

PSO GmbH – General Terms and Conditions of Business

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I. General Terms and Conditions of PSO GmbH for Purchases of Products via www.pso.de

Valid as of 1 July 2011

1. Scope of validity

- 1.1 These General Terms and Conditions of Business as well as our Data Protection Policy shall apply exclusively, in their then-current version at the date of the purchase, to the business relationship between the customer (you) and PSO GmbH (we). No adverse or other provisions provided by you will be acknowledged, unless expressly accepted by us in writing.
- 1.2 You are free to view these General Terms and Conditions of Business at our website www.pso.de and to print and save them using the functionalities provided by your internet browser. You are also free to archive the e-mail that is being sent to you by us for the purpose of confirming the receipt of your order. Therein you will find the details of your order as well as these General Terms and Conditions of Business.
- 1.3 We grant each customer a password protected access to his or her personal account. After you have registered with us you may view and administer your data concerning open and recently shipped orders as well as other past orders, your address, bank account details, and the subscription to our newsletter. You shall keep your user name and password confidential.

2. Conclusion of the Contract

- 2.1 Your contractual partner is PSO GmbH, Hohenlindener Strasse 1, 81677 Munich, Germany.
- 2.2 Our advertisement is without engagement, except if expressly confirmed as binding.
- 2.3 By placing a purchase order with us, you make a binding offer to purchase the products in your shopping cart. A contract will not be concluded, however, unless and until we confirm your order by sending you an e-mail setting forth the details of your purchase, provided that shipping of product shall be construed as a confirmation. Where we do not confirm parts of your order by e-mail, or do not ship the relevant product, no contract shall be deemed concluded with regard to such parts of your order. Subject to each customer's right of revocation (section 3 below), your offer is binding for a period of 5 work days.
- 2.4 We sell product only in quantities suitable for an average household.

3. Revocation Right

The following revocation right shall only apply to consumers within the meaning of § 13 of the German Civil Code (*Bürgerliches Gesetzbuch*). According to § 13 of the German Civil Code a customer is each natural person that enters into the transaction for purposes that cannot be attributed to such person's trade or free-lance activities.

Agreement on the Bearing of Costs

You have to pay for the cost of return shipment (i) if the product delivered is the product you ordered and the price of the returned product does not exceed €40.00 (forty Euros) or (ii) if the price of the returned product exceeds €40.00 and you have, at the time of revocation, failed to perform your main obligation under the contract or to make a down payment to the extent such down payment was contractually required. Failing any of the above, return shipment will be at no costs to you.

Instructions on your Right of Revocation

You have the right to withdraw from your order within a period of 14 days with no obligation to state a reason, either in text form (e.g., letter, fax, e-mail) or, if the product has been provided to you before the end of such 14-day period, by sending the product back to us. The 14-day period starts with your receipt of these instructions in text form, but no earlier than upon your receipt of the product (or, in the case of recurring delivery of similar product, no earlier than upon your receipt of the first installment) and no earlier than upon our full compliance with our obligation to instruct you in accordance with Article 246 § 2 and § 1 (1st and 2nd paragraph) of the Introductory Law to the German Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuch, EGBGB*) and Article 246 § 3 EGBGB. In order for you to comply with the 14-day term, it suffices to dispatch the revocation notice or the product to us during such 14-day period.

Please send the revocation to:

PSO GmbH
Hohenlindener Strasse 1
81677 Munich
Germany

Telefax: +49 (0)89 96228899-31
E-Mail: info@pso.de

Please return product to:

PSO GmbH
Return Shipments
Hohenlindener Strasse 1
81677 Munich
Germany

Consequences of any Revocation

In the event of a revocation each party shall return to the other party what it has obtained from such other party (e.g., product, money), as well as any benefits obtained through the use of what was obtained (e.g., interest). In the event you are unable to return the product (in whole or in part) to us at all, or in declined condition, respectively, you are obliged to compensate us for lost value. No compensation for lost value will be due, however, if the product's declined condition is solely due to your examination of it (as would be possible in a physical store, for example). You can avoid the obligation to compensate us for lost value resulting from intended use by not treating the product as your own and by refraining from any activity that deteriorates the product's value. Products that can be shipped by parcel are to be returned to us at our own cost and risk. You have to pay for the cost of return shipment (i) if the product delivered is the product you ordered and the price of the returned product does not exceed €40.00 (forty Euros) or (ii) if the price of the returned product exceeds €40.00 and you have, at the time of revocation, failed to perform your main obligation under the contract or to make a down payment to the extent such down payment was contractually required. Failing any of the above, return shipment will be at no costs to you. Products that cannot be shipped by parcel will be picked up by us from you. Any obligation to reimburse costs shall be met within 30 days. For you, the term begins with the dispatch of your revocation notice or the product, for us with their receipt, respectively.

