

## General Terms and Conditions for the TecCom Start-up and Service Contract

### 1 Delivery, rights to the software products

- 1.1 TecCom shall supply the customer with the software products in object code form. The customer shall be obliged to employ the version that is current when the contract is concluded, or a subsequent version.
- 1.2 The customer shall himself be entitled to make the specified number of copies of the software products, and to use the same, or to pass the software products on to an end user (user of the software). When the customer itself uses the software, the customer is the end user. In the case of duplication, any alphanumeric identifiers, trademarks, and copyright marks shall be adopted in unchanged form. Where the software products are passed on, all rights and obligations included in these provisions shall also be transferred.
- 1.3 Installation of the software products shall be the responsibility of the end user. Upon request by the customer, TecCom will provide support for installation and implementation at a fee specified by the applicable TecCom price list.
- 1.4 The end user shall enjoy the non-exclusive right to use the software products in unmodified form. The end user shall not reverse-engineer or translate the software products, or extract program sections.
- 1.5 The end user shall be entitled to create one backup copy of each software product. In doing so, any alphanumeric identifiers, trademarks, and copyright marks shall also be duplicated. Documentation may only be duplicated if required for the user's own purposes.

### 2 Services

- 2.1 TecCom shall be obliged to render the agreed services for the customer.
- 2.2 TecCom shall be entitled to adapt the services in line with the current state of the art.
- 2.3 The customer shall ensure the timely provision, at its own expense, of any hardware and software requirements, network addresses, and network connections needed by TecCom to render the agreed services.
- 2.4 The TecCom services and TecCom business processes shall be provided on a 7-days-a-week, 24-hours-a-day basis, with an average minimum availability factor of 98% per calendar month
- 2.5 TecCom commits oneself to keep the data another 21 days when received.
- 2.6 TecCom shall be entitled to subcontract, but shall remain responsible for provision of the agreed services.

### 3 Cooperation between the contract partners

- 3.1 Each contract partner shall nominate for the benefit of his counterpart a technically competent contact able to provide the information necessary for performance of this contract, and to take, or delegate the requisite decisions.
- 3.2 TecCom employees shall not enter into an employment relationship with the customer, even when working at the customer's premises. The customer shall convey requests in relation to the

services to be rendered exclusively to the employee nominated by TecCom, and shall not issue instructions to other TecCom employees.

### 4 Warranty

- 4.1 The warranty period for the software products shall be 6 months, and commences upon activation of the customer, but 3 months after delivery to the customer at the latest.
- 4.2 In the event of faulty data media, TecCom shall fulfill the terms of the warranty by supplying a replacement.
- 4.3 The maintenance covers at any one time the latest version as well as the previous version for the first six month after its release.
- 4.4 The warranty on the software products shall embrace error diagnostics and error rectification.

The rectification of errors, that is non-compliance with the functions described in the user documentation, shall be effected by the supplying of a new revision level of the software. It shall be a condition that the error can be reproduced, and that the error corrections provided by TecCom have been taken into account. TecCom shall receive from the end user all documentation and information required for error rectification purposes.

Until an error correction is available, TecCom shall provide an interim solution as a workaround for the error, provided that this is possible with reasonable outlay, and that the end user is unable to process urgent tasks because of the error.

For a software product that the end user has expanded via interfaces provided for this purpose according to the corresponding interface descriptions, TecCom shall provide guarantee up to such interfaces. Furthermore, TecCom shall not guarantee a software product modified by the end user, unless the end user should demonstrate, by means of a test run of the unmodified software product, that the modifications have no causal relationship with the errors occurring.

- 4.5 If a software product error is neither rectified nor circumvented in a manner deemed appropriate by the end user within a reasonable period of time, the end user shall retain the right to cancel the contract or reduce the license payment.

### 5 Prices, payment conditions, duration of contract

- 5.1 The one-off payment for connecting the business partners shall become due after dispatch of the invoice to the customer.
- 5.2 Prices to be paid on an ongoing basis shall be invoiced monthly retroactive, commencing from the start of use. The entire monthly sum shall be invoiced for the first partial month.
- 5.3 Network connection costs are not included in the prices.
- 5.4 In addition to the prices cited above, TecCom shall bill the customer separately for consulting, software engineering, and other support services desired by the end user at the currently valid list prices, provided no other agreements with the contractual partner exist.
- 5.5 The contract shall be of unspecified duration, and can be cancelled in writing with 3 months notice from the end of a calendar quarter, either in its entirety or in respect of individual services.

