

'GCBs' – General Conditions of Business - Software, Status: June 2021

General Software Conditions of IMA Materialforschung und Anwendungstechnik GmbH (Inc.) (hereinafter referred to as IMA Dresden)

Art. 1

Generalities and valid application

1. These present conditions are validly to apply exclusively for all software- contracts and agreements, which IMA Dresden concludes as a 'contractor'.
2. Any contradictory General Conditions of the customer will not be recognised and accepted by IMA Dresden, unless it approves their validity expressly in writing. These present General Software Conditions are also to remain validly applicable even when IMA Dresden proceeds to sell or supply to a customer unconditionally, although already in the knowledge of the existence of any purchasing conditions contradictory to or divergent from these present conditions.
3. The conditions of IMA Dresden are only applicable via-à-vis enterprises within the meaning of Art. 14 of the German 'BGB – Bürgerliches Gesetzbuch' (Civil Law Code).
4. All rights, to which IMA Dresden is entitled under any German Federal statutory requirements, going beyond these present conditions, remain unaffected by the foregoing stipulations.
5. Oral declarations or agreements made in individual cases have priority over these General Software Conditions and require written confirmation by IMA Dresden to be effective.

Art. 2

Offer and conclusion of contract

1. The customer's order represents a binding offer that IMA Dresden will accept within two weeks by sending an order confirmation / license / update contract or handing over the software package.
2. Offers or cost estimates submitted beforehand by IMA Dresden are non-binding.

Art. 3

Type and extent of the services

1. IMA Dresden hereby permits the customer to use the software on the basis of the agreed stipulations of the licensing agreement-/ update agreement.
2. The user documentation for the use of the software is in the German language and to be provided in printed or printable form, unless otherwise agreed.
3. The software was verified at an appropriate point in time before supply to the customer with a currently updated anti-virus program. IMA Dresden hereby declares, that the verification revealed no sign of damaging features inherent in the software.
4. Regular and appropriate data-saving routines are to be the responsibility of the customer.

Art. 4

Usage rights

1. The software is copyright protected. The mandatory provisions of the Copyright Act (§ 69a ff. UrhG) apply to the software with regard to the rights of use.
2. The software is provided to the customer for the agreed use. The extent of the agreed use of the software as well as the type and extent of the user rights is recorded in the licensing agreement-/ update agreement. Should no other usage right arrangement be recorded in the agreement, IMA Dresden hereby grants the customer a non-transferrable, non-exclusive and time unrestricted right to use the software.
3. The customer legally binds itself hereby to undertake all suitable technical and organizational countermeasures to ensure a proper and agreed use of the software.
4. The customer is entitled hereby to take a backup copy of the software for safekeeping purposes. This copy must be kept in such a way that no third party can access it.
5. When the customer is expressly authorized to transfer the usage rights to a third party under the licensing agreement-/ update agreement, and the customer avails itself of such possibility, then the customer is also to transfer the obligations under the licensing agreement-/ update agreement to bind that third party appropriately. The foregoing transfer will invalidate the former usage rights of the customer. All existent copies of the software with the customer are to be erased, or the software is to be returned to IMA Dresden. The customer may however retain a copy of the software for purposes of verification and archiving, when such is expressly authorized in the licensing agreement-/ update agreement.
6. When the customer is entitled to usage rights only for the system environment indicated in the licensing agreement-/ update agreement, then permission is to be obtained from IMA Dresden for its use on another system environment. Should a system environ-

ment for the use of the software not yet be employable, then the use of the software on another system environment is to be permissible hereby until the rectification of any disruptions in the foregoing system.

7. The customer binds itself hereunder not to give the software another form of coding.

Art. 5

Immediate extraordinary termination of the licensing agreement-/ update agreement because of an infringement of the usage rights

1. Should the customer grievously infringe the agreed usage rights or the copyrights of the owners, then IMA Dresden can give immediate notice to terminate the licensing agreement-/ update agreement on an immediate extraordinary basis.
2. In case of a notice to terminate, the customer is to be under a contractual duty hereby to erase the original copy of the software made available before the notice to terminate, to include the documentation and all additional copies, or to return these to IMA Dresden. Upon the first demand of IMA Dresden, the customer is to give a declaration of the erasure. The customer is however entitled hereby, to retain a copy of the software for purposes of verification and archiving, when such is expressly authorized in the licensing agreement-/ update agreement.
3. All other sundry statutory requirements are to remain in force unaffected by the foregoing.

Art. 6

Remuneration

1. The total price indicated in the licensing agreement-/ update agreement represents the remuneration for all contractual performance and services, unless otherwise agreed. The remuneration is immediately payable upon supply and performance and when the customer receives a verifiable invoice. In cases of partial work routines, the foregoing is validly to apply analogously.
2. The statutory rate of value-added tax is not included in the price and will be shown separately in the invoice at the current statutorily taxable amount.
3. The customer is only entitled to set-off rights if his counterclaims are legally established, undisputed, synallagmatic with the main claim or recognized by IMA Dresden.
4. The customer is only authorized to exercise a right of retention if his counterclaim arises from the same contractual relationship.