End of the Instructions on your Right of Revocation

Exclusion of the Revocation Right

You shall have no right of revocation with regard to distance selling contracts insofar as any of the following products are the subject of the transaction:

- a. Products that were produced in accordance with specifications provided by you or tailored to specifically meet your personal requirements or products that are inapt for return shipment (e.g., software downloads) or perishable or that have passed their expiration date;
- b. Products with audio or video or software content to the extent you have unsealed the data carrier delivered to it;
- c. Newspapers, journals and magazines, unless you have placed your order by telephone.

4. Prices, Payment and Delivery

- 4.1 The price mentioned in our offer at the time of the placement of the order shall be the agreed upon price. Such price is the end price, i.e., the product price including value added tax and any other price components, but excluding shipment costs.
- 4.2 The following payment methods may be used in connection with our shop: credit card, advance payment by wire transfer, purchase on account, debit, and Paypal. We reserve the right to offer you only certain payment methods, depending on the results of a credit assessment.

- 4.3 The purchase price shall be due upon your receipt of our confirmation of the order, except that for 'purchase on account' the payment shall be due upon your receipt of the shipped goods. You will be in default if payment is not made within 14 days of the payment's due date. We do not accept payment from bank accounts outside of the European Union.
- 4.4 If automatic debit transfer fails due to a lack of funds, incorrect bank details provided by you, or due to an objection raised by you, or due to any other reason, you shall bear any additional costs resulting therefrom (e.g., bank fees), unless the automatic debit transfer fails through no fault of your own.
- 4.5 To the extent we give any details on our website in connection with one of our products as regards availability and shipment, such details are not binding or guaranteed (except as expressly otherwise agreed upon). Shipment of the purchased product will usually take place within 10 work days, but no later than 30 days after receipt of the order, as shipment depends also on third party upstream suppliers. Where advance payment is required, shipment will not take place unless and until full payment has been received on our bank account. In addition, we may cancel the order if payment has not been made and received within 30 days of your receipt of the confirmation of the order and after receipt by you of a written notice that payment is due.
- 4.6 Shipment will be reasonably delayed in any force majeure event, e.g., in the event of strike, lock out, governmental intervention, lack of energy or resources, transportation shortages (through no fault of our own), interference by fire, water and system damages as well as any other interferences that intervene through no fault of our own. We will give notice to you hereof without undue delay. You may cancel your order if any of the foregoing intervenes for a period of more than 30 days, without prejudice to any other rights and remedies you may have.
- 4.7 Any of our shipment obligations is subject to the quantities of the relevant product that we have on hand in our inventory or that are made available to us by our suppliers. Please note that we will not assume any procurement risk, i.e., any risk of obtaining supplies with regard to ordered products which are not immediately available to us. In particular, we shall have no delivery obligation in the event that we ourselves are not supplied with the product duly or on time through no fault of our own. In such event we may cancel the agreement, whereby we shall give you notice hereof without undue delay, and we will reimburse you any amounts already paid, subject to any other rights and remedies you may have.
- 4.8 For consumers within the meaning of § 13 of the German Civil Code (*Bürgerliches Gesetzbuch*), and in case of mail order only, the risk of accidental demise and accidental deterioration of the product shall transfer to you upon handover to you or any third party appointed by you to take delivery, irrespective of whether or not there is insurance coverage. Otherwise, the risk of accidental demise and accidental deterioration of the product shall transfer to you upon handover, in case of mail order upon delivery of the product to the freight carrier or such other person or entity assigned to procure delivery.
- 4.9 We shall retain title to all products delivered until receipt by us of full payment.

5. Warranty

The statutory warranty provisions shall apply.

