

Carmeq GmbH General Terms and Conditions for Sales and Services

1. Applicability of Terms and Conditions

- (1) Subject to deviating individual agreements the conclusion of contracts with Carmeq GmbH ("we") is exclusively governed by the following Terms and Conditions; by placing an order the Customer accepts our Terms and Conditions. Conflicting or deviating terms or conditions used by a Customer will only have binding effect on us if we have expressly accepted them. Our Terms and Conditions also apply when we provide our deliveries or services having knowledge of a Customer's conflicting or deviating terms and conditions and do not expressly object to their application.
- (2) These General Terms and Conditions are applicable to all our deliveries and services and to any obligations resulting from the contractual relationship with the Customer. *Vis-à-vis entrepreneurs (Unternehmer)*, companies and legal entities incorporated under public law, our Terms and Conditions shall also apply to all future business relations.

2. Conclusion of Contract

- (1) A contract with us ("Project") shall only be deemed concluded when the Customer accepts our offer without any reservation or when it receives our written confirmation of its order or when we commence delivery/services. In case we issue a written order confirmation, this confirmation shall define the subject and the scope of the contract unless otherwise expressly agreed.
- (2) Any amendments, subsidiary agreements and modifications and any stipulation of quality or the giving of guarantees shall only be effective if expressly and specifically agreed to in writing.

3. Performance of the Order

- (1) Unless expressly agreed upon otherwise our deliveries and services must only meet those quality, technical and other specifications explicitly defined in the contract; such specifications do not constitute guarantees (*Beschaffheitsgarantien*) unless we expressly accept liability without fault or expressly declare them to be guarantees; any guarantee undertaking must be made in writing. We reserve the right to make technical and design changes in the same or better quality to the descriptions and specifications in our brochures, catalogues or similar sales documents and we are entitled to exchange parts and components for others of the same or better technical standard; for the Customer no rights will arise as a result of such changes. Neither these descriptions and specifications nor any advertisements (including those made by the manufacturer) shall constitute the undertaking of a guarantee. Unless required by law we are only obliged to provide advice if agreed to as a main contractual duty (*Hauptpflicht*).
- (2) Software sold by us will at our discretion be delivered on standard memory devices or by giving the Customer online-access to our server for downloading purposes. Unless expressly agreed upon, future improvements and developments of software are not included in the scope of delivery.
- (3) The Customer shall be obliged to exhaustively provide us with all information necessary for the delivery of goods and/or rendering of services. We are under no obligation to check the Customer's data, information or other services for completeness and correctness unless there is particular reason to do so under the circumstances of an individual case or we have contractually and expressly accepted such obligation. If work is to be performed at the Customer's place of business, our personnel shall be provided with adequate working space and equipment.
- (4) If we perform work outside our company premises, the Customer shall take all necessary measures to comply with the legal duties of care towards third parties

(*Verkehrssicherungspflichten*) unless otherwise determined either by the circumstances or by agreement with the Customer. We are entitled to refuse execution of the delivery of our goods and/or rendering of our services until the necessary measures have been taken.

- (5) Notwithstanding our responsibility to fulfil our contractual obligations we may without limitation commission third parties in the performance of the contract. Should employees whose participation was contractually agreed upon be prevented due to reasons for which we are not responsible, we may substitute other suitable employees in their place.

4. Changes Orders

- (1) After conclusion of the contract, any changes to the scope of services require our express agreement. The implementation of any change is subject to the condition that an understanding has been reached about the consequent amendments to the specification of services, remuneration, schedules, and any other aspects either party considers necessary. Any declarations and agreements regarding changes must be made in writing.
- (2) In particular, we may request a reasonable extension of schedules and deadlines for our sales and services and an additional adaption and start-up period as well as payment of the costs for reviewing a request for changes.

