

General Terms of Business for the provision of standard software – Edition : 1 July 2004

1. Subject

1.1 All deliveries and performances associated with the provision of standard software (hereinafter referred to as "software") by imos AG (hereinafter referred to as "imos") shall be governed exclusively by the present Terms.

1.2 Divergent or supplementary terms shall only be valid if explicitly approved by imos in writing. Orders shall only be valid when confirmed by imos in writing. Insofar as imos has warranted certain properties of the software, imos shall only be bound by such a warranty if it was given by imos in writing. This requirement for written form may only be waived by written agreement.

1.3 The customer's general terms of business shall not become part of the contract, even if enclosed with requests for quotations, orders, declarations of acceptance, etc. and even if they are not explicitly rejected.

1.4 Deliveries and performances shall only be executed following the conclusion of a valid, written agreement by and between imos and the customer.

2. Quotations

2.1 All quotations by imos shall be without obligation unless explicitly stated otherwise in the quotation. Contracts and other agreements shall only become binding when confirmed by imos in writing. imos reserves the right to diverge from the quotation in minor respects if required for technical reasons, even after the quotation has been accepted by the customer.

2.2 The customer shall not disclose the quotation submitted, neither as a whole nor in part, and not even in a revised version, without the prior written consent of imos.

3. Scope of delivery and performance

3.1 The scope of delivery and performance is set out in detail in the contractual agreement.

3.2 The software shall be supplied as object code in machine-readable form on a data medium compatible with the computer system in question. The source code is not covered by the contract and is therefore not delivered to the customer.

4. Implementation

Unless specified otherwise in the contractual agreement, the customer shall be responsible for implementation of the software.

5. Dates, deadlines

5.1 Delivery and performance dates or deadlines specified in the contracts shall only be binding if designated as such in writing by both the customer and imos; in all other cases, all dates / deadlines shall be without obligation.

5.2 If non-compliance with the deadline for deliveries or performances is demonstrably attributable to circumstances for which imos is not responsible, the deadline shall be extended accordingly.

5.3 Deliveries by imos shall be deemed to have been effected on schedule if imos presents the data medium and associated documentation to the customer on or before the agreed date.

6. Remuneration and due date

6.1 Remuneration and ancillary costs are quoted excluding value-added tax at the statutory rate.

6.2 The remuneration shall be due upon delivery. Invoices shall be payable without deduction within 14 days of the invoice date. Overdue payments shall be charged interest per annum at a rate seven (7) percentage points above the basic interest rate charged by the European Central Bank. Further claims for damages shall remain unaffected.

7. Material defects and deficiencies in title

7.1 Definition

7.1.1 Material defect: A material defect exists if the contractual software does not display the contractual properties or is unsuitable for the contractually agreed purpose.

7.1.2 Deficiency in title: Copyright to the contractual software is held by imos and / or third parties. A deficiency in title exists if the rights necessary for the contractually agreed use of the software cannot be validly granted to the customer.

7.2 Limitation period: Claims based on material defects and / or deficiencies in title shall become statute-barred one year after delivery of the programs. This shall not apply in the case of No. 7.11.

7.3 Modification of programs by customers: Insofar as the customer modifies programs directly or through third parties, all claims based on material defects or deficiencies in title shall be extinguished unless the customer can prove that the defects which have arisen are not attributable to such modification and that analysis of the defect and action to remedy it by imos is not impaired in consequence.

7.4 Duty to examine and report complaints: When the contractual software has been delivered to the customer, the customer shall examine both the software and the documentation to ensure they are complete and without defects and shall report any complaints to imos without delay. This duty is required by Section 73 of the German Commercial Code (HGB). If this duty is violated by the customer, the rights defined in the following section with regard to defects may no longer be claimed by the customer in conjunction with those material defects which would have been revealed had the goods been duly examined on delivery.

