

General Terms and Conditions – Software, as of: 09/2008

(2008-09-16)

of Sterling Commerce GmbH, Uerdinger Straße 90, D-40474 Düsseldorf

(hereinafter: Sterling Commerce)

Translation from German. Only the German text is authoritative

These General Terms and Conditions govern the provision of software programs (or program components) as well as any related user manuals and the provision of related maintenance services to which Sterling Commerce commits itself towards the customer by means of a separate contractual document (hereinafter: "**License Schedule**"; each License Schedule and these General Terms and Conditions hereinafter jointly an "**Agreement**").

1. USAGE RIGHTS

1.1. Sterling Commerce grants the customer a non-exclusive, not sub-licensable, and perpetual right to use a copy of the software programs listed in the License Schedule in machine-readable form (object code version) and a copy of the related user manual (hereinafter "**Products**"). The Products also include all edits, corrections, improvements, updates, new versions, and other modifications (hereinafter "**Updates**"), which Sterling Commerce makes available to the customer in connection with the Product maintenance pursuant to Clause 3 or otherwise under this Agreement. The customer will use the Products exclusively on the operating system specified in the License Schedule and within the license scope specified therein (i.e. up to the number of CPUs, MIPS, or other unit of measurement stated there) and at the designated location provided therein. Any expansion of the usage rights granted to the customer pursuant to the License Schedule obligates the customer to pay additional fees corresponding to the price list valid at the time of the respective expansion and subject to the General Terms and Conditions of Sterling Commerce applicable at that time. The customer itself is responsible for the implementation or, as the case may be, installation of the Products and the training of its employees.

1.2. The customer has the right to use the Products only for the following purposes: (a) in order to exchange information within the scope of its business relationships, (b) for internal use, and (c) in connection with services which the customer provides to its parent company or subsidiaries that are entirely under its control, provided that the employees of these companies do not have access to the Products.

1.3. The customer will not sub-license, publish, rent out, or lease out the Products. Unless explicitly agreed in the License Schedule, the customer is not authorized, notwithstanding its rights pursuant to Clause 1.2, to use the Products for the provision of services to third parties. In particular (but without limitation) the customer is not authorized to permit third parties to access the Products remotely or to enable third-party access to them in connection with a partial or complete outsourcing of the IT or the operative processes ("**Outsourcing**") of a third party to the customer.

1.4. If the customer intends to grant the use of the Products to a third party ("**Outsourcer**") for purposes of providing Outsourcing services to the customer or to grant such third party access to the Products, the customer is obligated to notify Sterling Commerce in advance about the details of such a plan in writing and obtain the written consent of Sterling Commerce. Sterling Commerce will not withhold this consent without important cause, provided that particularly (but not only) an Outsourcing to a competitor of Sterling Commerce and/or reasonable doubts regarding the reliability and/or the safety precautions of the Outsourcer shall be deemed an important cause.

1.5. Sterling Commerce reserves the right to make its consent in the cases of Clause 1.4 subject to the payment of a reasonable administration fee by the customer.

1.6. The customer will not reproduce the Products; exempt are disaster recovery copies to prove program errors and for backup purposes. The customer may install the Products only for this kind of use or for the use in emergencies on additional hardware with the same operating system at the designated or a different designated location of the customer. The customer will maintain meaningful records about the number and the designated location of all copies of the Products and make these available to Sterling Commerce upon request. If the hardware used by the customer is no longer in working order due to a significant malfunction, the customer may, after notifying Sterling Commerce in writing without undue delay, use the Products temporarily and only for the period during which the malfunction is remedied on other hardware or at another location, which is located in the same country as the designated location. As soon as the hardware used by the customer is operational again, the customer is obligated to stop the use of the Products on the additional hardware without undue delay.

1.7. The customer may move the designated location to a different location within the country in which the designated location is found. The customer will notify Sterling Commerce in writing no later than thirty (30) days prior to a change of the designated location and state the planned location in the notification. From the time when the respective change has been effected, the new location shall be deemed as "designated" for purposes of these General Terms and Conditions.

