

## **General Terms and Conditions**

### **ARXUM GmbH, Europaallee 33, 67657 Kaiserslautern**

#### **1. General - scope of application**

1.1 These General Terms and Conditions shall apply to all deliveries of hardware and software as well as all services rendered by ARXUM GmbH (hereinafter referred to as "ARXUM") in connection therewith if and insofar as the contracting parties have not expressly agreed otherwise in the contract.

1.2 These General Terms and Conditions contain general provisions that also apply to and supplement the Software License Terms. In the event of contradictions between these General Terms and Conditions and the Software License Terms, the latter shall take precedence.

1.3 These General Terms and Conditions shall apply exclusively; ARXUM shall not recognize any terms and conditions of the customer that conflict with or deviate from these General Terms and Conditions unless ARXUM has expressly agreed to their validity in writing. These General Terms and Conditions shall also apply if ARXUM, knowing that the customer's terms and conditions contradict or deviate from these General Terms and Conditions, unconditionally executed the delivery or service to the customer.

1.4 These General Terms and Conditions shall only apply to entrepreneurs, legal entities under public law and special funds under public law.

1.5 These General Terms and Conditions shall also apply to all future deliveries and services to the customer.

#### **2 Offer, conclusion and contents of contract**

2.1 ARXUM's offers are subject to confirmation and non-binding. A contract is only concluded upon receipt of the written, telex or electronic order confirmation from ARXUM. A contract is also concluded if ARXUM carries out the delivery or service after placing the order without separate confirmation.

2.2 ARXUM is entitled at any time to change deliveries or services with effect for the future; however, ARXUM is not obliged to make such changes to deliveries or services already made, unless the contracting parties have exclusively agreed otherwise, e.g. in a software licence contract.

2.3 Drawings, illustrations, dimensions, weights or other performance data are only binding if expressly agreed.

2.4 The legal relationship between ARXUM and the customer shall be governed solely by the written contract including these General Terms and Conditions. This completely reproduces the agreements of the contracting parties on the subject matter of the contract. Oral promises made by ARXUM prior to the conclusion of this contract are not legally binding and will be replaced by the written contract in the same way as other oral agreements made by the contracting parties, unless it is expressly stated in each case that they shall continue to be binding in this case.

2.5 ARXUM shall only be responsible for public statements made by manufacturers, their assistants or otherwise in advertising if it can be proven that ARXUM initiated them and the advertising actually influenced the customer's purchase decision.

2.6 The assumption of a consultation of the customer by ARXUM requires the explicit conclusion of a contract aimed at this.

2.7 The customer bears full responsibility for the completeness and correctness of the information and data provided by him as well as for the items made available by him.

2.8 ARXUM is entitled to use subcontractors for the provision of deliveries and services.

#### **3. Delivery time and partial delivery**

3.1 Delivery dates or delivery periods, which may be agreed as binding or non-binding, shall be agreed in writing. The beginning of the delivery period stated by ARXUM presupposes the clarification of all technical questions. Furthermore, ARXUM's compliance with the delivery obligation presupposes the timely and proper fulfilment of the customer's obligations. The defence of non-fulfilment of the contract remains reserved.

3.2 If an agreed delivery date is exceeded for reasons for which ARXUM is responsible, the customer must set ARXUM an appropriate period of grace for performance in writing. This period of grace shall be at least two weeks. If performance does not take place after expiry of the grace period and the customer therefore wishes to withdraw from the contract or demand damages instead of performance, he is obliged to notify ARXUM of this in writing beforehand, expressly requesting performance, together with an appropriate further grace period. At ARXUM's request, the customer is obliged to declare within a reasonable period of time whether he will withdraw from the contract due to the delay in performance or demand compensation instead of performance or insist on performance.

3.3 If an agreed delivery date is delayed due to circumstances for which ARXUM is not responsible because ARXUM has not been supplied, not supplied on time or not supplied properly despite proper congruent coverage, the deadlines for ARXUM shall be extended accordingly. If ARXUM has duly informed the customer about the obstacle to

performance and if it is not only of a temporary nature, ARXUM is entitled to withdraw completely or partially from the unfulfilled part of the contract.

3.4 If ARXUM has to pay damages due to a non-intentional or grossly negligent breach of duty for which ARXUM is responsible, a claim for damages to which the customer is entitled shall be limited to a maximum of 5% of the value of the affected partial or total delivery or service, insofar as this cannot be used on time or in accordance with the contract as a result of the delay or non-delivery.

