



GENERAL TERMS AND CONDITIONS

FOR

COMMERCIAL GOODS

("GTC COMMERCIAL GOODS")

I. Part: General Terms and Conditions

§ 1 Applicability of these GTC COMMERCIAL GOODS

1. Scope of applicability: These GTC COMMERCIAL GOODS shall govern the rights and obligations relating to the supply of COMMERCIAL GOODS under the CONTRACT between the CUSTOMER and the COMPANY. The following provisions shall apply accordingly to pre-contractual relationships between the PARTIES.

Deviating, conflicting or supplementary general terms and conditions of the CUSTOMER shall not apply, even if, for example, the COMPANY does not expressly object to their applicability or if the COMPANY provides the services without reservation in the knowledge of the general terms and conditions of the CUSTOMER.

These GTC COMMERCIAL GOODS shall only apply vis-à-vis entrepreneurs, governmental entities under public law or special governmental estates.

2. Definitions: The definitions and clarifications set out in II. Part shall apply to these GTC COMMERCIAL GOODS.

§ 2 Supply of COMMERCIAL GOODS

1. General: The COMPANY shall supply the COMMERCIAL GOODS to the CUSTOMER in accordance with the provisions of the CONTRACT. The scope of services and the essential product features of the COMMERCIAL GOODS will be described in more detail in the OFFER. If the supplied COMMERCIAL GOODS also contain machine-readable programs (software), the COMPANY shall grant the CUSTOMER a non-exclusive right of use, unlimited in time, for the purpose of the intended use of the COMMERCIAL GOODS, subject to deviating individual contractual provisions. There shall be no further right of use or exploitation.

2. Delivery: Delivery shall always be made from the COMPANY's place of dispatch or directly from the manufacturer's place of dispatch, excluding packaging, transport and insurance and for the account and at the risk of the CUSTOMER. The dispatch of the COMMERCIAL GOODS shall be proof of the transfer of risk.

The COMPANY shall be entitled to make partial deliveries. Partial deliveries shall generally be deemed to be independent deliveries, which may also be invoiced separately. The obligation to assemble and install shall require a separate written agreement based on the applicable prices for services and the COMPANY's GTC for work and services.

3. Delivery periods: Delivery periods shall only be binding if they have been expressly designated as "binding" in writing by the COMPANY. The binding nature of the deadline shall be subject to the timely provision of all necessary supplies and cooperation by the CUSTOMER. The deadline shall be deemed to have been met
 - a) for deliveries without assembly and installation: if the goods were shipped to the CUSTOMER by the COMPANY or a supplier / subcontractor of the COMPANY or were made available for pickup by the CUSTOMER within the agreed delivery or performance period. If collection or delivery is delayed for reasons attributable to the CUSTOMER, the deadline shall be deemed to have been met if notification of readiness for dispatch is given within the agreed period; or
 - b) for deliveries where assembly and installation are owed: as soon as the assembly and installation has been carried out within the agreed period.

In the event of any disruptions due to FORCE MAJEURE EVENTS and other hindrances for which the COMPANY is not responsible, e.g. lockouts, disruptions in own supply, operational disruptions, delivery periods shall be reasonably extended for the COMPANY. If the delivery or service becomes permanently impossible or unreasonable as a result, the COMPANY shall be finally released from the obligation to perform.

4. Storage: If dispatch or delivery is delayed at the request of or through the fault of the CUSTOMER, storage charges of 0.5% of the invoice amount may be charged to the CUSTOMER for each full week after notification of readiness for dispatch; the storage charge shall be limited to 5% of the invoice amount. The storage charge to be paid in accordance with the above provision shall be reduced insofar as the CUSTOMER provides evidence of significantly lower damage due to storage. In all other respects, further claims for damages in accordance with the statutory provisions shall remain unaffected.
5. Retention of title: The goods delivered shall remain the property of the COMPANY until payment has been made in full. The CUSTOMER may install and reform the delivered goods in the ordinary course of business. However, any combination, mixing and processing or reformation shall be carried out exclusively for the COMPANY, which shall acquire a co-ownership share in the finished goods or in the new item corresponding to the ratio of the value of the delivered goods to the value of the finished goods or the new item.

