

General Terms and Conditions

(Status as of January 1st 2002)

**Intermediate GmbH & Co. KG,
Durmshheimer Straße 55, 76185 Karlsruhe**

– hereinafter referred to as Intermediate –

§1 Prevalence of Terms and Conditions

(1) The following terms and conditions are valid for all contracts with Intermediate.

(2) Regulations to purchasing- or other conditions by the ordering party Intermediate does not accept. Acknowledgements by the ordering party referring to his own terms and conditions are hereby rejected.

§2 Offers

(1) Offers are only binding when written.

(2) Intermediate reserves the right of technical and creative discrepancies of descriptions and statements in offers, catalogues, brochures and written documents as much as construction- model- and material changes in the course of technical advance or changes of the market situation. The ordering party cannot derive from changes or discrepancies any rights against Intermediate.

§3 Payment Practices

(1) The accounts are due after 10 days from date of invoice, insofar there are no deviant contractual regulations. A discount is not granted.

(2) Prices named by Intermediate are net-prices and are valid from the business location by Intermediate. Domestic and foreign taxes and tolls, forwarding expenses and costs as well as insurance costs may be added if applicable.

(3) Sales, deliveries and services on the basis of incomplete or incorrect information by the ordering party, costs for special services or costs for not verifiable notifications of defects or improper system use are defrayed by the ordering party.

(4) Orders which contents require the new development of software or an individual change of existing software has to be paid as follows, if nothing else is confirmed in writing:

- 50% of the order volume are due when the contract is concluded;
- 25% are due when the first software module is installed;
- 25% are due when the last software module is installed.

§4 Retention of Title

(1) Sales, deliveries and services of this contract stay the title of Intermediate until the fulfilment of all claims, including future ones from this contract and the whole business connection with the ordering party.

(2) If the ordering party is in delay with payments, the usage allowance expires. Charging with denied or not legally binding claims of the ordering party is excluded.

§5 Delivery and Service Provision

(1) With shipment of hard- and software the danger devolves at that moment to the ordering party the delivery is handed to the common carrier; this is also valid if the delivery was agreed to be carriage free. Only at the explicit wish and at

costs of the ordering party an insurance is contracted against damage in transit.

(2) Appointed dates and respites named by Intermediate are without obligation, insofar there was no other explicit agreement. Delivery dates are only valid insofar as Intermediate gets supplied timely and correctly. Appointed dates and respites begin at the day of the confirmation by Intermediate and extend subject to the default of payment by the ordering party. Part deliveries are allowed if the receipt is not of disproportional expenditure kind for the ordering party.

(3) If the ordering party's duty to cooperate do not meet the demands according to §12, service- and delivery respites extend analogous. If the ordering party's duty to cooperate do still not meet the demands despite appointment of a date and cancellation threat, Intermediate is entitled to notice of cancellation. Intermediate is then free from contractual liability. Furthermore Intermediate holds the right to invoice the ordering party all expenditures until the date of cancellation.

(4) Also at respites and appointments bindingly agreed on, delivery- and service delays are not represented by Intermediate due to force majeure or due to happenings that makes it significantly complicated or impossible to deliver by Intermediate. This includes industrial conflicts, business disruption, official appointments, problems to get the relevant material, also when they happen to the contractor or at contractors by Intermediate. Intermediate then has the right to postpone the service or delivery for the duration of the interference plus an adequate reaction time.

(5) In the case of delay the ordering party can claim a compensation for the delay amounting to 0.5% of the contract price for every accomplished week of the delay. All in all, the compensation for the delay is only allowed up to 5% of the contract price. Reducing of the compensation of the delay is acceptable insofar a lower damage is proved. Further claims, especially claim for damages, are excluded, unless the delay is based on at least gross carelessness by Intermediate.

(6) By belated change- and supplement requests the delivery time is extended adequately.

(7) In cases of doubt, Intermediate is authorized to issue directives for their staff, even if the services are adduced at the ordering party. Intermediate reserves the right of the possibility to replace one staff member with another one having the required qualifications. Intermediate is also allowed to appoint free staff and staff of other companies within the scope of the fulfilment of the order. The same terms are valid for them as for the stable staff.

§6 Acceptance at Contracts of Service

(1) Insofar the law for contracts of service is applying and an acceptance is required, the acceptance of the service or partial performances has to take place by the ordering party within 30 days after allocation. The acceptance has to be declared if the results are according to the described scope of works. The ordering party has to make a partial acceptance when partial performances are delivered. The ordering party admit with the acceptance of parts of the services that the service is in accordance with the order at content and scope. The acceptance has to be approved written. Marginal complains

to not entitle to the refusal of the acceptance. In the case of the ordering party not making the acceptance within 30 days or submitting a written objection of the acceptance, the service or partial performance are accepted as approved after the respite. After the transferring of programmes into the production the relevant programmes apply as accepted by the ordering party. Deficiencies asserted after the acceptance are removed by Intermediate in the scope of warranty.