### 6 Liability of TecCom

- 6.1 If TecCom should get into arrears with delivery of the software products ordered, or with provision of the other agreed services, and if the end user notifies TecCom that it has suffered damages as a consequence, it shall be entitled to claim flat-rate damages. TecCom shall not be responsible for delays resulting, in particular, from force majeure, e.g. mobilization, war, civil unrest, or other similar events such as strikes or lockouts. The flat-rate damages shall amount to 0.5% of the price for the product or service supplied late, for each complete week of the delay. If the end user cannot put a portion of the goods or services provided into operation at the right time and to the agreed extent, the flat-rate damages shall be reduced commensurately
- 6.2 Claims for damages on the part of the end user that go beyond the limits specified in 6.1, in all cases of delayed delivery or provision of services, are excluded, even after expiration of a deadline imposed on TecCom with the threat of rejection, unless there should be compulsory liability as a result of intention or gross negligence. The right of the end user to withdraw from the contract and the provisions contained in 6.3 through 6.5 shall remain unaffected.
- 6.3 TecCom shall be subject to unlimited liability in respect of personal damage for which it is responsible, and shall refund the cost of restoring the goods concerned, up to an amount of EUR 50,000 per instance of damage. In the case of damage to data media, the liability for damages shall not include the outlay for the restoration of lost data and information.
- 6.4 Warranty and damage claims on the part of the end user that go beyond those explicitly cited in this contract, whatever their legal justification, and in particular claims in respect of operational interruptions, lost profit, loss of information and data or consequential damages are excluded, unless compulsory liability applies according to product liability law, or in cases of intent or gross negligence, absence of warranted features or where important contractual duties have been breached. Claims for damages in respect of breach of contractual duty shall, however, be limited to foreseeable damage typical of such contracts, provided no intention or gross negligence is involved.
- 6.5 The above rules are not linked to any change in the burden of proof to the detriment of the end user.

## **7 TecCom liability in respect of the infringement of the proprietary right of third parties**

- 7.1 If a third party submits claims against the end user in respect of the infringement of industrial property rights or copyright (hereinafter referred to as: proprietary rights) by the software products supplied by TecCom, and if use of the software products is hereby adversely affected or prevented, TecCom shall, as it deems fit and at its own expense, either modify or replace the software products in such a way that the proprietary rights are no longer infringed, while still basically corresponding to the agreed specifications, indemnify the end user against license fees for use

of the software products vis-à-vis the third party, or take back the software products, while reimbursing the end user for the payment made in respect of the license to use the said products, minus an amount to cover the period during which the software product was in use.

- 7.2 Conditions for TecCom liability as per 7.1 are that the end user informs TecCom of claims made by third parties in respect of the infringement of proprietary rights immediately and in writing, does not recognize the alleged infringement, and engages in any action, including any kind of out-of-court settlement, only with the approval of TecCom. If the end user discontinues use of the software product in order to minimize damages or for other compelling reasons, it shall be obliged to notify the third party that this cessation of use is not connected with any recognition of the infringement of proprietary rights.
- 7.3 Insofar as the end user itself is responsible for the infringement of proprietary rights, claims against TecCom according to 7.1 shall be excluded. The same shall apply if the infringement of proprietary rights stems from special parameters imposed by the end user, from its use by the end user in an unforeseen manner, or results from modifications to the software product carried out by the end user, or its deployment with software products not supplied with TecCom.
- 7.4 Further claims on the part of the end user resulting from the infringement of the proprietary rights of third parties are excluded. The right of the end user to withdraw from the contract and the provisions of 6.3 through 6.5 remain unaffected, however.

## **8 Confidentiality**

The contact partner shall treat all documentation, information and data received in order to carry out the agreement, and designated as confidential, only for the purposes of carrying out this agreement. For as long as and insofar as they are not in the public domain, the contract partners shall treat the specified documentation and information as confidential vis-à-vis any third party not involved in the execution of the agreement. These obligations shall continue to apply even after termination of the agreement.

By signing this contract, customers give TecCom permission to refer to them as TecCom customers.

## **9 Export licenses, transfer of contractual rights and obligations, subsidiary agreements, place of jurisdiction**

- 9.1 The export of software products and documentation may – for example because of their nature or intended purpose – be subject to an obligation to obtain approval.
- 9.2 TecCom shall be entitled to transfer claims, rights and obligations from this contract in their entirety to a third party. If this third party is not a company affiliated with TecCom within the meaning of § 15 of the Aktiengesetz (Federal German Corporation Law), the transfer shall be ineffective, if the end user submits a written objection within 4 weeks of receiving an appropriate notification. TecCom shall apprise the end user of this fact in the notification.
- 9.3 Subsidiary agreements shall be in written form.
- 9.4 The place of jurisdiction is Munich, provided the customer is a registered trader.