6. Data Protection

- 6.1 We will save and archive your order and address data (and transmit the same to our partners) for the purpose of processing and handling your order and shipping the product, for recommendations of other products, for warranty issues and credit assessment (in particular in case of purchase on account) in accordance with our Data Protection Policy.
- 6.2 In addition to the foregoing, our Data Protection Policy shall apply to any processing of your data by us.

7. Changes to these General Terms and Conditions of Business

Insofar as these General Terms and Conditions of Business have been applicable to the customer relationship between you and us, we reserve the right to modify them in our own discretion if this is necessary due to changing legal or technical landscape that we operate in. Any such modifications shall be deemed accepted by you, unless you oppose to such modifications in writing or by e-mail within 40 days of your receipt of a notice detailing the modifications.

8. Applicable Law, Venue

- 8.1 All business transactions with us shall be governed by the laws of Germany excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) and any other intergovernmental agreements (whether or not they have been transformed into German law).
- 8.2 In any business transactions with merchants and public law entities (all within the meaning of § 310 I 1 of the German Civil Code (*Bürgerliches Gesetzbuch*)) the courts of Munich shall have exclusive jurisdiction with regard to any dispute arising out of or in connection with these General Terms and Conditions of Business, provided that we may also choose to pursue legal action at the customer's main place of business.

9. Severability

If a condition in the agreement is or becomes invalid, the validity of the remainder of the agreement will not be affected. In place of the ineffective regulation, a regulation that is closest to the economic purpose of the ineffective regulation will count as agreed on. The same shall apply in the event of a loophole.

II. General Terms and Conditions of PSO GmbH for Consulting and IT-Services

Valid as of 1 June 2011

1. Scope of validity

- 1.1 These General Terms and Conditions of Business apply to the provision of software consulting and IT services by PSO GmbH („PSO“), whereby such services can include, from time to time, the licensing of pre-existing software to the customer.
- 1.2 These General Terms and Conditions of Business shall be exclusively applicable; no adverse or other provisions provided by the customer will be acknowledged, unless expressly accepted by PSO in writing.
- 1.3 Generally, any contract shall be considered as awarded if a written order by the customer was confirmed by PSO in writing or if the customer signed an order form provided by PSO. Any confirmation of an order as well as any order form shall hereinafter together be referred to as “Statement of work”.
- 1.4 Other terms applicable to the services object of these General Terms and Conditions of Business may be set out in schedules to the Statement of Work and become part of the agreement only by express reference in the Statement of Work. If there is a conflict among the components of the agreement, the terms of the Statement of Work and its schedules shall prevail over these General Terms and Conditions of Business, subject only to section 1.2 above.
- 1.5 The Services to be provided by PSO are listed conclusively and in detail in the Statement of Work (including any schedule thereto) and in these General Terms and Conditions of Business. Supplements thereto as well as any covenants, warranties, representations and/or any other agreement between the parties before or in connection with the conclusion of the contract must be in writing to be legally effective and require the prior express approval by the PSO management.
- 1.6 These General Terms and Conditions of Business shall apply only toward contractors in the meaning of section 310 I of the German Civil Code (*Bürgerliches Gesetzbuch*).

2. Performance of services by PSO

- 2.1 PSO shall render no services but those set out in the Statement of Work and its schedules. PSO shall render its services in accordance with the accepted state of the art in the relevant science and technology at the time the agreement is signed. Except as provided herein before, PSO makes no warranties as to the quality of the services to be performed. To the extent services are not mentioned in the Statement of Work, or in any schedule thereto, PSO will render such services at its then current rates and subject to the execution of an agreement duly signed by both parties.
- 2.2 To the extent the services and its quality are described in the Statement of Work, or in any schedule thereto, such descriptions are appellative only and

shall not be construed as warranted characteristics, unless expressly confirmed in writing by PSO.

