

# General Terms and Conditions of Trade



## for services

of Uniserv GmbH, Rastatter Str. 13, 75179 Pforzheim, Germany  
(as per: September 2012)

## comprising

### A. General terms on which our services are based, in particular

- computer centre services
- training courses
- consulting
- support for the installation and integration of licensed software
- set-up and parameterisation of licensed software

## supplemented by:

### B. Special terms for computer centre services

## A General terms

### 1. Scope

- 1.1 All business dealings shall be governed exclusively by the following General terms and conditions of trade; in as far as they do not contain any provisions, the statutory rules shall apply. The Client's additional terms (including terms deviating from our own terms and conditions) shall be valid in whole or in part only if expressly confirmed by us in writing. Our General terms and conditions of trade shall also apply if we are aware that the Client's terms are contrary to or deviate from our General terms and conditions of trade to our detriment but nevertheless unconditionally effect delivery of services to the Client.
- 1.2 Our General terms and conditions of trade shall only apply with respect to entrepreneurs, legal entities under public law and special public funds as defined by Section 310 (1) German Civil Code.
- 1.3 Our General terms and conditions of trade shall also apply to future business with the Client.
- 1.4 We shall advise the Client of any changes to the General terms and conditions of trade in writing or by electronic means. The Client shall thereupon have the possibility of objecting to the changes within a period of 6 weeks. The previous General terms and conditions of trade shall continue to apply in the event of an objection. The Client shall receive clear notification of the changes, which shall be indicated in specific terms.

### 2. Contractual services

- 2.1 Unless otherwise provided for in these General terms and conditions of trade, we shall always perform our services on the basis of the statutory provisions of the law of service contracts. Accordingly, we shall be obliged to perform the contractually agreed services as such, not to ensure their success. Responsibility for projects and their success is borne by the Client.
- 2.2 Our services stem solely and exclusively from the specifications contained in the contract documents (in particular offers and acknowledgements thereof complete with enclosures). Contractual services are not specified in other descriptions of our contractual services, public utterances, promotional material or advertising.

### 3. Travelling times and travelling expenses

Travelling times, travel costs and costs for overnight accommodation will be invoiced according to expenditure.

### 4. Third-party contract performance

We are entitled to have our obligations stemming from the agreements concluded with us performed by third parties, with the exception of our computer centre services.

### 5. Terms of payment

- 5.1 Value added tax (sales tax) will be charged in addition at the statutory rate.
- 5.2 Payment may only be offset by the Client against counterclaims which are uncontested, acknowledged or recognised by declaratory judgement. The Client is only authorised to exercise the right of retention if the Client's counterclaim stems from the same contractual relationship.

### 6. No provision of access

Should the Client require internet access in order for us to be able to perform our services, responsibility for the provision and availability of this access shall lie solely with the Client. We can accept no liability whatsoever for the quality of data transmission via the internet, data and messages being free of viruses and malware, the correctness of data transmission, or unauthorised third-party access to data when transmitted over the internet.

### 7. Liability

- 7.1 Pursuant to the statutory regulations, we are liable for damages as follows:
  - In cases of intent;
  - In cases of gross negligence on the part of our legal representatives or executives, liability for compensation being limited to the foreseeable damage typically occurring;
  - In cases of substantial contractual obligations being violated due to gross negligence on the part of our other vicarious agents, liability for compensation being limited to the foreseeable damage typically occurring;
  - In cases of other (immaterial) contractual obligations being violated due to gross negligence on the part of our other vicarious agents, liability for compensation being limited in accordance with 7.2., clauses 2 and 3 below;
  - In cases of culpable injury to life, body or health;
  - In cases of failure to meet guarantees and malice.
- 7.2 We shall also be liable in accordance with the statutory provisions for the slightly negligent violation of substantial contractual obligations by our legal representatives, executives and other vicarious agents.

However, the total amount of liability is limited to the contract value excluding value added tax (sales tax), albeit to a maximum of €100,000. Liability is limited to the damage to be typically anticipated within the framework of our services.

