

1. Contractual Basis

1.1. Scope of application

This supplement to the General Terms and Conditions applies to all contractual relationships and negotiations precedent to the contract with NETCOR customers, regardless of the type and scope of the services within present and future business ties.

1.2. Exclusivity

Solely the terms of NETCOR apply (<http://www.netcor.de/AGB>). Contradicting customer or third party terms only apply if they are expressly approved by NETCOR in writing. If you are not agreeable to this, please notify NETCOR of this in writing. In this event, the right to withdraw proposals is reserved without the right to lodge a claim of any type against NETCOR. The use of services subject to these terms, particularly the use of hardware, the installation of software, or the use of services upon disclosure of these General Terms and Conditions are deemed an approval and will result in the exclusion of an objection based on contradicting own GTC's. The notification within standard terms and conditions of own terms and conditions is hereby expressly forbidden.

1.3. Conclusion of contract and written form

NETCOR principally only agrees to a contractual obligation, if the type and scope of service and counter service were established in writing by both parties. Any subsequent verbal modifications and supplementations will only become effective if they are thereafter confirmed in writing. The same applies to any and all declarations of intent, particularly objections, appeals and notices of defects within the contractual relationships. Contractual penalties must be reserved by both contracting parties in writing. This clause can only be annulled through expressed written agreement.

2. Transfer and modification of software

2.1. License and scope of use

NETCOR in its capacity of holder of rights grants the customer the non-transferable and non-exclusive, non-regional right to use the software and documentation material specified in the order sheet and/or in the invoice for the time specified in the order sheet and/or the invoice, or indefinitely in the event of non-specification of a time limitation. The contracted use is defined as: reading instructions or data for a program by entry at the terminal, by transfer from memory units or from data carriers to the agreed hardware for the purpose of processing, as well as creating a copy in a machine-readable form for data backup. Application, performance, as well as all other specific program properties are determined solely by the (electronic) manuals included with the program. With the purchase of a server software license, the customer receives the unlimited user rights in the server software for a one-time production installation. The installation may be performed at any one (1) location on the customer's local network. Additional installations are permitted without limitation for testing, maintenance and implementation purposes at the location of the production installation. The concurrent use of the software on different locations by possibly parent/subsidiary/sister companies is explicitly not covered by this usage right. The customer further acquires the right to install the software on as many work stations linked to the network as he has paid license fees. The assessment basis for this is the number of licenses listed in the order sheet and/or in the invoice, as well as possible special agreements (volume discounts, unlimited licenses, etc.). Network workstations include networked home workplaces, temporarily networked laptop PCs as well as remote workstations. If these merely serve as replacements for workstations linked to the local network, they do not require additional workstation licenses. If the agreed number is exceeded, smooth operation cannot be guaranteed. The use of the software on laptop PCs also constitutes simultaneous operation.

2.2. Third party property rights

NETCOR releases the customer from all claims made against him in connection with the use of the software due to infringement of copyrights, patents or other intellectual property rights, provided

- the customer promptly notifies NETCOR of all infringement claims made,
- and the customer does not admit any such claims without the approval of NETCOR.
- the customer authorizes NETCOR to conduct all negotiations and proceedings, and provides NETCOR with the necessary support, whereas any and all costs for negotiation and proceedings shall be payable by NETCOR.

The preceding obligation does not apply if the copyright and patent infringement or other infringements of rights can be attributed to the software or parts thereof being used with equipment or programs not supplied by NETCOR or the combined use thereof not being approved. The preceding provisions govern - subject to cipher 7 Liability par. 4 of our General Terms and Conditions - the entire liability of NETCOR in connection with the infringement of copyrights, patent rights or other intellectual property rights. In the event of imposed or anticipated claims due to infringement of copyrights, patent rights or other intellectual property rights,

NETCOR is entitled to modify or exchange the equipment or programs at their own cost so as to prevent an infringement. This may not in any way impair the performance of the software system already supplied by NETCOR. If the use of the software, or parts thereof has been prohibited by court order, or if according to NETCOR's judgment, a lawsuit for property right infringement is impending, NETCOR is entitled, to the exclusion of all of the customer's rights, at its discretion and at its own cost

- modify the programs so as to rectify the infringement of property rights;
- procure the right for continued use of the systems for the customer;
- replace the affected programs with programs which do not infringe property rights, and which either meet the customer requirements or are equivalent to the programs replaced;
- take back the programs or parts thereof and refund the customer the (possibly pro-rata) purchase price minus a suitable amount for use and depreciation, minus an additional reduction for damage hereby incurred by the customer.

