

General Terms and Conditions of Contract (Version 2004)

1. Validity of General Terms and Conditions of IBIS Prof. Thome AG

1.1 These General Terms and Conditions are applicable to all contracts concluded between IBIS Prof. Thome AG (hereinafter referred to as the vendor) and the purchaser (or client), as well as any other arrangements made within the scope of the business relationship.

1.2 The client's General Terms and Conditions do not form part of the contract, even if the vendor, after receipt of such written General Terms and Conditions, has not explicitly contradicted these.

1.3 In the event that the client does not wish to accept the vendor's General Terms and Conditions, or is not willing to consider them applicable, he must provide the vendor with written notification of this before the contract is concluded.

2 Terms of payment and prices

2.1 The client is obliged to pay all invoices issued by the vendor within 14 days following receipt. The date on which payment is received by the vendor is deemed to be the date on which payment was made. On expiry of this 14-day period, the client is automatically in default of payment even if no reminder has been issued. In the event of default, the vendor is entitled to withhold any outstanding deliveries and services. After defaulting on payment, the client is obliged to pay any interest on arrears that can be proven (or a minimum of 5%) as well as a EUR 10.00 processing fee for every reminder issued. The enforcement of any additional damages caused by proven delay remains unaffected by these aforementioned regulations.

2.2 In the event that the client enlists further or additional services and deliveries from the vendor which are not already included in the existing contractual relationship and also do not fall within the services offered free of charge by the vendor, the client is obliged to pay for these services and deliveries in accordance with the respective current list of prices and the applicable hourly and daily rates of the vendor.

2.3 All prices are net. Statutory VAT is added to these. The vendor is entitled to make partial deliveries.

3. Delivery and dispatch

3.1 All offers are subject to confirmation. All delivery dates suggested by the vendor are non-binding, unless a particular binding date has been expressly agreed upon in writing as a date of delivery.

3.2 If, following the placing of the order, the client requests changes or additions to the contractual services to be rendered by the vendor, or if circumstances arise that prevent the vendor from upholding a particular delivery date and the vendor is not responsible for these circumstances, the obligation of the vendor to comply with the contractually-agreed date of delivery no longer applies. The vendor will endeavour, in such a case, to provide the services or make the delivery within an appropriate period of time that corresponds to the period of delay.

3.3 If the vendor, through no fault of his own, is prevented from fulfilling the contract on time, for example as a result of disruptions to procurement, production or supply on the part of a subcontractor, he is not obliged to meet a particular delivery date. In such a case, once a period of one month has elapsed commencing from the agreed date of delivery, the client is able to set an extension period of 6 weeks.

3.4 If a particular contractually-agreed delivery date is not complied with as a result of mobilisation, war, riot, strike, lock-out, or as a result of other circumstances not attributable to the vendor, the delivery period is to be extended in accordance with Clause 3.2 above.

3.5 If, following the expiration of the aforementioned 6-week extension, the vendor has not carried out delivery, the client can withdraw from the contract providing written notification is given and the vendor is responsible for the delay to services and delivery. If, through no fault of his own, it becomes impossible for the vendor to fulfil the contract, either in full or in part, in accordance with Clauses 3.3 and 3.4, he is completely or partially released from his obligation to render services and provide delivery. If the vendor is only able to deliver in part, the client's obligation to pay is reduced accordingly.

Terms of contract for the development of software

4. Object of the contract

4.1 The vendor will develop the software in line with the respective current technological norms. The software will be delivered as an object program without system documentation.

4.2 Provided the expected services and the requirements of the client do not result from the contractual objective or agreement, the vendor and the client are both obliged to draw up specifications. Once produced, these specifications will be presented to the client for written approval. The client is obliged to give his approval to these specifications within 14 days of them being presented to him. If the client fails to give his written approval to the submitted specifications within 14 days, the specifications will be considered to have been contractually agreed and will form the basis of the software to be developed by the vendor.

4.3 If, following conclusion of contract, the task to be undertaken is shown to be incorrect, ambiguous, not feasible, or not technically possible, the vendor is to notify the client immediately. This does not depend on a lack of information or incorrect consultation before or after conclusion of the contract. In such a case, the vendor is entitled to make a suggestion that comes as close as possible to the client's expectations or objectives regarding the software to be developed. This suggestion may be accepted or rejected by the client within 14 days of it being submitted. In the event that no declaration (acceptance or rejection) is made by the client, the vendor's suggestion will be deemed to have been contractually agreed. In such a case, the vendor also has the option of declining to make a suggestion and may withdraw from the contract.

5. Changes to services to be delivered

5.1 If, following conclusion of the contract, the client wishes to change his requirements or the agreed detailings and specifications, or broaden the contractual services of the vendor, these new wishes and requirements will only form part of the contract if they are agreed upon in writing. If such a change has an effect on the service and delivery of the vendor in terms of scope and timing, the vendor is entitled to demand a corresponding increase in remuneration in accordance with his list of prices and applicable hourly and daily rates, and to demand that the date of delivery be extended accordingly.

5.2 If no agreement is reached on the changes or extensions to the contract desired by the client, the original range of services provided by the vendor remain applicable.

5.3 The vendor reserves the right to make changes to the program (including changes required after delivery) that enhance its capability and do not compromise the remaining functionality. The client, however, is not entitled to demand such changes or improvements to the program.

