

1. Scope of Application

These Terms and Conditions, together with the applicable system requirements and licence terms of CURSOR Expert Solutions GmbH (hereinafter referred to as "CURSOR-XPS"), shall apply exclusively to all deliveries and services provided by CURSOR-XPS, provided that the Customer is an entrepreneur, a legal entity under public law, or a special fund under public law.

Any conflicting or deviating purchasing terms and conditions of the Customer shall not apply unless expressly agreed by CURSOR-XPS in text form in the individual case. The provision of services or acceptance of payments by CURSOR-XPS without reservation shall not constitute acceptance of any such deviating provisions.

These Terms and Conditions shall also apply to all future deliveries and services provided to the Customer.

Any individual agreements and any provisions contained in our order confirmation shall take precedence over these Terms and Conditions. In case of doubt, trade terms shall be interpreted in accordance with the Incoterms[®] issued by the International Chamber of Commerce in Paris (ICC) in the version in force at the time the Contract is concluded.

2. Contractual Declarations

All quotations are non-binding as to price, quantity, delivery period and availability of delivery. CURSOR-XPS shall be entitled at any time to adapt its products and services with effect for the future.

The order confirmation issued by CURSOR-XPS in text form shall be decisive exclusively for the acceptance of the order, the scope of delivery and services, and the time of performance.

3. Prices, Terms of Payment, Set-off

Unless otherwise agreed in the individual case, our prices current at the time of conclusion of the Contract shall apply, ex warehouse, plus statutory value added tax.

Where the delivery or performance date is more than three months after conclusion of the Contract, CURSOR-XPS shall be entitled, upon timely notice to the Customer and prior to performance of the services or delivery of the software, to adjust the price of the software or services to the extent required by general price developments beyond the control of CURSOR-XPS (such as exchange rate fluctuations, currency regulations or changes in customs duties) or as a result of changes made by suppliers. In the case of framework

agreements containing agreed prices, the three-month period shall commence on the date of conclusion of the framework agreement.

Any payments contractually agreed shall fall due and be payable within 10 days from the date of invoice. CURSOR-XPS shall be entitled at any time, including within the framework of an ongoing business relationship, to make delivery in whole or in part only against advance payment. Any such reservation shall be declared no later than in the order confirmation.

Upon expiry of the above payment period, the Customer shall be in default. During any period of default, interest shall accrue on the outstanding remuneration at the statutory default interest rate applicable from time to time. CURSOR-XPS reserves the right to claim further losses caused by default. In relation to merchants, the entitlement of CURSOR-XPS to commercial maturity interest pursuant to section 353 of the German Commercial Code (HGB) shall remain unaffected.

The Customer shall have rights of set-off or retention only to the extent that its claim has been finally adjudicated or is undisputed. In the event of defects in the delivery, the Customer's counter-rights, in particular pursuant to Clause 7.6 sentence 2 of these Terms and Conditions, shall remain unaffected.

If, after conclusion of the Contract, it becomes apparent (for example, by an application for the opening of insolvency proceedings) that the claim of CURSOR-XPS to the price is jeopardised by the Customer's inability to perform, CURSOR-XPS shall be entitled, in accordance with statutory provisions, to refuse performance and, where appropriate after setting a deadline, to withdraw from the Contract (section 321 German Civil Code (BGB)). In the case of contracts for the manufacture of non-fungible items (custom-made products), CURSOR-XPS may declare withdrawal immediately; the statutory provisions regarding cases where no deadline is required shall remain unaffected.

4. Daily Rates

Daily rates are based on a working day of 8 hours.

Services provided at weekends, on nationwide public holidays in Germany, or on public holidays in the federal state of Hesse shall be charged at the Customer's daily rate plus a 50% surcharge.

On-call services at weekends, on nationwide public holidays in Germany, or on public holidays in the federal state of Hesse shall be charged at the Customer's daily rate for the entire duration of the on-call period. If services are actually utilised during the on-call

period, the time so utilised shall be charged at the Customer's daily rate plus a 50% surcharge.

5. Delivery, Passing of Risk

Delivery shall be made ex works CURSOR-XPS, Gießen (EXW Incoterms 2010). Software shall be delivered by download. The Customer shall receive the software in object code only. There shall be no entitlement to disclosure of source code. Installation of the software within the Customer's system environment shall be subject to separate agreement.

Unless expressly designated as such, any statements contained in test programs or in product or project descriptions shall not constitute guarantees as to quality.

