

# General terms and conditions of business (GTC) of OPERTIS GmbH (OPERTIS)

## A. General provisions

### § 1 — Scope

1. The GTC below shall apply exclusively; divergent or supplementary conditions, in particular contractual provisions of the contractual partner shall not become part of the contractual content unless OPERTIS has expressly confirmed their application in writing. The GTC shall also apply in their currently valid version to all future agreements with the contractual partner.
2. These GTC shall only apply vis-a-vis entrepreneurs, legal entities of public law and public law special funds in the meaning of Sec. 310 (1) BGB (German Civil Code).

### § 2 — Conclusion of agreement, performance content, written form

1. Order forms signed by the contractual partner shall be understood as an offer of the contractual partner unless it is evident in individual cases, for example by mutual signature, that an immediate conclusion of the agreement was arranged. OPERTIS can accept such an offer within four weeks.
2. Offers issued by OPERTIS shall be without engagement and only apply for an appropriate period stated in the offer.
3. The performance content due shall emerge from the subsequent written order confirmation of OPERTIS or in the event of immediate contractual conclusion (Section 1) from the particular contractual form. Unless anything else is expressly agreed, for example in a consultation agreement, the contractual partner alone shall be responsible for the selection and suitability of the delivery and performance.
4. All agreements and any retrospective supplementary or divergent additional agreements must be in written form to be effective. This shall also apply to rescission of this written form requirement.

### § 3 — Terms of payment, offsetting, right of retention

1. Price information of OPERTIS shall not include any delivery and transport costs incurred and if applicable exclude the currently valid statutory VAT. All payments by OPERTIS shall be due immediately and without deduction for payment. Payment terms stated in invoices shall not apply as due date regulation.
2. Default of payment shall in particular occur if the contractual partner does not pay within two weeks after the due date and receipt of the invoice. In the event of default of payment, OPERTIS shall be entitled to demand default interest amounting to 9% above the base lending rate. This shall not rule out assertion of additional damages.
3. OPERTIS shall be entitled to refuse all performance incumbent on it from the business relationship or only to render it against payment in advance as long as the contractual partner is in default with its payment obligations. The contractual partner shall only be entitled to offsetting or retention if its counterclaim is undisputed or has been determined with legally binding force.
4. If OPERTIS is obliged to advance performance, the performance may be refused without default occurring if circumstances become evident after conclusion of the agreement that permit concluding that the contractual partner cannot fulfil its counterperformance, in particular its payment obligation. In this case, OPERTIS shall be obliged to determine an appropriate deadline within which the contractual partner must

pay concurrently in return for rendering of the performance or provide security. After fruitless expiry of the deadline, OPERTIS can rescind the agreement and demand compensation of the loss produced or of the expenditure incurred in vain.

#### **§ 4 — Deliveries, dates, conditional delivery, transfer log**

1. Deliveries shall be made ex works "Hagenstr. 25, 34454 Bad Arolsen, Germany", i.e. at the cost and risk of the contractual partner. OPERTIS shall take out transport insurance at the expense of the contractual partner in the event of a corresponding agreement.
2. The delivery and performance period shall emerge from the written order confirmation of OPERTIS or in the event of immediate contractual conclusion (§ 2 Section 1) from the particular contractual form. If nothing to the contrary has been agreed, the dates stated shall in each case involve "approximate deadlines". The final dates shall be announced by OPERTIS with an appropriate period of notice. OPERTIS shall be entitled to partial delivery and performance; any claims of the contractual partner on account of performance disruptions shall not be affected by this.
3. All performance obligations of OPERTIS shall be subject to the reservation of it receiving supplies on time and correctly. In the event of it not being supplied on time or correctly through no fault of its own and of other obstacles for which it is not responsible, OPERTIS shall be entitled to postpone the delivery or performance by the duration of the hindrance caused by this without default occurring.
4. If agreed, OPERTIS shall connect hardware ready for operation or install software in a functional state. Operational readiness or functional capability can be demonstrated by trouble-free running of test programs or a test run. The contractual partner must then confirm the operational readiness or functional capability by signature of a transfer log.
5. Operating instructions can be transferred in digital form.

