

# General Terms and Conditions

of Robotron Datenbank-Software GmbH

(last revised: 03/2017)

## 1. Scope

**1.1** The following General Terms and Conditions apply to all contracts for the provision of any deliverables and performances by Robotron Datenbank-Software GmbH (hereafter referred to as „Robotron“) to Customers.

**1.2** Any diverging or additional contractual terms of Customer, in particular Customer´s conditions of purchase, shall not apply, regardless of whether such conditions are referred to in requests for submission of offers, or in orders, or otherwise, even if Robotron does not expressly object to such conditions.

Any conditions that diverge from these General Terms and Conditions shall only apply if Robotron expressly acknowledges them in writing.

**1.3** These General Terms and Conditions shall only apply vis-à-vis Customers that are no consumers in terms of Section 13 German Civil Code (Bürgerliches Gesetzbuch – BGB).

## 2. Conclusion of Contracts

**2.1** If not agreed otherwise, a contract will be concluded upon a written confirmation of the order by Robotron. Should such a confirmation not be made, then the contract will be deemed established at the latest upon commencement of the provision of performance by Robotron.

**2.2** The contract consists of the following parts, in the following order:

- offer of Robotron
- any particular separate performance descriptions of Robotron (where provided)
- these General Terms and Conditions

**2.3** Any precontractual statements or supplementary agreements will only be part of the contract if they are expressly confirmed in writing by Robotron.

## 3. Provision of Performance

**3.1** The scope of performance is specified in the offer of Robotron, or in a particular performance description (or negotiation protocol), where it is expressly confirmed in writing by Robotron.

**3.2** Any due dates or terms referred to in the contract with regard to performance provision shall only be binding if they have been acknowledged by Robotron in writing as binding. Such due dates or terms shall further be subject to the timely provision of any subcontractor performance.

**3.3** Any performances not expressly specified in the contract shall be out of scope of performance.

**3.4** Where a performance is provided on grounds of a Service Contract („Dienstvertrag“ in terms of the German Civil Code), Robotron will not bear any project responsibility, or responsibility for a particular work result.

**3.5** Robotron may – where deemed appropriate – provide partial deliveries or partial performances.

**3.6** Robotron is entitled to make use of third parties as subcontractors. Robotron will be responsible for any subcontractor performance to the same extent as it is responsible for its own performance.

**3.7** Each party shall appoint a responsible contact person or project manager, who shall be responsible for promptly making any decisions required for proper performance, and for any coordination. Any decisions shall be documented.

**3.8** The grant of rights, or a transfer of ownership, regarding the contractual performance shall be subject to complete payment of the agreed remuneration.

**3.9** In the case of a shipment in connection with the provision of performance, the risk will pass to Customer as soon as Robotron has handed the shipment over to the transport person.



**3.10** In case of force majeure (e.g. strikes, unrest, shipping delays, production disruptions, or other impeding or unforeseen circumstances that are outside of Robotron's sphere of influence) Robotron shall be released of any performance obligation for the duration of the force majeure. Any due dates or terms shall be postponed by the duration of the force majeure. This also applies if such force majeure events occur during a default, or during a delay which Robotron is not responsible for.

## 4. Assignment of Personnel

**4.1** Robotron will have sole authority over its personnel; Customer will not have authority to give any directions. Customer shall make any required coordinations with the appointed contact person of Robotron only.

**4.2** The allocation of personnel remains in the sole authority and discretion of Robotron, Customer will not have the right to demand that particular employees are allocated.

**4.3** No employment will be established between Robotron's personnel and Customer. There will not be a supply of temporary workers. Where it is required that Robotron personnel works within Customer premises, the working areas of Robotron personnel shall as far as possible be separate from the working areas of Customer's personnel. Robotron personnel must not be integrated into Customer's operational procedures or work organization, as far as not mandatorily required for the provision of the agreed performance, or by any particular circumstances.

## 5. Changes to the agreed Performance

**5.1** Changes to the agreed scope of performance can only be made by mutual agreement.

**5.2** Robotron will evaluate requests for change of Customer and will inform Customer whether, or under which conditions, the change could be realized. If the change can be realized, Robotron will submit a written offer for the respective realization. Such offer will specify the changed or extended performance description, any consequences for the performance period or planned due dates, as well as the remuneration. The preparation of the offer will be free of charge for Customer, as far as proportionate and reasonable for Robotron. Should the preparation of such an offer require considerable technical planning or effort, then Robotron shall be entitled to demand an appropriate compensation.

