



General Terms and Conditions of DSC Software AG

DSC-GTC-GENERAL

I. Scope, Supplementary Contractual Provisions

1.1 These General Terms and Conditions of DSC Software AG - DSC-GTC-GENERAL – shall apply to all contractual relationships with customers in connection with products and services of DSC Software AG - DSC – and shall be deemed an integral part of the contract, unless otherwise agreed upon in writing in an individual agreement between DSC and the Customer. These DSC-GTC-GENERAL shall also apply to future business relationships with the same Customer and DSC shall not be required to make reference to their applicability for each individual contract with said Customer.

1.2 These DSC-GTC-GENERAL shall apply exclusively. Deviating, contrary or supplementary General Terms and Conditions of a customer shall only become integral parts of the contract if and to the extent that DSC expressly consents with their applicability in writing. Such consent shall be required in any event, in particular also if DSC, being aware of the General Terms and Conditions of the Customer provides a product or service to the latter without reservation.

1.3 Only the directors of DSC shall have the authority to agree upon delivery and service provisions deviating from these General Terms and Conditions.

1.4 These DSC-GTC-GENERAL shall be supplemented by the contractual Terms and Conditions for the Provision of Software - DSC-GTC-SOFTWARE -, Terms and Conditions for Software-Update-Service - DSC-GTC-SERVICE – and the Terms and Conditions for the Provision of Consulting and other Services - DSC-GTC-SERVICES. The above provisions shall apply accordingly to the scope of said contractual terms and conditions.

II. Contract Negotiations, Execution of Contract, Written Form Requirement

2.1 All quotations submitted by DSC shall be subject to change and non-binding. This shall also apply in the event that DSC did provide the Customer with catalogs, product descriptions or other technical documentation prior to the execution of the contract, for which DSC reserves all property and copyrights. Moreover, the pre-contractual obligation shall also be governed by the provisions of these General Terms and Conditions, in particular by the liability limits stipulated in item 7.2 and subsequent.

2.2 Each order for software programs respectively commissioning with any other service by the Customer shall be deemed a binding offer to enter into a contract, unless otherwise provided for in the purchase order respectively commission or any other agreements. DSC shall have the right to accept this offer to enter into a contract within four weeks after receipt by DSC. Such acceptance shall either be declared in writing, e.g. through the issuance of an order confirmation or through the delivery of the software programs respectively the rendering of the other services to the Customer.

2.3 For any terminations, notices and deadlines and other legally relevant declarations of intent by the Customer to be legally effective, they shall be made in writing. This shall also apply to any waivers of this written form requirement. Verbal ancillary agreements have not been made.

III. Delivery, Shipment, Risk Transfer

3.1 Deliveries of software programs or other merchandise shall be made ex warehouse, which shall also be deemed the place of fulfillment. Upon request of the Customer, software programs or other merchandise will also be sent to a different destination. Unless pickup by the Customer respectively pickup by a third party have been agreed upon and if the Customer did not provide any special instructions, DSC shall have the right to determine at its discretion the mode of transportation, in particular the forwarding company to be used, the transportation route, packaging, etc. Transport insurance coverage shall be obtained only upon explicit instructions by the Customer and for the Customer's account.

3.2 The risk of accidental loss and adverse impact on the condition of the object shall transfer to the Customer upon transfer of the object. If the Customer is in default of acceptance, this shall be deemed equivalent to the object having been transferred. In the event that the object is being shipped, the risk of accidental loss and adverse impact on the condition of the object shall transfer already upon release of said object to the forwarder, carrier or any other person or institution commissioned to execute shipping.



3.3 Delivery times shall be deemed binding only, if they have explicitly been confirmed to be binding by DSC in writing. In the event that delivery times have been agreed upon bindingly, DSC shall not be in default until being notified by the Customer in writing.

3.4 Compliance with delivery deadlines for shipments shall be contingent upon the Customer's timely provision of all information required for the delivery and in particular, that the Customer renders the acts of participation Customer is required to perform. In the event that the Customer does not fulfill these prerequisites, the delivery deadline shall be reasonably extended. This shall not apply in the event that DSC is responsible for the delay.

3.5 In the event that non-compliance with delivery deadlines is the result of force majeure, e.g. war, riots or similar events, such as strike, lock-outs, late self-delivery by suppliers, etc. the delivery deadlines shall be reasonably extended.

3.6 DSC shall have the right to perform partial shipments or render partial services. This shall not apply in the event that the Customer is not interested in receiving the respective partial shipments or services.

IV. Remuneration, Payment Terms

4.1 The price for the respective product respectively service shall be based on the applicable DSC pricing terms, respectively on the quotation submitted by DSC. Unless otherwise agreed upon in writing, travel expenses and per diem shall be billed separately. All prices shall be understood net ex warehouse without any deductions, plus applicable value added tax as effective on the day of billing.

4.2 DSC explicitly reserves the right to reject the acceptance of checks or drafts. They shall always be accepted as conditional payment only. Discount and draft fees shall be for the Customer's account and shall be due for immediate payment.

