

General Terms and Conditions for Deliveries and Services of CENIT AG

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1 Scope of Application

- 1.1 In the absence of a separate agreement, all offers and orders concerning deliveries and services of CENIT AG (CENIT) shall be based on the present *General Terms and Conditions for Deliveries and Services* of CENIT. This applies even in the event that, in the context of ongoing business relations, no express reference is made to these *General Terms and Conditions for Deliveries and Services* at a later point in time. Terms and conditions of the customer that are contrary to or deviate from the present *General Terms and Conditions for Deliveries and Services* apply only if CENIT recognizes their applicability expressly in writing.
- 1.2 These *General Terms and Conditions for Deliveries and Services* apply only in relation to entrepreneurs within the meaning of § 14 BGB (German Civil Code) and only if the contract relates to the operation of the enterprise, as well as in relation to legal persons under public law and special funds under public law within the meaning of § 310 para.1 BGB.
- 1.3 To the extent referred to in the confirmation of the order by CENIT, further General Terms and Conditions may be applicable in addition to the present *General Terms and Conditions for Deliveries and Services*, especially the *General Terms and Conditions for Software Licenses* (for an unlimited period of time or for a definite period of time) and the *General Terms and Conditions for the Maintenance of Software* of CENIT. Within the limits of their respective scope of application, said General Terms and Conditions shall take precedence over the provisions of the present *General Terms and Conditions for Deliveries and Services*.
- 1.4 These General Terms and Conditions for Deliveries and Services apply to both the delivery of products as well as to work and services. Instead of the acceptance of delivered products, approval of work applies to work performances and receipt applies to services.
- 1.5 Rights that CENIT is entitled to according to legal regulations or pursuant to other agreements beyond the General Terms and Conditions for Deliveries and Services herein remain unaffected.

2 Offers, Conclusion of Contract

- 2.1 All offers submitted by CENIT are subject to confirmation. Orders shall not be deemed accepted until confirmed by CENIT in writing. Any order acknowledgment generated with the aid of an automatic system is deemed as a written acknowledgment despite the lack of a signature or a name reference. The confirmation of the order by CENIT is binding with regard to the content of the contract unless written objection is received by CENIT within 8 days from

the date of the confirmation by CENIT of the order. Oral collateral agreements must in all cases be confirmed by CENIT in writing to be effective.

- 2.2 CENIT reserves all rights without limitation in respect of all service and product descriptions, drawings, test programs, and other documentation supplied to the customer within the framework of the offer. This documentation may be made available to third parties only with the prior consent of CENIT. All product descriptions and technical data contained in such documents as well as in brochures, advertisements and other information, and advertising material are compiled with due care; they do not constitute a guarantee with respect to quality or a guarantee otherwise, however, unless expressly identified as such. CENIT reserves the right to carry out technically required changes even after the conclusion of the contract if such changes do not materially affect the agreed upon functions of the delivery item or object of the service.
- 2.3 Any silence on the part of CENIT with respect to offers, orders, requests or any other declarations from the customer shall only constitute consent if this was agreed upon in writing in advance.

3 Prices, Terms of Payment

- 3.1 Unless specified otherwise in the confirmation of the order by CENIT, the prices according to the price list of CENIT as amended from time to time shall apply. The indicated prices will be invoiced plus the applicable statutory VAT, in the case of deliveries of goods ex warehouse Stuttgart, including packing, plus freight and transport insurance. Travel costs and expenses will be billed separately.
- 3.2 Invoices of CENIT are payable immediately upon receipt without deduction. If the customer fails to effect payment upon receipt of a reminder that has been issued after the due date, the customer will be in delay with payment. Moreover the customer will be in delay with payment without the issue of a reminder 30 days after the due date and receipt of the invoice. In the event of a delay with payment CENIT shall be entitled to default interest in the legally applicable amount as from the beginning of the delay. Any further claims of CENIT shall remain unaffected.
- 3.3 Should the customer be in delay with payment, CENIT is entitled – without prejudice to any other statutory rights – to exercise without prior notice a right of retention over all outstanding deliveries and services or to request advance payment and/or provision of security with respect to all outstanding deliveries and services. The same shall apply in the event that, after accepting the order, CENIT obtains knowledge of facts that give rise to justified doubts about the customer's ability to pay.
- 3.4 The customer must only offset counterclaims against claims of CENIT that are undisputed or that have been legally established by way of declaratory judgment. The customer shall be entitled to exercise a right of retention only to the extent that its counterclaim is based on the same contractual relationship.

