

# Standard terms and conditions of PSI Aktiengesellschaft für Produkte und Systeme der Informationstechnologie

## 1. Scope, making contracts

- 1.1 These terms and conditions shall govern the contractual relationship between PSI Aktiengesellschaft für Produkte und Systeme der Informationstechnologie (hereinafter: PSI AG) and the respective other party (hereinafter: Customer) for PSI AG's services. They shall govern current and future business relations for the supply and production of hardware and software including related consultancy services and in each case also the respective pre-contractual negotiations.
- 1.2 These terms and conditions shall apply exclusively. PSI AG does not accept Customer's diverging or supplemental terms and conditions.
- 1.3 Offers, including specifications of services and projected calculations, shall be subject to change. Binding offers may be accepted only within three months after the offer has been placed.

## 2. Providing services, delivery and acceptance

- 2.1 The scope and the details of the services and their specifics and any warranties will be separately agreed in writing for each specific contract.
- 2.2 PSI AG shall have no obligation to provide the services itself. The use of freelancers and of third parties who are not in employment with PSI AG shall be permitted.
- 2.3 PSI AG shall provide its services in accordance with the state of the art. It must be taken into account that software cannot be developed entirely free of errors.
- 2.4 Performance in parts shall be permitted to a reasonable extent, parts may be invoiced on their own.
- 2.5 The goods or other service may diverge from the original agreement if it meets or exceeds the agreed service characteristics.
- 2.6 Deadlines and time limits shall not be binding unless the written form is observed. For PSI AG to meet binding deadlines and time limits, Customer's obligations must be performed duly and on time.
- 2.7 Customer shall review and approve within 14 days after receipt PSI AG's services specifications or similar specifications drawn up in the course of performing the contract. If within such time limit for review Customer raises no objection against PSI AG's services specifications or similar specifications submitted for review, or does not expressly uphold already previously raised objections against these documents, then these documents shall be deemed to have been approved. PSI AG shall draw Customer's attention to this fact and to

the consequences of failing to raise any objections within the time limit.

- 2.8 For orders that substantially exceed the delivery of hardware and/or software (projects), PSI AG shall appoint a project leader. In this case Customer shall appoint a qualified contact able to provide necessary information and authorised to make decisions. The contact shall be authorised to issue and receive declarations of intent on Customer's behalf.
- 2.9 Where PSI AG produces or substantially modifies items of property and/or software, the parties shall conduct an acceptance procedure. In this case and where an acceptance procedure is provided for by law for certain works and services, the following shall apply:
  - 2.9.1 As soon as PSI AG is ready to deliver, it shall notify Customer in writing of its readiness for acceptance.
  - 2.9.2 Customer shall then review the service as to whether it is as owed. The time limit for review shall commence at Customer's receipt of the notice of readiness for acceptance and shall be two weeks. Customer shall carry out the review in such a way that even those parts of the service will be fully reviewed and tested that are used only occasionally or at fixed intervals, for example once a year. Customer shall document the review.
  - 2.9.3 If marginal defects occur Customer shall not stop the review and shall limit it only to the degree made necessary by the defects.
- 2.10 On successful expiry of the time limit for review the service shall be deemed to have been accepted without a declaration from Customer being required. PSI AG shall point this out to Customer in the notice of readiness for acceptance. Customer may prevent the automatic acceptance only by written notice stating that an obstacle to acceptance is present. At PSI AG's demand Customer shall confirm the acceptance in writing.
- 2.11 If Customer uses the service productively in excess of what is necessary to review it, then the service shall be deemed to have been accepted.
- 2.12 If parts of services are severable, then an acceptance procedure should be carried out for the part service. In these cases the last part acceptance shall be deemed to constitute overall acceptance. In all other respects the acceptance rules contained in these terms and conditions shall apply.
- 2.13 If Customer is entitled on the one hand to claim specific performance/correction of performance by PSI AG and on the other hand to rescind the agreement, claim non-performance damages and/or reimbursement for expenses,

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then PSI AG may demand that Customer exercise its rights within a reasonable time limit. If Customer does not exercise its rights within the time limit, then PSI AG shall no longer owe performance or correction of performance.

### 3. Customer's contribution

3.1 Generally Customer as towards PSI AG shall have the following obligations to contribute:

- Provide necessary information and documents on the own organisation and system environment or on that of the final customer, if any,
- Make available necessary test data,
- Review and promptly approve services specifications and other documents submitted by PSI AG,
- Cooperate in technical experiments and test runs,
- Create the necessary installation requirements at the Customer's or end customer's end,
- Promptly and fully report errors in writing at each stage of performance.
- Report defects in writing to PSI AG including delivery of all data and documents needed to make good the defect.

