

## General Terms and Conditions (GTCs) of DDS GmbH (DDS)

### Clause 1: Content of the Agreement

1. The only valid terms and conditions shall be those specified by DDS. No other terms or conditions shall form part of the Agreement, even if DDS does not expressly object to the same.
2. Changes and amendments are only valid if they have been made in writing.
3. Even if this is not expressly pointed out at the conclusion of further agreements, the GTCs of DDS shall be applicable in their latest version in all commercial transactions.
4. Presentations in test programs as well as in product and project specifications do not constitute guarantees for properties of Data; such guarantees require express written confirmation from DDS.
5. The Ordering Party has ascertained that the specifications of the Data meet its requests and requirements.

### Clause 2: Objects of the Agreement

1. The object of the Purchase Agreement on Standard Products shall be the transfer of standard software and/or data stock (hereinafter to be referred to as the Data), subject to the stipulations for purchase agreements specified in the German Civil Code (Bürgerliches Gesetzbuch, BGB sections 433 ff) as well as – if requested by the Ordering Party – further services, subject to the stipulations for service agreements specified in the German Civil Code (BGB sections 611 ff).
2. The object of the Update Agreement shall be the transfer of software updates and updated data stock, subject to the stipulations for purchase agreements specified in the German Civil Code (BGB sections 433 ff) as well as the said services, subject to the stipulations for service agreements specified in the German Civil Code (BGB sections 611 ff).
3. The object of the Contract Service Agreement shall be the implementation of customized blueprints (such as software applications), which are also subject to the stipulations for contract service agreements specified in the German Civil Code (BGB sections 633 ff).

### Clause 3: Copyright and intellectual property

1. The software (program and manual) as well as the data stock are protected by copyright. The Parties hereby contractually specify that all data stock shall be subject to copyright regulations. All rights to the software and to data stock arising from the relationship between the Parties shall be the exclusive entitlement of DDS.
2. If a collection of data is transferred which is arranged systematically or under a specific method and if the same is accessible through electronic media or in some other way, then this database, too, shall be subject to copyright. DDS has the exclusive right to duplicate, propagate or make public available the database as a whole or a substantial part thereof with regard to its type or scope. If the Ordering Party enters its data into the database, this shall not lead to its acquisition of copyrights in respect of the data given to it by DDS or in respect of the database software. If the Ordering Party creates a separate copyrightable work through the entry or editing of data, then its rights shall be limited to this work. DDS's database and the database software shall not be covered by this particular copyright.
3. The Ordering Party shall be given non-exclusive authority to use the Data on its premises for its own purposes, as specified in the manuals supplied with the Data and as specified in paras. 3-7.
4. The Ordering Party is permitted to save the programs and data to the RAM and to the hard drives of the number and types of computers specified in the System Note. They may make a copy of each of the programs and data stock for backup purposes only, making sure such copies contain the copyright notice on the original data medium.
5. No other types of use or possibilities of using the Data shall be permitted, in particular no duplication, translation, editing, arrangement or other forms of reworking the Data.
6. As soon as a new program version or updated data stock has been installed, the right of beneficial use concerning the previous program version and data stock shall lapse.
7. The decompiling of the software shall be permitted within the statutory framework of copyright law if DDS does not supply within a reasonable period of time the information and/or documents required for ensuring the interoperability of the software with other programs.
8. The Data may only be passed on to third parties or branch offices of the Ordering Party with the renunciation of its own legal position after obtaining written permission from DDS. Such permission is only granted if, prior to passing on the Data, the Ordering Party submits to DDS the third party's written commitment that it will observe DDS's Terms and Conditions. Upon the transfer, the Ordering Party shall confirm to DDS in writing that it is no longer in possession of the Data or copies thereof.
9. The Ordering Party is not entitled to obtain source programs.

### Clause 4: Customer's collaboration

1. The Ordering Party shall support DDS in the implementation of the Agreement, ensure the availability of hardware, operating system and basic software and provide telecommunications facilities and the required number of staff. The Ordering Party shall provide DDS on time with all the information required for the implementation of the Agreement. The Ordering Party shall grant DDS access to its business premises at ordinary business hours.
2. The Ordering Party shall make adequate provision for the event that the software does not work properly, either wholly or in parts; it shall do so by means data backups, failure diagnosis, continuous checks, etc.
3. The Ordering Party shall make data backups prior to its data processing equipment being worked upon by DDS; DDS shall notify the Ordering Party prior to conducting such work.