- 2.3 PSO will perform its services at the place of performance agreed upon in the Statement of Work or in any schedule thereto.
- 2.4 PSO renders services within the meaning of sections 611 et seqq. of the German Civil Code (unless it expressly confirms that its services shall be a work performance within the meaning of sections 631 et seqq. of the German Civil Code), whereby PSO will be responsible for the services it provides and PSO will assist and give advice to the customer, provided that solely the customer shall bear responsibility for the project and its success.
- 2.5 PSO will use all reasonable efforts to render its services within the period of time agreed upon in the Statement of Work or in any schedule thereto. However, and unless expressly confirmed in writing by PSO, any such period of time shall be an estimate only and non-binding.
- 2.6 Each party may request changes to the scope of services. However, PSO shall not be obliged to comply with any such request and to offer more or other services than those set out in the Statement of Work and its schedules. Any changes to the scope of services are subject to mutual agreement in a change letter duly signed by both parties. For as long as no such change letter has been signed, PSO may continue with the performance of the services as originally agreed upon. Where a customer's change request leads to a temporary interruption in the performance of PSO's services, PSO may demand the agreed compensation, or a reasonable compensation if no specific compensation had been agreed upon for the services in question, provided that PSO is unable to deploy the respective employees in a different project (for remuneration).
- 2.7 To the extent that PSO has committed itself to a fix delivery date, any changes and enhancements to the original scope of services will defer such delivery date accordingly. The same shall apply if some event beyond PSO's control prevents it from performing its obligations under the contract, e.g., in the event of force majeure. If PSO's performance of its obligations under the contract is impeded due to any of the foregoing for a period of at least 30 days, PSO may terminate the agreement without prior notice, whereby the customer is not entitled to any remedies in that respect. The due performance by PSO of its obligations under the contract is always subject to the customer meeting its payment obligations and its obligations to co-operate with PSO.
- 2.8 PSO may subcontract part or all of the services to a third party, provided that PSO remains responsible and liable for the fulfillment of its obligations under the contract and for the performance of the services.
- 2.9 Insofar as the scope of services obliges PSO to provide a user documentation to the customer, PSO is free to choose whether it will provide such user documentation or any part thereof in the German or in the English language.

3. Compensation

- 3.1 The customer will compensate PSO for its services on a time-and-material basis, unless the parties expressly agree in writing upon a fixed price compensation.

- 3.2 A time-and-material compensation will be calculated on the basis of daily or hourly rates (whereby one day shall consist of 8 working hours). The compensation will be augmented or reduced proportionately in accordance with longer or shorter working hours, respectively. The compensation will be calculated at PSO's then current rates, unless otherwise agreed in the Statement of Work or its schedules. If PSO is required by the customer to perform any of its services outside its regular business hours, the daily or hourly rate, respectively, will be increased (i) by 30% on weekdays between 10pm and 6am and on Saturdays and (ii) by 50% on Sundays and on bank holidays.
- 3.3 Travel and accommodation, where required for the performance of the services, as well as any other costs and expenses reasonably incurred by PSO will be charged to the customer at PSO's then current rates (e.g., travel times and expenses, accommodation, allowances).
- 3.4 Any fees mentioned in the Statement of Work or in any schedule thereto are net of any value added tax. The value added tax will be charged to the customer in addition to those fees at the then current VAT rate. In the event there is a change in the VAT rate during the term of the contract, the contract shall be deemed modified accordingly.
- 3.5 PSO will invoice the customer as agreed upon in the Statement of Work or in any schedule thereto, which may be in advance, at the end of each month, or after completion of the services. If the parties have not agreed upon a specific payment schedule, monthly payment shall be deemed agreed. PSO may invoice the customer costs and expenses pursuant to clause 3.3 as soon as such costs and expenses have been incurred. PSO may in its sole discretion, and in accordance with section 14 I 2 of the German Value Added Tax Act (*Umsatzsteuergesetz*), invoice the customer in digital form by e-mail.
- 3.6 The amount invoiced is due upon receipt of the invoice by the customer and is payable without any deductions whatsoever within 14 days of the invoice date by wire transfer to the bank account mentioned on the invoice.
- 3.7 If the customer fails to pay any amount as invoiced, the customer will be in default without any further notice and any such amount shall bear interest in the amount of 10 percentage points over and above the then current base rate of the European Central Bank, subject to any other rights and remedies PSO may have and to customer's right to demonstrate that a lower interest loss occurred.
- 3.8 PSO may refuse to continue performing its services under the contract and may withhold any deliverables due if the customer is in default with any payment or if there is indication for customer's illiquidity. In any such event PSO may demand the deposit of a security, unless the customer pays any monies payable under the agreement, whether due or not, in advance.
- 3.9 If the customer is in default, PSO may withdraw any deliverables from the customer to the extent this is possible given the nature of the services and notwithstanding any other rights and remedies PSO may have. Prior to any withdrawal PSO will give notice to customer reasonably in advance.
- 3.10 In the event the customer does not accept delivery of pre-paid services at the agreed delivery date, the customer shall not be entitled to any refund or credit or to any delivery at a later date.

