

General Terms and Conditions

§ 1 Scope of application

(1) These General Terms and Conditions ("T&Cs") shall apply to the business relationship between Trapeze Switzerland GmbH, Trapeze Germany GmbH, Trapeze-Elgeba GmbH or Trapeze Group Deutschland GmbH – including their brands such as "Voyagerr" - (hereinafter referred to as "TRAPEZE") and the Customer (hereinafter referred to as "Customer"). The contracting party in each case is the TRAPEZE company indicated on the written order confirmation or individual contract. These T&Cs apply to all services defined under § 1 (2).

(2) The T&Cs regulate as essential parts of the contract the conditions under which TRAPEZE provides the following agreed services in the respective orders of the Customer, the quotations prepared by TRAPEZE or order confirmations:

- a) Sale of standard software;
- b) Services agreed upon within the scope of the purchase and/or customer service agreement;
- c) Sale and delivery of hardware products, equipment parts or components; and
- d) Pre-contractual obligations.

Unless otherwise agreed, these T&Cs shall apply exclusively to these services in business dealings. Other contractual conditions shall not become part of the contract, even if TRAPEZE does not expressly object to them.

(3) Even if no further reference is made to this in the future conclusion of similar contracts, the TRAPEZE T&Cs shall apply exclusively in the version available at www.voyagerr.com/gtc at the time of the Customer's declaration, unless the contracting parties agree otherwise in writing.

(4) For the delivery of standard software, §§ 433 ff. of the German Civil Code ("BGB") shall apply. For supplementary services (e.g. installation, parameterization, training), §§ 611 ff. BGB shall apply.

§ 2 Conclusion of Contract

(1) The offers of TRAPEZE are subject to change and non-binding, unless they are designated as binding in writing. A legal obligation shall only come into existence by a contract signed by both parties or by written confirmation of the order by TRAPEZE,

furthermore by the fact that TRAPEZE begins with the performance of services after the order has been placed. TRAPEZE may request written confirmations of oral contractual declarations by the Customer.

(2) The Customer shall be bound by its declarations regarding the conclusion of contracts for two weeks.

§ 3 Subject matter of the contract, scope of services

(1) The subject of these T&Cs is only the delivery of standard software and the granting of the rights of use in accordance with § 4, in addition to the services ordered at the time of purchase, e.g. training in accordance with § 15 and other services defined under § 1 (2).

(2) Prior to the conclusion of the contract, the Customer has verified that the specification of the Software corresponds to its wishes and needs. The Customer is aware of the essential functional features and conditions of the software.

(3) The scope, type and quality of the deliveries and services shall be determined by the contract signed by both parties or by TRAPEZE's order confirmation, otherwise by TRAPEZE's offer. Other information or requirements shall only become part of the contract if the contracting parties have agreed to this in writing or TRAPEZE has confirmed them in writing. Subsequent changes to the scope of performance require written agreement or written confirmation by TRAPEZE.

(4) Product descriptions, representations, test programs, etc. are descriptions of performance, but not guarantees. A warranty requires a written statement by the management of TRAPEZE.

(5) The Customer shall receive the software consisting of the machine program and the user manual. The Customer shall not be entitled to receive the source program.

(6) TRAPEZE shall provide all deliveries and services in accordance with the state of the art.

§ 4 Rights of the Customer to the Software

(1) The software (program and user manual) is protected by law. Copyrights, patent rights, trademark rights and all other industrial property

rights to the software as well as to other objects which TRAPEZE makes available or makes accessible to the Customer in the course of initiating and executing the contract shall be the exclusive property of TRAPEZE in the relationship between the contracting parties. Insofar as third parties are entitled to the rights, TRAPEZE shall have corresponding rights of exploitation.

(2) Rights of use for standard software or software products of third parties are determined by the license conditions of the respective software manufacturer and are granted to Customer by so-called End-User-License-Agreements ("EULA") or comparable regulations. Customer shall ensure that everyone who uses services of TRAPEZE and/or third parties complies with these regulations.

(3) Contractual items, documents, proposals, test programs, etc. of TRAPEZE which become accessible to the Customer before or after conclusion of the contract shall be considered intellectual property and business and trade secrets of TRAPEZE. They may not be used in any way whatsoever without written permission from TRAPEZE and must be kept secret in accordance with § 14.

