

General Terms and Conditions of Business basysKom GmbH

Part A: General Conditions

Article 1 Object of the Contract; Scope

- 1.1 basysKom GmbH, with its seat at Robert-Bosch-Str. 7, 64293 Darmstadt, Germany, District Court Darmstadt: Commercial Register Number HRB 9352 (**vendor**) renders different kinds of services from consultant services to work performance and surrenders software to the **vendee**, especially in the field of cross-platform software solutions.
- 1.2 Services and offers by the vendor shall be exclusively made on basis of these General Terms and Conditions relating to each part of these General Terms and Conditions. These Terms and Conditions shall also apply to future business relations even if not expressly agreed upon. At the latest on receipt of vendor's services these Terms and Conditions are to be considered as accepted. Counter-confirmations made by the vendee referring to its own Terms and Conditions of Business for purchasing shall not be accepted.

Article 2 Type and Scope of Services; Reimbursement for Performances/Services

- 2.1 Type and scope of services and their reimbursement shall be contractually agreed. Here the following items shall be decisive:
 - the project contract respectively the 'agreement on transfer of possession' (also the offer, the service specification, the order or things called alike) including appendixes such as professional and technical fine specifications, as well as activities and the time schedule;
 - the conditions hereinafter, including their special **Part B**: services such as consultant services and performances; **Part C**: development of software; **Part D**: the provision of standard software on a continuing basis and the individual customisation of standard software;
 - regulations and special standards, as far as generally applied at the time of the submittal of the order.
- 2.2 In case of discrepancies the aforementioned contractual agreements shall be applied.

Article 3 Co-operation

- 3.1 All contracting parties agree to the fact that for a co-operation the principles of commercial loyalty shall be in effect. They mutually agree to fulfil agreements accordingly, and if amendments become necessary, the contracting parties shall act in accordance with the general principles of bona fides.
- 3.2 All contracting parties shall appoint respective contact persons for the performance of the contract. These persons shall be mentioned in respective project contracts. Amendments in this respect shall be immediately advised to the other party accordingly.

Article 4 Invoicing; Maturity; Terms of Payment

- 4.1 Invoices shall be made out by the vendor and shall indicate besides compensation, extra charges and expenses, the applicable statutory VAT.
- 4.2 Reimbursements for vendor's services shall be due for prompt payment unless otherwise stipulated.
- 4.3 Invoices shall be due for payment by the vendee within fourteen (14) days upon receipt without deduction. In case of a default in payment legal regulations shall be in force.

Article 5 Data Protection

- 5.1 The vendor as well as its vicarious agents shall be subject to data secrecy as per Article 5 'Data Protection Act' (§ 5 Bundesdatenschutzgesetz). This obligation to data secrecy shall refer to all particulars on personal and factual circumstances of one party as well as to all protection measures related to these particulars. The vendor shall not be entitled to use or process particularly personal data without prior authorisation.
- 5.2 Vendee's instructions regarding the use of personal data shall be followed.
- 5.3 The vendor shall use all pieces of information and documents given by the vendee in the context of the contract performance only for project work.
- 5.4 These obligations shall be valid beyond the expiration of the contract.

Article 6 Obligation of Secrecy; Keeping and Return of Documents

- 6.1 The contracting parties are subject to the obligation of secrecy regarding all pieces of information they have been given in the context of the contract performance, such as technical and operating processes, respectively business transactions of the contracting parties, especially company and business secrets. The contracting parties are not allowed to pass these pieces of information on to a third party, with the exception of information which is meant to be published; furthermore, information one contracting party has allowed in writing to be transferred or published; also information which one of the contracting parties has gathered from a third party without breaching the obligation of secrecy, or information one contracting party has obtained before.
- 6.2 The vendor undertakes to duly file all business documents and records which it obtained during the performance of the project contract; and documents it has issued itself. Also, it shall make sure that third parties shall not be given any access to these documents. This refers particularly to all recordings, notations, drafts, samples, models, conceptions and papers as well as to programmes and data files etc. which are in the possession of the vendor and are related to vendee's affairs. Upon vendee's request and upon termination of the project, the vendor shall return all documents it has been furnished with by the vendee. The vendor has the right to file copies as far as they are required for a proper documentation and bookkeeping.
- 6.3 These obligations are valid beyond the termination of the contract (after-effect).
- 6.4 The contracting parties shall obligate their vicarious agents accordingly.