(2) At failures based on hard- or software of other producers and/or malpractice in using the application which are not represented by Intermediate, the acceptance cannot be refused.

§7 Test Data

The ordering party provides to Intermediate for testing purposes an adequate test environment as well as a sufficient number of test- and result data in time and assures that this data covers all professional and technical standards for the software. Intermediate checks the functionality of the programmes on the basis of the data at hand. The programme acceptance results from the on the basis of this data by the ordering party. The ordering party has to prove his test activity with testing protocols.

§8.1 Warranty

(1) In the case of complains Intermediate at first has the right to mend within an adequate respite, to make a compensation delivery or can provide alternative solutions. The ordering party will describe possible complains as detailed as possible. The duty to cooperate for the ordering party also applies at the rework according to §12.

(2) For compensation §10 is valid. Other claims are excluded, for example reimbursement of expenses when a third party does a removal of defects.

(3) The contractual warranty is limited to one year from delivery on and from acceptance on respectively.

(4) Warranty claims against Intermediate are entitled to the direct ordering party and isn't transferable.

(5) The commercial examination and notice of warranty are not touched by the aforementioned regulations.

§8.2 Additional Conditions concerning Software

(1) Errors in programs can't be excluded even with high diligence at the current state-of-the-art. Intermediate only warrants the accordance of the software with the service description valid when the contract was concluded and ceded to the ordering party before the contract was concluded.

(2) In the case of reproducible programme errors which are detected by Intermediate in the last unchanged version of the programme and which are not traced back to handling mistakes, Intermediate will remove deficiencies confirmed in written form by the ordering party in an adequate respite. Independent from the incoming of a written problem report, Intermediate will promptly start the amendment as far as it is possible without the data to be delivered by the ordering party. The ordering party confirms the performance of removal of defects. If emerged deficiencies are traced back to a deficient handling or malfunctions Intermediate does not have to represent, the costs for the inspection are carried out by the ordering party.

(3)The warranty doe not apply for deficiencies which are caused by variations of operation conditions in using the yielded programme, also not for deficiencies in modified or processed versions of the programme as far as it is not proven that existing deficiencies are in no context with modifications or processing.

(4) If Intermediate leaves to the ordering party standard software of a third party, the warranties are part of the agreement at hand. The ordering party can then make claims of this warranty against the third party. A warranty or liability that goes further than the content of declaration of this third party is excluded.

§9Liability

(1)Intermediate is only liable at intent and carelessness no matter which legal ground – that also applies to delay and impossibility- unless it is a violation of essential contractual obligations of the respectively concerned contract or liability because of the absence of a guaranteed quality.

(2) Intermediate is in no case liable for missing economic success, collateral harms and consequential damages as much as harms from claims of third parties with the exception of claim according to §11 from the violation of trademark rights of third parties.

(3) A liability of Intermediate for normal usage is excluded. Errors and malfunctions caused by improper handling, unusual operating conditions or the usage of improper resources exclude any warranty claims.

(4) Intermediate is only liable for a data reconstruction if the data was saved by the ordering party is sufficiently updated and complete, that means daily saved. The reconstruction has to be possible with a justifiable effort.

§10 Rights of Third Parties

(1) Intermediate ensures that the transferred programmes are free from third party rights and can transfer usage rights efficiently in the contractual manner to the ordering party respectively. Intermediate will defend the ordering party against all claims which derive from violations of trademark rights or copyrights through the contractual usage of programmes in the Federal Republic of Germany.

(2) The ordering party is obligated to give back licence agreements Intermediate got from the contractor/ the producer for transferring it to the user, filled out and signed without delay to the seller. The ordering party is liable for any harm caused by not giving back licence agreements or delayed or incomplete return of those licence agreements.

(3) Are claims against the ordering party of Intermediate made or to expect according to passage 1, Intermediate can replace the programme on own costs or change then in a scope reasonable for the ordering party. If this or the obtaining of the using right not possible with an adequate effort, every contract partner has the right to cancel the licence contract about the relevant programme without notice. In this case Intermediate is only liable to the ordering partner for the harm caused by the cancellation according to §10.

(4) If the ordering party instructs Intermediate to use or modify hardware, software or graphic design services by a third party, Intermediate assumes that the ordering party has gotten all relevant licences beforehand. If this is not the case,

the ordering party bears all assuming costs deriving from this situation.