4.3 Invoices shall be due and payable without any deductions within 10 days after receipt, unless otherwise agreed upon in writing. The Customer shall be in default of payment upon expiration of said due date. In the event that the Customer should be in default of payment, the late payment interest rate shall be 8 percentage points above the base interest rate pursuant to § 247 BGB (German Civil Code) annually.

4.4 DSC reserves the right to adjust prices in a reasonable manner if upon execution of the contract, cost decreases or increases occur. DSC shall submit evidence of same to the Customer upon request.

4.5 The Customer shall have the right to set-off payments only if Customer's counter claims have been finally adjudged or have been accepted by DSC in writing. Moreover, the Customer shall be entitled to execute the right of retention only if the Customer's receivable based on which the Customer is withholding payment is based on the same contractual relationship and has either been finally adjudged or has been accepted by DSC. The Customer shall not be entitled to assert a right of retention for part performance pursuant to § 320 Section 2 BGB (German Civil Code) against DSC.

4.6 In the event that the Customer should be in default of not insignificant amounts of payment, DSC shall have the right to temporarily withhold the rendering of further services under the same legal relationship to which DSC has committed itself and to make all remaining pending balances out of same legal relationship due for payment immediately. Any agreed upon deadlines respectively times allotted for the execution of pending deliveries and services by DSC shall be null and void in this case, without requiring DSC to issue a special notification to that effect.

V. Retention of Title and Rights

5.1 Until all present and future payables of an ongoing business relationship are satisfied, DSC shall retain all rights in products respectively services provided. This shall in particular apply to the title in deliveries of objects as well as to other rights, such as licensing rights for software programs.

5.2 Prior to having made complete payment for all secured receivables products respectively services provided by DSC may not be pawned to third parties, nor assigned to third parties as collateral. In the event of attachments or other impediments imposed by third parties, the Customer shall be required to immediately advise said party of DSC's title in such objects. Moreover, the Customer shall undertake to immediately notify DSC via phone or fax and to subsequently submit a written notification.

5.3 In the event that the Customer's behavior should be in breach of contract, in particular in the event of non-payment of the remuneration due, DSC shall have the right to rescind from the contract in compliance with statutory provisions and, if applicable, to demand the return of contractual merchandise based on the retention of title clause and DSC's rescission of the contract and to revoke other rights possibly awarded to the Customer, such as licensing rights for software programs.

5.4 The Customer shall handle the merchandise delivered with care and shall, upon DSC's request, obtain adequate insurance coverage for damages for the duration of the retention of title period. The Customer shall assign any insurance claims to DSC in advance. In the event of attachments or other third party manipulations, the Customer shall immediately notify DSC in writing to allow DSC to assert its rights in a timely manner. In the event that the third party should not be in a position to absorb the costs incurred by DSC in enforcing its rights, the Customer shall be liable to DSC for the damages incurred.

VI. Examination and Deficiency Notification Obligation, Participation Obligations of the Customer

6.1 For all deliveries and services provided by DSC, the Customer shall assume an examination and deficiency notification obligation pursuant to § 377 HGB (German Trade Law).

6.2 In terms of the Customer's right of retention based on any deficiencies, above item 4.5 shall apply accordingly. In the event that the deficiencies have been adjudged finally or accepted by DSC, the scope of the rights of retention executed must be reasonable in comparison to the deficiencies present. In the event that deficiency notifications should be baseless, DSC shall have the right to claim reimbursement of any damages from the Customer.

6.3 To prevent damages, the Customer is instructed to ensure that Customer's data inventory is backed up daily in compliance with on the latest state of technology.

6.4 Within the scope of the services owed by DSC, the Customer shall render any required participation activities at no cost to DSC. This shall in particular include the provision of all required information to DSC, e.g. on the objectives and requirements of the Customer, without having to be asked to do so and in due time. Moreover, the customer shall provide any required facilities/equipment for the installation or operation of the products respectively services in due time.

VII. Liability

7.1 DSC's liability shall be based on statutory requirements unless otherwise agreed upon subsequently.

7.2 DSC shall be liable for any acts of deceit, intent or gross negligence. Moreover, DSC shall also be liable for ordinary negligence in the following cases:

- For damages resulting from the loss of life, personal injury or health damages.
- In the event of breach of an integral contractual duty. In this case, DSC's liability shall, however, be restricted to reimbursement of the foreseeable, typically incurred damages, not to exceed the amount of EUR 250,000.00 in any case or if the value of the affected order exceeds this amount, the value of the order.

This shall be without any prejudice to claims of the Customer arising from warranties made by DSC as well as those arising from the Product Liability Act. The aforementioned provisions shall not change the burden of proof to the detriment of the Customer.

7.3 The Customer shall - in case that the further legal requirements exist - have the right to rescind from the contract based on a breach of duty that is not the result of a deficiency only, if DSC is responsible for said breach of duty. The right to rescind shall be excluded if the breach of duty is insignificant.