2.3. Property and copyrights

The software provided to the customer, including any and all documentation, remains the property of NETCOR. NETCOR remains the owner of all copyrights and rights of use for the programs provided to the customer, including any and all associated documentation materials, even if they are modified by the customer, even when they are linked to his own programs and/or those of a third party. In the event of such modifications or linking, the customer shall add the corresponding copyright notice on copies. Modifications and expansions to the program codes made at the customer's request and expense, become the property of NETCOR upon prior approval which, following a separate agreement pertaining to a potential reimbursement, can then be made available to other customers. A modification of the program code by the customer is only permitted with the prior written approval of NETCOR. This approval may only be denied in very special circumstances. The customer shall provide NETCOR with a copy of such modifications on a data carrier or via printout, together with all the necessary information. The use of the modified program version requires the customer's approval. In the event that programs modified by the customer or by third parties, or other programs not acquired from NETCOR are used, which result in an impairment of the system functionality, NETCOR shall not be liable for any damages incurred.

2.4. Resale and subletting

The license holder is entitled to sell or gift the software including the user guide and other associated support material to third parties on a continuing basis, provided the acquiring party agrees to the continued validity of these contract terms. In the event of transfer, the license holder must transfer to the new license holder any and all program copies including any backup copies, or must destroy the copies not transferred. The previous license holder's right to use the program expires with the transfer. In the event of software resale, the license holder is obliged to provide the producer with the full name and address of the buyer in writing. The license holder is not authorized to rent the software and support materials out to third parties. The license holder is not authorized to transfer the software to third parties if there is reasonable suspicion the third party will breach the contract terms, particularly regarding the creation of unauthorized duplicates. This also applies with regard to the license holder's staff.

2.5. Payments

The customer is required to pay a one-time license fee for the indefinite use of the software. The amount of the license fee is based on the current pricelist or on special arrangements, according to the order or invoice.

2.6. Customer obligations

The programs provided, as well as the documentation materials in whole or in part, may not be accessible to third parties with the intent of possible abuse. The customer shall not modify the NETCOR markings, copyright notices and property notices on programs in any form. The customer must ensure the external confidentiality of all programs, documentation and company documents, as well as program-specific knowledge. This only includes those documents which were made accessible to the customer in compliance with this contract, not advertising brochures and their contents. He shall also obligate his staff to the corresponding confidentiality. This duty to observe secrecy also extends past the term of the contract, regardless whether the contract was ended prematurely for any reason. The duty to observe secrecy further prohibits the publication of excerpts or citations. A release from the duty to observe secrecy is solely permitted with the prior approval of NETCOR. The customer agrees to reimburse NETCOR for damages incurred due to a breach of the above stipulations, under gross negligence not to exceed the price of the license price, except in the event of premeditation.

2.7. Termination

NETCOR may terminate the contract with immediate effect if the customer is in payment default for the agreed license fee

of more than two months and/or, following written warning, the customer continues to breach a stipulation of these General Terms and Conditions or other stipulations of an individual contract. The customer is only entitled to terminate this contract due to NETCOR's failure to meet an obligation, or due to irreparable defects, and provided he has first warned NETCOR in writing or in text form and a reasonable period has passed during which the reported breach of contract has not been rectified. Within a period of five days following the license expiration, the customer shall destroy all programs, copies and associated materials, including modified or combined programs, unless such retention is required by law. The customer shall confirm the destruction or retention for legal reasons within 30 days following NETCOR's request. In addition, he shall grant NETCOR the right to verify the compliance with this stipulation.

2.8. Software enhancement and customization; handling

NETCOR shall enhance and customize the software provided, if applicable. In this event, unless explicitly otherwise agreed in writing, the customer shall notify NETCOR of his requirements of the software in due time and with a suitable written description. The customer shall provide NETCOR with all information required for the creation of the software in written, clearly arranged form, and shall also explain such at the request of NETCOR. Should the customer determine the demand analyses, specifications or technical specifications created do not comply with the requirements actually requested by the customer, he shall immediately inform NETCOR of this in writing and provide alternative proposals. The parties shall then amicably decide on an amendment or modification of the requirements. The customer shall provide all obligations to co-operate listed here free of charge. Should NETCOR determine customer specifications or information as erroneous, incomplete or unsuitable for the execution of the order, NETCOR shall immediately notify the customer. The customer shall decide on any modification arising from this notice, regarding the creation process of the software, within a reasonable period. Promptly following close of contract, each party shall inform the other of a competent person authorized to bring about decisions associated with the creation of the software.

