



General Agreement for Purchase and Licensing of Software and Services

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1. Definitions

- 1.1. *Contract* means: these Standard Terms and Conditions of Supply, which are between SOS GmbH and the Customer, under which the Products are supplied by the SOS GmbH to the Customer and sets out the basic rules and obligations.
- 1.2. *Customer* means: the party identified as the Customer in this Contract to whom the SOS GmbH may agree to supply Products in accordance with the terms and conditions of this Contract.
- 1.3. *SOS GmbH* means: SOS GmbH, Giesebrechtstr. 15, 10629 Berlin, Germany. The SOS GmbH's VAT number is DE136743813
- 1.4. *Products* means: software items or services to be provided by SOS GmbH to the Customer in accordance with this Contract.
- 1.5. *Third Party Software* means all software owned by or licensed to the Customer from a third party owner (whether or not supplied by the SOS GmbH) and which comprises part of the Products.

2. Independent Contractor

The relationship between SOS GmbH and the Customer is that of an independent contractor. Neither party is the agent of each other, and neither party has any authority to make any contract or to impose any obligation on the other party without their express prior permission.

3. Order Acceptance

- 3.1. All orders placed with SOS GmbH by the Customer for Products shall constitute an offer to the SOS GmbH, under the terms and conditions of this Contract, subject to availability of the Products and to acceptance of the order by the SOS GmbH's authorised representative.
- 3.2. All orders are accepted and Products supplied are subject to the express terms and conditions of this Contract only. SOS GmbH may at any time amend this Contract upon 14 days written notification to the Customer. The modified terms and conditions of supply shall apply to any orders placed or to the use of SOS GmbH by the Customer after the expiry of such notice period.
- 3.3. It is agreed that the terms and conditions of this Contract (or any amendments to them) prevail over the Customer's terms and conditions of purchase unless these latter terms and conditions are amended by SOS GmbH in writing and signed by SOS GmbH.

4. Shipment of Software Products, Rights of Use

- 4.1. SOS GmbH delivers the Products to the Customer. Installation and implementation are incumbent on the Customer, unless otherwise agreed upon in writing. The implementation will be executed by SOS GmbH if a price for such service has been agreed on.
- 4.2. The Customer does not attain the right to use the products in an unchanged form and to the extent as defined by the user licence. The right for the use is not exclusive to the Customer and is limited to the equipment agreed upon. If no specific use has been agreed upon, the Customer is permitted to store the product on one device. Without previous written permission of the SOS GmbH, it is not permitted to translate nor edit the products.
- 4.3. For the purpose of data backup the Customer is permitted to create one copy per product. Alphanumeric identification, trademark and copyright notations have to be copied without change. A log has to be kept for the whereabouts of the copies. Duplication of documentation is not permitted.
- 4.4. The Customer is responsible to take care, that the products and the documentation thereof are not reproduced or handed over to third parties without written permission of SOS GmbH.

5. Pricing and Payment Terms

- 5.1. All prices are represented in EUR or USD and are exclusive of Value Added Tax and/or similar taxes. All applicable taxes are payable by the customer.
- 5.2. All quoted or listed prices are based on the cost to SOS GmbH of supplying the Products or services to the Customer. While the SOS GmbH tries to ensure that all prices are accurate, errors may occur. If, prior to delivery of the Products, SOS GmbH discovers an error in the price of the Products ordered, via SOS GmbH or otherwise, or the price changes as a result of circumstances beyond SOS GmbH's control, SOS GmbH may change the Product's price and such changes shall apply to any purchase order placed with SOS GmbH.
- 5.3. Invoices will be raised and dated on the date of dispatch or from the day the Customer is using the Software product or service. Unless otherwise specifically requested or agreed, invoices are payable by the customer 30 days from date of invoice. Payment shall be the essence of the Contract. Payments which are not received in full by due-date, will be considered overdue and remain payable by the Customer together with an interest of payment.
- 5.4. SOS GmbH reserves the right to charge a surcharge on credit card transactions (which may exceed the amount charged to SOS GmbH by the credit card companies) by way of a handling or processing charge.

