General Business Terms & Conditions

PROGNOST Systems GmbH (PSG)   Posted: 1st Sept. 2005
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§ 1 Applicable Law

1. German law shall be applicable for all of the business transactions conducted by PSG, unless otherwise specifically agreed upon.
2. The following conditions shall be exclusively applicable, unless specifically agreed upon in writing, for all current and future contracts, deliveries and services. All earlier agreed upon conditions hereby lose its validity.
3. Contingent deviating business conditions of the customer, especially purchase conditions, shall not be applicable, even if we do not specifically contradict them.
4. Our offers, prices and other statements are subject to change, unless other conditions have been specifically agreed upon in writing.
5. Customer orders are in an accepted status only, if they have been confirmed in writing, via facsimile, delivery of the product or remittance of an invoice.
6. Changes, adjustments or additional agreements need to be submitted in writing in order to become effective.

§ 2 Software/Hardware System Utilization

1. If the software is delivered by PSG, either individually or in connection with system deliveries (Operating software, user programs and/or written data), the object of this contract shall be the delivery and availability of the programs on data carrier for the purpose of use and utilization by the customer, including the installation manual and a description, which enables the use of the programs. This description can be also part of the program (i.e., in form of online help texts). The description of the programs in the prospectus and similar documents is only a description of the services and shall give no assurance of features.
2. PSG is the owner and/or licensed user of all patent rights and non-patent right procedure technologies, existing within the programs.
3. PSG shall grant the customer a single, non-exclusive, and only with a specific prior written approval, transferable license for the use of the system for its own usage, within its own business, exclusively and only, one respective central processing unit. The use of the visualization software within a network or on a computer, whose central processing unit enables the simultaneous utilization through several users, shall only be allowed if a specific network license, or a multiple user license, has been specifically agreed upon, and only for the specifically named computer system and/or the employees and/or positions included in the contract. An amendment to the license agreement shall become necessary, in the event additional connections for measuring chains, machines to be monitored and/or positions and/or employees (visualization licences) are added to the original license agreement
4. The license fee, and in some instances applicable maintenance fee for Service Contracts, within the first contract year, shall be due in full with the delivery of the programs and receipt of the invoice. The granting of such license is contingently dependent upon receipt of payment in full of the agreed upon fees. PSG reserves the right to prohibit the utilization and demand the cancellation of all data carriers, on which the program and the thereby generated data is located on, until the date of maturity and/or appropriate payment has been made to PSG. PSG is entitled to make use of these security measurements and license restrictions for technical means in accordance with this program, i.e., refusal of access to the program. Unless specifically agreed upon otherwise, the license shall be indefinitely unlimited. The right for utilization does not include the right to use the contingent trademark of the program. The granting of a sublicense agreement by the customer is excluded.
5. The customer is only entitled to make copies of the license program, if it shall become necessary for the utilization, in accordance with the contract, on a central processing unit or for security measurements. All copies must carry the copyright trademark of the manufacturer, in the same manner as the original copies delivered by PSG. In the event of termination or settlement of the contract, the objectives of this contract, as well as all copies, are to be returned to PSG or to be deleted. The customer shall provide PSG with a written confirmation of its obligation fulfillment.
6. The customer obligates himself to use the programs, including contingent adjustment and/or improvements, only in correspondence with the terms of this contract and within the terms of the granted license and not to grant accessibility to third parties, indirectly or directly. For each liable offence against the obligations agreed to herein, a contract penalty three times the entire amount of the agreed upon license fee shall be due, even in the event that only parts of the program were made available to third parties in an unauthorized manner. The enforcement of an application of injunction and ongoing claim for damages shall hereby not be effected.

7. The customer hereby agrees that he shall be in compliance with the above referenced obligations, and shall inform its colleagues, employees, as well as third parties, which are authorized use the programs, of such agreements. This confidentiality agreement shall also apply to the time after termination of the contract.
8. PSG can not guarantee that a license program will correspond with the specific requirements of the customer, as long as the delivered program is only a standardized program.

§ 3 Software Changes/Adjustments

We reserve the right to make changes, adjustments and improvements to the software, if they become necessary or due to technically essential reasons.