5. Customer's Obligations Regarding Consulting and Software Development Services

- (1) Due to the high complexity and customer-oriented nature of computer- and software products, the success of a Project generally depends on close co-operation between the Customer and us. Therefore, the parties undertake to show mutual consideration, to exchange information and precautionary warnings of any risks and to protect each other from any disturbance including such by third parties.
- (2) The Customer undertakes as a main contractual duty (*wesentliche Vertragspflicht*) to ensure, at no additional cost for us, that all its agreed obligations to participate in the performance or provide material will be available in the necessary quality and at the time agreed or at which they are required to realize the project in time. As far as necessary for the success of the Project, the Customer will especially provide own personnel in sufficient number and competent contact persons for the entire duration of the Project. If the parties have stipulated requirements for third-party systems operated by the Customer in the specifications or in another section of the contract, the Customer is responsible for meeting those requirements. Any requests for information which we consider necessary for the success of the Project must be answered without delay.
- (3) Should information or documents provided by the Customer prove to be faulty, not complete, unclear or objectively not feasible, the Customer will make the necessary corrections and/or amendments immediately after we have informed it of such circumstances. This particularly applies to (rough and/or detailed) concepts provided by the Customer. Defects or malfunctions of any components provided by the Customer will immediately be repaired by it.

6. Rights of Use

- (1) With the delivery of work results (e.g. concepts or drawings) developed within a Project, we grant the Customer – unless expressly agreed upon otherwise – a simple, non-exclusive right to use the work results. The right of use will be specified in the respective individual agreement.
- (2) With the delivery of Software, we grant the Customer – unless expressly agreed upon otherwise – the simple, non-exclusive right to use the software. The right of use will be specified in the respective individual software certificate or equivalent written agreement (e.g. single user or multi user license, development- or runtime-license). The license granted to the Customer includes the right to copy the software from the delivered data carrier onto the agreed hardware and for the use specified in the agreement. The use of the software

HINWEIS: Zur Einsicht der Hilfetexte Absatzmarker (Symbol) aktivieren!

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within a network requires our prior written approval. If the delivered software was not made by us we will only act as intermediary for a license contract with the software manufacturer. The Customer therefore agrees to the software license of the producer which is part of the delivery; that license agreement will determine the scope of the right of use.

- (3) In case the Customer plans to use the software on a different hardware system, he must delete the software from the previously used system.
- (4) The right of use granted to the Customer permits the Customers to make one machine-readable copy for data backup and documentation purposes. The Customer must clearly mark the copy as such under specific reference to the original software. The Customer may only use the copy if the original program can no longer be used because of damage or destruction.
- (5) The scope of application, capabilities and all other specific attributes of the software are defined by the documentation we deliver with the software.
- (6) The granting of sub-licenses and the renting/leasing or lending of the software to others is permitted only with our prior written consent.
- (7) At any rate, irrespective of the scope of the right of use granted to the Customer, we may use any acquired ideas, concepts and know-how for the further development of software.

7. Time of Performance

- (1) Any schedules or milestones for a Project serve as a guideline for the measures to be taken within the Project. Deadlines shall only be binding if they have been explicitly agreed to as binding deadlines; any such agreement must be made in writing. To the extent that dates and deadlines have not been agreed upon as being binding, we shall not be in default until the Customer has unsuccessfully fixed a reasonable final deadline for the delivery of the goods. In any case, terms shall only commence once the Customer has fully complied with the requirements under his obligation to co-operate and - in case it was so agreed - after receipt of a prepayment. Subsequent changes of the order upon the Customer's request and delays of the Customer's contributions shall extend the time of delivery/time of performance according to the length of the delay.
- (2) In case our performance is delayed through unforeseeable circumstances for which we are not at fault (such as industrial disputes, disturbance of operations, transport impediments, lack of raw materials, governmental measures - including the incidence of such circumstances at the level of our suppliers - or if we do not obtain supplies ourselves in due time), we shall be entitled to choose, at our discretion, to either revoke the contract in whole or in part or to postpone performance for as long as the hindrance lasts. We will immediately inform the Customer of the non-availability of the services or goods. Should we revoke the contract, we will refund any compensation to the Customer. Claims for damages on part of the Customer shall be excluded.
- (3) In case the Customer fails to comply with his obligations to co-operate, to contribute to the project or to provide goods, in whole or in part, the deadlines affected thereby will lose their binding effect and we will not be in default. After an unsuccessful warning notice we shall be entitled to claim any damages resulting therefrom, including reimbursement for additional expenses. In this case the risk of accidental deterioration or accidental loss of the goods shall pass to the Customer from the time it is in default of acceptance. If the Customer does not fulfill its duties to co-operate or to contribute to the project within a reasonable additional period for performance specified by us in or following the warning notice we are furthermore entitled to terminate the contract with immediate effect. In this case we are entitled, as a minimum, to compensation and payment according to Section 649 German Civil Code (*Bürgerliches Gesetzbuch*); our further claims remain unaffected. We have the same rights if, due to the delay, we cannot bring the project to an end within reasonable time or if we can do so only at substantially higher costs, e.g. because

