

General Terms and Conditions of Business

I. General Provisions

§ 1 Scope of application

(1) VSX VOGEL SOFTWARE GmbH (hereinafter referred to as "VSX") is the specialist for pump selection software and develops applications for the selection and calculation of fluid handling components and systems as well as for business processes and related topics.

(2) Unless otherwise agreed upon, these General Terms and Conditions of Business shall apply exclusively to deliveries and services of VSX, in particular the sale of standard software, execution of adjustments, maintenance of data in databases (data entry), production of data carriers containing copies of the software (data carrier service) and pre-contractual obligatory relationships with VSX in the context of business transactions.

(3) The terms and conditions of the customer shall not become a part of the contract, even if VSX does not object to them expressly.

(4) Even if no reference is made thereto again when entering into similar contracts, the General Terms and Conditions of VSX, in the version available at www.vsx.net/agb on the date of the customer's declaration, shall apply exclusively unless otherwise agreed in writing by the parties to the contract.

§ 2 Quotations, conclusion of contracts

(1) All quotations, cost estimates and price lists of VSX are subject to confirmation and non-binding, unless designated explicitly as obligatory.

(2) A legal obligation is only incurred through a contract signed by both parties or the written order confirmation of VSX. In order to fulfil the requirement of a written form, transmission in text form, in particular by fax or e-mail, is sufficient.

§ 3 Prices

The prices stated in the order confirmation of VSX, plus applicable VAT and, in cross-border trade, plus any other taxes and customs as well as bank transaction charges, shall apply.

§ 4 Scope of services

(1) The contract signed by both parties or the order confirmation of VSX shall be decisive for the scope, type and quality of deliveries and services.

(2) Other information or requirements, including charts and figures, and other performance data shall only become a part of the contract, if agreed upon in writing by both parties or if confirmed by VSX in writing. The same shall apply to the installation of software, training courses and other incidental services. Subsequent changes in the scope of services require a written agreement or a confirmation of VSX in writing or by fax. § 2 paragraph 2 sentence 2 shall apply accordingly in order to safeguard the form requirement.

(3) Product descriptions and presentations in test programs are, insofar as they have become a part of the contract, regarded as specifications, but not as warranties. A warranty requires the written declaration of the management of VSX.

§ 5 Performance period, delays

(1) Information about the dates of delivery and performance are non-binding, unless defined as binding in writing by VSX. § 2 paragraph 2 sentence 2 shall apply accordingly in order to safeguard the form requirement. VSX may render partial services, insofar as the parts delivered can be used by the customer separately in a sensible way.

(2) The delivery and performance periods shall be extended by the period during which the customer is in arrears with payments under the contract and by the period during which VSX is prevented from delivery or performance due to circumstances beyond its control as well as by an adequate start-up time after end of the

impairment. These circumstances shall include force majeure, labour disputes and missing or inadequate cooperation of the customer.

(3) If the parties agree later on additional services, which affect the deadlines agreed, the deadlines shall be extended by an adequate period.

(4) Any reminders and time limits defined by the customer must be made in writing to become effective. Any additional respite shall be of adequate length. A period of less than two weeks is adequate only in particularly urgent cases.

§ 6 Delivery and transfer of risk

(1) Unless otherwise agreed, all deliveries are carried out at the risk of the customer. If delivery is delayed at the customer's request, the risk shall pass to the customer upon notice of the readiness to deliver.

(2) At the customer's request, transport insurance shall be effected. The costs of transport insurance shall be borne by the customer.

(3) The customer is obliged to have all delivery objects from VSX inspected by an appropriate employee immediately after the delivery in compliance with commercial code regulations (Section 377 of the German Commercial Code, HGB) and to complain of any defects identified in writing by providing a detailed description of the defect.

§ 7 Reservation of title

(1) Until all claims (including all balance claims from current accounts) VSX has against the customer for whatever legal reason have been fulfilled, VSX is granted the following guarantees, which VSX shall release on request at its own discretion, if their value exceeds the claims permanently by more than 20%.

(2) The goods supplied shall remain the property of VSX. Processing or transformation of the goods is always effected for VSX as the manufacturer, but without any obligations on the part of VSX. If the title of VSX to the goods is terminated due to the combination with other objects, it is herewith agreed that the title of VSX to the new object shall be transferred to VSX in proportion to the relevant value (invoice amount). The customer shall store the property of VSX at no cost. Goods, to which VSX retains the title, are hereafter designated as conditional goods.