The CUSTOMER may sell the delivered goods in the ordinary course of business provided that it does not agree a ban on assignment with the purchaser. The CUSTOMER hereby assigns its future claims from the transfer of the reserved goods at the delivery's relevant invoice value to the COMPANY as security until full payment has been made; the COMPANY accepts this assignment. If the COMPANY has a co-ownership share in the sold items, the claim shall be assigned in the amount of the value of this co-ownership share, but with priority over the other claims. The CUSTOMER may not pledge or assign goods subject to retention of title as collateral.

In the event THIRD PARTIES access the goods subject to retention of title, the CUSTOMER shall inform the THIRD PARTIES of the COMPANY's ownership and notify the COMPANY in writing without undue delay. The CUSTOMER shall bear all costs of any intervention proceedings and other defensive measures in connection with such access by THIRD PARTIES.

In case of breach of CONTRACT by the CUSTOMER, in particular default of payment or suspension of payments, the COMPANY may revoke the CUSTOMER's right to resell, to collect claims and to process or combine the delivery and take back the delivery at the CUSTOMER's expense or demand the assignment of the CUSTOMER's claims for restitution against THIRD PARTIES. The repossession or seizure of the goods subject to retention by the COMPANY shall not be deemed to be a withdrawal from the CONTRACT, unless the statutory provisions on consumer credit apply.

The COMPANY shall be entitled to exploit the goods and to satisfy its claims from the proceeds by offsetting them against the outstanding claims against the CUSTOMER. The COMPANY shall release securities at the request of the CUSTOMER if the value exceeds the claims to be secured by more than 10% in total.

§ 3 Remuneration and payment methods

1. Remuneration: The remuneration will be agreed in the CONTRACT. Invoices may be issued in paper form or electronically.
2. Payments are due within ten (10) days of the invoice date without deduction. This shall also apply to partial deliveries.
3. Payments will only be deemed to have been made when the COMPANY has received the actual funds. The CUSTOMER may not make payments to THIRD PARTIES, AFFILIATED COMPANIES or representatives of the COMPANY.
4. Offsetting: The CUSTOMER may set off only those claims which are undisputed or have been finally determined by a court of law.
5. Insofar as the CONTRACT provides a binding price (if applicable, for a specific period) for ATOSS PRODUCTS (e.g. for additional MODULES and/or license extensions) and/or for the provision of professional services by the COMPANY (e.g. daily rates for CONSULTANTS, training courses, flat rates e.g. for setting up terminals, test systems or VPN tunnels as well as for

any travel costs and expenses), which the CUSTOMER may order from the COMPANY after conclusion of the CONTRACT, COMPANY shall no longer be bound to these prices if the official consumer price index for the Federal Republic of Germany or the index replacing it increases in one month by more than thirty (30) percentage points compared to the same month of the previous year.

6. Interest: If the CUSTOMER fails to meet the payment deadlines pursuant to § 3 clause 1, without the need for a prior reminder, then interest will be due on the purchase price from the expiry of this deadline in accordance with the statutory provisions on the interest rate for default.
7. Delivery against prepayment: The COMPANY shall be entitled to make deliveries only against advance payment if there are facts that lead one to assume that the COMPANY's claim for payment appears to be at risk. This shall apply in particular if the COMPANY has insights that the financial circumstances of the CUSTOMER have deteriorated significantly, in particular also if the CUSTOMER fails to settle due claims of the COMPANY. In the latter case, the COMPANY may suspend other deliveries until the due claims have been settled.