7.5 Notification of defects by the customer: Any defects which arise shall be documented by the customer in a manner reproducible by imos and shall be reported to imos, preferably in writing and immediately when discovered.

imos shall remedy the defect as set out below upon acquiring knowledge of defects pursuant to Nos. 7.4 and 7.5 above:

7.6 Remedial action: imos shall be entitled to remedy the defect through repair or by delivery of a replacement, at its discretion. The customer may demand delivery of a replacement or repair within a reasonable period of time if the other form of remedial action is unacceptable. imos may also remedy the defect by instructing the customer with regard to the required action by telephone, in writing or electronically. Any additional costs incurred by imos on account of the fact that programs have been transferred to a place other than the customer's head office as set out above shall be borne by the customer. If it is found that a defect reported by the customer does not actually exist or is not attributable to a program in accordance with the program version, imos shall be entitled to charge the costs incurred for analysis and other processing to the customer in accordance with imos' current price list for services insofar as the customer was guilty of wilful intent or gross negligence in reporting the defect.

7.7 Reduction in price or rescission of contract: If imos is unable to remedy the defect within a reasonable period of time, which shall be sufficiently long to permit at least two (2) attempts to remedy the situation, the customer shall be entitled to set imos a reasonable final period of grace permitting at least two (2) attempts to remedy the situation. If imos still fails to remedy the defect within this final period of grace, the customer shall be entitled either to demand a reduction in price or to withdraw from the contract at his discretion. Periods of grace and time-limits need not be observed by the customer if these have become unacceptable for the customer, in particular if imos has definitively and seriously refused to remedy the defect. Remedial action shall not be deemed to have failed completely with the second attempt. imos shall be free to make as many attempts as it considers necessary to remedy the defect during the permitted periods of grace.

7.8 Damages and reimbursement of costs: In addition to rescission and reduction in price, the customer may also claim damages instead of performance or reimbursement of costs if imos is to blame for the defect.

7.9 Restriction of rights in conjunction with minor defects: The right of rescission and damages instead of performance shall only apply in the case of major defects.

7.10 Fee for use in case of rescission: If rescission of the contract is justified, imos shall be entitled to demand a reasonable fee for the customer's past use of the programs up to the time of cancellation. This fee shall be calculated on the basis of a four-year overall period of use of the programs, with a reasonable deduction for the programs' impairment due to the defect leading to rescission.

7.11 Fraudulent intent / guarantee: The statutory regulations governing material defects and deficiencies in title shall remain unaffected in the event of fraudulent intent and if a guarantee

is given by imos. The technical data, specifications, description of performance and warranted performances contained in this contractual agreement and its annexes shall exclusively constitute a description of quality in accordance with Section 434 Para. 1 Sentence 1 of the German Civil Code (BGB) and Section 633 Para. 2 Sentence 1 of the German Civil Code (BGB), and shall not constitute an independent guarantee or guarantee of quality or durability. Independent guarantees and guarantees of quality or durability in the legal sense shall only exist if they have explicitly been designated as such in writing.

7.12 Action with regard to alleged deficiencies in title

7.12.1 Information: If a third party reports a violation of property rights to the customer on account of the software, its designation or documentation, the customer shall immediately inform imos accordingly and allow imos to take action against such claims where possible. The customer shall give imos every conceivable support in this context. Above all, the customer shall provide imos with all the required information concerning the use and possible editing of the programs, preferably in writing, and shall make available all the required documents.

7.12.2 Action: Insofar as third-party rights have been violated, imos may redress the situation, at its discretion, either

- by acquiring a right of use for the customer commensurate with the purposes of the contractual agreement from the party entitled to the property right, or
- by modifying the software which caused the violation of property rights without affecting its function or only with effects acceptable to the customer, or
- by substituting a software which can be used for the contractual purpose without violating any property rights and without affecting its function or only with effects acceptable to the customer in place of the software which caused the violation, or
- by supplying a new program version which can be used for the contractual purpose without violating third-party property rights.

The provisions pursuant to No. 6 in the present Terms of Business shall apply accordingly in the case of deficiencies in title.

8. Granting of rights

8.1 Permanently granted rights: imos grants the customer the simple (non-exclusive) right to permanently and simultaneously use the contractual software on the number of workstations specified in the program licence in return for the remuneration specified in the program licence.

