1   Scope and validity

These General Terms and Conditions (GTC) of Sitasys AG (hereafter referred to as "Sitasys") govern the signing, contents and settlement of contracts with purchasers.

These GTC are binding for the offer submitted by Sitasys and apply to the appropriate order after the order has been placed. Conditions not included here but requested by the purchaser are valid only if expressly approved in writing by Sitasys.

2   Validity of the offer

Where offers stipulate no other expiry date, Sitasys remains bound by its offer for a period of thirty days from the date of issue of such offer.

3   Ordering

An offer is accepted if confirmed in writing by the purchaser. A contract is not formed until Sitasys has confirmed the purchaser's acceptance in writing.

Both parties must agree upon changes desired by the purchaser to the Sitasys order confirmation in writing.

4   Deadlines

Sitasys commits to adhere to the deadlines defined in the contract, provided that the purchaser for his part honours his contractual obligations (terms of payment, preliminary obligations etc.).

The deadlines are appropriately postponed if obstacles occur, which are beyond Sitasys's control, such as natural disasters, mobilisation, war, riots, epidemics, strikes or official measures.

The deadlines are also postponed if Sitasys does not receive the information required to execute the order in time, or if the purchaser subsequently makes modifications which lead to delays.

In the event of delayed delivery, the purchaser is not entitled to withdraw from the contract. Entitlement to compensation is determined according to Section 13.

5   Fulfilment of contract

5.1   Scope of delivery/service

The exact scope and performance of delivery or service are defined in detail in the contract and the attachments thereto. Amendments to the contract and the associated increased or reduced costs, or adjustments to the contractual deadlines, must be agreed in writing.

5.2   Software licences/ intangible property rights

Unless otherwise agreed upon, all programme elements (software) are delivered in the form of a user licence. After payment in full in the amount of the contract, the purchaser is entitled to the non-exclusive, non-transferable right of use of the software excluding the right to grant sub-licences. The content and scope of any rights of use to software and other intellectual property, of third-party manufacturers/licensors are determined by the license conditions of the particular third-party manufacturer/licensor. All other rights, in particular copyrights and all associated entitlements, remain unconditionally the property of Sitasys or – in the case of third-party software – of the relevant manufacturer.

The same applies to all other work produced in conjunction with this contract (evaluations, programme documentation and such, whether in written and/or machine-readable form).

By accepting a user licence, the purchaser undertakes to use the supplied programmes only on a designated central processor unit (CPU) and only for his own internal purposes and not to make the programmes available to third parties.

Sitasys products may as separable components incorporate open source software ("open source components") subject to separate license terms which are identified in the relevant license information or in the appendix to the contract. Any and all open source components contained within the software are not licensed pursuant to the contract, but instead licensed pursuant to the terms of the applicable licenses.

5.3   Place of performance

Unless otherwise agreed upon, the place of performance for Sitasys and the purchaser is the Sitasys headquarters in Langendorf.

If Sitasys has also taken on the responsibility for the assembly and installation respectively, the place of installation will be regarded as the place of performance only with respect to the obligations associated with the installation.

5.4   Title and risk

Unless otherwise expressly agreed upon, the title and risk are transferred to the purchaser at the time of delivery (EXW Incoterms 2010).

6   Obligation to cooperate

The purchaser is required to cooperate in the performance of a contract. In particular, the purchaser must make an adequate number of suitably qualified personnel available to timely perform all the services which he is required to perform in connection with a contract and to give Sitasys the information required at the appropriate time. The training of purchaser's personnel, which might be necessary, is the responsibility of the purchaser. The purchaser undertakes to provide the information and documents needed for the services of Sitasys, self-dependently, timely, completely and correctly.

If Sitasys works on the purchaser's premises, the latter will make suitable work areas and office services available and provide Sitasys staff with the necessary access to the computer and communication systems, including both hardware and software, to his own personnel responsible for the performance of services and to documentation and other material of the purchaser to the extent that this is required by Sitasys for the provision of its services. Further obligations of the purchaser to cooperate may be stated in the offer or individual contract.

In the event of failure by the purchaser to make services, information, materials, test data or access authorisation to systems and requisite work areas etc. available in compliance with the contract, Sitasys is entitled to adjust its remuneration appropriately, in particular for fixed prices or price estimates. Agreed performance dates will be suitably extended accordingly.

7   Prices and payment terms

7.1   Prices

Unless otherwise agreed upon, all prices are quoted strictly net in Swiss francs (CHF) plus value added tax and with adjustment for inflation. Adjustments for inflation will be made on the basis of the Swiss national consumer price index, and in particular the partial index for "private services." The starting point is the index at the time of the offer. Other price changes are possible by mutual written consent.

