

## crossbase mediasolution GmbH Terms of Sale, Delivery and License

### 1. Scope of Validity

- 1.1 The general terms and conditions of business (GTCs) listed below apply to all deliveries, services and quotes provided by crossbase mediasolution GmbH.
- 1.2 Any customer terms and conditions that contradict these GTCs will not become part of the contract, even if no express objections have been made when a delivery is received. crossbase mediasolution GmbH has the right to cancel the contract agreement if the customer fails to accept the validity of these GTCs.
- 1.3 All changes or supplements to these GTCs, and any additions, supplements or changes to signed contracts, to which crossbase mediasolution GmbH's GTCs apply, must be made in writing.

### 2. Quotation and Conclusion of Contract

- 2.1 Any quotes provided by crossbase mediasolution GmbH are subject to change without notice, and non-binding – especially with regard to the prices, quantity and delivery deadline, availability and additional services stated in them.
- 2.2 The range of services to be provided by crossbase mediasolution GmbH shall be specified exclusively in crossbase mediasolution GmbH's order confirmation. These GTCs, and any of crossbase mediasolution GmbH's special terms of business that apply, will also apply insofar as they are referenced in the order confirmation.
- 2.3 crossbase mediasolution GmbH reserves the right to take into account any deviations from the quote documents or order confirmation that are required by binding, legal or technical standards.

### 3. Installation, Training and Consulting

- 3.1 The customer will receive one copy of the program on a data medium and also a digital copy of the user documentation.

- 3.2 The customer is responsible for ensuring that the supplied software is installed correctly. The scope of delivery and services does not include crossbase mediasolution GmbH installing the supplied software, or training and instructing the customer or their workforce in how to use this software. These services are subject to a separate agreement, and will be charged for separately.
- 3.3 If such a special agreement has been made, the customer must ensure that the necessary requirements are fulfilled, and that sufficient space is provided for installing the software and training people in how to use it.

### 4. Delivery of Software License, Test Period

- 4.1 The software license is available to the customer for two weeks following delivery, for test purposes. The test period starts when the customer receives the software license, and ends two weeks after that.
- 4.2 During the test period, the customer will be able to verify whether the software meets their requirements. If it does not, the customer must report any deficiencies they discover to crossbase mediasolution GmbH in writing, giving a precise description of the deficiencies. In this case, the terms of the warranty will be applied. If no deficiencies are reported during the test period, the program will be considered to have been accepted. The warranty period shall start from the date on which the software was received.
- 4.3 If the software was installed by crossbase mediasolution GmbH, as part of a separate agreement, the customer must test it without delay. If the software generally meets the conditions of the contract, its acceptance must be declared without delay. The software is considered to have been accepted if no deficiencies are reported to crossbase mediasolution GmbH within two weeks of the software being supplied. This also applies if the program has been used in productive operation.

## **5. Prices**

- 5.1 Prices are net, and excluding delivery costs. The prices listed in the order confirmation, plus VAT at the currently applicable rate, are final. Deliveries and services will be charged for according to the price list that applied on the day they were provided.
- 5.2 Services will be charged for according to the price list that applied on the date on which the order was accepted.

## **6. Delivery Times**

- 6.1 Delivery times stated by crossbase mediasolution GmbH are only approximate, and are non-binding. If the delivery is not made within 6 weeks after the delivery date agreed by crossbase mediasolution GmbH, the Customer is entitled to specify an extension, within which crossbase mediasolution GmbH must make the delivery, and withdraw from the contract if no delivery is made within that extended period.
- 6.2 If any changes are made to the order details, any agreed dates and deadlines will be canceled, unless otherwise agreed.
- 6.3 Delivery and service deadlines will be extended appropriately in the case of acts of God and all other obstacles which are of substantial influence on supplies and services, and which are beyond the control of crossbase mediasolution GmbH.

## **7. Delay in Customer Acceptance**

- 7.1 If the customer delays, when accepting ordered products, crossbase mediasolution GmbH is entitled to withdraw from the contract, or require the payment of damages instead of fulfilment after setting an appropriate extension of 14 days. If crossbase mediasolution GmbH requires the payment of damages, their value shall equal 50% of the order value, unless the customer proves that a lower value applies, or crossbase mediasolution GmbH proves that a higher value applies.

