General Terms and Conditions of Business of systerra computer GmbH

1. Area of application
1.1 systerra deliveries and services are performed solely on the basis of the following General Terms and Conditions of Business and the provisions of the valid pricelists or tenders, insofar as they have not been agreed otherwise in writing. Provisions that oppose or deviate from those defined in the systerra General Terms and Conditions of Business will not be recognized by systerra unless systerra has expressly agreed to their validity in writing. The systerra General Terms and Conditions of Business also apply in cases, where systerra renders the delivery or service to the customer in knowledge of opposing or deviating conditions of the customer. Promises and supplementary agreements require the written confirmation of systerra.
1.2 The illustrations, descriptions, weight information, etc. contained in tenders, pricelists, pictures, drawings or any other information are prepared or determined in the best possible form, but are only approximately definitive, unless systerra expressly defines them as binding. This applies especially also to statements and product descriptions ("product-related statements") made by manufacturers.
1.3 systerra reserves all property rights and intellectual property rights to drawings and documents. They must not be made accessible to third parties.

2. Shipment and transfer of perils
The peril of accidental destruction and accidental deterioration of the goods passes to the customer with surrender, in the case of sales shipment, with delivery of the goods to the forwarder, the freight agent or other persons specified for the execution of the shipment. The surrender is effective even when the customer is in delay with the acceptance.

3. Conclusion of contract, deliveries and services
3.1 Tenders submitted by systerra are without obligation and non-binding. A contract comes about only with the written confirmation of order by systerra, however not later than by delivery of the goods to the customer. 3.2. Delivery dates and delivery periods are non-binding, insofar as systerra has not expressly promised them as binding by means of a written confirmation. Delivery periods and dates that are expressed in days, weeks or months, i.e. not as an exact date, are on principle not binding. In this case, the customer can, after expiry of the agreed date, request systerra in writing to fulfill the outstanding performance obligation after appointing a reasonable prolongation; the claim of the customer for these services is due with expiry of this deadline.
3.3 The delivery schedule is extended after delivery delays due to unforeseen obstacles, which systerra could not prevent even after taking precautions that can reasonably be expected (e.g. strikes, breakdowns, delays in material procurement, official measures etc, or obstructions in the realm of suppliers to systerra). If the delivery is delayed by more than two months due to the reasons mentioned above, then the customer is entitled to rescind the contract in part or in full. If the delivery is impossible as a result of these events or becomes unreasonable for systerra, then systerra is also entitled to a corresponding right to rescind the contract.
3.4 systerra reserves the right to make partial deliveries and to invoice the proportionate remuneration, if this is reasonable for the customer when taking the interests of systerra into account.
3.5 The right is retained to make technical and design changes to information provided in brochures, catalogues and written documents, as well as model, design and material changes as a result of technical progress and further development that are reasonable for the customer.

4. Prices and terms of payment
4.1 Systerra prices are applicable ex-headquarters of systerra plus the legally applicable turnover tax, insofar as systerra is obliged to invoice and pay this to comply with legal regulations. Shipment cost (incl. postage and packing) will be invoiced separately.
4.2 Systerra invoices are to be paid by the customer within 10 days of invoicing without any deductions. The customer is in default of payment after expiry of this date.
4.3 A set-off in respect of systerra is permitted only with claims accepted by systerra or unappealable legally established claims. Any rights of retention of the customer are excluded insofar as they are not based on the same contractual relationship. Insofar as a right to retention exists, payments may be retained by the customer until the settlement of counterclaims, only to the amount that represents a reasonable relationship to the counterclaims.
4.4. systerra is entitled to set off customer payments in the following sequence of payments due to it: costs, interest, claims for damages, demands resulting from the delivery of goods and services. If several debts of the same type exist, then those with the lowest level of security will be paid first, amongst those with the same level of security the oldest first, and amongst those of the same age, each debt proportionately.
4.5 If it is recognized after conclusion of the contract, that the claim by systerra for payment is endangered by lack of ability or willingness to pay by the customer, then systerra is entitled to fulfill its own delivery obligations resulting from this contract only when the customer either makes the payment agreed for this within a reasonable time period to be specified by systerra or provided sufficient security for it. systerra can assume the existence of the customer's inability or unwillingness to pay especially if he defaults on due, undisputed and non-protested debts resulting from the business relationship to systerra for more than four weeks, checks or bank drafts rendered by the customer are rejected, or an application is made for the commencement of insolvency proceedings over the customer's assets. Further claims and rights of systerra remain unprejudiced by this.