1.8. The usage right granted pursuant to Clause 1.1 is non-transferable.

2. ELECTRONIC DELIVERY AND INVOICING

2.1. The Products (including all Updates) will be delivered electronically via downloads. A physical delivery of the Products is no longer planned.

2.2. Upon conclusion of the Agreement, Sterling Commerce will send an e-mail to the customer stating the order details and download instructions for the licensed Products to the e-mail address stated by the customer in the License Schedule. The customer may download the Products on its own, using the download instructions contained therein, from the Sterling Commerce Electronic Software Distribution (ESD) Portal. This service is available only in the English language. Sterling Commerce has fulfilled its delivery obligation by sending the e-mail to the customer and making the Products available for download.

2.3. The Product usage fees will be invoiced by Sterling Commerce upon delivery of the Products. The maintenance fees will be invoiced in each case for twelve (12) months in advance, for the first time upon delivery of the Products. The grant of the usage right is subject to the precedent condition of full payment of the Product usage fees. All fees and charges are due thirty (30) days after the customer's receipt of the invoice. Any set-off or the assertion of a retention right is possible only with claims that are undisputed or established by a final court decision. All fees stated in the License Schedule are exclusive of applicable public charges and taxes.

3. PRODUCT MAINTENANCE

3.1. In consideration of the customer's payment of the maintenance fee, the customer may claim maintenance services with the following content as of the effective date of the corresponding License Schedule: (a) reasonable telephone support during regular business hours (Monday to Friday, except legal holidays, from 09:00 until 17:30 hours CET) for all error reports concerning the Products, (b) correction of Defects, to the extent that these are reproducible at Sterling

Commerce or, via remote data transfer, at the customer in order to maintain the essential correspondence of the software programs with the specifications in the user manual, and (c) availability of Updates that are generally available at Sterling Commerce. Maintenance Services are further detailed in the Sterling Commerce Customer Support Reference Guide (available in the English language under www.sterlingcommerce.com/Services/Customer-Support/). The Product maintenance period amounts to twelve (12) months, commencing from the time of delivery of the Products, and each contractual year automatically renews by additional twelve (12) months, unless terminated in writing upon giving three (3) months prior notice to the expiration of the respective maintenance period.

3.2. Sterling Commerce has the right to update the Customer Support Reference Guide from time to time. The customer shall be informed about this in writing no later than three (3) weeks before the new Customer Support Reference Guide becomes effective. In case changes to the Customer Reference Guide result in unreasonable burden for the customer, always considering the mutual interests of Sterling Commerce and the customer, the customer may object to updates on reasonable grounds in writing within two (2) weeks after receiving the notification. Any such reasonable objection authorizes both parties to terminate the maintenance agreement with effect as of the time when the new Customer Support Reference Guide becomes effective.

3.3. Sterling Commerce has the right to update the maintenance fees at the beginning of a new 12-month maintenance period. The customer shall be informed about this in writing no later than three (3) months before the new fees become effective. The customer may object to updates in writing within two (2) weeks after receiving the notification. Any such objection authorizes both parties to terminate the maintenance agreement with effect as of the time when the new maintenance fees become effective.

4. IMPLEMENTATION OF UPDATES AND PROCESSING BY THE CUSTOMER

The customer is obligated to implement or, as the case may be, install all Updates provided to it by Sterling Commerce as soon as it is informed about the availability of the respective Updates. If the customer fails to implement or, as the case may be, install individual or several Updates that are made available by Sterling Commerce in connection with maintenance services or if the customer edits the software programs by itself or through a third party contracted by the customer without the explicit prior written consent of Sterling Commerce, (i) Sterling Commerce shall not be liable for the operability of the software programs, to the extent that losses of the customer are due to the failure to implement or, as the case may be, install any relevant Update; and (ii) Sterling Commerce shall not be obligated to provide maintenance services for the affected software programs, provided that the customer shall not be entitled to a refund of prepaid maintenance fees or to a waiver of any outstanding maintenance fees.