6. Rights of use

6.1 When purchasing software products from the vendor, the client only acquires the right to use the software inclusive of user documentation for the contractually-defined purpose. All other usage rights remain with the vendor.

7. Acceptance

7.1 Upon receipt of the product or service, the client is obliged, without delay, to check that the contract has been fulfilled and that the software complies with contractual requirements as regards essential functions. (This also includes the user documentation). The inspection may take a maximum of two weeks following receipt of the delivery unless otherwise agreed in writing. If, within this two-week period following receipt of the delivery, the client reports no defects or no failure to fulfil the contract, the acceptance process is considered to be complete.

7.2 If partial deliveries have been agreed and made, these must be inspected separately. It is hereby agreed that all the parts delivered must work together and this combined functionality forms the basis of the inspection for the final partial delivery.

8. Liability for software

8.1 Neither the vendor nor his suppliers are liable for damages that occur as a result of the use of software products provided by the vendor, or damages that arise as a result of the inability of the client to use these software products. This also includes, in particular, claims for damages for lost profits, interruption to business, loss of company information or data, or other financial loss.

8.2 The liability of the vendor is, as a matter of principle, limited to the amount already paid by the client for the software product in question. Furthermore, the vendor's maximum liability is limited to the contractually-agreed level of remuneration.

8.3 However, the limitations to liability agreed in 8.2 do not apply to damages caused by intent or gross negligence on the part of the vendor or his collaborators.

9. Warranty

9.1 The vendor guarantees that the software products he has developed will function in accordance with the accompanying user documentation and the contractually-assured specifications to a substantial extent for a period of 6 months after the date of acceptance.

9.2 The warranty is limited to a period of 6 months after the the date of acceptance. During this period, the client must immediately give written notification to the vendor of any defects that arise. In the event that such immediate written notification is not given, the vendor is released from his warranty obligations.

9.3 If errors in software are corrected, the vendor will only assume an additional warranty within the original warranty period or for an additional 30 days maximum. In such cases, the longer of the two periods is always decisive.

9.4 Any additional warranty is excluded, especially for the suitability of the software to the purposes of the client, as well as for damages caused directly or indirectly (e.g. loss of profit, interruption to business etc.), losses of data, and damages that arise in connection with the recovery of lost data, unless the vendor or his collaborators have caused damages through intent or as a result of gross negligence.

10. Claims by the client

10.1 As set out above, claims by the client are limited either to reimbursement of the remuneration paid or to subsequent improvement of the software within the warranty period.

10.2 In the event that subsequent amendments to the software prove unsuccessful, the vendor reserves the right to remind the client of his/her right to withdraw from the contract or to demand a reduction of the purchase price. The customer is hereby made aware that despite a level of service and delivery that corresponds to the latest technological norms, errors may still be present in programs and, in principle, cannot be ruled out completely.

10.3 The client only has a right to withdraw from the contract or demand a reduction of the purchase price if an error proves to be considerable and significant to the entire service offered, and the defect cannot be remedied through other software possibilities.

10.4 The regulations set out in §10 do not apply if the failure or non-functionality of the software is attributable to external influences, to abuse, or to incorrect usage for which the vendor is not responsible.

10.5 In the same way, the warranty does not apply if the client, without permission from the vendor, makes changes to the delivered software, or to the hardware used for running this software, or if he has the said software or hardware altered by a third party.

Terms of contract for Internet services

11. Liability and claims for damages with internet services

11.1 The vendor assumes no liability for any damages that arise either directly or indirectly as a result of the use of the server hardware or server software operated by the vendor or his contracting partners, or for any damages that result from the inability to use the server hardware and server software in question. This also includes damages for lost profits, interruption to business, loss of company information or data, as well as damages for other financial loss.

11.2. The liability of the vendor is strictly limited to the amount already paid by the client for the service in question.

11.3 The client releases the vendor from any liability for the content of the data distributed on his behalf, or the content of data saved on the vendor's hardware or that of his contracting partners, and agrees not to use the services or hardware made available to store or distribute obscene, pornographic, threatening, libellous or any other criminally-relevant material.

11.4 Furthermore, the client agrees that he will not infringe upon any trademark rights, patent rights or any other rights pertaining to third parties. The vendor is under no obligation to inspect the data distributed or saved on behalf of the client.

11.5 The client releases the vendor from all claims made by third parties pertaining to the data submitted. The vendor only has limited responsibility for the saving of submitted

data, and then only when the data are transferred in electronic form by the client. In this case, the client is obliged to create backup copies. If the data have been produced by the vendor on behalf of the client, the vendor is obliged to create backup copies.

Other terms of contract

12. Miscellaneous

12.1 If any individual provision set out in these General Terms and Conditions is or becomes invalid, whether in full or in part, this does not affect the validity of the remaining provisions. Any invalid provisions are to be replaced by new provisions that come as close as possible to the purpose originally intended.

12.2 Supplementary agreements have not been made. Additions to the contract are only valid when they are confirmed in writing.

12.3 The client can only relinquish his rights from a business relationship with the vendor if the vendor gives his written consent. The client may only offset the claim against the purchase price if he has issued a legally-valid counterclaim which can be enforced.

12.4 The place of jurisdiction is – if legally permissible – the town/city in which the vendor has his place of business in the Federal Republic of Germany. Wuerzburg is considered to be the contractually-agreed place of fulfilment. It is also agreed that German law is applicable.