

## Conditions of Purchase

Dated: 01. January 2002

### 1. Order and Confirmation

- 1.1 The Customer may cancel the order if the Supplier has not confirmed acceptance of the order (confirmation) in writing within two weeks of receipt.
- 1.2 If the confirmation varies from the order the Customer is only bound thereby if it agrees to such variation in writing. In particular the Customer is subject to the general terms and conditions of the Supplier only insofar as such conform with the conditions of the Customer or if the Customer has agreed to such in writing. The acceptance of deliveries or services as well as payments do not constitute approval.
- 1.3 Any amendments or additions to the order shall only be effective if the Customer confirms such in writing.

### 2. Rights of Use

- 2.1 The Supplier hereby grants the Customer the following non-exclusive, transferable, perpetual and worldwide right
  - 2.1.1 to use, or allow others to use, software and the related documentation (hereinafter collectively referred to as "Software");
  - 2.1.2 to sublicense the right of use under Section 2.1.1 to affiliates as defined in § 15 AktG), other distributors and end users insofar as such relates to individual software;
  - 2.1.3 to grant a licence to affiliates (as defined in § 15 AktG) and other distributors to sublicense the right of use to end users in accordance with Section 2.1.1;
  - 2.1.4 to copy the Software for installation in hardware or to have such copied by affiliates (as defined in § 15 AktG) or other distributors.
- 2.2 In addition to the rights granted in Section 2.1 the Customer, affiliates (in terms of § 15 AktG) and other distributors are entitled to allow end customers to transfer Software licenses.
- 2.3 Any and all sublicenses granted by the Customer shall provide adequate protection for the intellectual property rights of the Supplier in the Software so that the same contractual provisions shall apply as the Customer itself uses to protect its own intellectual property rights.

### 3. Term, Penalty for Breach

- 3.1 For the purposes of calculating the timeliness of delivery or re-performance the relevant point in time is the date of receipt by the Customer at the designated place of receipt and for the calculation of the timeliness of deliveries with installation or commissioning as well as services the relevant point in time shall be that of acceptance.
- 3.2 Where any delay in delivery or performance or re-performance can be anticipated the Customer shall be notified immediately in order to determine its decision.
- 3.3 In the event that any agreed deadline is not met for reasons for which the Supplier is responsible, the Customer may charge a penalty for each commenced working day of delay amounting to 0.3 % but not exceeding a total of 10 % of the total contract price.

In the event that the respective reservation of rights is not given at the time of acceptance of the delivery, services or performance, the penalty may be claimed up to the date of the final payment.

### 4. Transfer of Risk, Dispatch, Place of Performance

- 4.1 For deliveries with installation or commissioning and for services, the transfer of risk occurs upon acceptance

and in cases of delivery without installation or commissioning the transfer of risk shall be upon receipt by the Customer at the designated place of receipt.

- 4.2 Unless otherwise agreed, the costs of delivery and packaging shall be borne by the Supplier. For pricing ex works or ex warehouse of the Supplier, transport shall be at the lowest cost insofar as the Customer has not requested a particular method of delivery. Any extra costs resulting from non-conformity with transport requirements shall be borne by the Supplier. Where the price is quoted free to recipient, the Customer may also determine the method of transportation. Any extra costs resulting from the need to meet the delivery deadline by way of expedited delivery shall be borne by the Supplier.
- 4.3 Each delivery shall include a packing note or delivery note with details of the contents as well as a complete order number. Notice of dispatch shall be provided immediately with the same information.

### 5. Invoices

The order number as well as the number of each individual item shall be detailed in invoices. Insofar as such details are omitted any invoices shall not be due for payment. Copies of invoices shall be marked as duplicates.

### 6. Payments

- 6.1 Unless otherwise agreed, payments shall be due
    - within 14 days and deduction of 3 % discount
    - or within 30 days and deduction of 2 % discount
    - or within 90 days net.
  - 6.2 The period for payment shall commence as soon as any delivery or service is completed and the appropriate invoice is received. Insofar as the Supplier is required to provide material testing, test records or quality control documents or any other documentation, such shall be a part of the requirements of the completeness of the delivery or performance. A discount shall also be allowed if the Customer sets off or withholds any payments to a reasonable extent for reasons of any deficiency. The period for payment shall commence after the complete rectification of any deficiency.
  - 6.3 If the Supplier is a business person (as defined in § 14 of the German Civil Code "BGB") the payment shall be deemed overdue only if the Customer does not pay in response to a payment demand notice received after payment has become due.
  - 6.4 Payments do not constitute a recognition that any delivery or service is in accordance with the Contract.
- ### 7. Inspection upon Receipt
- 7.1 The Customer shall immediately upon receipt of any delivery check that the required quantities and types are correct and further shall check for any externally recognisable transportation damage or other deficiencies.
  - 7.2 If the Customer detects any deficiency in the course of the above inspection it shall notify the Supplier. If the Customer detects any deficiency at a later date it shall also notify the Supplier.

