

General Terms and Conditions of Sale of Vertigo Systems GmbH

I. Application range

1. Our agreements on software development, product deliveries and other services are governed exclusively by the following General Terms and Conditions of Sale. Any general terms and conditions established by the customer which deviate from, or go beyond, the present General Terms and Conditions of Sale shall not be applicable.
2. The present General Terms and Conditions of Sale apply exclusively to business transactions with persons acting in a merchant's or independent businessman's capacity (entrepreneurs within the meaning of section 14 of the German Civil Code) This definition shall be deemed to include public-law entities and separate property funds under public law.

II. Conclusion of agreements

1. Our quotations are non-binding.
2. No agreement shall be deemed entered into until the customer has received our written order acknowledgment, or until we commence delivery of products or services.

III. Scope of performance

1. The content of an agreement shall be determined by our quotation, our order acknowledgment, and the present General Terms and Conditions of Sale. No retroactive change, addition or ancillary agreement shall be valid unless agreed upon in writing.
2. Our contractual obligations do not include trial runs, the installation of hardware and software, hardware/software maintenance and upkeep, or instruction and training activities. However, we are prepared to provide such add-on services under a separate purchase order for a compensation based on actual expenditure. Valid prices shall be those set forth in our current price list.

IV. Properties of our services

1. No property or feature shall be deemed an agreed quality of our products or services unless it is referred to in our quotation and/ or our order acknowledgment.
2. Any representations regarding the quality and durability of our products or services whereby we grant our customer additional rights without prejudice to his statutory remedies for defects under warranty shall not themselves constitute a warranty of quality or durability within the meaning of section 443 of the German Civil Code unless explicitly referred to as a warranty by ourselves. Customer's rights in a warranty case shall be based exclusively on the declaration of warranty. The declaration of warranty shall be set down in writing.

V. Customer's duty to co-operate

1. The customer undertakes to co-operate in
 - the procurement of all information we need about the customer (and, where applicable, his final customer) in order to be able to effect contractual performance;
 - any expressly agreed technical trial runs, specifically by providing sufficient personnel, data, materials and product during normal working hours;
 - the preparation and implementation of product and software installations, specifically by facilitating remote data transmission resources, where such installation has been expressly agreed upon.
2. Furthermore, the due and timely performance of our services is contingent on
 - the use of technically skilled personnel and adequate training of customer staff so as to ensure a reliable launch and operating process;
 - verification of our planning, specifications and technical statements for their suitability for customer's operational requirements; any discrepancies, irregularities or errors discovered in this process shall be reported to us without delay;
 - full and sufficiently precise error reports, made available forthwith, including the provision of suitable data and reports for error analysis and the use of proper back-up routines for own data and system environments.

- due and proper care and maintenance of technical items (hardware and software) delivered by ourselves.
3. If any information or document provided by the customer is found to be faulty, incomplete or ambiguous, it shall be corrected and completed by the customer forthwith upon receipt of our request to that effect.
 4. Save where we have justified cause for reviewing customer-supplied data, information or other items for completeness and correctness, we shall be under no obligation to effect such review.
 5. Customer's duties to co-operate in accordance with the foregoing paras. 1 and 2 constitute material contractual obligations. In the case of non-performance thereof we cannot be held in default from the time of such breach until it is cured. If a customer's default on co-operation duties results in delay and/or additional costs we shall be entitled to an adjustment of our time schedule and pricing, without prejudice to any further statutory rights or remedies. Valid prices shall be those set forth in our current price list.

VI. Customer's retroactive change requests

1. Any retroactive customer requests for changes and/or additions shall be reviewed for feasibility and necessary preconditions for implementation. Our performance and delivery obligations shall be deemed to be suspended for the duration of such investigation. If the customer's change request calls for an extensive review, we may bill the customer for the review costs. Valid prices shall be those set forth in our current price list.
2. Following our review, we shall communicate our approval or rejection to the customer without delay. However, no retroactive change or addition shall become part of the contract unless it is made the subject of an agreement which must stipulate remunerations as well as an extension of the original delivery or performance term. Any such agreement should be made in writing.

VII. Delivery / Passage of risk

1. If our performance is to be made at a location other than the customer's site, deliveries shall, on principle, be made on an "ex works" basis (EXW, Incoterms 2000). In this case, the risk of accidental perishing of, or accidental damage to, the goods supplied by ourselves shall pass to the customer at the time of our surrender of such goods to a freight forwarder or carrier. Transport costs shall in this case be borne by the customer.
2. If, under the terms of our agreement with the customer, our performance is to be rendered at the customer's site, the risk of accidental perishing or accidental damage shall pass to the customer at the time of the goods' supplied by ourselves arriving at the customer's premises.
3. Partial deliveries shall be permitted as long as the customer can be reasonably expected to consent thereto.