7.2   Terms of payment/default

- Unless otherwise agreed upon, the purchaser must settle every invoice from Sitasys within 30 days of the invoice date according to the contractually agreed upon payment schedule.
- Payments must be made by the purchaser even in the event of warranty claims or if deliveries or services are delayed for reasons for which Sitasys cannot be held responsible.
- If the purchaser defaults on the agreed payment dates, he will be obliged to pay interest on arrears from the due date without a reminder. The interest rate corresponds to the usual rate of interest imposed at the purchaser's domicile but at least 5% above the prevailing bank rate set by the Swiss National Bank. Sitasys reserves the right to claim additional compensation.

8   Reservation of title

The delivered items remain the property of Sitasys until the agreed price has been paid, including all additional costs and interest. Up to this point they may neither be mortgaged, sold nor leased without approval. If needed, Sitasys is entitled to enter its reservation of title in the property register at the purchaser's domicile. Furthermore, the purchaser agrees to inform Sitasys immediately in writing of any change in domicile or business address or if third parties lay claim to the delivered items subject to the reservation of title.

9   Acceptance

9.1   Acceptance test

In the event of work performances, Sitasys will provide the purchaser with evidence of completion of the work in an acceptance test. For definable and independently usable parts of the work, Sitasys may require the performance of partial acceptance tests. In that case, the entire project work will be deemed accepted based on the last partial acceptance (final acceptance). Partial acceptance tests, which have already been performed, will remain unaffected by the outcome of the final acceptance test.

9.2   Readiness for acceptance

After completion of the performance, Sitasys will declare readiness for acceptance to the purchaser. At the latest one week after the receipt of this declaration, the purchaser will perform the acceptance test.

9.3   Fault classes

The following fault classes are stipulated for acceptance:
Fault class 1
Use for the agreed purpose (economically reasonable use) is impossible or restricted in an unacceptable manner by such faults.
Fault class 2
Use for the agreed purpose is impaired.
Fault class 3
Use for the agreed purpose is not restricted or only insignificantly restricted by such faults.
The final allocation of these faults to one of the above fault classes will be made by mutual agreement between the parties. It must be indicated whether the fault constitutes a departure from the agreed specifications of performance or whether it is a request for a modification by the purchaser. Faults in fault class 1 are "significant deviations". Faults in fault classes 2 and 3 are "insignificant deviations". Insignificant deviations do not entitle the purchaser to withhold acceptance. They will be remedied by Sitasys under the warranty according to a timetable to be established jointly.

9.4   Declaration of acceptance

Acceptance is done by the purchaser by countersigning the acceptance report and in the following cases:
-       productive use of works services by the purchaser is regarded as acceptance in every case without requiring an acceptance report;
-       if the purchaser refuses, for reasons not attributable to Sitasys, to cooperate in an acceptance or to it carry out, Sitasys can allow a grace period of five working days. If acceptance does not take place within this period, the work performance will likewise be deemed accepted without requiring an acceptance report.

10   Confidentiality

The parties undertake not to misuse confidential information, technical documents, samples, process descriptions or data disclosed to them within the scope of the contract, or to divulge these to third parties or permit access in any way whatsoever.

11   Warranty

11.1   General

Legal warranty provisions apply to the extent that these terms of business do not depart from them. In respect of products and software made by third parties, different warranty provisions may apply. The purchaser accepts the warranty requirements of the manufacturer concerned.

11.2   Extent of warranty

Sitasys exclusively warrants that the products feature the properties as agreed upon in writing. No warranties above and beyond exist.
Damages or faults caused by improper use or treatment, improper or unauthorized intervention, natural wear and tear, defective maintenance or by other reasons for which Sitasys is not responsible, are not covered by the warranty. Warranties on operating materials and consumables, such as batteries and accumulators, are excluded. The warranty lapses also if the purchaser or third parties make modifications or repairs without the written consent of Sitasys or if the purchaser fails to take appropriate and immediate measures to minimise the damage or fault.
In particular, Sitasys cannot warrant that the programmes created by it can be used without interruption or fault in all combinations desired by the purchaser with any data, EDP systems and programmes or that the creation of other programme errors is excluded by the correction of one programme error.
The warranty does not cover programme errors, which are attributable to circumstances for which Sitasys is not responsible such as, in particular
-       manipulation of the programme by the purchaser or a third party;
-       influences of a third-party component or of machines and programmes not supplied by Sitasys;
-       operating errors by the purchaser or a third party.
If not otherwise explicitly provided in the contract, any and all open source components are provided on an "as is" basis, and Sitasys takes no responsibility for any use or distribution of any and all open source components, and expressly disclaims any and all representations and warranties, express, implied or statutory, with respect to any and all such open source components, including without limitation, any warranties of merchantability, fitness for a particular purpose, system integration, data accuracy, title or non-infringement of third party rights.