#### **§ 5 — Reservation of title**

1. Title to the contractual object shall be reserved until complete payment of all existing and future claims of OPERTIS from the business relationship. Pledging, transfer by way of security or other disposal of the contractual object by the contractual partner shall be ruled out as long as the reservation of title exists.
2. The buyer may use the goods subject to reservation of title and sell on in the normal course of business as long as it is not in default of payment. The buyer shall already assign to us by way of security in full the payment claims of the buyer against its customer from selling on of the goods subject to retention of title and those claims of the buyer regarding the goods subject to retention of title arising on other legal grounds against its customer or third parties (in particular claims from tort and claims to insurance payments) and including all claims for payment of the account balance from the current account. We shall accept this assignment.  
The buyer may collect these claims assigned to us on its own account in its own name for us as long as we have not revoked this authorisation. This shall not affect our right to collect these claims ourselves; however, we shall not assert these claims ourselves and not revoke the collection authorisation as long as the buyer meets its payment obligations properly.  
However, if the buyer behaves contrary to the terms of the agreement - especially if it has entered into default with the payment of the payment claims - we can demand from the buyer that it discloses to us the assigned claims and respective debtors, notifies the respective debtors of the assignment and hands over all documents to us and provides all information that we need to assert the claims.
3. Processing or conversion of the goods subject to retention of title by the buyer shall always be carried out for us. If the goods subject to retention of title are processed with other property that does not belong to us, we shall acquire co-title to the new property in proportion to the value of the goods subject to retention of title (final invoice amount including VAT) to the other property processed at the time of processing. Otherwise, the same applies to the new property created by processing as to the goods subject to retention of title.

If the goods subject to retention of title are inseparably connected to or mixed with other property that does not belong to us, we shall acquire co-title to the new property in proportion to the value of the goods subject to retention of title (final invoice amount including VAT) to the other property processed at the time of processing. If the goods subject to retention of title are so connected or mixed that the property of the buyer must be regarded as the main item, the buyer and we shall already agree that the buyer assigns co-title to this item to us proportionally. We shall accept this assignment. The buyer shall preserve the sole title or co-title to the property so-created for us.

4. The contractual partner shall be obliged to treat the property subject to retention of title carefully. This shall in particular include insuring it at its own expense at the current value against theft, damage and destruction and carrying out the service work required regularly. The contractual partner shall already assign all claims from the insurance agreement to OPERTIS. OPERTIS shall be authorised to demand submission of proof regarding the existence of insurance protection.
5. The contractual partner must inform OPERTIS immediately in writing of damage, pledging or other intervention in objects belonging to OPERTIS. In the event of pledging of an object belonging to OPERTIS, the contractual partner must refer to the title of OPERTIS and bear all costs of reacquisition, including legal prosecution costs insofar as these cannot be collected from the third party.
6. The contractual partner can demand release of security if the realisable value of the security exceeds the claims still open by more than 20%; OPERTIS shall be entitled to select the security to be released.

#### **§ 6 — Ancillary and cooperation obligations of the contractual partner**

1. The contractual partner must ensure within its area of responsibility that OPERTIS can render the performance contractually due unhindered on the dates announced, in particular to deliver the hard- and software to be transferred to the planned rooms and connect it ready for operation or install it in a functional condition. Recognisable performance obstacles (company holidays, etc.) must be notified in advance in writing to OPERTIS with an appropriate period of notice.
2. The contractual partner shall be responsible in particular for observance of the conditions below to preserve performance and guarantee claims:
  - a) Connection/installation conditions
    - Designation and assignment of the staff needed to support the connection /installation work;
    - Permitting test run or running of test programs under the normal operating conditions and granting the computer time needed for this.
  - b) Data maintenance
    - Regular data backup, in particular before carrying out service work to minimise the data loss risk.
  - c) General service conditions
    - Designation of a qualified contact and representative;
    - Immediate report and detailed description of malfunctions occurring on the basis of appropriate documents (error logs, etc.);
    - In the event of agreed remote diagnosis: setup and maintenance of infrastructure required (telephone connection, etc.) at own expense.