VIII. Delivery time limits / Obstacles to delivery / Rescission

1. If our performance must be rendered at a location other than the customer's site, our delivery or performance time limits shall be deemed fulfilled if the ex-works dispatch of the deliverables has occurred within the respective time limit. If the agreement stipulates performance at the customer's site, our delivery or performance time limit shall be deemed fulfilled if the deliverables arrive at the customer's business premises within that time limit.
2. Our compliance with stipulated performance and delivery time limits is contingent on the timely clarification of all technical issues and on Customer's fulfilment of all his co-operation duties. If these preconditions are not met in a timely manner, our time limits shall be reasonably extended except where the delay is attributable to ourselves.
3. Any condition of Force Majeure (unforeseen circumstances and events that could not have been avoided even through the exercise of a prudent businessman's due care and diligence, e.g., labour conflict, war, fire, transport obstacles, shortage of raw material, interventions of public authorities) shall result in a suspension of our delivery and performance obligations for as long as it prevails and as long as is warranted given the extent of its effects. This shall also apply if our performance or delivery is already delayed.

4. The performance and delivery times quoted by ourselves are given subject to the proviso of our receiving timely and proper supplies.
5. In the case of Force Majeure or delayed or defective performance on the part of our own suppliers we shall be entitled to rescind the agreement. If this occurs, we shall notify the customer forthwith of the non-availability of the deliverables and shall reimburse him forthwith for such consideration as he may have already rendered.

IX. Prices and payment terms

1. Any prices stated in our quotation or order acknowledgment are lump-sum prices only if expressly referred to as such therein. All other price information constitutes a mere cost estimate. The customer shall in these cases be billed on the basis of actual expenditure. Valid prices shall be those set forth in our current price list.
2. Our prices are given net, ex works, and exclusive of sales tax, loading, packing, freight, postage and shipping.
3. We reserve the right to change prices accordingly if, following the closure of an agreement, our procurement and delivery costs increase for reasons beyond our control (e.g. increases in collective wage/salary levels, material prices or taxes), provided always that we have notified the customer thereof before effecting delivery. The same applies if we incur additional costs due to customer's request for a change in the delivery date.
4. Save where advance payment has been agreed upon, our invoices are payable within 10 working days from the invoice date, without any deduction. Payment shall be deemed to have been made at the time of our receipt of free and clear funds. In the case of delayed payment we shall be entitled to default interest at a rate of 8 percentage points above the base interest rate.
5. If it emerges that the fulfilment of our payment claims is imperilled by customer's lack of solvency, we shall be entitled to call for immediate payment of all yet unmatured claims from our entire business relationship with that customer to the extent to which our own performance and delivery obligations underlying such claims have been fulfilled. This provision shall also apply if we have already accepted bills of exchange or cheques. Fulfilment of a claim shall be deemed imperilled if a bank's or credit reporting agency's status report suggests a lack of creditworthiness of that customer. The same applies if the customer has failed to make timely payment on at least two invoices. In this case we shall be additionally entitled to set the customer a reasonable time limit in which he shall, at his discretion, either effect payment or else furnish a security; in either of these latter cases, he shall perform *pari passu* with our tendering of any outstanding counterperformance. Upon fruitless expiry of this time limit we may rescind the contract. The grant of an extension is dispensable if customer has stopped payments or is excessively indebted.
6. The customer is not entitled to offset counterclaims against our own claims except where such counterclaims are uncontested or enforceable at law. The same applies to any exercise of retaining or withholding rights or liens.

X. Installation and support services

To the extent to which we have expressly undertaken in an individual case to provide installation or technical support services, the following terms and conditions shall apply:

1. For installation and/or support services, respectively, the agreed hourly rates will be invoiced. Save as otherwise explicitly agreed upon, we shall be entitled to charge an hourly rate of € 100 plus sales tax. Pure travelling time will be billed at 50% of the respective hourly rate. Travel costs, expenses, cost of accommodation to an appropriate and locally accepted standard shall be charged additionally against presentation of receipts.
2. It is a condition precedent to any timely installation that the agreed installation environment has been created and/or preserved by the customer. Any changes in the installation environment shall be communicated to us forthwith but no later than 7 working days before the start of our installation activities.
3. Installation will include neither a start-up nor trial runs. However, we are prepared to perform such start-up or trial run on the basis of a separate purchase order at the hourly rates indicated above. If a trial run has been expressly agreed upon, it shall be commenced following the installation. A trial run shall

be deemed successful if the deliverables provided by us operate in an essentially defect-free manner for the agreed period of time. If no time period has been agreed for a trial run, a period of eight hours shall be deemed to have been stipulated.

4. Customer agrees to accept our performance forthwith, issuing a written acceptance record. If the customer fails to accept our performance within 10 working days from the completion notice and does not give formal notice within that period of any defects of complaints that form a bar to acceptance, our performance shall be deemed contractually recognized and accepted.

