

## **GENERAL TERMS AND CONDITIONS of Garderos GmbH**

### **1. Area of validity**

- 1.1. These General Terms and Conditions (GTC) are valid for the use of software products produced by Garderos GmbH („Garderos“) by a contractual partner (Customer), as well as for services carried out by Garderos. Furthermore, the GTC are valid for the delivery of Appliances (Hardware which has been pre-installed with Garderos software products) to customers of Garderos.
- 1.2. In case services are provided within the scope of a support contract, a license contract or any other contract that has been individually agreed, the provisions of such contract take precedence over the GTC.
- 1.3. Other contractual provisions, in particular Customer's General Terms and Conditions have to be confirmed in writing by Garderos.

### **2. Software license**

- 2.1. Garderos grants to the Customer the non-assignable, non-exclusive, limited license to use the licensed software products ("Software") for Customer's internal purposes upon the terms and conditions set forth in these GTC.
- 2.2. Software shall mean the computer programming code in any form, may it be source code or object code as well as any software updates supplied by Garderos, the media in which the programs are delivered and the associated documentation (including published product specifications and user manuals).

### **3. Scope of use in general**

- 3.1. In these GTC 'use' denotes the copying (be it permanently or temporary) by loading, displaying, running, transmitting or saving the Software (in whole or in part).
- 3.2. The use of the Software is limited to the purposes, persons and locations the Software has been licensed for.
- 3.3. The Software shall not be modified or be incorporated into any other software programs (in whole or in part), except with the prior written consent of Garderos.
- 3.4. Except as provided in these GTC or in cogent law (like section 69d paragraph 2 and 3, section 69e of the German Copyright Act (Urheberrechtsgesetz)), the Software shall not be copied, replicated, decompiled or reproduced in any form or medium.

### **4. Freeware, shareware und Open Source Software**

In case the Software contains freeware, shareware and open source software, Garderos provides no warranties and shall have no liability whatsoever in respect of the Customer's possession and/or use of the freeware, shareware or open source software. Regarding such parts of the Software, there are specific licensing conditions either being part of the Software Documentation or accompanying the Software ("Open Source Conditions"). Upon the Customer's request Garderos will provide the Customer with a copy of the source code of the open source software. To the extent there is a conflict between these GTC and the Open Source Conditions, the terms of the Open Source Conditions shall take precedence over the provisions of these GTC with regard to the open source software.

### **5. Assignment and sublicenses**

The Customer is not entitled to assign the license or grant any sublicenses (in whole or in part) without the prior written consent of Garderos.

### **6. Scope of services**

- 6.1. In these GTC 'services' denotes in particular the performing of services which support the Customer in using software produced by Garderos (e.g. training, technical consulting; installation, customization and testing of the software on the Customer's computer systems).
- 6.2. Scope and type of the services to be provided by Garderos arise from the relevant contract between Garderos and Customer.
- 6.3. Services are generally provided by Garderos' employees. However, Garderos is entitled to provide the services with help of qualified third parties, or to let the services be provided by third parties.

## **7. Customer's obligations for services**

- 7.1. As appropriate for the services, the Customer shall provide Garderos' employee with the required work space, resources and materials at his own cost. If the provision of services requires any intervention with power supply, conductor or wire systems, a qualified specialist shall be called in, who is solely responsible for compliance with the relevant regulations of health and safety and security.
- 7.2. As far as operations with the Customer's computer system are required, solely the Customer is responsible for backing up and saving his data.
- 7.3. If Garderos's employees assist in transports at the Customer's site or in any other performance outside his field of duties, the Customer shall indemnify Garderos and its employees from any liability for damages caused due to negligence.
- 7.4. If services to be performed at the Customer's site are delayed for reasons outside Garderos' or its employees' control, any extra costs caused by the delay shall be borne by the Customer.

## **8. Appliances**

- 8.1. The conditions of use and licencing of the preinstalled software on Garderos Appliances is governed by these GTC, unless otherwise stated.
- 8.2. Replacing the preinstalled software on Garderos Appliances with software not produced by Garderos is not permitted. Only the configuration of the preinstalled software by the Customer is permitted.
- 8.3. The use of the pre-installed software of a particular appliance is only allowed, and only possible, on the appliance on which the software was delivered to the Customer by Garderos.
- 8.4. If software from Garderos (for example, software updates or upgrades which Customer has purchased from Garderos) is installed on an Appliance subsequent to its delivery date, its use shall be governed by clauses 8.1 to 8.3.

