General Conditions for TriaGnoSys Services and Supplies (issue 1. April 2004)

TriaGnoSys GmbH, Oberpfaffenhofen, – in the following called TriaGnoSys – applies the following general conditions. These conditions shall apply to supplies and services rendered by TriaGnoSys, in particular to research and development contracts. They shall not apply to pure lending for use (e.g. tenancy agreements, licensing agreements).

Art. 1   Offer and Contract Conclusion

1. The contract shall be brought about upon our written confirmation of order or upon execution of the order. The confirmation will be sent within 10 working days after receipt of order.

2. TriaGnoSys reserves proprietary rights and copyrights of drawings and technical documents attached to the offer. They shall not be made available to third parties. If the contract is not awarded, relevant documents shall be returned to TriaGnoSys without delay upon request.

Art. 2   Scope of Performance

1. The scope of performance shall be governed by TriaGnoSys' confirmation of order. Where such confirmation is not available, it shall be governed by TriaGnoSys's version of the offer, alternatively the order of the customer.

3. Additional arrangements and amendments to the contract shall only have legal effect if confirmed in writing by TriaGnoSys. Should the customer demand in writing that the original scope of the contract be amended and/or extended, such amendment shall be binding, in deviation with Sentence 1, if TriaGnoSys takes up activities in the sense of the amended scope of contract.

Art. 3   Remuneration

1. Remuneration shall be due, unless otherwise agreed, in accordance with the following payment schedule:

   - 30 % following the contract signature / award;
   - another 40 % after one-half of the agreed contract duration;
   - the final 30 % after completion of the contract or upon delivery of the final report.

2. Payments shall be made net within 30 days after invoicing into the account indicated on TriaGnoSys' letterhead.

Art. 4   Performance Periods

1. The contractually agreed performance periods shall be extended accordingly if the customer does not make provisions within the term agreed and free of faults, or does not fulfil its obligations in any other manner. Additional costs resulting from such shall be incumbent on the customer.

2. The performance periods shall be extended by a reasonable time if unforeseen obstacles arise, such as labour disputes, force majeure, public measures and similar events.

Art. 5   Acceptance

1. As soon as TriaGnoSys has furnished the contractually agreed service, the customer shall be obliged to accept it without delay.

2. If no explicit acceptance statement is issued, acceptance shall be deemed to have taken place if this declaration (e.g. acceptance report) of the customer has not been received by TriaGnoSys within 2 weeks following delivery of the final report or following delivery of the service in another suitable form.

Art. 6   Warranty

1. The warranty shall cover the application of scientific diligence as well as the observance of accepted rules of technical practice.

2. Assertion of warranty claims shall be limited to a period of 6 months after acceptance of the service. TriaGnoSys shall not assume a warranty thereafter.

3. The warranty claims of the customer shall be limited to the rectification of defects. The extent of the claim for rectification shall be limited to the sum of the value of the contract.

4. If services of TriaGnoSys involve outside services, the warranty of TriaGnoSys shall be limited to assignment of rights against the producer.

5. Warranty negotiations shall commence upon the written assertion of the warranty claims against TriaGnoSys. The warranty negotiations shall terminate upon the presentation of a written statement by either party declaring their failure.

Art. 7   Liability

1. Liability for personal injury shall be limited to damages caused by wilful and negligent acts.

2. Liability for material damages resulting from violations of the contract and from offences shall be limited to damages caused by wilful and grossly negligent acts.

3. In the case of gross negligence, the liability of TriaGnoSys shall be limited to the value of the contract, but to a maximum of 25,000.00 Euro.

4. Further claims for damages by the customer, in particular claims for compensation for direct and indirect damage, including loss of anticipated profit, shall be excluded.

5. In the event of delay the liability is limited to 0.5 % of the remuneration specified in Section 3 for each week of delay; the aggregate amount may, however, not exceed 5 % of the remuneration due according to Section 3. The liability for compensation shall not be affected if the delay is attributable to willfulness or gross negligence. In this case, the liability for compensation is limited to the typical, foreseeable damage. Upon expiration of a reasonable extension of time granted after the performance became due, the customer is fully entitled to demand compensation in lieu of performance as provided by law; the amount of the claim for compensation is, however, limited to the typical, foreseeable damage.