- 5.5. The Customer must notify SOS GmbH in writing within 7 days of the date of invoice of any errors within the invoice. Failure will result in SOS GmbH assuming acceptance of the invoice in full.
- 5.6. If Products are delivered in instalments SOS GmbH shall be entitled to invoice each instalment upon delivery thereof. Apart from the prices listed for software or services, the following services are charged separately:
- Diagnosis and the fixing of problems or damages caused through improper handling, which have not been caused by SOS GmbH.
 - Work relating to duplication, translation or generating of software products.
 - Services ordered by the Customer for consulting, software engineering, support or any other service commissioned by the Customer.
 - Travel times and travel fees.

6. Retention of Title and Warranty

- 6.1 The Customer attains the rights to use the Products as soon as the payment for the Product has been received in full.
- 6.2 SOS GmbH warrants that it has good title to or licence to supply all Products to the Customer.
- 6.3 In case of a defective data medium, SOS GmbH will either provide repair or make a new delivery of the Product. This applies if the defect occurs within 12 months, starting with the day of the original delivery and if the defect predates the original delivery (e.g. errors in the design, material or the lack of agreed on features).
- 6.4 Errors that occur in the Product will be covered by the warranty as outlined in 6.3, provided that the error constitutes a deviation from the Product specification agreed on initially. For Products covered by a warranty contract, an analysis of the error and repair of the error are included. The Customer will receive a updated/corrected version of the Product. For Products not covered by a warranty contract, the Customer will receive updates and bug fixes, provided such corrections exist.
- 6.5 SOS GmbH warrants that if an error in a Product is not repaired within a reasonable time frame the customer shall have the right to a price reduction or withdrawal from the contract.
- 6.6 Except as specifically set out in this clause, SOS GmbH disclaims and excludes all other warranties, whether express or implied, by statute or otherwise, including but not limited to the warranties of description, design, satisfactory quality and fitness for a particular purpose, or arising from any previous course of dealing, usage of trade practice.

7. Indemnities and Limits of Liability

- 7.1 SOS GmbH cannot accept any liability in relation to any losses, costs or expenses which arise through any difficulty caused over date changes.
- 7.2 If the Customer receives Products with delay and if there is no due reason, he will be entitled to ask for damages from SOS GmbH. A claim of damages can only be applied if the Customer can prove that the delay has caused a financial loss.
- 7.3 For problems arising through situations out of SOS GmbH's control, such as mobilization, war, unrest, strike or natural disasters SOS GmbH can not be held liable.

- 7.4 SOS GmbH will indemnify the Customer, if in the course of using the Software Product and carrying out the work agreed on by contract, a material damage is caused to the data of the Customer. The indemnity covers the efforts that are required to restore the lost data, provided that proper data back-up has been made. However the indemnity does not apply to costs arising out of efforts in obtaining a data replacement.
- 7.5 Except as stated in these terms and conditions, SOS GmbH disclaims and excludes all liability to the Customer in connection with these terms and conditions including the Customer's use of the Products and in no event shall SOS GmbH be liable to the Customer for special, indirect or consequential damage, including, but not limited to, loss of profits arising from loss of data or in connection with the use of the Products.
- 7.6 SOS GmbH will indemnify the Customer for direct damage to property caused solely by defects in any of the Products or which are caused solely by the negligence of SOS GmbH's assigned employees acting within the course of their employment and the scope of their authority. The SOS GmbH's total liability under this sub-clause shall be limited to EUR 50,000 for any one event or series of connected events.
- 7.7 The Customer shall indemnify and defend SOS GmbH and its employees in respect to any claims by third parties which arise from any SOS GmbH performance or non-performance pursuant to the instructions of the Customer or its authorised representative.

8. Clearing of Goods, Subsidiary Agreements

- 8.1. Export of the Product and documentation of the same, may require clearing or may be subject to approval by authority.
- 8.2. For subsidiary Agreements written agreements are required. Written agreements override verbal agreements.

9. Specification of Products

- 9.1. SOS GmbH will not be liable in respect of any loss or damage caused by or resulting from any variation for whatsoever reason in the manufacturer's specifications or technical data of the Products.
- 9.2. SOS GmbH will not be responsible for any loss or damage resulting from curtailment or cessation of supply of Products following any variation as described in this Contract.
- 9.3. SOS GmbH will use its reasonable endeavours to advise the Customer of any such impending variation as soon as it receives any such notice thereof from the manufacturer.
- 9.4. Unless otherwise agreed, the Products are supplied in accordance with the manufacturer's standard specifications as these may be improved, substituted or modified.
- 9.5. SOS GmbH reserves the right to increase its quoted or listed prices, or to charge accordingly in respect of any orders accepted for Products of non-standard specifications and in no circumstances will SOS GmbH consider cancellation of such orders or the return of such orders.