7.4 DSC shall not be liable for the loss of data if the damages would not have occurred had data been backed up properly within the scope of responsibility of the Customer. The performance of proper data backup shall be assumed if the Customer has verifiably backed up Customer's data daily in machine readable form and has therefore ensured that said data can be recovered at a reasonable expense. The liability of DSC for data loss – unless same was caused intentionally or due to acts of gross negligence on the part of DSC – shall be limited to the typical cost of recovery which would have been incurred in the event of proper data backup.

7.5 DSC shall also not be liable for software errors that occur after the utilization and operational conditions have been changed, after operational errors, after manipulations of the software program, such as changes, adaptations, connections with other programs and/or after non-contract-compliant utilization, unless the Customer verifies that said error already existed at the time of handover of the product respectively service and that it is not causally connected to the above events.

7.6 Whenever DSC's liability is excluded or limited, this shall apply to the personal liability of staff and workers of DSC accordingly. This shall be without prejudice to the objection of shared responsibility.

7.7 To the extent that damage compensation claims are excluded or limited based on the above sections, such exclusion or limitation shall also comprise any competing claims based on illegal acts as well as claims based on the reimbursement of expenses pursuant to § 284 BGB (German Civil Code).

VIII. Statute of Limitations

Claims for deficiencies and damages filed by the Customer – regardless of the legal reason – shall be subject to a statute of limitations of one year as of the beginning of the warranty period, otherwise as of the date the entitlement was established. This shall not apply if statutory provisions provide for shorter statutes of limitation. However, statutory statutes of limitation shall apply in the following cases:

- Deficiency claims if DSC has deceitfully failed to disclose the defect or provided a guarantee of quality;
- Damage claims resulting from the loss of life, physical injury or health damages;
- Other damage claims based on intentional or grossly negligent breach of duty;
- Damage claims based on the breach of other material contractual duties;
- Claims arising from the Product Liability Act.

IX. Setting of Deadlines, Notice to File Claims for Damages, Rescission and Termination

9.1 In the event that Customer should be entitled to the statutory right to claim damages in lieu of performance of the service or reimbursement of expenses, after a reasonable deadline set by the Customer has expired to no avail, such a notice setting a deadline shall additionally contain the express threat of the Customer that Customer shall enforce these legal remedies upon expiration of the deadline.

9.2 The aforementioned item shall apply accordingly if by statute, the Customer is entitled to rescind from the contractual relationship with DSC or to terminate said contract for important cause without notice after a reasonable deadline set by the Customer has expired to no avail.

X. Secrecy, Confidentiality

10.1 In the event that the contracting parties are sharing confidential information of a commercial or technical nature or such details become known to one of the parties from within sources of the other party, which are usually considered business secrets, such as customer data, the parties shall undertake to treat such information as strictly confidential and to not make such information accessible to any third parties without the consent of the other party and to not use such information beyond the execution of this contract in any other form. This joint confidentiality obligation shall not pertain to such information, which verifiably

- Is generally known or becomes generally known without the involvement of a contracting party;
- Becomes known to one of the contracting parties from another source not obligated to the other party to maintain confidentiality;
- Is required to be disclosed by one of the contracting parties due to statutory mandates – in particular to courts, criminal investigators and government agencies.

10.2 Each of the contracting parties shall undertake accordingly to return any physically transferred confidential information to the other party at any time upon pertinent request or to destroy same at said party's discretion, without retaining copies or records of same.

Own records, compilations and analyses containing confidential information shall be immediately destroyed upon request of the other contracting party; electronically transmitted and/or stored confidential information shall be deleted.

The performance of the destruction/deletion shall be confirmed to the other contracting party in writing upon request. The aforementioned provisions stipulated in this section shall however not pertain to copies retained for the purpose of verification by one of the contracting parties in confidential files.

10.3 The term of this confidentiality agreement shall survive the contractual relationship between the parties by a period of 5 years.

10.4 DSC shall, however, retain the right, to transmit software research files, which may contain business secrets, such as customer data, to the licensor to solve issues and problems raised by the Customer in connection with the software provided by DSC. In this case DSC shall bind the licensor to confidentiality.

XI. Miscellaneous

11.1 In the event that the Customer is a professional business person, a legal entity of public law or a public law special entity, the place of jurisdiction for all litigation arising directly or indirectly from the contractual relationship shall be the domicile of DSC, Karlsruhe, Germany. DSC shall, however, also have the right to file suit at the domicile of the Customer.

11.2 The legal relationships between DSC and the Customer shall be governed by the laws of the Federal Republic of Germany, under exclusion of the UN Convention on Contracts on the International Sale of Goods - CISG -.

11.3 In the event that one of the provisions of these General Terms and Conditions should be ineffective or become ineffective, this shall not affect the effectiveness of the remaining provisions. Ineffective provisions shall be replaced by such effective provisions that meet the intended economic purpose as closely as possible.