4. *The customer's obligations to co-operate*

- 4.1 The performance of PSO's services under the contract is subject to the customer's meeting its obligations to co-operate as set out herein. The customer will use best efforts to support PSO in order for PSO to be able to accomplish its services within the period stipulated for delivery, if any. Without limiting the generality of the foregoing, the customer will – as a fundamental duty – meet all of its obligations to co-operate set out in this clause 4 in timely manner and at no costs or fees to PSO and will have its organisation suitably prepared, as is reasonably required for the performance of PSO's services.
- 4.2 During the performance of its services PSO shall be granted access to management and other personnel that are qualified to perform the tasks required of the customer. The customer will assign a qualified project manager that is able to reach or to effectuate a decision and provide PSO with necessary information when needed. If PSO so requests in its reasonable discretion for the purpose of a successful project, the customer will replace any member of its personnel assigned to the project.
- 4.3 The customer shall make available to PSO in due time all information and material necessary and appropriate for the performance of the services under the agreement. PSO encourages the customer to check all material and information provided to PSO to be complete, precise and faultless. PSO shall not be responsible for any losses, damages or defects resulting from incomplete, imprecise or faulty information or material provided by the customer, unless PSO overlooked any of the foregoing by gross negligence or willful conduct.
- 4.4 To the extent necessary for the provision of the services, the customer shall grant PSO free access to its premises, including, without limitation, the right to use the customer's parking area, workplace, tools and equipment (e.g., internet access, telephone, fax, simple office supplies, direct system access, remote access, etc.). The customer will make available the necessary system environment for development purposes, including the necessary number of ready-to-work computer terminals that allow direct access to the customer's system infrastructure. The customer is solely responsible for the operation and support of its system infrastructure and will provide for a regular back-up of the customer data and programs (at least once daily). The customer's computers made available to PSO must at all times dispose of an up-to-date data security and anti-virus protection system. Any licenses, approval and authorizations necessary for the performance of PSO's services will be procured by the customer. The customer will inform PSO reasonably in advance of any restrictions pertaining to the availability of any of customer's systems, tools and equipment as well as to the access to any of the customer's work areas.
- 4.5 Unless PSO has expressly committed itself in writing to be in charge of the customer project, it is customer's sole responsibility to manage and control third parties involved in the project. The customer will ensure the necessary and timely co-operation of any third party commissioned by the customer in connection with the project if such third party's involvement has any impact on PSO's performance of services.
- 4.6 If the customer fails to perform any of its obligations hereunder in a timely or properly manner and if the customer, after receipt of a written notice from PSO, fails to cure such default within a reasonable period of time indicated by PSO,

PSO may terminate the agreement with immediate effect, subject to any other rights and remedies PSO may have.

