

Standard Terms and Conditions of Contract of Janitza Electronics GmbH for the Sale of Standard Software

§ 1 Applicability of the Terms and Conditions of Contract

(1) Unless otherwise agreed, exclusively these Standard Terms and Conditions of Contract apply for the sale in business dealings of standard software by Janitza Electronics GmbH, business domicile Vor dem Polstück 1, 35663 Lahnau (hereinafter called "JANITZA") and for pre-contractual obligations in this connection. Deviating terms and conditions of contract of the customer shall not form an integral part of the contract, even if JANITZA does not expressly contradict the same.

(2) Even if no reference is made to them once more upon the conclusion of similar contracts, exclusively the Standard Terms and Conditions of Contract of Janitza Electronics GmbH for the Sale of Standard Software shall apply in the version applicable when the customer made his declaration (retrievable under www.janitza.de) unless the parties expressly agree otherwise in writing.

(3) Supplemental hereto, the statutory provisions apply; for the supply of the standard software, §§ 433 et seq. German Civil Code [Bürgerliches Gesetzbuch] (BGB), for separately ordered services (e.g. installation, parameterisation, training), §§ 611 et seq. BGB.

§ 2 Conclusion of the contract

(1) Unless the offer is designated in writing as being binding, all offers of JANITZA are subject to confirmation and without obligation. A legal obligation only arises through a contract signed by both parties or by a written confirmation of order from JANITZA, or through JANITZA commencing with the performance in accordance with the terms of the contract. JANITZA may demand written confirmation of verbal declarations of contract by the customer.

(2) The customer shall be bound by declarations directed at the conclusion of a contract (offers of contracts) for a period of four weeks.

(3) For other types of deliveries and services (e.g. delivery of hardware, software support, set-up and installation of software) separate contracts are to be concluded.

§ 3 Object of the contract; Scope of performance

(1) The object of these Terms and Conditions of Contract is only the delivery of standard software and the grant of rights of use in accordance with § 4, as well as training (if ordered) in accordance with § 15.

(2) Prior to the conclusion of the contract, the customer shall verify that the specifications of the software conform with his wishes and requirements. He is familiar with the essential functional features and conditions of the software.

(3) The scope, nature and quality of the deliveries and services shall be determined by the contract signed by both parties or the confirmation of order from JANITZA, or otherwise the offer from JANITZA. Other details or requirements shall only become an integral part of the contract if the parties agree this in writing or if JANITZA has confirmed them in writing. Subsequent changes to the scope of performance require written agreement or the written confirmation of JANITZA.

(4) Product descriptions, illustrations, test programmes etc. are performance specifications, but do not constitute any guarantees. A guarantee requires a written declaration by the management of JANITZA.

(5) The customer receives the software consisting of the machine programme and the user manual. The method of delivery of the software shall be determined by the agreements; in the absence of any other agreement, the programme and user manual will be delivered on a CDROM. The customer has no claim to be provided with the source programme.

(6) JANITZA will provide all deliveries and services using state-of-the-art systems and technologies.

§ 4 Rights of the customer to the software

(1) The software (programme and user manual) is legally protected. The copyright, patent rights, trademark rights and all other ancillary copyrights in the software, as well as all other items which JANITZA provides or makes available to the customer within the framework of the contractual negotiations and performance of the contract shall, in the relationship of the parties inter se, remain the sole property of JANITZA. Where such rights are held by third parties, JANITZA has the corresponding rights of use and exploitation.

(2) The customer shall only be entitled to process his own data himself and in his own operations and for his own purposes using the programme. All data processing equipment (e.g. hard disks and central processing units) on which the programmes are copied or transferred, either in whole or in part, either temporarily or permanently, must be located in the premises of the customer and be in his direct possession. Further contractual provisions governing use (e.g. the limitation to a number of workplaces or persons) are to be implemented in technical terms and complied with in practice. JANITZA hereby grants the customer the powers necessary for this use as a simple right of use, including the right to rectify faults. § 13 applies in respect of the period of the right of use.

(3) The customer may prepare such backup copies of the programmes as are necessary for his safe operations. The backup copies must be safely stored and, in so far as technically feasible, labelled with the copyright notice of the original data carrier. Copyright notices may not be deleted, altered or suppressed.

