



Appollo Systems GmbH

General Terms and Conditions of Business and Delivery

As of 17.08.2017

## **General Terms and Conditions of Business and Delivery of Appollo Systems GmbH As of 17.08.2017**

### **§ 1 Validity**

(1) The deliveries, services and offers of Appollo Systems GmbH (hereinafter referred to as APPOLLO) are based on these General Terms and Conditions. Unless the customer has received an updated version of the General Terms and Conditions, these provisions shall apply to all current and future business transactions with the customer, even if no express reference is made to the General Terms and Conditions.

(2) Deviating or supplementary General Terms and Conditions of the Customer are hereby expressly rejected.

### **§ 2 Delivery of Software**

(1) Unless expressly regulated in an individual contract, APPOLLO grants the customer a non-transferable, non-sublicensable and non-exclusive right to use the software and documentation for the agreed period of use in accordance with the following provisions.

(2) The software shall be provided to the customer in object code on a machine-readable data carrier.

(3) APPOLLO provides application documentation in German with the software. It shall be made available to the customer in printed form or on machine-readable recording media. The type of transfer is specified in the software license agreement. Further copies of the documentation may be obtained from APPOLLO against separate payment.

(4) Unless otherwise agreed in the Software License Agreement, the Software may only be used as a single-user version. The software may not be simultaneously fed into, kept in stock or used on more than one computer or working memory, nor may it be simultaneously used multiple times in networks or on other multi-station computer systems.

(5) "Use" of the software in the sense of this contract is the total or partial duplication (copying) by loading, displaying, running, transferring or storing the software for the purpose of its execution and for processing the data contained therein, in each case for the customer's own purposes. The use also includes the execution of the aforementioned actions for the purpose of observation, examination or testing of the software by the customer. If the application documentation is provided on a machine-readable data carrier, the regulations on the scope of use for the software shall apply accordingly.

(6) After the software has been installed on the mass memory of hardware, the original data carrier serves as a backup copy. The customer is not entitled to make more than one additional backup copy. If the Software is equipped with a technical copy protection, the Customer shall immediately receive a copy at the request of APPOLLO insofar as this is necessary for the intended use of the

Software. The customer shall clearly identify such backup copies as backup copies by means of suitable notes.

(7) The Customer shall retain the proprietary notices and other legal reservations contained in the Licensed Material unchanged and shall include them in all complete or partial copies made by the Customer in unchanged form.

(8) The Customer shall only be permitted to retranslate (decompile) the software code into another form of representation if this is necessary to achieve interoperability with independently created computer programs and is carried out in accordance with the provisions of § 69e UrhG (German Copyright Act). A further prerequisite is that the customer has asked APPOLLO in advance for the necessary information and Appollo has not made this information available immediately. APPOLLO may demand reimbursement of necessary expenses for the notification.

(9) The customer is not permitted to change or otherwise modify the software. If the elimination of any errors is necessary for the intended use, APPOLLO shall do so in accordance with the provisions of the maintenance contract, otherwise § 69d Para. 1 UrhG shall apply.

(10) If APPOLLO provides the customer with a new development status of the software on the basis of a separate agreement, the right to use this status shall be subject to the condition that the customer has returned to APPOLLO or deleted the version(s) of the license material previously used and all copies and partial copies of the same at the latest three months after the beginning of the productive use of the new status. An archive copy marked as such may be retained.

(11) The granting of the rights of use to the Licensed Material is subject to the condition that the Customer has paid the due remuneration in full.

(12) The Customer undertakes not to make the Software available to third parties in full or in part, either in the original or in the form of copies, without the express written consent of APPOLLO. This shall also apply in the event of a complete or partial sale or dissolution of the customer's company and, in principle, also for affiliated companies within the meaning of § 15 AktG.

(13) The Customer shall not be entitled to transfer the granted rights of use to third parties or to grant third parties rights thereto.

### **§ 3 Cooperation of the Customer**

(1) The responsibility for the selection of the software and the hardware on which the software is installed lies exclusively with the customer. The Customer shall ensure the provision of the infrastructure intended for the use of the Software. This includes in particular the correct system platform and the presupposed additional programs.

(2) The customer shall immediately confirm receipt of the licensed material. He shall thoroughly test the licensed material for faultlessness and usability in the specific situation before commencing operational use. This also applies to licensed material received under the warranty.

(3) The customer shall take appropriate precautions in the event that the software does not work properly in whole or in part, e.g. by data backup, fault diagnosis, regular checking of the results.

(4) The customer shall support APPOLLO to a reasonable extent in the elimination of errors, e.g. by sending data carriers with the affected software on request or by making working materials and employees familiar with the license material available to APPOLLO as contact persons.

#### **§ 4 Term, Return and Deletion of Licensed Material**

(1) APPOLLO may terminate the customer's right of use for good cause if the customer culpably and seriously violates the usage restrictions in §§ 2 and 3 and has not remedied the violation despite a reminder with an appropriate deadline. In the event of repetition, no new reminder is required. Any other statutory or contractual rights of rescission or termination shall remain unaffected.