Article 7 Liability; Limitation of Liability; Exclusion of Liability

- 7.1 The liability for defects in quality and the infringement of industrial property rights shall be particularly regulated under the parts (B, C, D) of these General Terms and Conditions of Business under 'warranty of merchantable quality' and 'liability in case of an infringement of industrial property rights'. These regulations shall be final and binding. However, statutory warranty regulations remain untouched in the event of malice or a guarantee assumed by the vendor.
- 7.2 The vendor shall undertake an unlimited liability in case of wrongful intent and gross negligence. In case of an ordinary negligent violation of a major contractual duty by the vendor, its legal representatives or its vicarious agents, vendor's liability to the vendee shall be limited to predictable damages, typically occurring damages and direct average damages. If necessary, all contracting parties shall furthermore agree on a limitation of liability by stipulating a liability sum for each case in the project contract. As for the rest liability shall be excluded.
- 7.3 The limitations of liability and the exclusion of liabilities aforementioned shall not affect vendee's claims based on product liability. Furthermore, the limitations of liability shall not be valid for bodily and health damages on part of the vendor.

Article 8 Statute of Limitation

Unless otherwise stipulated hereinafter, statutory provisions shall be applied for the limitation of reciprocal claims of the contracting parties.

Article 9 Final Clause

- 9.1 The contracts shall be governed exclusively by the Laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG). Place of jurisdiction shall be Darmstadt.
- 9.2 Amendments of these General Terms and Conditions of Business shall be made in writing. This also applies to the written form requirement itself.
- 9.3 In cases of doubt, the German version of these Terms and their constituent parts shall take precedence over translations in other languages.
- 9.4 If one or more parts of these General Terms and Conditions of Business should become invalid, the validity of the rest of this contract remains unaffected. An invalid part shall be replaced by a valid part which shall approach the economic purpose of the invalid part.

Part B: Consultant Services and Performances

Article 10 Object of Performances / Service

- 10.1 The vendor renders project-orientated services and consultant services to the vendee, which shall be specified in the project contract. Further, the project contract indicates the estimated duration of the project, prices and terms of payment of all additional services.
- 10.2 The vendor shall perform assigned duties freely and self-dependently. When performing its duties, the vendor is not subject to vendee's instructions. The vendor is not entitled to give instructions to vendee's employees. The vendor has the right to appoint vicarious agents.

Article 11 Place and Time Frame of Activities / Services

Place and time frame regarding vendor's activities/services shall be stipulated in the project contract.

Article 12 Reimbursement; Terms of Payment

- 12.1 If the contracting parties agree upon payment on time-basis, the vendor shall be reimbursed for the total time required for the contract performance. Material costs, additional costs and expenses will be charged separately. Waiting time caused by the vendor being acceptable for vendee shall be reimbursed by payment on time-basis. The vendor shall issue invoices monthly payable in arrears showing - upon vendee's request - required activity time by 'track records' as usual in this line of business.
- 12.2 A fixed price agreed upon in the project contract shall be the price for total services provided under the contract. Principally, invoices shall only be issued after complete provision of services. The contracting parties agree on adequate part payments or advance payments when certain mile-stones of the projects have been reached (project steps and/or phases of the project).

Article 13 Transfer of the Right of Use

- 13.1 If the vendor in the scope of its provision of services develops a new work result which is copyrighted or subject to other copyright protections, the vendor shall provide the vendee with all exclusive rights of use for all common ways of utilisation of this work result. These rights of use shall be unlimited in respect of space, time and contents. The vendee shall be authorized to copy, process, publish, perform, transfer by wire or wireless the original work results or the modified, processed or regenerated work results. Furthermore, the vendee shall be entitled to make these work results available for data networks and to use them in data processing.
- 13.2 The vendee shall be transferred a non-exclusive right of use in the scope of contract performance for external standard components and part-components, which were developed, used and imbedded by the vendor independent of the contractual co-operation between the contracting parties. These components shall be specified in the project contract or its appendixes. The vendor shall not be entitled to use any materials (such as components, graphics, elements, drawings, conceptions, ideas and similar things) involving an infringement of industrial property right of third parties.
- 13.3 The vendor shall account for the application of the rights of paternity (Article 12-14 D Copyright Act, §§ 12 – 14 Urheberrechtsgesetz) insofar as vendee's right of exploitation will not be affected.
- 13.4 Reimbursement for the provision of 'usage rights' for copyrighted works developed and provided for in the performance of the contract shall be satisfied by the reimbursement for the service provision itself.