## **8. Transfer of Risk, Warranty**

- 8.1 The customer accepts that, due to the sheer number and complexity of application options, the standard software cannot usually be supplied completely free from error. In particular, crossbase mediasolution GmbH does not guarantee compatibility.
- 8.2 crossbase mediasolution GmbH guarantees that the version of the software that the customer is licensed to use is suitable for the purposes defined in the description of services in the contractual agreement. If there are significant discrepancies between the software's capabilities and the description of services, crossbase mediasolution GmbH is entitled, and indeed obliged, to either repair the software or provide an error-free replacement at its discretion. crossbase mediasolution GmbH is also entitled to provide a new update to resolve defects in the software. The customer is entitled to enforce additional legal rights under the warranty if crossbase mediasolution GmbH is unable to resolve or circumvent the significant deviations from the description of services in its software by implementing the measures detailed above within a reasonable time, and therefore enabling the customer to use the program as defined in the contract.
- 8.3 Warranty claims must be made in writing, and include a precise description of the defect for which the claim is being made.
- 8.4 Claims against the warranty cannot be made if the customer has failed to fulfil their obligations for testing the software and reporting defects as detailed in Point 4, and if this defect could have been identified as part of an agreed test. Claims against the warranty cannot be made if the customer or any third party makes changes to the supplied software, unless the customer can prove that the defect is not due to these changes.
- 8.5 The warranty period will run for one year after acceptance, or assumed acceptance, of the software, as specified in Points 4.2 and 4.3.

## 9. Liability

- 9.1 crossbase mediasolution GmbH has unlimited liability for damages caused intentionally, or as a result of gross negligence, on the part of crossbase mediasolution GmbH, its legal representatives, or persons employed to perform specific tasks. crossbase mediasolution GmbH also accepts unlimited liability for loss of life, bodily injury or damage to personal health. crossbase mediasolution GmbH also accepts legal liability as specified in the mandatory legal requirements, in particular those stated in German product warranty laws and German product safety laws.
- 9.2 No liability shall be accepted for any cases of minor negligence, unless the individual case is covered in Section 1, or Section 3 below.
- 9.3 In the case of (minor) negligence that infringes fundamental contractual obligations, crossbase mediasolution GmbH only accepts liability to the extent of the damages that could be anticipated when the contract was concluded. In particular, crossbase mediasolution GmbH shall not be liable for lack of economic success, lost profits, indirect damage, consequential damage and the claims of third parties, with the exception of claims arising from the infringement of third party intellectual property rights. Other than that, liability for damages caused by (slight) negligence shall be limited to the contractual value.
- 9.4 In their own interest, the customer is obliged to make regular backups of their data. If they fail to do so, crossbase mediasolution GmbH only accepts liability for damages that would have occurred even data had been backed up properly at regular intervals.
- 9.5 crossbase mediasolution GmbH only accepts liability under current legislation for the loss and restoration of data if such loss would not have avoidable, if the customer had taken the appropriate steps to back up the data, or if properly trained users had taken such measures.
- 9.6 The existing restrictions on liability also apply to the benefit of the staff and representatives of crossbase mediasolution GmbH.

- 9.7 The existing restrictions on liability also apply if liability as specified in § 823 BGB is triggered at the same time.

## 10. Payment

- 10.1 Unless otherwise agreed, payment must be made immediately after the invoice is issued. If payment is delayed, crossbase mediasolution GmbH is entitled to charge interest of 5 % above base rate, in accordance with § 1 of German Diskontsatz Überleitungs-Gesetz dated 06/09/1998, unless crossbase mediasolution GmbH proves a higher level of loss.
- 10.2 Offsetting rights can only be granted to the customer if their counter-claims are legally proven, not contested or recognized by us. In addition, the customer is entitled to exercise their rights of retention to the extent that it involves their counter-claims under the same contractual relationship.

## 11 Retention of Ownership

- 11.1 crossbase mediasolution GmbH remains the owner of the supplied program media and the right to use the software held on these media until the purchase price has been settled in full. If the customer is a "business registered under the German Commercial Code", as defined in the German legal regulations, these restrictions apply up until the point at which all payables that have arisen or will arise from the business relationship are settled in full. This also applies if crossbase mediasolution GmbH has included individual payables, or all of them, in the current invoice for the amount currently outstanding. Upon complete acquisition of the ownership of the program media, the customer acquires the usage rights specified in the product license.
- 11.2 The customer must treat the goods subject to retention of title with the due diligence of a good businessman, on behalf of crossbase mediasolution GmbH, and insure them, at their own cost, against fire, water, theft and other risks. The customer shall transfer their corresponding claims from insurance contracts to crossbase mediasolution GmbH with

the conclusion of this contract. crossbase mediasolution GmbH accepts this transfer of rights.