### Clause 5: Delivery and delays

1. Specifications of delivery times are non-binding. Binding delivery dates require DDS's written approval. Partial deliveries are permitted.
2. Periods of delivery and service shall be extended by a period of time during which DDS, without any fault of its own, is prevented from delivery or from the performance of a service due to industrial action, *force majeure*, non-delivery by subcontractors, staff sickness or other unforeseen occurrences, and such periods of delivery and service shall additionally be extended by a reasonable period of time required for re-starting operations after the termination of the disruption. The same shall apply if DDS is waiting from information oder collaboration activities that are to be undertaken by the Ordering Party.
3. In order to be effective, all reminders and deadlines set by the Ordering Party must be submitted in writing. If DDS is late in delivering, then the Ordering Party may only assert claims after the unsuccessful expiry of an extension of time, which must be at least 12 working days. Damage claims are also subject to Clause 10.

### Clause 6: Payment, set-off and assignment

1. Payments are due without deductions within 14 days of the receipt of invoices and goods or services. DDS is entitled to claim interest on arrears at eight percentage points above the latest basic interest rate of the European Central Bank, provided that the Ordering Party is a consumer at five percentage points. The Ordering Party may produce evidence of damage being lower, and DDS may produce evidence of damage being higher.
2. The Ordering Party may only offset against undisputed and unappealable claims. It may not assign claims towards DDS to third parties. Any right of retention may only be based on claims arising from this Agreement.

### Clause 7: Proviso of cancellation

1. DDS transfers the rights of beneficial use detailed in Clause 3 of the GTCs together with the annexes specified in the Agreement, under the suspensive condition of the complete compensation of its claims. The Ordering Party shall notify DDS immediately in writing if third parties want to gain access to DDS's software or data stock; it shall notify third parties of the fact that the third parties' right of beneficial use is merely conditional and limited.
2. Moreover, DDS may withdraw the rights of beneficial use if the Ordering Party fails to meet the limitations of use in the System Note enclosed with the Agreement and in clause 3 of the GTCs or if the latter violates the confidentiality commitment under Clause 12 of the GTCs, without immediately discontinuing such violation upon a written warning, announcing the possibility of revocation.
3. If the right of beneficial use is revoked, the Ordering Party shall return all items it has received as well as all copies and stored programs and data stock. It shall furthermore assure DDS of the return and deletion in writing.

### Clause 8: Acceptance of goods or service

1. After the delivery of the Data, DDS may request the Ordering Party to submit a written Statement of Content to the effect that the goods or service is/are correct, complete and faultless. The Statement shall be submitted within two weeks of receiving delivery and may only be refused if the software or the data stock contains defects which prevent or substantially obstruct operations.

Acceptance shall be considered declared if the Ordering Party has had possession of the software or data stock for more than four weeks since delivery without notifying defects that would prevent acceptance under Clause 9 para. 1 or if the Ordering Party has made payment without reservation.

2. When DDS installs the programs at the Ordering Party's request, then DDS shall indicate operational readiness to the Ordering Party in writing. When operational readiness has been declared, the Ordering Party may test the software or data stock for a period of four weeks (test operations). The Ordering Party shall notify DDS of any defects immediately and in writing if such defects prevent or substantially obstruct operations and if they substantially impair the functioning of the software. Other defects, too, shall be notified to DDS in writing and shall be removed under the Warranty. Acceptance shall also be considered declared if the Ordering Party does not declare to DDS refusal of acceptance in writing within two weeks of the termination of test operations.

### Clause 9: Warranty

1. The Ordering Party undertakes to notify obvious defects within a reasonable period of time and in writing, giving a precise description of the fault. Moreover, if the Ordering Party is a dealer, then he or she shall examine DDS's goods and services immediately upon receipt and notify any identified defects immediately as detailed in sentence 1. This commitment shall depend on the Ordering Party's opportunity to identify and name faults. Any late, inadequate or unsubstantiated complaints shall exempt DDS from its duties to perform. Should DDS still take the relevant action, then it shall bill the Ordering Party for the work done.
  2. DDS warrants that program functions can be executed in an error-free manner as detailed in the program specifications and contractual documents. The Parties agree that, at the current state of the art, software errors cannot be excluded despite care being taken in writing the software.
  3. DDS may also accept a warranty with subsequent improvement for any standard products it gives to the Ordering Party. Improvement shall take the form of error removal or the provision of a new program or data stock, or it may mean pointing out ways in which a new program or new data stock can still be given to the Ordering Party with an acceptable amount of work involved in adjustment or conversion.
  4. The Ordering Party shall give DDS sufficient opportunity and time required by DDS to make all the improvements or to deliver all the replacements, considered to be necessary; otherwise DDS shall not bear any liability for the resulting consequences.
- The Ordering Party shall support DDS in the removal of errors (providing DDS with error specifications and test data, information from staff, access to the installation, etc.). The Ordering Party shall take adequate precautions for the event that the software might not work properly, either wholly or in parts, particularly by backing up data.