of other commitments.

- (4) If - for reasons we are responsible for - we are either in default or the performance of the delivery is impossible and therefore excluded according to Section 275 (1) of the German Civil Code (*Bürgerliches Gesetzbuch*), or if we are allowed to refuse performance according to Section 275 (2) and (3) of the German Civil Code (*Bürgerliches Gesetzbuch*), we shall be held liable exclusively as provided for by the law, but subject to the limitations of liability set forth hereunder in Section XII.

8. Risk of Loss

- (1) If the Customer is an entrepreneur (*Unternehmer*) of business, the risk of accidental loss or accidental deterioration of the goods shall pass to the Customer upon dispatch; this also applies if we should have agreed to bear the delivery costs or to take on additional obligations to be performed or in case of a partial delivery. Section VII. 3., sentence 3 hereof also applies.

9. Acceptance

- (1) To the extent a formal acceptance (*Abnahme*) of our delivery is required by law, the Customer shall be obliged thereto. Minor defects not seriously impairing the suitability of the delivery of goods with respect to the object of the contract do not entitle the Customer to refuse the acceptance, irrespective of its right to assert his legal claims for defects (*Mängelansprüche*).
- (2) The acceptance is considered granted if
 - the Customer refuses the acceptance in breach of the above Section IX. 1 or refuses, in spite of having been requested to do so in a timely manner, to participate in the joint testing procedure for acceptance, or
 - the Customer does not declare the acceptance in writing immediately after joint testing has been completed and after we have requested it to do so within a period of 7 working days, unless the Customer specifically names the faults in writing which cause its refusal of acceptance within this deadline, whereas we will point out to the Customer the relevance of its actions at the beginning of the period.
- (3) In case of severable performance we have the right to demand acceptance part of a partial delivery.
- (4) Intellectual/intangible services shall be considered accepted unless the Customer explicitly objects in writing within 30 days after having received such performances in written form and he specifically names the faults, provided we have notified the Customer of the relevance of his actions at the beginning of said period. In case of such reservation, we will review our performance. In case of any reservations raised by the Customer we will review our performance. Should a reservation prove to be unjustified, the Customer must bear the costs incurred unless it acted in ordinary negligence (*einfache Fahrlässigkeit*).

10. Prices and Payments

- (1) Prices are applicable as quoted by us; the respective VAT is added to the prices if and to the extent it accrues. Unless otherwise agreed upon we are entitled to reimbursement of any expenses incurred in addition to the contractually agreed payment.
- (2) If a payment based on an hourly rate is agreed upon, our respective price list in force at the time of performance will apply unless otherwise agreed between the parties. There will be no increase in prices for deliveries or services performed within four months after conclusion of the contract. Fractions of hours will be billed in full.
- (3) Our invoices are to be paid - without deduction of cash discount and free of additional expenses - in accordance with the agreed schedule of payment, otherwise within 30 days of the date of the invoice. Should we - by virtue of express agreement in individual cases - accept payment by check,

such acceptance is pending full discharge of the debt and also does not allow for a deduction of cash discount. Any respective discount charges shall be borne by the Customer. We shall only acknowledge payments by check as satisfactory if the respective amount has been credited unconditionally and unrestrictedly to our account. We do reserve the right to demand adequate progress payments and advance payments.

