

# General Terms and Conditions of Contract

## Bissantz & Company GmbH, Nürnberg, Status 1/2005

### 1 Scope, Creation of Contracts

- 1.1 These terms and conditions shall apply to all of our goods and services of Bissantz & Company GmbH delivered within the scope of current and future business relationships. Our price list shall apply in supplement.
- 1.2 Divergent, contradictory or supplementary terms and conditions of the Customer shall not become an element of contract, even if we are aware of them, unless we have expressly agreed to their application in writing.
- 1.3 Our offers are non-binding. Contracts shall not be created until we have issued a written confirmation of order or have delivered the goods or services. Changes and supplements of contracts shall not be valid unless they have been agreed in writing.
- 1.4 Documents and information delivered and provided by us such as illustrations or technical data shall only be binding if they have been expressly indicated as being an element of contract or express reference is made to them.
- 1.5 We reserve the right to make technical changes within a reasonable scope.

### 2 Software

- 2.1 The regulations under law and in these General Terms and Conditions of Contract concerning the delivery of movable property shall apply with respect to the provision, creation, alteration or adaptation of software.

### 3 Price and Payment

- 3.1 The prices listed in the price list shall apply unless another agreement has been made under contract. Our prices are exclusive of the respective value-added tax and any additional shipping costs.
- 3.2 Provided that nothing to the contrary is agreed, services shall be charged according to days of service at the daily rates plus side costs for travel and accommodation (if applicable) in accordance with the price list. One day of service is equivalent to eight hours; overtime shall be charged separately on the basis of the proportionate application of the daily rate.
- 3.3 If a payment period is determined on a calendar basis, Customer shall be in default without the necessity of a default notice if the payment period has been overrun. Otherwise, payments by Customer are due for payment upon the receipt of the invoice and are payable within 10 days.
- 3.4 In the event of a default of payment of Customer we are entitled to cease delivery of goods and services until the outstanding payments have been satisfied in full.
- 3.5 Customer may only set off with or because of claims or assert rights of retention which are undisputed or are final and absolute under a court judgment and, in the case of a right of retention, are based on the same contractual relationship.
- 3.6 For deliveries within the European Union Customer shall submit his VAT identification number in good time prior to the delivery date agreed under contract. In the event that such notification is not given on time or in full, we reserve the right to charge the value-added tax in the applicable amount.
- 3.7 For deliveries outside of the European Union we are entitled to subsequently charge the statutory value-added tax if Customer has not sent us a proof of export within one month of the date of shipment.
- 3.8 If Customer is in default of payment, a dunning charge of € 15.00 per notice of default shall be due.

### 4 Scope of Use

- 4.1 To the extent we provide Customer with software within the scope of this Contract, we shall grant Customer a non-exclusive perpetual license against payment of a one-time license fee, to reproduce the Software to such extent as is necessary to load, display, run, transmit or store the Software at the same time on one computer for simultaneous use by up to the maximum number of users ("Contractual Use"). Customer shall only use the Software for the Contractual Use and shall not provide the Software to any additional users. Customer is furthermore prohibited from translating, processing, changing the arrangement of or otherwise altering the Software, including the correction of errors. Customer is not entitled to decompile or translate the Software in another manner into the source code or into another form readable to the human eye. Upon request and against payment of the administrative fee applicable at such time, we will provide information indispensable to producing the interoperability of an independently created computer program with the Software (sec. 69 e Copyright Act).
- 4.2 The delivered software may be subject to the following usage restrictions: The software will only run for a limited period unless it is activated in this time frame with a code, which can be obtained from us.
- 4.3 Customer is not entitled to make copies or partial copies of the Software on another data carrier. This shall not apply for the creation of one back-up copy.
- 4.4 Customer is not entitled to completely or partially copy the documentation delivered in printed form. We may deliver additional copies of the documentation at the prices applicable on the date of order.
- 4.5 Customer is only entitled to give the Software to a third party (hereinafter referred to as the "New User") if he has himself completely stopped using the Software and has destroyed any existing copies of the Software and he has informed us of the names and address of the New User of the Software and the New User has given us written notification of his agreement with these General Terms and Conditions of Contract.
- 4.6 Under no circumstance is Customer entitled to permanently or temporarily let, lease or otherwise make the Software available to third parties without our written authorization. Customer's employees are not deemed to be third parties as long as they use the Software under the terms of contract within the scope of their existing employment relationship.
- 4.7 Customer shall receive a non-exclusive perpetual right of use to the performance results (excluding software) created by us within the scope of this Contract. We shall retain the rights of use to standard programs, program modules, tools, etc. used to achieve performance results.

### 5 Breach of Duties

- 5.1 In the event of a breach of duties on our part Customer may assert broader claims for damage compensation and rescission if he has set a reasonable period of grace for us to duly render our performance and has declared at the same time that he will refuse performance upon expiration of the period of grace (notice of refusal).
- 5.2 As soon as Customer has exercised his right to rescind the Contract his right of use to the Software provided to Customer under this Contract shall end. In this case Customer must remove the Software from all of his storage media and destroy any and all copies of the Software and notify us hereof in writing.

- 5.3 Should it be established upon inquiries in the context of Customer's request for a supplementary performance that we are not obliged to make supplementary performance, we are entitled to bill on the basis of the then applicable price list the expenses incurred during the inquiry, including, but not limited to, the costs of transport, travel, work and materials.
- 5.4 Except in the case of intentional fault, claims because of the breach of duties on our part in producing an intangible work or in rendering services shall become statute-barred within two year from acceptance or the complete rendering of the service. This shall not apply to claims because of defects in materials or title for which clause 6.1 hereof shall apply.