(4) The Customer shall acquire the same rights to modified, extended or newly created software as to the standard software. Insofar as the newly provided items replace items already delivered, the rights granted to the previous items shall expire at the time at which the new items are usable.

§ 5 Time of Performance, Ownership, Place of Performance and Transfer of Risk

(1) Information on delivery and performance dates shall not be binding unless TRAPEZE has designated them as binding in writing. TRAPEZE may provide partial performance to the extent that the delivered parts can be reasonably used by the Customer.

(2) Delivery and performance periods shall be extended by the period in which the Customer is in default of payment under the contract and by the period in which TRAPEZE is prevented from delivery or performance by circumstances for which TRAPEZE is not responsible, and by a reasonable start-up period after the end of the impediment. Such circumstances shall also include force majeure and labor disputes.

Deadlines shall be deemed to be extended by the period of time during which the Customer, in breach of contract, fails to cooperate, e.g. fails to provide information, fails to provide access, fails to provide supplies or fails to make employees available.

(3) If TRAPEZE is dependent for the performance of its services on delivery items/services which it does not provide itself and which are not in stock or cannot be procured at the time the order is placed, TRAPEZE shall be entitled to terminate the contract if TRAPEZE is not supplied by its supplier/subcontractor, is not responsible for the non-delivery or TRAPEZE is unable to procure the services despite reasonable efforts or is able to procure them at substantially increased market prices (compared to those customary in the trade). TRAPEZE shall immediately inform the Customer of the non-availability of the services and, if applicable, reimburse the Customer for any consideration already paid.

(4) If the contracting parties subsequently agree on other or additional services which affect agreed deadlines, these deadlines shall be extended by a reasonable period of time.

(5) TRAPEZE retains title to delivered items or the right to use delivered software until all claims to which TRAPEZE is entitled against the Customer at the time of performance or in connection with the delivered items in the future have been settled.

- a) The Buyer may sell the items subject to retention of title, in particular combine them with items of third parties, only in the ordinary course of business. The Customer is not entitled to pledge the items subject to retention of title in any other way, to assign them by way of security or to make any other dispositions that would endanger TRAPEZE's ownership.
- b) In the event of resale of the goods subject to retention of title, the Customer hereby assigns to TRAPEZE by way of security the resulting claim against the Customer - in the event of co-ownership of TRAPEZE in the goods subject to retention of title, in proportion to the co-ownership share. The same applies to other claims which take the place of the goods subject to

retention of title or otherwise arise with regard to the goods subject to retention of title, such as insurance claims or claims in tort for loss or destruction. TRAPEZE revocably authorizes the Customer to collect the claims assigned to TRAPEZE in its own name. TRAPEZE may revoke this collection authorization only in the event of realization.

- c) If third parties gain access to the goods subject to retention of title, in particular by seizure, the Customer shall immediately inform them of TRAPEZE's ownership and inform TRAPEZE of this in order to enable it to enforce its ownership rights. If the third party is not in a position to reimburse TRAPEZE for the judicial or extrajudicial costs incurred in this connection, the Customer shall be liable for them.

(6) Reminders and setting of deadlines by the Customer must be in writing to be effective. A grace period must be reasonable. A period of less than two weeks shall only be reasonable in case of special urgency.

(7) The place of performance of services shall be the place where the service is to be rendered. Otherwise, the place of performance for all services shall be the registered office of TRAPEZE.

(8) If shipment of the goods has been agreed, the risk shall pass to the Customer at the latest when the delivery item is handed over (whereby the beginning of the loading process shall be decisive) to the forwarding agent, carrier or other third party designated to carry out the shipment. If the shipment or the handover is delayed due to circumstances caused by the Customer, the risk shall pass to the Customer from the day on which the delivery item is ready for shipment and TRAPEZE has notified the Customer thereof.

§ 6 Contractual obligation and termination of contract

(1) Any termination of the further exchange of services (e.g. in case of rescission, reduction, termination for cause, damages in lieu of performance) must always be threatened by stating the reason and setting a reasonable deadline for remedy (except in cases of emergency at least two weeks) and may only be declared within two weeks after expiry of the

deadline. In the cases stipulated by law (cf. Section 323 (2) of the German Civil Code), the setting of a deadline may be omitted. Anyone who is wholly or predominantly responsible for the disruption may not demand reversal.

