

General Software Contractual Terms and Conditions of VST GmbH (hereinafter referred to as VST) for the Provision of Standard Software (Software GTC) valid as of 01 December 2006

1. Scope of application

1.1 These General Terms and Conditions of Contract apply in addition to the General Terms and Conditions of Business of VST to the provision of software for an indefinite period of time (software purchase). Insofar as software is provided for use as a component of or in connection with a delivery of associated hardware, these contractual terms and conditions shall apply insofar as a breach of duty or defect in performance has its cause in the software; otherwise, the General Terms and Conditions of VST shall apply exclusively to the hardware.

1.2 Insofar as these Terms and Conditions do not contain any provisions, the General Terms and Conditions of VST shall apply, which are available on the website www.vst-pro.de and which we will be pleased to send to you on request.

1.3 With these terms and conditions, VST does not assume any obligation to provide software services, to maintain software or to set up and install software. These require a separate agreement.

1.4 Furthermore, VST shall have no obligations whatsoever during any free trial period granted to the customer for the purpose of evaluating the software prior to a purchase.

2. Subject of the contract

2.1 The condition and the areas of use of the software result exclusively from the product description and, in addition, from the operating instructions, unless otherwise agreed individually.

2.2 The software shall be delivered exclusively in executable form together with operating instructions in the language and installation description specified in the product description; unless expressly agreed otherwise, the provision of further documentation is not owed. The operating instructions and installation description may also be provided electronically.

2.3 The Software shall be delivered by providing a data carrier or, if agreed or requested by the customer, by downloading it from the Internet via a link provided by VST or the manufacturer.

3. Excluded areas of application of the software

It is expressly pointed out that, unless expressly agreed otherwise in individual cases, the software was neither developed nor planned or produced for use in dangerous areas of application which require fault-free operation to protect against damage to life, limb, health or the environment. The software is not suitable for use in or in connection with energy power plants, air traffic navigation or communication, air traffic control, other traffic control, the operation or monitoring of medical or other vital or life-supporting or life-securing equipment, weapons systems or similarly dangerous areas in which faults in the product could lead directly or indirectly to death, physical or health impairments to persons or to serious physical or biological or ecological damage ("High Risk Activities").

4. Rights of use

4.1 The software (programme, product description and operating performance) is legally protected. Copyrights, patent rights, trademark rights and all other ancillary copyrights to the software as well as to other objects which VST provides or makes accessible to the customer within the scope of the contract initiation and performance are exclusively vested in VST in the relationship between the contracting parties. Insofar as third parties are holders of rights, VST has acquired or licensed the necessary rights of use and exploitation.

Upon payment in full, VST shall grant the customer the right to use the software to the extent stipulated in the contract. Unless the scope of use of the software is agreed otherwise, this right includes a simple right of use, not limited in time, to operate the software at one workstation on one computer unit (single licence). The customer is thus entitled for the agreed duration of the right to install, load and run the software on a maximum of the agreed number of workstations.

4.2 A computer is any computer unit with a CPU. Use in a network is only permissible if this has been expressly agreed (multiple use). /multi-user licence); in this context, the maximum number of simultaneous users shall be specified; this shall also apply if the software is not duplicated within the network. Use of the software by way of transfer to third parties via remote data transmission, in particular in the form of Application Service Providing (ASP), is not permitted unless this has been expressly agreed.

4.3 Simultaneous use of the software on more than the agreed number of workstations (overuse) is not permitted. The customer is obliged to report any overuse immediately. For the period of overuse, i.e. from its beginning until the conclusion of a corresponding agreement or until the cessation of the overuse, the customer is obliged to pay compensation for the overuse, which is calculated pro rata temporis on the basis of twice the price of the software used according to the price list valid at the time of the breach of contract, whereby the parties base the calculation of the compensation on a 3-year linear depreciation. The right to claim further damages in addition to the contractual penalty is reserved. The customer shall be free to prove that a lesser damage has been incurred.

4.4 The customer may transfer the right to use the software to a third party if he completely abandons his own use, in particular deletes or destroys any documentation, copies, etc. or transfers them to the third party with the transfer of rights. Insofar as a multi-user/multiple licence has been granted, this may only be transferred in its entirety; a transfer of individual workstation authorisations from a multi-user/multiple licence leads to an extension/intensification of the use of the software which has not been agreed and is expressly prohibited; Clause 4.3 applies accordingly. Sublicensing is not permitted.

4.5 In the event of a transfer of the right of use to a third party, e.g. in the context of a resale, the customer shall inform VST of the name and address of the recipient and shall draw the recipient's attention in particular to Clause 3 (no High Risk Activities) and to the scope of the licence in accordance with this Clause 4.

4.6 VST is entitled to take reasonable and effective measures to prevent unauthorised duplication or other unauthorised use; VST shall draw attention to such measures in the product description prior to conclusion of the contract. VST is in particular entitled to make the usability of the Software dependent on the use of uniquely marked hardware (e.g. dongle/hardlock); thus the Software is technically usable only in connection with this hardware part. VST is further entitled to make the usability of the software dependent on a prior personalised registration of the user via an online registration system of the software manufacturer. The rights of the customer under Section 69 d (2) and (3) and Section 69 e UrhG shall remain unaffected.