5. *License terms and ownership*

- 5.1 PSO will make available to the customer the Work Results and Deliverables defined in the Statement of Work and in any schedule thereto. "Work Results and Deliverables" as used herein are written documents and other works (e.g., software and other programs, the associated documentation, concepts, analyses, diagrams and drawings, reports, etc.) individually created for the customer, provided that any programs (including software), documents and other works that had been created by PSO or any third party before, outside or independent of the customer project (including any modification thereof for the customer, altogether referred to as "Pre-existing Works") shall not be considered Work Results and Deliverables. Pre-existing Works shall be governed by the license terms set out in section 5.3 below.
- 5.2 Subject to section 5.3 and PSO's receipt of the full compensation agreed upon at the time of signature of the agreement, PSO hereby assigns to the customer, and the customer accepts, the transferable, exclusive, worldwide, perpetual, unlimited, paid-up license to use the Work Results and Deliverables within the means of sections 15 to 24, 69a of the German Copyright Act (*Urheberrechtsgesetz*). Upon signature of the agreement, the customer grants to PSO, and PSO accepts, the irrevocable, transferable, non-exclusive, unlimited, worldwide, perpetual, paid-up license to use and exploit the Work Results and Deliverables, including, without limitation, the right to translate, customize, modify, reproduce, display, perform, and make publicly available Work Results and Deliverables or any part thereof, and to sublicense all or part of these rights to any third party. In no event will any termination of the agreement affect or interfere with PSO's rights in and to the Work Results and Deliverables previously rendered, which rights will continue in full force and effect.
- 5.3 Any and all rights in and to Pre-existing Works remain with PSO or a third party. Only to the extent that Pre-existing Works are embedded in any Work Results and Deliverables, and subject to PSO's receipt of the full compensation agreed upon at the time of signature of the agreement, PSO grants to customer, and customer accepts, the non-transferable, non-exclusive, worldwide, perpetual, paid-up right to use such Pre-existing Works for the customer's internal business purposes in accordance with the intended purpose of the agreement. The customer may not sell, rent, sublicense, or make available any Pre-existing Work, or any copy thereof, to any third party, regardless of whether or not such Pre-existing Work is embedded in any Work Result or Deliverable.
- 5.4 PSO assigns to the customer, and customer accepts, the ownership in and to the Work Results and Deliverables upon PSO's receipt of the full compensation agreed upon at the time of signature of the agreement.
- 5.5 PSO reserves any and all rights not expressly granted or assigned to the customer herein. PSO reserves the right to offer equal or similar services to other customers than the customer. Without limiting the foregoing, PSO shall in no way be limited to use any ideas, know-how, training and workshop data, standard support resources, and basic concepts created in connection with the

customer project for the purpose of other customers or in connection with projects of other customers.

- 5.6 In the event the customer makes available to PSO any third party products (e.g., standard software and associated documentation) or other third party works during the project, the customer shall secure all rights and authorizations necessary for PSO's performance of the services and shall, where necessary, grant to PSO, free of charge, a non-exclusive limited license to use such third party products and works within the scope of the project. The customer shall indemnify and hold harmless PSO, its officers, employees, agents, subcontractors, and vicarious agents at first request from or against any and all third party claims arising out of or in connection with the use of third party products and works by PSO during the project and in accordance with the agreement.
- 5.7 If the customer fails to comply with the license terms set out herein and if the customer, after receipt of a written notice from PSO, fails to cure such default within a reasonable period of time indicated by PSO, PSO may, subject to any other rights and remedies PSO may have, terminate the agreement with immediate effect, unless the customer's failure is merely insignificant. In any such event of termination, any and all rights assigned or granted to the customer revert to PSO with immediate effect.

6. *Special terms for work performances (sections 631 et seqq. of the German Civil Code)*

The following additional terms shall apply where PSO has, exceptionally, committed itself to deliver a Work Result within the means of sections 631 et seqq. of the German Civil Code.

Acceptance

- 6.1 The customer shall without undue delay declare its acceptance if the work result delivered by PSO is substantially as contracted. Insignificant defects of the work result do not entitle the customer to deny acceptance.
- 6.2 If the Statement of Work or any schedule thereto provides for acceptance criteria or an acceptance procedure, the customer shall without undue delay, but in any case in no more than 14 days after delivery, check if the acceptance criteria have been met or perform the acceptance procedure. The aforesaid period can be extended where the parties have agreed upon such extension in writing or where such extension is, as an exception, indispensable given the nature of the work result. PSO will reasonably support the customer's testing activities. To the extent that test data and scenarios are necessary for testing, it is the customer's responsibility to provide those.
- 6.3 During acceptance testing the customer will prepare an acceptance protocol that describes defects found, test data and scenarios used, and any action taken that leads to a defect. The customer will make available such protocol to PSO after acceptance testing, but upon notification to PSO of a defect at the latest.
- 6.4 Unless the parties have agreed otherwise, the Work Results and Deliverables shall be deemed accepted 30 days after delivery to the customer at the latest, unless the customer notifies PSO in writing of any defect found.

Notwithstanding anything to the foregoing, Work Results and Deliverables shall be deemed accepted if used productively.

- 6.5 Any part of the delivered work shall be subject to a separate acceptance if it constitutes an independent functional unit in its own right. Insofar, sections 6.1 through 6.4 shall apply accordingly, but without prejudice to any final acceptance confirming the defect-free coercion of all units of the work delivered.