Art. 7

Performance time and performance disruptions

1. Indications concerning the dates of supply and performance are non-binding, unless indicated especially as binding on the part of IMA Dresden. IMA Dresden is entitled hereby, to render partial performance provided that the components supplied can be meaningfully employed by the customer.
2. The time periods for supply and performance are to be extended by that time period in which the customer is in arrears of payment under the licensing agreement-/ update agreement and also by the time period in which IMA Dresden is prevented from supplying and performing by reason of circumstances for which it is not culpable, and also by a reasonable time period for a start-up upon the termination of the grounds of hindrance. Such circumstances also include force majeure (Act of God) and industrial action. Such time periods for supply and performance can also be extended, by time periods during which the customer fails to collaborate in an anti-contractual manner, e.g. fails to provide information, enables no access, fails to provide important features and makes no work-force members available for assistance.
3. Should the contractual parties subsequently agree upon other or additional performance or services, which affect already agreed time periods for supply and performance, then the latter times periods are to be extended by a reasonable additional period of time.
4. Reminders and the setting of due-date deadlines on the part of the customer are to be in writing for their effectiveness. Subsequent allowances for extensions are to be reasonable and appropriate. A time period of less than two weeks is only then to be deemed reasonable in cases of urgent necessity.
5. In cases of delays or arrears, the customer can set IMA Dresden reasonably appropriate time periods for subsequent supply and performance.

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Art. 8 Warranties

1. IMA Dresden leaves the software free of material defects to the customer. Minor technical defects are to be deemed as insignificant.
2. Any warranty claims of the customer cannot extend to software, which the customer alters or employs on a system environment not indicated in the licensing agreement-/ update agreement, unless customer can show, that the employment of the software is not the cause of any defect.
3. The prerequisite for any warranty claim is the reproducibility or detectability of the defects.
4. The customer is to report any defects with immediate effect indicating any obvious and recognizable facts for the detectability. The customer is in all reasonableness to undertake countermeasures, which will alleviate the detection of the defects and their causes.
5. The warranty time period is 12 months from the date of supply and installation, unless otherwise agreed.
6. The warranty service is for the latest version of the software installed with the customer. A new version is to be accepted by the customer when such serves the avoidance or removal of defects. The customer is however not obliged to accept a new version should such prove unreasonable because a new version will decidedly deviate from the already installed agreed determinative version. Should IMA Dresden fail to rectify the defects within a reasonable period of time with success, then the customer can set the contractor a subsequent period of time for compliance. After the expiry of such subsequent time period, the customer can require an appropriate reduction in the remuneration, or withdraw from the licensing agreement-/ update agreement, and when statutory requirements are infringed, also assert an indemnity for loss or damage parallel to the withdrawal from the agreement(s).
7. When a new version of the software is provided, the previous exchanged version is to be erased or returned to IMA Dresden upon demand. Unless otherwise expressly indicated in the licensing agreement-/ update agreement, the customer has no entitlement to receive the source program.
8. The customer does not receive any guarantees in the legal sense from IMA Dresden.

Art. 9 Liabilities and indemnities for loss or damage following culpability

1. The legal liability of IMA Dresden to indemnify for loss or damage, on whatsoever grounds and in particular on grounds of impossibility, arrears, improper- or incorrect supply, infringement of contract, infringement of contractual duties during contractual negotiations and non-permissible actions, is to be limited to the stipulations of this present Art. 9, when IMA Dresden can be held culpable.
2. IMA Dresden is not liable hereunder for cases of the simple negligence of its corporate organs, legal representatives, employees or other sundry associated vicarious agents, provided that such is not an infringement of essential contractual duties. The infringement of essential contractual duties are the following: the failure to supply and install the software in due time, the existence of defects, which encroach considerably upon its functionality and usability, as well as failure to provide advisories, protection duties and duties to take due care, which enable the customer to employ the software supplied according to the licensing agreement-/ update agreement, or failure to ensure protection of life and limb of the personnel of the customer, or failure to ensure the protection of their property from considerable loss or damage.
3. Should however IMA Dresden be liable under Art. 9, Para. 2 hereof to indemnify for loss or damage on the aforementioned grounds, then legal liability is limited to indemnify for loss or damage, which IMA Dresden could have well foreseen as a consequence of an infringement at the moment in time of the conclusion of the licensing agreement-/ update agreement, or which it should have foreseen when exercising the commercially usual duty to take due care. Indirect loss or damage and consequential loss or damage resulting from defects in the software, are moreover only indemnifiable when such loss or damage are typically to be anticipated under conditions of the proper use of the software provided.
4. In case of any legal liability for simple negligence, the duty of IMA Dresden to indemnify is limited to material loss or damage and any consequent loss or damage to assets up to an amount of 5% of the contract amount for each and every loss, even when an infringement of essential contractual duties occurs.
5. The foregoing limitations of legal liability and restrictions are also to apply to the same extend to the corporate organs of IMA Dres-

den, its legal representatives, employees and its sundry associated vicarious agents.