(2) All declarations in this context must be in writing to be effective.

§ 7 Remuneration, Payment

(1) The agreed remuneration shall be due without deduction after delivery of the Software or goods (for other services after performance of the service) and receipt of the invoice by the Customer and shall be paid within thirty (30) days without any deduction, unless otherwise agreed in writing. If the Customer fails to make payment when due, the outstanding amounts shall bear interest from the due date at a rate of 5% p.a.; the right to claim higher interest and further damages in the event of default shall remain unaffected.

(2) Travel costs, expenses and accessories shall be additionally remunerated according to expenditure. Additional services requested by the Customer (e.g. consulting and support during program installation) shall be invoiced according to TRAPEZE's current price list.

(3) Value added tax shall be added to all remuneration.

(4) The Customer may only offset claims which have been recognized by TRAPEZE in writing or which have become *res judicata*. Except in the area of § 354 a of the German Commercial Code (HGB), the Customer may assign claims arising from this contract to third parties only with the prior written consent of TRAPEZE. The Customer shall only be entitled to a right of retention or the defense of non-performance within this contractual relationship.

§ 8 Obligations of the Customer

(1) The Customer is obligated to inspect all delivery items of TRAPEZE immediately upon delivery or upon making them available in accordance with the provisions of the German Commercial Code (§ 377 HGB) and to notify TRAPEZE in writing of any defects detected, giving a detailed description of the defect. The Customer shall thoroughly test each module for usability in the specific situation before commencing productive use. This shall also apply to software which the Customer receives after the initial delivery, for example within the

scope of the warranty or a maintenance contract.

(2) With respect to obvious defects or other defects which would have been recognizable in the course of an immediate, careful inspection, the delivery items shall be deemed to have been approved by the Customer if TRAPEZE does not receive a written notice of defect within 10 (ten) working days after delivery. With respect to other defects, the delivered goods shall be deemed to have been accepted by the Buyer if TRAPEZE does not receive a written notice of defect within 10 (ten) working days after the time when the defect became apparent; if the defect was already apparent at an earlier point in time during normal use, this earlier point in time shall, however, be decisive for the commencement of the period for giving notice of defect.

(3) The Customer shall take reasonable precautions in the event that the program does not function properly in whole or in part (e.g. by means of data backup, documentation of software use, fault diagnosis, regular testing of results, emergency planning). It is his responsibility to ensure the functionality of the working environment of the program.

§ 9 Material defects

(1) Software shall have the agreed quality at the time of the passing of risk and shall be suitable for the contractually intended use or, in the absence of an agreement, for normal use. It satisfies the criterion of practical suitability and has the quality customary for software of this type; however, it is not free of defects. A functional impairment of the program resulting from hardware defects, environmental conditions, incorrect operation or similar is not a defect. An insignificant reduction in quality shall be disregarded.

(2) In the event of material defects, TRAPEZE may first provide subsequent performance. Subsequent performance shall be effected, at TRAPEZE's option, by removal of the defect, by delivery of software which does not have the defect, or by TRAPEZE showing reasonable possibilities to avoid the effects of the defect. At least three attempts to remedy a defect shall be accepted. An equivalent new program version or the equivalent previous program version without the defect shall be accepted by the Customer if this is reasonable for the Customer. The installation of software (patches or new

versions) shall be the responsibility of the Customer.

(3) The Customer shall support TRAPEZE in the analysis of errors and the elimination of defects, in particular by describing problems that occur in concrete terms, by informing TRAPEZE comprehensively, and by granting TRAPEZE the time and opportunity necessary for the elimination of defects. TRAPEZE may choose to remedy the defect at the Customer's premises or at its business premises or by remote maintenance. The Customer shall, at its own expense, provide for the necessary technical prerequisites and grant TRAPEZE online access to the software after TRAPEZE has given appropriate prior notice.