#### **§ 7 — Taking back and disposal of electrical equipment**

1. The contractual partner shall assume from OPERTIS the obligation incumbent on the manufacturer for disposal pursuant to Sec. 19 (1) ElektroG [Distribution, Taking-Back and Environmentally-Friendly Disposal of Electrical and Electronic Devices Act] for self-used commercial products (B2B device) and as a result it shall also assume the proper disposal of these products pursuant to the statutory regulations (especially Sec. 20 et seqq. ElektroG) at its own expense or have this carried out.
2. In the event of passing on of devices acquired from OPERTIS to a new user, irrespective of whether through purchase, loan, leasing, etc., the contractual partner shall ensure that the new user assumes the

obligation agreed hereunder of the contractual partner. OPERTIS shall hereby issue its approval of such assumption by other purchasers. The obligation to transfer the disposal obligation to new purchasers shall also include the obligation to transfer it in writing also to any later purchasers of the devices affected.

3. In the event that the contractual partner from the start intends to resell the commercial products acquired from OPERTIS (B2B devices) to third parties, it shall hereby assume the obligation to agree with its contractual partners in the event of the additional resale of the devices affected in the name of OPERTIS that the particular purchaser assumes the disposal obligation of the manufacturer pursuant to Sec. 19 (1) sentence 4 ElektroG in full and on its own responsibility and at its own expense carries out or has carried out the proper disposal of the devices acquired.  
The contractual partner shall also ensure that its customers transfer the obligation to proper disposal to later users or have it transferred. OPERTIS shall already agree to this extent to passing on the obligation to this extent and hereby authorises the contractual partner with its customers to transfer the obligation agreed above pursuant to Sec. 19 (1) sentence 4 ElektroG in the name of OPERTIS to its customers.
4. If the contractual partner omits passing on the disposal obligation in the name of OPERTIS to its customers, it shall carry out the disposal obligation of the manufacturer properly according to the Electric and Electronic Devices Act itself at its own expense. Moreover, OPERTIS shall release the contractual partner from the disposal obligation pursuant to Sec. 19 (1) ElektroG and any claims of third parties. In the event of corresponding recourse against OPERTIS by third parties, the contractual partner shall be obliged to provide OPERTIS immediately with all documents required in which the assumption of the disposal obligation by its customers or third parties and offer all support needed.

#### **§ 8 — Default**

1. In the event of default, the contractual partner may set OPERTIS an appropriate period of grace with the declaration that it will rescind the agreement in whole or in part after expiry of this period or demand damages on account of non-fulfilment.
2. If the contractual partner demands damages on account of non-fulfilment, the payment obligation of OPERTIS shall be limited to 8% of the value of belated performance pursuant to the agreement.

#### **§ 9 — Guarantee rights (especially purchase), rescission**

1. Obviously evident defects must be notified in writing to OPERTIS to preserve guarantee rights within five working days after delivery, transfer or acceptance; concealed defects emerging within the period of limitation within five working days after discovery.
2. The period of limitation for defects in newly manufactured objects shall be one year from delivery or acceptance.
3. If a defect occurs within the period of limitation, OPERTIS can provide appropriate replacement within a period of its selection or eliminate the defect. If the substitute delivery or elimination fails within an appropriate period or this is unreasonable, the contractual partner shall be entitled to abate the purchase price, rescind the agreement or demand damages on account of non-fulfilment; the liability of OPERTIS shall be limited in this respect to 1.5-fold of the purchase price of the defective object.
4. Guarantee rights shall be ruled out if a defect is based on improper operation, improper servicing or handling of hard- or software or an amendment or conversion of the hard- or software transferred not approved by OPERTIS.
5. Service times shall not be regarded as downtimes if the service measure is not based on defectiveness of the contractual object for which OPERTIS is responsible (e.g. defective maintenance measures, loading of updates, etc.).
6. The right of rescission of the contractual partner shall be ruled out if OPERTIS is not responsible for the circumstance justifying rescission.

#### **§ 10 — Joint liability of OPERTIS**

1. In the event of ordinary negligence - on whatever legal grounds - the liability of OPERTIS, its executive bodies, employees and agents shall be limited for a loss event to that scale of loss with the occurrence of which OPERTIS would typically have had to expect upon conclusion of the agreement on account of the circumstances known to it at this time. However, OPERTIS shall not be liable for indirect losses, defect consequential damage or lost profit.
2. Liability for data loss shall be limited to the restoration expense, which would normally have occurred in the event of regular backup corresponding to the risk.
3. Irrespective of other liability stipulations in these general terms and conditions of business, OPERTIS shall not be liable in any case beyond an amount of 100,000 euros.
4. Liability going beyond the maximum liability sums included in these general terms and conditions of business can only be assumed on the basis of separate written agreement.
5. The above liability restrictions and others included in these general terms and conditions of business shall not apply in the event of intent or gross negligence and in the event of culpable injury to life, limb and health, to liability claims under the Product Liability Act and in the event of a contractually-agreed fault-independent liability obligation (guarantee).