(3) The customer may process and sell the conditional goods in the ordinary course of business, as long as it is not in arrears with payment. Ordinary course of business does not include any measures that violate any other rights of VSX, in particular rights of use and utilisation of software. The goods must not be pledged or transferred by way of security. The customer herewith now assigns any claims resulting from the resale or from another legal reason (insurance, unlawful act) in connection with the conditional goods (including balance claims from current accounts) in their full amount to VSX for the sake of security. VSX grants the customer the revocable right to collect the claims assigned to the seller in its own name and on its own account. This power of collection can only be revoked if the customer does not fulfil its payment obligations properly.

(4) In the event of access of third parties to the conditional goods, in particular attachments, the customer shall refer to the title of VSX and notify VSX thereof immediately to enable VSX to enforce its own ownership rights. If the third party is not able to reimburse VSX for judicial or extra-judicial costs incurred in this connection, the customer shall be liable for such costs.

§ 8 Payment and delay in payment

(1) Unless otherwise agreed, invoices of VSX shall be payable within 14 days from the invoice date without any deductions.

(2) If the customer is in arrears with payment, it is charged an interest of 8% above the base interest rate from the relevant date. VSX reserves the right to claim for higher damage caused by delayed performance.

(3) Despite any other provisions of the customer, VSX shall be entitled to set off the customer's payments first against any older debts of the customer and shall notify the customer on how the payments have been used. If any expenses and interest have already incurred, VSX shall be entitled to set off the customer's payments first against expenses, then against interest and then against the principal.

(4) A payment is deemed to be made when VSX can dispose of the amount. In the event of payment by cheque, payment is deemed to be effected, if the cheque has been honoured.

(5) If VSX is aware of any circumstances that might query the customer's credit-worthiness for objective reasons, in particular, if the customer suspends its payments or a cheque is returned due to insufficient funds, VSX shall be entitled to demand payment of the entire residual amount, even if VSX has accepted any cheques. In this case, VSX shall also be entitled to demand advance payments or a collateral security.

§ 9 Offset, retention and assignment

(1) The customer is only entitled to offset, retention or reduction, including in the event of a notice of defects or counter-claims, if the counter-claims have been adjudicated finally or are undisputed. However, if the additional prerequisites of sentence 1 are not fulfilled, the customer is also entitled to retention, if the right of retention is claimed due to counter-claims under the same contractual relationship.

(2) Except for the scope of Section 354a of the German Commercial Code, the customer may only assign any claims under this contract with the prior written consent of VSX.

§ 10 References

VSX shall be entitled to show the customer's name and logo in reference lists and to publish these on the Internet or in the print media in order to provide factual information. Any further use is not permitted.

§ 11 Binding term and termination of the contract

(1) The termination of the further delivery of services (e.g. in the event of cancellation, notice for cause, reduction or damages instead of performance) has to be announced in advance, by indicating the reasons and a deadline for the removal of defects (normally two weeks) and can only be declared within two weeks after the end of the deadline. In the cases of § 323 (2) of the German Civil Code (BGB), indication of a deadline can be waived. The party that is totally or mainly responsible for the default cannot request the reversal of the contract.

(2) All declarations in this connection must be made in writing to become effective.

II. Standard Software and Adaptations, Data Entry, Data Carrier Service

§ 12 Standard software and adaptations

(1) Before the conclusion of a contract on the delivery of standard software, including possible adaptations requested and relevant user documentation, (hereinafter referred to as the "software") from VSX, the customer has checked whether the software specifications are in compliance with its wishes and requirements. The customer is aware of the significant functional features and system requirements of the software.

(2) In particular, the customer is aware of the fact that the VSX software is not suitable for planning or designing pumps and other components of aircrafts, spacecrafts or nuclear plants. In addition, it is not suitable for any measures and procedures in connection with aircrafts, spacecrafts and nuclear plants.

(3) The method of delivery of the software shall be as defined in relevant agreements; unless otherwise agreed, the program and the manual shall be delivered on CD-ROM. The customer is not entitled to receive the source code.

§ 13 Scope of the right of use

(1) The software is protected by copyrights. As regards the relationship between the parties to the contract, VSX is the sole owner of any copyrights, patent rights, trademarks and all other industrial property rights in the software and in any other items, transferred or made accessible by VSX to the customer in the context of the contract negotiation and performance. If any rights are the property of third parties, VSX has relevant rights of exploitation.

(2) VSX grants the customer a non-exclusive right of use of the software, unlimited in time and transferable to a limited degree. The precise content of the right of use is indicated in the contract signed by both parties or the order confirmation. The acquisition of the right of use is subject to the condition precedent that owed remuneration has been paid fully. By that date, the customer has a preliminary, contractual right of use.

