user will name a person in charge of coordination and responsible for the works affected by this contract at start of the work at the latest. He is responsible for the timely, correct and complete forwarding of all means, information, accesses and utilities, necessary for the completion of this contract to C.O.S.

Solely the user remains responsible for the completeness and correctness of the information provided.

(2) The user's duty includes the timely delivery of all information relevant for the development of the software like organisational charts, hardware and software documentation, project organisation. Testing and approval will be performed by competent personnel of the user. Who are authorised to report deficits, errors, functional enhancements or changes of the program structure. The user will also deliver adequate test data, scenarios or mock up-data.

(3) The user will examine specifications, prototypes or test versions timely and with due diligence. Change requests are reported in writing as soon as possible.

(4) All information and material concerning this contract are to be handle with due care and withheld from access of third parties. Both parties will return the other party the material and documents not necessary any longer right after the termination of the project.

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(5) If C.O.S has been appointed to install the software, the user must prepare the hardware adequately and grant access to the C.O.S employees. Other activities on the hardware or the physical or digital environment have to be suspended.

(6) The user will store the backup and original media at a location inaccessible for unauthorised personnel and instruct his employees to respect the intellectual property rights duly.

§ 12 Approval for services

(1) The user can approve either after completion or successively after individual project steps or partial deliveries. The user schedules approval dates timely and notifies C.O.S. If those approval dates are not scheduled, the services are considered approved.

Refer to §11 (2).

Errors are groups in to the following classes of priority:

Class 1: Severe – operation is blocked
The reasonable/economic usage of the software is impossible or strongly disturbed.

Class 2: Immaterial errors
The software can serve its purpose. Examination testing and approval are not affected. Due dates for fixing errors under this class will be reconciled among user and C.O.S.

Class 3: Irrelevant Errors
They have no relevant effect on the usage of the software. They are be corrected within the warranty period.
The user selects the error class at first and then reconciles his choice with C.O.S.

(2) Once the software has been approved, C.O.S can ask the user to issue a written confirmation statement.

(4) Neither class 3 nor 2 errors can interrupt the approval of the software. C.O.S can set a due date until the user has to issue the approval confirmation..
The user bears the risk for the start of operation. The warranty is excluded. C.O.S cannot be held liable for shortcomings, defects or misuse of other hard- or software providers. Such incidences cannot extend the approval period or constitute a right to refuse the approval. The warranty of C.O.S §9 does not include deficits due to imprecise or false specifications of the user or not originating from code changes of C.O.S.

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§ 13 Informational duties

(1) The user notifies C.O.S in the case of transfer of the software, providing name, company name, address of the new user.

(2) The user provides C.O.S the circle of persons authorised to issue complaints, approval confirmations, decisions or error messages.

(3) C.O.S is entitled to name the user as a reference customer on the market. If a further information exchange between leads of C.O.S and the user are required, C.O.S will reconcile this regarding date and contact person. However, the user can refuse this at any time.

§ 14 Title retention

(1) C.O.S always keeps the right on the software (source code) unless stated differently. This also yields for results of consultancy, customer tailored software projects. The right of usage is transferred only after complete payment of all liabilities of the corresponding contract. A usage beforehand can be tolerated if contractually agreed..

(2) If C.O.S claims her right of retention, this can neither be considered a breach of contract nor its cancellation.

§ 15 Changes and updates

(1) C.O.S is allowed to issue updates and upgrades and ask adequate fees for this service.

(2) C.O.S is not obliged to deliver updates or upgrades for former versions of the software or if the subscription fee has not been payed timely.

§ 16 Confidentiality

(1) Both parties agree to not disclose any information specified confidential by the other. This is valid also for internal information, which can assumed to be confidential under normal circumstances.

(2) The security standards of the user must at least covert he C.O.S security policy requirements.

(3) C.O.S cannot be forced to audits, certifications and the like by the user unless otherwise agreed individually.

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(4) Both parties agree to adhere to privacy and data protection laws of the EU, Luxembourgian and German legislation. If the software runs outside the EU, it is the obligation of the user's organisation to enter any local requirements into the individual contract.

§ 17 Form

(1) All cancelations, modifications and extensions of these contractual agreement or of its parts have to be in writing.

(2) If any parts of the contract should not be valid, both parties agree to replace it with one being commercially equivalent or close to the invalid part.

§ 18 Place of jurisdiction

(1) Place of jurisdiction is the location of the court district where the affected entity of C.O.S is based.

(2) Conflicting terms and conditions can only be interpreted in the context of this document.

(3) This is a contract under German law.

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