

General Terms and Software Usage Conditions

State: 07/01/2012



1. Jurisdiction

If the customer is acting in the course of its business, the following terms and conditions as well as system requirements of CURSOR Software AG (hereafter CURSOR) shall apply exclusively for all deliveries and services of CURSOR. General purchasing conditions of the customer that contradict or differ from these conditions will not be acknowledged unless CURSOR has consented to the purchaser's general conditions in writing for the particular transaction. These conditions shall also apply to all future deliveries and services to the customer.

2. Conclusion of Contract

The offers shall not be binding with respect to price, quantity, delivery time or availability. The acceptance of any order, the scope of the supply, and the date of delivery shall be determined exclusively by a written order confirmation of CURSOR.

3. Prices

All prices shall apply ex works CURSOR, Giessen (EXW-Incoterms 2010), excluding packing, postage, carriage, toll, import charges, insurance, and value-added tax applicable at the time of delivery. CURSOR will charge the statutory turnover tax at the rate in effect at the date of performance. If the service is carried out 4 months after the conclusion of the contract, the price shall be adjusted to the changed price basis. The prices charged shall be the prices valid on the day of delivery. The same applies for orders without an explicit price agreement.

Daily rates refer to working days of 8 hours.

Services at weekends or national holidays, as well as holidays in the federal state of Hesse will be charged with 50 % extra charge to the unit price.

Incidental costs like expenses, accommodation expenses, travel costs, and travel time will be charged at cost and are not included in the quoted prices.

Expenses lump sum daily fee:	€ 24,00
Travel costs per kilometer:	€ 0,55
Travel time is working time:	hourly rate of principal service
Further costs:	per receipt.

4. Delivery, Passing of Risk

Delivery is made ex works CURSOR, Giessen (EXW-Incoterms 2010). The software shall be delivered via download. The customer shall receive the software in machine

code. There is no claim to access to the source code. The software installation in the customer's system environment is carried out in accordance with a separate agreement. Presentations in test programs as well as in product and project specifications do not constitute quality guarantees; insofar as they are not explicitly designated as such.

5. Scope of Rights Granted

The customer is granted a non-exclusive, temporary unlimited right to use the contractual items.

Without explicit agreement, the rights of use will be granted exclusively for the country in which the customer has a permanent place of business. The rights of use are restricted to the individually named persons - usually specified in the purchase order - at their computer workplace. The software shall only be used by the customer for the agreed contractual purpose. The resale and the commercial distribution of the software are prohibited. Reproduction of the software shall be permitted only insofar as copies are required in connection with the contractual purpose agreed. The customer may conduct data security measures in accordance with the state of the art and produce back-up copies necessary for this purpose. Backup copies on movable data carriers are to be marked as such and are to be provided with the copyright note of the original data carrier.

The customer is authorized to modify, extend, and rewrite the software but only in so far as it is deemed by law to be indispensable or where the agreed use of the software expressly so stipulates. The decompiling of the software shall be permitted only to the extent permitted by law and not before CURSOR has failed to provide the necessary data and/or information for establishing the interoperability with other hard- and software within a reasonable period having been requested to do so in writing. Where CURSOR provides the customer with any supplementary software for the rectification of defects or for maintenance, (e.g. patches or supplements to the user manual), or a new version, (e.g. upgrades or updates), replacing software previously provided, these shall be subject to these terms and conditions.

Where CURSOR provides a new version of the software, the customer's rights in relation to the old software shall cease as soon as the customer actively uses the new software irrespective of the absence of an express request for its return. However, CURSOR agrees to a three-month transition period, during which both versions of the software may be used in parallel. Any reproduction or reworking of user documentation is not

permitted. As far as the documentation is integrated in the software, copying and processing is admissible to the extent regulated herein for the software. For third-party products that are sold by CURSOR the third party's conditions of use shall be given priority.

