

General Terms and Conditions

1. SCOPE

- 1.1 The following General Terms and Conditions (**GTCs**) shall apply to all agreements between SevenCs and its customers, solution partners, resellers, licensees or any other parties (each a **Business Partner**). SevenCs will sell and deliver programs, program elements and data (**Software**) and will perform services only in accordance with these GTCs.
- 1.2 Any terms and conditions of a Business Partner, which are contrary to or deviating from these GTCs shall not be binding on SevenCs unless expressly confirmed by SevenCs in writing.
- 1.3 The delivery of Software and/or performance of services without reservation or performance of services shall not constitute an acceptance of the Business Partner's terms and conditions.

2. OFFER AND ACCEPTANCE

- 2.1 All deliveries of Software or performance of services must be agreed in separate written agreements (**Agreement(s)**). The provisions set forth in the Agreement shall prevail in the event that the provisions set forth in the GTCs are inconsistent or contrary to the provisions set forth of the Agreement. Amendments of, or alterations to, any Agreement must be in writing to be effective. A waiver of the written form requirement shall not be effective unless in writing.
- 2.2 SevenCs' offers (including, but not limited to, price lists, price quotas, delivery dates, time limits, product descriptions and other performance data) are not binding and are subject to change without notice, unless expressly otherwise agreed in writing.
- 2.3 In order to become binding, SevenCs must confirm any order or oral agreement by an order acknowledgment (in writing, by telefax or via e-mail) and an Agreement is only concluded upon issue of such order acknowledgment if signed by both Parties. Any references in brochures, advertisements, internet pages or other publications shall be considered a performance description only and no warranty of quality (*Beschaffenheitsgarantie*).
- 2.4 SevenCs retains ownership rights and copyrights to all illustrations, drawings, calculations and other documents delivered in its quotations and correspondence and the Business Partner must destroy these or return them to SevenCs if requested.

3. PRICES, PAYMENT CONDITIONS

- 3.1 The terms and conditions for the transfer of the Software and the performance of services are set forth in detail in the Agreements. All agreed prices are quoted "ex works", are payable in Euros and exclusive of the applicable value added tax.
- 3.2 The costs for additional services or performances which become necessary because of incorrect or incomplete information provided by the Business Partner, indicated



defects that cannot be verified and inappropriate handling of the Software by the Business Partner shall be borne by the Business Partner.

- 3.3 SevenCs reserves the right to reasonably increase any recurring fees upon giving the Business Partner three months' prior written notice. Should such fees be increased by more than 10 % at a time, the Business Partner shall be entitled to terminate the Agreement with due notice. Increases may not occur in intervals of less than twelve months.
- 3.4 SevenCs will charge for data carriers and other accessories at current list prices.
- 3.5 All payments become due on the agreed date. If no due date has been expressly agreed for certain payments, then the date of actual delivery of the Software or performance of the relevant services shall be the due date for the payments to be made by the Business Partner. If the Business Partner has not paid on time the Business Partner shall pay interest on the amount outstanding of 8 percent p.a. above the prime rate pursuant to Section 247 of the German Civil Code (*BGB*) from the due date to the payment date.
- 3.6 The Business Partner shall not have any set-off or retention rights unless its counterclaims are undisputed, non-appealable or acknowledged by SevenCs.

4. RETENTION OF TITLE

- 4.1 The Software provided under the Agreements shall remain the property of SevenCs until all payments due under the business relationship have been received in full. In any event, any additional goods supplied by SevenCs for test purposes (such as data carriers, accessories etc.) shall remain the property of SevenCs.
- 4.2 The Business Partner shall not be entitled to pledge or assign the Software, goods and services covered by the Agreement. In case of any pledging or other intervention of the Software or other goods by third parties, the Business Partner shall immediately inform the third party in writing that SevenCs is the owner of the Software and other goods and inform SevenCs in writing so that SevenCs can institute legal proceedings pursuant to Section 771 of the German Code of Civil Procedure (*ZPO*). If and to the extent that the third party is not able to refund SevenCs' in and out-of-court costs of legal proceedings pursuant to Section 771 of the German Code of Civil Procedure, the Business Partner shall be liable for the costs, losses and damages incurred by SevenCs.
- 4.3 If the Business Partner is in breach of the Agreement, particularly in case of delays of payments, SevenCs shall be entitled, after having set a reasonable period of time, to claim the return of the Software supplied. The measure of claiming the return of the Software supplied shall not constitute a rescission of the contract unless SevenCs expressly declares so in writing.

5. DELIVERIES, PASSING OF RISK, INSURANCE

- 5.1 Any Software may, at the Business Partner's choice, be retrieved by Internet via "ftp-server" or may be dispatched by SevenCs on data carriers of agreed specifications. If the Business Partner wishes to retrieve the Software by internet via "ftp-server",



SevenCs will set up a personal internet account for the Business Partner. Immediately after full payment has been received by SevenCs, SevenCs will provide to the Business Partner a code number with which the Business Partner may access the Software. The Business Partner is obliged to retrieve the Software via internet within the time span agreed in the Agreement.