5. OWNERSHIP AND PROPRIETARY RIGHTS

5.1. The Products contain trade secrets of Sterling Commerce Inc., companies affiliated with it, or its licensors (hereinafter jointly "**Rights Holders**"). The Rights Holders are and remain holders of all rights to the Products including all related intellectual property and copyrights. The customer does not receive any rights to the Products beyond the grant of the license under the Agreement.

5.2. Beyond the scope permitted by law pursuant to Sections 69 e, 69 g of the German Copyright Act (UrhG), the customer will not carry out any reverse-engineering, disassembling or de-compilation or apply other methods in order to determine or derive the source code of the programs. The customer may, however, decompile to the extent that this is necessary in order to establish the interoperability of the Products with a computer program created independently by the customer and if the de-compilation is limited to parts of the Products, provided, however, that this shall only apply after Sterling Commerce has first refused in writing to provide the required information upon request of the customer.

5.3. The customer will permit Sterling Commerce or an independent third party contracted by Sterling Commerce after reasonable prior notification to enter its business premises during regular business hours in order to examine the use of the Products and compliance with the provisions of the Agreement. Beyond this, the customer will reply without undue delay to inquiries from Sterling Commerce or from an independent third party contracted by Sterling Commerce, which relate to the nature and scope of the use of the Products.

5.4. Certain Products may contain asset protection features which restrict the implementation or, as the case may be, installation of the Product if used without authorization or improperly. The customer acknowledges that such features do not affect or prevent the contractual use of the Products.

6. CONFIDENTIAL INFORMATION

6.1. The customer will treat the content of the contractual relationship existing between itself and Sterling Commerce as well as all business and trade secrets, technical or other know-how, operating methods, business processes, financial information, concepts, strategies, development and research results, inventions, computer programs in object code or source code, market analyses, safety measures, internal guidelines, customer data, and sources for the procurement of goods as well as other documents or data that can be recognized as confidential – also and to the extent that they relate to third parties (including customers of Sterling Commerce) – that become known to the customer in connection with the fulfillment of its contractual duties (hereinafter jointly "**Confidential Information**") confidential and keep them secret from third parties. The customer is obligated to bind all of its employees and sub-contractors in accordance with the foregoing.

6.2. The confidentiality obligation pursuant to Clause 6.1 continues to exist for a period of two (2) years after the end of rendering the Services unless the parties cancel it earlier in writing by mutual consent.

6.3. The confidentiality obligation pursuant to Clause 6.1 shall not apply to information which (i) was already known to the customer without violating a confidentiality obligation or becomes known to the customer irrespective of the contractual relationships existing between it and Sterling Commerce from a third party that is not under a confidentiality obligation, (ii) which is publicly available or becomes publicly available without any fault of the customer, (iii) which was or, as the case may be, is developed by the customer independently and autonomously on its own, i.e. without use or knowledge of similar Confidential Information of Sterling Commerce.

6.4. The confidentiality obligation pursuant to Clause 6.1 shall also not apply if and to the extent the customer is obligated by law, professional rules, a court or arbitral tribunal or a regulating authority to disclose Confidential Information or if the disclosure serves to protect its own legal interests.

7. WARRANTY

7.1. All claims of the customer because of defects in the Products or defects in title ("**Defects**") shall become statute-barred after twelve (12) months from the delivery of the software programs.

7.2. Sterling Commerce warrants that at the time of delivery, the delivered software programs do not differ materially from the contractual quality, i.e. the quality described in the user manual, in a way which negatively affects the suitability of the software programs for the use confirmed in the user manual. Sterling Commerce does not warrant that all combinations contained in the Products and selected by the customer will always run without interruption and free from Defects. In order to maintain its claims for Defects, the customer is obligated to examine the software programs immediately after delivery and notify Sterling Commerce without undue delay in writing about any recognizable Defects. The customer is furthermore obligated to notify Sterling Commerce without undue delay in writing of any hidden Defects which it discovers during the limitation period referred to in

Clause 7.1. Sterling Commerce will, at its sole discretion either remedy Defects or deliver fault-free software programs instead of the defective ones (subsequent performance). If the subsequent performance by Sterling Commerce should fail, be impossible or unreasonable, the customer has the right to rebate the product usage fee by an appropriate pro-rata amount or rescind the Agreement. Rescission is excluded in the case of unsubstantial Defects. The customer is obligated to support Sterling Commerce when Defects are remedied and particularly provide Sterling Commerce with written protocols about the nature and time of occurrence of the Defects.

