

General Terms and Conditions of Business

Allgemeine Geschäftsbedingungen der

FORGIS GmbH
Altenkesseler Strasse 17/D2
66115 Saarbrücken, Germany

Geschäftsführer: Christian Berres und Joachim Boes
Amtsgericht Saarbrücken, HR B 12 118

– nachfolgend FORGIS –

§ 1 Validity of the General Terms and Conditions

(1) The General Terms and Conditions of Business (GTCB) given below are valid in respect of all current and future deliveries and services provided to our customers in every section of each contract.

(2) Any deliveries, services and offers made by FORGIS are made on the basis of these General Terms and Conditions. FORGIS does not recognise any conflicting conditions of purchase or other conditions of any kind made on the part of their customers. Any statements to the contrary on the part of the customer in respect of the customer's conditions of business and/or conditions of purchase are hereby contradicted.

(3) The particular services and deliveries to be performed shall be agreed in self-contained contracts, of which these General Terms and Conditions are hereby made the basis. These contracts shall be made in writing.

§ 2 Offers

(1) Any offers made by FORGIS shall always remain without obligation and subject to confirmation.

Only following confirmation in writing from FORGIS shall any orders be deemed to have been accepted.

(2) FORGIS hereby reserves the right to introduce deviations, both in technology and in design, from the descriptions and specifications given in catalogues, brochures and written documents, and also to introduce alterations in the course of making technological improvements or in the event of an alteration in the market situation. The customer shall not be entitled to derive any rights against FORGIS as a result of any such alterations or deviations.

§ 3 Conditions of payment

(1) All prices are valid as of the business seat of FORGIS.

(2) The legally-applicable value added tax at the time of the conclusion of any given contract shall be added to all prices quoted. In the event that ongoing services shall be required under a contract, the value added tax rate applicable at the time at which each respective account shall become due shall be the determining one.

(3) Subject to a term of three months and by providing written notification to its customers, FORGIS shall be entitled to raise the charges for usage payable at regular intervals. In the event of a rise in such charges of more than ten percent, the customer shall be entitled to terminate the contract in the proper manner and subject to the termination period. At least twelve months must elapse between two such rises.

(4) Payment shall become due at each respective payment date and/or at the time of delivery. Payments shall be made at the time when they become due and without any deductions.

(5) FORGIS shall be entitled, even if this contradicts any other provisions on the part of the customer, to set off payments by the customer initially against the oldest debts on the part of said customer. In the event that costs or interest shall have arisen, FORGIS shall be entitled to set off these payments initially against the costs, then against the interest and lastly against the principal amount.

(6) The customer shall be entitled to charge up against any given claims on the part of FORGIS only such counterclaims as shall be undisputed or legally binding. The customer shall not, in relation to this contractual relationship, be entitled to assert any rights of retention arising out of any other contractual relationship with FORGIS.

(7) FORGIS shall be entitled to refuse the acceptance of bills of exchange or cheques. Any acceptance of cheques or bills of exchange shall take place only for payment. Any discount and bill of exchange charges shall be borne by the customer and shall be due immediately. Bills of exchange shall be accepted without any warranty being made in respect of the correct presentation and protest.

(8) Any payments arising out of incomplete or incorrect statements on the part of the customer, any costs in respect of special performance or costs in respect of non-verifiable claims on account of defects or inappropriate use of systems shall be borne by the customer. In the absence of any explicit agreement to the contrary, data carriers and any other accessories shall be charged for separately at their respective list prices.

(9) For the purposes of financing, FORGIS shall be entitled to assign its rights arising from deliveries and services.

(10) In the case of commissions whose content shall be the development of new software or an individual alteration in existing software, or any engineering service that shall not fall within the field of software development, the following method of payment shall, in the absence of any written agreement on any other method, be deemed to have been agreed:

- 30% of the amount payable in respect of the commission shall become due directly upon the signing of the contract;
- 40% of the amount payable in respect of the commission shall become payable at the end of one half of the estimated duration of the project;
- The remainder payable in respect of the commission shall become payable following the delivery of the closing report.

§ 4 Default in payment

(1) In the event that the customer shall fall into default in respect of payment, FORGIS shall, without prejudice to any of its other rights, be entitled to take back its hardware and software and to dispose of them elsewhere.

(2) As of the point in time at which the said default shall first arise, FORGIS shall be entitled to demand interest to the amount of the rate of interest charged by the commercial credit institutions in respect of overdrafts, however, at least 4 % above the respective discount rate of the Deutsche Bundesbank, plus the statutory value added tax applicable at that time. Any interests shall become due immediately.