8.2 Installation, loading, execution: The customer shall thus be entitled to install, load and run the contractual software on not more than the number of workstations specified in the program licence.

8.3 Backups: In addition, the customer shall be entitled to produce a reasonable number of backups and to save data in the usual manner.

8.4 Editing: The customer shall be entitled to edit the software if a modification is necessary to ensure interoperability or to remedy an error. Note No. 7.10, however.

8.5 Extended right of use: The customer shall require additional rights to be granted by imos for any further use of the programs, especially for their use on a larger number of workstations than that specified in the program licence.

8.6 Over-use: All use exceeding the contractually agreed scope, especially the simultaneous use of software on more than the number of workstations specified in the program licence, shall constitute a breach of contract. In such cases, the customer shall be obliged to inform imos of the excess use without delay. The parties shall then seek to reach an agreement on extension of the rights of use. The customer shall be obliged to pay a fee for over-use in accordance with imos' price list for the duration of such over-use, i.e. until a corresponding agreement has been reached or until the over-use is ended. This fee shall be calculated on the basis of straight-line depreciation over four years. If the customer fails to report the over-use, a contractual penalty shall be incurred equal to three times the price of the performance used as specified in imos' price list.

8.7 Copyright: References to copyright and other property rights in the contractual software shall not be removed or modified. They shall be included on every copy produced.

9. Limitation of liability

9.1 Scope of the rulings: imos' liability for damages shall be governed by the following provisions with regard to the amount, regardless of the legal foundations:

9.2 Wilful intent and gross negligence: imos' liability for losses caused by wilful intent or gross negligence on the part of imos or one of its vicarious agents or statutory representatives shall be unlimited.

9.3 Bodily injury: Liability shall be unlimited in the case of losses due to death, bodily injury or damage to health, even in the event of a simple, negligent breach of duty by imos or its statutory representatives or vicarious agents.

9.4 Organizational fault / guarantee: Liability shall similarly be unlimited for losses due to major organizational fault by imos, as well as for losses caused by the absence of a quality warranted by imos.

9.5 Violation of essential contractual duties: In the event of a violation of essential contractual duties, imos' liability shall be limited to the contractually typical, foreseeable loss if none of the cases specified in Nos. 9.2 to 9.4 above applies.

9.6 Exclusion of liability: All further liability for damages shall be excluded; liability without fault shall be excluded in particular.

9.7 Product liability law: Liability under the law on product liability shall remain unaffected.

9.8 Contributory fault: If a loss is attributable to the fault of both imos and the customer, the customer must bear his share of the fault.

9.9 Data storage: The customer shall be responsible for producing regular backups of his data. If imos is responsible for a loss of data, imos' liability shall therefore be limited exclusively to the costs of duplicating data from the backups to be produced by imos and for restoring the data which would have been lost even had the data been stored correctly.

10. Software maintenance

imos is prepared to maintain the software on the basis of a software maintenance agreement.

11. Set-off

The customer shall only be entitled to set imos' claims off against claims which are undisputed or have been unappealably established.

12. AutoCAD

imos uses software components made by Autodesk, especially the product AutoCAD. If AutoCAD is not included in the scope of delivery ordered, the customer shall be obliged to obtain a valid licence for the current AutoCAD version from the manufacturer Autodesk.

13. Amendments and supplements

13.1 Amendments and supplements to the contractual agreement shall only be valid if set out in writing. This shall also apply for any amendment of the present ruling.

13.2 A letter confirming a verbal agreement shall only be valid if counter-confirmed in writing by the receiving party.

14. Applicable law, jurisdiction.

14.1 The contractual agreement shall be governed by German law. The United Nations Convention on Contracts for the International Sale of Goods shall be excluded.

14.2 Place of jurisdiction for all disputes arising from or in conjunction with the contractual agreement shall be Herford.

15. Invalid provisions, loopholes in the contractual agreement

If any of the provisions of the contractual agreement prove or become invalid or if it is found to contain a loophole, this shall not affect the validity of the remainder. The invalid provision shall be replaced by the statutory ruling.