§ 4 Services/Consulting Services

1. Services, especially consulting services, result on the basis of a written offer and/or orders. PSG is entitled to use expert personnel for the execution.
2. The basis of our services and consulting services are acknowledged standards and guidelines, as well as experience related data, especially in the judgment of the condition of a machine on the basis of technical determined data.
3. The customer shall make all required information, documents and data available for the execution of the order. Data delivered by the customer or a third party shall be tested by us for plausibility, without a guarantee for the correctness of the data.
4. PSG obligates itself, especially in regards to data and information characterized as confidential, i.e., company- and trade secrets, which become known in the connection with its service to the customer, to keep this information confidential and not to transmit this information to third parties without the agreement of the customer. The obligation of confidentiality shall continue to exist past the duration of such agreement.
5. The customer shall use the reports, plans, calculations, drawings and the like, generated by PSG in connection with this agreement, only for the purposes listed in this agreement and shall not transmit or publish this information (nor any part of it) to third parties without the explicit written permission of PSG. The contingent copyrights of PSG in regards to the results of any services performed shall remain untouched. Only documents with an original signature are authentic.
6. PSG offers a guarantee for its service in accordance with this contract, which is to be represented in the course of execution of the service. Guarantee claims for services, especially consulting services, shall only be honored in form of improvements and/or adjustments to service.
7. PSG warrants for intentionally caused damages or damages caused due to carelessness, by PSG and/or its affiliates, exclusively within the terms of the existing company liability insurance.

§ 5 Date of Delivery

1. The delivery of choice shall be made by PSG, within the arranged delivery period.
2. PSG is entitled to conduct partial deliveries and/or partial services. These will respectively count as independent deliveries and/or services and are to be paid separately upon order. PSG reserves the right to discontinue all further deliveries and/or services, if payment for a partial delivery and/or partial service becomes delinquent.
3. Delivery delay enters into the infringement of the delivery time period only after an appropriate extension, given by the customer, has passed the end that delivery timeframe, unless specific delivery terms are agreed upon. The customer shall have the right to terminate the agreement after an appropriate extension of time for service (in accordance with §323 BGB) has passed; Ongoing claims, especially compensation claims in accordance with § 281 BGB are excluded, as long as the delay has not occurred intentionally or due to carelessness on behalf of PSG.
4. The compliance of the agreed delivery time period requires the timely delivery of all documents, required installations, releases and compliance with the arranged payment conditions and other obligations due from the customer. PSG reserves the right to extend the corresponding delivery time period in question, if any delays occur, which are not caused by PSG.

§ 6 Warranties

1. The customer shall conduct test runs on the system in its possession immediately after the installation. If at that time or at a later time errors are detected, claims can be made only on the basis of program errors, if it is found that an error is plausible and/or reproducible, including the exact description, especially and including all user scenarios before appearance of such error, as well as the preprocessed or processed data during the occurrence of the error. PSG reserves the right to demand the customer to make this data available to PSG.
2. Obvious defects shall be reported by the customer in writing within a time period of two weeks from receipt of the product. After the expiration of this time period, the guarantee for obvious defects shall become void.
3. Errors caused by defective data, improper treatment, insufficient maintenance through the customer, misuse of company regulations, excessive use, as well as through other reasons not represented by PSG after delivery, are excluded from any guarantees.
4. In the event an entitled and timely claim of any errors is received, the customer shall have the right to have improvements and/or adjustments made to service. The customer is entitled to terminate the agreement or demand a reduction of fees, if PSG rejects to make improvements and/or adjustments to service or two trials of improvements and/or adjustments to service fail within an appropriate time period.
5. PSG shall not be liable for any damages, caused by or emerge due to the use of this product or the inability to use this product, even if PSG was informed of the possibility of such a damage, unless, damages can be traced back to intentional or careless behavior of PSG.
6. In the event PSG has to conduct a delivery exchange, the customer shall be responsible to supply us with the required time and opportunity, within the course of reasonable conditions, as well as necessary devices and representative test data. The customer is aware that the removal of error(s), especially on individual programs, may require a longer period of time, due to error analysis and tests.
7. Any guarantee claims by the customer shall become void, if the customer undertakes, without written approval of PSG, by itself or through third parties, the initiative to conduct improper adjustments and/or changes to the delivered programs or data, as long as a connection with measures and reported errors is not excluded, for which the customer is responsible to supply proof.
8. In the event PSG becomes aware at a later time, that a complaint or claim on behalf of the customer was unjustified, the customer shall be responsible to pay all costs caused by this action, even if a maintenance contract is in existence at that time.
9. The programs delivered by PSG are in correspondence with the legal determinations of the Federal Republic of Germany. Deviations for foreign countries need a specific written agreement.
10. The guarantee time period applies to all system components (Sensors, data collection- and processing, system hardware and system software) for the duration of a year, beginning with the factory delivery provisions. Separate guarantee time periods are applicable for individually delivered program parts. An additional guarantee time period shall not be granted for improvements and/or adjustments to service and/or exchange deliveries. Any costs associated with possibly defective components and the therefore related loss of salaries and wages, as well as additional expenses, shall be calculated according to receipts and/or expenditures.

§ 7 Introduction/Training

Introduction to the software (training) is not covered by the license fee, and will only be conducted through a separate agreement within the terms of the agreed upon rates, of which fees for travel and program installation are part of the introduction and are, therefore, payable by the customer.

