

General Terms and Conditions

SYSback AG

(A) General regulations

1. Scope of these conditions

- 1.1. All business relations (to include supply and delivery, hereinafter referred to as Deliveries), including any future business relations between SYSback AG (hereinafter referred to as SYSback) and the customer shall be subject exclusively to the present General Terms and Conditions of Business. Terms and conditions of purchase or any other terms and conditions of business on the part of the customer are hereby denied validity. Such terms and conditions shall not apply.
- 1.2. The services to be supplied by SYSback are described in the individual customer contract, which also details the agreements with reference to remuneration, incidental costs, due dates, duration and time frame, physical resources and place of work. SYSback shall be entitled to call on third parties to supply the services agreed.
- 1.3. The following special regulations in Parts (B) Hardware Sales, (C) IT Services/Consulting and (D) IT-Maintenance shall further apply in relation to the type of contract. If discrepancies shall arise, the special regulations shall take priority over the general regulations in Part (A).

2. Contractual agreements, written form

- 2.1. Until such time as a contract has been concluded, offers by SYSback shall be considered provisional and without commitment.
- 2.2. The customer shall be considered committed to orders for the duration of three weeks, calculated from the date of receipt of the order by SYSback. SYSback may confirm its acceptance of the order at discretion either by a written confirmation of the order, by invoicing or by delivery of the goods.
- 2.3. In order to be valid, any changes or additions to the contract require to be confirmed by SYSback in writing. This shall also apply to any deviation from the contractual requirement of written form.

3. Terms and conditions of payment, offsetting and right of retention

- 3.1. With reference to punctuality of payment, receipt of the payment on SYSback's bank account shall be taken as definitive.
- 3.2. Even if a payment target has been agreed, SYSback may call for the immediate payment of all claims and/or make further deliveries and services dependent on advance payments if a significant deterioration of the customer's situation in terms of income and/or assets has occurred, or if such a development may be anticipated for the future, based on objective circumstances prevailing.
- 3.3. Any offsetting based on counterclaims by the customer is hereby excluded, as also is any right of retention on the part of the customer, except in a case of claims by the customer that are not legally contested or have been upheld at law. The assignment of claims to third parties is not permitted.
- 3.4. If no fixed price shall have been agreed, all services and deliveries – working hours, travel times and other work done including travelling and accommodation expenses – shall be charged for in accordance with the agreed prices and conditions and/or in accordance with the prices and conditions detailed in the written offer submitted by SYSback. All our invoices fall due for payment from the date of the invoice, in full and without deductions. All prices are to be understood with the addition of VAT at the current applicable rate.
- 3.5. Travel times and travelling expenses shall arise in connection with trips between the place of work of the employee and the premises of the customer relevant for the assignment and/or between the various customer premises where the assignment is to be carried out. Settlement will be based on submission by SYSback of the standard documentation of work done. The customer may raise objection to the figures calculated in this connection, but only if objection be supplied in writing within the term of two weeks.
- 3.6. If SYSback's contracting partner shall fall into arrears of payment, interest on arrears shall be incurred in the amount of 8% above the current discount rate of the European Central Bank. If SYSback is in a position to prove that further damages resulting from arrears have been incurred, SYSback shall be entitled to assert claims to this effect.
- 3.7. Maintenance fees shall fall due for advance payment in all cases with effect from the 3rd working day of the agreed accounting period. In the case of system support this shall be on the basis of the minimum service hours agreed, in the case of maintenance on the basis of the bill of services.
- 3.8. Service hours for system support which are claimed for in excess of the agreed minimum demand in the course of the accounting period will be charged for in accordance with Hourly Rate II (see 3.10 below). This detailed accounting of specific services rendered will be on a quarterly basis, with a monthly term of payment on completion of the given quarter.
- 3.9. System maintenance will be charged for based on the total of the

monthly agreed service charge per unit or object, in keeping with the agreed bill of services. In the case of system support, charges will be based on an hourly rate. This hourly rate shall be graduated, in such a way that Hourly Rate I shall apply to the agreed minimum service hours and Hourly Rate II shall apply to any hours of work that may be required in excess of the minimum service agreement.