(2) At the end of his right of use, the customer is obliged to return the original as well as all copies and partial copies of the license material to APPOLLO or to destroy them at APPOLLO's request. The customer shall confirm the destruction in writing.

(3) If the customer replaces terminated software with new editions of the software offered by APPOLLO, he shall be entitled to retain the terminated software for up to three months as an alternative reserve. The retention of an archive copy requires a written agreement.

#### **§ 5 Other Services**

(1) The customer undertakes to organize the use of the resources made available to him in such a way that the security and/or availability and/or system integrity and/or availability of APPOLLO's systems is not impaired.

(2) The customer administers his passwords and other access data conscientiously and takes care to keep them secret. He is obliged to change his passwords regularly, as far as they are assigned to him he will change them immediately.

(3) The customer is obliged to pay for all services which are caused by the misuse of the passwords by third parties or the use of the passwords by third parties, as far as he has to represent this.

(4) If APPOLLO suffers damage through the fault of the customer, e.g. by sending spam mails, APPOLLO reserves the right to assert claims for damages against the customer.

(5) With the transmission of the websites (to the Provider), the Customer releases APPOLLO from any liability for the content and expressly assures APPOLLO not to transmit any material and not to show any material of third parties which violates, denigrates or insults other persons or groups of persons in their honor. In addition, the client assures that any fees incurred by the publication of this data (e.g. GEMA fees) will be paid to the relevant organizations. Furthermore, the customer expressly affirms that he will not publish any content or data that violates the applicable law of the

Federal Republic of Germany or is right-wing extremist in content. This shall also apply if such content is made accessible through hyperlinks or other interactive connections which the customer places on the pages of third parties. It is expressly forbidden to send so-called 'mass e-mails', 'spam e-mails' or similar in any way from the Provider's servers.

(6) APPOLLO reserves the right to block any content which could impair the normal operating behavior or the security of the server or to prevent its operation in individual cases.

## **§ 6 Prices and payment**

(1) Insofar as services are invoiced on a time and material basis, the price list of APPOLLO valid at the time the order is placed shall apply.

(2) If services are rendered outside APPOLLO's business premises after consultation with or at the request of the customer, the travel, accommodation and expenses incurred shall be invoiced separately according to actual expenses. In this case, travel times shall be deemed to be ½ working hours.

(3) All prices are net, i.e. plus the statutory value added tax.

(4) Invoices from APPOLLO shall be due net without cash discount and other deductions on the date stated in the invoice, at the latest, however, upon receipt of the deliveries, the rendering of services or the acceptance of services by APPOLLO by the customer.

(5) APPOLLO shall be entitled to charge due interest at a rate of 5 percentage points above the base rate. If the customer is in default, APPOLLO shall be entitled to charge interest on arrears of 8 percentage points above the base interest rate as damages. APPOLLO may claim a higher damage caused by default upon proof. The customer is at liberty to prove a lower damage to APPOLLO.

(6) The customer may only offset such counterclaims that have been legally established, are undisputed or acknowledged by APPOLLO. The customer may only assert a right of retention on the basis of counterclaims which are based on the same contractual relationship and which are undisputed or have been legally established or are ready for decision. In the event of ongoing business relations, each order shall constitute a separate contractual relationship within the meaning of this paragraph (6).

(7) APPOLLO is entitled to adjust the respective price list a maximum of once per quarter to changing market conditions, in case of significant changes in procurement costs, changes in sales tax or procurement prices. In the event of price increases that significantly exceed the regular increase in the cost of living, the customer has the right to terminate the contract.

## **§ 7 Force majeure, reminders**

(1) If APPOLLO is prevented from meeting delivery, performance or completion deadlines by force majeure after conclusion of the contract, the deadline shall be automatically extended by the duration of the force majeure plus a reasonable start-up period. Unforeseeable circumstances for which

APPOLLO is not responsible and which make delivery, performance or completion unreasonably difficult shall be deemed equivalent to force majeure. These include in particular industrial disputes, sovereign interventions, lack of raw materials or energy, serious transport disruptions, failure of data lines of third parties, failure of servers of third parties, even if they occur with a vicarious agent, supplier or subcontractor of APPOLLO.

(2) Agreed delivery, service or completion dates shall be automatically extended by the period in which APPOLLO waits for the cooperation or information of the customer.

(3) Any reminders or deadlines set by the customer must be in writing in order to be effective.

## **§ 8 Retention of title**

(1) APPOLLO reserves the right of ownership to items delivered by it in its own name (e.g. data carriers or printed works) until all claims arising from the respective contractual relationship with the customer have been settled in full. The maintenance and/or servicing of hardware and software shall constitute independent contractual relationships in this sense.

(2) The customer shall be obliged to keep the reserved goods free from the rights of third parties and shall notify APPOLLO immediately in writing or by telephone if third parties have access to the reserved goods and shall inform the third party of APPOLLO's rights.