§ 8 Software Care and Maintenance

1. The programs, described in this service contract, are object of the software care agreement. For payment of a fixed annual sum the following services shall be provided by PSG, within the terms of this agreement:
   - Removal of errors, even after the guarantee time period has passed, in the software to be maintained and the documentation provided by PSG.
   - Adjustment to legal changes, new or changed guidelines, ordinances, i.e., that may have any influence to the arranged purpose of the software to be maintained, as well as the creation and availability of
   - Additional programs, if they become necessary due to these changes. These adjustments are conducted within the terms of our technical capabilities in accordance with the program, within an appropriate time period after receipt of notice of the changes in the law.
   - Updates in accordance with general valid requirements of the market, i.e., conformities to new operating system-release-levels, new peripheral units or alike

- Recovery of programs that were destroyed as a result of operation errors or technical interferences.
- Availability for consulting service via telephone, during normal business hours on five business days of the week, after contact has been made by the user
- Availability of consulting capacity for written inquiries regarding the software to be maintained.
- Availability of training capacity for additional training, as desired by the user, as well as the availability of programming capacity for program changes/adjustments and connection programming. The calculation of fees for these services shall result in accordance with our valid compensation rates.
2. Prerequisites for the maintenance of the software:
- The user shall receive the latest version of the software, which is object of the service agreement. Respectively, only the latest version shall be maintained upon written request by the user, during normal business hours. PSG reserves the rights to have third parties carry out the maintenance.
- Upon request of PSG personnel, the user shall supply adequate office space and the applicable hardware of the user in its office space, at its own cost, within a sufficient time period.
3. Warranties covered by the Software Maintenance Contract:
- PSG hereby guarantees that the software referred to in this agreement shall retain its user applications for the duration of this contract.
- If PSG does not comply with the obligations and terms of this contract, the user has the right to terminate the agreement without further notice, after an appropriate extension has been given. Other and/or further claims of any kind, regardless of applicable law, moreover the liability of sequential damage towards PSG, is excluded.
4. The agreement for the care and maintenance of the above named software shall run indefinitely. Both parties may cancel the agreement by giving a written notice within a time period of six months into each referenced calendar year and/or contract year.
5. The fees for the care of the software result out of the calculation of the respective valid price list of PSG; Fees are calculated in advance to the end of the valid period and/or contract period. Fees are payable in full, without any deductions, within 10 days after receipt of the invoice.
The following services are not covered by the one-time license fee for the software and/or the fees for software care and maintenance and are therefore calculated as follows:
- Cost of materials
- Data carrier
- Additional delivery of manuals
- Generation of program carriers
- Cost of delivery
- Cost of installation, if installation is not performed by customer.

§ 9 Payment and Payment Default

1. Unless indicated otherwise, all fees are to be paid in Euro currency. Respectively, the fees are to be paid in addition to the sales tax applicable by law.
2. Invoices are payable in full within 10 days after receipt of the invoice, unless otherwise agreed upon. In the event of payment default by the customer, PSG shall be entitled to demand interest in the amount of 6% in addition to the base interest rate of the base interest rate-reference size-ordinance. We reserve the right to pursue any damages due in the event of continuous delay of payment.
3. The payment terms are "net terms", unless otherwise specifically agreed upon in a written agreement. The customer can only exercise the right of a claim or use the right of retention in a counterclaim, if these claims have been assessed or are legally uncontested.

§ 10 Liability

1. PSG shall assume responsibility, in accordance with the law, for damages caused intentionally or through carelessness by PSG or one of its affiliates.
2. Liability due to positive breach of contract, breach of contract negotiations or prohibited action is excluded in the case of simple carelessness, unless PSG has not fulfilled its essential obligations of the contract.
3. Liability due to any other legal reasons shall be excluded, in the event of simple carelessness, for indirect and/or sequential damage, especially for damages such as profit loss, business outage, loss of commercial information or data and/or other financial loss.
4. The liability of PSG is not excluded, but limited to a maximum amount of 10.000 EUR, in case of damage to property and assets due to carelessness.

5. Business liability insurance and/or product liability insurance is in existence to cover damages which PSG may be liable for. PSG obligates itself to uphold the same level of insurance protection which existed at the time the contract was entered into and will share information in regards of the insurance policy upon request.

§ 11 Location and Jurisdiction

1. The location for all contractual obligations, especially delivery and payment, shall be Rheine.
2. Jurisdiction for all disputes arising out of this contract shall be Rheine. PSG shall be entitled, at its own discretion, to file suit at the location of the customer.
3. If one or several conditions and terms of this contract are or become ineffective, the validity of the remaining conditions and terms shall not be affected. In the event of the ineffectiveness of one condition, another similar condition shall be used in its place as the effective regulation.

§ 12 Data Storage

By awarding the contract to PSG, the customer hereby gives his consent that all data relevant to the fulfillment of the contract, especially its customer data, shall be stored in PSG's database (§ 26 Federal Data Protection Act).