- 11.3 The customer shall also immediately assign to crossbase mediasolution GmbH all receivables arising from the onward sale of the goods or the further licensing of the software. The customer is irrevocably authorized to collect this receivable. The customer agrees to notify crossbase mediasolution GmbH immediately of any assigned receivables, and its debtors. crossbase mediasolution GmbH is entitled to disclose the renunciation of rights to the customer's debtors.

## **12. Scope of the Granting of Rights and Usage Rights**

- 12.1 crossbase mediasolution GmbH grants the customer the non-exclusive right (license) to use the supplied software for an unlimited period of time. The source code is not included in the scope of delivery.
- 12.2 The license is a single user license, and entitles the customer to use the software in normal operations. This includes installing the software, making a backup copy, uploading the software into RAM and running the software. The license does not cover any other uses of the software. In particular, the customer is not entitled to make any changes to the software, have it translated or duplicated, either in full or in part, or temporarily, no matter what methods are used, or what other means are involved. Printing out the program code is also regarded as illegal duplication. Modifications for which permission from crossbase mediasolution GmbH must not be refused, in accordance with principles of good faith (German Copyright Act, Sec. 39 Para. 2), are admissible. The customer must not allow third parties to access the software or documentation without the written agreement of crossbase mediasolution GmbH.
- 12.3 A separate license fee, as specified in crossbase mediasolution GmbH's quotation, will be charged for the use of the supplied software on additional workplaces, or computer systems other than those detailed in the contract.

- 12.4 crossbase mediasolution GmbH is the owner of all commercial protection and copyrights for the software, and also the associated user documentation. Information about copyrights or other commercial patents that is attached to, or located within the software, must not be modified, removed or otherwise made illegible.

- 12.5 The customer is not entitled to lease or lend out this software in any way that is not specified in the contractual agreement. crossbase mediasolution GmbH must be informed in advance of the customer's intention to transfer the software license to a third party. This transfer can only take place if the third party gives their written agreement to the contractual conditions and the customer relinquishes the software without keeping any copies of it (including any previous versions). The customer is not entitled to reverse engineer, decompile or disassemble the software. Sections 69d, 69e of Germany Copyright Law are otherwise unaffected.

- 12.6 crossbase mediasolution GmbH undertakes to resolve any software defects that occur after the expiration of the warranty period as agreed in a software maintenance contract.

- 12.7 crossbase mediasolution GmbH reserves the right to change the programs, develop them further, improve them or replace them with new developments. crossbase mediasolution GmbH is prepared, but not obliged, to make modifications and adjustments. crossbase mediasolution GmbH is entitled to charge a reasonable fee for the work involved, if the customer asks for the software to be modified or adjusted.

## **13 Rights of Third Parties**

- 13.1 The customer agrees to inform crossbase mediasolution GmbH immediately if any third parties make property right claims about the supplied software, and that crossbase mediasolution GmbH shall carry out the legal defence at the customer's expense. As the result of property right claims by third parties, crossbase mediasolution GmbH is entitled to make the necessary changes to its software at

its own cost, and to implement these changes to software it has already supplied, and which has already been paid for.

#### **14 Assignability of Claims**

- 14.1 The customer is not entitled to transfer their claims from the contracts agreed with crossbase mediasolution GmbH, or to (either wholly or partly) transfer any rights or responsibilities arising from the contracts agreed with crossbase mediasolution GmbH to third parties, without the express agreement of crossbase mediasolution GmbH. This also applies to warranty claims.

#### **15. Data Protection**

- 15.1 The customer grants crossbase mediasolution GmbH the right to process, store and analyze the data the customer provides to them as part of their business relationship. This data will be treated in accordance with the German Data Protection Act (§ 26 BDSG).

#### **16 Confidentiality**

- 16.1 The customer agrees to keep all information, documents and commercial and company secrets provided to them by crossbase mediasolution as part of the contract between them and crossbase mediasolution, or that will arise from this contractual relationship in future, confidential for an unlimited period of time. None of this information can be recorded, passed on or otherwise used for commercial purposes unless required by the terms of the contract, or to achieve the aims of the contract. This requirement of confidentiality does not apply to information that is considered part of the general state of technology, information that is generally available, or information that the customer is already entitled to use, or has received permission from a third party to use. The customer is required to take appropriate measures to ensure that their employees, representatives and other persons who perform work for them, and their independent subcontractors or suppliers, comply with the non-disclosure agreement described above, insofar as they require access to this informa-

tion, documents, commercial and company secrets, to perform their agreed tasks for the customer.