## **9. License Fees and Payment**

- 9.1. In consideration of the licenses granted or Appliances delivered, the Customer is obliged to pay license fees and payments according to the current Garderos Pricelist. Prices do not include Value-Added-Tax (VAT) or any other taxes.
- 9.2. Until all license fees and payments due, are paid in full by Customer to Garderos, the Software and/or Appliances shall remain the property of Garderos, and none of the rights mentioned under clause 2 and 3 shall be granted to the Customer.
- 9.3. The Customer shall pay all shipping charges, taxes and duties which are incurred, unless otherwise agreed.
- 9.4. If Garderos provides services at the Customer's premises, the Customer shall pay for travel, accomodation and any other costs incurred by Garderos.
- 9.5. Any travel, accomodation or other costs incurred by Customer, shall be carried by Customer.
- 9.6. All orders shall be invoiced at the time of shipment and are ex-works (EXW Incoterms 2010) Garderos. Payment for an order must be received in full before the order is shipped. Freight and insurance costs shall be paid collect by the Customer or prepaid by Garderos and invoiced to the Customer.
- 9.7. The right of set-off or retention may only be claimed by the Customer if his counterclaim is undisputed, accepted by Garderos in writing or has been declared final and absolute.
- 9.8. Past due amounts shall bear interest according to section 288 of the German Civil Code.

## **10. Delivery**

- 10.1. Unless otherwise agreed in writing the Software and documentation shall be delivered on machine-readable data-media.
- 10.2. In case of the delivery of an Appliance, the Customer shall receive a copy of the pre-installed software as delivered installed on the respective appliance, as well as the Appliance documentation.
- 10.3. In case of the delivery of an Appliance, Garderos reserves the right to deliver alternative hardware of equal or superior value, instead of the agreed hardware. The alternative hardware shall be equally suited to the foreseen purpose of the Appliance.
- 10.4. Delivery dates shall only be binding, if confirmed in writing by Garderos.

- 10.5. If despite making reasonable efforts, Garderos cannot carry out a delivery or perform a service, for reasons such as force majeure, the occurrence of unforeseeable or extraordinary circumstances, delayed or non-delivery by Garderos' own suppliers, the agreed delivery period shall be extended by a reasonable amount. If the aforementioned reasons make it impossible for Garderos to carry out the delivery or perform the service, Garderos shall be freed from its contractual obligations.

## **11. Intellectual property rights/Copyright protection**

- 11.1. Subject to the license granted in these GTC, Garderos maintains all rights to the Software as well as to all copies of the Software (in whole or in part, be it the delivered version or a version produced in breach of these GTC) which the Customer might have produced.
- 11.2. The Customer shall maintain and not change any marks like copyrights, service marks or trademarks contained in the Software in its original form.
- 11.3. Upon knowledge of any unauthorized possession, use of or access to the Software, the Customer shall notify Garderos immediately and provide Garderos with full details of such a situation and co-operate at Garderos' expense in any litigation or other proceedings deemed necessary by Garderos to protect Garderos' rights.

## **12. Warranty**

- 12.1. Garderos warrants that the contractual products will perform according to the program description and/or documentation. Garderos shall be liable in accordance with the law in case of fraudulent concealment of a defect or in case of undertaking to provide a guarantee for a particular property of the contractual products.
- 12.2. Normal wear and tear, as well as damages caused by unskilled operation by the Customer are excluded from the warranty.
- 12.3. Garderos shall not be held responsible for defects if the Customer has made changes to the contractual products, or has had changes made by third parties to the contractual products, especially to the software, unless the defects do not relate to such changes.
- 12.4. Insofar as the Customer makes a warranty claim, and it emerges after examination of the claim that Garderos is not responsible for the defect, Garderos shall be entitled to claim costs for effort and expenses incurred due to the claim .
- 12.5. Garderos is entitled to remedy defects by repair, using methods of Garderos' choosing, or, by delivery of new products (additional delivery), within a reasonable time frame. Garderos may choose to carry out the repair of software by replacement by a new or different version of the software. Until remedy Garderos shall be entitled to offer an interim solution. The parties agree that a total remedy is not in every case possible by a repair of software defects. For the additional delivery of Appliances, clause 10.3 shall apply.
- 12.6. The Customer shall take all necessary and reasonable measures to determine, delimit and document the defect. In case of warranty the Customer shall provide Garderos with all available information and support the remedy to the best of his ability. In the case of Appliances, the Customer shall, if deemed necessary by Garderos, send the Appliance back to Garderos or Garderos' suppliers, for remedy of the defect. The Customer shall carry the costs for shipment in this case. If the remedy happens during the warranty period, Garderos shall carry the return shipment costs, insofar as the Customer is located in the European Union, otherwise the Customer shall carry the costs. Clause 12.4 shall apply in this case.
- 12.7. If repair is unreasonable for Garderos or the repair finally fails after various attempts and written notices by the Customer, the Customer is entitled to reduce the payment made for the contractual products according to the extent of limitation of usage of the contractual products, or, if the law so allows, to withdraw from the contract or claim for damages. Liability that might arise is subject to clause 13.
- 12.8. Indispensable prerequisite of warranty is a written notice of defects by the Customer – in case of obvious defects within one week after receipt of the contractual products., in all other cases immediately after defect is detected.
- 12.9. The warranty period shall be one (1) year following delivery of contractual products.

