

**1. GENERAL PROVISIONS – SCOPE OF VALIDITY**

1.1. These general terms and conditions are exclusively binding; terms and conditions opposing or differing from these terms and conditions shall not apply unless VogtConsulting has explicitly approved them as binding in writing and signed form (including fax and signed PDF sent by email).

VogtConsulting's general terms and conditions are binding even if VogtConsulting effects delivery without reservation to the ordering party in awareness of opposing and differing terms and conditions of the ordering party.

1.2. All agreements, amendments and/or changes of such agreements and/or these general terms and conditions shall be in writing.

**2. CONCLUSION OF THE CONTRACT**

VogtConsulting's offers are only binding if and when they have been explicitly confirmed as binding. Orders are accepted only by way of VogtConsulting's written confirmation or by performance.

**3. PRICES, PRICE ADJUSTMENT**

3.1. All prices of VogtConsulting are net Ex Works Frankfurt (Incoterms 2000), excluding freight, customs duties, special packaging, installation or assembly. The price includes standard VogtConsulting packaging. General sales tax (VAT) is not included in VogtConsulting's prices; it will be separately accounted for in the invoice at the issue date of the invoice.

3.2. Orders for which fixed prices have not been expressly agreed shall be charged at the list prices valid on the day of delivery (current prices).

3.3. The exchange rate risk of the agreed foreign currency in relation to Euro (€) that occurs after conclusion of the agreement shall be borne by the ordering party.

**4. PAYMENTS**

4.1. VogtConsulting's invoices are payable without deduction within thirty (30) calendar days after receipt of the invoice. Payments shall be made free of costs at the place of business of VogtConsulting. Payments shall be due immediately in case of violation of substantial obligations of the agreement by the ordering party and/or circumstances that would reduce the creditworthiness of the ordering party, in particular discontinuation of payments and/or pendency of insolvency proceedings. In such a case, VogtConsulting shall be authorized to withhold outstanding deliveries and services or to perform them only in return for advance payment or security.

4.2. VogtConsulting reserves its right to accept payment by cheque (Scheck) or bill of exchange (Wechsel). Such acceptance (Erfüllung) will be pending until full discharge of the debt and without warranty for timely presentation or protesting. Cheque and bill payments are considered as payment only at encashment.

4.3. Any cash discounts granted may only be discounted if all due invoices have been paid on time. Insofar, receipt of payment by VogtConsulting shall be decisive.

4.4. VogtConsulting is entitled to charge interest since default at the rate of eight (8) percent points above the current base interest rate (sec. 288 para. 2, sec. 247 German Civil Code, "BGB"). The right to claim higher damages caused by delayed performance shall remain unaffected thereby provided that VogtConsulting can prove that it has incurred such higher damages.

**5. DELIVERY AND ACCEPTANCE OF WORK PERFORMANCE**

5.1. Delivery, installation and support dates and time limits are only binding for VogtConsulting if VogtConsulting has approved them in writing. The time limit begins on the day of confirmation of the order but not before all necessary documents and information are received and under the condition that the ordering party has fulfilled all of its obligations.

5.2. In the event of force majeure and/or other unforeseeable and extraordinary circumstances impeding VogtConsulting's ability without its fault to perform its duty to deliver in time (e.g. war, blockade, fire, natural catastrophes, revolt, strike, lockout, operations or transport hold-up, material and energy supply problems, official intervention, refusal of export, import or transit permits by official authorities) VogtConsulting is allowed to adequately prolong the delivery period or, if delivery becomes impossible or unreasonable, to withdraw from or terminate the contract totally or partially. The same applies if the aforementioned circumstances occur with VogtConsulting's suppliers and/or subcontractors. If the impediment lasts longer than three months, the ordering party shall be authorized, after granting a reasonable grace period with the threat of rejection, to rescind the agreement in relation to the part that has not been fulfilled. If the delivery time is extended or VogtConsulting is released from its obligation, the ordering party cannot derive any claims for damages from this. VogtConsulting shall inform the ordering party immediately of any event of force majeure.

5.3. If binding dates or time limits (also in the cases mentioned in 5.2. above) are not kept the ordering party may – except for fix-date purchases – only rescind the contract after the lapse of an adequate grace period set by the ordering party.

5.4. VogtConsulting shall be authorized to perform partial deliveries, partial work performance and partial services at all times; in the case of partial fulfillment the ordering party may only rescind from the whole contract if partial fulfillment is of no interest for the ordering party.

5.5. Any damage claim based on a delayed fulfillment of the ordering party against VogtConsulting shall be limited to 0.5% of the net value of the delayed delivery and/or work performance per completed calendar week of delay. The overall damage claim based on the delay shall be limited to a maximum of 5 % of the total contractual net value. This limitation shall not apply for claims based on delay if the delay is caused by gross negligence or intent. However, damage claims based on delay caused by negligence or gross negligence shall be limited to the usually foreseeable damage. Further damage claims based on delay shall be excluded; however other rights of the ordering party shall not be excluded.