(4) Within the scope of the sale of software, the contracting parties agree on the following error classes and response times:

- a) Defect class 1: Defects preventing operation: The defect prevents the Customer's business operation; there is no workaround: TRAPEZE shall immediately, at the latest within four hours after notification of the defect, commence with the elimination of the defect and shall continue to do so with vigor until the defect has been eliminated, to the extent reasonable also outside working hours (weekdays 8:00 a.m. to 5:00 p.m.).
- b) Error class 2: Defects hindering operation: The error hinders the business operations of the Customer considerably; however, the use of the software is possible with workarounds or with temporarily acceptable restrictions or difficulties: TRAPEZE shall begin with the error removal on the same day in case of an error message before 10:00 a.m., in case of a later error message at the beginning of the next working day and shall continue until the error is removed within working hours. TRAPEZE may first show a workaround solution and eliminate the defect later, if this is reasonable for the Customer.
- c) Error class 3: Other defects: TRAPEZE shall begin with the elimination of the error within one week or shall eliminate the error only with the next program version, if this is reasonable for the Customer.

(5) The time limits according to para. 4 shall commence with a defect report according to § 8 (1). For the calculation of the time limit § 5 (2), (3) shall apply. In case of disagreement about the assignment of a defect to the classes according to para. 4, the Customer may demand the classification into a higher defect class. He shall reimburse TRAPEZE for the additional expenditure if he cannot prove that his classification was correct.

(6) TRAPEZE may demand compensation for additional expenses resulting from the fact that the software has been modified, used outside the specified environment or operated incorrectly. TRAPEZE may demand reimbursement of expenses if no defect is found and the Customer had not raised the defect complaint without negligence. The burden of proof lies with the Customer. § 254 of the German Civil Code (BGB) shall apply accordingly. TRAPEZE's price list shall apply to the amount of the claim.

(7) In the case of material defects of delivered items, TRAPEZE shall be obligated and entitled, at its discretion within a reasonable period of time, to repair or replace the goods. In the case of defects in components of other manufacturers which TRAPEZE cannot remedy for licensing or actual reasons, TRAPEZE shall, at its discretion, assert its warranty claims against the manufacturers and suppliers for the account of the Customer or assign them to the Customer. Warranty claims against TRAPEZE shall only exist in case of such defects under the other conditions and in accordance with these General Terms and Conditions if the legal enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or is futile, e.g. due to insolvency.

(8) The warranty shall not apply if the Customer modifies the delivery item or has it modified by a third party without the consent of TRAPEZE and the rectification of defects is thereby rendered impossible or unreasonably difficult. In any case, the Customer shall bear the additional costs of remedying the defect resulting from the modification.

(9) If TRAPEZE finally refuses to remedy the defect or if such remedy finally fails or is unreasonable for the Customer, the Customer may either withdraw from the contract within the scope of § 6 or reduce the remuneration appropriately and additionally claim damages or

reimbursement of expenses in accordance with § 11. The claims shall become time-barred in accordance with § 12.

§ 10 Defects of Title

(1) TRAPEZE warrants that the Customer's use of the software in accordance with the contract does not conflict with any rights of third parties. In the event of defects in title, TRAPEZE warrants that it will, at its discretion, provide the Customer with a legally unobjectionable opportunity to use the software or equivalent software.

(2) The Customer shall inform TRAPEZE immediately in writing if third parties assert property rights (e.g. copyrights or patent rights) to the software. TRAPEZE shall support Customer in defending itself against the attacks of the third party by providing advice and information.

(3) § 9 (2), (6), (9) shall apply accordingly.

§ 11 Liability

(1) TRAPEZE shall pay damages or reimbursement of futile expenses, irrespective of the legal basis (e.g. from obligations arising from legal transactions and similar legal transactions, material defects and defects of title, breach of duty and tort), only to the following extent:

- a) The liability in case of intent and fraudulent intent is unlimited and limited from warranty according to the warranty promise.
- b) In case of gross negligence TRAPEZE shall be liable to the amount of the typical damage foreseeable at the time of conclusion of the contract.
- c) TRAPEZE shall not be liable in the case of simple negligence of its organs, legal representatives, employees or other vicarious agents, unless it concerns a breach of cardinal duty (duty, the fulfillment of which makes the proper execution of the contract possible in the first place, the observance of which the contracting party regularly relies on and may rely on, and the breach of which endangers the achievement of the purpose of the contract).
- d) Insofar as TRAPEZE is liable on the merits for damages pursuant to § 11 (1) c), this liability shall be limited to

damages which TRAPEZE foresaw as a possible consequence of a breach of contract at the time of conclusion of the contract or which it should have foreseen by exercising due care. Indirect damages and consequential damages which are the consequence of defects of the delivery item shall furthermore only be compensable insofar as such damages are to be expected in case of intended use. The above provisions of this paragraph shall not apply in the event of intentional or grossly negligent conduct on the part of members of TRAPEZE's corporate bodies or executive employees.