6. Scope of Rights Granted

The scope of the rights granted shall be determined by the General Terms of Use for Software of CURSOR-XPS and the licence information relating to such software. The General Terms of Use and the licence conditions are supplied with the software or may be accessed on the CURSOR-XPS website at cursor-xps.de.

7. Delay in Delivery, Force Majeure

If an agreed delivery date is exceeded for reasons for which CURSOR-XPS is responsible, the Customer shall grant CURSOR-XPS a reasonable extension of time for delivery in text form. Such extension shall be not less than three weeks. If delivery is not made by expiry of such extension and the Customer wishes to withdraw from the Contract or claim damages in lieu of performance on that basis, the Customer shall first notify CURSOR-XPS thereof in text form, expressly requesting delivery and granting a further reasonable extension of time.

In the event of force majeure, the delivery obligations of CURSOR-XPS shall be suspended; if a material change occurs in the circumstances existing at the time of conclusion of the Contract, CURSOR-XPS shall be entitled to withdraw from the Contract. The same shall apply in the event of shortages of energy or raw materials, industrial disputes, official orders, transport disruptions or operational disruptions. If suppliers of CURSOR-XPS fail to supply, fail to supply on time, or fail to supply properly for the above reasons, the preceding sentence shall apply accordingly.

Partial performance and corresponding invoicing shall be permissible unless unreasonable for the Customer.

8. Customer Obligations

The Customer shall take appropriate precautions in the event that software supplied by CURSOR-XPS does not function properly in whole or in part. Before using the software in live operation, the Customer shall test it thoroughly as to its suitability for the purpose intended by the Customer.

In the case of an on-premise installation, the Customer shall ensure that current data from data stocks maintained in machine-readable form can be reproduced with reasonable effort.

The Customer shall be obliged to inspect deliveries from CURSOR-XPS without undue delay and to notify defects in writing with a precise description thereof (section 377 HGB).

A prerequisite for cure in accordance with Clause 9 is that the defects can be reproduced or identified. The notice of defect must contain information on the nature of the defect and, in the case of software, the module in which the defect occurred, as well as the work being carried out when the defect occurred. Ideally, this should include system logs and, where applicable in the individual case, thread dumps or heap dumps.

9. Defects in Quality and Title

The Customer's rights in the event of defects in quality or title (including incorrect delivery, short delivery, improper installation or defective instructions) shall be governed by statutory provisions unless otherwise provided below. In all cases, the Customer's rights arising from separately issued guarantees, in particular by CURSOR-XPS, shall remain unaffected.

CURSOR-XPS shall provide deliveries and services free from defects in quality and title. Errors resulting only in an immaterial reduction in usability shall be disregarded. In the case of software, defects shall not include functional impairments caused by the Customer's hardware or software environment, operator error, harmful external data, network disruptions, or any other cause within the Customer's sphere of responsibility.

CURSOR-XPS shall not be liable in respect of software modified by the Customer unless the Customer proves that the modification was not causative of the reported defect.

To the extent that deliveries and services provided by CURSOR-XPS are defective and the defect has been duly notified by the Customer in text form in accordance with section 377 HGB, CURSOR-XPS shall, at its

option, either provide replacement delivery or remedy the defect (subsequent performance). For this purpose, CURSOR-XPS shall be given the opportunity to do so within a reasonable period of not less than eight days. In the case of software, subsequent performance may in particular be effected by providing a new software version or by identifying reasonable means of avoiding the effects of the defect (workaround). The Customer shall also accept a new software version where this requires reasonable adaptation efforts on its part.

Subsequent performance in the event of defects in title shall be effected by CURSOR-XPS procuring for the Customer a legally unobjectionable right to use the software. In this connection, CURSOR-XPS may replace the affected software with equivalent software conforming to the contractual provisions, provided that this is reasonable for the Customer.

If third parties assert intellectual property rights against the Customer, the Customer shall notify CURSOR-XPS thereof without undue delay in text form. CURSOR-XPS shall, at its option and in consultation with the Customer, defend against or satisfy such claims. CURSOR-XPS shall defend third-party claims at its own expense and shall indemnify the Customer against all necessary costs and losses associated with the defence of such claims, unless such costs or losses result from a breach of duty by the Customer. For these purposes, a breach of duty shall include in particular any acknowledgment by the licensee of third-party claims without the prior written consent of CURSOR-XPS.

If subsequent performance fails, the Customer may reduce the remuneration or withdraw from the Contract. However, withdrawal shall be permissible only if the Customer has first expressly threatened such withdrawal in text form while granting CURSOR-XPS a further reasonable extension of time.

