

# Terms and Conditions of the CANTOR Software GmbH (hereinafter referred to as CANTOR)

## § 1 Basis

The below terms of business and contractual relationship shall apply to all business transactions between CANTOR and its contractual partners. By placing an order with CANTOR, the contractual partner accepts the Terms and Conditions. Deliveries and services are performed exclusively on the basis of these Terms and Conditions. Deviations from these Terms and Conditions provided by contractual partner under reference to his own Terms and Conditions shall be effective only with confirmation in written form by CANTOR.

## § 2 Cooperation

2.1 Both parties agree to keep all knowledge of corporate secrets gained in the course of their business relations, and all information which is declared as confidential, as a secret for an indefinite period of time. Confidential information and documents may not be disclosed to third parties which are not part of the contractual transactions.

2.2 CANTOR and the contractual partner will each name a project supervisor, who is responsible for the contractual transactions. CANTOR undertakes to involve the customer's project supervisor if and insofar as it is necessary for the contractual performances.

2.3 The project staff appointed by the customer for handling the contractual business shall be released from work so that they will be able to attend project meetings and perform the necessary project transactions. The jointly drawn up project plan is obligatory for both parties.

## § 3 Quotations, prices, contract conclusion

3.1 Quotations issued by CANTOR are generally subject to change and not binding until they are accepted in a legally binding way. The quotations are based on the information provided by the customer, for the completeness of which the customer is responsible. Quoted prices are exclusive of the legal VAT, delivery costs, insurance and other additional expenses.

3.2 Deliveries and services which are not included in the quotation, will be separately charged at current rates.

3.3 A contract is concluded only by a legally binding order confirmation from CANTOR or by a signed software licence agreement, or in case of the aforementioned not being available by acceptance of the delivery or service on the part of the customer, at the mentioned conditions. Additional verbal agreements and assertions shall be effective only with confirmation in written form by CANTOR.

## § 4 Subject of the agreement; delivery of standard applications

4.1 The specific properties of the programs result from the performance/product description and/or from the project documentation which will be provided as one copy free of charges. CANTOR reserves the right to change, develop or improve the programs.

4.2 CANTOR grants the customer the non-transferable and non-exclusive personal right to use the agreed programs on the agreed computer system for his own purposes.

4.3 The programs are supplied in an executable form (object code). The programs are considered as delivered once they have been supplied to the customer on data carrier or in electronic form.

## § 5 Conditions for the modification/extension of standard programs and for the creation of individual software<sup>1</sup>

5.1 As a matter of principle, individual adjustments are carried out only in versions which are subject to software maintenance.

5.2 CANTOR grants the customer the same license for these services as for the standard programs.

5.3 The customer is entitled to request in written form changes and extensions of the agreed services. CANTOR can refuse to comply with these requests if the changes and extensions requested are not workable or if the realisation of said changes and extensions is unacceptable in the scope of normal service provision.

5.4 If the customer's requirements make it necessary, CANTOR will – supported by the customer – draw up a specification and submit this specification to the customer for approval in the scope of a supplementary quotation. The approval is considered as given if no requests for changes are made by the customer within a period of 14 days. The specification shall be binding for the contractual performance. The agreed services will be charged according to the necessary expenses at current rates.

5.5 After inspecting the services, the customer shall immediately declare his approval in written form. The services are considered as approved if the customer does not declare any fault which would considerably impair the usability of the performances, within one week after expiry of the agreed inspection period or, if no such period was agreed, within four weeks from installation.

5.6 If the customer wishes to alter his requirements after having placed the order, CANTOR is obliged to make adjustments in a reasonable scope. Changes must be declared in written form. If and insofar as the request for changes has an impact on CANTOR's contractual provisions or on the meeting of deadlines, CANTOR is entitled to an adequate adjustment of the contractual provisions, particularly with respect to an increase of the compensation and/or an appropriate postponement of the deadlines.