4 Passing of Risk, Delivery and Performance Dates

- 4.1 As regards deliveries, the risk passes to the customer as soon as the delivery item has left the CENIT warehouse; if the deliveries are collected by the customer, the risk passes with the customer's notification of the delivery item being ready for collection. Shipment shall always occur at the customer's cost and risk. In the absence of the customer's written instructions, CENIT will determine the manner of shipment. Transport insurance will be taken out only on the customer's express instructions and at its own expense. Should there be a delay in dispatch due to circumstances for which the customer is responsible, then the risk passes to the customer upon notification that the goods are ready for dispatch. In this case, CENIT is willing, however, to take out the insurance policies requested by the customer at the latter's cost. With respect to software, which the customer himself downloads off the Internet from the download area made available by CENIT, the risk passes to the customer at the time the download process is completed.
- 4.2 The provisions of no. 4.1 shall also apply if installation of the delivery item by CENIT has been agreed upon, unless installation is performed under a works agreement (Werkvertrag), in which case the risk shall not pass to the customer before acceptance of the work by the customer. If acceptance is delayed as a result of circumstances for which the customer is responsible, the risk passes to the customer upon the date of the notification of acceptance readiness.
- 4.3 Unless otherwise specifically agreed in writing, the indication of deadlines or delivery dates for the performance of deliveries and services is not binding. Delivery and service periods firmly agreed upon shall begin no earlier than upon receipt of CENIT's confirmation of the order, however not before the timely and proper fulfillment of the customer's cooperation duties, especially not before provision of the documentation, approvals, or releases to be furnished by the customer and the receipt of the agreed down-payment, if any. Delivery dates and deadlines shall be deemed to have been observed if, at their expiry, the delivery item has left the warehouse or CENIT has notified the customer delivery item is ready for collection and/or dispatch, or with respect to software that it is ready for download. The foregoing provision does not apply if, according to the contract, acceptance is required or CENIT is obligated to carry out the installation.
- 4.4 CENIT will endeavor to comply with agreed delivery and service deadlines. The customer's statutory right of rescission in the event of a delay with delivery or service shall remain unaffected but requires that CENIT be responsible for the delay. The customer shall be obligated to declare at CENIT's request within a reasonable period of time whether it will rescind the contract after the expiration of this period due to the delay with the delivery or service, or whether it will insist upon the delivery or service.
- 4.5 CENIT shall be released from the duty to perform in the event of operational breakdown (shortage of materials, strikes, illness of employees mentioned by name) for which CENIT is not responsible and other events of force majeure,

as well as late delivery of supplies to CENIT itself, for the period during which the impediment continues to exist. This shall also apply if these circumstances occur to suppliers of CENIT. To the extent that CENIT is released from the duty to perform, CENIT shall grant back advance performances, if any, made by the customer. Further reaching claims for damages of the customer shall be excluded.

4.6 Partial deliveries and services shall be permissible to a reasonable extent.

5 Copyrights, License Conditions for Software

5.1 The customer shall be obligated to observe such copyrights and other intellectual property rights as exist in respect of the delivery item or the work created in the context of performance, especially rights in respect of software.

5.2 In the event of a delivery of software of other manufacturers (Third-party Software), the customer shall be obligated to use the delivered software only in accordance with the respective valid license conditions of the manufacturer and to impose the same duties on the buyer in the event of a resale of the Third-party Software, provided that such resale is permissible.