- 3.10. For system support, service charges shall be based on the total monthly hours, in accordance with the documentation to be supplied by SYSback, with the addition of service markups calculated on the basis of the agreed service matrix. The number of service hours resulting from this computation will be multiplied by the agreed hourly rate – that is to say, the agreed minimum service hours will be multiplied by Hourly Rate I and any service hours called for over and above this minimum will be multiplied by Hourly Rate II. The minimum service hours determined in the bill of services will be graduated on a quarterly basis in the system maintenance category. Of these, a maximum of 40% may be called on in a given calendar month. Service hours not called on in a calendar quarter shall lapse without compensation. No claim to indemnification shall arise in such a case.
- 3.11. In the case of a service contract, the stated estimates of work involved and the pricing derived from this shall not be considered as binding unless the contract is one in which fixed prices are expressly involved. The quantitative assessments on which such an estimate is based rely on an assessment of the scope of service, carried out according to our best knowledge and on the basis of values derived from past experience.
- 3.12. If SYSback finds, while acting as a service supplier, that the quantity estimate or price volume has been exceeded, the customer will be informed immediately and in writing. The quantity estimate or price volume will only be exceeded based on the written authorisation of the customer.
- 3.13. If services that have been agreed and scheduled cannot be supplied in view of grounds for which SYSback cannot be held responsible, the delay / down time will nonetheless be charged for to the amount of the affected service component.
- 3.14. If SYSback is able to redeploy the employees affected by such delay / down time, SYSback's claim to remuneration shall be reduced by the returns obtained through the onward deployment of the said employees.

4. Industrial property rights, violation of industrial property rights

- 4.1. Industrial property rights vested in SYSback or in third parties must be observed by the customer. This includes cases where rights of use have been transferred.
- 4.2. Products supplied by us which have not been created in accordance with the special requirements of the customer shall be free from the industrial property rights of third parties which might limit or exclude the use of the same.
- 4.3. If SYSback creates products or undertakes actions in accordance with the special requirements of the customer, the customer shall release us from any claims of third parties based on the violation of such industrial property rights.
- 4.4. The customer hereby undertakes to notify SYSback immediately of third party claims with reference to the violation of industrial property rights and, if required, to conduct legal defence at our cost and on our instructions. In the case of claims based on the violation of industrial property rights of third parties with reference to products supplied under section 4.1, we shall be entitled at our own discretion and at our own cost to carry out modifications of the hardware and software supplied by us, to replace the hardware and software supplied by us with hardware and software of equivalent value which does not violate third party rights, to obtain an appropriate licence for the customer or to accept the return of the hardware and software supplied by us and to indemnify the purchaser for the purchase price, subject to the deduction of an appropriate amount to cover the use of the product and loss of value involved.

5. Confidentiality and data protection

- 5.1. Both parties to the contract shall be obliged to treat as confidential any operating or business secrets (as well as any other confidential items of information or matters relating to the other party in need of protection) which are supplied or which come to be known as a result of or in connection with the fulfilment of the terms of the contract. Such information may not be used for any purpose, either that of the party involved or of third parties, other than that of fulfilment of the objectives of the contract.
- 5.2. This obligation of confidentiality shall remain in force for a period of 12 months after termination of the contract.

6. Reservation in respect of property rights and copyright

- 6.1. Goods supplied shall remain the property of SYSback until the payment in full of the purchase price. Such goods shall remain,

furthermore, the property of SYSback until the settlement of all the claims of SYSback prevailing at the time of the conclusion of the contract in question, based on SYSback's business relations with the customer. SYSback's reservation in respect of property rights shall in the last resort also include any claims on the customer that may arise in future.

- 6.2. So long as SYSback's reservation in respect of property rights shall continue to apply, the goods delivered must be insured by the customer against loss, diminished value, fire, theft, hazard during transport and other damages.
- 6.3. Pledging or assignment in surety to third parties of the goods subject to reservation in respect of property rights, as also any assignment or pledging of hereditary rights to such goods, is hereby excluded.
- 6.4. The customer shall only be entitled to further disposal of the goods subject to reservation in respect of property rights in the context of regular business operations. Already as of now, the customer hereby assigns the claims to which he is due on the basis of such further disposal (including any claims based on current account balances) to SYSback. SYSback accepts the said assignment with immediate effect. If the necessary conditions exist whereby the customer might be justified in filing for insolvency, the empowerment to disposal shall only apply if the proceeds from the further disposal shall be paid to a specified account. The customer shall furthermore be entitled, subject to revocation by SYSback, to call in the claims which SYSback has assigned. SYSback shall be entitled to make use of this right of revocation if the customer shall fail to meet his payment obligations based on the business connection prevailing, or if circumstances shall come to SYSback's knowledge which appear to reduce the creditworthiness of the customer to a significant degree. In such a case, SYSback shall be entitled to demand that the customer inform SYSback of the claims assigned and the beneficiaries in question and give notice to the beneficiary of the assignment. In addition, SYSback shall be entitled to notify the beneficiary directly. Moneys received by the customer after the expiry of the entitlement to claim assigned to SYSback shall be managed on a trustee account and are to be paid out to SYSback promptly.
- 6.5. If the value of the sureties prevailing exceeds the assured claim by more than 10%, SYSback shall be obliged to that extent, on request of the customer, to release the said sureties at its own discretion.
- 6.6. In the case of payment arrears on the part of the customer, SYSback shall be entitled to dispose of the goods subject to reservation in respect of property rights immediately, without the need of any withdrawal from the contract on the part of SYSback.