<sup>1</sup> For this purpose, a separate software licence agreement is necessary

5.7 CANTOR guarantees that the services will meet the specification. The warranty period commences at the time of approval. The approval is the documented end of the functional inspection. Any operation of the product for production purposes is also considered as an approval. Warranty applies according to the provisions under § 11.

5.8 Custom adjustments will be included in the maintenance only at special compensation.

## § 6 Software maintenance<sup>2</sup>

6.1 CANTOR provides business software which is of vital importance for the customer's production and shipping processes. In order to ensure that the software is always up-to-date and operable, CANTOR offers its customers a maintenance agreement which guarantees the necessary updates to the most recent program version as well as a qualified service.

6.2 As a matter of principle, maintenance services are carried out only for versions which are subject to software maintenance.

## § 7 Reservation of Title for articles of trade

7.1 CANTOR shall retain title to the products delivered licence-free (hardware, articles of trade) until the purchase price claim and all claims are satisfied. The products may neither be mortgaged nor transferred, rented or lent.

7.2 The customer hereby assigns to CANTOR by way of security any claims arising from the resale of the reserved goods including the claims arising from the reservation of title and the advance assignment.

7.3 Until such time as the purchase price is settled in full, the customer is liable for any damages to supplied products (hardware and external software), even if the damages were not caused by his fault. If the customer does not meet his payment obligations, CANTOR is entitled to collect the goods. The customer herewith expressly declares his assent for entering his premises and offices

7.4 Should CANTOR be forced to cancel the agreement or to take back the delivered goods in part or as a whole, CANTOR is entitled to charge an adequate compensation for usage and decrease in value. Claiming the reservation of title cannot be considered as a cancellation of the agreement. Claims of further damages are reserved.

## § 8 Conditions of delivery and payment

8.1 Delivery is carried out by CANTOR to the location specified by the customer at the latter's cost and risk. Should the licensed software be damaged or deleted on the data carrier during transport or after arrival at the customer, replacement will be made available at the usual compensation.

8.2 If a delivery period is specified, this period begins only after the receipt of the customer's information and documents in complete form. Should delays occur during transport or installation which are caused by insufficient information, changes in the requirements, insufficient system or hardware conditions, or software from other suppliers, which impede the proceedings, the periods of delivery will be adjusted accordingly. The same applies to delays in delivery or service due to force majeure or events which considerably impede the production and delivery without any fault on CANTOR's part.

8.3 If the actual conditions at the customer's differ considerably from the information given to CANTOR as the basis of the quotation, CANTOR is entitled to demand an adjustment of the contract, or otherwise to cancel the contract and demand the usual compensation for services performed. Should a delivery period which was expressly accepted by CANTOR be considerably delayed for reasons within the responsibility of CANTOR, then the customer is entitled to cancel the contract or claim damages for default only if a grace period of at least six weeks granted by the customer in written form has expired without results. In such a case, the customer's compensation claims are restricted to the typical, contractually predictable amount.

8.4 Prices are ex factory Linden or the subsidiary where applicable, and exclusive of the legal VAT. The costs for installation, adjustments of program changes, hardware and printer adjustments, instruction, training, permanent or occasion-related service, additional manuals, additional data carriers in case of damage or deletion, and the running maintenance are not included in the licence fees and will be charged at current rates. CANTOR will supply the appropriate quotations on request. There is no obligation to contract.

8.5 The customer pays to CANTOR for all efforts and expenses additionally required; this includes e.g. costs for rented cars, train rides, flights, as well as travel time, costs of accommodation and travel expenses.

8.6 Payments shall be made immediately after service performance and invoicing without deductions. Irrespective of his right to retain performance, the customer is not entitled to hold back payments. He has only the right to set off payments against demands which are legally assessed or accepted by CANTOR.

## § 9 Leasing

9.1 The customer may finance the contractually owed compensation through a leasing company. This has no influence on the effectiveness of this contract, particularly if the leasing contract should not materialise. The maturity of the debt is not affected.

