General Terms and Conditions of Tobit Software™

The following general terms and conditions and special conditions apply for all current and future contracts, deliveries and other services between Tobit Software, Aktiengesellschaft, hereinafter Tobit Software and its customers. Diverging conditions of the customer to which Tobit Software has not expressly agreed in writing, shall not be part of this contract, even if Tobit Software does not expressly object to them.

I. General Conditions

1. Offer and Conclusion of Contract

1.1. Offers of Tobit Software are always subject to change without notice. The contract is not bound by any particular form.

1.2. Subagreements, modifications and supplements are valid only if confirmed in writing by Tobit Software.

2. Prices and Conditions of Payment

2.1. All prices, remunerations and fees are indicated in Euro plus the respective valid VAT. Additional services and costs paid by Tobit Software in accordance with the contract shall be defrayed by the customer, unless otherwise stipulated.

2.2. The invoice amounts are payable immediately without deduction. Tobit Software is entitled to perform and invoice partial deliveries and/or partial services within a reasonable extent.

2.3. Tobit Software expressly retains the right to refuse checks and bills of exchange. They will be accepted only as payment. Discount exchange fees shall be defrayed by the customer and are payable immediately.

2.4. The customer has the right of compensation, retention or abatement only if the asserted counterclaim is of legal force or is uncontested.

2.5. In case of default of payment, Tobit Software is entitled to charge interest in arrears for the amount of 4% above the respective basic interest rate. The interest is to be adjusted upward or downward, if Tobit Software can demonstrate a higher charge or the customer can demonstrate a lower charge.

If the customer is in default of payment or a substantial worsening of his financial situation becomes known, Tobit Software is entitled to collect all outstanding payments. Tobit Software is also entitled to perform outstanding deliveries and services only in exchange for prepayment or collateral security. If prepayments or collateral security have not been provided upon expiration of a suitable grace period, Tobit Software can cancel the contract.

3. Delivery and Service Periods

3.1. Delivery and service deadlines and delivery and service periods, which can be arranged to be binding or non-binding, must be indicated in writing. Delivery and service periods begin upon conclusion of the contract. If subsequent modifications to the contract are agreed upon, this also necessitates the stipulation of a new delivery and service date or a new delivery and service period.

3.2. The customer can withdraw from the contract or cancel a contract prematurely due to delays in delivery or service if a binding delivery or service period has been exceeded by more than four weeks and a suitable grace period with respect to type, scope, level of difficulty, etc. has expired unsatisfactorily.

3.3. Superior force and other unforeseeable extraordinary circumstances not due to negligence, such as difficulties in procuring materials, operational difficulties, strikes, lockouts, etc. shall extend the delivery and/or service period by the duration of the hindrance, even if theses events occur at the pre-supplier's facilities. If the delivery and/or the service becomes impossible or unfeasible due to the above circumstances, Tobit Software will be released from the obligation of delivery and/or service. If the delivery and/or service period is extended or if Tobit Software is released from the obligation of delivery and/or service, the customer can derive no claims for damages from this. Tobit Software can plead such circumstances only if it informs the customer without delay.

4. Exclusion of Claims

4.1. Claims for damages due to delay, impossibility of performance, violation of a contractual sub-obligation, negligence upon conclusion of the contract and unauthorized actions are excluded, as far as the damages were not caused by intentional or negligent behavior. Tobit Software shall be liable for the retrieval of data only if the customer has ensured that this data can be reconstructed at a reasonable expense from data material that is provided in machine-readable form and that the customer has fulfilled his data backup obligations.

5. Partial Invalidity, Venue, Choice of Law

5.1. If one or more provisions of these general terms and conditions or the special conditions in II below should become invalid, this shall not affect the validity of the remaining provisions or agreements.

5.2. Venue is the location of Tobit Software, if the customer is a merchant or juristic person under public law. Tobit Software is also entitled to institute an action at the customer's place of residence.