11.3   Warranty periods

The warranty period is twelve months from the date of delivery or (if installation or acceptance has been agreed) from installation or acceptance. Shorter periods are reserved for products and software of third party manufacturers.

11.4   Warranty claims

If no special acceptance procedure has been agreed, the purchaser must test the ordered object within 14 days of delivery. In the event of installation by Sitasys, this period begins after the installation has been completed. The purchaser must immediately notify Sitasys of any defects found. The fault report must be accompanied by appropriate detailed documentation.
If the purchaser fails to make the tests and/or give notification, the products shall be considered to be functioning without fault and the delivery as approved. If defects occur during the warranty period and are communicated in writing in a timely manner, they will either be remedied or the defective product replaced by an equivalent product at Sitasys's discretion. Cancellation or reduction is excluded. Replaced parts become the property of Sitasys.

The purchaser must allow Sitasys a reasonable period to remedy the defects.

On-site costs, packing and delivery costs will be borne by the purchaser. Material, work and return costs will be borne by Sitasys. In the event of software defects, Sitasys will bear the return costs of the corrected software version. All costs incurred on site (e.g. for installation, copying and downloading) are the responsibility of the purchaser.

Should it emerge while the defect is being remedied that no warranty claim in fact exists, all the costs will be charged to the purchaser according to the conditions established in Sitasys's currently valid service price list.

Warranty claims will be processed within a reasonable period on ordinary working days during Sitasys's normal opening hours. Extended warranty periods and extended standby or response times may be agreed upon in separate maintenance contracts. Existing hardware and software, which is reused or continues to be used for investment reasons is not covered by this warranty.

12 Maintenance

Unless a specific maintenance contract is concluded, Sitasys is not obliged to maintain the hardware and software.

If there is a service contract, Sitasys agrees to maintain the entire system or subsystem in accordance with the contractually defined terms.

The warranty for parts exchanged shall be governed by the maintenance contract.

13 Liability

The liability of Sitasys on any legal title whatsoever (including liability for auxiliary personnel within the meaning of article 101 of the Swiss Code of Obligations), for damage to property and pure monetary damage, proven to be caused by Sitasys as an immediate and direct consequence of the default (including any contractual penalties) is limited up to the greater of either 30% of all of the agreed total remuneration stipulated in the relevant contract or CHF 250'000. Sitasys excludes any liability for indirect or consequential damage, loss of profit, unrealised savings, additional costs incurred by the purchaser, claims by third parties etc. The liability for bodily injury (including death) is unlimited. Where the determining provisions of third party manufacturer stipulate more far-reaching limitations of liability, Sitasys will be liable for such products to the extent of the third party manufacturer's liability.

The purchaser will be responsible for ensuring adequate backup of the data and programmes stored on his equipment. Accordingly, Sitasys will not be held liable if, e.g. as a result of repair work, data or programmes present on equipment submitted for repair are lost or damaged.

14 Transfer of rights and obligations

Without the prior written consent of Sitasys, the purchaser is not entitled to transfer to third parties rights and obligations arising from the contractual relationship between it and Sitasys.

15 Invalidity

The fact that individual provisions are invalid does not affect the validity of the remaining provisions. The parties undertake to replace invalid provisions by new provisions, which approximate as closely as possible the economic purpose of the contract.

16 Contract termination

For important reasons, Sitasys is entitled at any time to terminate in writing the contract without incurring any liability for damages and claim the already performed services. In particular, Sitasys is entitled to terminate the contract

- if the purchaser's failure to fulfil a specific obligation represents a significant breach of contract;
- if the purchaser does not fulfil his obligation to pay the price or accept the goods within the time defined by Sitasys or declares that he does not intend to do so within the set time;
- if it emerges that the purchaser will not fulfil a significant part of his obligations due to a serious inability to fulfil the contract or settle payment or
- if it becomes apparent, even before the date set for fulfilment of contract, that the purchaser will commit a significant breach of contract.

17 Court of jurisdiction

The court of jurisdiction is **Solothurn (Switzerland)**. Sitasys is also entitled to take legal action against the purchaser at his domicile.

18 Applicable law

The legal relationship between Sitasys and the purchaser is governed by Swiss law. The General Terms and Conditions of Business are also subject to Swiss law.

The UN Convention on Contracts for the International Sale of Goods dated 11 April 1980 (Vienna Convention; CISG) is not applicable.