2.9. Change requests

So long as the software has not been supplied by NETCOR, the customer is entitled to request a written change in specifications at any time, provided the change request is of reasonable proportion to the overall contract and is based on functional considerations. NETCOR shall obey such change request, unless such request is unreasonable for NETCOR based on the concrete operational situation. If such a customer change request results in a considerable impact on the contractual balance in regard to performance and return service, the parties shall immediately mediate a written adjustment of the stipulations pertaining to the fundamental terms of the contract (in particular compensation, delivery date, etc.). In the event the parties cannot reach an agreement within four weeks as of the date the change request is received by NETCOR, the contract shall be executed without provision for the change request.

2.10. Delivery, deadlines and installation

Delivery dates and terms for delivery are strictly non-binding time guides, unless they are expressly agreed as fixed dates. The software version installed shall strictly be a standard version of the software. An expansion or customization of the standard software shall only be provided if specified accordingly in the written order. The installation shall be performed upon consultation with the customer. For this purpose the customer shall name a contact in writing immediately following close of contract. Promptly following close of contract, the customer shall submit to NETCOR all documentation, providing NETCOR with the configuration of the current hardware/operating system platform. If the company determines the configuration must be changed, then such modification must be executed prior to the installation of the software, and at the customer's own risk. The customer is obliged to provide all assistance required within the scope of the software implementation. In particular, this includes providing NETCOR with access to the hardware as well as providing test data and computation time in accordance with the NETCOR requirements, and providing a competent employee free of charge to perform the required tests or customizations. Upon close of contract, NETCOR shall provide the customer with a copy of the latest version of the licensed product universally offered by NETCOR on a corresponding data medium. NETCOR reserves the right to customize the specifications of the licensed product, e.g. to technical developments, legal changes or future market requirements. NETCOR only guarantees a smooth operation of the software on the approved hardware systems. The program installation by NETCOR onto a customer hardware system constitutes an approval.

2.11. Acceptance

Following installation and testing, NETCOR shall notify the customer in writing of the fully functional operation of the software component expansions or that it has been customized as compared to the standard version, and shall request the acceptance from the customer. The customer is consequently entitled to test the software. In the event of acceptability, the customer shall promptly, but not later than

within 30 days following written notification, declare the acceptability to NETCOR in writing. If the customer does not execute such acceptance within the grace period, the acceptance is nevertheless considered executed. The customer's receipt of notification determines the start of the grace period. The customer paying the compensation following start-up of the supplied software without objection constitutes an acceptance of the software. The acceptance shall not be denied due to the existence of negligible defects. The customer shall ensure that the requirements for data protection are met at the place of installation for the use of the material delivered. The absence of requirements for data protection do not entitle the customer to deny an acceptance.

