

# General Terms and Conditions of Business of ATOSS Software AG

– hereinafter referred to as the "COMPANY" –

Am Moosfeld 3 · 81829 Munich · Telephone +49. 89. 4 27 71-0 · Fax +49. 89. 4 27 71-100 · www.atoss.com

## Supply of goods (hardware, passes etc)

### § 1 General

The COMPANY supplies goods (hardware, passes, accessories) according to these General Terms and Conditions of Business.

### § 2 Deliveries

1. All deliveries are made from the COMPANY's dispatch centre or directly from the manufacturer's dispatch centre, excluding packaging, transportation and insurance, and at the account and risk of the CUSTOMER. The COMPANY is entitled to make partial deliveries. Partial deliveries are generally deemed to be independent deliveries that may also be invoiced separately. The obligation to assemble and install requires separate written agreement on the basis of the relevant valid price list for services and the General Terms and Conditions of Business of the COMPANY concerning the consulting for and rendering of IT system support services.

2. Delivery deadlines are only binding if they have been expressly confirmed by the COMPANY in writing. The binding nature of the deadline presupposes the timely rendering of all requisite supplies and cooperation services on the part of the CUSTOMER.

The deadline shall be regarded as having been adhered to

a) in the case of deliveries without assembly and installation if the delivery has been made within the agreed delivery or service period by the COMPANY or a supplier/subcontractor of the COMPANY for dispatch to the CUSTOMER, or has been provided for collection by the CUSTOMER. If the collection or delivery is delayed for reasons for which the CUSTOMER is responsible, the deadline shall be regarded as having been adhered to if the communication of preparedness to dispatch occurred during the agreed deadline period.

b) in the case of delivery including assembly and installation obligation, as soon as the assembly and installation has occurred within the agreed deadline period.

3. Supply deadline periods shall be extended accordingly for the COMPANY in the case of disruptions due to force majeure and other hindrances for which the COMPANY is not responsible such as strikes, lockouts, war, disruptions to its own deliveries, and operational disruptions. If delivery or provision of service becomes permanently impossible or inappropriate, the COMPANY shall be definitely released from its obligation to provide services.

4. If dispatch or delivery is delayed at the CUSTOMER's request or fault, a warehousing fee of 0.5% of the invoice amount may be invoiced to the CUSTOMER for each completed week following notification of preparedness to dispatch; the warehousing fee shall be limited to 5% of the invoicing amount. The warehousing fee to be paid according to the above regulation shall be reduced if the CUSTOMER provides evidence of significantly lower damages as a result of warehousing. More extensive damage compensation claims according to statutory provisions shall otherwise remain unaffected.

5. The delivered goods shall remain the property of the COMPANY until payment has been completed. The CUSTOMER may install and reorganize the delivered goods as part of regular business activities. Combination, mixing and processing or rearrangement shall occur exclusively for the COMPANY, however, which will obtain co-ownership of the finished goods or new object that corresponds to ratio of the

value of the delivered goods to the value of the finished goods or new object.

The CUSTOMER may sell the delivered goods as part of normal business activity to the extent that it has not agreed a covenant against assignment with the purchaser. The CUSTOMER shall assign its future receivables arising from the transfer of the reserved goods herewith as security in the relevant invoicing value of the delivery until the complete payment to the COMPANY that accepts this assignment. If the COMPANY enjoys co-ownership of the sold items, the receivable shall be assigned to the value of this co-ownership portion, but with precedence before the other receivables. The CUSTOMER is not permitted to transfer by way of security or to pledge reserved goods.

If third parties access the reserved goods, the CUSTOMER must make notification that they are COMPANY's property, and immediately inform the COMPANY in writing. The CUSTOMER shall bear all costs of intervention proceedings and other preventative measures in connection with such third-party access.

In the case of counter-contractual behavior on the part of the CUSTOMER, in particular payment default or discontinuation of payment, the COMPANY may revoke the CUSTOMER's entitlement to resale, collection of receivables, and to the processing and finishing or connection of the delivery, and withdraw the delivery at the CUSTOMER's cost, or demand the assignment of the CUSTOMER's restitution claims against third parties. The reclaim or pledging of the reserved goods by the COMPANY shall not be regarded as withdrawal from the agreement to the extent that the Consumer Credit Act is not applicable.

The COMPANY is entitled to reuse the goods, and to satisfy itself from the proceeds up to the level of the open receivables due from the customer.

