

APPENDIX 9
General Terms and Conditions of Business of Cubeware GmbH
(Revision of December 2006)

1. Contractual Bases

- 1.1. Contractual parties
The subject matter of the General Terms and Conditions of Business hereunder shall be the agreements between the company Cubeware GmbH (hereinafter referred to as "Cubeware") and its contractual partners (hereinafter referred to as "Customers") for the supply of software and/or goods and/or services.
- 1.2. Area of application
1.2.1 The following provisions shall be applicable on a general basis to all the agreements concerning the purchase of software and/or goods or the supply of services that are entered into between Cubeware and the Customers.
1.2.2 The quantity and denomination of the individual objects of supply, the amount of the remuneration to be paid plus non-recurring additional expenses, as well as other separate contractual agreements are defined in the respective offer / confirmation of offer / delivery note / invoice.
1.2.3 Agreements shall become effective on the basis of the following conditions only. The Customer shall acknowledge these conditions when placing the order or accepting delivery, even if its own terms and conditions of business should include any wholly or partially conflicting clauses. Any deviations from the said conditions shall have no binding effect to Cubeware, although Cubeware may not explicitly object to such conditions.
- 1.3. Export provisions
The agreement shall be subject to the requirement that the export provisions of the Federal Republic of Germany, the EU and of the U.S.A. shall be complied with. If delivery is not supposed to be made by virtue of such export provisions, then Cubeware's obligation to effect delivery shall cease.

2. Contents of Performance

- 2.1. Scope of use
2.1.1 The Software is made available to the user by means of a recording medium or by mail.
2.1.2 There are proprietary rights to the software held by Cubeware and/or third parties. If such rights are held by third parties, Cubeware has the relevant rights of use and distribution. The Customer shall be granted the non-exclusive right to personally use the software including documentation materials purchased from Cubeware or a distribution partner authorised by Cubeware, respectively.
2.1.3 All the installations must be used for the own purposes of the Customer only. Databases must be designed for own purposes only.
2.1.4 The authorisation of use shall be subject to the complete payment of the purchase price.
2.1.5 The specific scope of use may include a network licence, a company license of a central processor license (collectively referred to as "concurrent licence") or a work station licence (named licence). Details are given in the supply note and/or the invoice and/or the confirmation of order. Any further reaching commercial exploitation, especially modification, reproduction, decompilation, passing on to third parties, or re-engineering is not allowed. The user is prohibited from decompiling source code programmes from the software or carrying out any similar attempts. More detailed regulations are contained in sub-clause 3.2, as well as in the licence conditions included in the software, which Cubeware is ready to supply in printed form too, if required.
- 2.2. Services
2.2.1 Based on an individual service agreement which is either expressly included in the purchase agreement regarding the software or which is concluded separately between Customer and Cubeware, Cubeware will assist giving advice Customer in implementation and integration of the software in Customer's IT-structure. This agreement is a service agreement in the meaning of Sec. 611 of the BGB (*German Civil Code*), which means that Cubeware will use best efforts to supply assistance. Cubeware, however does not owe any results.
2.2.2 The individual support services are subject to the individual order. Notwithstanding anything to the contrary in the individual order, support services will be rendered by Cubeware on the basis of its price list at the time of Customer's order and in accordance with the relevant guidelines, both of which Cubeware is happy to supply Customer with.
- 2.3. Remuneration and payment provisions
2.3.1 The respective prices are exclusive of statutory value added tax, ex place of business or warehouse of Cubeware, respectively. Such prices will become due on invoicing. Discounts and any other deductions from the invoice amount are not permitted. Payment prior to the due date of the invoice shall not entitle to deduct any amounts either.
2.3.2 Statutory default interest shall be applicable (Sec. 288 of the BGB (*German Civil Code*)).
2.3.3 The Customer may set off against claims of Cubeware only with claims that are uncontested or recognised by declaratory judgement. The

Customer shall be entitled to assert a right of retention only for counter-claims under this contractual relationship.

- 2.3.4 The Customer's assertion of any rights of retention resulting from previous or other transactions shall be excluded.