- 7.3 Liability for loss of data shall be limited to the time and effort typically required for recovery assuming that back-ups commensurate with the risk had been regularly made.
- 7.4 Liability under the Product Liability Act remains unaffected.
- 7.5 Unless otherwise provided for in 7. above, any additional liability for compensation is excluded regardless of the legal nature of the claim. This shall in particular apply to claims for both compensation in addition to services and compensation in lieu of services on account of breach of obligations as well as claims in tort for damage to property pursuant to Section 823 German Civil Code.
- 7.6 The limitation contained in 7.5 (in connection with 7.1–7.4) shall also apply if the Client demands reimbursement of expenses.
- 7.7 Should our liability be excluded or restricted, this shall also apply to the personal liability for compensation on the part of our employees, co-workers, representatives and vicarious agents
- 7.8 The statutory provisions governing the burden of proof remain unaffected by the provisions contained in 7. above.

#### **8. Client's assistance**

The Client shall assist us to an appropriate extent in the performance of the contractual services. In particular, the Client shall provide us with the required data, information and documents in full and in good time, and if need be provide and maintain the working environment required for our services.

#### **9. Client's obligation**

The Client shall be obliged to store data properly and in particular to make back-ups on a regular basis commensurate with the risk.

#### **10. Client's responsibility**

Unless otherwise expressly agreed to the contrary, the Client shall always assume sole responsibility for:

- Selecting our services;
- All the documents, information and data provided by him/her.

#### **11. Cooperation**

The Client shall exclusively communicate all information, requests and instructions regarding the services to be performed to the contact persons specified by us.

#### **12. Text form**

Whenever these General terms and conditions of trade specify that declarations are to be made in writing, they may be sent by post or fax, and may also be written on computer and sent by email.

#### **13. Place of performance, place of jurisdiction, applicable law, severability clause**

- 13.1 The place of performance shall exclusively be our principal place of business unless otherwise agreed.
- 13.2 If the Client is a merchant as defined by the German Commercial Code, a legal entity under public law or a special public fund, the place of jurisdiction for all obligations stemming from or in connection with the contractual relationship (including matters regarding bills of exchange or cheques) shall either be our principal place of business or that of the Client, as we see fit. This agreement regarding the place of jurisdiction shall also apply to Clients based abroad.
- 13.3 All rights and obligations stemming from or in connection with the contractual relationship shall be exclusively governed by the Law of the Federal Republic of Germany regardless of conflict of laws provisions and to the exclusion of the United Nations Sales Convention (CISG - UN Convention on Contracts for the International Sale of Goods dated 11 April 1980).

- 13.4 Should individual provisions in these General terms and conditions of trade or individual provisions in other agreements between us and the Client be or become invalid, this shall not affect the validity of the remaining provisions or agreements.

## **B Special terms for computer centre services**

### **1. Subject of the agreement**

- 1.1 Addresses provided by the Client shall be processed at our customer service computer centre using the test and cleaning software ('computer programs') at our disposal. Our aforementioned computer programs are partly based on data and files provided by external suppliers. We cannot assume any liability for these data and files being flawless, complete and up-to-date. The same shall also apply to availability and the time of updating.  
The following applies specifically to computer programs that deliver problem solutions on the basis of approximation methods (similarity algorithms): These computer programs can only deliver logically correct results within certain probabilities. Such methods also enable the assignment of information when the type of coded information used for assignment is not identical (something which is not the case with regular data-processing techniques).
- 1.2 Approximation methods are necessary to compensate for differences in the quality of data capture, various address sources, the different degree of updating and different forms of presentation, incomplete data, abbreviations, etc. Approximation methods were and are developed taking into account aspects based on the quantity of normally correct decisions. In other words, when approximation methods are used, the probability of a certain quality of results being achieved depends on factors such as the parameters selected, the data structure used and the content of data. In specific applications, this may result in cases which, if considered manually, would be decided differently. Differences between a possible manual assignment decision and one that is computer-based do not constitute defects. The Client cannot demand that we modify the assignment algorithms based on similarities or approximation methods; altering these methods is not part of the contractually agreed features.
- 1.3 The computer programs used by us comprise intellectual property and significant industrial know-how. We reserve all rights to them with the exception of those rights granted to the Client on the basis of express agreement, or in accordance with the law or with the aim and object of the contracts for services.