5.3 In addition to the present *General Terms and Conditions for Deliveries and Services*, the use of CENIT standard software shall be subject to the *General Terms and Conditions for Software Licenses* of CENIT (for an unlimited period of time or for a definite period of time), as specified in the program certificate.

5.4 If software is individually developed on behalf of the customer or if individual adjustments are programmed (Individual Software), the customer will be granted a non-exclusive right of use with regard to the respective work result, unless individually agreed otherwise in writing. Besides, the use of such Individual Software shall be governed by the *General Terms and Conditions for Software Licenses* of CENIT AG for an unlimited period of time in addition to the present *General Terms and Conditions for Deliveries and Services*.

6 Retention of Title

6.1 As regards deliveries, CENIT retains title to the delivery item until all claims arising from the business relationship with the customer have been discharged in full, regardless of the cause in law. With respect to current accounts, the title retained is regarded as security for the offset balance of CENIT at any time given.

6.2 In the event of a conduct on the part of the customer that is contrary to the terms of the contract, especially in the event of a delay with or imminent cessation of payment, bill protest, unsatisfactory information about the financial solvency of or compulsory enforcement actions against the customer or if a motion to open insolvency proceedings has been filed against the customer, CENIT shall be entitled to take back and the customer shall be obligated to return the delivery item and/or assert its retention of title. These acts, as well as the attachment of the delivery item by CENIT, do not constitute

a rescission of the contract unless CENIT has expressly declared so in writing. After taking back the delivered goods, CENIT shall be entitled to sell or otherwise dispose of the same. The proceeds from such sale or other disposition, less reasonable costs thereof, shall be credited towards the customer's liabilities.

- 6.3 The customer shall be obligated to treat the delivery item with care and, at the request of CENIT, to sufficiently insure the same against damage for the period of time CENIT retains its title to the delivery item. The customer assigns to CENIT already now any claims it may have against the insurance company up to the amount of the underlying claims of CENIT. In the event of attachments or other interventions by third parties, the customer must immediately notify CENIT in writing so that CENIT can assert its title. To the extent that the third party is unwilling or not able to reimburse CENIT for the judicial and extra-judicial costs incurred by CENIT in connection with the enforcement of its property rights, the customer shall be liable for the loss incurred by CENIT.
- 6.4 The customer may dispose of the delivery items to which CENIT has title only in the proper course of business dealings on its usual terms; this applies, however, only as long as the customer is not in default with payment. Where software is concerned, it may only be resold in accordance with the provisions of CENIT's General Terms and Conditions for Software Licenses as amended (for a software license for an unlimited period of time or for a software license for a definite period of time). In the event of resale, the customer assigns to CENIT already in advance the claims arising against its purchasers or any third party in the amount of the respective amount of CENIT's invoice for the delivery items resold (incl. VAT) plus a security surcharge of 10%. CENIT hereby accepts the assignment.
- 6.5 The customer shall be entitled to collect the claims assigned to CENIT under no. 6.4 above until revoked by CENIT; such revocation shall be permitted at any time. CENIT will exercise this right of revocation for cause only. The customer shall, upon request, be obligated to notify the third-party debtors of the assignment to CENIT and to furnish CENIT with the information and documentation required for collection.
- 6.6 The customer may not transfer to third parties the delivery items to which CENIT has a title by way of security or pledge the same, may not assign the claims resulting from the resale to a third party or make an offset, nor agree a ban on assignment with its purchasers with respect to such claims. In the event of a global assignment by the customer, the claims assigned to CENIT are to be expressly exempted.
- 6.7 If the value of the security existing on behalf of CENIT exceeds CENIT's claims against the customer by more than 10%, CENIT shall be obligated to release the security exceeding this limit at the customer's request; the individual objects to be released will be chosen by CENIT.