Article 14 Warranty of Merchantable Quality

- 14.1 If the vendor fails to provide its performances and consultant services agreed upon in the project contract error-free and in compliance with the contract and the vendor is to be held responsible for that, the vendor is obliged to render these services error-free and in compliance with the contract in an adequate period of time without extra costs for the vendee; provided, the vendee has filed a complaint promptly or at the latest within two (2) weeks from the date of knowledge of the defects in quality as described. The vendee shall be entitled to terminate the contract without notice, if the vendor on its own responsibility fails to render major parts of the contractually agreed services within a time-limit expressly stipulated by the vendee. In this case the vendor shall have the 'right to compensation' for the services rendered until the termination of the contract has come into force. The right for compensation shall not be applied for services for which the vendee can prove within four (4) weeks from the date of termination that they are useless and without interest for the vendee.

14.2 However, the right of extraordinary termination remains unaffected. Here the vendor shall also have the 'right to compensation' for the contractually agreed services rendered until the termination of contract has come into force. The 'right to compensation' shall not be applied for services for which the vendee can prove within four (4) weeks from date of termination that they are useless and without interest for the vendee.

14.3 Continuing warranty claims for defects in quality by the vendee are excluded. This exclusion shall not be applied in case of wrongful intention and gross negligence and vendee's claims with regard to product liability. Furthermore, the limitations of liability shall not be valid for bodily and health damages for which the vendor is responsible.

Article 15 Warranties in case of an ,Infringement of Industrial Property Rights'

15.1 In the event that a third party asserts a claim to the vendee for an 'infringement of industrial property rights' because of the utilisation of the transferred work results and in consequence the work results get affected by this, the vendor shall be entitled to undertake the following:

The vendor shall at its choice and at its costs either modify or replace the performances/services contractually agreed in such a way that they are basically in compliance with the performances/services contractually agreed and acceptable to the vendee preventing an 'infringement of industrial property rights', or the vendor shall exempt the vendee from licence fees against the party entitled to industrial rights or against third parties. In case the vendor fails to provide for these services in adequate terms, the vendor shall be forced to take these work results back and to refund fees paid by the vendee deducting an amount for the time of utilisation. In this case the vendee shall be obliged to return these work results.

15.2 Conditions precedent to vendor's liability as per sub-item 15.1 are, that the vendee immediately informs the vendor about a third party's claim; that the vendee does not accept the 'infringement of industrial property right'. Furthermore, the vendee shall leave any arising dispute including any out-of-court-settlements to the vendor; or the vendee shall in case of disputes and settlements only act in accordance with the vendor. Vendee's costs arising from legal defence such as court and lawyer fees, shall be borne by the vendor.

15.3 If the vendee is responsible for the 'infringement of industrial property rights' itself, claims against the vendor shall be excluded.

15.4 Vendee's continuing claims for a third party 'infringement of industrial property rights' shall be excluded. This exclusion shall not be in force in case of wrong intent and gross negligence and in case of vendee's claims based on product liability. Furthermore, the limitations of liability shall not be valid for bodily and health damages on part of the vendor.

Article 16 Termination of the Project Contracts; Reduction of the Order Volume

16.1 Unless otherwise stipulated the contracting parties are allowed to terminate the project contracts on services/and consultant services by a four (4)-weeks'-notice to the end of the month. In this case the vendor shall be entitled to claim for reimbursement for its services rendered under the contract until the termination has come into force.

16.2 The vendee has the right to claim for a reduction of the order volume agreed in the respective project contract. In this event the contracting parties shall mutually agree on a new order volume.

16.3 In case of a termination of the project contract subject to the contractual period of notice as well as in case of a reduction of the order volume it is principally agreed that from the time of notice or from the date of the amendment at least one hundred eighty (80) hours (ten (10) project days, eight (8) hours per day) of the contractually stipulated services shall be accepted and reimbursed.

