

## **General Standard Contract Terms and Conditions of PTV Planung Transport Verkehr AG**

### **§ 1 Subject Matter of the Agreement**

1. The contract terms and conditions of PTV AG shall apply exclusively to any all supplies and services (hereinafter referred to in summary as "Deliveries"). Any other terms and conditions shall not form the contents of the agreement even if PTV AG should perform the contract without contradicting the inclusion of third party terms and conditions of business.
2. Contract modifications and amendments shall always be made in writing. This provision shall also apply to any waiver of the requirement for written form.
3. Even if renewed reference is not made to such at the time of conclusion of further agreements, the General Standard Contract Terms and Conditions of PTV AG in their respectively valid version shall apply within the scope of commercial transactions. Merchants within the meaning of these terms and conditions of business shall be any parties to the agreement in accordance with Section 14 of the German Civil Code [BGB], in particular those engaged in commercial transactions or self-employment.
4. Representations in test programs, product and project descriptions shall not be warranties for the quality of the contract items. Any warranties shall require the express and written confirmation of PTV AG.
5. The client has determined whether the specification of the contractual items corresponds to the client's requirements and wishes.

### **§ 2 Copyright and Intellectual Property**

1. The software (program and manual), the data stock and other items shall be subject to copyright and protected in part by further industrial property rights. As a precaution the parties to the agreement shall hereby contractually subordinate the contract items to the rules of copyright. In the relationship of the parties to the agreement PTV AG shall be exclusively entitled to any and all of the contractual items. The client may use the contractual items only in accordance with the following stipulations and the provisions of individually agreed contracts.
2. The client shall be provided with nonexclusive authorization to employ the contractual items at the client's company for editing and processing the client's own data as described in the manuals provided in Section 2 Paragraphs 3 through 9.
3. The client may load the programs and data onto the main memories and the non-removable disks of the number and type of computers specified in the system document. The client may only make a copy of the programs and data stock that are to be provided with the copyright notice of the original data carrier for backup purposes. Copyright notices, trademarks, etc. may not be removed or changed.
4. All other types of use and possibilities of the contractual items, in particular rental in accordance with Section 17 Paragraph 3 of the German Copyright Law [UrHG] which go beyond the contractually permitted duplication, translation, editing, arrangement and any other reworking shall be prohibited. Paragraph 7 shall apply with regard to disclosure.
5. The license for the previous program version and data stock shall no longer be valid starting with productive use of the new program version or updated data stock.
6. The software may be decompiled within the scope of the regulations of German copyright law in the event that PTV AG fails to provide the information and/or documents required for establishing the interoperability of the software with other programs within an appropriate period of time in spite of written request by the client.
7. The client may pass on the contractual items to the client's branch offices or other third parties only with complete and final surrender of the client's own legal position. The client shall oblige the recipient in writing prior to such disclosure to comply with the contents of the agreement, including these General Standard Contract Terms and Conditions of PTV AG. The respective third party shall be obliged to provide PTV AG with a corresponding declaration. The client shall assure PTV AG in writing that the client is no longer in possession of the contractual items or copies of such.
8. The client shall have no claim to receive source programs.
9. The client shall only be provided with a limited right to use insofar as the contractual item involves a test version. Such limitations may involve the geographical scope of application, the time period and the contents.

### **§ 3 Client Cooperation**

1. The client shall provide PTV AG with support in performance of the agreement. The client shall provide for the hardware, operating system and basic software as well as make telecommunications facilities and the required number of staff available. The client shall provide PTV AG with any and all information required for performance of the agreement in a timely fashion. Insofar as is useful for performance of the respective services the client shall grant PTV AG access to the client's business premises during normal business hours.
2. The client shall make a backup prior to intervention in the EDP; PTV AG shall notify the client in time prior to such intervention.
3. The client shall take appropriate precautions if the contractual items fail to properly operate in part or as a whole by making a backup, failure diagnosis, constant inspection, etc.

### **§ 4 Deliveries and Delay**

1. Any information provided with regard to delivery times shall be nonbinding. Binding dates of delivery shall require written approval by PTV AG. Partial deliveries shall be permissible in the event that the client is able to make reasonable use of such.
2. Periods of delivery shall be extended by the period in which PTV AG is prevented, without itself being responsible, from providing the supplies or services through labor disputes, force majeure, default on the part of suppliers, staff illness or any other unforeseeable events as well as an appropriate period for restarting after the end of the disturbance. The same shall apply in the event that PTV AG is forced to wait for information or cooperation on the part of the client.
3. Any reminders or periods prescribed by the client shall be made in writing in accordance with Section 126 of the German Civil Code [BGB] in order to become effective. In the event that PTV AG delays a delivery, then the client shall have the right to alter the legal relationship – except in the cases of Section 323 Paragraph 2 of the German Civil Code [BGB] – only after a written respite, which (except in particularly urgent cases) must amount to at least 12 working days, has elapsed without success. Section 10 shall apply to payment of damages.