6.8 For deliveries in other legal systems, in which these retention of title provisions do not have the same security effect as they do in the Federal Republic of Germany, the customer hereby grants CENIT a security right accordingly. If additional measures are required to do so, the customer will do everything in its power to grant CENIT a security right of this kind without undue delay. The customer will cooperate in all measures that are necessary and conducive to ensuring the effectiveness and enforceability of such security rights.

7 Liability for Defects as to the Quality of Delivered Goods or Performed Work

7.1 In the case of deliveries (including a software license for an unlimited period of time), the customer shall carefully examine the delivery item without undue delay upon receipt and submit a complaint to CENIT about defects, if any, promptly in writing, however no later than seven working days of delivery, or – in the case of hidden defects – within seven working days after the defects are discernible. Works must be accepted by the customer without undue delay upon performance; acceptance may not be refused due to insignificant defects.

7.2 In the event of defects of the delivered item that are objected to in a timely manner, or defects of performed works subject to reservation or such unknown to the customer upon acceptance, the customer primarily has a claim for subsequent fulfillment within a reasonable period set by the customer. The way of subsequent fulfillment (removal of defect or delivery of new goods/new performance of work) shall be decided by CENIT. The expenses necessary for this purpose, such as wage, material, transport, and travel costs, will be borne by CENIT only to the extent that such expenses are not increased due to the fact that the delivery item or the object of the works has subsequently been brought to a place other than the agreed place of delivery or performance, unless such relocation is in accordance with the agreed use of the respective delivery item or object of the respective works. If the notification of defects is unjustified, CENIT shall be entitled to claim reimbursement from the customer for any costs incurred by CENIT in connection therewith, unless the customer is not responsible for the unjustified notification of defects.

7.3 If CENIT refuses to render subsequent fulfillment in accordance with no.7.2 above, such subsequent fulfillment fails even after a second attempt, or demanding such subsequent fulfillment is deemed unreasonable for the customer, the customer is entitled, at its own choice and without prejudice to possible claims for damages or for reimbursement of expenses according to no. 10 below, to demand a decrease in the agreed remuneration for the goods delivered or work performed by CENIT (reduction), to remedy the defect itself and obtain reimbursement for the necessary expenses (applicable for performance of work only) or – if the violation of duty on the part of CENIT is not only insignificant – to rescind the contract.

7.4 The right of the customer to claim for defects shall not exist if the defect is due to the modification of the delivery item or work results by the customer without authorization of CENIT, in particular if such pertain to installing third-party

parts, or if such goods or work results were not used according to the relevant product description.

- 7.5 The period of limitation for warranty claims shall be one year after delivery (for delivery items) or as of the date of acceptance (for work performances). The reduced period of limitation also applies to claims based on wrongful acts relating to a defect of the delivery item or the work performance. The reduced period of limitation shall not apply to CENIT's unlimited liability for damage due to a warranty violation or as a result of an injury to life, limb or health, due to deliberate intent and gross negligence, for product defects or if CENIT has expressly assumed the procurement risk.

8 Supplemental Provisions for the Purchase, Programming and Leasing of Software

- 8.1 For this reason, the object of the agreement is software generally corresponding to the information contained in the applicable program description. Subject to a possible express guarantee given by CENIT, the information contained in the program description and in the program documentation shall not constitute guarantees as to quality within the meaning of §§ 443 and 639 BGB (Beschaffenheitsgarantie [quality guarantee]).
- 8.2 A software defect is deemed to exist if the software does not fulfill the functions set forth in the program description, if it furnishes incorrect results, interrupts its run in an uncontrolled manner, or otherwise fails to work according to its agreed functions, thus inhibiting or considerably impairing the use of the software.
- 8.3 CENIT does not warrant for defects of the software
- that have been caused by faulty application on the part of the customer and that could have been prevented in the event of careful consultation of the program documentation; this applies also in the event of non-existent or insufficient backup measures;
 - due to virus infestation or other external influences such as fire, accidents, power outage, etc. for which CENIT is not responsible;
 - that are due to the software being used in an operational environment other than the one approved by CENIT or are due to defects of the hardware, the operating system, or computer programs from other manufacturers, which the customer uses in connection with the software;
 - that are due to the software having been modified by the customer or a third party without authorization of CENIT.
- 8.4 Moreover, CENIT shall also not be liable for any components or modules from other manufacturers delivered free of charge (third-party software), in particular with respect to open source software, which may be used in connection with the licensed CENIT software.
- 8.5 In the event that defects within the meaning of no. 8.2 above occur, the customer shall be obligated to furnish CENIT with all information necessary for the error analysis and subsequent fulfillment, and to grant CENIT and/or the