3.2 Insofar as Customer is able, Customer shall review PSI AG's plans, services specifications, technical information and warranties as to their accuracy and completeness.

3.3. Customer shall be responsible for obtaining permissions from authorities or governmental bodies. PSI AG shall agree to obtain such permissions for a charge and only at Customer's express written request.

### 4. Fee

4.1 Unless otherwise agreed, Customer shall pay a fee based on time and material expenditure at the prices shown in PSI AG's price list as updated from time to time.

4.2 All agreed prices shall be ex VAT. Prompt payment discounts, rebates and other reductions must be agreed separately in writing.

4.3 PSI AG shall document services charged on a time basis in the form of hour sheets submitted to Customer at regular intervals. If Customer does not accept an hour sheet, PSI AG may demand that the accuracy of the hour sheet be reviewed jointly within ten working days after receipt. If during the review and within five working days after a review Customer does not raise any objection or does not expressly uphold its objection, then the hour sheet shall be

deemed to have been accepted. PSI AG shall draw Customer's attention to this fact and to the consequences of failing to raise any objections within the time limit.

4.4 Agreed daily rates are based on eight clock hours during normal business hours. Each further complete or incomplete hour worked shall be charged additionally at 1/8 of the agreed daily rate each plus the surcharges agreed from time to time.

4.5 PSI AG will charge for Customer's modification or extra orders accepted by PSI AG in accordance with the price list updated from time to time.

4.6 In addition to the fee PSI AG shall have claim to reimbursement of its expenses. Travelling times shall count as times worked.

4.7 In addition to the agreed fee, VAT at the statutory rate as amended from time to time and/or further applicable domestic and foreign duties and dues, if any, shall be payable to the extent PSI AG is responsible for them as towards third parties.

### 5. Maturity, setoff, rights of retention

5.1 The fee shall mature in accordance with the progress of performance. If the fee is a fixed price, then payments shall mature as follows:

- 30% at making the contract
- 30% after the expiry of one third of the time remaining until the agreed acceptance, delivery or performance date,
- 30% after the expiry of two thirds of the time remaining until the agreed acceptance, delivery or performance date,
- 10% at acceptance, delivery or performance.

5.2 Fees for services charged on a time basis will normally be invoiced on a monthly basis. Invoiced amounts shall be mature on receipt of the invoice and shall be paid fully without deductions within 14 days.

5.3 Customer shall have rights of retention (*Zurückbehaltungs- oder Leistungsverweigerungsrechte*) only with regard to counterclaims that are either undisputed or res iudicata. Customer's setoff with counterclaims shall be excluded unless the counterclaim is undisputed or res iudicata.

### 6. Modifications of services

6.1 Necessary modifications shall fall within PSI AG's sphere of risk if a service cannot be provided, or can be provided only with considerable additional expenditure as compared to

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contractual arrangements, as a result of anything falling within PSI AG's scope of responsibilities or attributable to it. In these cases PSI AG shall be entitled to modify or adapt the service at its own expense, to the extent that the modification or adaptation is reasonably acceptable for Customer taking into account PSI's best interest.

- 6.2 If a necessary modification does not fall within PSI AG's sphere of risk, then PSI AG may demand that the contract be adjusted.

### 7. Rights of use

- 7.1 With full payment of the fee owed under the respective contract, Customer shall acquire an irrevocable, non-exclusive and non-transferable right, unlimited in time, to use the software produced and/or supplied by PSI AG.
- 7.2 Customer shall be entitled to install and use the produced and/or supplied software only on the specified system platform and/or computer performance class and on the agreed number of workstations. Any change of the installation and/or use from the above shall require PSI AG's consent.
- 7.3 The grant of rights does not include a grant of rights in software source codes and must be agreed separately and in writing.
- 7.4 Customer shall not be entitled to edit or modify the produced and/or supplied software, including (without limitation) to reverse engineer or decompile it or cause it to be reverse engineered or decompiled; unless this is necessary to achieve interoperability. In this case, however, the rules on Customer's remedies for defects shall be taken into account.
- 7.5 In the case of third party software licences that PSI AG grants to Customer, the respective third party licensor's licence terms shall also apply by way of restriction.
- 7.6 If third parties raise claims against Customer for a violation of IP rights with regard to the produced and/or supplied software, then Customer shall promptly report this to PSI AG in writing to enable PSI AG to set up a legal defence against these claims. In this case Customer shall provide PSI AG with the information necessary and useful for the legal defence and for an amicable settlement.
- 7.7 If PSI AG consents to or tolerates any use before full payment for the services has been made, this shall be deemed to be subject to revocation at any time. In particular (without limitation) PSI AG may revoke if Customer defaults on paying the fee and this shall not be construed as a rescission of the contract by PSI AG.