3. Securing the Performance

- 3.1. The Customer's obligation to co-operate
3.1.1 Backups
The Customer shall take adequate precautions for the event that the software might not work properly as a whole or in part – irrespective of whether due to defects in the software, operating errors, or Cubeware's breach of obligation under the Support Agreement. Such precautions particularly especially include without being limited to regular backups, comprehensive diagnosis of software errors, and regular checking of the results. The Customer shall especially check whether data input and / or data transferred by the Customer from other systems was free of faults in order to ascertain that data processing results have not been negatively affected by any erroneous data input and / or transfer from other systems.
- 3.1.2 Export licence
The Customer undertakes to obtain the export licences required pursuant to the provisions of the Federal Republic of Germany, the EU and the U.S.A.
- 3.1.3 Updating and filing
The Customer shall keep updated and filed the documentation materials it receives, as well any changes communicated to the Customer in writing or on the phone, or other notifications relating to contractual services.
- 3.1.4 Securing the product
The Customer is obliged to prevent any unauthorised third party access to the software as well as the documentation by taking appropriate precautions. Supplied original recording media, as well as any backups shall be safeguarded in a place secured against unauthorised third party access. The employees of the Customer shall be stringently advised to comply with the present contractual conditions, as well as the copyright provisions.
- 3.1.5 Defence against hostile acts
Cubeware shall – at its own expense – ward off any claims asserted by third parties against the Customer for breach of proprietary rights resulting from the supply and performance of Cubeware. The Customer shall not acknowledge any such claims on its own behalf. The Customer authorises Cubeware to enter into the litigation on its own both in and out of court. Cubeware shall indemnify the Customer against any such claims, provided that such claims are not a result of Customer's conduct. The Customer undertakes to assist Cubeware – at Cubeware's expense – in pursuing Cubeware's rights, and to ward off hostile acts against the industrial property rights of Cubeware.
- 3.1.6 Obligations to furnish information
The Customer shall inform Cubeware immediately, in writing and comprehensively in case third parties should assert any claims based on the supply or performance provided by Cubeware. The Customer undertakes to inform Cubeware immediately, in writing and comprehensively about any defects of Cubeware's software.
- 3.1.7 Access and contact person
In case Cubeware is required to render services, Customer will enable Cubeware in a reasonable way access to Customer's IT-structure, will provide apt and competent contact persons and will supply the necessary information.
- 3.2. Rights to reproduce and access protection
3.2.1 The Customer shall reproduce the supplied software only to the extent the respective reproduction is necessary for the use of the software. Necessary reproduction includes installation of the software from the original recording medium to the mass storage of the employed hardware, as well as loading of the software to the primary storage.
3.2.2 In addition, the Customer may carry out reproduction for backup purposes. If for reasons of data safety or of quick reactivation of the computer system after a total failure, the regular backup of the entire data file including the computer programmes used is indispensable, then the Customer may produce reproductions in the strictly required amount. The respective recording media shall be marked accordingly. Each copy of the software made as set forth above shall be provided with the following copyright note that must be clearly visible:
(c) 1997 - 2006 Cubeware GmbH
Backup copies shall be used for filing purposes only.
- 3.2.3 The Customer shall not make any further reproductions, also including the transmission of the software code to a printer, or the making of photocopies of any additional documents.
- 3.2.4 The Customer may use the software on any hardware supported by the software. If the Customer changes the hardware under a named licence, however, then the Customer shall delete the software from the previously used hardware. A named licence entitles the Customer to use the software at one work station. If the Customer has purchased a concurrent licence, simultaneous access of users shall only be allowed up to the number of purchased licences. A concurrent licence shall entitle the Customer to access the software simultaneously from several work stations.