5.6. If the ordering party is in delay in accepting deliveries or services or the work performance or fails to cooperate, VogtConsulting shall be authorized to demand restitution of the damage incurred by it, in particular to store the contractual products at the expense of the ordering party. The risk of accidental deterioration and accidental loss shall pass to the ordering party as soon as the latter is in delay in accepting delivery.

5.7. If, after expiry of a period of grace period granted by VogtConsulting, the ordering party without legal reason (acceptance may not be refused by reason of trivial defects) refuses to accept the delivery and/or the work performance or does not respond within five (5) business days to a written demand to

accept or declares that it does not intend to accept the delivery and/or the work performance, VogtConsulting can refuse to fulfill the agreement and can demand damages due to non- fulfillment. However, acceptance of the goods delivered and/or the work performed shall be deemed given by the ordering party in case of commencement of commercial use or after expiry of a time period of four (4) weeks after VogtConsulting has delivered the goods and/or finished the work performance owed to the ordering party for fulfillment of the contract, whichever occurs first.

5.8 Minor defects shall not entitle the ordering company to deny acceptance.

## **6. TRANSFER OF RISK**

Delivery is made Ex Works Frankfurt (Incoterms 2000). The risk passes to the ordering party upon readiness for shipment/transport and receipt of a respective notice of readiness for shipment/transport.

## **7. RESERVATION OF TITLE**

7.1 VogtConsulting retains full title of ownership in the delivered items until full payment is effected.

7.2 The ordering party shall neither attach the delivery item nor assign it as security. The ordering party shall notify VogtConsulting immediately of any attachment, confiscation of the goods or other actions by third parties.

## **8. SET-OFF / RIGHT OF RETENTION**

8.1. The ordering party may only set-off claims with undisputed claims or claims which have been finally declared by judgment.

8.2. The ordering party may only use the right of retention if the counterclaim derives from the same contractual relationship. A right of retention due to counterclaims that have not been recognized by VogtConsulting or have not been finally declared by judgment shall be excluded.

## **9. INTELLECTUAL PROPERTY RIGHTS**

9.1 Any and all intellectual and industrial property rights in the delivered software, its, modifications, updates and derivatives thereof, shall always remain with VogtConsulting or its third party suppliers. The ordering party shall neither itself nor permit any third party to alter, modify, enhance, adapt, reverse-compile or reverse-engineer, disassemble, or translate such software or any part thereof or otherwise create any derivative work based thereon.

9.2 Patents, licenses and other intellectual property of VogtConsulting shall not be transferred. This shall also apply to any form of copyright, source code and other documentation. If software is supplied as part of the delivery, this shall be provided to the ordering party solely for use in accordance with the agreement. The ordering party shall refrain from either sublicensing it, copying it or modifying it in any way and shall not alter, enhance, adapt, reverse-compile or reverse-engineer, disassemble, translate such software or any part thereof or otherwise create any derivative work based thereon.

9.3 All trademarks on the products delivered and/ or installed by VogtConsulting shall remain the property of VogtConsulting. Any use of them shall require the prior written consent of VogtConsulting.

9.4 If a third party asserts justified claims against the ordering party due to infringement of an intellectual property right or

copyright (hereinafter referred to as "property rights") by products that have been supplied by VogtConsulting and used in compliance with the agreement, VogtConsulting shall be liable towards the ordering party as follows:

a) At the discretion and expense of VogtConsulting, VogtConsulting shall either obtain a right to use the product, or modify the product so that it does not infringe the property right or replace the product. If this is not possible for VogtConsulting at reasonable conditions, VogtConsulting shall take back the product and refund the purchase price.

b) The ordering party shall only be entitled to the claims from Section 9.4 lit a) under the conditions that the ordering party notifies VogtConsulting immediately in writing of the claims asserted by a third party and the ordering party does not acknowledge an infringement of the contested property right and VogtConsulting reserves the right to take all measures to repel the claims. If the ordering party discontinues using the product in dispute, it shall be obliged to point out to the third party that this does not represent any acknowledgement that a property right has been infringed.

9.5 Claims of the ordering party shall be excluded if the ordering party is responsible for the infringement of the property right or if the infringement is caused by its own specific stipulations, by an application not foreseeable by VogtConsulting or by the fact that the product is modified by the ordering party or used in conjunction with products from third parties.

9.6 Any title (including the related intellectual property rights) to product developments carried out by VogtConsulting or its sub-contractors at the request of the ordering party shall be with VogtConsulting, except as otherwise agreed on between the parties in writing.

## **10. CLAIMS FOR DEFECTIVE GOODS AND SUPPORT DUTIES OF THE ORDERING PARTY**

10.1 The ordering party is obliged to inspect the delivered items immediately after receipt. Any written notification of defects has to be made to VogtConsulting within seven (7) days after receipt of the goods, in case of hidden defects within the same period after awareness of the defects. Otherwise warranty claims are barred.

10.2 The ordering party shall support VogtConsulting in its rendering of services and performing of works related to the software delivered and any attempt to comply with the missing requirements or defaults (Nacherfüllung) by using its best efforts.

## **11. WARRANTY CLAIMS**

11.1 The contractual products shall be produced with due care and diligence. However, the parties agree that it is not possible in accordance with the state of the art to rule out software errors under all application conditions. Where this is not possible in accordance with the state of the art at the time of production, warranty claims shall be excluded.