### 8. Retention of title

- 8.1 Title to the goods produced or supplied by PSI AG shall pass to Customer as soon as Customer has performed all the principal and ancillary payment obligations (whether actual future or contingent) arising within the business relationship with PSI AG.
- 8.2 Customer shall not be entitled to mortgage goods subject to retention of title, or transfer title to them by way of collateral, to third parties.
- 8.3 Customer may resell goods subject to a retention of title only in the ordinary course of business. Customer hereby assigns to PSI AG by way of collateral the payment claims arising out of a resale or on any other legal grounds regarding the goods subject to the retention of title, including those for goods that are processed or built in. In the case of processing or building into something, the assignment shall be for the part of the value of the goods subject to the retention of title out of the value of the completed item.
- 8.4 At Customer's demand PSI AG shall release items of collateral to the extent their value exceeds the secured payment claims by more than 20%.

### 9. Customer's warranty remedies, reporting defects

In the case of a defect in PSI AG's service, the following shall apply:

- 9.1 The limitation period for warranty claims shall be two years for produced software, one year for all other services; unless PSI AG had fraudulently concealed the defect in question.
- 9.2 PSI AG shall always first be entitled at its option to make good the defective service or to deliver and/or produce a replacement. This shall not affect PSI AG's right to refuse correction of performance in the cases specified by the law.
- 9.3 If PSI AG's correction of performance fails, then after a reasonable period of grace set by Customer has expired without result, except where a period of grace is unnecessary in the cases specified by the law, Customer shall have the statutory claims.
- 9.4 Correction of performance will generally be deemed to have failed only if two attempts to correct performance, made within a reasonable period of time, have not resulted in the defect being made good.
- 9.5 If customer has interfered with PSI AG's service, then an obligation to correct performance can arise only if the type and scope of the interference are accurately documented by Customer.

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tomers, Customer proves that the problem that has occurred has neither directly nor indirectly been caused by its interference and Customer accepts to pay the additional expenditure incurred by PSI AG as a result of its interference.

- 9.6 Evident defects shall be reported promptly and in any case no later than 14 days after delivery, providing the service or acceptance. The same shall apply to reporting concealed defects after they have been discovered. Belated defect reports or reports made after the goods subject to retention of title have been processed shall be precluded.

### **10. Limitation of liability and limitation period**

- 10.1 PSI AG shall be liable in accordance with the statutory rules for attributable intentional and grossly negligent breach of duties or obligations.
- 10.2 PSI AG shall be liable for ordinarily negligent breach only if the breach was of a material contractual obligation. In this case damages claims shall be limited to a maximum equal to the foreseeable, typical damage and loss.
- 10.3 In cases of 10.2 PSI AG shall not be liable for consequential damage or loss to other items of property or other assets of Customer. This limitation of liability shall not apply insofar as PSI AG is able to obtain cover for the damage or loss suffered under the existing business or product liability insurance policy.
- 10.4 The limitation period for immaterial breaches of contract shall be one year only.
- 10.5 PSI AG shall be liable without limitation in accordance with the statutory rules for any damage or loss resulting from personal injury or death. This shall not affect PSI AG's liability under the law of tort and under the German Product Liability Act (*Produkthaftungsgesetz*).

### **11. Governing law and legal venue**

- 11.1. This agreement shall be governed and construed exclusively by the laws of the Federal Republic of Germany excluding the UN sales of goods law (UNCITRAL).
- 11.2. The exclusive place of jurisdiction shall be Berlin.

### **12. Written form**

Contracts with Customer and any amendment, addendum or ancillary arrangement to each contract must observe the written form.

### **13. Severability**

If any clause of these terms and conditions or any part of one is void or invalid, this shall not affect the validity of the remaining clauses. The parties shall replace the void or invalid clause by another one that comes as close as possible to the commercial goal and purpose of the void or invalid clause whilst being valid.

### **14. German and English Version**

The German version prevails in the case of a discrepancy or conflict between the German and the English version of these terms and conditions.