Copies which are no longer required must be deleted or destroyed. The user manual and other documents provided by JANITZA may only be copied for internal business purposes.

(4) The customer shall only be entitled to pass on the software or parts thereof to third parties in accordance with the following provisions and after carrying out the following procedures:

- a) Only an original data carrier (see § 3 (5)) may be passed on. Other software or software in another version may not be passed on.
- b) The customer must delete all other copies of the software (irrespective of the version), in particular on data carriers and on solid state memories or random access memories (RAM). He shall relinquish the use of the same. He undertakes to carry out these procedures prior to passing on the original data carrier to third parties and to confirm this to JANITZA in writing without delay.
- c) The transfer to third parties is permanent, that is to say without any claim for return or any option of repurchase.
- d) The third party must give a written declaration to JANITZA that it will comply with § 4, § 13 (2) and (3), § 14 and § 16 of these Standard Terms and Conditions of Contract directly vis-à-vis JANITZA.
- e) The written consent of JANITZA has been received. JANITZA shall be obliged to grant consent unless compelling reasons preclude the same (e.g. protection from competition).

- In the case of any breach of these provisions by the customer, he shall be liable to pay JANITZA a contractual penalty equivalent to the amount that the third party would have to have paid for the software in accordance with the current price list of JANITZA, but at least the amount of the purchase price agreed hereunder. Further-reaching claims by JANITZA are reserved.

(5) The provisions under paras. (2), (3) and (4) (d) and (e) also apply where the customer rectifies a fault or (in so far as admissible) carries out any other modification of the programmes or uses the software for training purposes.

(6) The customer may only decompile the interface information of the programmes within the limits defined by § 69e German Copyright Act [Urheberrechtsgesetz] (UrhG), and then only after informing JANITZA in writing of his intent together with a request for the necessary information to be provided within a period of at least two weeks. § 14 shall apply to all knowledge and information which the customer may obtain in relation to the software during the decompiling process. Each time before involving third parties, the customer shall provide JANITZA with a written declaration from the third party that the latter undertakes directly vis-à-vis JANITZA to comply with the provisions laid down in §§ 4 and 14.

(7) No other forms of exploitation, in particular the leasing, rental or distribution in tangible or intangible form, the use of the software by and for third parties (e.g. outsourcing, computer centre operations, application service providing) are permitted without the prior written consent of JANITZA.

(8) Objects of the contract, documents, suggestions, test programmes etc. from JANITZA which become available to the customer either before or following the conclusion of the contract are deemed to be intellectual property and business and company secrets of JANITZA. They may not be used in any manner without the written permission of JANITZA and must be kept confidential in accordance with § 14.

§ 5 Performance periods; Delays; Place of performance

(1) Details concerning times for delivery and performance are non-binding unless they are designated by JANITZA in writing as being binding. JANITZA may render partial performance if the parts delivered can expediently be used by the customer.

(2) The periods for delivery and performance shall be extended by such periods during which the customer is in default of payment under the contract and by any periods during which JANITZA is prevented from delivery or performance by circumstances for which JANITZA is not responsible, plus a reasonable start-up time following the end of the circumstances causing the prevention. Such circumstances also include force majeure and labour disputes. Periods for delivery and performance shall also be extended by any such period during which the customer, in breach of contract, fails to comply with his obligations of cooperation, e.g. fails to provide information, to grant access, to supply materials or facilities or to make staff available.

(3) Should the parties subsequently agree upon different or additional performances which affect the periods agreed, these periods shall be extended by a reasonable period of time.

(4) Formal warnings and the setting of time limits by the customer shall only be effective if made in writing. Any extension of the time for performance must be reasonable. A period of less than two weeks shall only be deemed to be reasonable in cases of special urgency.

(5) The place of performance for training sessions shall be the location where the training sessions are to take place. In all other cases, the place of performance for all performances under and in connection with this contract shall be the location of the head office of JANITZA.

§ 6 Contractual commitment and termination of the contract

(1) Any termination of the further exchange of performances (e.g. rescission of the contract, claim to a reduction in price, termination for compelling reasons, claim for damages in lieu of performance) must always be threatened specifying the grounds and setting a reasonable period for rectification (as a rule, at least two weeks) and may only be declared within two weeks of the notice having elapsed. In the cases stipulated by law (see § 323 (2) BGB) the setting of a deadline may be dispensed with. The party who is entirely or predominantly responsible for the disturbance shall not be entitled to demand rescission of the contract.