§11 Ordering party's Duty to Cooperate

(1) The ordering party provides all requirements which are needed for a proper performance of the contractual agreed deliveries or services by Intermediate. In particular, the ordering party provides the needed hard- and software environment (e.g. hardware and operating system, workplace, computer time, access to hard- and software, using of communication facilities, authorisations) the delivery or service refers to, according to the demands by Intermediate.

(2) The ordering party fully supports Intermediate to service provision, particularly with accurate and written fixation of demands, prompt answering of questions, adequate cooperation, in-process inspections of work results, test and so forth.

(3) The ordering party names a contact person who provides Intermediate relevant information and makes decisions or bring about a decision promptly.

(4) The ordering party is liable for the violations of those contractual obligations. The liability includes the unauthorised usage of programme copies in contrary to the contract as well as their multiple usage or cession to third parties.

§12 Expenditure Increase

(1) The following points are generally neither in costs nor contemporary unaccounted for concerning offers and lead to a change of appointments and costs. The costs are depending on expenses according to the significant pricelist invoiced separately by Intermediate.

- system down times of the systems provided by the ordering party
- attitude concerning the time of answering questions by Intermediate to the ordering party
- changes of appointments causing extra expenses
- product deficiencies caused by deficient test data, from other systems or work done by the operating party
- down times in which Intermediate is not responsible for.

§13 Secrecy and Custody

Intermediate obligates to keep confidential assigned information in confidence and to delete ceded information when asked for written and to either destroy or give back documents from the ordering party. Intermediate respects the Data protection Act. Intermediate is allowed to process data of the ordering party mechanical.

§14 Trademark Rights by Intermediate

(1) Software Intermediate creates or changed for the ordering party is copyrighted. This also applies for parts or the software or wholly or partly derived software from it including the corresponding materials. Even if the ordering party changes the software in the contractual allowed scope and connects it with own software or software of a third party, Intermediate stays as holder of all rights. All rights of the software, in particular the trademark rights with all authorities in the scope of the contract realisation of the ceded programmes, documents, conceptions and information are entitled exclusively to Intermediate, also if those utilities

were created with guidelines or cooperation of the ordering party. The ordering party has the right of usage on those utilities in the own company.

(2) Hard- and software are only to be used by the ordering party for own purposes, unless something else has been agreed on contractual. The application of a programme on several computers has to be allowed in particular.

(3) The ordering party is allowed to make safety copies of delivered programmes and parts of those.

(4) Subjects of the contract, documents, suggestions, testing programmes and so forth are an intellectual property of Intermediate and are not to be duplicated or accessible for third parties. If a contract does not accomplish, they have to be given back or deleted and are not allowed to be used.

(5) If graphic services (web design, design of operator interfaces and so forth) are part of the assignment, the usage of those is not allowed for the ordering party beyond the contents of the contract. Any plagiarism, also of parts of it, is not allowed. If concepts are used for more than originally intended, Intermediate has the right to invoice the usage additionally. The ordering party ensures that he is authorised to use all submittals given to Intermediate. If he is in contrary to this assurance not authorised, the ordering party releases Intermediate from all claims of compensation by third parties.

(6) The ordering party is liable to Intermediate for all harms caused by the violation of the aforementioned obligations by the ordering party.

§15 Source Code Cession at Individual Software

Intermediate is only then obligated to cede the source code of the executable programme including the corresponding development documentation if the acceptance towards the ordering party concerning an obligation to support for money or the deal of a maintenance contract is refused, unless the reasons for the refusal are acceptable for the ordering party.

§16 Place of Performance, Jurisdiction, Applicable Law

(1) Place of Performance for all contractual services is Karlsruhe, unless something else is agreed on.

(2) Towards commercial ordering parties (according to the German Commercial Code, HGB) the jurisdiction Karlsruhe applies as agreed on.

(3) The privity of contract between ordering parties and Intermediate is based on the law of the Federal Republic of Germany. The prevalence of the UN convention is excluded.

§17 General Contract Appointments

(1) Oral additional agreements are not made by the contract parties. Subsequent additions or changes of the made agreements are in need of a written form. An oral disclaimer of the written form is excluded.

(2) If one or more terms of those conditions or one of them based on further conditions and agreements is ineffective or will become so, or if a loophole is detected in them, the validity of the other terms are not to be touched and at the place of ineffective term or to fill the loophole an adequate, acceptable regulation shall fill in which the contract partner wanted or would have wanted for the whole purpose of the conditions if they had considered the ineffectiveness or loophole.