XI. Customer's rights and obligations in the case of defects

1. All goods and services delivered by ourselves shall be inspected for defects by the customer forthwith. The customer shall report any apparent defects to us without delay, but in any case within a period of fifteen (15) working days. If the delivery does not include an installation service, the time period for inspection and notification of defects shall start to run at the time of delivery; if an installation service has been agreed upon, the inspection and notification period shall begin upon completion thereof or, where a trial run forms part of our contract, upon completion of that trial run. Concealed defects must be reported to us by the customer forthwith upon discovery. Any notices according to sentences 2 and 4 of this paragraph should be given in writing. For compliance with the time limit the notice must be in our hands prior to expiry of that time limit. Customer's failure to inspect our goods and services forthwith or to report a defect within a given time limit shall constitute a waiver of his right to assert any claim(s) based on such defect.
2. Customer claims for defects can only be accepted if, and to the extent to which, the defects thus reported can be reproduced or demonstrated on the basis of machine-generated records. The customer shall document defects in writing in a manner allowing them to be traced and identified, stating all information expedient to the discovery of the defect(s).
3. If a product delivered by ourselves is defective and such defect has been reported in a due and timely manner, the sole remedy available to the customer shall initially be supplementary performance, except where he cannot reasonably be expected to consent to same. Where supplementary performance is to be rendered, we may choose, at our sole discretion, between the options of re-working the product and supplying a new replacement. If two attempts at supplementary performance have failed or if we refuse supplementary performance altogether, the customer may reduce the purchase price or rescind the agreement.
4. The customer shall have no rescission right if the defect is immaterial in nature.
5. With regard to indemnification claims, the provisions of Article XII shall apply.
6. If the delivered product has been modified by the customer, defect claims can only be accepted if he demonstrates that the defect is not attributable to such modification.
7. If only individual ones out of a plurality of delivered products are defective, the customer's statutory rescission right (to the extent to which such remedy is available to him) shall be limited to these defective units. This shall also apply where products and programs have been sold as matching items, except where defective and non-defective items cannot be separated from one another without suffering damage in the process, or where the customer can demonstrate that such separation would place an unreasonable burden on him.

XII. Liability / No rescission in the case of certain breaches of contract

1. We assume unlimited liability under the German Product Liability Act for any loss or damage caused with wilful intent; for malicious non-disclosure of defects; for loss or damage resulting from grossly negligent breach of a material contractual obligation; and for loss or damage associated with bodily injury, death, or health impairment.
2. For loss or damage caused through gross negligence but not falling under para. 1 above, we carry a limited liability whereby we are obliged to provide compensation for foreseeable loss or damage as typically sustained in contracts of this nature. Such limitation of our liability to compensation for foreseeable loss or

damage typically sustained in contracts of this type shall also apply if we have breached a material obligation through simple negligence.

3. Save in the cases contemplated in paras. 1 and 2 above, we accept no liability for any loss or damage resulting from simple negligence.
4. The foregoing limitations and exclusions of liability also apply to the liability of our executive organs, employees and/or agents.
5. The existence of a breach for which we are not liable and which does not constitute a defect in our deliverables hereunder shall not entitle the customer to rescind the agreement.

XIII. Periods of limitation

1. Customer claims based on a defect shall become time-barred one year after delivery. This shall also apply in cases where a trial run has been agreed upon. Notwithstanding the provisions of the foregoing sentence 1, a customer's claim for defects shall become time-barred after five years if the defect resides in a third-party's right *in rem* entitling the holder thereof to recover possession of the goods delivered by ourselves.
2. Other contractual claims for breach of contract, as well as our own claims on the customer, shall become time-barred as defined by statute.

XIV. Reservation of title

1. Products supplied by ourselves remain our sole property pending fulfillment of all claims (including claims from a current account balance) we may have on the customer now or in the future, regardless of the legal grounds thereof.
2. In the event of a third-party attempting to gain possession or control of products subject to our reservation of title, the customer shall point out our title thereto and shall notify us forthwith. The costs of our intervention shall be borne by the customer, to whom we shall progressively cede, *pari passu* against payment of such intervention costs, any reimbursement claims we may have on that third party.

XV. Confidentiality / Data protection

1. It is agreed between the parties that all information regarding one party's business or operational affairs which has come to the other party's knowledge in the context of its performance hereof shall be treated confidentially. This confidentiality requirement shall survive the termination of the Agreement.
2. Both parties agree to impose compliance with the confidentiality requirement set forth in the foregoing para. 1 on their employees and/or agents.
3. We shall be entitled to process, or arrange for others to process, customer data within the confines of the intention and purpose hereof, taking into account applicable data protection and privacy regulations.
4. We shall be entitled to include the customer's name in a list of references. Any other reference to the customer shall be coordinated with him beforehand.

XVI. Applicable law / Place of performance / Jurisdiction

1. This Agreement is governed exclusively by German law, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG)
2. The place of performance for all deliveries and services effected by ourselves shall be our corporate seat in Cologne. Our corporate seat shall also be the place of payment for the customer.
3. The courts of Cologne/Germany shall be the exclusive courts of jurisdiction for all disputes arising, whether directly or indirectly, from the contractual relationship. However, nothing herein contained shall bar us from suing the customer at his general place of jurisdiction. This provision shall also be applicable in the case of transactions across national boundaries.

Valid as of June 2006