(2) All declarations in this connection must be made in writing in order to be effective.

§ 7 Remuneration; Payment

(1) The agreed remuneration shall become due and payable without any deduction within 14 days of delivery of the software (in the case of training sessions, after completion of the training course) and receipt of the invoice by the customer.

(2) Unless otherwise agreed, the respective price list of JANITZA, which can be viewed under www.janitza.de or requested from JANITZA, applies.

(3) Travel costs, expenses, accessories, shipping costs and telecommunication costs are to be reimbursed in addition according to time and material expended. Any additional performances or services demanded by the customer (e.g. advice and support in the programme installation) will be invoiced in accordance with the respective current price list of JANITZA. Any increase in the list price shall be limited to 3 % per year.

(4) Value added tax will be added to all prices.

(5) The customer may only set off claims of his own against claims of JANITZA if such claims are undisputed or have been judicially decided and are final and legally binding. Except as provided in § 354 a German Commercial Code [Handelsgesetzbuch] (HGB), the customer may only assign claims under this contract to third parties with the previous written consent of JANITZA. The customer shall only be entitled to exercise a right of withholding or to raise the defence of non-performance of the contract within the scope of this contractual relationship.

§ 8 Duties of the customer

(1) The customer shall, in accordance with the commercial law provisions (§ 377 German Commercial Code (HGB)), be obliged to have a competent employee inspect all items delivered by JANITZA immediately following delivery or upon their becoming accessible and to notify JANITZA in writing of any flaws discovered, giving a precise description of the defect. The customer shall thoroughly test each module as to its usability in the specific situation before commencing productive use. This also applies to programmes which the customer receives within the scope of the warranty or a service contract.

(2) The customer shall take reasonable precautions (e.g. through data back-ups, fault diagnosis, regular examination of the results, emergency planning) in order to deal with a situation in which the programme, either in whole or in part, does not work properly. It is the responsibility of the customer to ensure the functionality of the working environment of the programme.

§ 9 Material defects

(1) The software has the agreed features and is suitable for the contractually specified use or, in the absence of any such agreement, for normal use. It satisfies the criterion of practical fitness for its purpose and has the quality typical of software of this type; however, it is not free from faults. Any impairment in the functioning of the programme which results from hardware defects, environmental conditions, faulty operation or such like does not constitute a defect. A negligible reduction in quality is to be disregarded.

(2) In the case of material defects, JANITZA may in the first instance provide subsequent performance. Subsequent performance shall, at the option of JANITZA, be effected through rectification of the defect, through delivery of software which is free from defects, or through JANITZA demonstrating possibilities of avoiding the effects of the defect. The customer shall acquiesce in at least three attempts to remedy the defect. The customer shall accept an equivalent new programme version or the equivalent previous programme version which did not contain the fault where this is conscionable for him.

(3) The customer shall support JANITZA in the analysis of faults and the rectification of defects, in particular through providing a detailed description of the problems arising. He shall provide JANITZA with comprehensive information and grant JANITZA the time and opportunity necessary to rectify the defect. JANITZA may, at its option, rectify the defect on site or at the business premises of JANITZA. JANITZA may also provide services by means of remote maintenance. The customer shall at his own expense ensure that the necessary technical pre-requisites are available and, following corresponding notice, grant JANITZA access to his EDP system.

(4) The parties agree the following error classes and reaction times:

- a) Error class 1: Operation-impeding defects: the error prevents the business operations of the customer; no work-around solution is available: JANITZA shall start with the rectification of the error immediately, no later than within six hours following the error notification, and shall continue with appropriate commitment until the error is rectified, in so far as can reasonably be expected also outside normal working hours (workdays from 8:00 am to 5:00 pm).
- b) Error class 2: Operation-hindering defects: the error considerably hinders the business operations of the customer; however, the use of the software is possible with work-around solutions or with temporarily acceptable limitations or difficulties: Where the error notification is received before 10:00 am, JANITZA shall start with the rectification of the error on the same day; where the error notification is received later, JANITZA shall start with the rectification of the error at the beginning of the following working day and shall continue within normal working hours until the error has been rectified. JANITZA may in the first instance demonstrate a work-around solution and rectify the error later if this is conscionable for the customer.
- c) Error class 3: Other defects: JANITZA shall start with the rectification of the error within one week or shall rectify the error with the next programme version if this is conscionable for the customer.