(3) If VSX carries out adaptations to the standard software on behalf of the customer, the same provisions as defined for the rights of use of the standard software shall apply to the rights of use of the work results achieved, unless any deviating regulations have been agreed upon. In particular, the customer shall have a non-exclusive right of use pursuant to paragraph (2) and VSX the exclusive right with respect to the further exploitation of the work results.

(4) The customer may make any copies of the software exclusively for exercising its right of use and for making backup copies. The customer may make copies in the random access memory within the limits of the program execution for the intended purpose. The user manual and other documents handed over by VSX may only be copied for internal corporate purposes.

(5) After the unsuccessful expiry of a deadline defined by the customer for fault correction, the customer may rectify the fault itself, to the extent that the contractually defined use is not modified or extended. This does not result in an obligation of VSX to provide the source code. Section 323 (2) of the German Civil Code (BGB) shall apply accordingly. It is also not necessary to define a deadline, if fault correction has failed or is unreasonable for the customer. After the end of the warranty and outside the scope of application of a software maintenance agreement, VSX may request an appropriate advance payment before the fault correction.

(6) VSX labels the code of the software, the user interface and the documentation with notes about the copyright of VSX. The customer may not modify or tamper these notes without the consent of VSX. If the software or documentation is modified or combined, the customer shall label the code of the software, the user interface and the documentation with notes about the copyright of VSX to an acceptable extent.

(7) VSX shall consent to the transfer of the software (as a whole or in part) to a third party under the following conditions:

1. The customer shall hand over to the third party (if available) the original data carriers, delete all other copies, in particular those stored on data carriers as well as in read-only memories or random access memories, stop the use of the software completely and provide VSX with a written confirmation of the fulfilment of these duties.
2. The third party declares in writing to VSX that it complies with the provisions of this contract, in particular with the provisions of § 13, directly vis-à-vis VSX and
3. there are no important reasons objecting such a transfer, e.g. a competitive situation between VSX and the intended purchaser.

The consent of VSX must be given in writing to become effective.

(8) The customer may only decompile the interface information of software within the limits of Section 69e of the German Copyright Act (UrhG) and only if it has notified VSX in writing of its intention and requested the necessary information with an advance period of at least two weeks. § 21 shall apply to any knowledge and information supplied to the customer in the context of decompilation. If any third parties are involved, VSX shall be furnished with a written statement of such a third party that it undertakes, directly vis-à-vis VSX, to comply with the provisions defined § 13 and § 21.

(9) All other exploitation actions, in particular leasing, borrowing and distributing in a physical or non-physical form, are not permitted without the prior written consent of VSX.

(10) Contractual items, documents, suggestions, test programs etc. of VSX, furnished to the customer before or after the conclusion of the contract, are the intellectual property as well as business and trade secrets of VSX and to be treated as confidential pursuant to § 21.

(11) VSX can revoke the customer's rights of use for an important reason under the prerequisites of § 11. An important reason exists if the customer does not pay due remuneration or violates its duties under the above-mentioned sections considerably despite a written reminder. If the right of use has not accrued or terminates, VSX may request that the customer returns all items transferred or provides a written assurance that they have been destroyed and, in addition, VSX may request the deletion or destruction of all copies and a written assurance thereof.

§ 14 Subsidiary duties of the customer

(1) The customer is obliged to inspect the software immediately as defined in § 6 paragraph 3 and to immediately complain of defects identified. The customer shall test each module thoroughly for its usability in the concrete situation, before it starts with the operative use of the software. This shall also apply to programs delivered to the customer in the context of the warranty and of a maintenance contract, if applicable.

(2) The customer shall initiate adequate precautions for the event that the software does not function properly totally or in part (e.g. through data backups, fault diagnosis, regular review of results). The customer is responsible for ensuring that the work environment of the software operates properly. It shall transfer all information available to it and necessary for removing the defect to VSX.

(3) The customer undertakes to notify VSX immediately, if any changes have occurred in the person, address, name, legal form or the company.

(4) If adaptations and other services have been agreed based on the individual specifications of the customer, the customer shall provide VSX with all necessary information and nominate an appropriate contact in the enterprise of the customer.

(5) The customer is obliged to protect the software, including user documentation, from the unauthorised access of third parties through adequate precautions. The customer shall store the user account login data and the user documentation in a safe place. In addition, the customer shall inform its employees and assistants, who use the software in compliance with the provisions of this contract, emphatically that they have to comply with the conditions of the present contract and the provisions of the Copyright Act.