7.3. Sterling Commerce warrants that the Products supplied by it are free from third-party rights, which prevent use of the Products in conformity with the Agreement. Subject to the provisions in Clause 4 and in this Clause 7.3, Sterling Commerce will support the customer in the defense against all third-party claims, which are based on an infringement of copyrights or intellectual property rights by the Products. If any such claim is asserted against the customer in court, the customer will let Sterling Commerce control the defense upon request of Sterling Commerce and, in this context, will take all reasonable efforts of defense against claims based on defects in title or, as the case may be, support Sterling Commerce through such efforts and – to the extent that the customer itself takes over the procedural defense – will not make any dispositions over the object in dispute (particularly acknowledgements, in- or out-of-court settlements, countersuits, and their withdrawal) without the prior written consent of Sterling Commerce. The customer has to notify Sterling Commerce in writing without undue delay after any such claim has been asserted. Sterling Commerce will indemnify the customer against any related liability which is imposed on the customer through a final court decision.

7.4. If one of the Products should become, or in Sterling Commerce's opinion be likely to become, the subject of an intellectual property rights dispute, Sterling Commerce may, in its sole discretion, either (a) procure for customer the right to continue using the Product, or (b) replace or modify the Product accordingly, provided its functions are not adversely affected in a material manner. If none of these options are commercially reasonable according to the due discretion of Sterling Commerce, Sterling Commerce may rescind the License Schedule in respect to the Product concerned.

7.5. If errors of the software programs should appear which the customer could have avoided through the implementation or, as the case may be, installation of available Updates, the customer shall not be entitled to any claims for Defects in respect to these errors. Any such errors do not constitute Defects within the meaning of this Clause 7.

7.6. The provisions of Clause 9 (Liability) apply to any damage claims of the customer because of Defects.

7.7. Clause 7.3 sentence 3 applies also after expiration of the limitation period set forth in Clause 7.1.

8. EXTRAORDINARY TERMINATION

Either party may terminate the Product maintenance pursuant to Clause 3 in the event the other party has breached a material contractual duty and if such breach has not been remedied within thirty (30) days after written request by the other party. A breach of the rules particularly in Clauses 1.1 through 1.6; 2; 5; 11.2 and 11.3 shall constitute a breach of a material contractual duty.

9. LIABILITY

9.1. Sterling Commerce shall be liable without limitation for damages caused intentionally or by gross negligence by legal representatives, managing employees, or other vicarious agents.

9.2. Sterling Commerce shall be liable for slight negligence only in the case of a breach of a material contractual duty, i.e. a contractual duty the fulfillment of which makes the proper implementation of the Agreement possible in the first place, the breach of which endangers the purpose of the contract and on the fulfillment of which the customer regularly relies. In this case, however, the liability of Sterling Commerce

shall be limited to the loss typically foreseeable at the time the respective License Schedule was concluded. Sterling Commerce shall not be liable for a slightly negligent breach of a non-material contractual duty.

9.3. The above limitation of liability shall apply to all claims of the customer for damages, irrespective of their legal basis with the exception of any liabilities arising from mandatory legal provisions (e.g. under Section 14 of the German Product Liability Act (ProdHG)) as well as liability for injury of life, body, or health.

9.4. The customer is obligated to take reasonable precautions to avert and/or mitigate damages. This includes in particular the duty to create regular backup copies (in temporal intervals, which are adequate considering the nature and proneness for errors of the area in which the software programs are used as well as the foreseeable scope of the damages in the case of data loss) as well as the adequate use of customary protection software against viruses and other malware.