**5.3** Customer shall evaluate the offer without delay, and shall immediately accept or reject it. Section 2 of these General Terms and Conditions applies for the conclusion of the contract regarding the respective change.

**5.4** As long as there is no written agreement regarding a change of performance, the agreed scope of performance will remain binding. If not agreed otherwise, any due dates or terms regarding the agreed performance will be postponed by the duration of the evaluation or discussions of the requested change.

## 6. Obligations of Customer

**6.1** Customer shall without particular request provide to Robotron any support, and shall meet any preconditions within his sphere, which may be reasonably required for the proper provision of the agreed performance.

**6.2** In particular, Customer shall timely provide any required information, data, test cases, equipment, work places, or other required items. As far as required, Customer shall provide a remote access to his system. Customer shall further – as far as reasonably required for the provision of performance, and as far as not within the scope of Robotron's performance – provide any required hardware or software licenses. As required, Customer shall ensure to make available competent personnel and contact persons during the entire term of performance provision.

**6.3** Customer shall ensure that any data carriers provided are free from defects and do not contain any malicious software or unlawful content.

**6.4** Customer shall inform Robotron without delay about any changes to relevant operating conditions.

**6.5** As far as Customer provides any software or other legally protected items, he grants to Robotron a non-exclusive usage right, as far as it is required for the provision of performance.

**6.6** Any individual contract between the parties may specify detailed cooperation obligations of Customer.

**6.7** As far as Customer does not provide any cooperation obligations, Robotron shall not be responsible for any delays, or any negative consequences on the provision of performance. Any due dates or terms shall be postponed accordingly.



**6.8** Customer shall indemnify Robotron from any claims of third parties resulting from an unlawful use of the contractual performance by Customer or his auxiliary persons.

**6.9** Customer shall inform Robotron immediately if any third parties claim a violation of their rights. Customer must not acknowledge such claimed violations. Robotron will lead any such disputes or proceedings in its own responsibility; however, Customer shall support Robotron as far as reasonably required.

## **7. Acceptance of Work**

**7.1** Performances provided on grounds of a „contract to produce a work“ („Werkvertrag“ in terms of the German Civil Code) is subject to a formal acceptance by Customer.

**7.2** Robotron will provide the contractual performance to Customer for acceptance. Customer shall declare acceptance in writing without undue delay – if not agreed otherwise within 2 weeks upon provision for acceptance. The performance must be accepted if it has the agreed quality. Acceptance cannot be refused due to minor defects.

**7.3** Should Customer not declare acceptance within due time, and should Customer not report any substantial defects, then the contractual performance shall be deemed to have been accepted. Acceptance shall further be deemed to have been declared if payments are made by Customer without objection, or if Customer makes productive use of the contractual performance.

**7.4** Robotron may provide any partial performances for acceptance.

**7.5** Any individual contract between the parties may specify detailed acceptance criteria (e.g. defect classes, defect corridor).

## **8. Rights in the Case of Defects (Statutory Warranty)**

**8.1** Regarding performances provided on grounds of a „contract to produce a work“ („Werkvertrag“ in terms of the German Civil Code), Robotron warrants that the deliverables and performance comply with the generally recognised state of the art and the quality agreed in writing.

**8.2** Customer shall inform Robotron in writing without undue delay as to any defects, where such information must

be transparent and reproducible, and must include any information required for identification and analysis of the defect. Customer shall in particular describe the operational steps that have caused the defect, as well as the appearance and consequences of the defect.

**8.3** Insofar as the performance has defects that substantially impair the agreed use, Customer will – subject to the statutory provisions – initially have the right to demand subsequent performance (i.e. remedy of the defect or provision of a new work).