At the CUSTOMER's request, the COMPANY shall release collateral if its total value exceeds the value of the receivables to be secured by more than 10%.

### § 3 Payment

1. All invoices must be paid within 10 calendar days from the invoice date, and without discounts. The same shall also apply for partial deliveries. All prices quoted are before the addition of the relevant applicable statutory VAT.

2. The CUSTOMER may only offset with such receivables that are uncontested or deemed legally final and absolute.

3. Payments shall be deemed not to have been rendered until the monetary amount has been received by the COMPANY. The CUSTOMER is not permitted to make payments to third parties or representatives.

4. If the CUSTOMER exceeds the payment periods pursuant to figure 3.1, interest shall be due from the expiry of this period, without the need for prior warning, to the amount of 5% per annum above the relevant basic interest rate of the European Central Bank applied to the purchase price.

5. The COMPANY is entitled to make deliveries only against prepayment if circumstances suggest that the COMPANY's payment demand may be in jeopardy. This shall apply particularly if information is available that the CUSTOMER's asset circumstances have deteriorated significantly, particularly also if the CUSTOMER fails to settle the COMPANY's due receivables. In the latter case, the COMPANY may discontinue other deliveries until the due receivables have been settled.

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### § 4 Confidentiality

The parties shall agree strict confidentiality relating to all mutually published operating and business secrets, including cost estimates, offers, drawings and other documents. At the end of a relevant order, the recipient shall be obligated to return the documents containing confidential information to the other party upon request. Statutory data protection regulations must be observed.

### § 5 Warranty

With respect to a warranty case, the COMPANY is initially entitled to eliminate the defect through subsequent improvement or replacement delivery. If the COMPANY fails to eliminate defects that have been properly communicated by the CUSTOMER, including as part of two subsequent improvement attempts within an appropriate and set written subsequent period, or replacement deliveries fail, the CUSTOMER is entitled to demand an appropriate reduction of the agreed payment or the reversal of the agreement; however, in the case of defects that are restricted to parts of services that can be partially accepted, the latter shall apply only with respect to the defective parts of service to the extent that the remaining parts of service in themselves can be reasonably used by the CUSTOMER for commercial purposes. If the examination of a defect notification shows that a warranty case does not exist, the CUSTOMER shall reimburse the costs of the examination and repair according to the costs that have arisen on the basis of the COMPANY's relevant valid service terms. Warranty periods shall commence with delivery or, if the COMPANY performs installation, at the time of installation. Warranties shall be limited to 12 months. The CUSTOMER must notify a defect in writing providing precise details of the circumstances under which it has made its notification. The CUSTOMER shall support the COMPANY appropriately in its search for the cause of the defect.

### § 6 Liability

Irrespective of legal reason, the COMPANY's liabilities shall be limited to €25,000.00 or the level of the payment for

the service order that has given rise to the damage, or is the object of the claim, or stands in direct relationship with it. The higher amount shall apply in each case. The COMPANY shall not be liable for lost earnings, unrealized cost-savings, reimbursement of wasted expenses, damages arising from third-party claims and other direct and indirect losses, as well as for recorded data. The above liability limits and liability exclusions shall not apply for damages based on the omission of a guaranteed characteristic, the malicious concealment of defects, or on an infringement of key contractual obligations on the part of the COMPANY or of its vicarious agents, or damage to life, body or health, and for damages which the COMPANY or its vicarious agents have caused intentionally or as the result of gross negligence, or were caused as the result of slight negligence and have resulted in damages arising from injury to life, body or health.

### § 7 Modifications, place of jurisdiction, applicable law

Modifications and supplements shall require written form for them to be effective. Contrary business terms on the part of the CUSTOMER shall not be applicable. Exclusively German law shall be applicable to this agreement; application of the "UN Sales Convention" (United Nations Convention on Contracts for the International Sale of Goods) shall be expressly excluded. The location for the satisfaction of all obligations arising from this agreement, and the exclusive place of jurisdiction, shall be Munich.

### § 8 Other provisions

The COMPANY is entitled to refuse satisfaction of the obligations arising from this agreement if the satisfaction of the agreement would infringe export regulations.

### § 9 Safeguarding clause

Should individual provisions prove ineffective, the efficacy of the remaining provisions shall be hereby unaffected. The parties shall cooperate in order to replace ineffective regulations with such regulations that correspond as far as possible to the ineffective provisions.