- 5.2 The agreed delivery dates of the Software and the agreed dates for the performance of services are subject to the provision that all technical and administrative prerequisites of the Agreement have been fulfilled and that the Business Partner has fulfilled its obligations in time.
- 5.3 If any goods or services of SevenCs' own suppliers are not provided, are not provided correctly or are not provided in time for reasons beyond SevenCs' control or in case of force majeure, SevenCs shall – within its entire discretion – be entitled to postpone the delivery of the Software and the performance of services for the continuance of the respective obstacle and a reasonable start-up period or to rescind the Agreement either in whole or in part in respect of the part of the Agreement not fulfilled. Interruptions of operations (e.g. due to fire, machinery breakdown, shortage of raw material or energy), strikes, lock-outs, governmental action or the refusal to grant official permits (e.g. export licenses), even if they concern SevenCs' suppliers or their sub-suppliers, and any other obstacles which are not caused by SevenCs' fault shall be equivalent to events of force majeure. The above provisions shall also apply to any default on SevenCs' part due to circumstances mentioned therein. SevenCs shall inform the Business Partner immediately of the occurrence of any such obstacle.
- 5.4 SevenCs shall not be in default with the delivery of the Software or the performance of other services as long as the Business Partner is in default with the performance of any of its obligations arising out of the business relationship towards SevenCs, in particular making available free of charge the necessary preconditions for the performance of the services agreed upon in the Agreement.
- 5.5 In the event of a slightly negligent (*leicht fahrlässig*) delay in delivery, SevenCs' liability shall not exceed 15 % of the purchase price of the invoice value of the delayed Software and services, unless the delay in delivery constitutes a breach of a material contractual duty. In the event of delay of delivery due to gross negligence or in the event of a breach of a material contractual duty, SevenCs' liability shall be limited to the typically foreseeable damage and loss.
- 5.6 The limitation of liability pursuant to clause 5.3 shall not apply, if time is of the essence (*kaufmännisches Fixgeschäft*) or if the Business Partner justifiably claims that due to the delay its interest in fulfilment of the Agreement has ceased to exist.

6. WARRANTIES

- 6.1 The Business Partner shall inspect the Software supplied without undue delay (*ohne schuldhaftes Zögern*). If discovering any defects, the defect shall be notified promptly in writing, however not later than within seven working days following receipt of the Software. In case of hidden defects (*versteckte Mängel*), the notification shall be made immediately in writing, however not later than seven working days after the defect has been discovered. If the Business Partner fails to notify the defect in due form and time, the Software supplied shall be deemed accepted. The date of



SevenCs' receipt of the notification shall be decisive for the timeliness of the notification of defects.

- 6.2 Any damage in transit shall be notified to the carrier. The duties of notification under the General Terms and Conditions for German Forwarding Agents (*Allgemeine Deutsche Spediteurbedingungen*) shall apply to any such damage or loss.
- 6.3 SevenCs shall not be liable for defects resulting from improper utilization of the Software (such as - without being limited to - the unpermitted alteration of the Software or the unpermitted link to other software, programs, program elements or data), from the use of unsuitable resources or from an unusual operating environment.
- 6.4 In case of any defects of the Software, SevenCs shall, at its entire discretion, be entitled to require subsequent performance (*Nacherfüllung*) by either remedying the defect (including in particular, through the provision of a temporary or permanent work-around) or by supplying Software free from defects. In case of remedying the defect, SevenCs shall bear the costs incurred for the remedial action only up to the amount of the purchase price. SevenCs may refuse subsequent performance in accordance with the statutory provisions.
- 6.5 If and to the extent SevenCs does not comply with its obligations pursuant to clause 6.4 or if the subsequent performance fails under the statutory provisions, the Business Partner shall be entitled to rescind the Agreement or to reduce the purchase price subject to the requirements laid down by law.
- 6.6 Any further claims of the Business Partner for damages or reimbursement of expenses resulting from or in connection with defects, irrespective of their legal basis, shall be exclusively subject to clause 7.
- 6.7 The limitation period for warranty claims – except for claims for damages – shall be twelve months from the passing of risk.

7. GENERAL LIMITATION OF LIABILITY

- 7.1 Unless otherwise stipulated in these GTCs, SevenCs' liability for all claims for damages or reimbursement of expenses asserted against SevenCs, irrespective of the legal grounds of such damage claims, shall be limited pursuant to the provisions of this clause.
- 7.2 In the event of slight negligence, SevenCs shall only be liable, if it fails to meet material contractual duties endangering the purpose of the Agreement. Any other liability for slight negligence shall be excluded.
- 7.3 In the event of liability pursuant to clause 7.2, in the event of gross negligence and in the event of strict liability, SevenCs shall only be liable for the typically foreseeable damage or loss, but exclusive of useless expenses incurred by the Business Partner.
- 7.4 None of the provisions in this clause 7 shall affect SevenCs' liability (i) pursuant to the German Product Liability Act (*Produkthaftungsgesetz*), (ii) for injuries to a person's



life, body or health, (iii) for express quality warranties (*Beschaffenheitsgarantie*) or (iv) for fraud.