9.2 The customer is obliged to supply the leasing company with a confirmation of the approval of the leasing object by proof of successful installation.

<sup>2</sup> For this purpose, a separate software maintenance agreement is necessary

9.3 CANTOR reserves all rights to the software (§ 13); these rights cannot be transferred to the leasing company.

#### **§ 10 Default of acceptance or of payment**

10.1 If the delivery or installation is delayed for reasons within the responsibility of the customer, the risk of accidental loss or impairing of the product shall pass to the customer for the period of the delay, beginning with the day of the readiness for delivery. CANTOR undertakes, at the customer's request and costs, to acquire appropriate insurance for the products.

10.2 The obligation for paying the compensation at the scheduled date of delivery and installation remains. Insofar as warranty periods of CANTOR's suppliers are in process, these remain effective to the disadvantage of the customer.

10.3 If the customer fails to pay on due date, he is obliged to pay interest amounting to the rate of interest on credits as established by CANTOR, but at least 5 per cent above the current base rate of the European Central Bank. The interest is due without any reminder as soon as the time for payment is exceeded. We reserve the right to claim further damages. The customer's right to inspect the programs is suspended.

#### **§ 11 Guarantee**

11.1 CANTOR makes the software available to the customer in a form free of defects of subject or title, for usage as intended. Usage as intended and the presumed usage conditions result from the performance/product description as drawn up by CANTOR.

11.2 CANTOR guarantees for a period of 12 months beginning with the passing of the risk or with successful installation, that the programs correspond to the documentation, that the data carriers on which the software is stored as well as the hardware that is possibly included in the delivery, are not affected by faults with respect to their material layout which might impair or destroy their usability when used under normal conditions and with due care. Once an installation by CANTOR has been carried out, any warranty claims on the customer's part expire either within a period of 12 months after the documented end of the functional inspection, or after having put the software into operation, in any case however, after a period of 18 months after delivery.

11.3 Should errors occur during usage in conformance with the contractual provisions, then the customer has to inform CANTOR immediately after the occurrence of the errors in written form and supply the necessary information for remedying the errors. The customer shall support CANTOR in an adequate form during the correction of the errors, and in severe cases, grant CANTOR access to his computer system. The right to error correction is subject to the fact that the error is reproducible or can be proved by machine-made printouts.

11.4 CANTOR undertakes to correct errors in an adequate period of time. CANTOR shall make correction measures for programs available in written form and, if necessary, in machine-readable form. The customer shall transfer these to his system. CANTOR has fulfilled its guarantee obligation if the customer can be supplied with a data carrier on which the objectionable error is remedied, or if the customer is given a work-around which enables him to achieve the desired results. Further obligations out of the guarantee are excluded.

11.5 Whenever CANTOR delivers external software, machines, machine components or accessories, such deliveries are carried out in the scope of the manufacturer's guarantee. There is no further guarantee or obligation on CANTOR's part. Removing or changing the signature of a software component is forbidden and will result in the forfeiture of any warranty claims.

11.6 Any warranty is forfeited for program components which the customer has changed or intruded into. This does not apply if the customer is able to prove, in connection with an error report, that his intrusion was not the cause for the error.

11.7 If CANTOR acts in reply to an error report from the customer and the customer fails in producing the error, CANTOR is entitled to charge compensation in a customary amount.

#### **§ 12 Liability**

12.1 Claims for damages against CANTOR – whatever the legal cause – are excluded, unless intent, gross negligence or the initial inability to perform is evident, or if warranted qualities are missing. Any liability is limited to the typical and contractually foreseeable damages.

12.2 Liability for damages caused by viruses is excluded, likewise liability for damages caused by faults resulting from incorrect information, documents or materials supplied by the customer. CANTOR is not liable for missed performance results of the engaged computer systems, lost profit, missed savings, collateral and consequential damages. Furthermore, CANTOR is not liable for the recovery of data. Other provisions apply only if the customer has met his obligation to mitigate loss, and if the data can be recovered with reasonable effort from machine-readable documents.