Liability for defects

- 6.6 Subject to section 634a 1st paragraph number 2, and 3rd paragraph of the German Civil Code, the limitation period for PSO's liability is 12 (twelve) months starting with acceptance.
- 6.7 Any defect found entitles the customer to demand from PSO supplementary performance within a reasonable period of time. In such event PSO will, at no charge to the customer and in its sole discretion, either rectify the defect or deliver a replacement work to the customer. Supplementary performance shall be deemed to have failed after 3 (three) attempts.
- 6.8 Insignificant defects do not entitle the customer to terminate the agreement or to claim damages (with no prejudice to the customer's right to reduce the compensation payable to PSO).
- 6.9 PSO makes no warranties or representations that the Work Results and Deliverables are fit for the customer's particular purposes or to meet the customer's specific needs, unless expressly otherwise agreed in writing.
- 6.10 The customer will assist PSO in the detection and rectification of any defect and grant access without undue delay to any of its offices, documents, materials, systems, and programs that are relevant for the detection and rectification of the defect.
- 6.11 PSO is not liable for defects to the extent the customer has modified the Work Results and Deliverables, unless the defect would have emerged regardless of such modification.
- 6.12 PSO may charge the customer at PSO's then current rates for the investigation of a supposed defect claimed by the customer if such supposed defect does not fall under PSO's liability and the customer should have been aware of this after diligent investigation.

7. *Third party rights*

- 7.1 PSO will indemnify the customer from any justified third party claim that the use of the Work Results and Deliverables in accordance with the agreement infringe third party rights, provided that the customer
- promptly notifies PSO in writing of the claim; and
 - allows PSO to control the defense and any related settlement negotiations (which means, for clarification, that the customer may not negotiate and/or agree to a settlement without PSO's prior approval); and
 - promptly makes available all the support, information and full power of attorney that PSO may request in its reasonable discretion for the purpose of the actions described herein above.
- 7.2 If such a third party claim is made, PSO may in its sole discretion either obtain the right for the customer to use the Work Results and Deliverables in

accordance with the agreement at no additional costs to the customer, or modify the Work Results and Deliverables in such a way that their use as contracted falls out of the scope of said third party rights, or replace the Work Results and Deliverables with ones that are functionally equivalent. PSO may deny performing any of the above actions if the same can only be performed at an unreasonable effort or expense.

- 7.3 In the event PSO is unable to eliminate any legal restraints resulting from third party rights or PSO denies to do so due to the unreasonable expense or effort involved, the customer may reduce the compensation accordingly or terminate the agreement, subject to any other rights and remedies the customer may have.
- 7.4 PSO has no obligation regarding any claim based on third party rights to the extent such claim results from parts of the Work Results and Deliverables that the customer had designed, demanded or provided. The same shall apply if the customer
- has modified the Work Results and Deliverables; or
 - has combined, mixed or connected the Work Results and Deliverables, or has operated, distributed, or in any other way used the same, with any materials, products, systems, data, apparatus, or any other work of the customer or of any third party,

unless the third party right infringement was caused regardless of any such act.

8. Termination

- 8.1 Either party may terminate the agreement for cause in writing and with immediate effect. In particular, either party may terminate the agreement if the other, through negligence or on purpose, does not comply with any of its material obligations, provided the one who is not complying is given written notice and 30 (thirty) days to comply. An insignificant breach of one party's obligations does not entitle the other to terminate the agreement. This section 8.1 shall be without any prejudice to the terms set out in section 5.7.
- 8.2 In the event PSO terminates the agreement pursuant to section 4.6, section 5.7, or section 8.1, the customer shall be obliged to compensate any services delivered until the termination becomes effective and to reimburse and to pay for any costs, expenses and damages (with the deduction of spared expenditures) incurred by PSO in connection with the termination. This includes any commitment that PSO reasonably entered into in the confidence that the agreement would be duly executed. PSO will make reasonable efforts to reduce such costs, expenses and damages to a minimum.
- 8.3 To the extent the validity of any of the terms of these General Terms and Conditions of Business is, by nature, not limited in time, such terms shall continue in full force and effect (with no prejudice to section 5.7, 2nd sentence).