2.12. Warranty

NETCOR advises that according to the current state of technology it is not possible to develop computer software that is completely error-free. For a period of twelve months as of the time of transfer, NETCOR issues a warranty that the contracted software in its functionality essentially complies with its description. If the customer is a consumer in the sense of the German Civil Code, the warranty period extends to two years. Liability only exists for a specific property if it was expressly agreed in writing. The customer shall inspect the software covered by the contract immediately, following delivery, and report obvious errors in writing and without delay. If a software failure occurs, the customer is obliged to report it in writing two weeks. In line with the written notice of defects, the defect and its manifestation shall be described in detail so as to allow the verification of the defect (e.g. submission of the error messages) and a user error (e.g. entering the steps of a procedure) and facilitate its elimination. If the notice of defects is deemed justified, the customer shall set NETCOR a reasonable timeframe for supplementary performance. The customer shall notify NETCOR of his requested form of supplementary performance - improvement of the delivery or delivery of a new product free from defects. NETCOR, however, is entitled to reject the selected supplementary performance only if it can be shown that this can be executed with unreasonable costs, and when any other form of supplementary performance, e.g. updates or patches, would not entail significant disadvantages for the customer. NETCOR can further reject the supplementary performance altogether, only if this can be executed only with unreasonable costs. NETCOR is entitled, if a remedy is de facto impossible for unreasonable or for economic reasons, to install an alternative solution if this results in a suitable solution to the problem. Within the grace period, NETCOR is entitled to two attempts at supplementary performance of the same or directly associated NETCOR product defects. Following the second failed supplementary performance, the customer is permitted to cancel the contract or reduce the payment. The right to cancel or the right to reduce the price can be exercised following the first failed attempt of supplementary performance, if the customer cannot be expected to wait for further attempts within the set timeframe. Negligible defects do not entitle a cancellation of contract. If a defect occurs due to an incorrect or outdated driver, the customer shall grant NETCOR the right to supply a functional driver within 14 days as of the date of the respective notification. NETCOR assumes no warranty for the software meeting specific customer requirements or its operation with the customer's programs or the customer's existing hardware. If the customer makes a warranty claim against NETCOR, and it is determined that a defect either does not exist, or that the claimed defect is not cause to provide warranty, the customer, provided he made such claim against NETCOR under gross negligence or premeditation, shall reimburse NETCOR for all expenses incurred. Promptly following installation, repairs, maintenance or other procedures on the EDP system, the customer shall verify whether the functionality of the data protection still exists and record the result in writing.

3. Consulting, maintenance and training

3.1. Consulting

Should NETCOR assume consulting functions, NETCOR shall be commissioned strictly based on a separate basic agreement.

3.2. Training

Should NETCOR assume training functions, e.g. in form of workshops, NETCOR shall be commissioned strictly based on a separate basic agreement.

3.3. Consulting and training fees

Consulting and training fees are strictly based on expenditure of time. In case of doubt, the customer shall reimburse expenses for materials used according to premiums customary to the market at the time these services are rendered.

4. Confidentiality and data protection

4.1. Confidentiality

NETCOR and the customer mutually agree to treat all the other party's trade and company secrets confidential indefinitely, and to refrain from disclosing the information to third parties or selling it on in any form. Any documentation, drawings and other information gained by the other party based on the business connection may only be used by him

in line with the corresponding contracted purpose. The parties shall enter into a separate confidentiality agreement for this purpose. NETCOR and the customer shall ensure through suitable agreements with employees and other assistants and vicarious agents and suitable organizational measures that these are subject to the same obligation of secrecy. These obligations remain in effect following the expiration of the contract.

4.2. Data protection

The customer shall ensure his existing data processing systems and data files comply with the respective Federal Data Protection Act, State Data Protection Act, and any applicable special data protection provisions. This particularly applies in regard to the recording, processing, modification, transmission and deletion of data and data files

5. Rights under termination

5.1. Return of products

Upon expiry of the contract, all products supplied to the customer for use, particularly rented or leased hardware, shall be returned, whereupon the shipping and insurance costs shall be payable by the customer.

5.2. Software

Upon expiration of the contract, any software for which limited license rights were granted shall be returned to NETCOR together with the data medium, provided it was installed on NETCOR data media, and further shall be deleted from the customer's own data media and the deletion log submitted.

5.3. Documentation

All documents associated with the documentation, including source programs and, if applicable, development documentation shall be returned in their original state, along with all copies thereof.

5.4. Confirmation of full return

On demand, NETCOR is entitled to a formal confirmation of all return requirements being met in full and pursuant to the contract.

6. Collateral clauses

Companies in which the customer or his shareholders are majority shareholders may join this contract upon request through ex parte declaration. The entire business connection between NETCOR and the customer are solely subject to the laws of the Federal Republic of Germany. If such law references international legal systems, such references are void. The application of the UN trade law (UNCITRAL) is expressly excluded. The place of fulfillment for deliveries and services is the location contracted as the address of fulfillment, or when in doubt the registered office of NETCOR (Buchholz in der Nordheide). The place for the fulfillment of payments is the place of the payment office listed in the invoice. The place of jurisdiction for both parties is Tostedt; however, NETCOR is entitled at its discretion to file its claims with the court of the customer's jurisdiction. If the customer is not a general merchant the legal provision applies.

All other brand or product names are trademarks or registered trademarks of their respective owner.