5.3. The laws of the Federal Republic of Germany shall apply exclusively to all disputes arising from this contract.

II. Special Conditions for the Sale and Manufacture of Standard Software

1. Scope

1.1. The following conditions apply to the delivery of standard software, the modification and expansion of standard software and the delivery of the modifications and expansions and other stipulated services.

2. Type and Scope of Services

2.1. The type and scope of the mutual performance within the scope of a software license agreement are regulated by the contractual terms. The decisive factors are: the binding description of performance; the license conditions of the manufacturer; the preceding general terms and conditions and the following special conditions.

2.2. Tobit Software points out that the state of the art makes it impossible to manufacture software in such a way that it will always function correctly in all applications and in all combinations. The subject of the contract is therefore only a software that is useable within the scope of the binding description of performance.

2.3. The customer acknowledges without restriction Tobit Software's rights to the product (patents, copyrights, trademarks, business secrets, trade mark rights); both parties acknowledge the copyright protection of the program.

3. Reproduction Rights and Access Protection

3.1. The customer may copy the program as far as the respective reproduction is necessary for the use of the program. Necessary reproductions include installation of the program from the original data carrier to the main memory of the hardware used as well as loading the program into the random access memory.

3.2. Furthermore, the customer can create a copy for backup purposes; however, only one backup copy may be created and maintained. This backup copy shall be labeled as a backup copy of the program, with the copyright notice of Tobit Software.

3.3. The customer is obligated to take suitable measures to prevent unauthorized access by third parties to the program and the documentation.

The original data carriers and the backup copies shall be kept in a safe place that is protected against unauthorized access. The employees of the customer shall be instructed expressly to comply with these contractual terms and the copyright law.

4. Multiple Licenses and Network Licenses

4.1. The customer may use the software on any hardware available to him. If the customer changes his hardware, however, he must remove the software from the previously used hardware.

4.2. The simultaneous use on more than one hardware system is prohibited. If the customer wishes to use the software on several hardware configurations simultaneously, for example by several employees, he must purchase a corresponding number of program packages or user licenses.

4.3. The use of the software within a network or another multi-station computer system is prohibited, if this enables simultaneous multiple use of the program.

If the customer wishes to use the software within a network or other multi-station computer system, he must prevent simultaneous multiple use by means of an access restriction mechanism or pay the supplier a special network fee based on the number of users connected to the computer system. The user will be notified by the supplier of the special network fee as soon as the user has notified the supplier in writing of the intended network use including the number of connected users. The use in a network is allowed only after full payment of the network fee.

5. License Fees, Remuneration, Prices

5.1. For the non-exclusive and non-transferable right to use the program the customer shall pay a one-time license fee and/or monthly license fees for the duration of use.

5.2. The period of use begins with the delivery or acceptance of the programs and ends with the expiration of the user's license.

5.3. One-time license fees shall be payable net cash upon delivery of the programs, monthly license fees initially upon delivery for the period until the end of the calendar year, and then annually in January net cash in advance.

5.4. The delivery of standard programs, including modifications and expansions and other services shall be invoiced to the customer, unless otherwise agreed, at the rates according to the valid price list or, in the absence of a price list, at the usual rates.

5.5. Data carriers and program accessories shall be invoiced separately by Tobit Software at the respectively valid list prices. They shall remain the property of Tobit Software until payment has been received in full.

5.6. The programs, program documentations and other documents connected with an order are shipped to the account of and at the risk of the customer.

5.7. If after conclusion of the contract Tobit Software increases its license fees, rates of remuneration or other prices in connection with increases in wages, material or other costs, then it can also raise the stipulated license fees, rates of remuneration and other prices accordingly. Increases shall take effect no sooner than four weeks after written notification.

6. Recompilation and Program Modifications

6.1. The retranslation of the provided program code to other code forms (recompilation) and other means of restoring the various manufacturing stages of the software (reverse engineering) including modification of the program are prohibited.

6.2. The removal of copy protection or similar protection routines is prohibited.

6.3. Copyright notices, serial numbers and other characteristics serving to identify the program may in no case be removed or modified.