(3) In the event that the customer shall fall into default in respect of a payment, or that there shall be concrete indications that the customer may shortly become incapable of payment, FORGIS shall be entitled to discontinue any further work on all commissions given it by the customer. FORGIS shall further be entitled to demand the immediate payment in advance of all amounts receivable, including bills of exchange and deferred amounts due, or to demand the appropriate securities.

(4) In case acceptance is delayed the risk of accidental damage and deterioration passes to the buyer.

§ 5 Retention of title

(1) Any performance arising out of this contract shall remain the property of FORGIS until such time as all sums receivable under this contract and out of the business relationship with the customer as a whole, including those receivable in the future shall have been paid. The software delivered shall, until payment shall have been made in full – and in the event of payment by cheque or by bill of exchange, this shall mean until discharge – remain our property. This retention of title shall also extend to copies of programmes that shall be delivered on data carriers or transmitted online, and shall equally be valid in respect of all accompanying materials. In the event that only rights of usage shall have been granted in respect of software, the foregoing provision shall accordingly remain valid in respect of the data carriers that shall have been delivered.

(2) The customer shall, over the regular course of business dealings, be entitled to alter or process the goods to which this retention of title applies, or to adapt them to suit his/her needs in various other ways. This right shall, however, apply only if the customer shall not have fallen into default and if the terms of the licence from FORGIS shall not be opposed to this. The goods to which this retention of title applies may not be pledged or assigned as a security. As a security against this, the customer hereby assigns to FORGIS, in advance and in their entirety, any and all receivables that may arise out of the selling-on of the goods to which this retention of title applies or out of any other cause in law (insurance, unauthorised activities) in respect of said goods.

(3) In the event that any third party or parties shall gain access to the goods to which this retention of title applies, in particular by virtue of distraint, the customer shall draw the attention of such third parties to the title retained by FORGIS, and shall thereupon inform FORGIS without delay. Legal, extra-legal or other expenses arising out of such an access shall be borne by the customer. The customer hereby assumes responsibility in full for any possible loss or damages.

(4) In the event that the customer shall behave in a manner contrary to the contract, or shall fall into default with his/her payments, FORGIS shall be entitled to take back, at the customer's own expense, the goods to which this retention of title applies, or, as the case may be, to demand the relinquishment of the claim for return from the customer in respect of the third parties. This withdrawal or distraint by FORGIS of the goods to which this right of retention applies shall not, subject to any legal provisions that may determine otherwise, amount to any withdrawal from the contract.

(5) In the event that the goods delivered shall be processed or remodelled by the customer, this shall be done on behalf of FORGIS as manufacturer. However, this shall not give rise to any obligations on the part of FORGIS. In the event that the title or joint ownership of FORGIS in respect of said goods shall become extinguished by means of this interlinkage, the signing of the contract shall be deemed to provide in advance that the customer's title or joint ownership in the entire item(s) shall be proportionately (in terms of invoice value) transferred to FORGIS. The customer shall, free of charge, preserve the title or joint ownership of FORGIS against such an event.

(6) Any hardware and/or software that shall have been delivered for the purposes of testing and demonstration shall remain the property of FORGIS. The customer shall only be entitled to make use of such items within the framework of a special agreement with FORGIS, and such an agreement may be limited in duration. Following the expiration of the temporary right of usage, all parts of such hardware and/or software shall be returned to FORGIS without the need for further demand and at the customer's own expense.

(7) In the event that copies shall have been prepared of the software made available to the customer, such copies shall be destroyed following the expiration of the right of usage. This provision shall also apply in the event that a limited right of usage (leasing, rental) shall have been granted under the contract.

§ 6 Deliveries

(1) With the handing-over to the customer of the hardware and software, inclusive of all accompanying materials, both delivery and the passing of the risk shall be deemed to have taken place. In the event of that the hardware and software shall be shipped, the risk shall be deemed to have been passed to the customer at such time as the shipment shall have been transferred to the carrier. In the event that, without any culpability on the part of FORGIS, such shipping shall be delayed or shall become impossible, then the risk shall be transferred to the customer at such time as the communication of readiness to dispatch the goods shall be sent to the customer. Insurance of the hardware or software against damage suffered in transit shall only be taken out at the express wish of the customer and at the customer's own expense.