- e) In the event of liability for simple negligence, TRAPEZE's obligation to pay compensation for property damage and further financial losses resulting therefrom shall be limited to EUR 500,000 per case of damage and per calendar year to EUR 1,000,000 or the contract value, whichever is higher in the individual case, even if a breach of material contractual obligations is involved.

(2) TRAPEZE reserves the right to object to contributory negligence. In particular, the Customer has the obligation to secure data and to defend against malware in accordance with the current state of the art.

(3) The above exclusions and limitations of liability shall apply to the same extent in favor of TRAPEZE's corporate bodies, legal representatives, employees and other vicarious agents.

(4) Liability for injury to life, body and health and for claims arising from the Product Liability Act and other mandatory statutory provisions shall remain unaffected.

§ 12 Limitation period

(1) The limitation period for claims according to § 9 - § 11 is:

- a) in the case of material defects for claims for repayment of the purchase price arising from withdrawal or reduction, one year from delivery of the Software, but for defects duly notified within the limitation period not less than three months from submission of the effective declaration of withdrawal or reduction;

- b) in the case of other claims arising from material defects, one year;
- c) in the case of claims based on defects of title, two years if the defect of title does not lie in a right of a third party on the basis of which the third party can demand the return of the items specified in Section 3 (5) or demand that they cease to be used;
- d) two years in the case of claims for damages or reimbursement of futile expenses not based on defects of quality or title; the period shall commence at the time when the Customer became aware of the circumstances giving rise to the claim or should have become aware thereof without gross negligence.

(2) The limitation period shall commence at the latest upon expiry of the maximum periods stipulated in § 199 of the German Civil Code (BGB). In the case of damages and reimbursement of expenses due to intent, gross negligence, warranty, fraudulent intent and in the cases specified in § 11 (3), (1) shall not apply.

§ 13 Commencement and Termination of the Customer's Rights

(1) TRAPEZE may terminate the rights according to § 4 for good cause under the conditions of § 6. Good cause shall be deemed to exist if TRAPEZE, taking into account all circumstances of the individual case and weighing the interests of both parties, cannot reasonably be expected to allow the software to remain with the Customer on a permanent basis, in particular if the Customer violates § 4 in a significant manner. Only the statutory provisions shall apply to the rescission of the contract due to default of payment by the Customer.

(2) If the rights according to § 4 do not arise or if they end, TRAPEZE may demand from the Customer the return of the items provided or the written assurance that they have been destroyed, furthermore the deletion or destruction of all copies of the items and the written assurance that this has been done.

§ 14 Confidentiality and data protection

(1) The contracting parties undertake to treat as confidential all items (e.g. software, documents, information) received from the other contracting party before or during the performance of the

contract which are protected by law or contain business or trade secrets or are designated as confidential, even after the end of the contract, unless they are in the public domain without any breach of the duty of confidentiality. The contracting parties shall store and secure these items in such a way that access by third parties is excluded.

(2) The Customer shall make the contractual items accessible only to those employees and other third parties who require access in order to perform their official duties. He shall instruct these persons about the need for secrecy of the objects.

(3) TRAPEZE shall process the data of the Customer required for the business transaction in compliance with the data protection regulations. TRAPEZE may name the Customer as a reference customer after successful completion of the services.

§ 15 Final Provisions

(1) Amendments and supplements to the contract must be made in writing to be effective. The written form requirement may only be waived in writing. Compliance with the written form requirement is a prerequisite for the validity of the declaration. Transmission in text form, in particular by fax or e-mail, shall be sufficient to comply with the written form requirement.

(2) The law of the Federal Republic of Germany shall apply; if Trapeze Switzerland GmbH is a contractual partner, Swiss law shall apply, excluding the conflict of laws provisions and the UN Convention on Contracts for the International Sale of Goods. The place of performance and exclusive place of jurisdiction for all disputes arising from and in connection with this contract shall be the registered office of TRAPEZE for contracts with merchants and persons of equal status.