7. Liability

- 7.1. The customer shall be obliged to give immediate notice to SYSback of any damages occurring and to ensure that such information be received by SYSback, in order to ensure that SYSback shall be informed at the earliest opportunity and may be in a position to take steps, in conjunction with the customer, to work towards the reduction of the damages incurred. Any violation of this obligation on the part of the customer shall entail the release of SYSback from the associated liability.
- 7.2. The customer shall be obliged to give immediate notice to SYSback of any damages occurring and to ensure that such information be received by SYSback, in order to ensure that SYSback shall be informed at the earliest opportunity and may be in a position to take steps, in conjunction with the customer, to work towards the reduction of the damages incurred. Any violation of this obligation on the part of the customer shall entail the release of SYSback from the associated liability
 - to damages occasioned by SYSback either wilfully or through gross negligence (but see section 7.3);
 - to cases of minor negligence for damages involving injury to life and limb or to health, or to damages based on violation of essential contractual obligations by SYSback (but see sections 7.4 and 7.5).
- 7.3. If gross negligence on the part of SYSback shall be involved, SYSback's liability shall be limited to the amount of the damage covered by SYSback's insurance. The sum insured under the insurance policy will be communicated to the customer on customer request. If the customer asks for the sum insured to be increased, SYSback will be prepared to comply with this request, provided that the customer be liable for the increased premium associated with the increase in the sum insured.
- 7.4. In case of minor violation of cardinal contractual obligations, SYSback's liability – with the exception of damage to life and limb or to health – shall be limited to damages typical of such agreements and those foreseeable by SYSback at the time of the conclusion of the contract or the time of the occurrence of such violation of obligation, with an upper limit however of the sum insured under SYSback's insurance policy. The sum insured in SYSback's insurance policy will be communicated to the customer on request. An increase in the sum insured is a possible option, provided that the customer bear the associated increase in the insurance premiums.
- 7.5. If negligence by SYSback shall result in personal damage to life and limb or health, the associated liability shall be limited to the sum insured under SYSback's insurance policy. The sum insured under

SYSback's insurance policy will be communicated to the customer on request. An increase in the sum insured is a possible option, provided that the customer bear the associated increase in the insurance premiums.

- 7.6. Claims to indemnification on the part of the customer in connection with minor negligence by SYSback in accordance with sections 7.4 and 7.5 above are hereby excluded, when they are not asserted at law within a term of three months after their having been declined with an appropriate notification by SYSback or SYSback's insurers.
- 7.7. The above exclusions of liability and restrictions of liability in sections 7.2 to 7.6 above shall likewise apply to SYSback's liability in relation to its organs, employees and vicarious agents.
- 7.8. The above exclusions of liability and restrictions of liability in sections 7.2 to 7.7 above shall not apply to the extent that personal damage or damage to property constitutes an essential requirement based on the mandatory standards of product liability law.
- 7.9. Any incidental liability on the part of the customer (including the failure to supply support services, organisational errors or inadequate data backup) are to be charged to the latter. The customer shall be held responsible for the provision of adequate data backup facilities.

8. Employee protection, ban on solicitation

- 8.1. The customer hereby undertakes not to solicit employees of SYSback or third parties employed by SYSback either directly or indirectly, and to supply justification for direct contractual relations with the same.
- 8.2. This ban on solicitation shall apply on signing of the contract and for the duration of one calendar year after the termination of the contract.
- 8.3. In case of violation, the customer shall be liable for a contractual penalty to the amount of EUR 50,000 in each case. The right to call for indemnification in respect of actions committed or unperformed shall remain untouched thereby. The contractual penalty shall be counted towards the indemnification involved.