Part C: Development of Software

Article 17 Objects of Services; Performance of Services; Specifications

17.1 The vendor shall develop individual software and submit this software to the vendee including documentation as agreed in project contract.

17.2 The software shall be developed by the vendor in compliance with agreed requirements as per detailed technical fine specification. This detailed specification shall be issued by the vendee. It shall describe correctly, completely and bindingly vendor's volume of services for the development of the software. It shall be stipulated in the project contract, if the vendee requires vendor's consultancy and planning services for the issuance of the detailed technical fine specification; or if the vendor issues the detailed specification itself. The specification shall be enclosed to the project contract upon completion.

17.3 Deadlines and fixed time-limits as well as responsibilities for the performance, the co-operation and the control duty of each project phase shall be mutually determined and agreed in the project contract. A worked out time-schedule and an activity plan shall be part of the detailed specification and separately enclosed to the project contract.

17.4 In the event that one of the contracting parties finds out that the detailed technical specification turns out to be faulty, incomplete, unclear or not objectively realizable, it shall immediately give notice to the other contracting party. According to their responsibility, the contracting parties shall provide for a correction or an adaptation of the technical specification.

Article 18 Vendee's Co-operation

The vendee shall be obliged to furnish the vendor with all necessary documents and information required for the work performance. This refers in particular to the existing facilities, equipments (systems), hardware, software, and parts of the software meant to interact with the software to be developed. Vendee's co-operation, for example the provision of the facilities/equipments, hardware and test data shall be specified in a separate appendix to the project contract.

Article 19 Amendments of Performances/Services

19.1 The vendee shall be entitled to ask for amendments of the project contract and its appendixes until the acceptance of the contract. The vendor shall check these requests regarding their realization and the foreseeable effects on the performances already rendered up to this point; their usability and the time-schedule. The vendor shall advise the vendee of its investigation results and the estimated additional costs. Unless otherwise stipulated, all activities/works on part of the vendor related to vendee's change request shall be reimbursed by an adequate amount agreed upon in the project contract.

Article 20 Transfer of the Right of Use

20.1 If the vendor in the scope of its provision of services develops a new work result which is copyrighted or subject to other copyright protections, the vendor shall provide the vendee with all exclusive usage rights for all common ways of utilisation of this work result. These rights of use shall be unlimited in respect of space, time and contents. The vendee shall be authorized to copy, process, publish, perform, transfer by wire or wireless the original work results or the modified, processed or regenerated work results. Furthermore, the vendee shall be entitled to make these work results available for data networks and to use them in data processing.

20.2 The vendee shall be transferred a non-exclusive right of use in the scope of contract performance for external standard components and part-components which were developed, used and imbedded by the vendor, independent of the contractual co-operation between the contracting parties. These components shall be specified in the project contract or its appendixes. The vendor shall not be entitled to use any materials (such as components, graphics, elements, drawings, conceptions, ideas and similar things) involving a third party's 'infringement of industrial property right'.

20.3 The vendor shall account for the application of the rights of paternity (Article 12-14 D Copyright Act, §§ 12 – 14 Urheberrechtsgesetz) insofar as vendee's right of exploitation is not affected.

20.4 Reimbursement for the provision of 'usage rights' for copyrighted works in the context of the software development shall be satisfied by the reimbursement for the development of the software itself.

20.5 Subject to the 'obligation of secrecy', the vendor shall not be prevented from the development of similar software for its own purpose or for a third party, using the newly gained know-how, the standard components or standard part-components which were brought in and used in the performance of the project contract.

Article 21 Source Code

21.1 As far as the vendee is provided with an exclusive 'right of use', the vendor shall put the source code as well as the complete

documentation of programming under the performance of the project contract at vendee's disposal. This shall be done in such a way, that an expert should be able to do further programming. It shall be expressly stipulated in the project contract if the vendor provides the vendee with the source code, basing on vendor's own standard components or part-components in the context of the software development.

21.2 The provision of source codes based on contractually agreed external standard components or part-components shall hereby be excluded.

Article 22 Reimbursement; Maturity

Reimbursement and terms of payment shall be stipulated in the project contract. It shall be agreed on full payment upon completion of contractual obligations and vendee's acceptance at the latest, or upon partial payments after the completion of mile-stones according to the activity plan and time-schedule (certain phases of the project). Details of payment shall be mutually agreed in the project contract.

