

## **General Standard Purchase Terms and Conditions**

### **Art. 1: General, Scope of Application**

1.1 The following exclusive General Standard Purchase Terms and Conditions (hereinafter: "GSPTC") shall govern the entirety of business relations - with the exception of License Agreements - between ChartWorld and its Clients. They shall apply likewise to all such future business relations, even if this should not be expressly stated otherwise.

1.2 ChartWorld will deliver digital data (hereinafter: "DATA") and will perform services only in accordance with this GSPTC. ChartWorld does not recognise purchase terms, general standard terms or other stipulations made by Client. This shall apply even if Client makes counter confirmations with reference to Client's own terms and conditions. Such terms and conditions shall not become part of the business relations even if ChartWorld remains silent thereon or effects delivery of DATA or performance of services. This GSPTC shall apply, as well, if ChartWorld effects delivery of DATA or performance of services without reservation of rights, although being aware of Client's terms and conditions at the variance with these GSPTC.

1.3 Deviations from this GSPTC are effective only if they have been agreed upon or confirmed by ChartWorld in writing. An oral waiver of this form requirement is not admissible.

1.4 All deliveries of DATA or performance of services will be stipulated in ancillary contracts (hereinafter: "Ancillary Contracts"), to be concluded exclusively on the basis of these GSPTC. Amendments or alterations to the Ancillary Contracts must be in writing. An oral waiver of this form requirement is not admissible.

1.5 ChartWorld retains ownership rights and copyrights to illustrations, drawings, calculations and other documents.

1.6 The contracting parties undertake not to poach or to aid third parties to poach current or former employees of the respective other party, neither during nor after performance of the Ancillary Contracts.

### **Art. 2: Conclusion and Terms of the Ancillary Contracts**

2.1 The Ancillary Contracts (e.g. Contracts of Purchase), even if entered into via Internet, shall not become legally effective unless ChartWorld confirmed Client's order (e.g. purchase order via Internet) in writing, by telefax or via electronic data transmission (e.g. e-mail).

2.2 In the event Client should order DATA via Internet, ChartWorld's acknowledgement of receipt of Client's order and - especially - Client's admission to download DATA shall be deemed to be a 'confirmation' for the purposes of Art 2.1. In this case, an explicit acceptance of such order by ChartWorld shall not be necessary.

2.3 Offers, prices quotas, delivery dates, time limits, product descriptions and other product condition data must be confirmed by ChartWorld in writing to become effective. Unless confirmed in writing, they are always, especially without being limited to, if made in brochures, advertisements, internet pages or other publications, nonbinding and subject to changes without notice.

2.4 If ChartWorld grants Client to update purchased DATA free of charge, ChartWorld shall be entitled to determine the period of time such Update Service shall be granted. Currently, the Update Service is granted for a one (1) year period. ChartWorld may abridge such period, especially, without being limited to, if Client is in breach with the Ancillary Contract or ChartWorld's General Standard License Terms and Conditions (GSLTC).

2.5 In the event Client asks ChartWorld to submit a recommendation of a concrete ocean route for a maritime navigation planed or carried out by Client, such recommendation shall be considered in any and all circumstances as an act of courtesy, made out of mariner's collegueship, free of charge, independent and unattached to ChartWorld's performances and therefore not creating, causing or constituting a contractual obligation whatsoever, especially, without being limited to, a contractual liability for defects, damages or losses. Art. 10 shall apply mutatis mutandis to claims given by operation of law. However, if Client heeds ChartWorld's recommendation, Client still shall act on Client's own risk.

### **Art. 3: Prices, Advance Payments and Setoff by Client**

3.1 The prices for the delivery of DATA and performance of services will be stipulated in the Ancillary Contracts. All prices are quoted ex business premises of ChartWorld plus value added tax at applicable statutory rate.

3.2 ChartWorld shall be entitled to increase regularly recurring user fees upon three months prior written announcement. Should such fees be increased by more than ten (10) Percent, Client may give notice within two (2) weeks, whether the respective contract shall be terminated upon expiration of the agreed upon period of cancellation; if no period of cancellation had been agreed upon, a period of three (3) months shall apply. In the event the respective contract had been cancelled by Client, the than agreed upon user fees shall remain valid until expiration of the period of cancellation. The fees may not be increased in intervals of less than six (6) months.

3.3 ChartWorld will charge for data carriers and other accessories at current list prices.

3.4 Costs for special services or performances of ChartWorld ascribable to incorrect or incomplete information provided by Client, to indicated defects not verifiable or to inappropriate handling of DATA by Client shall be borne by Client.