9. Place of fulfilment, responsible court of law

- 9.1. The place of fulfilment and responsible court of law shall be Hamburg, in so far as the customer is a businessman, a juridical person under public law or a special trust under public law (German: öffentlich-rechtliches Sondervermögen). SYSback shall however be entitled to bring suit against the customer at the latter's responsible court of law.
- 9.2. The law of the Federal Republic of Germany shall apply exclusively, the United Nations Convention for the International Sale of Goods (CISG) being expressly excluded.

10. Change procedures

- 10.1. During the validity period of an individual contract, either contracting partner may at any time suggest changes to the agreed services – in relation to the various development phases, to the scheduling or changes of any other nature – in a written proposal.
- 10.2. In case of a change proposal by the customer, SYSback will notify the customer within ten calendar days whether the change is possible and what implications it will have for the contract, especially having regard to the scheduling of operations, any additional labour or outlay and the redefinition of deadlines. The customer shall then be obliged, within a further deadline of five calendar days, to notify SYSback in writing as to whether he wishes to uphold his change proposal or whether he would prefer to continue the contract under the former conditions prevailing.
- 10.3. In so far as the scrutiny of a change proposal involves a not inconsiderable amount of labour and outlay, SYSback may invoice the customer separately for the extra work involved.
- 10.4. In case of a change proposal by SYSback, the customer will give notice within 10 calendar days as to whether he is in agreement with the proposed change. So long as the customer has not given his consent, work will be continued in accordance with the terms of the existing contract, or alternatively work may be interrupted, wholly or in part, on the written instructions of the customer.
- 10.5. Collateral oral understandings are only effective when confirmed in writing. Deviating or supplementary conditions, as well as any change in these conditions (including this clause on the requirement of written form), shall only hold good when they have been agreed to in writing.

(B) Special regulations for hardware sales

11. Delivery date, acceptance, delivery

- 11.1. Delivery dates and deadlines are approximate dates. Delivery dates shall be regarded as having been adhered to on notification that the goods are ready to be dispatched.
- 11.2. The customer shall be obliged to check the delivery note / service record and acknowledge receipt. Any objections are to be communicated to SYSback immediately in writing. Otherwise the receipted delivery quantity or service shall be regarded as having been acknowledged. A contractual service documented by means of a service record shall be considered as having been accepted if the customer shall have failed to comply with the request to acknowledge receipt within seven calendar days after notification that the work has been completed, or if the customer has not raised complaints based on supposed defects within the same period.
- 11.3. Delayed delivery or performance as a result of operational interruptions, official actions or *force majeure* shall result in an appropriate extension of the delivery deadline. Labour disputes, including strikes and legitimate lockouts on SYSback's premises or on the premises of one of SYSback's upstream suppliers, shall also be considered as *force majeure*. Any claim by the customer to indemnification is excluded in such a case.

12. Dispatch and transfer of risk

- 12.1. The goods shall be delivered to the customer, in the latter's name and at the latter's cost and risk. This shall likewise apply if SYSback shall bear the costs of the transport and/or transport insurance, based on the individual agreement in question.
- 12.2. Articles for delivery that have been notified as ready for dispatch must be immediately called for on the delivery date being reached. If dispatch is delayed in consequence of circumstances for which the customer may be held responsible, the latter shall be considered to be in arrears from the day of notification that the goods are ready for dispatch. The associated risk shall pass to the customer therewith, and the goods invoice shall become due for payment.
- 12.3. Evident losses or cases of damage during transport are to be noted by the customer on the freight receipt, with an appropriate reservation. In addition, written notification must be given to SYSback and the carrier immediately.
- 12.4. Damages or losses occasioned by the transport shall not release the customer from the obligation of full payment of the purchase price to SYSback. Step by step, against payment of this purchase price, SYSback hereby assigns to the customer all claims on third parties that may arise as a result of damage or loss during transport, and the customer accepts this assignment.

13. Export control regulations

SYSback hereby gives notice that the equipment it sells may under certain circumstances be subject not only to German but also to US American export restrictions. If the customer wishes to resell the equipment supplied by SYSback, he shall be obliged to clarify the question to what extent the equipment is subject to export restrictions and to obtain any export authorisations that may be required for the disposal of the goods. Any liability on SYSback's part is to that extent excluded. Information and authorisations in relation to German export restrictions may be obtained from the Bundesamt für gewerbliche Wirtschaft [Federal Office for Commerce and Industry] in Eschborn. Information in relation to US American export restrictions may be obtained from the US Department of Commerce, Office of Export Administration, Washington, DC 20044.