Only in urgent cases, if operational security is in danger or to prevent disproportionate damage, shall the Ordering Party have the right to remove a defect itself or to have it removed by third parties and to request that DDS should provide compensation for the necessary expenses; in such a case, too, the Ordering Party shall notify DDS immediately.

5. The Ordering Party shall be entitled to withdraw from the Agreement under the legal provisions if DDS – subject to legally specified exceptions – misses a reasonable deadline set for improvement or replacement due to a defect of quality.

However, the Ordering Party shall be entitled to no more than a right to the reduction of the contractual relationship if a defect is negligible.

Otherwise there shall be no right to the reduction of the contractual relationship. In particular, DDS shall not have any warranty liability in the event of

- faulty, improper commissioning, use or treatment by the Ordering Party,
  - improper maintenance,
  - natural wear and tear.
6. DDS shall also support the Ordering Party in the identification and removal of errors if a defect of DDS goods or services has not been established. Should DDS's goods or services turn out to be non-defective, then DDS shall bill the Ordering Party accordingly.
  7. If the Ordering Party or a third party conducts an improper improvement, then DDS shall not be liable for the resulting consequences.

Neither shall warranty claims apply if the Data has been modified and the Ordering Party furnishes no evidence that the defect is independent of such modification.

Neither shall warranty claims apply while the Ordering Party makes use of Data against the usage restrictions specified in the System Note and Clause 3 of the GTCs.

### Clause 10: Liability

1. If, through the fault of DDS, the Data cannot be used by the Ordering Party as specified in the Agreement, then the claims specified in Clause 9 shall be applicable, at the exclusion of further claims made by the Ordering Party.
2. Any damage not occurring on the Data itself, shall only be the liability of DDS, for whatever legal reasons, in the following cases:
  - Intent
  - Gross negligence on the part of the Manager or a managerial staff
  - Culpable injury to life, body or health
  - Defects that have been fraudulently concealed or whose absence has been warranted
  - Defects to the Data if there is liability for damage or injury under the Product Liability Act in respect of privately used items.
3. In the event of a culpable violation of essential contractual commitments, DDS shall also be liable for the gross negligence of non-managerial staff as well as for slight negligence; in the latter case liability shall be limited to whatever reasonably foreseeable damage is typical in agreements.
4. No further claims are accepted.
5. DDS may object that the Ordering Party is jointly responsible for the damage.
6. If insurance cover is in place, DDS shall provide the Ordering Party with the full insurance payment without regard to the agreed liability limitation.

### Clause 11: Limitation of liability in time

All claims of the Ordering Party, for whatever legal reasons, shall be subject to a 12-month period of limitation in time; if the objects of the Agreement are new movable items and if the Ordering Party is a consumer, then claims shall only expire after 24 months.

The relevant legal regulations shall apply in the event of intent or fraudulent behaviour as well as to claims arising from the Product Liability Act.

Limitation in time shall depend on the available legal provisions.

### Clause 13: Third-party rights

DDS assures that the transfer of rights under the available Agreements is not impeded by third-party rights. Should third parties assert conflicting industrial property rights towards the Ordering Party, then the latter shall notify DDS immediately in writing. DDS may protect the Ordering Party against such claims or satisfy the claims or compensate the Ordering Party for the expenses incurred in defending itself against third-party claims. Instead, DDS may replace the affects goods or services with similar ones within an adequate period of time.

### Clause 13: Confidentiality and safekeeping

The Parties undertake to maintain confidentiality on all documents and details that become known to them while the contractually specified services are being rendered and which are marked as confidential; they also undertake not to make such material available to third parties or to use the same in any other way. The Parties shall notify any staff of the confidentiality commitment in writing if such staff have access to the Data for business purposes. The Ordering Party shall keep and secure Data in such a way that they cannot be abused by third parties. Should this be requested, DDS shall delete any data given to it by the Ordering Party and either return or destroy the same.

### Clause 14: Severability Clause

If any individual provisions in this agreement are or become ineffective, the effectiveness of the other provisions will not be prejudiced thereby. Both parties to the agreement will replace the ineffective provision by a legally admissible provision that approaches the original provision as closely as possible in terms of content and economic effect.

### Clause 15: Final provisions

1. The place of jurisdiction for all disputes arising from this Agreement shall be Karlsruhe if the Ordering Party is a registered trader or is similarly qualified with the same status.
2. Written-form requirements for this Agreement are a prerequisite for effectiveness.
3. This Agreement shall be exclusively subject to the law of the Federal Republic of Germany and not to UN purchasing law.

(GTCs 1/09)

DDS Digital Data Services GmbH Karlsruhe