(2) Any deadlines and time periods named by FORGIS for deliveries shall be without obligations, always provided that no express agreement shall have been made to the contrary. The delivery deadlines shall only be valid to the extent that FORGIS itself shall receive the correct supplies in a timely manner. Deadlines and time periods shall begin on the day on which the commission shall be confirmed by FORGIS and shall, subject to all the rights of FORGIS, be extended by any period during which the customer shall be in default in respect of payment. Within the framework of the contractual relationship, partial deliveries shall be permissible, always provided that the acceptance of such deliveries shall not give rise to disproportionate expenses on the part of the customer.

(3) Concerning the time period for engineering services, the written declarations made by both parties in this respect shall be authoritative. In the event that a contract shall have been concluded without the presence of such declarations, authority in respect of this shall rest either with the written confirmation of the commission by the party providing the services or, in the event that such a document shall not have been created, with the written commission of the customer.

(4) The customer shall be under an obligation to take receipt of the hardware and software on the due date.

(5) In the event that the customer shall not have fulfilled his/her obligations to co-operate under § 9 herein, the time periods for the performance of services and for deliveries shall be extended accordingly. In the event that the customer shall, despite the appointment of a date and the threat of termination, continue not to fulfil his/her obligations to co-operate, FORGIS shall then be entitled to terminate the contract. FORGIS shall then be released from its contractual obligations in respect of deliveries and services. Further to the above, FORGIS shall also have the right to invoice the customer for all expenses that shall have been incurred up to the point of said termination.

(6) Even in respect of time periods and deadlines that shall have been agreed as binding, delays in respect of deliveries and/or services by reason of *force majeure*, or by reason of occurrences that render delivery by FORGIS significantly more difficult or indeed impossible, shall not be deemed to be the responsibility of FORGIS. Such occurrences shall include industrial disputes, disruption of operations, requirements issued by official bodies or difficulties in the procurement of the necessary materials, even if they shall take place on the part of delivery companies or between companies supplying FORGIS. FORGIS shall in such an event be entitled to postpone the performance of the service and/or the delivery for a time equal to the duration of the hindrance, plus an appropriate time period for resuming work. Further to the above, FORGIS shall, by virtue of the portion of the service that shall not have been performed, be entitled to withdraw from the contract.

(7) Only when the customer has written to FORGIS demanding performance of the service in question, giving an additional grace period of four weeks, shall FORGIS be deemed to have fallen into default. In the event of such a default, the customer shall be entitled to assert a claim for compensation in respect of default to the amount of 0.5 % of the value of the commission per full week of the default. In total, however, this compensation in respect of default shall not amount to more than 5 % of the value of the commission. Any further claims, and in particular any claims for damages, are hereby excluded, always provided that the default shall not be the result of gross negligence or worse on the part of FORGIS.

(8) Any subsequent desire on the part of the customer to have the contract altered or supplemented shall have the result of extending the delivery period accordingly.

§ 7 Guarantee

(1) The current state of technology does not make it possible to exclude entirely the possibility of errors within EDP programmes. The hardware and software delivered is free of manufacturing deficiencies and other errors impairing its usage.

(2) The contractual guarantee shall be limited to six months from the point of delivery and/or the point of receipt, whichever shall have been agreed. Any claims against FORGIS in respect of guarantees shall be the entitlement of the direct customer only and shall not be transferable.

(3) In the event that FORGIS shall pass on to the customer the standard software of third parties, the corresponding guarantee bond shall become part of the present agreement. The customer shall therefore also be entitled to assert against third parties any claims arising out of these guarantee bonds. Any guarantee or liability extending beyond the content of the guarantee bonds provided by such third parties is hereby excluded.

(4) As soon as deficiencies in either the hardware or the software shall become apparent, the customer shall inform FORGIS without delay, together with a short description of the nature of the deficiency. The customer shall be under an obligation to examine the hardware and software delivered to him/her with a view to ascertaining any self-evident deficiencies. Any self-evident deficiencies and/or significant and easily-visible damage shall, within a week of delivery, be reported in writing and complained of as deficiencies. The nature of such deficiencies shall be reported in writing and as precisely as possible.

(5) Such deficiencies shall be remedied by FORGIS within a reasonable period of time by means of the delivery and installation of new hardware components and/or of a new version of the relevant programme. It shall be a precondition of the above that the deficiencies shall have been reported and shall be reproducible. In the event that it shall not be possible to ascertain upon examination any deficiencies reported, the customer shall bear the costs of said examination. Equally, in the event that the deficiencies that shall have become apparent shall have been caused by incorrect usage or by interferences that shall not be the responsibility of FORGIS, here too the costs of the examination shall be borne by the customer.