14. Prices and price changes

- 14.1. Prices quoted apply ex works with the addition of VAT at the currently applicable rate at the time of the delivery / provision of the service. The price mentioned in the order confirmation is definitive. Customs duties, packaging costs etc. are to be borne by the customer.
- 14.2. SYSback shall be entitled to adjust the prices subsequently to an appropriate extent if the cost factors for the goods or other agreed services rise by a not inconsiderable amount.

15. Quality and defects (new goods and services)

- 15.1. Service descriptions and details relating to the nature of the article for delivery or service supplied serve for purposes of specification. To that extent this does not involve the assurance of properties which form the object of a guarantee. No publicity statements / product details from third parties or from SYSback constitute the object of the contractual product or service specifications, unless SYSback concludes an agreement with the customer to that effect.
- 15.2. The customer shall be obliged to investigate the delivered goods thoroughly at his own cost immediately following receipt, and to notify SYSback promptly in writing of any mistaken deliveries or inadequate quantities. SYSback is to be informed immediately in writing of any concealed defects on their being discovered.
- 15.3. Customer claims based on defects in the goods or inadequate service shall be fundamentally restricted to a claim to have the defect remedied, the faulty goods replaced or the service obligation fulfilled

subsequently. SYSback shall have the choice here of the means of satisfying the claim. SYSback shall be entitled to make an appropriate number of attempts to remedy the defect or replace the goods / fulfil the service obligation, at least however to the number of three. If the attempt to remedy the defect or replace the goods / fulfil the service obligation should be unsuccessful, the customer shall have the right at his own discretion of either withdrawing from the contract or reducing the remuneration. This right shall be restricted to the delivery or service affected, in so far as in the nature of the situation such a limitation can reasonably be accepted by the customer. In case the specified delivery quantities have not been reached, on failure of the attempt to remedy the defect the customer shall only have a claim to an appropriate reduction. This shall not apply if express assurance has been given of the service parameters or the acceptance of the articles to be delivered / service to be supplied cannot in the given circumstances reasonably be expected of the customer.

- 15.4. Claims based on defects in the goods supplied shall lapse one year after delivery. Claims based on defective performance on the part of SYSback shall lapse one year after the acceptance of the service. If SYSback supplies non-physical works (e.g. an expert report or a customised software program), the term of limitation of one year shall start when the customer becomes aware of the defect; customer claims in this respect shall however lapse two years after acceptance of the non-physical work at latest.
- 15.5. The deadlines referred to in section 15.4 shall not apply to the extent that legislation prescribes mandatory longer periods, in case of deliberate or grossly negligent violation of obligations by SYSback, in case of the fraudulent concealment of a defect or in cases of injury to life and limb or damage to health. Statutory regulations relating to suspension on the running of the period, stay of the period and recommencement of deadlines shall remain untouched thereby. If SYSback's confirmation of the order provides for a longer term of limitation, these claims shall lapse with the expiry of the deadline specified. So-called 'guarantee deadlines' are to be understood as warranty periods. Claims based on defects in remedial work supplied or in replacement deliveries / subsequent performance of services shall lapse three months after the conclusion of the remedial work or replacement delivery / subsequent performance, not however before the expiry of the original deadline.
- 15.6. If the object of a delivery is subsequently transferred to a location other than the customer's establishment, and as a result the outlay required for the subsequent performance becomes higher (especially in view of transport and road costs, material costs and labour costs), the additional expense shall not be incurred by SYSback. This limitation shall not apply if the transfer of the object of a delivery is in accordance with the specified use of the object as agreed with the customer.
- 15.7. For indemnification claims, section 7 (Liability) shall apply in other respects. Any more extensive claims based on defects brought by the customer against SYSback, or claims other than those defined by this section 15, are hereby excluded.

16. Quality and defects in connection with second-hand goods

- 16.1. To the extent that the customer shall acquire second-hand goods from SYSback, claims based on defects brought by the customer against SYSback are hereby excluded. This exclusion shall not apply if SYSback has fraudulently concealed the defect or has given a specific guarantee of quality.
- 16.2. For indemnification claims, section 7 (Liability) shall apply in other respects. Any more extensive claims based on defects brought by the customer against SYSback, or claims other than those defined by this section 16 arising out of the sale of second-hand equipment, are hereby excluded.