11.2 VogtConsulting warrants that the contractual products are generally described accurately in the product information and are essentially able to be used within these limits. The technical data and descriptions in the product information by itself do not represent a warranty of specific qualities. VogtConsulting shall not be liable if the program functions do not satisfy the requirements of the ordering party or work together with own components of the ordering party in the selection chosen by it.

11.3 Claims and rights of the ordering party due to defects shall initially be restricted to the right of VogtConsulting to subsequent remedy or fulfillment, with the ordering party having the right, at its discretion, to reduce the purchase price or rescind the agreement if subsequent remedy or fulfillment attempts fail.

11.4 If examination of a notification of defects reveals that the defects are not covered by the warranty, VogtConsulting shall be authorized to demand restitution of all its expenses from the ordering party. Costs of the examination and repair shall be charged at the respectively valid service prices of VogtConsulting.

11.5 If the ordering party or a third party undertakes improper modifications or maintenance work, no warranty shall be given for these and the resulting consequences. This does not apply to works performed by VogtConsulting.

11.6 If a malfunction or a defect is the consequence of the non-observation of operating or maintenance instructions, modifications of a programming or material nature, a replacement of parts or consumable materials that do not comply with the original specifications, all claims and rights of the ordering party due to defects shall lapse, unless the ordering party proves or it is obvious that the defect cannot be attributed thereto. This shall also apply if the defect is due to incorrect use, storage or foreign influence. Insignificant deviations from the contractually agreed stipulations shall not found any warranty claims.

11.7 The above sections conclusively specify the claims and rights due to defects in products and shall exclude other claims and rights of whatever nature, unless stipulated otherwise in section 12.11.8

11.8 If VogtConsulting only supplies individual subcomponents (e.g. modules) and these are processed by the ordering party, the warranty shall be restricted to the supplied subcomponents.

11.9 The warranty period terminates twelve (12) months starting after the transfer of risk or acceptance in accordance with section 5.7.

11.10 The aforementioned provisions in sections 11.1 – 11.9 shall also apply in case of work performance related to the delivered software.

## **12. LIABILITY**

12.1 VogtConsulting will be liable according to the legal provisions for damage claims resulting from intent or gross negligence or the breach of a fundamental contractual duty. In the case of unintentional breach of contract VogtConsulting's liability is limited to foreseeable and typical damages.

12.2 The liability for negligent infringement of life, bodily integrity or health is unaffected; the same applies for mandatory liability under the German Act on Product Liability, "Produkthaftungsgesetz". The liability for non-existence of a guaranteed specification remains unaffected as well.

12.3 The exclusion or limitation of VogtConsulting's liability also applies to the personal liability of VogtConsulting's employees, associates, workers, agents and auxiliary persons.

12.4 Damage claims made by the ordering party which result from VogtConsulting's ordinary negligence are barred after 12 months

after transfer of risk. This does not apply to damages that are based on the infringement of life, bodily integrity or health.

12.5 Unless otherwise foreseen above all liability is excluded.

## **13. TRANSFER AND ASSIGNMENT OF RIGHTS AND DUTIES**

The ordering party may only transfer or assign rights and/or duties arising out of the existing business relationship with VogtConsulting, especially the existing contracts, with VogtConsulting's prior written approval.

## **14. EXPORT**

14.1 Parties are obliged to respect the German, EU and US laws of exportation and re-exportation. The ordering party shall have sole responsibility for obtaining appropriate permits.

14.2 The ordering party obliges itself to provide all necessary information to VogtConsulting requested by the official authorities.

14.3 VogtConsulting shall not be liable for any delay caused by a delayed delivery of a necessary authorisation or license if VogtConsulting has applied for the respective authorisation or license at least three month before the foreseen date of delivery.

## **15. CONFIDENTIALITY**

The ordering party shall be obliged to treat all information to which it gains access in connection with the deliveries of VogtConsulting with confidentiality and to maintain secrecy concerning them for an unlimited period of time as if they were trade secrets. However, if and as far as mandatory regulations oblige the ordering party to divulge such information to third parties, the ordering party shall not be restricted by this obligation of confidentiality. In this case, the ordering party shall prior to the divulgation inform VogtConsulting about its duty to divulge and the information concerned by it.

## **16. MISCELLANEOUS**

16.1 Place of jurisdiction is VogtConsulting's registered place of business; VogtConsulting retains the right to bring an action against the ordering party at the competent court at the private or business seat of the ordering party.

16.2 The general terms and conditions and the contract shall be governed by the material laws of the Federal Republic of Germany; the UN Convention on the International Sale of Goods (CISG) does not apply.

16.3 Place of performance is the place of VogtConsulting's place of business unless the order confirmation provides otherwise.

16.4 In the event that any provision of these general terms and conditions is or will become null and void, or cannot be implemented on legal grounds, this shall not affect the legal validity of the other provisions of these general terms and conditions and the contract.

16.5 If there is any discrepancy between the German and the English version of VogtConsulting's General Terms and Conditions of Sale, the German version will prevail.