### **2. Requirement to examine services and report defects**

- 2.1 The Client is obliged to examine our computer centre services without delay (where feasible in the ordinary course of business) after they have been performed to ensure conformity with the contract. Any defects ascertained or ascertainable must be reported to us in writing without delay following the performance of our computer centre services (within five working days) complete with a detailed description.
- 2.2 Defects not detectable within the described due examination must be notified to us within eight working days of their detection, observing the requirements concerning the notification of defects specified in 2.1.
- 2.3 Upon the violation of the requirement to examine services and report defects, our computer centre services shall be deemed approved with respect to the defects concerned, i.e. the Client shall not be entitled to the extraordinary termination of the contract concluded with us nor to claim compensation.

### **3. Right to re-performance**

- 3.1 Should a computer centre service be performed defectively (a case of insufficient performance), we shall have the right (not the obligation) to perform these services for the Client in a manner according to contract at no additional cost within an appropriate period of

time.

- 3.2 Should we avail ourselves of the aforementioned right to re-performance but our attempts at re-performance remain unsuccessful within an appropriate period of time, the Client shall be entitled to extraordinary termination of the contract without notice if the performance of the computer centre service according to contract is largely unsuccessful within an appropriate period of grace set by the Client for reasons for which we are responsible.

In this case, we shall be entitled to claim payment for the services performed on the basis of the contract until termination becomes effective. Payment shall not be due solely for those services proven by the Client to be unusable and of no interest to him or her within four weeks of the notice of termination having been submitted.

- 3.3 Any claims for compensation shall be decided in accordance with B I. 2. (Requirement to examine services and report defects) in conjunction with A. 6. (Liability).

#### 4. Client's responsibility

The Client shall always remain 'in command of the data', i.e. we shall merely perform data processing on the Client's behalf. Unless agreed otherwise, the Client shall always assume responsibility for his or her data and the transmission thereof to us.

#### 5. Data transfer

The Client shall provide us with the data to be processed saved electronically on data media in standard formats, indicating the characteristics required for reading it (e.g. on formats/block lengths etc). The contractual partner identifies and designates data and lists which he delivers and/or has delivered from other data owners for further processing.

#### 6. Licensing of computer centre services

Delivery of the results of our computer centre services shall be effected by being transferred to the Client by us, either by sending them on DVD or cassette, or by electronic delivery (i.e. by making them available for download from a network and informing the Client accordingly). Should data media be damaged or accidentally erased

either in transport or at the Client following receipt, we shall provide a substitute.

#### 7. Terms of payment

- 7.1 Unless otherwise agreed, all payments are to be made within 30 days of the invoice date in full to our pay office. Payment shall only be considered to have been made as soon as we are definitely able to dispose of the whole amount.

- 7.2 Should payment not have been made within 30 days of the date of invoice, the Client shall be deemed to be in arrears without the need for an additional declaration on our part. In all other respects, the statutory rules concerning the consequences of delay in payment shall apply.

#### 8. Term of the agreement; periods of notice

- 8.1 The agreement shall commence on the date specified in the acknowledgement of order and shall run for an indefinite period.

- 8.2 The period of notice shall be three months.

- 8.3 The right to extraordinary termination for an important reason remains unaffected. In particular, an important reason justifying extraordinary termination by us shall exist:

- If the Client is in arrears with his/her payments by more than a month;
- If the Client is facing impending financial collapse, if an insolvency petition has been filed with regard to the Client's estate or if insolvency proceedings have been terminated due to insufficiency of assets, or if the cancellation or liquidation of the Client in the commercial register has been applied for or carried out;
- If the Client has violated substantial contractual obligations more than once or grossly.

#### 9. Confidentiality; non-disclosure

- 9.1 We render our services in accordance with the terms of the German Data Protection Act and our Data Processing Declaration.

- 9.2 The Client shall be immediately furnished with copies of this Declaration by us upon request.

## UNISERV GmbH

Rastatter Str. 13, 75179 Pforzheim, Germany, T: +49 7231 936-0

F: +49 7231 936-3002, E: info@uniserv.com, www.uniserv.com

© Uniserv GmbH, Pforzheim, All rights reserved