- 3.2.5 The Customer may resell the software licence including the documentation material or give it away as a present to a third party for good, provided, however, that the acquiring third party will give its consent to the continuing validity of the contractual conditions hereunder also for such third party. Rental, application service or leasing is not allowed. In the event of passing on as a resale or a present, the Customer shall hand any and all software copies – including existing backup copies, if any – to the new user, or destroy any backup copies that have not been passed on. Passing on of the software entails that the Customer's right to use the software will expire. The Customer must completely delete the programmes from its hardware. The Customer shall notify Cubeware without undue delay in writing about such passing on, identifying the new user.
- 3.2.6 Removal of a copy protection or similar protection routines shall only be allowed if such protection mechanism should negatively affect or prevent the faultless use of the software. The Customer shall be liable to furnish proof with respect to any negative effect or prevention of faultless use caused by the protection feature.
- 3.3. Reservation of title
- 3.3.1 Cubeware shall retain title to the contractual objects until its claims under this or other agreements made with the Customer have been fully settled.
- 3.3.2 In the event of delay in payment, Cubeware may demand within a reasonable period of time the return of the software programmes to which title has been reserved, dispose otherwise of the objects of purchase, and repeat the supply to the customer within a reasonable period of time once payment has been made.
- 3.3.3 If any third party should claim any right to the purchase objects or parts thereof by means of distraint, attachment or otherwise, then the Customer shall be obliged to notify Cubeware without undue delay, and inform such third party thereof.
- 3.4. Warranty
- 3.4.1 The Customer shall check the supplied contractual objects within eight working days upon delivery. If software has been provided, the requirement to check shall focus particularly on the completeness of the supplied recording media and documentation, as well as whether the basic software features are working.
- 3.4.2 Defects ascertained, or that ought to have been ascertained in checking as set forth above must be notified to Cubeware in writing within further eight working days. The notice of defects should include a description of the defects in as much detail as possible.
- 3.4.3 Defects that cannot be ascertained in duly checking as described above shall be notified within eight working days upon discovery, observing the specified notification requirements (sub-clause 3.4.2).
- 3.4.4 In the event of breach of any obligation to check and to notify, the supplied contractual objects shall be considered as accepted in the awareness of the respective defect.
- 3.4.5 The period for the assertion of warranty rights shall be one year. It starts on the delivery of the software and/or the goods.
- 3.4.6 Cubeware may decide in its discretion whether defective software be rectified or exchanged. If Cubeware's rectification of defects proves not successful within a reasonable period of time, and if it fails even after a reasonable extension set by the Customer, or if Cubeware waives its rights of rectification of defects in writing, then the Customer shall be allowed to avail itself of the statutory warranty rights. The Customer shall be specifically entitled to reduce the respective purchase price, to rescind the agreement, or to demand subsequent performance (section 437 of the BGB (*German Civil Code*)).
- 3.4.7 Cubeware shall be entitled to by-pass a possible defect if removal of such defect would only be possible at an unreasonable expense, and if such defect does not considerably impair the quality of transit time or response time.
- 3.4.8 Cubeware's obligation to provide warranty shall cease if changes are made to the software specified in the agreement without the explicit prior written approval of Cubeware. The Customer shall be entitled, however, to explain and prove that such change is by no means associated with the occurred defect, and is not considerably complicating the analysis and rectification of the defect.
- 3.4.9 The Customer shall assist Cubeware in determining the defect and – on Cubeware's request – prepare and/or print such supporting information, and shall further assist Cubeware by supplying any further information supporting defect analysis and rectification works, and by immediately granting access to the documents showing the closer circumstances leading to the occurrence of the defect.
- 3.5. Liability
- 3.5.1 Cubeware shall be liable – irrespective of the legal ground –
- if the cause for the damage is attributable to intent or gross negligence,
 - if slight negligence committed by legal representatives or agents is given in connection with the breach of material contractual obligations (cardinal obligations),
 - for damages resulting in the injury of life, the body or health caused by a negligent breach of obligation by Cubeware or any legal representative or agent of Cubeware, or
 - for claims based on the German Product Liability Act, and deceit.
- 3.5.2 In the event Cubeware becomes liable as a result of any slightly negligent breach of material contractual obligations, liability for damages shall be limited to the typically occurring damage.
- 3.5.3 In addition, Cubeware's liability for loss of data shall be limited to the typical restoration expense that would arise if backup copies have been made regularly and to an extent which is appropriate when considering the risks.
- 3.5.4 In any other cases, Cubeware's liability – irrespective of the legal ground therefor – shall be excluded. The same shall apply to the liability of employees, representatives and agents of Cubeware. If programmes manufactured or licensed by Cubeware should have defects which – according to the state of the art – were unavoidable at the time of signing the agreement, and if Cubeware can furnish adequate proof to this effect, then all claims based on a contractual breach of obligation shall be void.
- 3.6. Assignment
Assignment of rights and obligations by the Customer under this agreement require the prior written consent of Cubeware. In its turn, Cubeware shall be entitled to assign rights and obligations under this agreement to third parties. In the event of assigning its rights and obligations under this agreement, Cubeware shall be liable to the Customer for the due performance of all contractual obligations.
- 3.7. Confidentiality
The Customer undertakes to treat confidential any information received from Cubeware in carrying out the contractual relationship, and to subject such third parties to secrecy to which disclosure of the said information cannot be avoided.
- 4. Execution of the Agreement**
- 4.1. Scope
The effective date of the agreement, delivery dates and delivery volumes shall be defined in the respective confirmations of order / delivery notes.
- 4.2. Time limits
Delivery dates shall be binding only if explicitly defined as such in the relevant confirmation of order / delivery note.
- 5. General Provisions**
- 5.1. Written form
All declarations, notifications, consents or similar communications intended to establish legal effects between Cubeware and the Customer must be made in writing or, if made orally, confirmed in writing. Notification via telefax / e-mail shall be in compliance with the written form requirement.
- 5.2. Severance
If any of the provisions of this Agreement should be or become ineffective or unenforceable as a whole or in part, that will not affect the effectiveness or the enforceability of the remaining provisions of this agreement. In such a case, the contractual parties shall agree upon a provision coming closest to the ineffective or unenforceable provision(s) in economic terms. The same shall be applicable to any gaps in this agreement, requiring the parties to include a provision they had reasonably included taking into consideration the economic intentions, had they been aware of the gap at the time of signing the agreement.
- 5.3. Choice of law
The agreement shall be exclusively governed by the laws of the Federal Republic of Germany. If such laws should refer to foreign legal systems, such references will be ineffective. The Convention of Contracts for the International Sale of Goods (CISG) shall be excluded.
- 5.4. Place of performance and venue
Place of performance for all obligations resulting from the contractual relationship shall be Rosenheim, Germany. Venue shall be Rosenheim, Germany. Cubeware shall be entitled to bring action at the place of business of the Customer too.