6. Terms of Payment

Payments are due within 10 days after the invoice has been issued. After the expiry of the payment term set out on the invoice, the customer shall be deemed in default of payment. Checks shall only be accepted by way of performance. Payment charges shall always be for the account of the customer and shall be settled immediately. The customer shall only be entitled to offset undisputed or legally determined counterclaims. Rights of retention can only be exercised if they are based on the same business transaction. In the event of a payment in arrears, all customers related accounts receivable of CURSOR will be due for immediate settlement. The same applies in case of a significant deterioration of the customer's financial situation and payment suspension.

7. Delay in Delivery, Force Majeure

Delivery dates are only approximate except where CURSOR has declared them as binding in writing. Delivery dates shall be subject to CURSOR's receipt of any articles to be supplied in a correct condition and on time, unless CURSOR is responsible for any non-delivery by its suppliers. If CURSOR fails to comply with the agreed schedules of delivery the customer shall set a reasonable grace period for delivery. That period may not be less than three weeks. Where after expiry of such extension the service still has not been delivered and where the customer desires to rescind the contract for this reason or claim damages instead of performance he shall advise CURSOR thereof expressly in writing, and shall set a further appropriate grace period in which to deliver the goods.

In case of force majeure, the delivery obligations of CURSOR shall be suspended; where any essential change arises to the conditions under which the contract was made, CURSOR shall be entitled to rescind the contract. The same release shall apply in cases of shortage of energy or raw materials supplies or in cases of industrial disputes, governmental decrees, breakdowns of transport or of our operations or if CURSOR's suppliers, due to force majeure events or to the foregoing reasons, fail to deliver at all or fail to deliver in a proper or timely manner.

Partial deliveries are permitted insofar as the delivered parts can be used in a practical manner. Each partial delivery may be billed separately.

8. Customer's Cooperation Duties

The customer shall take adequate precautions for the event that the software supplied does not operate properly in whole or in part. He shall test the software thoroughly to ensure it is suitable for his intended purpose before using it operationally. He shall also secure his data in accordance with the current state of the art. He shall ensure that current data from his data stock kept in machine-readable form are reproducible with reasonable effort.

The customer shall take appropriate measures to protect the software from unauthorized access by third parties. The customer is obliged to undertake performance tests immediately before and after the installation and report the results to CURSOR. The customer is obliged to have all of CURSOR's deliveries checked by a competent employee immediately and to send immediate written notification of the defects discovered, including a detailed description of the defect. Condition precedent for remedying defects (see section 5) is the reproducibility or detectability of the deficiencies. Notifications of defects must contain information on the type of defect, the module in which the defect has occurred, as well as the work that has been carried out for purposes of removing the defect.

9. Defects of Quality and Title

CURSOR provides deliveries and services free from material defects or defect in title. Deficiencies which lead to a nominal restriction in the use of the software shall not constitute a material defect. Where, functional impairments of the software result from the hardware and software environment provided by the customer or from incorrect operation, external and damaging data, faults in computer networks or other reasons relating for which the customer is responsible, such functional impairments shall not be considered material defects in the sense of the first sentence.

CURSOR shall give no warranty for software modified by the customer, except where the customer shows that the modification is not the cause of the deficiency. Insofar as the deliveries and services provided by CURSOR are defective and the customer has properly notified them of the same in writing immediately upon their discovery, CURSOR shall at its option deliver a replacement or remedy the defect. CURSOR shall always be granted an opportunity to make such subsequent delivery within an appropriate period of time of at least 8 days. A remedy may be provided in particular by supplying a new program state or by CURSOR demonstrating ways in which the effects of the defect can be avoided. The customer must adopt this new program state if the adjustments required are acceptable.