(5) The time periods under para. (4) begin with an error notification in accordance with § 8 (1). § 5 (2) and (3) apply for the purpose of calculation of the time periods. In the case of a difference of opinion on the assignment of an error into the classes in accordance with para. (4), the customer may demand

classification into a higher error class. Should the customer fail to prove that his classification was correct, he shall reimburse JANITZA the additional expenditure.

(6) JANITZA may make additional charges which arise from the software having been modified, used outside the prescribed environment or improperly operated. JANITZA may demand reimbursement of its expense if no defect is found. The burden of proof lies with the customer. § 254 German Civil Code (BGB) applies correspondingly.

(7) If JANITZA ultimately refuses to rectify the defect or such rectification is ultimately unsuccessful or is unconscionable for the customer, the customer may, within the scope of § 6, either cancel the contract or curtail the remuneration by a reasonable amount and additionally demand damages or reimbursement of his expenses in accordance with § 11. The claims shall lapse by limitation in accordance with the terms of § 12.

§ 10 Flaws in legal title

(1) JANITZA warrants that no rights of third parties preclude the use of the software by the customer in accordance with the terms of the contract. In the case of flaws in legal title, JANITZA warrants that it will, at the option of JANITZA, procure for the customer a legally unchallengeable possibility of use of the software or of equivalent software.

(2) The customer shall inform JANITZA in writing without delay if any third party asserts industrial property rights (e.g. copyright or patent rights) against him in respect of the software. The customer authorises JANITZA to conduct the dispute with the third party alone. So long as JANITZA avails itself of this authorisation, the customer may not of his own initiative acknowledge the claims of the third party without the consent of JANITZA; JANITZA shall then at its own expense avert the claims of the third party and shall indemnify the customer from all costs associated with averting such claims except in so far as these result from conduct on the part of the customer in breach of duty (e.g. use of the programmes in breach of the terms of the contract).

(3) § 9 (2), (6) and (7) apply correspondingly. § 6 shall apply for the discontinuance of the exchange of performances. § 11 shall apply in relation to liability; § 12 in relation to the limitation period.

§ 11 Liability

(1) JANITZA shall be liable in accordance with the statutory provisions in so far as the customer asserts claims for damages based on deliberate intent or gross negligence, including the deliberate intent or gross negligence of representatives or vicarious agents of JANITZA.

(2) In the case of ordinary (that is to say, not grossly) negligent breaches of such contractual duties, the fulfilment of which actually enables the contract to be properly performed at all and upon compliance with which a client regularly relies and is entitled to rely (cardinal duties, fundamental contractual duties) JANITZA shall be liable in accordance with the statutory provisions. In such case, however, the liability of JANITZA shall be limited to the damage foreseeable and typically arising according to the nature of the performance; the reimbursement of consequential damage such as e.g. loss of profit is excluded. The same shall apply to grossly negligent breaches of non-fundamental contractual duties committed by the simple vicarious agents of JANITZA.

(3) JANITZA shall not be liable for ordinary (that is to say, not grossly) negligent breaches of non-fundamental contractual duties.

(4) The limitations and exclusions of liability in accordance with paras. (1), (2) and (3) shall also apply for claims arising for liability in connection with the conclusion of the contract (culpa in contrahendo),

other breaches of duty or in tort. They shall not apply to injury to life, limb or health attributable to JANITZA or to claims under the Product Liability Act [Produkthaftungsgesetz].

(5) JANITZA shall be free to raise the defence of contributory negligence. The customer is, in particular, under an obligation to prepare data back-ups and to protect his system from malicious software in accordance with the latest state of technology.

