

# General Terms and Conditions of PSI Transcom GmbH

## 1. Validity, conclusion of contract

- 1.1 These terms and conditions shall apply to any contracts made and entered into by and between PSI Transcom GmbH and the other party to the contract (hereinafter called customer) for services or deliveries performed or effected by PSI Transcom GmbH. Such terms and conditions shall apply to current and future business relations for the delivery and production of hardware and software, including related consultancy services as well as the related negotiations prior to the conclusion of contracts.
- 1.2 These terms and conditions shall be the only terms and conditions which apply to the relations between PSI Transcom GmbH and the customer. PSI Transcom GmbH does not accept any deviating or additional terms and conditions of the customer.
- 1.3 Any offers and bids, including any specifications and cost calculations which may be contained therein, shall be deemed to be without engagement. A binding offer shall be accepted within a maximum period of three months after submission of the offer.

## 2. Performance, delivery and acceptance

- 2.1 The scope and details of services and deliveries and the special characteristics thereof, as well as any guarantees, shall be subject to separate written agreement for each and every concrete contract.
- 2.2 PSI Transcom GmbH shall not be obliged to perform in person. PSI Transcom GmbH shall be at liberty to commission free-lance staff as well as third parties not employed with PSI Transcom GmbH.
- 2.3 PSI Transcom GmbH shall perform and effect its service and delivery on the basis of the state of the art. The parties hereto acknowledge the fact that it is not possible to develop software without any bugs or defects.
- 2.4 Partial delivery shall be acceptable to a reasonable extent, with PSI Transcom GmbH being at liberty to issue separate invoices for each and every partial delivery.
- 2.5 Deviations of the goods or other services from the original agreement shall be permitted on condition that the agreed features are performed or exceeded.
- 2.6 Any deadlines, dates and time specifications shall not be valid unless made in writing. Adherence to binding dates and deadlines on the part of PSI Transcom GmbH shall be contingent upon the timely and correct fulfillment of the customer's obligations.
- 2.7 The customer shall be obliged to examine and approve any performance specifications or other specifications of PSI Transcom GmbH

which are prepared within the scope of the performance of the contract. In the event that the customer fails within this examination period to raise any objections against the performance specifications or other specifications of PSI Transcom GmbH, or in the event that the customer fails to explicitly maintain any previous objections against such documents, such documents shall be deemed to be accepted. PSI Transcom GmbH draws the customer's attention to this circumstance and to the consequences of failure to raise objections on time.

- 2.8 PSI Transcom GmbH shall appoint a project manager for orders (projects) of a scope significantly beyond the delivery of hardware and/or software. In such a case, the customer shall appoint a competent contact partner who shall be able and authorized to personally supply any necessary information and to personally make decisions. The contact partner shall be authorized to express and receive statements of intent on behalf of the customer.
- 2.9 In as far as PSI Transcom GmbH manufactures or modifies to a significant extent any moveable objects and/or properties, the parties shall perform acceptance thereof. Any such case and cases where acceptance is required by law shall be subject to the following:
  - 2.9.1 As soon as PSI Transcom GmbH is ready to perform, it shall notify the customer in writing of its readiness for acceptance.
  - 2.9.2 Thereafter, the customer shall examine the services or deliveries with regard to their contractual properties. The examination period shall commence when the customer receives notification of readiness for acceptance and shall expire two weeks thereafter. The customer shall perform the examination in such a manner that even those parts of the service or delivery are subjected to comprehensive examination and testing which are used at irregular intervals or at regular intervals, such as once a year. The customer shall document such examination.
  - 2.9.3 In the event that minor defects occur, the customer shall not discontinue the examination. Instead, the examination shall be limited only to the extent necessitated by such defects.
- 2.10 The service or delivery shall be deemed to be accepted on successful expiration of the examination period. A statement by the customer shall not be required for these purposes. PSI Transcom GmbH shall notify the customer of this circumstance in its notification of readiness for acceptance. The customer can only prevent automatic acceptance by way of a written statement

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indicating that acceptance is prevented. The customer shall at PSI Transcom GmbH's request issue a written confirmation of acceptance.

- 2.11 In the event that the customer uses the service or delivery in productive operations to an extent necessary beyond the purpose of examination, the service or delivery shall be deemed to be accepted.
- 2.12 In the event that parts of the service or delivery can be isolated, acceptance of the partial service or delivery shall be carried out. The last partial acceptance in such cases shall also constitute final acceptance. Otherwise these terms and conditions shall apply to acceptance operations.
- 2.13 In the event that the customer is entitled to demand from PSI Transcom GmbH delivery / additional delivery on the one hand and to cancel the contract on the other and to demand damages in lieu of the service/delivery and/or compensation for costs incurred, PSI Transcom GmbH shall be entitled to demand that the customer exercise his rights within a reasonable time. In the event that the customer fails to exercise his rights on time, PSI Transcom GmbH shall no longer be obliged to effect delivery or to re-perform.