10. Liability

(1) Unless otherwise provided in these Terms and Conditions, including the following provisions, CURSOR-XPS shall be liable for breaches of contractual and non-contractual obligations in accordance with statutory provisions.

(2) CURSOR-XPS shall be liable for damages, irrespective of the legal basis, within the scope of fault-based liability in cases of wilful misconduct and gross negligence. In cases of simple negligence, CURSOR-XPS shall be liable, subject to statutory limitations of

liability (for example, diligence in one's own affairs or insignificant breaches of duty), only:

- a) for losses arising from injury to life, body or health;
- b) for losses arising from breach of a material contractual obligation (being an obligation the fulfilment of which is essential to the proper performance of the Contract and on the observance of which the contractual partner regularly relies and may rely); in such case, however, the liability of CURSOR-XPS shall be limited to compensation for foreseeable loss typically occurring.

(3) The limitations of liability arising from paragraph 2 shall also apply in favour of third parties and in the event of breaches of duty by persons whose fault CURSOR-XPS is responsible for under statutory provisions. They shall not apply where a defect has been fraudulently concealed or a guarantee as to the quality of the goods has been assumed, or in respect of claims by the purchaser under the German Product Liability Act.

(4) In the event of a breach of duty which does not consist of a defect, the Customer may withdraw from or terminate the Contract only if CURSOR-XPS is responsible for the breach of duty. Any free right of termination of the Customer is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

11. Limitation Period

The limitation period for claims governed by Clauses 9 and 10 shall be one year. This shall not apply in the cases set out in Clause 10(2) (liability for wilful misconduct, gross negligence, personal injury and under the German Product Liability Act) or where longer periods are mandatorily prescribed by law pursuant to section 438 para. 1 no. 2 BGB, section 479 para. 1 BGB or section 634a para. 1 no. 2 BGB (defects in buildings), or in other cases where longer statutory periods are mandatory. If the defect in title consists of a proprietary right of a third party on the basis of which delivery can be demanded to be surrendered, the statutory limitation periods shall apply.

Paragraph 1 shall apply accordingly to the Customer's other claims.

12. Retention of Title

Deliveries made by CURSOR-XPS shall remain the sole property of CURSOR-XPS until all claims arising from the respective contractual relationship have been satisfied ("Retained Goods").

If Retained Goods are processed or transformed by the Customer with the consent of CURSOR-XPS, the retention of title shall extend to the entire new item.

13. Confidentiality and Data Protection

The Customer shall treat as confidential all confidential information, in particular any documents, samples, business intentions, personal data, issues, data and/or problem solutions, and other specific know-how (hereinafter collectively referred to as "Information") of which it becomes aware in the course of the business relationship with CURSOR-XPS, both during the term of and after termination of the contractual relationship, and in particular shall not disclose such Information to third parties or exploit it without authorisation for its own business purposes. The same shall apply to the conclusion and contents of this Contract. The Customer shall impose the same obligation on its employees.

This confidentiality obligation shall not apply to Information which:

- was already known to the Customer outside the contractual relationship
- was lawfully acquired from third parties;
- is or becomes generally known or part of the state of the art; or
- is released by CURSOR-XPS.

Upon termination of this contractual relationship, the Customer shall, without being requested to do so, return all documents and Information requiring confidentiality or, at CURSOR-XPS's request, destroy the same and provide evidence thereof.

The parties shall comply with the rules of data protection, in particular where they are granted access to the other party's operations or hardware and software. They shall ensure that their agents and subcontractors also comply with these provisions and, in particular, that they are bound to data secrecy prior to commencing their activities. The parties do not intend any processing or use of personal data on behalf of the other party. Rather, any transfer of personal data shall take place only in exceptional cases as an ancillary consequence of the contractual services provided by the parties. Personal data shall be handled by the parties in compliance with the applicable data protection laws.

14. Final Provisions

No oral side agreements have been made. Any amendments or supplements must be made in text form and must refer specifically to this Contract. This form requirement shall also apply to any waiver of this requirement.

Should any provision of this Contract be or become invalid, or should the Contract contain any omission, this shall not affect the validity of the remaining provisions. The parties undertake to agree, in place of the invalid or incomplete provision, a provision which comes as close as possible to the legal and economic purpose of the invalid or incomplete provision.

All legal relationships arising out of this contractual relationship shall be governed by the laws of the Federal Republic of Germany, excluding the CISG.

If the Customer is a merchant or has its registered office or place of business outside Germany, the place of jurisdiction for all disputes in connection with these Terms and Conditions shall be Frankfurt am Main. However, CURSOR-XPS shall also be entitled to elect the Customer's place of business as the place of jurisdiction.

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