

## **AGB Pranke GmbH**

### **General Terms and Conditions (GTC)**

**of Pranke GmbH, Karlstrasse 16b, 76133 Karlsruhe, Germany  
(hereinafter referred to as "Pranke")**

#### **§ 1 Scope of Application**

1.

The other party (hereinafter referred to as "Client" automatically accepts the General Terms and Conditions of Pranke by placing its order. The present GTC shall apply exclusively; supplementary or conflicting GTC of Client do not become part of the Agreement.

2.

The GTC shall apply in their present form to all future business transactions between Client and Pranke, including all cases where no explicit reference is made to them.

3.

Offers submitted by Pranke are subject to change without notice unless they are specifically referred to as binding, or unless they contain a validity period. Client will be bound by the order placed with Pranke for a period of one (1) month; Pranke is not obligated to accept Client's order. A contract between Pranke and Client is concluded either by its signing, or by written order confirmation from Pranke, or performance by Pranke.

4.

Pranke shall provide supplies and services of a contractually agreed quality that are state-of-the art at the time the Agreement is concluded. All specifications and requirements made by Client must be in writing.

5.

Information and representations in the product and in project descriptions, documentation, etc., shall not be deemed to be guarantees or warranties issued by Pranke as to the quality or the durability of the supplies and services, unless Pranke expressly makes a written statement to this effect.

6.

In the event that Pranke carries out development tasks in accordance with the specifications and requirements of Client or if Pranke integrates computer programs or other components from third parties or Client itself into the hardware or software upon the request of Client, or adapts its own developments to such components provided, Pranke does not assume any responsibility for the technical and legal properties of these third party components. In particular, Client shall indemnify Pranke from and against claims for damages that third parties assert against Pranke for an infringement of third party patents, copyrights, trademarks, or other industrial property rights.

7.

Pranke uses these General Terms and Conditions only in its dealings with business entities in connection with its business operations.

## **§ 2 Delivery, Delivery Period**

1.

Periods given for delivery and performance shall not be binding, unless Pranke refers to them as binding in a written document. Compliance with delivery periods and/or the time for performance is subject to proper and timely delivery to Pranke, unless Pranke is responsible for non- or mal-performance on the part of its supplier(s). Partial deliveries are permissible to the extent that the parts supplied may be used independently in a reasonable manner. Any partial delivery or partial service may be invoiced separately.

2.

The delivery period/period for performance shall commence upon clarification of all details concerning the execution of the order and after Client has provided any documentation to be supplied by Client, if applicable. Upon Client's request, Pranke shall confirm this date in writing.

3.

In the event of a delay of the delivery or performance for reasons beyond its control, Pranke will be released from its obligation of timely delivery / performance while the delay persists. In the event that the circumstances impeding delivery or performance should persist for more than three (3) months, both Client and Pranke have the right to rescind the Agreement.

4.

If an acceptance procedure is required, it will be deemed to have been conducted – unless Client explicitly objects to this provision - two weeks after the go-live, unless an acceptance procedure has actually been performed at an earlier date.

5.

Software will be shipped in machine code, not in source code.

## **§ 3 Client's Duty to Co-Operate**

1.

Client shall provide any information required for the performance of the Agreement to Pranke in a timely manner. To the extent that this is useful or necessary in the performance of the Agreement, Client shall support performance on the part of Pranke free of charge by making available – to the extent required – e.g., staff, rooms, the necessary IT environment, telecommunications systems, and data in a timely manner, and by collaborating with Pranke on specifications, tests, acceptance procedures, etc.

2.

Prior to the go-live, Client shall thoroughly test any supplies, work results, development objects, and adaptations and adjustments provided by Pranke for their freedom from defects and fitness for their intended use.

3.

Client shall take reasonable precautions for the event that the provision or performance of the supplies and/or services should be impaired or that the supplied goods do not operate properly in whole or in part. Client shall backup its data based on the recognized state-of-the-art that is current at that time. It shall ensure that up-to-date data can be reproduced from machine-readable data stores at a reasonable cost.

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4.

If Client fails to comply with its duty to co-operate, Pranke may withhold its deliveries or services. In the event that Pranke performs the agreement anyway, it will charge Client with the additional expense incurred due to Client's failure based upon the price list that is valid at that time. The same applies to additional costs that Pranke incurs because work must be repeated as a consequence of inaccurate, incomplete, or subsequently revised information provided by Client.

5.

Client shall immediately inspect all supplies and services provided by Pranke in accordance with § 377, § 378 German Code of Commerce (HGB) and shall notify Pranke of any defects in writing, giving a detailed description of the defect.

6.

A notice of defect shall include information on the type of error, the module affected, and the tasks or operations that were being performed on the systems (hardware and software) at the time the error occurred. The defect shall be described in such a manner that it may be reproduced.

### **§ 4 Software License**

1.

Pranke grants Client a non-exclusive, indefinite, worldwide right to use the software in its original configuration or in a version released by Pranke (e.g., when a new system must be obtained) in its own business operations and within the contractually agreed scope.