### 3. Customer's cooperation

- 3.1 The customer shall be generally obliged to cooperate with PSI Transcom GmbH in the following ways:
  - Submission of required information and documents concerning the customer's or a final customer's, if any, organization and system environment
  - Provision of required and necessary test data
  - Examination and immediate acceptance of performance specifications and other documents submitted by PSI Transcom GmbH
  - Cooperation during technical tests and trials
  - Creation of the required and necessary installation conditions at the customer's or final customer's premises
  - Immediate and complete written error and defect reports during each phase of performance
  - Written notification of defects to PSI Transcom GmbH, including submission of any data and documents necessary for eliminating defects.
- 3.2 The customer undertakes to the extent to which he is capable thereof to examine any plans, specifications, technical information and

guarantees of PSI Transcom GmbH with regard to their correctness and completeness.

- 3.3 The customer shall be responsible for obtaining approvals from public authorities or government institutions. PSI Transcom GmbH shall not provide such approvals unless against payment and at the customer's express, written request.

### 4. Payment

- 4.1 Unless anything to the contrary is agreed to, the customer shall pay for time and material on the basis of the prices stated in PSI Transcom GmbH's latest applicable price list.
- 4.2 Any prices agreed to shall be deemed to be net prices. Any cash discounts, allowances or other deductions shall be subject to separate written agreement.
- 4.3 Work billed by time shall be documented by PSI Transcom GmbH in the form of time records which shall be submitted to the customer at regular intervals. In the event that the customer refuses to accept a time record, PSI Transcom GmbH shall be entitled to demand that the correctness of such time record be jointly examined within ten working days after receipt. In the event that the customer fails to raise any objection during examination or within a maximum period of five working days after examination, or in the event that the customer fails to expressly maintain his objection, the time record shall be deemed to be accepted. PSI Transcom GmbH draws the customer's attention to this circumstance and to the consequences of failure to raise objections on time.
- 4.4 The agreed hourly rates shall be based on eight hours during normal working hours. Any further hour (incomplete hours being counted as full hours) shall be additionally paid at a rate of 1/8<sup>th</sup> of the daily rate, plus surcharges agreed to in each case.
- 4.5 PSI Transcom GmbH shall bill any change or addition requests brought forward by the customer and accepted by PSI Transcom GmbH on the basis of the applicable price list in effect at such time.
- 4.6 PSI Transcom GmbH shall be entitled to claim reimbursement of expenses in addition to payments due. Travel time shall be deemed to be working time.
- 4.7 In addition to the agreed payment, statutory value-added tax and/or further customs duties and levies payable in Germany and abroad shall be paid in as far as PSI Transcom GmbH is liable therefor to any third party.

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### 5. Maturity, set-off, retention rights

5.1 Payment shall be due in accordance with the progress of the work. In the event that a fixed-price payment is agreed to, payments shall become due as follows:

- 30% at the time of signing the contract
- 30% after the expiration of one third of the time until the agreed acceptance, delivery or performance date
- 30% after the expiration of two thirds of the time until the agreed acceptance, delivery or performance date
- 10% on acceptance, delivery or performance.
- Payments are due within 14 days after presentation of an invoice.

5.2 Payments for work billed by time shall be usually charged once a month. Invoices shall be due for payment without any deduction on receipt of the invoice, and shall be payable within 14 days.

5.3 The customer shall not have any retention right or right to refuse performance unless with regard to counter-claims which are either not disputed or which have become non-appealable. The customer waives any right of setoff against counter-claims unless with regard to claims which are either not disputed or which have become non-appealable.

### 6. Changes in service or delivery

6.1 The risk for a necessary change shall be borne by PSI Transcom GmbH if - for reasons for which PSI Transcom GmbH is responsible or which can be assigned to PSI Transcom GmbH's sphere - performance of a service is not possible or involves significant additional costs compared to what was contractually agreed. In such cases, PSI Transcom GmbH shall be entitled to change or adjust the service or delivery at its expense in as far as such change or adjustment is reasonable for the customer, taking PSI Transcom GmbH's interests into consideration.

6.2 In the event that a necessary change does not belong to PSI Transcom GmbH's sphere of risk, PSI Transcom GmbH shall be entitled to demand a modification of or amendment to the contract.

### 7. Rights of use / license

7.1 On complete payment of the remuneration to be paid under the applicable contract, the customer shall obtain an irrevocable, non-exclusive, unlimited and non-transferable right and license to use the software produced and/or supplied by PSI Transcom GmbH.

7.2 The customer's rights are limited to the right to install and use the software produced and/or supplied on the specified system platform and/or with computers of the specified performance class and on the agreed number of workstations. Any change in installation and/or use in this respect shall be subject to PSI Transcom GmbH's consent.

7.3 The granting of rights related to software source codes shall not be included in the granting of rights and shall be subject to separate agreement.

7.4 The customer shall not be entitled to edit or change the software produced and/or supplied and shall, in particular, not be entitled to reverse engineering or decompilation of such software unless this is necessary to ensure interoperability. In such cases, however, the provisions related to the customer's rights in the case of defects shall be taken into consideration.

7.5 Software licenses from third parties which PSI Transcom GmbH grants to the customer shall be additionally and with restricting effect subject to the terms and conditions of the respective third-party licensor.