3.5 Any withdrawal must be made in writing.

3.6 Partial deliveries are permissible within reasonable limits for the customer.

3.7 The provisions in sections 3.1 to 3.6 shall apply accordingly to ARXUM's services.

3.8 As long as ARXUM (i) waits for the cooperation or information of the customer or (ii) is hindered in its deliveries or services by strikes or lock-outs in third companies or in ARXUM's company, official intervention, legal prohibitions or other circumstances through no fault of ARXUM ("force majeure"), delivery and service deadlines shall be deemed extended by the duration of the hindrance and by a reasonable start-up time after the end of the hindrance ("downtime") and there shall be no breach of duty for the duration of the downtime. ARXUM shall inform the customer immediately of such hindrances and their probable duration. If the force majeure lasts uninterruptedly longer than 3 months, both parties are released from their performance obligations.

#### **4. Prices and terms of payment**

4.1 Unless otherwise stipulated in the contract, the prices of ARXUM shall apply "EXW Kaiserslautern" (Incoterms 2010). Unless expressly agreed otherwise in the contract, packaging and shipping costs as well as costs for installation, parameterization, instruction and training and other ancillary services shall be charged separately.

4.2 The statutory value added tax is not included in ARXUM's prices. It will be shown separately in the invoice at the statutory rate on the day of invoicing.

4.3 Unless otherwise expressly agreed, payment shall be made immediately upon receipt of the invoice without deduction. Payments by bills of exchange and cheques require the express consent of ARXUM.

4.4 If the customer defaults on a payment to ARXUM, also with regard to earlier deliveries, or if ARXUM becomes aware of circumstances which, according to its dutiful commercial discretion, indicate a significant deterioration in the financial situation of the customer, ARXUM may, at its option, demand immediate payment or securities from the customer.

4.5 The customer is only entitled to offset if his claims are legally established, undisputed or acknowledged by ARXUM. The exercise of a right of retention by the customer due to counterclaims based on other contractual relationships is excluded.

#### **5. Delivery and transfer of risk**

5.1 Unless otherwise stipulated in the contract, delivery "EXW Kaiserslautern" (Incoterms 2010) is agreed. Shipment shall be effected at the expense and risk of the customer.

5.2 ARXUM shall effect the delivery of software by either (i) providing the customer with a program copy of the software on a machine-readable data carrier as well as the number of copies of the operating instructions agreed in the contract or the operating instructions in electronic form, or (ii) making the software and/or the operating instructions available in electronic form on a network and informing the customer thereof, at the customer's option. In the event that the operating manual is provided in electronic form, the customer shall receive the operating manual either on the same data carrier as the program copy of the software or on another data carrier or ARXUM shall make the operating manual available in a retrievable form in a network and shall inform the customer thereof.

5.3 If the software is made available for retrieval via a network, ARXUM shall bear the costs for making the software available for retrieval in the network, the customer shall bear the costs for the retrieval.

#### **6. Retention of title**

6.1 ARXUM reserves ownership of the delivery item until complete settlement of all remuneration claims as well as other existing claims from the current business relationship with the customer. The retention of title shall also extend to the acknowledged balance insofar as ARXUM books claims against the customer in current accounts.

6.2 The customer is obliged to treat the delivery item with care. In particular, he is obliged to insure the goods at his own expense against fire, water and theft at replacement value.

6.3 In the event of seizures or other interventions by third parties, the customer must notify ARXUM immediately in writing so that ARXUM can bring an action in accordance with § 771 ZPO (Code of Civil Procedure). If the third party is not in a position to reimburse ARXUM for the judicial and extrajudicial costs of an action pursuant to § 771 ZPO, the customer shall be liable for the loss incurred by ARXUM.

6.4 In the event of breaches of duty by the customer, in particular default in payment, ARXUM shall be entitled to withdraw from the contract and take back the goods after the unsuccessful expiry of a reasonable deadline set for the customer; the statutory provisions on the dispensability of setting a deadline shall remain unaffected.

6.5 ARXUM undertakes to release the securities to which ARXUM is entitled at the customer's request insofar as their value exceeds the claims to be secured by more than 10%, insofar as these have not yet been settled. The release is at the discretion of ARXUM.

## **7. Cooperation and information duties of the customer**

7.1 In ARXUM's opinion, the customer shall provide ARXUM free of charge with all information and documents required by the customer to carry out the contractual deliveries and services.

7.2 The customer shall name a competent contact person who will be available to ARXUM for information and questions. This contact person is also authorized to make declarations which are necessary as an interim decision within the framework of the continuation of the order. The customer shall ensure that decisions, information or provisions necessary for ARXUM to fulfil the order are made or delivered without delay.

7.3 The customer has informed himself about the essential functional characteristics of the contractual deliveries and services of ARXUM, in particular of the software, and bears the risk of whether these correspond to his wishes and needs; in case of questions about the functional characteristics of the contractual objects, he will obtain additional information from ARXUM.

7.4 The customer shall be solely responsible for setting up a functional hardware and software environment for the contractual objects that is sufficiently dimensioned to take into account the additional load caused by the contractual objects.