2.

Client shall not rent, lease, or transfer the software, or allow the software to be used by a third party except with the prior consent of Pranke; Client shall never use the software on a time-sharing basis, in connection with the provisioning of online services (ASP), for computing center arrangements, or for any other paid or unpaid use of the software for third parties unless consent is given by Pranke.

3.

All other kinds of exploitation, in particular, its translation, alteration, arrangement, or other adaptations and their distribution require the prior consent of Pranke.

4.

Client shall not decompile the Software except to the extent permitted by and subject to the provisions of the copyright law where this is indispensable to obtain the information necessary to achieve interoperability with other programs and provided that Pranke, upon written request by Client, fails to provide the necessary information within a reasonable time and for reasonable compensation. Prior to retaining third parties, Client shall submit a written declaration by the third party in which this third party agrees to comply with the present provisions governing rights to use, and to protect and safeguard any confidential information.

5.

To the extent required for safe business operations, Client may make back-up copies of the software that shall be marked as such, and the copyright notice of the original data medium shall be attached to them. The user manuals may be copied and reproduced only for internal purposes. The copyright notices, trademarks, other proprietary legends or notices, serial numbers, and any other marks or features serving the purpose of identifying the program may not be changed or obliterated.

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### 6.

Client shall obtain the prior written consent of Pranke prior to any transfer of the software to third parties. Pranke shall not withhold consent if (i) Client declares in writing prior to the software transfer that it will finally discontinue the use of the software and not retain any copies thereof, and if (ii) the third party furnishes Pranke with a written declaration that it shall comply with the contractual provisions governing the use and transfer of the Software. Client shall provide the third party with hardware, data media, documentation, and any other documents in their original version.

### 7.

Pranke grants the rights to use set forth above on the condition precedent of full payment of all outstanding amounts. Pranke may revoke the rights to use for cause. Cause shall exist, in particular, if Client is in default of a substantial amount for a period of more than two (2) weeks, violates the present provisions governing the rights to use, or breaches the duty of confidentiality set forth in § 10, and does not promptly refrain from this violation or breach following a written notice in which the revocation of the rights to use is threatened, or, in case of imminent danger, without such a written notice. If the rights to use are revoked, Client shall return the original software, and, if applicable, any copies thereof, and delete the stored programs. Upon request, Client shall confirm to Pranke that it has returned and deleted the items in their entirety.

## **§ 5 Payment Terms, Prices**

### 1.

In the event that fixed prices were agreed for supplies and any other services, 50% of the compensation will be due and invoiced, unless otherwise agreed, at the date of the execution of the agreement, and 50% upon contract performance. Contractual services and any other services that are charged on a time and materials basis will be invoiced and due at monthly intervals based on the price list of Pranke that is valid at that time. Payments are due within fourteen (14) days from the receipt of the invoice with no deductions.

### 2.

All prices are quoted exclusive of the statutory value added tax, freight, packaging, and insurance that is valid at that time.

### 3.

Pranke may claim interest on late payment in the amount of 10 % above the basic interest rate of the European Central Bank to compensate for damages caused by late payment. Pranke has the right to prove higher damages and Client lower damages, however, as a minimum, the statutory interest rate for late payment shall be payable. In the event that Client is in arrears with a payment by more than two (2) weeks, Pranke has the right to withhold any further supplies and/or services until payment has been received. Pranke shall advise Client hereof in writing prior to suspending supplies and services.

## **§ 6 Reservation of Title**

### 1.

Pranke reserves the full ownership right and title to and in the systems supplied by it until all claims that it may have against Client in connection with the business relationship have been settled. In case of a substantial violation of the Agreement by Client, Pranke has the right to demand the return of the system, in particular, in case of delayed payments.

2.

Client shall promptly notify Pranke in writing of any attachment, seizure, or other third party interventions (e.g., damage, destruction, etc.). In addition, Client shall promptly inform Pranke of any change of business address.

3.

If the system supplied under a reservation of title is combined with other items not belonging to Pranke, Pranke acquire a pro-rated joint ownership title in the newly created item based on the ratio of the value of the system supplied under reservation of title to the value of the other items at the time of their combination, unless the other item is to be deemed the most significant component.

## **§ 7 Defects, Warranty**

1.

Defects as to quality are only those reproducible defects that are caused by poor quality of the supplies and services provided by Pranke. Any impairment of a function resulting from environmental conditions (including hardware defects for which third parties are responsible), operator errors, data corruption, or any other reasons for which Client is responsible, shall not be deemed a defect as to quality. Minor defects will not be considered.

2.

As far as software defects are concerned, Client is advised that based on the state-of-the-art it is not possible to produce software of such a quality that will operate error-free in all combinations and applications. Therefore, the subject matter of this Agreement is only a software that is substantially fit for use within the scope of the product description and the user manual.

3.