### **§ 5 Payment, Setoff and Assignment**

1. Payments shall be due without deduction within the agreed periods for payment.
2. The client shall only be entitled to set-off claims that are undisputed or recognized by declaratory judgment. The client may not (except in the cases regulated in Section 354a of the German Commercial Code [HGB]) assign claims against PTV AG to third parties. A right of retention may only be based on claims arising out of the present agreement.

### **§ 6 Reservation of Revocation**

1. Granting rights to use of the contractual items shall be subject to the condition precedent of complete payment of the remuneration owed for respective delivery. However, PTV AG shall not take action against any use of the contractual items in accordance with the agreement up to one month following transfer for use of the contractual items (at least until four weeks have elapsed as of receipt of the invoice).
2. The client shall be obliged to immediately notify PTV AG in writing if third parties aim to access the software or data stock of PTV AG. The client shall draw the attention of third parties to this conditional and limited right to use.
3. In addition, PTV AG may revoke any rights to use if the client is guilty of gross noncompliance of the contractual restrictions on use and fails to comply with Section 3, or violates the obligation to maintain secrecy of Section 12 and does not immediately refrain from such behavior even after a written warning with the threat of revocation.
4. In the event of revocation of the right to use the client shall be obliged to hand over any and all delivery items and copies and delete any stored programs and data stock. The client shall ensure PTV AG of such handover and deletion in writing.

### **§ 7 Acceptance of Delivery**

1. After delivery of the contractual items PTV AG may require a written declaration of the contents from the client that the delivery is correct, complete and free of defects. Such declaration shall be provided within two weeks following delivery and may only be refused if the software or the data stock has a defect that is detrimental or substantially detrimental to operation. Acceptance shall be considered as having been effected if the client is in possession of the contractual items for more than four weeks since delivery reporting defects that would restrict acceptance or if the contractual items are in productive use without complaint or if the client pays in full without reservation.
2. If PTV AG installs the programs at the client's request, then PTV AG shall notify the client of readiness for operation. The regulations of Section 7.1 shall apply accordingly following the declaration of readiness for operation.

### **§ 8 Inspection and Reporting Obligation**

1. Merchants shall be obliged to immediately and thoroughly inspect deliveries and immediately report material defects in writing. Any material defects shall be concretely described to the extent that is reasonable.
2. Other clients shall report obvious material defects in writing within a period of three weeks following delivery. Any material defects shall be concretely described to the extent that is reasonable.
3. Delayed reporting shall relieve PTV AG from any warranty obligations for the defect. PTV AG shall invoice any expenditure to the extent that PTV AG takes action nevertheless.

### **§ 9 Defects**

- A. The following regulations shall apply to consumers:
1. PTV AG shall warrant that the program functions are executable without error in accordance to the program descriptions and contract documents. The contracting parties shall be in agreement that in accordance with the state of the art software errors may not be completely ruled out even in the case of careful manufacturing. Thus what is important is the practical suitability of the contractual items.
  2. PTV AG shall not be liable for material defects if the contractual items have been modified and the client is unable to prove that the defect is independent of this circumstance.
  3. Legal regulations shall apply in all other respects.

B. The following rules shall apply to merchants in the case of material defects:

1. Section 9 Part A Paragraphs 1 and 2 shall apply.
2. When it comes to its claim to subsequent performance PTV AG shall have the option of choosing between reworking and new delivery. Reworking shall be effected by means of error elimination, provision of a new program or data stock or insofar as PTV AG indicates possibilities which accommodate a new program or data stock if this results in acceptable expenditure for adjustment or conversion.
3. The client shall provide PTV AG with sufficient time and opportunity to carry out any required reworking and replacements which may appear necessary to PTV AG.
4. The client shall provide PTV AG with support during elimination of the defect (provision of error descriptions and test data, information from staff, access to the installation, etc.). The client shall take appropriate precautions in the event that the software does not work properly either in part or as a whole, in particular by making a backup.
5. Within the scope of legal regulations the client shall have the right to cancellation of the agreement if PTV AG – taking statutory exceptions into consideration – allows a term prescribed in writing for reworking or replacement because of a material defect to elapse without success. However, the client shall only be entitled to abatement of the contractual relationship to the extent that only an insignificant defect is involved. The right to abatement of the contractual relationship shall be excluded in all other respects. PTV AG shall not warrant in particular in the case of  
- faulty, improper commissioning, use and handling by the client  
- improper maintenance  
- natural wear.
6. PTV AG shall provide the client with support when it comes to error detection and elimination even if the defect is not based on PTV AG supplies and services. PTV AG shall invoice the respective expenditure should it turn out that the supplies and services of PTV AG are not defective.
7. PTV AG shall provide no warranty as long as the client makes use of the contractual items in contravention of Section 2.