§ 15 Defects of quality

(1) The software has the agreed quality, is suited for contractual, or otherwise conventional, use and has the quality usual for this type of software; however, it is not free from defects. Any functional impairment of the software, resulting from hardware defects, environmental conditions, wrong operation, etc., shall not be regarded as a defect. Any minor impairment of quality is not taken into consideration.

(2) In the event of defects of quality, VSX has the right to provide supplementary performance. At the option of VSX, supplementary performance can be effected by correction of the defect, delivery of a program without this defect or by showing any methods to avoid the effects of this defect. An equivalent new program level or the equivalent previous program level, which does not have this defect, is to be accepted by the customer, insofar as tolerable by it.

(3) The customer shall support VSX in the fault analysis and fault correction by providing a precise description of any problems incurred, informing VSX comprehensively and granting VSX the time and opportunity necessary for fault correction. VSX may perform fault correction, at its option, on site or on the premises of VSX. VSX may also provide remote maintenance services. The customer shall ensure that the necessary technical requirements are fulfilled and grant VSX access to its IT system after a relevant advance notice.

(4) The parties agree upon the following defect classes and response times:

Defect class 1: Defects preventing operation. The defect prevents the customer's business operations from being carried out; no work-around available. VSX shall start immediately, but not later than within a working day (Monday to Friday) after the error notice, with fault correction and shall continue relevant activities persistently until the error has been removed, insofar as tolerable even outside the usual working hours.

Defect class 2: Defects impairing operation. The defect impairs the customer's business operations to a considerable degree. However, the use of the software is possible using work-arounds or with preliminarily acceptable limitations or impairments. VSX shall start not later than within three working days after the error notice with fault correction and shall continue relevant activities during usual working hours until the error has been removed. VSX can first provide a work-around and later rectify the fault, if tolerable for the customer.

Defect class 3: Other defects: VSX shall start fault correction within a week or removes the error with the delivery of the next program level, if tolerable by the customer.

(5) The deadlines pursuant to paragraph 4 shall commence on the date of a complaint pursuant to § 14 paragraph 1. § 5 paragraph 2 to 4 shall apply accordingly to the calculation of deadlines. In the event of any disputes relating to the classification of a defect based on the classes defined in paragraph 4, the customer may

request allocation to a higher defect class. The customer shall reimburse VSX for any expenditure, if it cannot give proof that its classification was correct.

(6) If VSX is not able to identify a defect complained of by the customer or if a defect is due to an operating error or other circumstances beyond VSX's control, the customer shall bear the costs incurred by VSX in compliance with agreed or usual rates.

(7) The customer's warranty claims shall be statute-barred as defined in § 20.

§ 16 Defects of title

(1) VSX warrants that there are no rights of third parties objecting to the contractual use of the software by the customer. In the event of defects of title, VSX grants a warranty by procuring a legally perfect right of use of the software or, at the customer's option, of equivalent software.

(2) The customer shall notify VSX immediately in writing, if any third parties claim for protection rights (e.g. copyrights or patent rights) against the customer. The customer grants VSX the right to handle any disputes with such third parties alone. If VSX makes use of this right, the customer may not recognise any claims of such a third party without the consent of VSX. VSX shall defend the claims of the third party at its own expense and reimburse the customer for all costs in connection with the defence of these claims, unless these are based on a customer behaviour contrary to the contract (e.g. use of the program contrary to the provisions of this contract).

(3) § 15 paragraphs 2 to 5 and 7 shall apply accordingly.

§ 17 Data entry

(1) If the customer instructs VSX to enter data in databases (data entry), the above-mentioned regulations shall apply accordingly. However, the rights in the data remain the property of the customer in deviation from § 13. With respect to the data entered, the customer is the creator of the database within the meaning of Section 87a (2) of the German Copyright Act (UrhG).

(2) The customer shall undertake all diligent efforts to supply complete and correct data to VSX. It shall compare the data supplied with the data entered in the context of the test pursuant to § 14, insofar as tolerable.

(3) If data supplied by the customer infringes any rights of third parties, the customer shall indemnify VSX from any claims of such third parties and the costs of legal prosecution, irrespective of any existing additional claims.

§ 18 Data carrier services

(1) If the customer instructs VSX to produce data carriers, §§ 14 to 16 above shall apply accordingly to the incidental duties of the customer and the warranty of VSX for the production of the data carriers.