Article 23 Acceptance of Performance

23.1 The acceptance of the contract work shall be upon total completion of performances or upon completion of part performances. The acceptance of the software is subject to a successful operational testing, which means either the total performance shall be tested or the part performances as described. The operational testing shall be deemed to be successful if the software meets all requirements under the project contract respectively the technical fine specification.

23.2 The type, volume, duration and setting of the operational testing shall be either agreed in the project contract itself or in an appendix to the contract made up in time by both contracting parties.

23.3 If the software has passed the acceptance test, the vendee shall be obliged - upon vendor's request - to furnish the vendor with a written acceptance certificate. Minor defects shall be mentioned in this certificate.

23.4 The acceptance shall not be refused due to minor defects. The vendor shall be entitled to set an adequate time-limit for the presentation of the acceptance certificate. Upon expiration of this time-limit, the software shall be deemed to be accepted.

Article 24 Default; Hindrance and Interruption of Performance

24.1 In case of default, the statutory provisions are in force observing the statutory warranty regulations as per Article 7 of these General Terms and Conditions of Business.

24.2 In the event of delay in the provision of performances due to force majeure or events which make it temporarily difficult or impossible for the vendor to render services/performances – such as strikes, lock-outs, official directives, etc. also occurring to vendor's suppliers or third parties that render services to the vendor – the vendor shall not be held responsible, even if the deadlines and fixed time-limits in the contract are binding.

Article 25 Warranty of Merchantable Quality

25.1 The vendors shall guarantee that the developed software and the documentation are free of defects. A defect of quality exists, if the developed software does not correspond to the condition/quality as agreed in the project contract or the technical fine specification and if it cannot be used as contractually agreed.

25.2 Defects shall be clearly and traceably documented by the vendee. Vendees shall immediately furnish the vendor with these documents upon knowledge of the defect.

25.3 Within the period of warranty the vendor shall upon vendee's request and at its choice provide for a remedy of defects by removing the defects or by a new delivery of software.

25.4 Vendor's remedy of defects may also be carried out by telephone, written or electronic advice to the vendee.

25.5 In the event that the vendor is not successful in removing the defects within an adequate period of time, where the vendor has two trials, the vendee is authorised to set a final time-limit allowing the vendor two further trials of reparation. In case the vendor fails to be successful again in the fixed time-limit, the vendee shall be authorised to ask for a reduction or to withdraw from the contract. Vendee's waiting time regarding time-limits shall become superfluous, if the period of time is unacceptable, especially, if the vendor has seriously and finally refused a reparation. In case of default on part of the vendor, the vendee is entitled - besides the termination of contract and the claim for reduction - to claim damages instead of new performances and the reimbursement of expenses, considering the general limitations of liability as per Article 7 under these General Terms and Conditions of Business. The vendee shall be entitled to terminate the contract or to claim damages instead of the whole performances only in case of severe damages.

25.6 If it turns out that a damage noticed by the vendee does effectively not exist or cannot be attributed to the developed software, the vendor shall be entitled to claim for reimbursement for the analysis and miscellaneous work at a rate stipulated in the project contract.

Article 26 Warranties in case of an 'Infringement of Industrial Property Rights'

26.1 In case a third party asserts a claim to the vendee for an 'infringement of industrial property rights' due to the utilisation of the transferred work results and the work results get affected by this, the vendor shall be entitled to undertake the following:

The vendor shall at its choice and at its costs either modify or replace the performances/services contractually agreed preventing an 'infringement of industrial property rights'. The replaced or modified performances/services shall be basically in compliance with the contract being acceptable for the vendee. Or, the vendor shall exempt the vendee from licence fees against the party entitled to industrial rights or against third parties. In case the vendor fails to provide for these performances/services in adequate terms, the vendor shall be forced to take these work results back and to refund fees paid by the vendee deducting an amount for the time of utilisation. In this case the vendee shall be obliged to return these work results.

26.2 Conditions precedent to vendor's liability as per sub-item 26.1 are that the vendee immediately informs the vendor about a third party's claim; that the vendee does not accept the 'infringement of industrial property rights'. Furthermore, the vendee shall leave any arising dispute including any out-of-court-settlement to the vendor, or the vendee shall in case of disputes and settlements only act in accordance with the vendor. Vendee's costs arising from legal defence, such as court and lawyer fees, shall be borne by the vendor.