## **§ 9 Liability**

(1) APPOLLO owes its customer damages on a non-contractual and contractual basis only to the following extent:

In case of intent, gross negligence or absence of a guaranteed quality or durability in full amount;

in other cases only in case of breach of an obligation essential for the achievement of the purpose of the contract (cardinal obligation), namely limited to compensation for the foreseeable and typical damage, but not exceeding an amount of € 50,000.

(2) APPOLLO's liability for personal injury and under the Product Liability Act remains unaffected.

(3) The customer shall indemnify APPOLLO against all claims of third parties which are based on a non-contractual use of the software by the customer.

(4) The customer is obliged to set up and maintain an appropriate data backup. APPOLLO shall not be liable for damages caused by the lack of an adequate data backup.

(5) APPOLLO shall not be liable for lack of economic success, loss of profit, savings or other indirect damages. APPOLLO shall not be liable for errors caused or to be caused by improper use of the software. This applies in particular to errors that are attributable to an inadmissible modification of the

software or a failure to comply with the requirements for the hardware and software environment of the software.

(6) Further liability claims are excluded.

(7) Claims for damages shall expire one year after the date on which the customer becomes aware of the damage, regardless of this knowledge, two years after the damaging event. § 852 BGB remains unaffected. If negotiations are pending between APPOLLO and the customer regarding the damages to be paid, the statute of limitations shall be suspended until one of the contractual partners refuses to continue the negotiations.

## **§ 10 Warranty**

(1) APPOLLO guarantees that the software is suitable for the contractually agreed purpose and has the contractually agreed characteristics. Insignificant deviations from the contractually agreed characteristics which do not prevent or impede the use of the software shall not constitute warranty claims.

(2) APPOLLO shall provide the warranty by subsequent performance, at its own discretion, either by remedying the defects or by defect-free replacement delivery.

(3) APPOLLO may also remedy defects by showing the customer possibilities to avoid the effects of a defect without adverse impairment of the owed functionality. In the course of the warranty, the customer must also take over new program or data stocks provided to him if this leads to a reasonable adjustment or conversion effort.

(4) The customer shall be obliged to provide APPOLLO with comprehensible and verifiable documents and information on the type and extent of deviations from the contractually agreed characteristics and to support APPOLLO to the best of his ability in rectifying and isolating errors.

(5) The warranty period begins with the delivery of the software and is 12 months.

(6) APPOLLO does not assume any warranty for errors that were or are caused by improper use of the software. This applies in particular to errors that are attributable to an inadmissible modification of the software or a failure to comply with the requirements for the hardware and software environment of the software.

(7) Further warranty claims are excluded.

## **§ 11 Rights of third parties**

(1) APPOLLO shall defend the customer against all claims which are derived from an infringement of a commercial property right or copyright by goods supplied by APPOLLO (in particular software) or work results provided which the customer uses in accordance with the contract. APPOLLO shall as-

sume costs and damages imposed on the customer by court order, provided that the customer immediately notifies APPOLLO of such claims in writing, supports APPOLLO to the best of its ability in defending the claims and that all defensive measures and settlement negotiations are reserved for APPOLLO.

(2) If claims against the customer have been asserted or are to be expected pursuant to paragraph 1, APPOLLO may modify or exchange the goods or the work results at its own expense to an extent reasonable for the customer. If this is not possible or if it is not possible to obtain a right of use with reasonable effort, either party may terminate the license for the software concerned without notice. In this case, APPOLLO shall be liable to the customer for the damage caused to him by the termination in accordance with § 5.

## **§ 12 Miscellaneous**

(1) APPOLLO may use the assistance of subcontractors and other vicarious agents to fulfil its contractual obligations towards the customer.

(2) The law of the Federal Republic of Germany shall apply. The UN Convention on Contracts for the International Sale of Goods shall not apply.

(3) Verbal ancillary agreements have not been made.

(4) Customer's rights under a contract may not be transferred from the customer to a third party by assignment, sublicense or in any other way, unless APPOLLO has expressly consented in writing. The prohibition of assignment shall not apply to the Customer's monetary claims if the respective contract constitutes a commercial transaction for the Customer within the meaning of § 354a HGB (German Commercial Code).

(5) Place of performance is Bürgstadt. The exclusive place of jurisdiction for all disputes arising from or in connection with these General Terms and Conditions and the individual contract in which reference is made to these General Provisions shall be Aschaffenburg.

(6) Should individual provisions of the contract between APPOLLO and the customer, including general terms and conditions or included special terms and conditions, be or become invalid in whole or in part, or should there be a gap in these provisions, this shall not affect the validity of the remaining provisions.

(7) In the case of APPOLLO's activities on the customer's premises, the customer's house rules shall apply, as far as these are made known to the respective employees of APPOLLO.

(8) Both parties shall observe the German and European data protection regulations with regard to the contractual services.

(9) The parties undertake to treat as confidential the information received from the other party in the course of the performance of the contractual services - insofar as this information has been



marked as confidential or by its nature is to be regarded as confidential. This does not apply to information which was already known to the other party prior to the conclusion of the contract, which is freely available on the market or is state of the art, or to information which becomes known to third parties without the intervention of the other party.