5. Obligatory inspection and other responsibilities of the customer
5.1 The customer is obliged to inspect the delivered products without delay after delivery and, if a defect is established, to notify systerra within 10 days of delivery. If the customer neglects to notify systerra, then the delivered products are reckoned to have been approved unless the defect was not recognizable during the inspection. If such a non-identified defect is detected at a later time, then the notification must be made within five days of its detection, otherwise the delivered products are reckoned to be approved also under consideration of this defect. In the case of the absence or late notification of defects, the delivered products are regarded with respect to these defect as having been accepted; warranty claims by the customer in accordance with § 6 are excluded.
5.2 The customer grants to systerra insight into his existing system environment (hardware, operating system and application software) and provides systerra on request with all information and documentation, and possibly software components, necessary for the provision of consultancy services in accordance with § 8.1. The customer furthermore ensures at his own cost that rights necessary for use of the software by systerra within the framework of its consultancy activity and/or implementation of the software procured from systerra are present. The customer accepts that the recommendations and consultancy services of systerra are made on the basis of the Information and documents made available to systerra.
5.3 Liability of systerra in accordance with § 7 for damage that is caused by incorrect or incomplete information or documentation from the customer (cf. § 5.2) is excluded in cases of slightly negligent cause of damage by systerra.
5.4 The customer must furthermore independently take suitable precautions to avoid the loss of data and programs (e.g. during implementation of software products), especially by manufacturing backup copies of all data and programs, that are commensurate with the cost of the damage caused in the case of loss.
5.5 If the customer does not fulfill his obligations or not in an orderly fashion in accordance with § 5.2 within a reasonable time period specified by systerra in writing then systerra can withdraw from the contract after a fruitless expiry of the time period.

6. Warranty
6.1 systerra provides a warranty for the freedom from defects for the deliveries for a period of one year starting at delivery. Sentence 1 does not apply to claims by the customer for damages for the reasons stated in $ 7.1 and not insofar as the law in § 438 Para. 1 No. 2 BGB (Buildings and Items for Buildings), § 479 Para 1 BGB (Claim under a Right of Recourse) and § 634a Para 1 No. 2 BGB (Building Defects) specifies longer time periods. The legal statute of limitations remains effective in these cases.
6.2 The warranty for deliveries of software and hardware is restricted to reproducible defects. The defect must be reproducible either at systerra if the delivered goods are returned to systerra, or at the customer in the presence of a systerra employee. If the software supplied by systerra is also installed by systerra, then systerra provides a warranty for the function of the agreed performances or the performances contained in the program documentation at the time of installation.
6.3 If the delivered product is defective, then systerra either delivers a replacement or repairs the defect (subsequent fulfillment) at its own choice. systerra bears the costs necessary for the execution of the subsequent fulfillment. The customer however bears the costs for transport, labor and other costs incurred by systerra in association with the examination of the rebuked goods, if the defect investigation shows that the defect notified by the customer is not subject to the warranty obligations of systerra.
6.4 If the (possibly multiple) repair or spare part delivery fails after a reasonable period or id refused by systerra, then the customer has the choice to reduce his payment by an appropriate amount, or – also without the otherwise necessary declaration of a reasonable time extension for the subsequent fulfillment and its unsuccessful expiry in the case of the seriousness of the defect – to cancel the contract. In the case of a negligible contract violation, especially minor defects, the customer does not have the right to rescind the contract. If the customer decides to rescind the contract due to legal or technical defects after abortive subsequent fulfillment attempts, then he is not entitled to claim damages for the defect.

6.5 All warranty claims by the customer are excluded if the customer ignores operating or maintenance instructions, replaces parts or uses consumable materials that do not correspond to the original specifications or after interventions by persons that are not expressly authorized to do so and thus cause defects. If a defect is present, and if one of the above mentioned criteria is fulfilled, then the customer must prove that the defect was not caused by satisfying one of the above criteria.

6.6 systerra does not guarantee the suitability of the delivered goods for a specific purpose, unless the suitability for a specific purpose was expressly confirmed by systerra. The customer does not receive guarantees in the juristic sense from systerra. Manufacturer's guarantees are not prejudiced by this. Public statements, praise or advertising by the manufacturer do not represent contractual quality information of the goods.

6.8 It is not possible even with the best available technology and the most careful programming, to exclude errors in computer programs in all application areas. systerra therefore does not guarantee the freedom from defects for the software sold by them, insofar as they are insignificant defects, and also for the results achieved with the software.

6.9 In the event of defectiveness of product-related information from the manufacturer, which systerra has not expressly adopted, and defects in the delivered goods caused by this, then the customer is entitled to make certain warranty claims in this section against systerra only insofar as systerra is the manufacturer or a previous judicial recourse against the manufacturer remained unsuccessful without fault of the customer. systerra now already surrenders entitlement to future guarantee claims against the manufacturer due to defective product-related information of the manufacturer with respect to the delivered goods.

6.10 The judicial right of rescission of the customer due to defects in the delivery does not imply guilt of systerra. In all other cases of neglect of duty, the customer can rescind the contract only when systerra is responsible for the neglect of duty.

7. Liability
7.1 The following provisions for the liability of systerra apply to all claims for damages and liability cases, independently from the cause in law upon which they are based (e.g. guarantee, default, impossibility, neglect of duty in contractual or other obligations, existence of a frustration of contract at conclusion of the contract, violation of obligations of consideration, non-permitted behavior, etc.). The following provisions do not relate to claims of the customer due to damage caused by harm to life, body and health, rights and claims of the customer based on fraudulent concealment of a defect by systerra or due to the lack of a property, for which systerra has accepted a guarantee, claims and rights of the customer that are based on intentional or grossly careless behavior by systerra itself or by its legal agents or subcontractors as well as claims of the customer according to the product liability law. The legal provisions remain effective for the preceding exceptions.