- (4) The Customer is only entitled to set-off payments if its counterclaims have either been established by a final and non-appealable court decision (res judicata) or are uncontested or acknowledged by us in writing. The same shall apply in respect to the assertion of rights of retention.
- (5) Should we, after conclusion of the contract, become aware of circumstances which appear to endanger our claims against the Customer because of the lack of the ability to pay, we shall be entitled to deliver outstanding goods/render outstanding services only against prepayment or provision of security. We shall also be entitled to revoke the contract after expiration of a deadline set for the prepayment or provision of security; Subsection 2, sentence 3 of this section shall apply accordingly.
- (6) The Customer is in default of payment without further notice or declaration on our part if it does not pay within 5 days after the payment becomes due. In case of default in payment the Customer owes default interest as provided for by law, unless we prove higher damages.

11. Claims for Defects (*Mängelansprüche*)

- (1) Should the goods delivered or the services rendered by us have any faults, the Customer shall give us an opportunity for remedy (*Nacherfüllung*) within reasonable time unless such remedy cannot be reasonably accepted by the Customer in an individual case, or special circumstances are given which, taking into consideration the interests of both parties, justify an immediate revocation of the contract. In any case, we shall be entitled to choose between remedying the defect or re-delivering goods / re-rendering services free of faults.
- (2) If standard software of a third-party producer is delivered and we have only acted as intermediaries for a license contract (Section VI. 2 sentence 5 of these Terms and Conditions), the claims of the Customer shall be directed against the respective third-party manufacturer. The Customer can only make a claim on us if the claim for defects against the third-party manufacturer proves not be enforceable out of court.
- (3) If the Customer is an entrepreneur (*Unternehmer*) or business, it is obliged to immediately examine the goods delivered for obvious defects. Regarding obvious defects, such as missing data carriers or handbooks and easily discernible damage to data carriers, the Customer must notify us in writing immediately upon delivery. Regarding defects which become apparent later, the Customer must notify us immediately upon discovery. If the Customer does not fulfil its obligation to examine the goods or to notify us of a defect, the goods are deemed to have been approved concerning the particular defect.
- (4) The Customer must raise any claims for defects in writing, specifying all faults discovered and the circumstances under which they appeared. If a fault alleged by the Customer cannot be reproduced, the goods are not deemed to be defective with regard to such fault. If the Customer manipulated the hard- or software in any way, it is only entitled to claims for defects (*Mängelrechte*) if it can prove that his manipulations were not the cause for the defect. Should it become apparent that a fault alleged by the Customer does not actually exist, in particular if an alleged fault cannot be reproduced, we shall be entitled to demand reasonable compensation for our effort and cost unless the Customer has acted without fault or in ordinary negligence (*einfache Fahrlässigkeit*).
- (5) Should we fail or refuse to remedy the defect, or if the Customer cannot reasonable be expected to accept the remedying of the defect, the Customer shall be entitled to the other statutory rights in case of defects, i.e. revocation of the contract (*Rücktritt*), reduction of the agreed remuneration (*Minderung*), performing the remedy himself or contracting a

third party to do so (*Selbstvornahme*), payment of damages or reimbursement of frustrated expenses. Claims for damages are subject to the limitations according to Section XII. of these Terms and Conditions.

- (6) Should the fault merely consist of an immaterial deviation from the agreed quality, the Customer shall, at our discretion, only be entitled to remedy of the defect (*Nacherfüllung*) or a reasonable reduction of the agreed remuneration (*Minderung*). Should no quality have been specified, the same shall apply to any immaterial deviation from the suitability for the use intended under the agreement or in the absence of a specific agreement the suitability for the customary use, i.e. the common use of such goods which may reasonably be expected by the Customer.