4.7 The granting of rights is subject to the condition precedent of full payment of the purchase price.

5. Cooperation obligations of the customer

5.1 It is the customer's responsibility to ensure that programmes and data are regularly backed up. The customer shall take appropriate precautions in the event that the programme does not work properly in whole or in part (e.g. through data backup, fault diagnosis, regular testing of results). It is his responsibility to ensure the operation of the working environment of the programme. If the customer violates these obligations, VST shall not be liable to the extent that any damage arises therefrom; VST shall in particular not be liable for the replacement of lost or damaged data or programs. This procedure applies

5.2 The customer is obliged to refrain from any use of the software in High Risk Activities (clause 3).

6. Legal defects

6.1 Claims based on defects of title shall be determined in accordance with Section 8 of the General Terms and Conditions of VST and the following Section 7 of these General Software Contract Terms.

6.2 The customer shall inform VST immediately in writing if third parties assert property rights (e.g. copyrights or patent rights) against it. The customer shall not acknowledge the infringement of property rights alleged by third parties and shall either leave any dispute, including any out-of-court settlements, to VST or conduct it only in agreement with VST. The necessary court and lawyer's costs incurred by the customer as a result of the legal defence shall be borne by VST. Insofar as the customer itself is responsible for the infringement of property rights, claims against VST are excluded.

7. Material defects

7.1 The warranty period for the software is 12 months. This does not apply to the right of recourse under § 478 BGB.

7.2 Only proven and reproducible deviations from the specification when used in accordance with the contract shall be deemed to be a defect which is not a defect of title. A defect shall not be deemed to exist if it does not occur in the most recently provided version of the software and its use is reasonable for the customer.

7.3 The customer is obliged to inspect all delivery items of VST immediately upon delivery in accordance with the provisions of commercial law (§ 377 HGB) and to notify VST immediately in writing of any defect that may occur. The defect and the corresponding data processing environment are to be described as precisely as possible therein; further requirements according to § 377 HGB remain unaffected.

7.4 Claims for defects do not exist

- in the event of damage resulting from faulty or negligent handling by the customer,
- for consequences resulting from changes made by the customer or third parties,
- for software which has been extended by the customer or a third party beyond an interface provided for this purpose by VST or the manufacturer of the software, insofar as the defect is based on this;
- if the software provided is not compatible with data processing software used by the customer, unless such software has been expressly designated as compatible in the product description or in the operating instructions.

7.5 If the software has a defect, VST shall first be given the opportunity for subsequent performance within a reasonable period. VST shall have the right to choose whether the subsequent performance is carried out by remedying the defect (subsequent improvement) or by replacement delivery.

7.6 Unless VST chooses another type of supplementary performance, supplementary performance shall be effected by remedying a defect in the software as follows:

7.6.1 VST shall provide a new version (update) or a new version (upgrade) of the software for corresponding use as a replacement, insofar as available at VST or procurable with reasonable effort. Otherwise, the defect in the old version shall be remedied.

7.6.2 Until an update or upgrade is provided, VST shall provide the customer with an interim solution to circumvent the defect at its discretion and possibility, insofar as the continued existence of the defect is unreasonable for the customer, for example because it can no longer process tasks that cannot be postponed due to the defect.

7.6.3 If a delivered software data carrier or documentation is defective, VST shall replace it with a defect-free one.

7.6.4 The defect shall be remedied at VST's choice, either at VST's or at the customer's premises. If VST chooses to remedy the defect at the customer's premises, the customer shall provide the hardware and software as well as other necessary operating conditions (including the necessary computing time) with suitable operating personnel. In addition, the customer shall provide VST with the documents and information required to remedy the defect.

7.7 If the supplementary performance fails, the customer may - irrespective of any claims for damages according to the General Terms and Conditions - withdraw from the contract or reduce the remuneration. The right to withdraw from the contract and to claim damages instead of performance due to non-performance or performance not as owed shall only exist in the case of significant defects.

7.8 In the event of notices of defects, payments by the customer may only be retained to an extent that is in reasonable proportion to the defects that have occurred.

7.9 If the notice of defect is unjustified, VST is entitled to demand reimbursement from the customer of the expenses it has incurred as a result of investigating the defect. In particular, VST may demand additional costs arising from the fact that the software was modified, used outside the specified environment or operated incorrectly. The burden of proof lies with the customer. § Section 254 of the German Civil Code shall apply accordingly.

7.10 In addition, the General Terms and Conditions of VST shall apply to claims for damages. Further claims of the customer against VST or its vicarious agents are excluded.

8. Secrecy, data protection

8.1 Contractual items, documents, proposals, test programmes etc. of VST which are made accessible to the customer before or after conclusion of the contract are deemed to be intellectual property and business and trade secrets of VST and are to be kept secret in accordance with the following provisions of this Clause 8.

8.2 The contracting parties undertake to treat as confidential all items (e.g. software, documents, information) which they receive from the other contracting party before or during the performance of the contract and which are protected by law or which contain business or trade secrets or which are designated as confidential, also beyond the end of the contract, unless they are in the public domain without any breach of the duty of confidentiality. The contractual partners shall store and secure these items in such a way that access by third parties is excluded.

8.3 The customer shall only make the contractual items accessible to employees and other third parties who require access to perform the service tasks granted to them. He shall instruct these persons about the need for secrecy of the objects.

8.4 VST stores the data of the customer required for the business transaction in compliance with the data protection regulations.