7.3 Complaints may be made within one month of the delivery or performance or, insofar as the deficiency was first noticed upon commissioning or processing or first use, within one month of the detection.

7.4 In relation to the Supplier the Customer shall have no other duties in this regard other than the above named duties of inspection and notification.

## 8. Warranty

8.1 The Supplier warrants that its deliveries and performance are free from defects as to quality and defects of title for a period of three years unless the law requires a longer period. Such warranty period shall commence with the transfer of risk (Section 4). In cases of delivery to places at which the Customer is completing performance outside of its premises or workshops, the warranty period shall commence with the acceptance by the customer, but in no case later than one year after the transfer of risk.

8.2 In the event a deficiency is detected before or at the time of transfer of risk or during the period named in 1. above the Supplier shall at its own cost and at the discretion of the Customer either rectify the deficiency or provide substitute delivery or performance. This shall also apply to any deliveries subject to inspection by sample tests. The discretion of the Customer shall be exercised fairly and reasonably.

8.3 In the event that the Supplier fails to rectify any deficiency within a reasonable time period set by the Customer, the Customer may

cancel the contract in whole or in part without being subject to any liability for damages

or demand a reduction of price

or undertake itself any rectification or substitute performance at the cost of the Supplier or arrange for such to be done

and claim damages in lieu of performance.

The provisions of § 281 Section 2 and § 323 Section 2 BGB shall not be affected hereby.

8.4 Any rectification may take place without a further deadline being set and at the cost of the Supplier if delivery is after the original deadline.

8.5 The same shall apply if the Customer has a particularly strong interest in immediate rectification in order to avoid its own liability for delay or for other reasons of urgency.

8.6 The above named claims shall extinguish one year after notification of any deficiency but in no case before the expiry of the time limitations named in 1.

8.7 Additional or statutory rights are not affected hereby.

8.8 Insofar as the Supplier provides substitute performance or repairs, the periods named in Section 8.1 shall start to run once again.

8.9 The Supplier shall bear the costs and the risk related to the return of deficient goods.

## 9. Infringement of Industrial and Intellectual Property Rights

The Supplier guarantees that no industrial property rights including intellectual property rights prevent any use in terms of this contract.

## 10. Subcontracting to Third Parties

Subcontracting to third parties shall not take place without the prior written consent of the Customer and in the event that such takes place the Customer may cancel the Contract in whole or in part and claim damages.

## 11. Material in Support

11.1 Any material provided as support remains the property of the Customer and is to be stored, labelled and administered separately. The use of such is limited to the orders of the Customer. In the event of any reduction in value or loss the Supplier shall provide a replacement. This shall also apply to material provided for and on the supplier's account for a specific job.

11.2 Any processing or transformation of the material shall be for the Customer. The Customer shall be the immediate owner of the new or transformed object. In the event that such is not possible for legal reasons the Customer and Supplier agree that the Customer shall be the owner of the new goods at all times during any processing or transformation. The Supplier shall keep the new object safe for the Customer at no extra cost and exercise the duty of care of a merchant.

## 12. Tools, Patterns, Samples, Confidentiality etc.

Any tools, patterns, samples, models, profiles, drawings, standard sheets, printing templates and materials made available by the Customer as well as any materials derived therefrom shall not be made available to any third party nor used for any other purpose than those agreed in the Contract except with the prior written consent of the Customer. Such materials shall be protected against unauthorised access or use. In addition to any further rights the Customer may demand that such materials be returned if the Supplier breaches these duties.

The Supplier shall not make available to any third party any information obtained from the Customer insofar as such information is not general knowledge or is not otherwise lawfully obtained by the Supplier. Insofar as the Customer agrees to any subcontracting to third parties such third party shall agree to such terms in writing.

## 13. Insurance

All deliveries and services are insured for transport by the Customer. In the event that the transport is to be arranged by the Supplier the ordering of transport shall contain the following direction to the performing party: "Our customer declares that it does not require any damage insurance (SLVS) in terms of the new version of ADSp of 1998."

## 14. Assignment of Claims

Any assignment of claim is only allowed with the prior written approval of the Customer.

## 15. Special Right of Termination

In the event that the Supplier ceases to pay, or if an interim insolvency administrator is appointed or if insolvency proceedings are commenced in relation to the assets of the Supplier, the Customer may cancel the Contract in part or in whole. In case of cancellation the Customer may use existing facilities or deliveries or services of the Supplier already performed and provide reasonable payment for such.

## 16. Supplementary Provisions

Insofar as the Order Conditions do not regulate certain matters the statutory provisions shall apply.

## 17. Place of Jurisdiction, Applicable Law

17.1 The court of jurisdiction shall be, in the event that the Supplier is a merchant, at the place of ordering.

17.2 German substantive law shall apply excluding the Provisions of the United Nations Law on the Sale of Goods dated 11.4.1980.