7.2 systerra is liable for slightly careless neglect of obligations or causing the damage only after violation of essential obligations of its legal agents or subcontractors and then only restricted to the compensation of typical, and for systerra at conclusion of the contract foreseeable, typical for the contract, immediate average damage. For the rest, a liability of systerra for slight or simple negligence and/or cause of damage are excluded.

7.3 Insofar as systerra is liable according to § 7.2, then the liability against the customer is restricted for each case of damage to twice the net sales price of the delivered goods or the net fee for the consultancy service according to § 8, with which the negligence justify the liability is associated. If higher damages are threatened, the customer will draw the attention of systerra punctually to this fact.

7.4 Claims for damages of the customer become time-barred for guarantees against defects according to § 6 one year after delivery of the goods; the statutory period of limitations applies to the cases specified in § 6.1 sentence 2; in all other cases in one year starting with the end of the year during which the claims originated and the customer obtained knowledge of the circumstances justifying the claim and the identity of the liable party, or should have obtained without gross negligence. Regardless of the knowledge or grossly negligent ignorance, the claims become time-barred five years after their emergence onwards and regardless of their emergence and the knowledge or grossly negligent ignorance in 10 years, from the perpetration of the misfeasance, the neglect of duty or the other event provoking the damage (maximum period).

7.5 The liability of systerra regardless of negligence or fault in the area of tenancy law and similar owner and user relationships for faults existing already when the contract was concluded is expressly excluded.

8. Consultancy, training and other product-related services
8.1 systerra advises the customer at his request during the selection of systems suited to the intended application area having regard to the system environment existing at the customer. The customer's obligations to cooperate in this regard define themselves in accordance with § 5.2. The customer is aware that the interaction between system components from different manufacturers can lead to functional disturbances if these are not compatible with each other. If systerra declares in writing that certain components are compatible with each other, then this assurance extends only to those components stated in the written declaration. If the customer employs other components, then this is done at the customer's own risk, insofar as systerra has not previously confirmed the compatibility of the added components in writing.

8.2 systerra assists the customer at his request during the implementation of the procured software and hardware in the customer's system environment.

8.3 systerra also undertakes at the customer's request the training of the customer's staff in the handling of the procured software. The parties mutually agree the concrete timing and locations for the execution of the consultancy services and other product-related services. If nothing else is agreed, systerra can itself determine the timing and location.

8.4 Remuneration of the product-related services in accordance with § 8.1 to 8.3 is effected on an accrued cost basis according to person-days at rates in the tender submitted by systerra for this purpose, or lacking such, in accordance with the relevant current systerra pricelist, plus turnover tax where applicable. Product-related services are invoiced retrospectively in each case. For the rest, the provisions in § 4 apply.

8.5 The right to compensation of systerra for services rendered in accordance with this § 8 exists irrespective of the purchase of software and hardware products by the customer.

9. Reservation of title
9.1 The title to all products delivered by systerra – also those already paid – is reserved by systerra until full gratification of all demands, to which systerra is entitled from the complete contractual relationship with the customer, is received.

9.2 The customer is not entitled to pledge the reserved goods or to assign transfer as security. If a third party nevertheless acquires rights to the item serving as security, then the customer surrenders herewith all of his rights and demands through this to systerra; systerra accepts the surrender. The customer obliges himself to notify systerra without delay of a seizure or sequestration of the goods serving as security or any other injunction by a third party.

9.3 In the event of payment default or breach of contract by the customer or in the case of any other immediate threat to the entitlement of ownership rights of systerra, systerra is entitled to secure the items serving as security and to take possession of them. Insofar as § 503 Para. 2 BGB is not applied; this is not weighed as a rescission of contract.

10. License conditions
The terms and conditions of business of the respective manufacturers apply to the software products purchased by the customer, insofar as these address the granting and definition of licenses. The systerra computer Terms and Conditions of Business have priority in other matters.

11. Concluding provisions
11.1 The laws of the Federal Republic of Germany apply. The provisions of the UN purchase terms are not applicable.

11.2 If the customer is a merchant, juristic person under public law or special public assets, then the exclusive place of litigation for all disputes arising from this contract is the domicile of systerra. The same applies if the customer does not have a general place of litigation in Germany or the domicile or normal place of residence are not known at the time of institution of legal proceedings. Exclusive place of performance for delivery and payment obligations is the domicile of systerra.

11.3 In the event that individual provisions of the contract with the customer including these General Terms and Conditions of Business are or become ineffective in part or in whole, then the validity of the remaining provisions is not prejudiced by this. The completely or partially ineffective provision should be replaced by a provision that approximates as closely as possible to the economic success of the ineffective provision.