Art. 8   Rights to Results

1. Results shall be defined as knowledge attained and written down in notes, descriptions and modes of test procedures during the execution of the contract as well as developed designs and other development objects.

2. The customer shall be granted non-exclusive and gratuitous usufruct to results that are non-protectable or rights not protected by copyright. Rights to protectable results shall be regulated in the following Article 9. Transfers of ownership of designs and other development objects shall be agreed separately.

Art. 9   Industrial Property Rights and Works Protected by Copyright

1. TriaGnoSys shall make unlimited use of inventions produced by employees of TriaGnoSys in the contract field during execution of the contract, and register property rights. These property rights shall be due exclusively to TriaGnoSys.

3. The parties to the contract shall make unlimited use of inventions produced jointly by employees of TriaGnoSys and the customer in the contract field during execution of the contract, and property rights shall be registered jointly in the names of TriaGnoSys and the customer in respect of their employees. The parties shall clarify further questions by common consent, particularly cost allocation, foreign registration, etc.

4. The customer shall be entitled to use the property rights under Paragraph 1 and 2 in return for an appropriate fee. The appropriateness shall take the employer/employee relationship into consideration. The type and extent of usufruct granted shall require separate agreement.

5. The above shall apply analogically for works protected by copyright.

Art. 10   Right of Retention: Retention of Title

1. TriaGnoSys shall retain ownership of objects delivered until remuneration has been paid in full.

2. The customer shall only acquire usufruct for the results when the agreed remuneration has been paid in full.

3. If the customer fails to fulfil its contractual obligations, in particular by non-payment of partial remuneration, TriaGnoSys shall be entitled to withhold its services.

Art. 11   Confidentiality

1. All technical and economic information of TriaGnoSys, particularly intentions, knowledge and experience ranging beyond the pure contract result, shall be kept strictly confidential by the customer. This information shall neither be used nor made available to third parties without express written permission. The customer shall obligate its employees accordingly.

2. The obligation to secrecy under Paragraph 1 shall not apply to information that provably

   - was already common knowledge at the time of its delivery;
   - was already known by the recipient at the time of its delivery;
   - became common knowledge without the involvement of the recipient after delivery;
   - was made available to the recipient after its delivery by another party in a legally permissible manner and without limits with regard to secrecy or use.

Art. 12   Publications

1. TriaGnoSys and its personnel shall be entitled to scientific publication of the results achieved within the scope of the contract.

2. The customer, after prior written agreement with TriaGnoSys, shall be entitled to publish the work quoting the author and TriaGnoSys.

Art. 13   Termination

1. The customer shall be entitled to terminate the contractual relationship within a period of one month until the end of the seventh month of the contract if, after six months since work is commenced, no substantial progress has been made for reasons solely within the control of TriaGnoSys.

2. TriaGnoSys shall be entitled to terminate within a period of four weeks, if the customer does not fulfil its duties and obligations arising from the contract despite written reminders.

3. Both parties to the contract may terminate the contract on important grounds without prior notice. In particular, important grounds shall exist when the determined task leads to unforeseeable economic and technical difficulties, the economic utilisation of the results is excluded due to modifications of the actual or legal preconditions, or in the event of a similarly grave reason.

4. In cases of routine or exceptional termination, TriaGnoSys shall deliver the result achieved to that date within a reasonable period. The customer shall be obligated to reimburse the costs accrued until such time in accordance with the contractual remuneration agreement.

Art. 14   Miscellaneous

1. Place of performance shall be TriaGnoSys place of business responsible for providing the service.

2. German law shall apply. Place of jurisdiction shall be Munich.

3. The United Nations CISG - Convention on Contracts for the International Sale of Goods shall not apply.

4. Should one or more provisions of this contract be invalid, the remaining provisions shall continue to be binding. The invalid provision shall be replaced by a valid provision corresponding as closely as possible to the economic result intended by the parties to the contract.

5. Further claims and rights of the customer on the basis of the contract or its negotiations shall be excluded.