12. Liability and Right of Revocation

- (1) Our liability is exclusively governed by the following stipulations:
We are liable for:
 - intentional or grossly negligent acts,
 - culpable breaches of material contractual obligations (*wesentliche Vertragspflicht*).
- (2) As far as we are liable in cases of ordinary negligence (*einfache Fahrlässigkeit*) our liability is limited in amount to the damages foreseeable and typical for the type of contract. As far as we are liable in cases of ordinary negligence (*einfache Fahrlässigkeit*), our liability shall in any case be limited: In case of pecuniary losses to a maximum amount of € 100,000.00 per damaging event or, should our performance consist of the delivery of a software program, to the amount of the lump-sum license fee or the amount due for twelve months of use; the respective highest amount will apply. In case of damages to property caused by ordinary negligence liability is limited to a maximum amount of € 500,000.00 per damaging event. Any further liability on our part for pecuniary losses or damages to property shall be excluded. The liability for personal damage (*Personenschäden*) and product liability will not be affected by the above limitations.
- (3) The exclusion of liability based on the above provisions comprises the personal liability of our organs, employees and other staff members, representatives and (vicarious) agents and also applies to all claims based on negligence in the course of contracting (*culpa in contrahendo*), breach of an accessory contractual obligation, torts (in particular Sections 823 et seq. German Civil Code [*Bürgerliches Gesetzbuch*] including potential recourse claims according to Section 840 German Civil Code, Section 5 German Product Liability Law [*Produkthaftungsgesetz*] in conjunction with Section 426 German Civil Code) with the exception of claims under Sections 1, 4 German Product Liability Law.
- (4) We are only liable for the retrieval of data if the Customer made certain that lost data may be retrieved with reasonable expense and effort. The Customer is therefore obliged to back up the data and programs regularly and in adequate intervals.
- (5) The Customer's right to terminate or otherwise revoke the contract as a result of a breach of our contractual obligations shall be excluded if the breach is due to reasons for which we are not at fault and which do not consist of a defect of goods delivered.

13. Period of Limitation

- (1) If the Customer is an entrepreneur (*Unternehmer*) or business, its claims for defects (*Mängelansprüche*) shall become statute-barred within one year from the statutory start of the period of limitation. This does not apply to claims set forth pursuant to Sections 438 (1) No.1 and 2 and 634a (1) No. 2 of the German Civil Code (*Bürgerliches Gesetzbuch*).
- (2) If the Customer is an entrepreneur (*Unternehmer*) or business, all of its other contractual claims due to the breach of obligations shall become statute-barred within one year from the statutory start of the period of limitation.

- (3) The statutory periods of limitation shall not be affected by the above provisions in the following cases:
- for damages resulting from injuries to lives, bodies or health;
 - for any other damages based on intentional or grossly negligent breach of duty by us, our legal representatives or (vicarious) agents;
 - for the Customer's right to revoke the contract due with a breach of our contractual obligations for which we are at fault and which does not consist of a fault of goods delivered or services rendered;
 - for claims resulting from fraudulent concealment of a defect or a guarantee within the meaning of Section 444 or Section 639 of the German Civil Code (*Beschaffheitsgarantie*);
 - for claims to remuneration for expenses pursuant to Section 478 (2) of the German Civil Code (*Bürgerliches Gesetzbuch*).