(C) Special regulations for IT services / consultancy and development

customer's premises, SYSback alone shall have the right of giving instructions to its employees.

21.2. SYSback's employees will not be incorporated in the customer's firm.

17. Object of service

- 17.1. The object of service under the terms of a service contract is the agreed activity of consultation, analysis, software development or training, not the achievement of a specific result, a specific economic target or the creation of expert reports or other works. If SYSback does supply a report, this is not to be understood as an expert report but merely as reproducing the essential content in respect of the sequence, results and recommendations of the consultation.
- 17.2. The object of service under the terms of a contract for works and services is the bringing about of a specific service result and/or the production of a work on the basis of the specifications of the individual agreement.

18. General principles for the provision of services

- 18.1. In carrying out the tasks involved, SYSback will have regard to the targets specified by the customer and will supply the service in accordance with the generally valid rules of data processing. SYSback will endeavour, making use of its experience and knowledge, to achieve the best results possible.
- 18.2. The guaranteed assurance of specific properties shall be subject to express written confirmation by SYSback. Statements contained in the documentation, in prospectus or project descriptions do not constitute a guaranteed assurance of specific properties. In principle records shall be kept of talks held with a view to the precise specification of contractual matters, especially of the object of service. These records shall become binding on both parties if they have been signed for both sides by a person entitled to represent the parties or person appointed as project director.
- 18.3. SYSback will decide at its own discretion which employees are to be used, and reserves to itself the option of replacing them by new staff at any time.
- 18.4. For the purpose of executing the agreed services, SYSback may have recourse to independent sub-contractors, though SYSback remains directly obligated to the customer at all times.

19. Rights and obligations of involvement on the part of the customer

- 19.1. The customer shall make available the software systems required for the provision of the agreed services, in coordination with the requirements of SYSback. In so far as the service is provided on the customer's premises, the latter shall create the necessary framework for this (workplace, working resources, computing time, access to hardware and software and so on)
- 19.2. The customer shall appoint an overall project director as a person entitled to represent him. This person shall be responsible for all project activities, shall set up all contacts and make or bring about all decisions which are necessary and advisable for the speedy progress of the work.
- 19.3. The customer shall support SYSback to the necessary extent in connection with the provision of the service. In particular, the customer shall provide, for the duration of the project, appropriately qualified personnel for the clarification of technical and organisational issues, so that continuity of the project work may be guaranteed.
- 19.4. SYSback will be involved in the definition and implementation of the rules for project management, project organisation (responsible authorities) and project administration (documents, records etc.).

20. Dates, arrears, force majeure

- 20.1. Dates will be agreed in each individual contract. In so far as the customer may be held responsible for postponements, especially by failing to carry out or failing to carry out punctually activities of cooperation and support as agreed in spite of a written reminder, the agreed dates of execution shall be postponed and must be redefined between the parties on the basis of mutual agreement.
- 20.2. The resulting postponements shall not lead to SYSback's being in arrears. The delay / down time arising shall be at the customer's expense and will be charged to the customer in dependence on the outlay involved. In so far as SYSback shall be able to redeploy the employees affected by such delay / down time, SYSback's claim to remuneration shall be reduced by the returns obtained through the onward deployment of the said employees.
- 20.3. If a date has been agreed at which a service result is to be supplied, and if SYSback proves unable to adhere to this date for reasons of *force majeure*, all claims of the customer against SYSback arising from this postponement shall lapse. *Force majeure* is to be understood in particular as involving strikes, lockouts or the death or lengthy sickness of an employee of SYSback who is concerned with the project. In such a case claims to indemnification on the part of the customer, within the limits of section 7 (Liability), are hereby excluded.

21. Right of instruction

- 21.1. The planning of the execution of tasks will be determined by SYSback exclusively. Even if service provision takes place on the