(6) In the event that the hardware or the software shall be augmented or altered by the customer or by third parties, the guarantee shall thereby be extinguished. However, in the event that the customer shall be able to demonstrate that the respective alteration or augmentation was not the cause of the deficiency, either in whole or in part, the guarantee shall remain in force.

(7) Any liability on the part of FORGIS in respect of normal depreciation is hereby excluded. Any errors or malfunctions that shall have been caused by improper usage, abnormal operating conditions or the use of unsuitable operating facilities shall exclude any claims in respect of the guarantee.

(8) The customer shall be entitled to cancel the contract in the event that repeated attempts on the part of FORGIS to remedy deficiencies shall have met with no success and unacceptable disadvantages would be caused to the customer by accepting further versions of the programme(s) or further hardware components. Before the reimbursement of the purchase price, payment shall be made to FORGIS in respect of any usages that shall have been made prior to the cancellation of the contract, and in respect of such payments FORGIS shall have a right of retention.

(9) The commercial duties on the part of the customer to examine and to give notice of non-conformity shall remain unaffected by the foregoing provisions.

§ 8 Liability

(1) FORGIS hereby accepts the liability for any intentional or gross negligence and for default, impossibility of performance, for any initial incapacity and for the existence of guaranteed characteristics with reference to its central obligations in respect of the contract. This liability shall be limited to foreseeable damages. It shall also apply to any vicarious agents. Any more extensive liability is hereby excluded, and this shall apply also to consequential damages and to losses of data.

(2) FORGIS shall only be liable in respect of a data reconstruction if the relevant data shall have been safeguarded by the customer, fully and in a sufficiently up-to-date – that is to say, on a daily basis. Such a reconstruction must be possible by means of a justifiable expenditure.

§ 9 Obligations of the customer

(1) The customer hereby undertakes to treat with confidentiality all information in respect of the hardware and the software, in addition to all the correspondence prior to the contract, all the contractual correspondence over the entire duration of the period of usefulness, and also following the termination of said period. Such information shall not be made accessible to any third party. All employees of the customer shall be placed under a corresponding obligation.

(2) The customer hereby undertakes to make available in a timely manner all documentation, necessary authorisations, clearances, timely clarification and authorisation of plans, and the adherence to payment conditions and other obligations, that shall be necessary for the timely performance by FORGIS of its deliveries and services. In the event that these preconditions shall not have been fulfilled, the time period shall be extended accordingly.

(3) The hardware and the software shall be protected against any unauthorised access or access on the part of third parties. This obligation shall apply to the purchaser and any other contractual partner of the customer, and shall extend to cover the entire company.

(4) Target concepts, organisational concepts, suggestions or software shall be formally accepted by the customer without delay following their delivery or creation. In the event that the customer shall make use of the hardware and software delivered to him/her, or that four weeks shall have elapsed following the delivery of the hardware and/or software without any notification having been given of any deficiencies, said acceptance shall be deemed to have taken place.

(5) FORGIS shall at any time during the normal hours of business be entitled to demand access to the software entrusted to the customer in order to prepare a copy of the programme. The client shall be under an obligation, insofar as no contractual provision to the contrary shall have been agreed, to create the system specifications that make up the basis of a programme development. By means of signing these specifications, the customer shall confirm that the entries in respect of quantities and times and any and all further information contained within the specifications are complete and comprehensive.

(6) The customer hereby accepts liability for any infringement of these contractual conditions. This liability shall also extend to cover the unauthorised usage of any programme copies created in breach of the contract, the repeated use of such copies or the delivery of such copies to third parties.

§ 10 Enticement of employees, resale

(1) Both during and following the performance of the contract, both parties to the contract hereby undertake in respect of each other that each will not entice away any current or former employees of the other, either through their own actions or through third parties. FORGIS reserves the right to assert claims for damages in the event of infringements of this provision.

(2) The customer hereby undertakes, in the event of a resale of the purchased hardware and/or software, to notify FORGIS in writing of the name and the full address of the purchaser of said hardware and/or software.

§ 11 Data protection

In the event that during the course of the activities of FORGIS, personal data shall be processed, FORGIS shall observe the applicable data protection laws. In addition to the above, the necessary security measures shall be undertaken or agreed with the customer in order to guarantee the necessary data protection.