**8.4** Robotron may determine in its own discretion how to provide subsequent performance. In case of provision of a new work, Customer is obliged to return the defective performance. If subsequent performance has failed, then Customer may – in accordance with the statutory provisions – demand a reduction of the remuneration, or withdraw from the contract as far as the defect occurred. Subsequent performance will only be assumed to have failed if Robotron has unsuccessfully been given sufficient opportunity to remedy the defect or provide a new work, or if subsequent performance is impossible, or if it is unreasonable to Customer for objective reasons. Robotron may provide workaround solutions for remedy of defects, unless this is unreasonable to Customer for objective reasons.

**8.5** In the case of defects of title (i.e. if the rights contractually agreed for proper use of the performance cannot effectively be granted) Robotron will provide cure of the defect by – in Robotron’s discretion – enabling Customer to use the performance in a lawful manner (by modification or equivalent replacement of the performance, or by provision of the required rights), or by taking back the performance against refund of the remuneration (where benefits made from use by Customer may be deducted from such refund). Any other statutory rights of Customer remain unaffected.

**8.6** Customer’s statutory obligations according to Section 377 German Commercial Code (Handelsgesetzbuch – HGB) to duly examine the performance and notify defects remain unaffected.

**8.7** Warranty rights are excluded in case of only minor defects.

**8.8** Warranty rights shall be excluded in cases of excessive or improper use of the performance, natural wear and tear, failure of components of the system environment, or where defects cannot be reproduced or verified, or where the performance is used in a system environment different from agreed, or where influences occur that were not assumed for the contract. Warranty rights shall further be excluded

where Customer or third parties interfere with, or change, the performance after provision, unless this did not influence the occurrence of the defect.

**8.9** Warranty rights become time-barred after twelve months upon commencement of the statutory limitation (normally upon acceptance or delivery); this does not apply to compensation claims.

**8.10** The processing of reported defects by Robotron shall – subject to the statutory provisions – only lead to a suspension of the statute of limitation. As far as not expressly determined otherwise, any cure of defects will be done on a goodwill basis, without acknowledgement of a legal obligation.

**8.11** Robotron may demand reimbursement for any efforts, where a defect has been reported but cannot be determined or proven (unless Customer could reasonably not know that there was no defect), or for any additional efforts where reported defects cannot be reproduced, or where Customer fails to properly meet any obligations regarding the cure of defects (e.g. any cooperation obligations).

**8.12** Regarding performances provided on grounds of a purchase contract („Kaufvertrag“ in terms of the German Civil Code), the above provisions apply accordingly.

## 9. Term and Termination

**9.1** The term and termination will be agreed in any particular individual contract. Where a contract does not contain a termination provision, the statutory provisions shall apply.

**9.2** The notice of termination must be made in writing. The receipt of the termination notice shall be relevant for observance of the notice period.

**9.3** The right to terminate a contract for good cause shall remain unaffected. Robotron shall in particular have this right if an insolvency proceeding in terms of the German Insolvency Act (Insolvenzordnung - InsO), or any similar procedure, is pursued regarding Customer, or if Customer suspends his payments not only temporarily, or if Customers partially or totally discontinues his business operations.

## 10. Rights of Use

### 10.1 Provision of Robotron standard software (on-premise)

Insofar as Robotron standard software is provided, the following applies:

a) Upon complete payment of the agreed remuneration, Customer will obtain a non-exclusive, non-transferable, non-sublicensable, perpetual right to use the contractual standard software including user documentation, for Customer's own, internal use.

b) Customer may use the software only within the agreed quantity structure, or within the specified system environment.

c) Any further usage rights are not granted. In particular, any not expressly agreed reproduction, modification, translation, distribution, communication, making available, or other use of the software or its documentation, beyond the scope of use in accordance with the contract, or any exploitation towards third parties, is excluded. The right to make a copy for backup purposes remains unaffected. As far as it is not expressly permitted by law, any reverse engineering, decompiling, disassembling, or other conversion into generally readable forms is not allowed.

d) As far as not expressly agreed, a parallel operation on several, independent systems is not allowed.

e) In deviation from subsection a), the Parties may agree a usage right which is in terms of time restricted to the duration of the contract. Upon end of the term, Customer's usage rights shall cease; any reproductions (in particular any installations of software) must be deleted completely; Customer shall confirm deletion upon request.