10. Intellectual Property

- 10.1. The Customer hereby acknowledges that any proprietary rights used on or in relation to the Products of SOS GmbH or any Third Party Software supplied hereunder, including, but not limited to, any title or ownership rights, patent rights, copyrights and trade secret rights, shall at all times and for all purposes vest and remain vested in SOS GmbH or the Third Party Software owner.
- 10.2. The Customer hereby acknowledges that it is his sole responsibility to comply with any terms and conditions of licence attaching to Third Party Software supplied and delivered by SOS GmbH (including if so required the execution and return of a Third Party Software licence). The Customer is hereby notified that failure to comply with such terms and conditions could result in the Customer being refused a software licence or having the same revoked by the proprietary owner. The Customer further agrees to indemnify SOS GmbH in respect of any costs, charges or expenses incurred by SOS GmbH as the result of any breach by the Customer of such terms and conditions.
- 10.3. No title or ownership of software Products or any Third Party Software licensed to the Customer under this contract is transferred to the Customer under any circumstances.

11. Confidentiality

- 11.1. The Customer shall safeguard and (save as may be required by law) keep confidential all information entrusted to it by SOS GmbH which is not in the public domain and take all reasonable precautions to safeguard SOS GmbH's confidential information.
- 11.2. Only those members of staff who need to be aware of confidential information in order for the Customer to fulfil its obligations under this Contract shall be entitled to access to the confidential information.
- 11.3. All confidential information passed to the Customer by SOS GmbH shall remain the exclusive property of SOS GmbH and the Customer undertakes to return such information at the request of SOS GmbH or, at the latest, upon termination or expiration of this Contract.
- 11.4. The communication of any SOS GmbH login credentials to third parties is prohibited and will result in immediate withdrawal of the use of SOS GmbH and the possible instigation of further legal proceedings.
- 11.5. Upon request SOS GmbH provides a non-disclosure agreement (separate document) to the Customer.

12. Data Protection

- 12.1. The parties are committed to respecting the privacy rights of individuals. To the extent that a party collects and transfers to the other party any personal data, the receiving party will comply with relevant laws and regulations related to this collection and transfer and agrees also to comply with relevant laws and regulations related to the storage, maintenance and processing of such personal data.

- 12.2. The Customer agrees that SOS GmbH may make such enquiries and searches and obtain such references as it considers necessary from any person, firm or SOS GmbH including any credit reference agency (which will keep a record of any search made) and may disclose the results of those enquiries, searches and references and any information given by the Customer ("relevant information") to any credit reference agency or to any other SOS GmbH in any corporate group of which it is a member, to any SOS GmbH or business associated with it and to any person, firm or SOS GmbH acting on the SOS GmbH's behalf for any purpose connect with the SOS GmbH's business.

13. Contract and Place of Jurisdiction

- 13.1. No forbearance, delay, indulgence by either party in enforcing its respective rights shall prejudice or restrict the rights of that party and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or any later breach.
- 13.2. The Customer agrees not to assign any of its contractual rights herein without the prior written consent of SOS GmbH.
- 13.3. If any of these terms and conditions are unenforceable as drafted it will not affect the enforceability of any other of these terms and conditions and if it would be enforceable if amended, it will be treated as so amended.
- 13.4. Neither party shall be liable to the other for any delay in failure to perform its obligations hereunder (other than a payment of money) where such delay or failure results from force majeure including any act of God, fire, terrorism, explosion, accident, industrial dispute or any cause beyond its reasonable control.
- 13.5. Any documents or notices given hereunder by either party must be in writing and may be delivered personally or by first-class post or by fax to the others registered address or principle place of business. The notice period for posted documents will be deemed to have been given 4 working days after the date of posting. All such notices must be signed.
- 13.6. These terms and conditions shall be construed in accordance with the German Law. The court of jurisdiction is Berlin, Germany.