§ 4 Warranty

The COMPANY's warranty is governed by the provisions under this § 4. The COMPANY warrants that the COMMERCIAL GOODS are free from defects in quality and title. The COMMERCIAL GOODS are free from material defects if they are largely consistent with the product characteristics specified in the OFFER. The COMPANY shall be released from its warranty obligations insofar as the CUSTOMER uses the COMMERCIAL GOODS contrary to the provisions of the CONTRACT or uses them under conditions which deviate from the requirements described by the COMPANY. There shall be no warranty obligations on the part of the COMPANY with regard to any required licensing with THIRD PARTIES.

Claims for defects may only be asserted if the material defects are reproducible or ascertainable. In the event of a warranty claim, the COMPANY shall initially be entitled to remedy the defect by means of rectification or replacement delivery. If the COMPANY fails to remedy defects for which it was properly notified by the CUSTOMER even after two attempts to remedy the defect within a reasonable grace period set in writing, or if replacement deliveries fail, the CUSTOMER shall be entitled to demand a reasonable reduction of the agreed remuneration or rescission of the contract; the latter, however, in the case of defects which are limited to parts of the performance capable of partial acceptance, only with regard to the defective parts of the performance, provided that the remaining parts of the performance can be independently used by the CUSTOMER in a commercially reasonable manner. If the examination of a notice of defect shows that a warranty case does not exist, the CUSTOMER shall provide reimbursement of the costs incurred for the examination and repair based on the COMPANY's currently valid terms and conditions of service. Warranty periods shall commence upon delivery or, insofar as installation is carried out by the COMPANY, upon installation. The CUSTOMER shall give written notice of a defect, stating the exact circumstances under which it became apparent. The CUSTOMER shall provide the COMPANY with adequate support in searching for the cause of the defect.

§ 5 Liability

1. Unlimited liability: The COMPANY shall assume unlimited liability in accordance with the statutory provisions in the event of wilful intent and gross negligence, as well as in the event of culpable injury to life, limb or health and to the extent of a guarantee accepted by the COMPANY.
2. Liability in case of minor negligence: Subject to § 5 clause 1, the COMPANY shall be liable in the event of a minor negligent breach of an obligation, the fulfilment of which is a requirement for the proper performance of the CONTRACT or on the observance of which the CUSTOMER regularly relies and may rely ("CARDINAL OBLIGATION"), limited to the amount of foreseeable damage typical for the contract.
3. Clarification: In the cases of § 5 clause 2, the COMPANY's liability is limited to € 25,000, regardless of the legal grounds.
4. Liability disclaimer: In all other respects, the COMPANY's liability is excluded. Except in the cases set out in § 5 clause 1, the COMPANY shall in particular not be liable for profits lost, savings forfeit, losses resulting from THIRD PARTY claims and other indirect and consequential damages.

5. Force majeure: The COMPANY shall not be liable for EVENTS OF FORCE MAJEURE which make it substantially more difficult for the COMPANY to deliver the COMMERCIAL GOODS, or which temporarily impede or render impossible the proper performance of the CONTRACT.

§ 6 Limitation period

With the exception of claims due to wilful intent or gross negligence or due to injury to life, body or health, a limitation period of one (1) year shall apply to liability and warranty claims against the COMPANY. The limitation period shall commence from the statutory commencement of the limitation period or, insofar as the installation is carried out by the COMPANY, upon installation.

§ 7 Confidentiality

The PARTIES shall be obliged to treat all CONFIDENTIAL INFORMATION obtained within the context of the contractual relationship as confidential for an unlimited period of time, in particular they may not disclose it to THIRD PARTIES or use it other than for contractual purposes. Insofar as disclosure to THIRD PARTIES is necessary for the exercise of rights or for the performance of contracts, these THIRD PARTIES shall be obliged to comply with non-disclosure obligations that are largely comparable to § 7 of this document. The receiving PARTY may disclose CONFIDENTIAL INFORMATION by way of exception to the extent that it is required to disclose the CONFIDENTIAL INFORMATION pursuant to a binding legal, judicial or regulatory decision. Prior to disclosure, the PARTY which received the CONFIDENTIAL INFORMATION undertakes to notify the other PARTY without undue delay in writing of the order to disclose the CONFIDENTIAL INFORMATION so that the other PARTY may take timely remedies to prevent or limit the disclosure. If it lodges an appeal, the other PARTY continues to be bound by the obligation of secrecy as long as the appeal has suspensive effect. The disclosing PARTY will inform the receiving PARTY of the filing of an appeal.