§ 12 Limitation period

(1) The period of limitation shall be:

- a) one year starting with the delivery of the software for claims to repayment of the purchase price arising from cancellation of the contract or curtailment of the purchase price, however not less than three months as from the issue of the legally effective declaration of cancellation or curtailment of the price in the case of properly lodged complaints;
- b) one year for other claims arising from material defects;
- c) two years in the case of claims arising from flaws in legal title if the flaw lies in a right in rem of a third party by reason of which it may demand the surrender of the items specified in § 3 (5) or demand that the customer desists from using the same;
- d) two years in the case of claims for damages not based on material defects or flaws in legal title or for reimbursement of expenditure incurred in vain, commencing at the point in time at which the customer obtained knowledge of the circumstances substantiating the claim or must have attained knowledge of the same without gross negligence on his part. The claims shall be barred by limitation no later than upon the expiration of the maximum periods specified in § 199 German Civil Code (BGB).

(2) However, the statutory periods of limitation shall always apply in the case of claims for damages and reimbursement of expenditure incurred in vain arising from deliberate intent, gross negligence, guarantee, fraudulent intent and in the cases mentioned in § 11 (3).

§ 13 Commencement and end of the rights of the customer

(1) Ownership of items delivered and the rights pursuant to § 4 hereof shall only pass to the customer upon payment in full of the remuneration in accordance with the terms of the contract. Prior to this, the customer shall only have a temporary, contractual right of use which is revocable in accordance with para. (2).

(2) JANITZA may revoke the rights under § 4 for compelling reasons in accordance with the conditions of § 6. A compelling reason exists in particular if JANITZA cannot reasonably be expected to continue to maintain the contract in force, in particular where the customer fails to pay the remuneration or commits a significant breach of § 4.

(3) Should the rights under § 4 not come into existence or should they end, JANITZA may demand of the customer that he return the items provided or submit a written declaration that they have been destroyed, as well as the deletion or destruction of all copies of the items provided and a written assurance that this has taken place.

§ 14 Confidentiality

(1) Each party to the contract undertakes, also beyond the end of the contract, to treat as confidential all items provided to it by the respective other party or which have otherwise become known to it before or during the performance of the contract (e.g. software, documents, information) and which are legally protected or contain business or company secrets or are otherwise designated as being

confidential unless such items are already in the public domain without any breach of the duty of confidentiality. The parties shall store and secure these items in such a way as to ensure that no third party has access to them.

(2) The customer shall only make the objects of the contract accessible to those employees and other third parties who require access to the same for the performance of their contractual duties. The customer shall instruct these persons regarding the necessity of maintaining confidentiality in relation to the items in question.

(3) JANITZA shall process the necessary customer data relevant for handling the business transaction in due compliance with the data protection provisions. JANITZA may name the customer as a reference customer following the successful conclusion of its services.

§ 15 Training

(1) In so far as training courses are contractually agreed, these shall, at the option of JANITZA, be held at the premises of the customer or at another location designated in agreement with the customer. Where the training courses are held at the premises of the customer, the latter shall, following consultation with JANITZA, provide the necessary rooms and technical equipment. Where training courses are held elsewhere, the customer shall rent the premises and make the necessary hardware and software available on site.

(2) JANITZA may cancel a training session for compelling reasons. JANITZA shall notify the customer of any cancelation in due time and offer substitute dates.

(3) In the case of justified dissatisfaction of the customer, JANITZA shall be given the opportunity to remedy the matter. In further respects, § 6 shall apply.

§ 16 Final provisions

(1) Any amendments and supplements to the contract need to be made in writing in order to be effective. The requirement of the written form may only be revoked in writing. Transmission in text form, in particular by fax or e-mail, shall suffice to satisfy the requirement of the written form.

(2) The customer may only set off claims of his own against claims of JANITZA if such claims are undisputed or have been judicially decided and are final and legally binding. Except as provided in § 354 a German Commercial Code [Handelsgesetzbuch] (HGB), the customer may only assign claims under this contract to third parties with the previous written consent of JANITZA. The customer shall only be entitled to exercise a right of withholding or to raise the defence of non-performance of the contract within the scope of this contractual relationship.

(3) These Terms and Conditions of Contract shall be governed by the law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

(4) In the case of contracts with business persons, public legal entities or bodies of public assets the place of performance and court venue for all disputes arising under and in connection with this contract shall be the location of the head office of JANITZA.

(5) In the case of any inconsistencies between the German version of these Terms and Conditions of Contract and any translations, the German version of these Terms and Conditions of Contract is binding.