7.5 The customer shall thoroughly test the contractual objects for freedom from defects and the delivered software, in particular for usability in the existing hardware and software configuration, before using them. This also applies to software which he receives within the scope of warranty and maintenance.

7.6 The customer shall observe the instructions given by ARXUM for the installation and operation of the software; he shall inform himself at regular intervals within the bounds of what can reasonably be expected on the websites accessible via the Internet at [www.ARXUM.com](http://www.ARXUM.com) about current instructions and take these into account during operation.

7.7 Insofar as ARXUM is active on the customer's premises, the customer shall create reasonable conditions for this in good time within the bounds of reasonableness. In this case, he shall provide ARXUM with a suitable and appropriate operating environment at his own expense so that ARXUM can perform its contractual services unhindered.

7.8 The customer shall grant ARXUM access to the contractual objects for troubleshooting purposes, at ARXUM's discretion by means of remote data transmission and/or directly. ARXUM is entitled to check whether the contractual objects are used in accordance with the provisions of this contract. For this purpose, ARXUM may demand information from the customer, in particular about the period and scope of use of the contractual objects, as well as inspect the books and writings, as well as the hardware and software of the customer. ARXUM shall be granted access to the customer's business premises during normal business hours.

7.9 As an essential contractual obligation, the customer undertakes to back up data and programs in machine-readable form at intervals appropriate to the application, at least once a day, and thus to guarantee that these can be restored with justifiable effort.

7.10 Unless the customer expressly points this out in advance, ARXUM may assume that all of the customer's data with which ARXUM may come into contact is backed up.

7.11 The customer shall bear any disadvantages and additional costs arising from a breach of his obligations in accordance with this Section 7.

## **8. Warranty for material defects and defects of title, care and maintenance**

8.1 ARXUM warrants, in accordance with the provisions of sales law, that the contractual quality of the contractual objects is in accordance with the contract and that the use of the contractual objects by the customer to the contractual extent does not conflict with any rights of third parties. However, the guarantee for the freedom of the contractual objects from third-party rights only applies to the country of destination agreed between the contracting parties in which the contractual objects are to be used. Without express agreement, the warranty applies to the country in which the customer has his place of business.

8.2 In the event of material defects, ARXUM shall initially provide warranty by subsequent performance. ARXUM shall, at its option, provide the customer with a new, defect-free software version or remedy the defect in order to remedy the software defect; ARXUM shall also be deemed to remedy the defect if ARXUM shows the customer reasonable possibilities to avoid the effects of the defect.

8.3 In the case of defects of title, ARXUM shall initially provide warranty by subsequent performance. ARXUM shall, at its option, provide the customer with a legally flawless opportunity to use the delivered contractual items or exchanged or modified equivalent contractual items.

8.4 ARXUM is entitled to make subsequent performance dependent on the customer having paid at least an appropriate part of the remuneration.

8.5 The customer is obliged to adopt a new software version if the contractual scope of functions is maintained and the adoption does not lead to significant disadvantages.

8.6 If two attempts at subsequent performance fail, the Customer shall be entitled to set a reasonable period of grace to remedy the defect. He must expressly point out in writing that he reserves the right to withdraw from the contract and/or to claim damages if it fails again.

If the rectification fails within the grace period, the customer may withdraw from the contract, unless there is an insignificant defect, or reduce the remuneration. ARXUM shall pay damages or compensation for futile expenses due to a defect within the limits specified in Section 9. ARXUM may demand after expiry of a deadline set in accordance with sentence 1 that the customer exercises his rights resulting from the expiry of the deadline within two weeks of receipt of the request. After expiry of the deadline, the right to choose shall pass to ARXUM.

8.7 If ARXUM provides services in troubleshooting or troubleshooting without being obliged to do so, ARXUM may demand remuneration for this at its usual rates. This applies in particular if a defect cannot be proven or is not attributable to ARXUM. In addition, ARXUM shall be reimbursed for the additional expenses incurred by the customer due to the fact that the customer has not properly fulfilled his obligations according to section 7.

8.8 If third parties assert claims that prevent the customer from exercising the contractual rights of use, the customer shall inform ARXUM immediately in writing and comprehensively. He hereby authorizes ARXUM to take legal action against third parties in and out of court alone. If a claim is made against the customer in or out of court, the customer agrees with ARXUM and only takes legal action, in particular acknowledgement and settlement, with the customer's consent. The customer shall support ARXUM in its judicial or extrajudicial measures through appropriate assistance and information.

ARXUM is obliged to ward off the claims at its own expense and to indemnify the customer from all costs and damages associated with the defence against the claim, insofar as these are not based on the customer's breach of duty. ARXUM is also entitled, at its option, to satisfy the claim of the third party or to exchange the service concerned for an equivalent service corresponding to the contractual provisions if this is reasonable taking into account the interests of the customer.