§ 8 Data protection

By signing the CONTRACT, the COMPANY and the CUSTOMER have concluded a DPA in accordance with the GDPR. All processing of non-anonymised, personal CUSTOMER DATA shall be carried out by the COMPANY on behalf of the CUSTOMER on the basis of the DPA.

When the COMPANY provides services in connection with the software purchase, the CUSTOMER shall ensure that only personal data relating to the specific individual case (e.g. for the provision of the additionally commissioned SOFTWARE MAINTENANCE) can be viewed remotely by the CONSULTANT.

The transmission of non-anonymised, personal CUSTOMER DATA (e.g. test data, employee master data, etc.) to the COMPANY by means of transmission and communication channels that have not been mutually agreed upon in advance shall not be permitted. In particular, the CUSTOMER shall transmit the personal data necessary for the production of, for example, identification media directly to the manufacturer of the identification media or similar. In these cases, no personal data is transmitted to the COMPANY.

§ 9 Final provisions

1. Written form: Amendments and supplements to the CONTRACT shall only be effective if made in writing. This shall also apply to the waiver of the written form requirement or the waiver of this written form clause itself.
2. Amendments to the CONTRACT: The COMPANY shall be entitled to amend or supplement the provisions of the CONTRACT insofar as this does not negatively affect the equivalence relationship agreed upon at the time the CONTRACT was concluded with regard to essential elements of the CONTRACT and the amendments are reasonable for the CUSTOMER. The right to amend the contract in particular shall include changes with regard to (i) technical developments, (ii) changes in the legal framework, (iii) adaptations of the regulations on the handling of personal data, (iv) the elimination of an equivalence disruption that has arisen subsequently or (v) the elimination of regulatory gaps (e.g. in the event of unforeseeable, changed circumstances). The COMPANY will inform the CUSTOMER of the planned amendments in advance. The amendments shall be deemed to have been accepted by the CUSTOMER if it does not object to the COMPANY in writing or text form within six (6) weeks after notification. In the notice of amendment, the COMPANY shall also draw the CUSTOMER's attention to the intended significance of its conduct.

3. Transfer: The PARTIES may not assign or transfer the CONTRACT or individual rights and obligations under the CONTRACT without the prior written consent of the other PARTY. However, the transfer to an AFFILIATED COMPANY of the COMPANY does not require the prior written consent of the CUSTOMER.
4. Updating of contact details of the main contacts: The CUSTOMER is responsible for keeping the contact details of its main contacts (in particular contractual and technical main contact) provided to the COMPANY in the CONTRACT, up to date and for notifying the COMPANY of any changes.
5. Choice of law, place of jurisdiction: The laws at the registered office of the COMPANY shall apply exclusively to all claims arising from or in connection with the CONTRACT; the application of the "Uniform UN Sales Law" (United Nations Convention on Contracts for the International Sale of Goods) shall be expressly excluded. The exclusive place of jurisdiction for all disputes arising from or in connection with the CONTRACT shall be the registered office of the COMPANY.
6. Export control: The COMPANY shall be entitled to refuse performance of the obligations under this CONTRACT if performance of the CONTRACT would infringe export regulations.