Pranke advises Client that even minor changes in the software or the system, respectively, may result in substantial, unforeseeable problems in the operation of the program concerned, of other programs, or the overall system. Client is, therefore, expressly warned not to modify the programs without prior consultation; Client shall assume full risk for any modifications that it carries out on its own.

4.

In the event of a defect, Pranke may initially discharge its warranty obligations by subsequent performance. At the discretion of Pranke, this may either be the removal of the defect or the shipment of an error-free item, or creation of a new work. Services may be repeated by Pranke. At the discretion of Pranke, subsequent performance regarding software will occur by providing a new version of the program or documentation, or by showing Client a way of avoiding the effects of the defect or to work around the defect. Client will also accept a new software program version in the event that this causes reasonable expenses (time and material) for adaptation and customizing.

5.

If third parties assert claims to proprietary rights against it, Client shall notify Pranke immediately in writing. In its sole discretion, Pranke shall defend or satisfy the claims. Pranke may replace the supply concerned with an equivalent supply that is compliant with the contract requirements, if Client can reasonably be expected to accept this. Client shall not recognize any third party claims in its own discretion. Pranke shall defend against third party claims at its expense, and shall indemnify and hold Client free from any costs and damages related to or arising from the defense, to the extent that Pranke is liable.

6.

If subsequent performance has finally failed, or if the defense against or settlement of third party proprietary rights fails, Client has the right, in its discretion, to reduce the compensation, to rescind the agreement, and/or to claim damages or the reimbursement of wasted expenditures. The two latter claims are subject to § 8. The limitations period for claims regarding defects is subject to § 9.

**§ 8 Liability**

1.

Pranke shall pay damages or reimburse wasted expenditures, irrespective of the legal cause, only to the following extent:

- in case of intentional wrongdoing and absence of a guaranteed quality for the full amount;
- in case of gross negligence for reimbursement of the foreseeable and typical damages;
- in all other cases only for violation of a contractual duty that is of such material importance that the attainment of the purpose of the Agreement would be jeopardized and on compliance with the same Client may therefore rely, and for claims arising from defects as to quality or in title/warranty, and default. In the aforementioned cases, Pranke shall be liable for the foreseeable and typical damages, limited however,
  - to the respective contract volume for each individual damage incident and for all damage incidents together, provided, however, no less than EUR 5,000.00.
  - in case of a contract for the performance of a recurring obligation (e.g., support contracts) limited to the compensation payable within any one (1) calendar year,

2.

Statutory liability for personal injury or product liability remains unaffected. The defense of comparative negligence remains unaffected. Pranke shall be liable only for the restoration of data, if Client has made state-of-the-art backups and ensured that they can be reproduced from machine-readable data inventory at a reasonable cost. Telecommunications services rendered to the public are governed by § 44a of the Telecommunications Act (TKG).

3.

To the extent that liability is excluded or restricted pursuant to the foregoing provisions, this provision shall also inure to the benefit of the employees, representatives, and vicarious agents of Pranke.

**§ 9 Statute of Limitations**

1.

The limitations period for all claims of Client resulting from defects of the supplies and or services (§ 7) and for damages and the reimbursement of wasted expenditures (§ 8) is one (1) year. This is inapplicable if a third party may claim the surrender of the software by Client based on an in rem right.

2.

The limitations period shall commence in accordance with the statutory provisions and shall expire – if the statutory maximum period applies – upon the expiration of a five year period from the date on which the claim arises.

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### 3.

The statutory limitations period for claims against Pranke due to an intentional or grossly negligent violation of a duty (e.g., in the event of the malicious concealment of a defect), the assumption of a guarantee, personal injury or under the Product Liability Act remains unaffected.

## § 10 Confidentiality

The parties agree to keep confidential any information and records disclosed to them by the other party, or of which they become aware during the performance of the Agreement. Such information and records shall not be disclosed to third parties that are not involved in the performance of this Agreement. The parties shall store and protect such items in such a manner that third party misuse is precluded. The duty of confidentiality shall not apply to information and records that are in the public domain and were accessible at the time of disclosure, or of which the receiving party was aware at the time of disclosure, or that was disclosed by third parties not bound to a duty of confidentiality. This duty of confidentiality shall survive the termination of this Agreement.

## § 11 Final Provisions

### 1.

Oral collateral agreements are not incorporated into the Agreement. Modifications or amendments to this Agreement must be in writing to be effective. Compliance with the written form requirement is also deemed to exist by sending a facsimile message, but not an e-mail message. Any waiver of the mandatory written form requirement must be made in writing.

### 2.

If any provision of these GTC is or should become invalid in whole or in part, the remaining terms and conditions shall remain in full force and effect. An invalid provision is replaced by a valid provision that has such a financial effect that most closely matches that of the invalid provision. The same applies to a gap in the Agreement.

### 3.

All arrangements and agreements, all legal relationships under this Agreement between Client and Pranke, and all acts related thereto are subject to the law of the Federal Republic of Germany; the UN Convention on the International Sale of Goods (CISG) shall not apply.

### 4.

Place of jurisdiction is Karlsruhe, Germany

Last revised June 2009