#### **§ 11 — Confidentiality, data protection**

1. The contractual partners shall undertake to keep all information and data that becomes accessible to them in the context of the business relationship secret for an unlimited period, which are designated as confidential or on account of special circumstances are recognisable as business or operating secrets and - unless necessary for the achievement of the contractual purpose - and neither to record them nor to pass them on in any manner to third parties or use them in any manner. Employees and third parties brought in must be put under obligation in this sense.
2. To protect personal data, OPERTIS shall observe the relevant provisions on data protection, in particular committing the persons deployed by it during contractual fulfilment in the event of data processing to data secrecy in the meaning of Sec. 5 BDSG (German Data Security Act).

## **§ 12 — Legal venue, export controls**

1. The legal venue for all disputes arising from the business relationship shall be Bad Arolsen. This shall not affect the mutual right to have recourse against the contractual partner at its general legal venue.
2. German law shall apply exclusively to the exclusion of UN commercial law to all agreements between OPERTIS and a customer.
3. In the event of the export of the contractual object, the contractual partner shall be responsible for observance of the relevant provisions in this regard, especially the Foreign Trade Act and if applicable any US export control regulations.

## **B. Special provisions on software transfer**

### **§ 1 — Software transfer, usage rights, source codes**

1. OPERTIS shall grant the contractual partner in the context of the provisions below the unlimited, non-exclusive and - subject to Section 4 - non-transferable, simple right of usage to the software transferred. The scope of the right of use for software of other manufacturers ("third party software") shall be determined in the event of its inclusion primarily according to the terms of use of the respective manufacturer.
2. The contractual partner shall be entitled to use the software on hardware available to it within the context of the contractual and statutory provisions. Simultaneous use on more than one piece of hardware or on a network (simultaneous multiple use) - if the multiple use is outside the use in accordance with the provisions - shall require separate agreement. In the event of a change in the (operating) hardware, the software must be deinstalled on the previously used hardware.
3. Transfer or disclosure of the source code of the software shall not be due. OPERTIS shall not be obliged to further develop the software transferred. The contractual partner shall not be entitled without approval of OPERTIS to revise, process or duplicate the software transferred in any manner unless this is necessary in the context of the intended use (Sec. 69d Copyright Act - UrhG). Decompilation shall only be permissible pursuant to the provisions of Sec. 69e UrhG.
4. The contractual partner shall not be entitled to transfer its right of use to third parties or grant these corresponding rights of use (sublicences). This shall not affect the right of the contractual partner to resell the software acquired (purchase) subject to irrevocable abandonment of its own use, binding of the purchaser to the applicable terms of use and after deletion of duplicated items in the meaning of Section 3. In the event of resale, OPERTIS must be notified in writing immediately of the name and address of the purchaser.
5. The above provisions shall apply to user and operation documentation (also) transferred accordingly. OPERTIS shall be entitled to transfer documentation in electronic form and in German or English.
6. In the event of a breach of the agreement, especially of the provisions above or the applicable export control regulations, OPERTIS shall be entitled, among other things, to demand forbearance and if applicable transfer or destruction of unlawfully produced duplicate items and damages. This shall not affect the right of OPERTIS to terminate the right of use with immediate effect or to rescind the agreement.

### **§ 2 — Industrial property rights**

1. OPERTIS shall guarantee that no rights of third parties are infringed by the transfer and use of the software in the Federal Republic of Germany. OPERTIS shall not assume any guarantee for infringements of industrial property rights in the case of third party software.
2. If claims are asserted against the contractual partner by a third party from or in connection with an alleged legal infringement for which OPERTIS is responsible, OPERTIS must be informed of this immediately. The contractual partner shall undertake not to acknowledge any legal breach vis-a-vis the third party and to

leave any dispute with the third party, whether in court or out of court, exclusively to OPERTIS or to conduct it in agreement with OPERTIS.