26.3 In case the vendee is responsible for an 'infringement of industrial property rights' itself, claims to the vendor shall be excluded.

26.4 Continuing claims of the vendee due to an 'infringement of industrial property rights' of third parties shall be excluded. This exclusion shall not be valid in case of wrong intent and gross negligence and in case of vendee's claims based on product liability. Furthermore, the limitations of liability shall not be valid for bodily and health damages on part of the vendor.

Article 27 Statute of Limitation

Warranty claims resulting from defects in quality fall under the statute of limitation after one (1) year, claims based on an infringement of industrial property rights after two (2) years starting with the final acceptance of the completed software. In case of acceptance of part performances the limitation period for warranty starts with the acceptance of the last part performance. In case delivered part performances are already used by the customer, the limitation period for warranty starts with the first (1st) day of use after the acceptance of each individual part performance.

Article 28 Modifications of the Software by the Vendee

Warranty claims shall be inapplicable, if these can be attributed to vendee's modifications of the software.

Part D: Transfer of Standard Software on a Continuing Basis and the Individual Customisation of Standard Software

Article 29 Object of Services/Performances

29.1 The vendor shall deliver to the vendee its own standard software on a continuing basis including documentation. Scope of supply and functional range shall be stipulated in the 'agreement on transfer of possession'.

29.2 Additional performances such as installation; implementation support and courses of instructions shall be separately agreed in the 'agreement on transfer of possession' respectively by appendixes.

Article 30 Individual Customisation of Standard Software

In case the vendee requests a customisation of the standard software, it shall be agreed in a project contract respectively in an appendix of the 'agreement on transfer of possession'. The transfer of the 'right of use' shall solely refer to the regulations of this part. As for the rest of the customisation works the terms of part C: development of Software under these General Terms and Conditions of Business shall be applied.

Article 31 Reimbursement; Maturity

Reimbursement and terms of payment shall be stipulated in the 'agreement on transfer of possession'. Reimbursement shall fall due upon the transfer of the standard software.

Article 32 Transfer of the 'Right of Use'

32.1 Upon delivery of the standard software the vendor shall provide the vendee with a single non-exclusive 'right of use' for the utilisation of the programmes on a continuing basis.

32.2 Unless otherwise stipulated in the 'agreement on transfer of possession' the vendee shall be authorised to install, to load and run these programmes on as many computers as requested.

32.3 In addition the vendor shall be entitled to make the usual back-ups and to make as many back-up copies as being adequate.

32.4 The vendee shall be exclusively entitled to work on respectively to modify the software in order to remove a defect or in order to create an interoperability. Attention is invited to Article 37 of these General Terms and Conditions of Business.

32.5 The vendee shall be authorised, however only once, to transfer or resell the software to a third person. In this case the vendee shall either transfer all copies of the software made to the purchaser or delete the copies accordingly.

32.6 Any distribution or sub-licensing shall be subject to vendor's approval and adequate reimbursement.

32.7 It shall be prohibited to remove or amend any copyright notice as well as copyright protection notice of the standard software. Each copy shall bear the copyright notice itself.

Article 33 Object Code and Source Code

33.1 The standard software shall be exclusively delivered in form of the executable object code. The source code shall not be object of the contract and shall therefore, not be delivered.

33.2 The contracting parties may agree on an escrow of the source code either in the 'agreement on transfer of possession' or in a separate escrow agreement.

Article 34 Warranty of Merchantable Quality

34.1 The vendors shall guarantee that the developed software and the documentation are free of defects. A defect of quality exists, if the developed software does not correspond to the condition/quality as agreed under contract or the technical fine specification; and if it cannot be used as contractually agreed. The condition/quality agreed in the contract shall be clearly specified under the functional range mentioned in the 'agreement on transfer of possession' or its appendixes.

34.2 Defects shall be clearly and traceably documented by the vendee. Vendees shall immediately furnish the vendor with these documents upon knowledge of the defect.

34.3 Within the period of warranty the vendor shall upon vendee's request and at its choice provide for a remedy of defects by

removing the defects or by a new delivery of software.