II. Part: Definitions and clarifications

1. To the extent the masculine form for certain persons or groups of persons is exclusively used in the GTC COMMERCIAL GOODS, it is merely for the sake of simplification. The relevant wording shall refer equally to all genders.
2. Insofar as a declaration is to be made "in written form" or "in writing" in accordance with these GTC COMMERCIAL GOODS, it may also be made by the COMPANY in text form, in particular by e-mail, to the relevant contact person of the CUSTOMER, with the exception of a withdrawal.
3. In all other respects, the following definitions shall apply:

"GTC COMMERCIAL GOODS" means these General Terms and Conditions;

"OFFER" means the letter of offer from the COMPANY defining the content of the performance by the COMPANY. Insofar as the PARTIES extend the content of the performance as a result of supplementary orders, this term shall also refer to the supplementary offer in its most recently amended version;

"DPA" means the Data Processing Agreement, that the COMPANY as Processor and the CUSTOMER as Controller conclude pursuant to Article 28 of the GDPR by signing the CONTRACT as an integral part of the CONTRACT with respect to the collection, processing and use of the CUSTOMER's personal data. The DPA is available on the ATOSS website at <https://www.atoss.com/en-gb/dpa>;

"THIRD PARTY" means any natural person or legal entity other than the PARTIES and their AFFILIATED COMPANIES, their salaried and freelance employees, temporary workers and external consultants (such as management consultants, auditors and legal advisors) engaged by the PARTIES;

"EVENT OF FORCE MAJEURE EVENT" means an event which could not have been foreseen by the PARTIES and which could not have been avoided even by exercising due care. This includes in particular natural disasters, fire and water damage, storms, terror, war, strikes and industrial disputes, diseases (including epidemics and pandemics), insofar as a risk level of at least "moderate" is defined by the Robert Koch Institute or by an assessment of the World Health Organisation WHO;

"COMPANY" means the contracting ATOSS Group Company;

"COMMERCIAL GOODS" means hardware, terminals, badges, accessories etc;

"CARDINAL OBLIGATION" means, in accordance with § 5 clause 2 of the GTC COMMERCIAL GOODS a material contractual obligation, the fulfilment of which makes the proper performance of the CONTRACT possible in the first place or on the compliance of which the CUSTOMER regularly relies and may rely;

"CUSTOMER" means the contracting party of the COMPANY;

"CUSTOMER DATA" means the personal data or other data which the CUSTOMER enters into, processes and stores in the ATOSS PRODUCTS;

"PARTY" means either the CUSTOMER or the COMPANY as the respective contracting party; collectively, both contracting parties are referred to as "PARTIES";

"AFFILIATED COMPANY" means any entity that is directly or indirectly controlled by or under common control with a PARTY. "Control" for the purposes of this definition means (i) direct or indirect ownership or control of more than 50% of the voting shares of the relevant company and / or (ii) the ability to direct or cause the direction of the management and policies of the relevant company;

"CONTRACT" means the entirety of the rights and obligations of the PARTIES, arising, as the case may be, from (a) the OFFER, (b) these GTC COMMERCIAL GOODS, (c) the other Annexes referenced in the OFFER; the CONTRACT shall be concluded by written confirmation of the order or countersignature by the COMPANY to the CUSTOMER;

"CONFIDENTIAL INFORMATION" means any information, including data and other materials, which the COMPANY or the CUSTOMER – whether communicated in writing, electronically or orally – (i) has designated as "confidential" or otherwise deemed confidential or (ii) which a reasonable THIRD PARTY would, by its nature or by reason of the circumstances, consider to be entitled to protection and therefore confidential. Such confidential information shall in particular include CUSTOMER DATA, information on business activities and / or processes of the PARTIES as well as all software, technologies and know-how of the COMPANY in any form and updates and adaptations thereof, the business model as well as the cooperation partners and suppliers of the COMPANY, prices, offer documents, (marketing) ideas, brochures, advertising materials and presentations, concepts as well as all copies and records made thereof. Confidential Information shall not include information (i) expressly marked as "non-confidential" by the disclosing PARTY; (ii) lawfully developed or acquired by the receiving PARTY without any obligation of confidentiality; (iii) which is already generally known or subsequently becomes generally known through no fault of the receiving PARTY or as a result of a breach of contract; (iv) which is communicated or provided to the receiving PARTY by a THIRD PARTY entitled to make disclosure without breach of these GTC COMMERCIAL GOODS or (v) which has been released for disclosure by the disclosing PARTY with express written permission.