8.9 The customer can only derive rights from other breaches of duty by ARXUM if he has notified ARXUM of these in writing and has granted ARXUM a period of grace to remedy the situation. This does not apply if a remedy cannot be considered according to the type of breach of duty. For damages or compensation of futile expenses, the limits specified in section 9 shall apply.

8.10 The limitation period for claims based on defects (with the exception of claims for damages or reimbursement of expenses, to which clause 9 applies) is two years. This shall not apply to the delivery of hardware for which a limitation period of one year applies. In the case of the delivery of used hardware, the limitation period for warranty claims shall be six months. The limitation periods shall commence with the delivery of the subject matter of the contract. The statutory limitation periods shall apply if ARXUM fraudulently concealed the defect.

8.11 If necessary, the parties shall conclude a licencing contract for the software in a separate contract.

## **9. Liability for damages and reimbursement of expenses**

9.1 ARXUM shall be liable for damages caused intentionally or by gross negligence, which are the result of the absence of a guaranteed quality of the services, which are based on a culpable violation of essential contractual obligations (so-called cardinal obligations), which are the result of a culpable violation of health, body or life, or for which liability is provided under the Product Liability Act, in accordance with the statutory provisions.

9.2 Cardinal obligations are those contractual obligations the fulfilment of which is essential for the proper performance of the contract and on the observance of which the contractual partner may regularly rely. These are thus obligations whose violation would endanger the achievement of the purpose of the contract.

9.3 In the event of a breach of a cardinal obligation, the liability - insofar as the damage is based solely on slight or normal negligence and does not affect life, limb or health - shall be limited to such damage which must typically and foreseeably be expected to occur within the scope of the provision of services such as the contractual services.

9.4 In all other respects, ARXUM's liability - for whatever legal reason - is excluded both from ARXUM and from ARXUM's vicarious agents.

9.5 If damage to the customer results from the loss of data or programs, ARXUM shall only be liable for this if the damage would not have been avoided by the customer by securing all relevant data and programs as described in Section 7.9.

9.6 ARXUM is at liberty to object to contributory negligence (e.g. from Section 7).

9.7 Section 8.10 shall apply accordingly to the limitation period, with the proviso that the statutory limitation period shall apply to claims under Section 9.1. The limitation period pursuant to sentence 1 shall commence at the time specified in § 199 para. 1 BGB (German Civil Code). It shall commence at the latest upon expiry of the maximum periods specified in § 199 para. 3 and 4 BGB.

## 10. Acceptance

Insofar as acceptance is to take place, the delivery item shall be deemed to have been accepted, provided that the delivery and, if ARXUM also owes the installation, the installation has been completed, and ARXUM has informed the customer of this with reference to the acceptance fiction in accordance with this provision and has requested the customer to accept or

14 working days have elapsed since the delivery or installation or the customer has started using the delivery item (e.g. the delivered hardware and software has been put into operation) and in this case 6 working days have elapsed since delivery and installation or

the customer has omitted acceptance within this period for a reason other than a defect notified to ARXUM which makes the use of the delivery item impossible or significantly impairs it.

## 11. Data protection

The protection of the customer's personal data, which ARXUM communicates within the framework of contract initiation and/or implementation, is very important for ARXUM. ARXUM therefore strictly adheres to the legal provisions of the Federal Data Protection Act and the Telemedia Act when collecting, processing and using data.

For the rest, we refer you to the enclosed notes on data processing.

## 12. Final regulations

12.1 The place of performance for delivery, performance and payment is ARXUM's place of business.

12.2 If the customer is a merchant, the place of business of ARXUM is the place of jurisdiction. ARXUM is, however, entitled to sue the customer in court at his place of business or to claim in any other way.

12.3 The law of the Federal Republic of Germany applies. The validity of the UN Convention on Contracts for the International Sale of Goods is excluded.

12.4 These conditions and the contract referring to them represent the entire agreement between the parties. Amendments or supplements must be made in writing in accordance with § 126 BGB. This written form requirement can only be waived with a written agreement. Otherwise, where this contract requires written form, text form in accordance with § 126 b BGB (e.g. fax and e-mail) shall suffice.

12.5 Should a provision of this contract be or become invalid, contain an impermissible deadline or a loophole, the legal validity of the remaining provisions shall remain unaffected. Insofar as the ineffectiveness does not result from a violation of §§ 305 ff. of the German Civil Code (BGB), the remaining provisions shall remain unaffected. BGB (validity of general terms and conditions), an effective provision shall be deemed agreed in place of the invalid provision which comes closest to the economic intent of the parties. The same shall apply in the event of a gap. In the event of an impermissible deadline, the legally admissible measure shall apply.