## **13. Limitation of Liability**

- 13.1. Garderos is liable to the Customer in respect of damages caused by any breach of its contractual obligations, by any tort or on any other legal basis only in the case that these damages
- 13.1.1. are caused by Garderos's culpable breach of essential contractual obligations (so called cardinal obligations) in a way that endangers the contractual purpose or

- 13.1.2. are caused by Garderos's gross negligence or intention.
- 13.2. If the liability for the breach of a cardinal obligation according to clause 13.1.1 is not caused by gross negligence or intention, Garderos' entire liability shall be limited up to the amount of the payment made for the contractual product according to clause 9.1.
- 13.3. If the liability according to clause 12.1.1 or 12.1.2 is caused by gross negligence or intention of employees, which are not organs or executives of Garderos, the entire liability shall also be limited to the maximum amount set forth in clause 12.2.
- 13.4. Garderos is not liable for indirect damages, consequential damages caused by a defect, lost profits or useless expenses if they are not caused by intention or gross negligence of organs or executives of Garderos.
- 13.5. The exclusions or limitations of liability according to the subclauses above also apply to claims against employees or subcontractors of Garderos.
- 13.6. Garderos's liability to the Customer for death or injury, guaranteed qualities or the liability under the law on liability for products remains unaffected.
- 13.7. Garderos shall only be liable for loss of data if the lost data are reproducible with reasonable effort with the help of data stored in machine-readable form
- 13.8. The Customer shall make daily backup copies of his data. In case of an assumed software defect he is obliged to take all reasonable additional protective measures.

#### **14. Third parties' claims**

- 14.1. Garderos will defend the Customer against any claim or action of third parties that are based on infringement of an industrial property right or copyright by possession or use of the Software as agreed.
- 14.2. If the Customer is charged with copyright infringement, Customer shall give Garderos immediate written notice. The Customer is not entitled to settle claims by himself. Garderos will in its absolute discretion take actions against the claim or indemnify and hold the Customer harmless or replace the said product by an equivalent product. In this case the Customer is entitled to rescind the agreement after having fixed a reasonable period with the warning to withdraw in writing. Damage that might arise is subject to clause 12.
- 14.3. Garderos is not obliged to take any actions if the infringement claims according to clause 13.1 are based on programs or data provided by the Customer or are based on the fact that the Software (or the database) is not used in a updated unmodified original version delivered by Garderos or is used under circumstances different from those described in the documentation material.

#### **15. Termination for cause**

- 15.1. Each party may terminate the agreement immediately upon written notice to the other party if the other party fails to comply with essential obligations and the default is continuing thirty (30) days after the non-defaulting party has given the defaulting party written notice thereof; essential obligations are in particular clauses 3 to 5 and 8 to 11 of these GTC.
- 15.2. If the default is incapable of cure, the non-defaulting Party may terminate the agreement immediately without prior warning upon written notice to the defaulting party.

#### **16. Liquidation upon termination**

- 16.1. Upon termination of the agreement the Customer agrees to discontinue the use of the Software and shall, within five (5) days after termination or expiration of the agreement, at its own expense, return to Garderos the original and all copies of the proprietary and confidential information, such as all software and supporting materials in object code or source code format, in machine readable or human readable form, which he has in its possession.
- 16.2. The customer may elect to not return the confidential and proprietary information, including copies thereof; if the Customer elects not to return such copies, he shall destroy the same and provide Garderos with a written certification of an executive of the Customer attesting to said destruction.

#### **17. Support Contract**

For Garderos products purchased, the Customer is obliged to enter into a support contract with Garderos or a third party authorized by Garderos.

**18. Governing Law**

This agreement shall be governed by and construed in accordance with the law of the Federal Republic of Germany.

**19. Miscellaneous**

- 19.1. Any modifications of and supplement to these GTC or the agreement have to be made in writing. This provision applies also if the prerequisite of writing shall be ceded.
- 19.2. Place of performance shall be Munich.
- 19.3. Any conflict arising shall be subject to the exclusive jurisdiction of the court competent for Garderos's corporate domicile, as far as this can be legally agreed. Garderos reserves the right to take action against the Customer at the court competent for the Customer's domicile.