### 10.2 Provision of third party software (on-premise)

Insofar as standard software of a third party manufacturer is provided, the following applies:

Customer will obtain a non-exclusive, non-transferable, non-sublicensable, perpetual right to use the contractual standard software in accordance with the licence conditions of the manufacturer. The manufacturer's licence conditions shall be a preceding part of the contract.



### 10.3 Software as a Service

Insofar as a Software as a Service use is agreed, the following applies:

a) Customer will obtain a non-exclusive, non-transferrable right, in terms of time restricted to the duration of the contract, to access the software functionalities through the Internet, as far as required by the agreed contractual purpose.

b) Insofar as software of a third party manufacturer is provided for SaaS use, the licence conditions of the manufacturer shall apply.

c) Any further rights are not granted. Customer shall in particular not have the right to make the access to the software or its functionalities available to any third parties, or to other users than the ones agreed.

d) Insofar as any client software is required to be installed for making use of the SaaS service, Customer will obtain a non-exclusive, non-transferrable, non-sublicensable usage right, in terms of time restricted to the duration of the contract, as far as required by the agreed contractual purpose.

### 10.4 Developments and Project Performances

Insofar as any customer-specific development (e.g. an individual development, a modification or customizing of software, or any installation or integration, any concept development, or any other individual work, service, or project performance etc.) is agreed, the following applies:

As far as not agreed otherwise, Customer will – upon complete payment of the agreed remuneration – obtain a non-exclusive, perpetual, non-transferrable, non-sublicensable right to use the results of the performance, as far as required by the agreed contractual purpose.

### 10.5 Software Maintenance

Regarding any code programming, modification, or further development of software made in the course of software maintenance (in particular patches, updates, upgrades, or new releases), the scope of usage rights shall apply as contractually agreed with regard to the particular maintained software, or its previous version.

### 10.6 Training Documents

Regarding training documents, Customer will obtain a non-exclusive, perpetual, non-transferrable, non-sublicensable usage rights for Customer's own, internal use. As far as not expressly agreed, a reproduction is not permitted. Any distribution, making available, communication, or any recitation of the training documents is not allowed.

10.7 A right of use may only be transferred with Robotron's consent; this also applies to a transfer to companies affiliated with Customer. Robotron may not unreasonably withhold such consent. Where a usage right is legitimately transferred, Customer shall transfer his entire contractual obligations regarding the scope of usage right to the respective third party. Upon execution of the transfer to the third party, Customer's usage rights will cease; any reproductions (in particular any installations of software) must be deleted completely.

10.8 As far as not agreed otherwise, source code will not be provided. Regarding standard software, a provision of source code is strictly excluded under any circumstances.

## 11. Liability

11.1 Robotron is only liable for damages caused by intent or gross negligence or by at least slight negligent violations of substantial contractual obligations (cardinal obligations). Cardinal obligations are such obligations which in the first place enable the proper execution of the contract, on whose fulfilment the contracting partner can rely on and whose violation of adherence endangers the purpose of the contract. The liability for damages based on slight negligent violations of cardinal obligations is limited to the typically predictable extent of the damage.

11.2 In the case of data loss caused by slight negligence, Robotron is liable only for such efforts for reproduction of the data as would be required taking into account a proper data back-up by Customer.

11.3 The liability limitation described above does not apply for injury to life, physical injury, damage to health, or insofar as Robotron has assumed a guarantee. Furthermore liability remains unaffected according to the respectively applicable compulsory statutory provisions regarding product liability.

11.4 The above provisions for liability apply as well to the legal representatives or auxiliary persons of Robotron, insofar as claims are made directly against those.

## 12. Remuneration and Payment Conditions

12.1 Remuneration as well as particular payment conditions will be determined in the contract. A remuneration may be agreed on a fixed price basis, or on a time and material basis.

12.2 Any prices specified in the contract are generally net prices where the then current statutory VAT shall be added.

12.3 Where a remuneration is agreed on a time and material basis, the services will be invoiced according to the agreed hourly rate, and according to a timesheet indicating the working hours spent. A manday consists of eight hours. If not agreed otherwise, services will be invoiced monthly.

12.4 Any travel costs, or incidental costs, shall be invoiced separately according to the actual costs. Robotron will choose the means of travel by taking into account economic considerations.