12.3 Liability for data loss is limited to the typical effort for recovery which would have ensued, had regular data-backups been made in accordance with the risks of loss. The customer is made aware of the fact that regular data-backups can considerably minimise the risks of data loss.

#### **§ 13 Restriction of usage, program protection**

13.1 On principle, the copyright for all programs and for any application documentation produced by CANTOR is owned solely by CANTOR. The customer acknowledges that the programs and their documentation and other material are subject to copyright and corporate secrets of CANTOR. The customer shall permanently ensure that these secrets cannot be disclosed to third parties without the assent of CANTOR.

13.2 The rights of use cannot be transferred from the customer to third parties. After full payment for the products delivered by CANTOR, the customer receives the right to use these products for his purposes and in correspondence with the agreed scope of delivery. Up to this time, CANTOR is entitled to restrict the use of the products to a period to be specified, and to arrange for the appropriate security measures. The usage of external software is subject to the provisions of the relevant manufacturer.

13.3 CANTOR does not transfer any rights of use or of exploitation to the customer in excess of the contractually agreed usage. Any extended form of programming activity such as further data-technical adjustments of the program to the purposes of the customer, or further developments of the software, shall be carried out solely by CANTOR.

13.4 Usage of the programs is only allowed on computer systems which meet the minimum requirements as stated in the performance descriptions. A joint use by third parties is excluded.

13.5 In case of insolvency of the customer, the right of use for the delivered software expires automatically at the date of termination of the customer's business activity. On request of CANTOR, all documents shall be returned to CANTOR. On principle, rights of use to the software are not transferable in the scope of a takeover of the hardware by a third party – e.g. in case of insolvency.

13.6 The customer undertakes to retain the safety notices, copyright statements and other legal statements included in the software in an unchanged form, and to adopt all copies made by the customer in part or as a whole, in unchanged form.

13.7 Before data carriers, data storages or computer devices are destroyed, sold or otherwise transferred to third parties, the CANTOR software stored therein shall be completely erased. The erasure process must be documented and, on request, brought forward. CANTOR shall be granted the right to enter all offices and rooms of the customer in order to inspect the deletion of the programs. The let documents and data carriers shall be returned to CANTOR without compensation. This applies accordingly in the event of termination of the contract. In this event, the right of use expires automatically.

#### **§ 14 Place of Fulfilment and Place of Jurisdiction**

14.1 For the contractual relationships, solely German law is applicable. The application of UN purchase laws is excluded.

14.2 As far as § 38 ZPO is applicable, for all disputes arising from and in connection with a contract which is subject to one of these provisions, the exclusive judicial competence of CANTOR's place of business is agreed, which is at present the District Court at Giessen. The place of jurisdiction also applies to customers who carry out a similar business activity abroad.

14.3 The place of fulfilment for all mutual claims out of the contract is, as far as this can be contractually specified, CANTOR's place of business in Linden.

14.4 If the contract is drawn up in several languages, solely the German version shall be applicable for the legal relationships of the parties.

#### **§ 15 Written form**

All changes and amendments as well as the cancellation of a contract between CANTOR and the customer, notices of defect, and claims for damage, must have written form to be legally effective. To comply with this requirement it is sufficient to transmit documents in text form, particularly by fax or e-mail. The requirement for written form applies also to the abandonment of the same.

#### **§ 16 Salvatori Clause**

Should one or multiple provision(s) of this agreement be or become ineffective or unfeasible, then the validity of the remaining provisions of these conditions is not affected by this. In such a case, the ineffective or unfeasible provision(s) is/are replaced by such that is/are as similar as possible as regards content, and which comes closest to the ineffective or unfeasible provision(s) in respect to its/their purpose.