22. Acceptance

- 22.1. Service contract: In case of a service contract, no acceptance shall take place. The work shall be invoiced on the basis of the outlay of time and materials, as shown by documentary records to be validated by the customer. Invoicing shall be on a monthly basis.
- 22.2. Contract for work and services: If SYSback has supplied in full the service / partial service to be provided, SYSback will present the result of the work to the customer for acceptance / partial acceptance. The customer shall be obliged to check the results thoroughly within a term of 15 calendar days, and either to give SYSback a written declaration of acceptance / partial acceptance or to notify SYSback in writing of any defects discovered. If no response emanates from the customer within the acceptance deadline, the acceptance / partial acceptance of the service results shall be taken as understood. Defects which affect the use of the service results only to an inconsiderable degree shall not entitle the customer to withhold acceptance / partial acceptance. If the customer has provided a written list of defects within the agreed deadline, SYSback will rectify the errors listed in this list of defects and submit the service results once more for acceptance / partial acceptance by the customer. If a contract for work and services consists in several individual works capable of being used by the customer independently of one another, acceptance of these individual works shall take place separately and independently of one another. If partial works have been defined in a contract for work and services, SYSback may submit partial works for partial acceptance. If the customer calls for conceptual changes after execution of the acceptance process in relation to the given concept, the wish for change in the terms of the contract is to be seen in this case in the light of the contractually agreed change procedure.

23. Guarantee

- 23.1. Service contract: In the case of a service contract, no guarantee shall apply. In this case claims by the customer to indemnification, within the limits of section 7 (Liability), are hereby excluded.
- 23.2. Contract for work and services: SYSback offers a guarantee that the services to be provided will be executed in accordance with the terms of the contract. The guarantee period shall amount to twelve months. This will begin with the customer's declaration of acceptance, or in case the acceptance should be delayed, with the expiry of the acceptance deadline. The customer shall notify SYSback of any faults that occur, in a logically intelligible written communication giving all the information that will be practically useful for rectification of the fault. In so far as faults or impairments of use are or could be caused or partially caused by inappropriate operation, intervention by the customer or the customer's existing system environment, the guarantee shall lapse so long as and in so far as the customer shall be unable to demonstrate that these factors are not responsible for the occurrence of the fault.
In such a case claims to indemnification on the part of the customer, within the limits of section 7 (Liability), are hereby excluded.
- 23.3. Services which SYSback supplies nonetheless, and for which it emerges that no obligation under guarantee applies, will be invoiced for in accordance with SYSback's currently valid price list.

(D) Special regulations for IT maintenance

24. Scope of contract and location of service to be performed

- 24.1. Services are to be supplied, depending on their nature and the needs of the given case, on the customer's premises in accordance with the specific content of the contract agreed in the bill of services. They may also be supplied by SYSback in the form of telephone consultancy and support during basic service periods (working days Monday to Friday from 8.00 am to 5.00 pm).
- 24.2. SYSback shall also be entitled to have the contractually agreed services supplied by third parties. SYSback guarantees that the third parties on whom it relies will have the required qualifications for performance of the services under contract.
- 24.3. At the customer's request, on termination of a contract for maintenance SYSback will draw up a qualified service certificate, in so far as the period of validity of the contract shall have come to at least 12 months.
- 24.4. In the context of maintenance, EC levels and micro-code updates will be installed in accordance with the manufacturer's guidelines.

25. Additional services

- 25.1. Services in excess of the scope of service defined in the bills of services, especially with reference to the agreed location where the service is to be performed, or extended consultation and support outside an agreed service time, will be charged for separately.
- 25.2. Execution of these additional services will take place following written confirmation by SYSback.

26. Support activities by the customer

- 26.1. The customer shall ensure that all the following support activities required for the services to be supplied by SYSback shall be carried out punctually by the customer himself or by his vicarious agents, at no cost to SYSback: provision of employee information, firm records and logbooks, hard copies, real time data for test purposes, machine and computer resources, possible monitoring, registration of program status information and data stock and so on.
- 26.2. SYSback should be notified immediately of any error messages in a telephone or written communication, stating the customer number, the service location, the detailed circumstances in which the fault has occurred, the effects of the fault and possible reasons, so far as these may be detected. The customer shall provide all the required documents and information which SYSback requires for the diagnosis and rectification of the fault, as well as allowing access to the premises, hardware and software affected. The customer shall make computing time on his premises available when this is required for execution of the agreed services. The customer shall appoint suitable contact persons within his firm.
- 26.3. In so far as SYSback supplies services based on this contract with the help of techniques of remote data transmission, the customer must provide suitable equipment and programs in operational readiness and see that these are maintained.
- 26.4. Any adaptation or modification of the hardware or software environment, or change in the installation location, must be communicated to SYSback in writing and coordinated with SYSback, to the extent that this is required for the provision of services by SYSback. Additional costs resulting from a change of location will be charged for separately.
- 26.5. In case the customer shall fail to comply with his obligation of support, or fail to provide support punctually or to a sufficient extent, SYSback shall be released from its obligation to provide the service in question until such time as the customer shall comply with the said obligation.