7.5 Any limitation or exclusion of SevenCs' liability shall also apply to the same extent with respect to SevenCs' corporate bodies, legal representatives, executive and non-executive staff and other vicarious agents (*Erfüllungsgehilfen*).

8. RESERVATION OF RIGHTS

8.1 Except to the extent otherwise agreed in a relevant Agreement, SevenCs reserves all rights and title in relation to the Software in accordance with this clause 8.

8.2 SevenCs retains all proprietary and intellectual property rights, especially title and copyrights, to the Software and the accompanying materials (e.g. documentations, instructions and manuals) provided to the Business Partner.

8.3 The Software and accompanying materials are protected by copyrights. The Business Partner shall neither remove any existing identity, copyright or other identification marks, nor shall the Business Partner disable any display thereof.

8.4 The Business Partner shall not be entitled to alter, to extend, to modify or to adapt the Software and accompanying materials in any form whatsoever. Furthermore, the Business Partner shall neither be entitled to print out the program code or data – unless data printouts are designated by the Agreement – or to decompile program or data code into any other code, nor shall the Business Partner be entitled to reverse-engineer the Software.

8.5 The Business Partner shall neither be entitled to sell, to grant license or sublicense to or to hire or lend out the Software and accompanying materials, nor shall the Business Partner be entitled to affect SevenCs' rights concerning the Software and the accompanying materials in any other way or by any other means without SevenCs' prior written approval.

8.6 The Business Partner shall be entitled to copy the provided Software only, if such copy is necessary for the use of the Software. A copy which shall be deemed to be necessary for the use of the Software shall be the installation to the deployed mass storage and its download to RAM. Furthermore, the Business Partner may make one backup copy for the purpose of archival storage.

8.7 In the event that the Business Partner changes the hardware, the software shall be deleted irrevocably from the old hardware. The Business Partner shall not be entitled to download, to store or to use the Software simultaneously on more than one hardware system, especially, but not limited to, deploying it into a network area or a multicomputer workstation environment.

8.8 Upon termination of the Agreement, the Business Partner shall cease to use the Software and its accompanying materials and shall return, free of charge, the Software, the provided data carriers and accompanying materials. Furthermore, the Business Partner shall delete irrevocably any and all copies of the Software (including the back-up copy referred to in clause 8.6 above) and the accompanying materials.



9. MISCELLANEOUS

9.1 Notices

All notices to be given under any Agreement shall be given in writing in the German or English language and shall be delivered, unless otherwise specified, by mail, by telefax or e-mail to the addressee and the contact specified for this purpose in the relevant Agreement, or shall be delivered in person with an acknowledgement, signed by the representative of the receiving Party. Each Party may change the contact details for notices specified in any Agreement with prior written notice and such change shall become effect one week after its receipt by the other Party.

9.2 Costs

Unless otherwise explicitly agreed in the relevant Agreement, each Party will bear its own cost for the preparation, negotiation and performance of the relevant Agreement and these GTCs.

9.3 Confidentiality

The specific conditions of each Agreement, including in particular any information on prices, shall be deemed confidential in nature and the Business Partner shall not divulge any such conditions to any third parties except as me be required by law. If the Parties have entered into a specific non-disclosure agreement, the terms and conditions of such agreement shall prevail this clause.

9.4 Language and Interpretation

As regards terms for which anywhere in the relevant Agreement or these GTCs a German term has been inserted in brackets and/or italics, such German term alone (and not the English term to which it relates) shall be binding for the interpretation of the respective provision.

9.5 Entire Agreement

The relevant Agreement, together with its Annexes and these GTCs, will be the entire agreement and understanding between the Parties in relation to the subject matter of the relevant Agreement and will supersede any prior agreement whether written or oral, except as otherwise expressly agreed in clause 9.3 or elsewhere in the relevant Agreement or these GTCs.

9.6 Severability

Should individual provisions of any Agreement or these GTCs be or become legally ineffective or unenforceable in whole or in part, the validity of the remaining provisions shall not be affected thereby. The same applies if this Agreement contains a gap. The Parties shall use their reasonable best efforts to agree that the ineffective or unenforceable provisions shall be replaced, and such gap be filled, by an appropriate provision which, to the extent legally possible, comes as close as possible to what parties concluding this Agreement would have intended had they been aware of such issue at the conclusion of this Agreement.



9.7 Assignment of Rights

The Business Partner may not assign its rights and claims under the Agreement to any third party unless SevenCs has given its prior approval in writing.

9.8 Place of Performance

Place of performance for all services and obligations under each Agreement shall be the place of business of SevenCs, unless otherwise provided for in the relevant Agreement.

9.9 Legal Venue

For any and all disputes arising out of or in connection with the Agreement and these GTCs, the courts at SevenCs' place of business shall have jurisdiction. SevenCs, however, shall be entitled to institute legal proceedings against the Business Partner at its residence.

9.10 Applicable Law

The laws of the Federal Republic of Germany shall apply to each Agreement and these GTCs, without regard to the conflict of law rules of the Federal Republic of Germany. The United Nations Convention on the International Sale of Goods (**CISG**) shall be excluded.

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