Repair or replacement in the case of defects in title shall be carried out by CURSOR providing the customer with a lawful way to use the software. CURSOR may exchange the relevant software for an equivalent software package that meets the contractual provisions, provided this is acceptable to the customer. If third parties assert claims against the client due to conflicting property rights, the customer shall inform CURSOR immediately. CURSOR shall dismiss or satisfy the claims at its discretion and in consultation with the customer. The customer shall not accept third party claims of his own volition. CURSOR shall defend such third party claims at their own expense and releases the customer from all expenses associated with such defense, when these are not a result of non-contractual activities by the customer. If the supplementary performance fails to give the desired results, the customer is, in principle, granted the choice either to demand a reduction of the remuneration or to rescind the contract. Rescission of the contract is only permissible where the customer prior thereto sets a final and reasonable deadline in writing expressly indicating his intention.

10. Compensation for Damages

Except where otherwise provided below any claim of the customer for damages other than those claims set out in section 5 aforesaid are hereby excluded irrespective of the legal grounds upon which it is based. Accordingly, CURSOR is not liable for damages not incurred by the software itself; in particular, CURSOR is not responsible for lost profits or any other pecuniary loss suffered by the customer. Insofar as CURSOR'S contractual liability is excluded or limited, this also applies to the personal liability of its employees, representatives and vicarious agents.

The aforesaid limitation of liability shall not apply where the damage incurred has been caused by willful default or by gross negligence, where personal injury has been suffered or where the damages claim is based on product liability law. The same shall apply insofar as CURSOR assumed a guarantee for the quality of the contractual performances conflicting with any of the restrictions on liability.

Where CURSOR is in breach of a material term of the contract its liability to compensate damage to property shall be limited to such loss as was typically foreseeable at the time the contract was made. A material terms of the contract shall be any term which places the customer in the legal position provided for under the contract in terms of its content and purpose and any term which must be complied with in order to ensure proper performance of the contract and upon the performance

of which the customer relied or could be reasonably expected to rely.

Beyond the aforesaid CURSOR shall only be liable to the extent of its insurance coverage insofar as CURSOR is insured against the damage which has been incurred and subject to payment of the insurance benefit.

Any further liability for damages shall be excluded. CURSOR reserves the right to raise the defense of contributory negligence.

11. Limitation Period

The limitation period for defect claims concerning deliveries and services of CURSOR as well as for claims for damages amounts to one year from the time of delivery. Where there is a defect in title based on the violation of a third party's property right which can cause the surrender of the software the statutory limitation period shall apply.

For any other contractual claims brought by the purchaser the limitation period is one year from the legal start of the period. Claims become time barred at latest on the expiration of the maximum statutory periods. The statutory limitation periods shall apply to cases of personal injury (including violation of an individual's freedom) and to cases of willful default and gross negligence.

12. Privacy and Data Security

The contracting parties shall be obliged to treat as strictly confidential all commercial and company secrets revealed to them by the other party or becoming known to them during execution of the contract, including all information that is marked confidential. The contract partners shall store and secure the subject matter of the contract in such manner that the misuse through third parties is not possible. The contracting parties will store and secure these materials in such a way that third parties are unable to access them.

This duty to preserve confidentiality shall not apply for information and documents, which are already publicly known and accessible at the time of disclosure or already known to the receiving party at the time of disclosure or which is rightfully received from a third party.

The customer is hereby informed that CURSOR will collect, store, and process its data to the extent that is necessary to complete the contract and on the basis of data protection regulations, and that if necessary this data will be passed to third parties.

13. Final Provisions

Verbal agreements in relation to this contract have not been made. Any changes or supplements shall require a



written agreement with a reference to the respective contract. The same shall apply to the cancellation of the contract.

In case one clause should prove to be or become ineffective or incomplete these terms and conditions shall remain in legal effect. The parties agree to replace the invalid clause by a regulation, which corresponds as closely as possible to the commercial purpose of the invalid clause. All legal relations that arise between the parties from this contract are governed by German Law with excluding the UN Law on International Sales (CISG).

If the customer is a business or if his domicile/branch is abroad, the place of jurisdiction for any disputes arising from claims of either one of the parties to this contract shall be exclusively the registered office of CURSOR.

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