

General Terms and Conditions of the usb GmbH

§ 1 General

All deliveries and services are based on the following conditions, provided that the provisions stated in paragraph 2 AGBG apply. If different or supplementary terms apply, an explicit written arrangement or agreement with usb is required.

Conditions of sale and other general terms and conditions of the buyer/orderer only become valid if they are identical with these conditions. Different conditions only become effective if usb agrees to them in writing.

The following conditions are a part of all contracts relating to the use of software products, contracts on support and consultancy services as well as all contracts on modification of software products.

usb reserves the right to implement technical changes, which become necessary due to constructive innovation or further development and improvement implemented by usb or their suppliers, provided that they are reasonable for the customer and the utilizability of the product is not impaired.

§ 2 Offers/Orders

usb is bound to a written offer for four weeks from the date of the offer. The confirmation of the order determines the content and extent of the order. Secondary agreements and changes to the contract and supplements are only applicable if confirmed in writing. The same applies to the assurance of features.

§ 3 Prices/Conditions of Payment

Prices mentioned in offers and contracts do not include the relevant VAT. The VAT will be identified separately between traders.

Project fees are invoiced monthly (actual costs plus travel expenses).

Unless otherwise agreed, net payments are due immediately without deductions. Offers for the delivery of systems with an offer value of more than EUR 30.000,-- (not including VAT) are due 30% at receipt of the order and 70% at installation. If the installation of systems at the planned date is delayed by more than a month for reasons which were not caused by usb, the (rest-) purchase price is due one month after usb declares their readiness for delivery. Maintenance fees will be invoiced once a year.

usb is entitled to charge 3 % interest above the official rate of discount of the Deutsche Bundesbank, in case of maturity, as well as in default of payment.

If dates of payments are not adhered to, or if payment is stopped altogether, or if matters become known after the contract has been signed, concerning the questionability of the client's solvency and credit worthiness, all open invoices become due immediately, without any reference to agreements on part payment or on deferral of payment.

In this case usb is entitled, after the appropriate time extension with notice of refusal, to withdraw from the contracts which are affected by these payments. In case of a withdrawal the client is obliged to pay for the losses caused until this point in time.

In case of a legitimate withdrawal by usb or in case of default by the client, usb can demand a lump sum of damages as lost profit in the amount of 30% of the sales price or of the agreed compensation. The client reserves the right to prove that the amount of the damage is actually less. A set-off by the client is only possible with undisputed or valid counterclaims.

Use and maintenance of software is specified in separate contracts. As a rule the maintenance fee is due after installation.

§ 4 Costs for Trainings

Fees for training which correlates to software development or service projects are due after completion of the training.

When a training is booked separately (e.g. ARAS Innovator trainings) usb will issue the invoice 2 weeks prior to the training. This invoice is due prior of the training.

The cancelation of a booked training is only accepted in written form (e-mails are accepted). When the participation is cancelled less than 2 weeks prior to the training, usb is entitled to invoice 50% of the training fees. As soon as the training started a cancellation is not possible any more and the full training fees are due.

In case of poor attendance usb reserves the right to cancel or reschedule training. In this case usb is not liable for any incurred expenses.

§ 5 Delivery /Delivery Deadlines

Delivery dates and deadlines are binding if they are declared as binding in writing by the client and by usb, all other delivery dates and deadlines are not binding. The delivery period begins with the sending of the order confirmation, but not before the client provides all necessary documents. If a delivery deadline is not adhered to because of unforeseen events which lie outside usb's influence, the deadline is extended accordingly by a maximum of four months. After the appropriate time extension the client can withdraw from the contract without any charges.

usb is entitled to part deliveries as long as this is reasonable for the client. Part deliveries are seen as separate deliveries and can be invoiced separately.

§ 6 Guarantee

A guarantee will not be given for damages which occur exclusively through improper usage, changes, operation and maintenance of the product.

The guarantee does neither apply to user-exits, which have been installed by the client himself, and their effects on the system, nor to changes which have been carried out from the operating system and/or from the database level. As a rule, changes should only be implemented by the development tools approved by usb.

The client at his discretion grants usb the necessary time and opportunity to eliminate the defect or to arrange for replacement delivery. If the client refuses, usb is no longer bound by the guarantee.

The respective extent of the guarantee is specified in each separate contract.

§ 7 Liability

Unless specified otherwise in the respective contracts, claims for damages of any kind against usb or usb employees, or for any legal reason are excluded, unless usb or usb employees are conclusively liable of gross negligence or intent.

As long as legally admissible usb and usb employees are not specifically liable for claims of a third party against the client, damages to recorded data, lost profit, loss of expected savings, or for other vicarious damages.

The amount of any claims for damages from the client - for whatever legal reason - is limited in total to the following amounts.

- Public Liability
 - Product Liability
 - Professional Liability
- } 10.000.000,-- EUR E.E.L. per claim in a year aggregate

usb is not liable for the retrieval of data, unless the loss has been caused wilfully or by gross negligence and the client has ensured that the data can be reconstructed through reasonable effort, from data material, which is provided in machine-readable form.

Claims for compensation come under the statute of limitations after one year.

§ 8 Duties of the Client

The client will support usb in the execution of all contracts and will provide all necessary provisions at his own cost, such as the timely provision of all necessary information and documents, as well as if necessary the required hardware and operating system software.

Special participation duties apply to the contract for the maintenance of software products, which are specified in this contract.

§ 9 Transfer/Withholdings/Set-off

The client is not entitled to transfer claims from contracts with usb to a third party without written consent of usb.

Due to possible counterclaims - from former businesses or other businesses from a current business connection - the client is not entitled to refuse or to keep back payment or to balance payment against counterclaims, unless these counterclaims have not been disputed by usb and are due or valid.

§ 10 Security /Allegiance

Both partners have to treat all documents and information they receive for the fulfilment of the contract as confidential, until they have been made common knowledge. These requirements apply even after the settlement of a contract or after the completion of the business.

usb will guard with great care the documents and data which have been put at their disposal by the customer.

Both parties undertake not to poach any employees from each other.

§ 11 Legal Domicile/Applicable Law

usb headquarters is the exclusive legal domicile for both parties for all direct disputes or disputes that arise from the contract - this includes documents, bills of exchange and cheques.

The law of the Federal Republic of Germany is valid exclusively. The application of the uniform law on the international purchase of personal property ('*einheitliches Gesetz über den internationalen Kauf beweglicher Sachen*') is excluded.

§ 12 Salvatorian Clause

If the existing general terms and conditions, as well as the contracts based on them contain an omission, or if a term in the contract is, or becomes, completely or partially ineffective, the general terms and conditions, as well as the contracts remain effective.

As far as the existing general terms and conditions, as well as the respective contracts based on them, have an omission or are, or become, completely or partially ineffective, the contents of the general terms and conditions and/ or the contracts is regulated according to the legal regulations. In place of the missing or ineffective term, a term, which comes closest to the missing or ineffective term or the originally agreed economic purpose, is regarded as agreed.

The general terms and conditions, as well as the contracts based on them, however become ineffective to their full extent, if the adherence to them, in consideration of the planned changes in the previous paragraph, would mean an unacceptable hardship for the contracting party.