34.4 Vendor's remedy of defects may also be carried out by telephone, written or electronic advice to the vendee.

34.5 In the event that the vendor is not successful in removing the defects within an adequate period of time, where the vendor has two trials, the vendee is authorised to set a final time-limit allowing the vendor two further trials of reparation. In case the vendor fails to be successful again in the fixed time-limit, the vendee shall be authorised to ask for a reduction or to withdraw from the contract. Vendee's waiting time regarding time-limits shall become superfluous, if the period of time is unacceptable, especially if the vendor has seriously and finally refused a reparation. In case of default on part of the vendor, the vendee is entitled - besides the termination of contract and the claim for reduction - to claim damages instead of new performance and the reimbursement of expenses, considering the general limitations of liability as per Article 7 under these General Terms and Conditions of Business. The vendee is entitled to terminate the contract or to claim damages instead of the whole performances only in case of severe damages.

34.6 If it turns out that a damage noticed by the vendee does effectively not exist or cannot be attributed to the standard software, the vendor shall be entitled to claim for reimbursement for the analysis and miscellaneous work at an agreed rate.

Article 35 Warranties in case of an 'Infringement of Industrial Property Rights'

35.1 In the event that a third party asserts a claim to the vendee for an 'infringement of industrial property rights' due to the utilisation of the transferred standard software and the utilization of standard software gets affected or prohibited by this, the vendor shall be entitled to undertake the following:

The vendor shall at its choice and at its costs either modify or replace the standard software preventing an 'infringement of industrial property rights'. The modified or replaced standard software shall be basically in compliance with the contractually agreed condition being acceptable to the vendee. Or, the vendor shall exempt the vendee from licence fees against the party entitled to industrial rights or against third parties. In case the vendor fails to provide for the standard software in adequate terms, the vendor shall be forced to take the standard software back and to refund fees paid by the vendee deducting an amount for the time of utilisation. In this case the vendee shall be obliged to return the standard software including documentation.

35.2 Conditions precedent to vendor's liability as per sub-item 35.1 are that the vendee immediately informs the vendor about a third party's claim; that the vendee does not accept the 'infringement of industrial property rights'. Furthermore, the vendee shall leave any arising dispute including any out-of-court-settlement to the vendor or, the vendee shall in case of disputes and settlements only act in accordance with the vendor. Vendee's costs arising from legal defence such as court and lawyer fees, shall be borne by the vendor.

35.3 In case the vendee is responsible for an 'infringement of industrial property rights' itself claims to the vendor shall be excluded.

35.4 Continuing claims of the vendee due to a third party 'infringement of industrial property rights' shall be excluded. This exclusion shall not be valid in case of wrong intent and gross negligence and in case of vendee's claims based on product liability. Furthermore, the limitations of liability shall not be valid for bodily and health damages on part of the vendor.

Article 36 Statute of Limitation

Warranty claims based on defects in quality shall come under the Statute of Limitation after one year, claims based on an 'infringement of industrial property rights' after two years from the transfer of the standard software to the vendee.

Article 37 Modifications of the Software by the Vendee

Warranty claims shall be inapplicable if these can be attributed to modifications of the software on part of the vendee.

Article 38 Transfer of External Software, Open Source

38.1 Vendor's transfer of a third party's standard software (external software) to the vendee shall be agreed between both contracting parties and stated in the 'agreement on transfer of possession'.

38.2 The transfer of the 'right of use' in the context of sub-licensing shall be subject to the rules of the main licence.

38.3 In case the supplier provides the customer with standard software which is bound to the licenses of the GNU GENERAL PUBLIC LICENSE (GPL) or to the GNU LESSER GENERAL PUBLIC LICENSE (LGPL) or to another free license (e.g. BSD License, MIT License, Linus Documentation License, Artistic License, IBM Public License, Ricoh Source Code Public License, Mozilla Public License, Python License, Sun Public License), the further utilization of such software falls exclusively under the conditions of these licenses.

38.4 In case the vendee requests an individual customisation of the external software, it shall be separately agreed in the project

contract, respectively in an appendix of the 'agreement on transfer of possession'. The transfer of the 'right of use' shall be exclusively governed by sub-item 38.2 and 38.3. As for the rest of the customisation work the regulations of part C of these General Terms and Conditions of Business shall be applied.

basysKom GmbH

as per: december 2005