27. Duration of the contract and notice of termination

- 27.1. In so far as no period of validity for the contract has been separately agreed between the parties, the period of validity shall be 12 months in each case, calculated from the time of the signing of the maintenance contract by both parties.
- 27.2. The contract shall be extended by a further 6 months at a time, if notice of termination be not given in writing by one contracting partner with a term of notice of 3 months with effect from the end of the contractual year.
- 27.3. The right to give extraordinary notice of termination remains unaffected thereby. SYSback shall have the right to give extraordinary notice of termination if the customer falls into more than 2 months arrears in payment of the agreed remuneration. The customer shall have the right to give extraordinary notice of termination in respect of individual hardware and software items from the bill of services when it can be shown that these have been disinstalled and are no longer functional on his premises. The term of notice for extraordinary notice of termination in this case shall be 1 month with effect from the end of the calendar month.
- 27.4. Notice of termination requires to be given in writing.

28. Guarantee, extraordinary notice of termination and SYSback's property rights

- 28.1. In connection with system maintenance and support, SYSback guarantees that a start will be made with the service assignment within the agreed response time as specified in the bill of services.
- 28.2. If an error that occurs cannot be rectified within an appropriate period, and SYSback again fails to rectify it within an appropriate subsequent deadline set by the customer on two occasions, the customer may give extraordinary notice of termination of the contract if he has given warning to this effect when setting the second deadline. This shall not apply in cases of objective incapacity or *force majeure*. In cases where changes have been made by the customer to the object of service and SYSback has not given its express prior consent to these changes, SYSback will admit no liability unless the customer is able to show that these changes bear no relation to the faults that have occurred and do not necessitate any greater labour and outlay for SYSback in performing the contractual service.
- 28.3. Service obligations and guarantee obligations on the part of SYSback in accordance with the agreed bills of services shall lapse if faults or errors occur as a result of use by the customer under conditions that have not been approved by the manufacturer.
- 28.4. SYSback will, so far as may be necessary, provide spare parts for the rectification of errors and malfunctions and replace faulty components. The replaced components shall become the property of SYSback without any claim to compensation.
- 28.5. Parts installed by SYSback shall remain the property of SYSback until such time as these parts (including the cost of installation and associated service charges) have been paid for by the customer.
- 28.6. Subject to consultation with the customer, SYSback may also replace machines with machines of at least equal value. Replaced machines shall become the property of SYSback.

29. Liability and responsibilities

- 29.1. The liability of SYSback, as well as the liability on their own account of SYSback's employees and vicarious and performing agents, for whatever legal ground, shall be subject to the following regulations:
 - SYSback will admit liability for damages brought about either deliberately or through gross negligence by its employees or vicarious and performing agents.
 - In cases of minor negligence SYSback will admit liability for damages based on injury to life and limb or damage to health, as well as for damages based on a violation of essential contractual obligations by SYSback.
- 29.2. Irrespective of the legal ground, SYSback's liability shall be limited to EUR 50,000 or the service fee for 12 months (without VAT) for those machines which have occasioned the damage or which are the subject of the claim or stand in direct relation to it. The higher amount in each case shall apply.
- 29.3. SYSback admits no liability for loss of profit, savings not effected, damages arising from the claims of third parties or any other indirect and consequential cases of damage, or for recorded data.

30. Data security

- 30.1. The customer hereby undertakes to create and execute regular data backups. The data backup shall comprehend the entire software system and the regular backup of master data and dynamic data, and is to be carried out in accordance with the fundamental principles of proper data processing.

31. Maintenance offered by Manufacturer

- 31.1. If SYSback acts as a broker of maintenance offered by the manufacturer the General Terms and Conditions of the manufacturer have to be accepted. Any service call has to be directed to the service hotline of the manufacturer and the service will be delivered directly by the manufacturer. The period of service delivery is according to the agreement with the manufacturer.

(E) Severability

If one of the above rulings should be legally ineffective, the other rulings shall not lose their effectiveness. The customer and SYSback hereby undertake to replace the ineffective regulations with a legally admissible regulation that approximates as closely as possible to the former in economic terms. The same shall apply in the case of a loophole.

Translator's disclaimer

This document is a translation and as such not legally binding. In case of doubt, the German original "Allgemeine Geschäftsbedingungen der SYSback AG" (same date of publication) should be referred to.