## 6 Defects

- 6.1 Claims because of defects in materials or title shall become statute-barred one year from delivery or, if acceptance must be made, as of acceptance.
- 6.2 Software is free of defects in materials if it functions when used in accordance with the terms of contract in compliance with the performance specifications contained in the product description; minor discrepancies shall be disregarded.
- 6.3 In addition to the quality specifications agreed under contract, generally only the product description shall be deemed to be the agreed quality of the goods. Public remarks, promotion or advertising statements shall not constitute information on the contractual quality of the goods.
- 6.4 Should Customer avail himself of his claim to supplementary performance because of a defect in materials or title, we shall first be entitled, at our discretion, to carry out remedial work or deliver a substitute.
- 6.5 Customer may choose to rescind the Contract due to a defect in materials or title following the failed supplementary performance. His damage compensation shall be limited to the original price of the defective goods.
- 6.6 We are not responsible for any defect with respect to the Software if the defect has been caused by a change in the Software which has neither been carried out nor permitted by us.
- 6.7 In the event of fraud or the assumption of a guarantee for the quality of the item Customer shall be entitled, without limitation, to the rights under statute law because of defects in materials or title irrespective of the arrangements agreed in these General Terms and Conditions of Contract.

## 7 Proprietary Rights of Third Parties

- 7.1 The products delivered under this Contract and the achieved performance results shall be free of the copyrights and patents of third parties; in the case of conflicting patents this shall only apply if we were neither aware of them nor could have become aware of them upon application of the required care.
- 7.2 Should a third party assert rights relating to the products or to the performance results, we shall be liable to Customer if Customer leaves the defense against such alleged infringement of copyrights or patents (hereinafter referred to as the "Infringements of Proprietary Rights") to us. Provided that the licensee notifies us without undue delay in writing of the assertion of such claims and provides us with all of the information needed to evaluate the situation, we shall decide within a reasonable period whether and how an asserted claim is to be defended against or settled, and shall notify Customer hereof. Until the expiry of such period Customer shall be obliged to do everything without undue delay which is necessary to avoid the forfeiture of any rights; this shall not include the entitlement to a defense against or a response to such claims on his own. If we decide to assume the defense against such claims, Customer shall provide us with all of the required information and other reasonable support in such defense.

- 7.3 We shall not be liable for Infringements of Proprietary Rights if they are based on a processing or alteration of the product or the service results undertaken without our express written consent, nor shall we be liable for Infringements of Proprietary Rights resulting from a use or an application of the product not provided for according to the instructions of the documentation or from a use with components not authorised by us.

## 8 Liability

- 8.1 Except for loss of life, personal injury or property damage caused through our fault we shall only be liable to Customer for incurred damage to the extent that we are guilty of intent or gross negligence. In addition, we shall only be liable up to the amount of the typically foreseeable damage even in the case of such damage which we or our servants have caused through the breach of a major contractual obligation.
- 8.2 This limitation of liability shall apply with respect to all damage compensation claims irrespective of their legal basis, particularly precontractual and collateral contractual claims.
- 8.3 The limitation of liability shall limit neither the mandatory liability under the Product Liability Act nor a liability for assumed guarantees, provided that the guarantee was specifically intended to protect Customer from the incurred damage.
- 8.4 Compensation for purely pecuniary damage shall be limited in accordance with the principles of good faith such as in cases of a disproportion between the amount of the value of contract and the incurred damage.
- 8.5 Customer is obliged to make back-up copies of his files in reasonable intervals. A breach of this duty shall be deemed to be contributory negligence.

## 9 Acceptance

- 9.1 Acceptance shall be deemed to have occurred if Customer does not accept a work within four weeks of the notice of readiness for acceptance although he is obliged to do so. Should the fourweek period be unreasonably short in the individual case, another reasonable period shall apply instead.
- 9.2 Refusal to make acceptance, objections to acceptance or reservations against acceptance must be provided in writing without undue delay upon statement of the grounds.
- 9.3 Should partial acceptance be provided for, items 9.1 and 9.2 shall apply mutatis mutandis.

## 10 Reservation of Title

- 10.1 Ownership of the delivered goods shall not pass to Customer until payment has been made in full.

## 11 Confidentiality

- 11.1 Specific knowledge within a Customer's project as well as project results will be held in confidence by us. Results are only published to third parties if prior approval of the Customer has been obtained (e.g. to publish a success story).
- 11.2 We are not debarred from realizing similar projects for other Customers in the future.

## 12 General

- 12.1 The laws of the Federal Republic of Germany upon exclusion of the conflict of law rules and United Nations Convention on Contracts for the International Sale of Goods (CISG) shall apply. Venue for all disputes arising under or in connection with this Contract shall be Nürnberg. In case of doubt during Interpretation of this Contract the German version of the General Terms and Conditions of Contract prevails.
- 12.2 Should a provision of this Contract be invalid or unenforceable, or should this Contract be incomplete, this shall not affect the validity and enforceability of the remaining provisions hereof. In such case the parties undertake to replace the invalid provision by a valid one or to remedy the incompleteness with such provision which comes closest to the commercial intention of this Contract.