§ 12 Trademark rights of FORGIS

(1) Any existing distinguishing marks, notations of trademark rights or other indications of property supplied by FORGIS within the hardware and/or software shall not be removed by the customer and shall also be incorporated into any copies of the programmes that shall be prepared.

(2) FORGIS is and shall remain the proprietor of all rights in any of its software that shall have been delivered to the customer. This provision shall also apply in respect of any portions of the software or to any software that shall be derived from this software, either in whole or in part, including any accompanying materials. Even if the customer shall alter the software within the parameters permissible within the contract and combine it with the customer's own software or with the software of a third party, FORGIS shall remain the proprietor of all rights. A corresponding provision shall apply in respect of the purchased hardware.

(3) In the event that infringements of trademark rights shall be asserted by third parties in respect of any programmes of FORGIS, FORGIS shall be entitled to carry out, at the premises of the customer but at its own expense, the necessary alterations to the software, and the customer shall not be entitled to derive any further contractual rights from this. The customer hereby undertakes to notify FORGIS in writing and without delay in the event of any third party asserting any breach of any commercial trademark right or copyright.

(4) The hardware and software shall only be deployed for the customer's own purposes, always assuming that no provision stating otherwise shall have been agreed in the contract. The deployment of a programme on multiple computers shall require special authorisation within the contract.

(5) The customer shall only be entitled to create copies of programmes and of portions of programmes for backup purposes. Copies of accompanying materials shall only be created with the prior written agreement of FORGIS.

(6) The customer hereby indemnifies FORGIS against any and all losses that shall arise out of any infringement of the aforementioned obligations on the part of the customer.

§ 13 Transfer of rights

(1) The customer shall only be entitled to transfer to any third parties any rights arising out of the contract with the prior agreement of FORGIS.

(2) FORGIS shall be entitled to transfer to third parties the obligations incumbent upon it and the rights accruing to it under the contract. It shall also be entitled to cause any and all of its obligations to be carried out by third parties within the framework of the contractual relationship. The customer shall then accept the services performed as being services performed by FORGIS.

(3) A replacement of the contractual partner on the part of FORGIS shall be permissible. In the event that the contractual obligations shall be taken over by a third party, the customer shall have an extraordinary right of termination. However, this right of termination shall then be exercised by the customer within four weeks of his/her becoming aware of the change of the contractual partner. Following the expiration of this period of time, the contractual relationship shall then continue with the third party.

§ 14 Duration of the contract, termination

(1) The customer shall only be entitled to give notice of termination or of a withdrawal from the contract in the event that the contractually-agreed period for performance of an obligation on the part of FORGIS to deliver and/or to perform a service, having already been extended, shall have been exceeded. Furthermore, in order for the termination or withdrawal to occur, an appropriate period of grace must have been set by the customer and have elapsed without a successful result.

(2) In the event that no termination period shall have been expressly agreed within the contract, a period for termination of at least three months prior to the end of a quarter shall apply.

§ 15 Place for performance, court of jurisdiction

(1) The place for the performance of all services agreed under the contract shall be Saarbrücken, Germany.

(2) In respect of commercial customers (in the sense of the HGB (Handelsgesetzbuch = German Commercial Code)), the court of Saarbrücken shall be deemed to be agreed as the court of jurisdiction.

§ 16 Applicable law

(1) The export of goods produced by FORGIS into non-EU countries shall require the written consent of FORGIS.

(2) The law governing all the affected contractual agreements shall apply, and supplementing this, the law under the BGB (Bürgerliches Gesetzbuch = German Civil Code). The provisions of the uniform international law on sale of goods are hereby waived insofar as such a waiver is permissible. In other respects, the legal relationship between the customer and FORGIS shall be governed by the law of the Federal Republic of Germany.

§ 17 General Contractual Provisions

(1) Supplementary oral agreements shall not be made by the contracting parties. Subsequent addenda or alterations to the agreements already concluded shall require the written form. Any oral agreement to waive the requirement for the written form is hereby excluded.

(2) In the event that one or several provisions of these Terms and Conditions, and/or of any further Terms and Conditions and/or agreements basing themselves upon these Terms and Conditions, shall be or shall become invalid, or in the event that a loophole should become apparent in these Terms and Conditions, the validity of the remaining provisions shall not be affected by this; and in the place of the invalid provision or in order to fill in the loophole, an appropriate and permissible provision shall be substituted that shall have been desired by the parties concluding the contract or that shall reflect what would have been desired by the parties in terms of the actual purpose of these provisions, had the parties taken into consideration the invalidity or loophole.