9. Liability

- 9.1 PSO's liability for slight negligence is limited, regardless of the basis of the claim, to the contract value or the typical foreseeable damage, whichever is higher, provided, however, that such limitation shall not apply to the extent the damage was caused by a violation of a fundamental duty under the agreement (i.e., a duty which must be fulfilled to enable consummation of the agreement

and the achievement of its purposes and fulfillment of which the customer may reasonably expect).

- 9.2 Under no circumstances is PSO liable for the loss of data except to the extent such loss could have been avoided by reasonable alternating back-up, unless PSO has failed to reasonably advise the customer on the necessity of data back-ups ("reasonably" shall mean: in accordance with the know-how the customer personnel typically disposes of).
- 9.3 The limitation on PSO's liability shall apply also to the personal liability of PSO's employees, officers, agents, subcontractors and vicarious agents.
- 9.4 Notwithstanding anything to the foregoing, no limitation set out in this section 9 shall apply in the event the damages are covered by PSO's professional liability insurance. PSO undertakes to sustain the insurance level given at the time of signature of the customer agreement.

10. Confidentiality

- 10.1 The customer commits itself not to disclose any confidential information that the customer obtains, whether in writing, orally, or in any other manner, in connection with the negotiation and execution of the agreement (e.g., documents, drafts, plans, data, know-how, and any other business secrets). The customer may use such information only for the purposes designated by the agreement.
- 10.2 The customer undertakes to commit its employees and any other person involved with the agreement and its execution to the confidentiality provisions set out herein.
- 10.3 The confidentiality provisions set out herein shall not apply to the extent the customer demonstrates (i) that a piece of information had been available to the customer before cooperating with PSO, or (ii) that the customer has received that information from a person duly authorized to disclose such information, or (iii) that the information had been publicly available except to the extent the customer, its officers, employees or agents are responsible for such availability, or (iv) that the customer is obliged to disclose the information by order of a competent governmental or judicial authority.
- 10.4 The confidentiality provisions set out herein shall continue in full force and effect, notwithstanding any termination of the agreement.

11. Data privacy protection

Data processing for PSO's internal purposes

- 11.1 The customer agrees that PSO will register, process and use personal data provided by the customer for the purpose of executing the agreement and in order to intensify the business relationship with the customer (including for marketing purposes). Such personal data can comprise business-related data of the customer's employees, officers, supervisors and subcontractors, e.g., name, occupation, business address, e-mail address and telephone number. In particular, the customer agrees that PSO may contact such persons for the purposes mentioned above and using the data described herein.
- 11.2 Insofar as the customer makes available to PSO the data of any person mentioned above, the customer warrants and represents that it will obtain such

person's approval for the registration, processing and use of its data in accordance with section 11.1 above.

Data processing by PSO on behalf of the customer

- 11.3 In the event PSO processes any personal data on behalf of the customer, additional terms shall apply concerning the processing of data by order of the customer (Auftragsdatenverarbeitung) in accordance with section 11 of the German Data Protection Act (*Bundesdatenschutzgesetz*), which terms can be downloaded at www.pso.de or will be made available by PSO upon request.

12. Final clauses

- 12.1 The customer agrees that PSO may use the business relationship with the customer as a reference in relation to third parties and mention and make public such business relationship and advertise with same on PSO's website, in printed media and in any other advertising material.
- 12.2 Any changes and amendments of the agreement with the customer require written form to be binding.
- 12.3 If a condition in the agreement is or becomes invalid, the validity of the remainder of the agreement will not be affected. In place of the ineffective regulation, a regulation that is closest to the economic purpose of the ineffective regulation will count as agreed on. The same shall apply in the event of a loophole.
- 12.4 The customer has no right of retention, unless his counterclaims have been asserted in a legally binding way by (or are ready for judgement in that respect) or are undisputed. The customer may not offset any of its claims against a claim of PSO, unless the counterclaim stems from the identical contractual relationship and has been asserted in a legally binding way by (or is ready for judgement in that respect) or is undisputed.
- 12.5 All business transactions with us shall be governed by the laws of Germany excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) and any other intergovernmental agreements (whether or not they have been transformed into German law).
- 12.6 The courts of Munich shall have exclusive jurisdiction with regard to any dispute arising out of or in connection with the agreement.