3. The contractual partner shall cease the use of the software immediately on the request of OPERTIS. OPERTIS shall be entitled to transfer another or amended software that essentially corresponds to the agreed performance features. The contractual partner shall be exempted from payment of the lease fee or there shall be a corresponding abatement of the purchase price for the duration use restriction arising as a result of this.
4. In addition, OPERTIS shall take all measures suitable and necessary to defend the contractual partner against the claims raised. In the event of a legal breach proven or acknowledged by OPERTIS, OPERTIS shall exempt the contractual partner from any expenses, damages and other payments claims of third parties required up to a maximum amount of 100,000 euros.
5. The contractual partner shall support OPERTIS in defending the industrial property rights existing to its benefit to the software. The contractual partner shall immediately inform OPERTIS of industrial property right infringements that become known to it.

### **§ 3 — Software licence agreement**

1. Apart from the regulations in § 1 and 2, our currently valid licence and use conditions shall apply in each case (EULA).

## **C. Special terms for work performance**

### **§ 1 — Acceptance**

1. The contractual partner shall be obliged to accept contractual performance. Acceptance may not be refused on account of insignificant defects. On request, the contractual partner must confirm acceptance in writing.
2. Acceptance shall be regarded as having occurred pursuant to Sec. 640 (1) sentence 3 BGB if the contractual partner has not objected within ten working days of notification of contractual performance.

### **§ 2 — Guarantee rights**

1. The period of limitation for defects to performance rendered shall be one year from the beginning of the statutory limitation period.
2. If a defect occurs within the period of limitation, the contractual partner can demand elimination of the defect within an appropriate period. If the elimination fails or it is unreasonable, the contractual partner shall be entitled to abate the remuneration, rescind the agreement or demand damages on account of non-fulfilment; in this regard, the liability of OPERTIS shall be limited to 1.5-fold of the agreed remuneration and in the context of running maintenance agreements to the particular annual service fee.

## **D. General terms and conditions of service**

### **§ 1 — Term, termination, extension of term**

1. If no term has been agreed, the contractual term shall be concluded for 12 months.  
If nothing to the contrary has been agreed, the beginning of the rendering of the performance by OPERTIS shall be decisive for the beginning of the term.
2. The contractual relationship can be cancelled with a period of notice of three months to the end of the contractual term. In the absence of termination the agreement is extended in the event of an agreed term of up to 24 months by 12 months in each case; in the case of an agreed term of at least 24 months by 24 months. This shall not affect the right to termination for cause.
3. Every termination must be in writing to be effective.

### **§ 2 — Remuneration**

1. If there is no agreement to the contrary, the remuneration agreed shall be due and must be paid in advance on the first working day of the month. If the agreement does not begin with the month, proportional remuneration for this month shall be due immediately at the beginning of the agreement and must be paid within ten working days from the beginning of the agreement.
2. OPERTIS shall be entitled to increase the remuneration within each contractual year with a period of notice of three months if the costs for the performance components included in the remuneration increase. OPERTIS shall disclose the specific causes of the price increase. In the event of a remuneration increase of more than 5% in a contractual year, the contractual partner shall be entitled to terminate the contractual relationship in writing with a period of notice of one month to the end of the period of notice.
3. OPERTIS can demand adjustment of the remuneration if the circumstances underlying the remuneration arrangements upon conclusion of the agreement, especially the mode of operation of the contractual partner, change in such a manner that the relationship of performance and counter-performance is impaired.

## **E. Special terms and conditions for services - hardware**

### **§ 1 — Content and scope of the services**

1. The content of the services of OPERTIS shall be the repair, i.e. elimination of malfunctions occurring in the hardware identified in the service agreement on working days from Monday to Friday between 7.30 a.m. and 5.00 p.m. and - by special agreement - maintenance, i.e. carrying out all measures required for preserving operational readiness. All spare parts required for the conduct of service performance shall be covered by the remuneration to be paid by the contractual partner (flat-rate) unless the spare part involved must be paid for separately according to the contractual agreement.
2. OPERTIS shall be entitled to bring in agents to carry out the service due. OPERTIS at its own discretion can use new or replacement parts in the context of the service work contractually due and settled by the agreed remuneration. OPERTIS must take on exchanged replacement or wearing parts.