- 16.2 The customer will be charged a contractual penalty of 10% of the contractual amount for every instance of wilful or negligent infringement of the requirements detailed above. In the case of an infringement, fault shall be assumed unless the customer can provide proof that they were not responsible for the infringement. We remain authorized to assert all other rights.

#### **17. Oracle® Embedded Software Licence**

As an Oracle® ISV (Independent Software Vendor), crossbase is entitled to offer Oracle® as an Embedded Software License (ESL) with the crossbase solution application package. crossbase uses the Oracle® programs as embedded software within the application. The Oracle® programs are installed automatically along with the application. All the administrative tasks and functions are controlled by the application. Depending on customer and system requirements, the standard version of crossbase is supplied or installed with the Oracle® programs and provided with support. The end user must comply with the following provisions with regard to the use of the Oracle® programs, referred to below as "programs".

- 17.1 Use of the programs is limited to the legal entity that has been granted the end user license contract.
- 17.2 Use of the programs is limited to the crossbase application package and the commercial purposes of the end user. Or their representatives, contractual partners, outsourcing partners, customers and suppliers, subject to the provisions detailed in Point 17.
- 17.3 Oracle® or its licensor retains title and full ownership rights to the programs. Removing or modifying the copyright notices is not permitted.
- 17.4 Transferring the programs or their use or permissions to third parties is not permitted.
- 17.5 Reverse engineering the programs is not permitted.

- 17.6 Oracle®'s liability is limited, insofar as legally permitted, to a) damages of all kinds, no matter whether this is direct or indirect, incidental, or punitive damage, including consequential damage and b) loss of profits, income, data or data usage caused by using the programs.
- 17.7 If the contract is terminated, use of the programs must cease immediately, and all copies of the programs and associated documentation must either be destroyed or returned to crossbase.
- 17.8 The publication of the results of comparative benchmark tests performed using the programs is not permitted.
- 17.9 Compliance with the currently applicable export legislation in the USA, and other applicable export and import legislation, is mandatory, to ensure that neither the programs nor their direct products can be exported, either directly or indirectly, without total compliance with this legislation.
- 17.10 The use of the programs is limited, and they can only be used in connection with the crossbase application package. The programs must not be modified in any way.
- 17.11 Oracle® is not obliged to fulfil any duties or take on any responsibilities previously agreed between crossbase and Oracle®.
- 17.12 crossbase is entitled to check how end users are using the programs. End users are obliged to give crossbase reasonable support in performing these checks, and to allow crossbase to forward test results to Oracle®, or to give Oracle® similar support in performing these checks on program use, if crossbase's right to do so is transferred to Oracle®. If this right is transferred, Oracle® is not liable for the costs incurred either by crossbase or the end user in providing support for these checks.
- 17.13 Oracle® is the third-party beneficiary of this end user license contract under Point 17.
- 17.14 Some programs contain source code to which provisions detailed in Point 17 also apply.
- 17.15 The use of the technologies contained in the application, which are either designed or required to implement the programs, by third parties, is regulated by the license conditions that apply to third-party technologies, and not by the provisions listed under Point 17.

## **18. Final Provisions**

- 18.1 These terms remain binding in their remaining parts, even in cases of doubt, even when one or several of the terms is/are legally ineffective. If a provision proves ineffective, either in full or in part, or becomes so in the future, it will be replaced by a valid provision that most closely achieves the commercial purpose intended by the invalid provision.
- 18.2 The laws of the Federal Republic of Germany shall apply, to the exclusion of all others.
- 18.3 The place of supply for all crossbase mediasolution GmbH deliveries and services is Böblingen, Germany. If the customer is a "business registered under the German Commercial Code", as defined in the German legal regulations, or has their headquarters outside Germany, Böblingen, Germany, is agreed to be the exclusive place of jurisdiction.
- 18.4 All data obtained as part of implementing the contract will be processed by crossbase mediasolution GmbH at a central location.

Date: 05/31/2015

Version: 3.0

Valid from: 06/01/2015