14. Retention of Title

- (1) All delivered goods remain in our exclusive ownership until payment of the purchase price and fulfilment of all payment claims arising from the business relation. No pledging, transfer of ownership by way of security or other exploitation shall be allowed unless the goods were specifically acquired for resale purposes. In that case the Customer shall have the revocable right to resell the retained goods in its own name within the scope of an orderly conduct of business, provided that it is not in default of his financial obligations towards us and the assignment of claims is not prohibited by law or by agreement between the Customer and its purchasers.
- (2) In case of adjunction (*Verbindung*) or commixtion (*Vermischung*) of the retained goods with goods owned by the Customer, we will acquire joint ownership, our share of the ownership will be determined according to the value of the retained goods (i.e. our contract price including value added tax without deduction of cash discount). Should the Customer acquire sole ownership by virtue of law, it shall transfer to us an according share of ownership and store the goods on our behalf. In case the retained goods are processed by the Customer, we shall be deemed manufacturer of the new product.
- (3) By way of security, the Customer hereby assigns to us the following claims up to the invoiced value of the retained goods: All claims arising from the resale or any other cause in law (e.g. insurance, tort) in connection with the retained goods or goods in which we have joint ownership, including any balance in favour of the Customer from a current account. This shall apply even if according to the above restrictions a resale was not permitted. We hereby accept the assignment. If we only had joint ownership of the retained goods, the anticipatory assignment shall be limited to that fraction of the claim which is equivalent to the share of our joint ownership on the basis of the invoiced value.
- (4) The Customer shall have the revocable right to collect the assigned claims in its own name and for his own account. This authorization may be revoked if the Customer does not duly fulfil his payment obligations. In case of a justified revocation, the Customer or its legal successor or liquidator respectively shall upon our request disclose the assigned claims and the names and addresses of the debtors. In addition, it shall provide us with all information necessary for the collection of the claims and all relevant documentation and shall immediately notify the debtor of the assignment.
- (5) Should the retained goods be seized by a third party, the Customer will indicate our ownership and notify us immediately so we can assert our ownership rights. Moreover the Customer shall at our request immediately bring a third-party intervention against execution in accordance with Section 771 German Code of Civil Procedure (*Zivilprozessordnung*) in its own name but on our behalf (*gewillkürte Prozessstandschaft*). The Customer shall bear all necessary court costs and out-of-

court costs for the release from seizure and retrieval of the retained goods, provided such costs cannot be recovered from seizure and retrieval of the retained goods, provided such costs cannot be recovered from a third party.

- (6) If the Customer is in default of payment, we are entitled to revoke the contract subject to the statutory provision and at the same time reclaim the retained goods at the Customer's expense.
- (7) The above securities will be released upon the Customer's request at our discretion, if and to the extent that their value continuously exceeds the value of the secured claims by more than 10 %. The realizable value of retained goods is held to be their estimated value reduced by one third, the realizable value of claims assigned by way of security their nominal value reduced by one third.

15. Confidentiality and Data Protection

- (1) If either party obtains confidential information of the respective other party or the (vicarious) agents commissioned by the other party (in particular technical information or business and operational matters) in the course of the performance of the agreement, it is obliged to keep such information confidential. Unless otherwise agreed upon the duty of confidentiality remains in force for 5 years after conclusion of the contract. The provisions concerning rights to software or other work results are unaffected by the above confidentiality agreement.
- (2) We may incorporate the Customer's name into a reference list. Further references towards the Customer will be made in mutual understanding with it.

16. Place of Performance and Assignment

- (1) Place of performance for all goods delivered/services rendered shall be Berlin, Germany.
- (2) The assignment of the Customer's claims against us arise under the business relationship is excluded.

17. Place of Jurisdiction and Applicable Law

- (1) The exclusive legal venue for all claims against merchants (*Kaufleute*) and legal entities incorporated under public law which arising under the business relationship shall be Berlin, Germany. This also applies with respect to claims arising from checks, torts and third party notices (*Streitverkündung*). We also reserve the right to sue the Customer in any other court having statutory jurisdiction.
- (2) In case of cross-border deliveries and services, the exclusive place of jurisdiction for any disputes under the contractual relationship shall be Berlin, Germany (Article 23 of the European Council Directive on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters [*EuGVVO*] or Article 17 of the European Civil Jurisdiction Convention [*EuGVÜ*]). We also reserve the right to sue the Customer at his place of general jurisdiction or call upon any court which has jurisdiction according to the said European Council Directive or European Convention.
- (3) All business relations and all legal relationships between the Customer and us shall exclusively be governed by the laws of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

18. Final Provisions

- (1) In case of differences between the German and English version of these Terms and Conditions only the German version shall apply and be legally binding.