6. When IMA Dresden provides technical information and such information is not part of the performance and services usually provided by it on a planned contractual basis, then such activity is free of charge and not included in any legal liability.
7. The limitations and restrictions of this present Art. 9 do not apply to any legal liability of IMA Dresden for premeditated actions, guaranteed characteristics, danger to life and limb, danger to health and the statutory requirements under the product liability legislation.

Art. 10 Infringement of protection rights

1. Should any third party assert claims on the customer for an infringement of protection rights as a result of the use of the software provided by IMA Dresden, and should the use of the software be encroached upon or prohibited, then IMA Dresden is to be liable as follows:
 - At its discretion and selection and at its own expense, IMA Dresden will either alter- or replace the software in such a manner, that no protection rights are infringed, but retain the software essentially to the agreed functionality extent and performance characteristics for the customer to an acceptable extent, or keep the customer harmless from any license fees asserted by the owner of the protection rights or license fees of any third parties.
 - Should the foregoing not be possible for IMA Dresden on acceptable conditions, then IMA Dresden will inform the customer and forbid the customer to use the software as from a certain date. The customer will then be obliged at the discretion of IMA Dresden, either to erase the software including the documentation and all copies, or to return these to IMA Dresden. IMA Dresden will then reimburse the customer for the remuneration paid, less an amount corresponding to the time period of the usage of the software.
2. Should an infringement of the protection rights have been perpetrated on the part of IMA Dresden, the resultant legal liability will be in accordance with Art 9. Of these present General Software Conditions.
3. The prerequisite for any legal liability of IMA Dresden hereby is, that the customer informs IMA Dresden of the assertion of claims by third parties with immediate effect, and does not recognize the asserted infringement of protection rights, and either leaves the negotiations, to include any out of court settlement to IMA Dresden, or only conducts these in coordination with IMA Dresden. Should the customer incur any necessary costs of the court or legal fees for legal defense, then these are to be for account of IMA Dresden. Should the customer desist from using the software for purposes of restricting any loss or damage or on other important grounds, then the customer will be obliged to notify the third party, that any desistance from continuing to use the software will not represent any recognition of the infringement of the protection rights.
4. Should the customer itself be responsible for any infringement of protection rights, then claims against IMA Dresden are hereby excluded.

Art. 11 Data protection, confidentiality, secrecy and security

1. The customer is to ensure, that IMA Dresden obtains from the customer all relevant information going beyond statutory requirements, whose knowledge is requisite for data protection and confidentiality.
2. Before handing over a data carrier to IMA Dresden, the customer ensures the deletion of content worthy of protection, unless otherwise agreed.
3. IMA Dresden uses personal data from customers to process and take orders, deliver goods, provide services and process payments.
4. A transfer of personal customer data to third parties only takes place with the expressly declared consent of the customer or if the transfer is necessary to safeguard the legitimate interests of IMA Dresden, provided that the interests worthy of protection or fundamental rights of the customers do not prevail. In addition, IMA Dresden is only entitled to transfer customer data if it is legally obliged to release the data. The collection, transmission or other processing of personal data of the customer for purposes other than those mentioned here is not permitted and does not take place on the part of IMA Dresden.
5. For further information, please refer to the data protection information for customers, suppliers and other contractual partners on the IMA Dresden website.

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6. The customer and IMA Dresden are obliged to treat all confidential information, business and trade secrets obtained in the context of the contractual relationship as confidential, in particular not to pass them on to third parties or to use them for anything other than contractual purposes

Art. 12

General stipulations, place of jurisdiction and place of contractual completion

1. If one of the contracting parties suspends its payments or if insolvency proceedings are applied for against its assets or an out-of-court settlement procedure is applied for, the other is entitled to withdraw from the non-fulfilled part of the contract.
2. IMA Dresden is authorized to change these General Software Conditions. Any changes will take effect on the announced date of entry into force.
3. The law of the Federal Republic of Germany applies exclusively to the exclusion of the UN Sales Convention (CISG) and the reference provisions of German international private law.
4. When the customer is a registered trader, then the court of law competent for the corporate domicile (registered office) of IMA Dresden is the place of jurisdiction. IMA Dresden is however to be entitled hereunder to litigate against the customer at the court of law competent for its corporate domicile (registered office) or place of residence.
5. In so far as nothing else is stipulated herein, the place of contractual completion for all contractual and statutory claims is the place of the corporate domicile (registered office) of IMA Dresden.