12.5 Travel times will be invoiced with 50 %, according to the agreed hourly rate.

12.6 In the case of a remuneration of a time and material basis, the following surcharges apply to a service provision outside of the regular working hours, or regarding travel times, according to the agreed hourly rate:

- ▶ workdays (Mon-Fri) between 8 pm and 6 am: +50%
- ▶ on Saturdays: +50%
- ▶ on Sundays and on public holidays: +100%

12.7 Robotron reserves the right to increase the prices for software maintenance, as well as day rates for consulting or project services, in its reasonable discretion (Section 315 German Civil Code [Bürgerliches Gesetzbuch – BGB]). Robotron will notify Customer about such an increase within a reasonable period before the increase is supposed to become effective. Customer shall have the right to terminate the contract if the prices increase by more than ten percent; the termination must be declared within 2 weeks from receipt of the notification about the increase, otherwise the increased prices shall be assumed as agreed.

12.8 Payments are due without any reduction within 30 days from receipt of invoice. Any discount is not granted.

12.9 Customer may offset or retain only legally binding claims, or claims that have been acknowledged in writing by Robotron. Customer shall have a right of retention only regarding counterclaims arising from the same contract.

12.10 Robotron reserves the right to prohibit further use of the performance for the duration of a default of payment by Customer.

## 13. Data Protection

13.1 Insofar as a commissioned processing of personal data is subject of the contractual performance, Customer shall be responsible for compliance with the applicable data protection provisions (in particular with the German Federal Data Protection Act [Bundesdatenschutzgesetz – BDSG]).

13.2 Robotron will process any personal data only according to the contract and as instructed by Customer. Customer shall in particular agree with Robotron any required technical and organizational measures (Section 9 BDSG and annex to Section 9 BDSG).

13.3 Any further statutory data protection provisions and obligations remain unaffected.

13.4 Robotron will not obtain any own rights regarding any data of Customer or third parties that may be processed in the course of provision of performance.

13.5 As far as not agreed otherwise, Robotron will delete any stored data upon termination of the contract. Upon prior request of Customer, Robotron may provide to Customer such data in a common format, subject to an appropriate compensation.

## 14. Confidentiality

14.1 Both Parties shall treat any business and trade secrets, as well as any information obtained in connection with performance of the contract, as confidential. Such information must not be disclosed to any individuals or third parties who are not involved in the performance of the contract, unless prior written consent was given by the respectively other Party for such disclosure.



**14.2** The Parties shall impose these obligations on their personnel and on any possibly involved third parties.

**14.3** Robotron may disclose any confidential information to companies affiliated with Robotron in terms of Sections 15 et seq. German Companies Act (Aktiengesetz – AktG) or to involved subcontractors.

**14.4** The confidentiality obligations do not apply where such information had already been rightfully known to the Parties beforehand, or where such information becomes known to the Parties outside performance of the contract without violation of a confidentiality obligation, or where such information must be disclosed according to a binding court or administrative decision.

**14.5** Customer is aware that an electronic, unencrypted communication (e.g. by e-mail) poses security risks. Therefore, no claims can be made by Customer in relation to this manner of communication on grounds of a lack of encryption, unless an encryption was expressly agreed beforehand.

## **15. Final Provisions**

**15.1** Should any conditions of the contract be invalid, this will not affect the validity of the remaining conditions. The Parties will jointly replace the invalid provision with a valid provision which comes closest to the economic meaning and purpose of the invalid provision. This applies accordingly in the case of any contractual loopholes.

**15.2** Customer shall be responsible for compliance with any import or export regulations that may apply to the contractual deliverables or performance. Where a crossborder delivery or performance is agreed, Customer shall be responsible for any customs duties or other fees. Customer shall be solely responsible for any statutory or administrative procedures related to a crossborder delivery or performance, unless expressly agreed otherwise.

**15.3** Changes and amendments to the contract require written form. This also applies to this written form agreement itself.

**15.4** The contractual relation shall be subject to German law (excluding the UN Convention on Contracts for the International Sale of Goods).

**15.5** The place of jurisdiction for all disputes arising from the contractual relation shall be Dresden. Robotron reserves the right to take action the courts at the seat of Customer.