### **§ 2 — Special service work**

1. Service work
  - outside the times mentioned in § 1 Section 1,
  - which according to the contractual arrangements or operating instructions the contractual partner must carry out itself,
  - which become necessary on account of improper operation, handling, improper operation of the hardware, third party influence (e.g. through viruses, hackers) or force majeure (accident, water, fire, lightning, overvoltage, short circuit damage) and the delivery of spare and wearing parts to be



remunerated separately according to the contractual agreement shall be "special service work" that is rendered after separate agreement.

2. Special service work and the spare and wearing parts involved shall be charge pursuant to the currently valid price lists of OPERTIS. Work performance shall be charged according to time expended. Half-hours begun shall be rounded up to full hours. Waiting time for which OPERTIS is not responsible at the contractual partner shall be deemed working time. Travel and journey time shall be charged as working time. Expenses (overnight, travel costs, etc.) shall be charged according to expense.

## **F. Special provisions for service work - software.**

### **§ 1 — Content and scope of the services**

1. The content and scope of service work of OPERTIS - subject to divergent agreements, e.g in the context of a separate software maintenance agreement and Section 6 - shall be the supply, at the discretion of OPERTIS also in electronic form, of updates (error corrections and minor function improvements of a program version), together with installation information and support in the diagnosis and elimination of malfunctions occurring in the software designated in the service agreement. OPERTIS shall not assume any guarantee for constant functionality of the software. The service work shall be rendered workdays from Monday to Friday between 7.30 a.m. and 5.00 p.m., on Fridays up to 4.00 p.m.
2. Transfer of updates shall occur at the discretion of OPERTIS by delivery of a data-carrier or permitting a download; installation of the updates is not due. OPERTIS shall offer updates on special terms to the contractual partner, i.e. important functional extensions vis-a-vis product specifications of the software designated in the maintenance agreement, OPERTIS shall inform the contractual partner in each case of the content and availability of updates and upgrades of the software designated in the maintenance agreement. Transfer of updates and upgrades shall occur according to the agreements reached for the original program versions.
3. The service shall be rendered only for the latest release status of a program version and its predecessor and in the case of software extendable via interfaces only up to the interface. The contractual partner shall in this respect be obliged to install the updates transferred to it if this is reasonable.
4. As part of the malfunction elimination, the development of a workaround shall be sufficient if the important functions of the contractual software can hereby be reasonably restored. OPERTIS shall be entitled to bring in agents to carry out the service due.
5. Support in malfunction diagnosis and elimination shall occur primarily through the telephone service of OPERTIS. If the malfunction cannot be eliminated by this, OPERTIS shall endeavour - if possible - to eliminate the malfunction by remote diagnosis, delivery of an update or on site.
6. The contractual partner is aware that OPERTIS is dependent with regard to third party software included in the service agreement with regard to performance provision on the cooperation of the respective manufacturer. OPERTIS can in this regard only provide initial support if necessary. OPERTIS shall be entitled to refer the contractual partner with regard to further support in diagnosis and malfunction elimination to the respective manufacture, especially - if such exists - to its telephone service ("Hotline").

### **§ 2 — Special service work**

1. Service work outside of the times mentioned in Part F, § 1 Section 1, the installation of updates, the supply of upgrades (new program versions expanded with functionalities) and support in diagnosis and elimination of malfunctions based on force majeure, actions of third parties (e.g. through viruses, hackers), improper operation or handling, or a conversion or processing or expansion of the software by the contractual partner or third parties, shall be "special service work", which is rendered after separate agreement.
2. Special service work shall be charged pursuant to the currently valid price lists of OPERTIS. Work performance shall be charged according to time expended. Half-hours begun shall be rounded up to full

hours. Waiting time for which OPERTIS is not responsible at the contractual partner shall be deemed working time. Travel and journey time shall be charged as working time. Expenses (overnight, travel costs, etc.) shall be charged according to expense.

## **G. Information according to the Consumer Dispute Resolution Act**

OPERTIS is not prepared or obliged to take part in dispute resolution procedures before an arbitration body in the meaning of Consumer Dispute Resolution Act.

As of 1 July 2019