(2) If the customer has ordered the delivery of software (including any adaptations and data entry, if applicable) and the production of data carriers from VSX, the software has to be tested and accepted before the production of the data carriers. The customer shall not release the software for reproduction on data carriers until the tests have been completed successfully.

(3) Any defects in the software do not give the right to reject the delivery of data carriers and do not give rise to any other warranty claims regarding the delivered data carriers, unless the defect is due to faulty production of data carriers (e.g. defective materials, defective pressing) or a deviation of the software from the version already accepted.

III. Liability and Statutory Limitation, Secrecy, Other Provisions

§ 19 Liability

(1) VSX shall pay damages or reimburse fruitless expenses, for whatsoever legal reason (e.g. for obligations created by legal transactions and similar obligations, violation of duty and unlawful act) to the following extent:

The liability in the event of intent and warranty claims is unlimited.

- a) In the event of gross negligence, VSX shall be liable to the damage typical for such contracts and foreseeable at the conclusion of the contract.
- b) In the event of a negligent breach of a duty that is so material that the purpose of the contract might be endangered (cardinal duty), VSX shall be liable up to the amount of the damage typical for such contracts and foreseeable at the conclusion of the contract, but not more than EUR 500,000.00 per damaging event and EUR 1,000,000 for all damaging events in total. Otherwise, the liability for simple negligence shall be excluded.

(2) VSX has the right to plea for contributory default. In particular, the customer is responsible for making data backups and for anti-virus protection in compliance with up to date technology.

(3) To the extent that the liability of VSX is excluded or limited, this applies also to the personal liability of the employees, agents and servants of VSX.

(4) In the event of injury to life, body and health and claims under the Product Liability Act, the statutory provisions shall apply.

§ 20 Statutory limitation

(1) The period of limitation is

- a) one year for claims for repayment of remuneration due to cancellation or reduction from the start of the statutory or contractually agreed limitation, however not less than three months from the delivery of the effective notice of cancellation or reduction.
- b) one year for any other claims based on defects of quality;
- c) one year for claims under defects of title, if the defect of title is not based on an exclusive right of a third party, which enables the third party to request surrender or destruction of the objects transferred to the customer;
- d) one year for any other claims for damages or reimbursement of fruitless expenses, starting from the date, on which the customer has become aware of the circumstances giving rise to the claim or would have become aware thereof without gross negligence.

Limitation occurs no later than upon the expiry of the maximum period defined in Section 199 of the German Civil code.

(2) However, the statutory periods of limitation shall apply to reimbursement of damages and expenses resulting from intent, gross negligence, warranty, fraudulence and in the cases mentioned in § 19 paragraph 4.

§ 21 Secrecy, data protection

(1) The parties to the contract undertake to treat as confidential all items (e.g. software, documents, information) that they receive from the other party or become aware of before or during the performance of the contract, which are legally protected or contain business or trade secrets, or are labelled as confidential, including beyond the end of the contract, unless they have become public without any breach of the duty to maintain secrecy. The parties shall safeguard and protect these items in such a manner that access by third parties is impossible.

(2) Only employees and other third parties who require access in order to fulfil their tasks shall be granted access to the contractual items. The customer shall instruct these people with respect to the need to maintain secrecy regarding these items.

(3) VSX shall store the customer's data which is necessary for handling the business relationship in compliance with the provisions of the Data Protection Act.

§ 22 Final provisions

Changes in or supplements to this contract must be made in writing, unless any other form is required mandatorily in individual cases or required by the present provisions. This shall also apply to any changes in this clause.

(2) In the event of a dispute between the parties whether an e-mail message received originates really from the sender indicated in the e-mail, the e-mail shall be regarded as sent by the sender indicated if there is doubt.

(3) The law of the Federal Republic of Germany shall be applicable, the provisions of the UN Convention on Contracts for the International Sale of Goods being excluded. The place of performance and the legal venue for all disputes arising out of and in connection with this contract shall be Dresden in the event of contracts with merchants, legal persons under public law or special assets of the Federal Government.

(4) These General Terms and Conditions and all other agreements underlying the contract are on principle available in the German language. VSX prepares an English translation at the customer's request. In cases of doubt, the German version shall be binding.

(5) If individual provisions of a contract entered into within the scope of these General Terms and Conditions of Business are invalid or become invalid due to subsequent circumstances or if a gap is discovered, the validity of the remaining provisions shall not be affected. The invalid provision or the gap shall be replaced by a proper provision, which comes as close as possible to the parties' intentions, if they had considered this item when entering into the agreement.

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