7.6 In the event that any third party raises any claims against the customer based on a violation of industrial property rights related to the software produced and/or supplied, the customer shall immediately notify PSI Transcom GmbH thereof in writing in order to enable PSI Transcom GmbH to defend its rights against such claims. The customer shall in such a case provide PSI Transcom GmbH with any information necessary and suitable to enable PSI Transcom GmbH to defend its rights and to settle the case by way of an out-of-court settlement.

7.7 In as far as PSI Transcom GmbH agrees to or tolerates the use of software produced and/or supplied pending complete payment of the service or delivery, such agreement or acceptance can be revoked at any time. PSI Transcom GmbH shall, in particular, be entitled to revoke such permission or acceptance if the customer is in default with his payment(s) without such revocation having the effect of PSI Transcom GmbH canceling the contract.

### 8. Reservation of ownership

8.1 Ownership of the goods manufactured or delivered by PSI Transcom GmbH shall be transferred to the customer as soon as the customer has fulfilled the totality of the main and ancillary claims, including future or

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conditional claims existing under the business relation with PSI Transcom GmbH.

- 8.2 The customer shall not be entitled to pledge to third parties or to give as collateral any goods subject to reservation of ownership.
- 8.3 The customer shall not resell goods subject to reservation of ownership unless within the scope of his regular and ordinary business. The customer shall assign as collateral to PSI Transcom GmbH any receivables, including any ancillary rights, resulting from the re-sale or from any other legal reason; such assignment shall also include any cases in which the goods are processed or installed. In the case of processing or installation, such assignment shall apply to that part of the value which the goods subject to reservation of ownership have in relation to the entire object.
- 8.4 At the customer's request, PSI Transcom GmbH shall release collateral to the extent to which the value thereof exceeds the receivables for which it was created by more than 20%.

### 9. Customer's rights related to defects, notification of defects

Defects of PSI Transcom GmbH's services or deliveries shall be subject to the following provisions.

- 9.1 Claims based on defects shall become statute-barred after two years for the production of software and after one year for all other services unless PSI Transcom GmbH has maliciously failed to disclose the respective defect.
- 9.2 PSI Transcom GmbH shall at first always have the right as it may elect to repair the defect or to deliver and/or manufacture a replacement product. PSI Transcom GmbH's rights to refuse re-performance in the cases contemplated by law shall not be affected by the foregoing.
- 9.3 In the event that PSI Transcom GmbH's re-performance attempt fails, the customer shall have the rights contemplated by law after the fruitless expiration of an additional reasonable period set by the customer unless such additional period is not required in cases contemplated by law.
- 9.4 Re-performance shall generally not be deemed to have failed unless and until two re-performance attempts to eliminate a defect have failed within a reasonable period of time.
- 9.5 In the event that the customer has changed the services or deliveries by PSI Transcom GmbH, an obligation to re-perform cannot arise unless the customer has very precisely documented the type and extent of such change, unless the customer proves that the problem found is neither directly nor indirectly due to his change, and unless the customer agrees to pay any additional costs incurred by PSI Transcom GmbH as a result of the customer's change.

- 9.6 Apparent defects shall be reported immediately and in no case later than 14 days after delivery, performance or acceptance. The same shall apply to complaints concerning hidden defects after the discovery thereof. Notifications of defect made too late or after processing of goods subject to reservation of ownership shall not be considered.

### 10. Limitation of liability and limitation period

- 10.1 PSI Transcom GmbH shall be liable for violations of its duties for which it is accountable in cases of intent and gross negligence on the basis of the statutory provisions.
- 10.2 In the case of violations of obligations caused by slight negligence, PSI Transcom GmbH's liability shall be limited to cases of violation of material contractual obligations. In such cases, the amount of any claims for damages shall be limited to the extent of foreseeable, typical damage or loss.
- 10.3 In the cases contemplated in subsection 10.2 hereof, PSI Transcom GmbH shall not be liable for consequential damage to other objects or to other property of the customer. Such release from liability shall not apply in as far as PSI Transcom GmbH is able to have such damage or loss covered by its existing business liability or product liability policies.
- 10.4 The period of limitation for violations of contract other than material violations shall be limited to one year.
- 10.5 PSI Transcom GmbH shall be fully liable for death, personal injury and damage to health subject to the statutory provisions. PSI Transcom GmbH's liability in tort and under product liability law shall not be affected by the foregoing.

### 11. Applicable law and place of jurisdiction

- 11.1. The relations between the parties shall be exclusively subject to the laws of the Federal Republic of Germany, waiving the United Nations Convention on Contracts for the International Sale of Goods (UNCITRAL).
- 11.2. All disputes arising hereunder shall be exclusively referred to the courts of Berlin, Germany.

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## 12. Written form

Any agreements with the customer, as well as any modifications, amendments and ancillary agreements concerning the respective agreements shall not be valid unless made in writing.

## 13. Partial invalidity

In the event that individual clauses of these terms and conditions are void or invalid as a whole or in part, the validity of the remaining clauses shall not be affected thereby. The parties shall replace any such void or invalid clause by another effective clause which reflects the economic intent of the void or invalid clause to the maximum extent possible.