persons commissioned by CENIT unrestricted access to the software and the system of the customer on which the software is installed. Notifications of defects must contain information on the type of defect, the application during which the defect has occurred, as well as the work that has been carried out for purposes of removing the defect. If CENIT carries out an error analysis at the customer's request and the analysis shows that there is no defect CENIT is obligated to remove, CENIT may invoice the customer for the corresponding expenditure on the basis of the hourly rates of CENIT as applicable from time to time.

- 8.6 Strict liability due to initial defects according to § 536a paragraph 1 BGB is excluded in the case of software leasing (i.e. the use of software for a definite period of time).

9 Liability for Defects of Title

- 9.1 CENIT warrants within the limits of the following provisions that the goods delivered or the works performed by CENIT are free of third-party rights that prevent the customer's use of such goods or works as agreed.
- 9.2 In the event that such rights are asserted by third parties, the customer shall inform CENIT hereof without undue delay rights and grant CENIT any and all powers and authorities necessary for purposes of defending the customer against the asserted rights of third parties.
- 9.3 If third party rights within the meaning of no. 9.1 exist, CENIT will be entitled, at its choice:
- to remove the third-party rights that affect the use of the goods delivered or works performed as agreed by taking suitable measures; or
 - to modify or replace the goods delivered or works performed such that they no longer infringe third-party rights, if and to the extent that such modification or replacement does not affect the warranted functions of the goods or works.
- 9.4 If CENIT fails also in the second attempt to take the measures according to no. 9.3 above within a reasonable period of time to be set by the customer, refuses to render subsequent fulfillment, or demanding such subsequent fulfillment is deemed unreasonable for the customer, the customer may at its choice, without prejudice to possible claims for damages or for reimbursement of expenses according to no. 10 below, demand a decrease in the agreed remuneration (reduction) or – if the restrictions originating from the third party rights are significant – rescind from the contract (with respect to a purchase, including a software license for an unlimited period of time, or work performances) or terminate the contract (with respect to rental payments, such as for a temporary license).
- 9.5 With regard to the limitation-period for claims based on defects of title (including with respect to a software license for an unlimited period of time) or work performances, no. 7.5 above shall apply correspondingly.

10 Liability for Damages or Reimbursement of Expenses

- 10.1 CENIT shall be liable within the limits of the statutory provisions if the customer asserts claims for damages or for reimbursement of expenses that are based on willful misconduct or gross negligence or on non-compliance with written guarantees (including the assumption of a procurement risk), as well as in the cases of culpable injury of life, body, or health.
- 10.2 In the case of slight negligence, CENIT is only liable for breach of material contractual obligations. Material contractual obligations are those arising from the nature of the agreement and which are of particular importance for the purpose of the agreement. In case of breach of material contractual obligations by slight negligence, the liability of CENIT is restricted to the foreseeable and typically occurring damage. Claims for damages and for reimbursement of expenses under this no. 10.2 shall become statute-barred after 12 months. No. 7.5 shall remain unaffected.
- 10.3 In the event of a loss of data, CENIT shall be liable at most for the expenses that would be necessary for reconstruction of the data if the customer had provided a proper data backup system.
- 10.4 Any further liability for damages or for reimbursement of expenses beyond the scope provided for in these *General Terms and Conditions for Deliveries and Services* shall be excluded, regardless of the legal nature of the asserted claim. The mandatory provisions under product liability law shall remain unaffected.
- 10.5 To the extent that liability on the part of CENIT is excluded or limited according to these *General Terms and Conditions for Deliveries and Services*, this shall likewise apply to the liability of the representatives of CENIT as well as the persons employed for the fulfillment of its obligations and its vicarious agents, especially staff members.