C. The following rules shall apply to merchants in the case of defective titles:

1. Section 8 shall apply accordingly to defective titles unless a deviating regulation is provided in the following.
2. PTV AG shall ensure that the stipulated use of the contractual items does not violate the rights of third parties. PTV AG shall render subsequent performance in the case of defective titles in that PTV AG provides the client with a legally sound possibility of use at the discretion of PTV AG through modification of the contractual items while preserving the contractually owed functionality, exchange for equivalent contractual items, through aversion or satisfaction of the claims of third parties or in any other suitable manner.
3. The client shall immediately inform PTV AG in writing in the event that third parties assert claims against the client which are based on the violation of an industrial property right. PTV AG may defend the client against claims asserted by third parties at its own expense; the client shall inform PTV AG to a reasonable extent and refrain from doing anything which would impair the defense. In this case PTV AG shall indemnify the client against the required costs incurred by the client in order to avert the claims to the extent that such claims are not based on behavior contrary to the terms of the agreement by the client.

#### § 10 Payment of Damages

1. PTV AG shall provide compensation or substitution of futile expenditures to merchants, regardless of the legal reasons, only to the following extent:  
- PTV AG shall be liable without limitation in the case of intent or absence of a warranted quality,  
- in the case of gross negligence and in the case of negligent violation of a substantial obligation required for achieving the purpose of the agreement (cardinal obligation) PTV AG shall be liable in the amount of the typical and foreseeable damage at the time of conclusion of the contract; however, in the case of violation of a cardinal obligation which is not based on gross negligence liability shall be limited to the remuneration amount owed as a result of the agreement.
2. PTV AG shall be liable independently of Paragraph 1 insofar as payment is made by the insurance of PTV AG. A corresponding additional insurance may be agreed for additional remuneration at the request of the client.
3. PTV AG may raise the objection that the client is jointly responsible for the damage. PTV AG shall only be responsible for the replacement of data if the client has ensured that such data are reproducible from available data stock in machine-readable form at a justifiable expense.
4. PTV AG shall be liable to consumers in accordance with statutory regulations.
5. Only legal regulations shall apply in the case of injury to life, limb and health as well as claims based on product liability law.

#### § 11 Period of Limitation

1. Statutory regulations on limitation shall apply to claims asserted by consumers.
2. The following shall apply in the case of merchants:  
- Statutory regulations shall apply in the cases specified in Section 10 Paragraphs 1a and Paragraph 5.  
In all other respects the period of limitation shall amount to:  
- one year as of delivery of the contractual items for claims to refund of the purchase price due to cancellation or abatement; however, for properly reported defects not less than three months as of delivery of the effective declaration of cancellation or abatement;  
- one year for other claims based on material defects;  
- two years for claims based on defective titles if the defective title does not here in a real right of a third party on the basis of which the third party is able to demand the handover or disuse of the contractual items;  
- two years for claims to payment of damages or replacement of futile expenditures as of the point in time in which the client becomes aware must have become aware of the circumstances on which the claim is based without being culpable of gross negligence.
3. The period of limitation shall come into force with expiration of the maximum periods specified in Section 199 of the German Civil Code [BGB] at the latest.

#### § 12 Secrecy and Safekeeping

1. The parties to the agreement shall be obliged to maintain secrecy with regard to any and all information, documents and data about which they may have gained knowledge of during initiation and performance of the agreement and designated as confidential or which contain business or trade secrets or which are legally protected and to neither make such available to third parties nor employ such for purposes other than contractually agreed.
2. The parties to the agreement shall provide these items only to staff to whose tasks include being aware of such information. They shall instruct those staff who have official access to the contractual items in writing with regard to this obligation to maintain secrecy.
3. The client shall safeguard and secure contractual items in such a way that any abuse by third parties is excluded.

#### § 13 Final Provisions

1. The place jurisdiction for any and all disputes arising out of and in connection with the present agreement shall be Karlsruhe if the client is a merchant, legal entity under public law or special funds under public law or if the client does not have a general place of jurisdiction in Germany.
2. The contracting parties shall agree to appeal to the arbitration board of the Deutsche Gesellschaft für Recht und Informatik e. V. ([www.dgri.de](http://www.dgri.de)) in order to settle any dispute in part or as a whole, provisionally or finally in accordance with their rules of arbitration in the respectively valid version at the time of institution of arbitration proceedings for any differences in opinion arising out of or in connection with the contracts, contract extensions or supplements concluded between them which they are unable to settle among themselves. The period of limitation for any claims arising out of the grounds for arbitration shall be suspended as of the conciliation request until the end of the conciliation procedure. Section 203 of the German Civil Code [BGB] shall apply accordingly. If no conciliation is reached or if arbitration fails, then the parties shall have recourse to a court of general jurisdiction.
3. The writing requirements of the present agreement shall be prerequisites for the effectiveness of same. Written form may also be observed through text form (e.g. e-mail and fax).
4. The law prevailing in the Federal Republic of Germany shall apply to the exclusion of the regulations of the United Nations (Vienna) Convention on Contracts for the International Sale of Goods (CISG).

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PTV Planung Transport Verkehr AG, Karlsruhe, Germany