9.5. Sterling Commerce's liability for data loss shall be limited to the typical restoration effort that would have occurred if the customer had regularly made backup copies pursuant to Clause 9.4.

10. CUSTOMER DATA

Sterling Commerce will keep confidential any materials and data which relate to the customer's business activity and which are provided to Sterling Commerce under this Agreement and are designated as confidential in writing by the customer. Sterling Commerce will make such materials and data exclusively available to those employees and other vicarious agents which need to know them during the ordinary course of their employment at Sterling Commerce. The contracting parties do not intend a professional processing or use of personal data by Sterling Commerce. To the extent that Sterling Commerce receives personal data of the customer as a potential incidental consequence of the contractual performance, Sterling Commerce will use such data only for the purposes of fulfilling this Agreement.

11. GENERAL PROVISIONS

11.1. The License Schedule(s) and the conditions defined herein constitute the entire agreement between Sterling Commerce and the customer and replace all previous written or oral agreements concerning the contractual object of the respective License Schedule as well as any confidentiality agreements concluded between Sterling Commerce and the customer. In the case of a conflict between the provisions of a License Schedule and a provision of these General Terms and Conditions, the corresponding provision of the License Schedule shall prevail. Any amendments or modifications of the Agreement, such as a waiver of the written-form requirement, require the written form to be effective. General terms and conditions of the customer shall not apply, even if the customer makes reference to them and/or if Sterling Commerce does not explicitly object to their application.

11.2. The customer may not assign any obligatory claims against Sterling Commerce to which it is entitled under a License Schedule or under these General Terms and Conditions (particularly, without limitation, claims under the maintenance agreement and discount entitlements) without the prior written consent of Sterling Commerce. Sterling Commerce has the right to assign all or part of all rights and claims under the Agreement to a company affiliated with Sterling Commerce within the meaning of Sections 15 et seq. of the German Stock Corporation Act (AktG) (as listed under www.sterlingcommerce.de/About/AGB/). The assignment becomes binding for the customer upon receipt of a corresponding notice.

11.3. The customer acknowledges that the Products are fully subject to export control provisions and export regulations, particularly the Export Administration Regulations issued by the U.S. Bureau of Industry and Security ("BIS"), ("Export Controls"). The customer undertakes to comply with the applicable export control provisions and will particularly not export or re-export the Products, related technical data, or, as the case may be, products derived from these, into a country/to a company or natural person or legal entity, which is/are subject to the restrictions and prohibitions under the Export Controls or

make them accessible to such countries/companies or person, or otherwise violate applicable law. The customer hereby declares that it is not such a company or person itself and that it is not affiliated with any such company or person within the meaning of Sections 15 et seq. of the German Stock Corporation Act. The Products may contain encryption technologies, which are the subject of special Export Controls by the BIS so that the latter supplement the usage rights of the customer. If the customer transfers the Products to a place outside of the EU after prior written consent of Sterling Commerce, the customer alone shall be liable for compliance with the applicable export control provisions and indemnifies Sterling Commerce against any responsibility and/or liability, which is based on such a breach.

11.4. If individual provisions are void or unenforceable, the legal effectiveness of the remaining provisions shall remain unaffected.

11.5. The parties undertake to replace a void or unenforceable provision with an effective provision which resembles the economic

result of the void or unenforceable provision most closely and corresponds to the purpose of the Agreement in the best possible way. This shall apply accordingly in the event the Agreement is incomplete.

11.6. The Agreement is subject to German law excluding the UN Convention on the International Sale of Goods. The courts at the seat of Sterling Commerce shall have exclusive jurisdiction over any disputes arising from or in connection with these General Terms and Conditions or a License Schedule, while Sterling Commerce shall have the right to sue the customer also at any other permitted place of venue.

11.7. This Agreement has originally been drafted in the German language. In the event of any conflict, incongruity or other inconsistency between the German language version available under www.sterlingcommerce.de/About/AGB/ and this English language translation, the German language version shall prevail.