11 Protection of Confidential Information

- 11.1 The parties hereby agree to observe as strictly confidential all information from the other party made accessible in connection with the execution of the contract that is designated as confidential or which according to other circumstances is discernible as a business or trade secret for a period of five years commencing as of the date the other party obtains knowledge of said information, at the very latest commencing with the final delivery or the provision of the final performance, and, unless required to fulfill the purpose of this contract, to neither record said information nor to share it with a third party nor to utilize it otherwise.
- 11.2 No obligation to observe confidentiality shall apply if the receiving party had demonstrably already known the information prior to the start of the contractual relationship, if said information is public knowledge or is generally accessible, or if it becomes public knowledge or generally accessible at no fault of the receiving party. The receiving party bears the onus of proof.

11.3 The parties shall only allow their employees, representatives or other vicarious agents access to such information inasmuch as necessary for the purposes of the relevant contract and shall ensure by concluding suitable contractual agreements that they are also subject to the relevant obligations to secrecy.

12 Cross-Border Deliveries, Export Inspections

12.1 As concerns cross-border deliveries, the customer must submit all declarations necessary for export from Germany and import into the country of destination to the relevant authorities in due time and take any actions, including the procurement of documents necessary for customs clearance and to satisfy the requirements for any export inspections or other restriction in tradability. Upon request from CENIT, the customer must present an end-use certificate, which must meet the relevant applicable legal provisions.

12.2 Cross-border deliveries are subject to the condition precedent that there are no national or international regulations, export inspection provisions in particular as well as any embargoes or other sanctions, which would oppose the fulfillment thereof.

12.3 Any delays beyond the control of CENIT due to export inspections shall invalidate the agreed upon delivery dates.

13 Applicable Law, Place of Performance, and Place of Jurisdiction

13.1 The legal relationship between the customer and CENIT shall be governed exclusively by the laws of the Federal Republic of Germany, to the exclusion of the provision of Private International Law and the United Nations Convention on Contracts for the International Sale of Goods.

13.2 The exclusive place of performance for both parties to the contract shall be Stuttgart. The place of jurisdiction is Stuttgart. However, CENIT shall be entitled to sue the customer also at its general place of jurisdiction.

14 Final Provisions

14.1 Should a provision in CENIT's General Terms and Conditions for Deliveries and Services, the General Terms and Conditions for the Maintenance of Software or the General Terms and Conditions for Software Licenses be or become fully or partially ineffective or unenforceable or should they contain a loophole, this shall not affect the validity of the remaining provisions. Instead of the ineffective or unenforceable provision, the effective or enforceable provision shall be deemed to have been agreed upon that is closest in meaning to the purpose of the ineffective or unenforceable provision. In the event of a loophole, the provision shall be deemed to have been agreed upon that is equivalent to what would have been agreed upon according to the purpose of the relevant agreement had the contractual partners considered the matter to begin with.

14.2 The customer shall be notified in written form of any changes to CENIT's General Terms and Conditions for Deliveries and Services, the General Terms and Conditions for the Maintenance of Software or the General Terms and

Conditions for Software Licenses to take effect no later than two months prior to their proposed date of application. If the customer has agreed upon using an electronic communication channel with CENIT during the course of the business relationship, such changes may also be offered using such channel. The customer may either approve of the changes prior to the proposed date of application or reject them. The change shall be deemed as approved by the customer if the customer has not notified CENIT of its rejection prior to the proposed date of the application of said changes. CENIT shall make special mention of this deemed approval in the offer.