7. Reselling and Subleasing

7.1. The customer may permanently sell or make a gift of the software including the user manual and the other accompanying material to third parties, provided that the purchasing third party agrees that these terms and conditions shall continue to apply to himself. In case the program is resold, the user must either surrender to the new user all copies of the program including any existing backup copies or destroy the copies. As a result of reselling, the right of the previous user to use the program expires. He is obligated to comply with the obligation of notification in Section 12 of this contract.

7.2. The customer may not provide the software including the user handbook and other accompanying material to third parties temporarily (rent, lease or loan).

7.3. The customer may not provide (sell or make a gift of) the software to third parties if there are grounds to suspect that the third party will violate the terms of the contract, especially to make unauthorized reproductions. This applies also to the customer's employees.

8. Guarantee

8.1. Defects in the software including the handbooks and other documents shall be remedied by Tobit Software within the statutory guarantee period beginning with the time of delivery, after corresponding notification by the customer.

8.2. As far as the software is returned to Tobit Software for the purpose of repair or replacement, the customer shall defray the shipping costs.

8.3. In case of failure of the repair or replacement, the customer can plead redhibition or reduction.

8.4. Tobit Software shall assume no liability for faults, defects or damages that result from improper use, the use of unsuitable operating materials, atypical operating conditions or defects in the power network.

9. Obligation of Inspection and Notification of Defects

9.1. The customer shall inspect the delivered software including the documentation within eight work days after delivery, especially with respect to completeness of the data carriers and handbooks, as well as the proper operation of the basic program functions. Defects that are detected or are detectable during this inspection must be reported to the supplier by registered mail within a further period of eight work days.

The notification of defects must include a detailed description of the defects.

9.2. Defects that cannot be detected during the inspection described above must be reported within eight work days after discovery of the defect in compliance with the above notification of defects.

9.3. In case of violation of the obligation of inspection and notification of defects, the software is deemed accepted in view of the respective defect.

10. Liability

10.1. For damages due to defects in title and lack of assured properties, Tobit Software shall bear unlimited liability. The liability for initial negligence shall be limited to three times the remuneration and to such damages that are to be typically expected within the scope of the sale of software.

10.2. Otherwise Tobit Software shall bear unlimited liability only for intentional or grossly negligent behavior, also of its legal representatives and senior staff. For negligence on the part of other vicarious agents, Tobit Software shall be liable only to the extent of liability for initial negligence according to the preceding paragraph.

10.3. For slight negligence Tobit Software shall be liable only as far as an obligation is violated, the compliance with which is of special importance for fulfillment of the contract (cardinal obligation). In case of violation of a cardinal obligation, the limitation of liability for initial negligence shall be invoked according to paragraph 1 of this liability provision.

11. Obligation to Exercise Proper Care

11.1 The customer shall keep the original data carriers in a safe place that is secure against unauthorized access by third parties and shall expressly instruct his employees to comply with these contractual terms and the copyright law.

12. Obligation of Notification

12.1. In the event that the customer sells or makes a gift of the software, the customer is obligated to notify Tobit Software in writing of the name and the complete address of the new licensee.

13. Retention of Ownership

13.1. Tobit Software retains ownership of the software delivered to the customer until full payment of all claims from this contract existing at the time of delivery or originating at a later time; for payment by check or bill of exchange until these are cashed.

13.2. In case of negligent outstanding payments of the customer and in the event of substantial violation of obligations to exercise proper care, the claim for retention of ownership by the supplier is not deemed a withdrawal from the contract, unless Tobit Software expressly notifies the customer to that effect.

13.3. The right of ownership of Tobit Software applies also in the event of processing (extended retention of title).

14. Treatment of the Software After Expiration of the Right of Use

14.1. After expiration of the right of use, the customer is obligated to destroy all copies of the programs and the entire program documentation. He shall notify Tobit Software AG of this within eight days of the expiration of the right of use.