3.5 ChartWorld may demand advanced payment of the agreed upon price, especially, without being limited to, in the event of a purchase order via Internet.

3.6 If, in the aftermath of the conclusion of an Ancillary Contract, ChartWorld shall become aware of circumstances, which lead to reasonable doubts about Client's solvency, ChartWorld shall be entitled to refuse any performance of outstanding obligations unless a reasonable advance guarantee payment is made or security is deposited. If Client fails to respond within a reasonable period to a justified demand for advance payment or the deposition of security, ChartWorld shall be entitled to rescind from contract.

3.7 Client may offset his debts to ChartWorld only with counter accounts receivable which have been finally ruled upon in a court of law, which are ripe for judgement or which are not in dispute. The foregoing shall apply likewise to Client's rights of retention.

#### **Art. 4: Payment in Arrears**

4.1 Due dates for Client's payments are those agreed upon or, if not agreed upon and in any event at the latest, at the time risks passes accordingly to Art.6.

4.2 If Client's payments are in arrears, Client shall return upon ChartWorld's request DATA, goods and services supplied by ChartWorld without undue delay.

4.3 Furthermore, when Client's payments are in arrears, ChartWorld shall be entitled to charge interest as provided by statute.

4.4 If ChartWorld can prove exceeding damages and losses due to Client's payments in arrears, ChartWorld shall be entitled to claim these; ChartWorld's other rights and claims whatsoever shall not be prejudiced.

#### **Art. 5: Reservation of Title**

5.1 DATA and services covered by the Ancillary Contract shall remain property of ChartWorld until ChartWorld has received full payment of the agreed upon price. The foregoing shall apply to copies of DATA and to the provided accompanying materials and data carrier, as well. Any additional objects supplied by ChartWorld for test purposes (such as data carriers, accompanying materials etc.) shall remain property of ChartWorld in any event.

5.2 Client shall not be entitled to pledge or assign the DATA, goods and services covered by Ancillary Contract. If a third party should seize ChartWorld's property, especially in cases of attachment, Client shall make known to the third party that ChartWorld is owner of property and shall notify ChartWorld of the seizure without undue delay. Client shall be responsible for all caused costs, losses and damages.

5.3 Should Client be in breach of contract, particularly if Client is in arrears with payments, ChartWorld shall be entitled to repossess its property at Client's expense or, if such should be the case, to demand the assignment of Client's rights to recover possession from a third party. Neither repossession nor attachment of the property by ChartWorld shall constitute cancellation of the Ancillary Contract, subject to the proviso, that ChartWorld does not indicate or mandatory legal regulations dictate otherwise.

#### **Art. 6: Way of Delivery, Passing of risk, Insurance**

6.1 DATA, may, as Client chooses, be retrieved by Internet via "ftp-server" or may be dispatched on data carriers of agreed specifications.

6.2 If Client wishes to retrieve DATA by Internet via "ftp-server", ChartWorld will set up a personal internet account for Client. When full payment has been received by ChartWorld, ChartWorld will give Client a code number with which Client may access the DATA. Client is obliged to retrieve DATA via Internet within the time period permitted by ChartWorld. Risks of accidental destruction and accidental loss of the DATA shall pass to Client upon the beginning of the retrieval of DATA by Client.

6.3 If DATA are provided on specified data carriers, delivery will be made via a forwarding agent. Risks of accidental destruction and accidental loss shall pass to Client as soon as ChartWorld has handed out the goods to the forwarding agent. If previously, however, forwarding should be delayed or should become impossible due to circumstances beyond ChartWorld's control, risks of accidental destruction and accidental loss shall pass to Client as early as dispatch of the notification of readiness for forwarding.

6.4 ChartWorld shall be entitled to partial delivery.

6.5 Insurance will be taken out only at Client's expressed written request and Client's expenses, which shall be paid in advance.

#### **Art. 7: Time of Delivery, Delay in Performance by ChartWorld**

7.1 All delivery dates agreed upon are subject to the proviso that ChartWorld itself receives supplies correctly and on time.

7.2 ChartWorld shall be in arrears with performance only, if Client's written notice granting a grace period for performance of at least four (4) weeks had been of no avail. In this case, Client shall be entitled to compensation in the amount of 0.5 % for every full week ChartWorld being in arrears, up to a limit of 5 % of the invoice value of the deliveries and services which are in arrears.

7.3 Any other rights and claims of Client whatsoever shall be excluded, unless provided otherwise in this GSPTC.

#### **Art. 8: Client's Duty to Cooperate and Breach of such Duty**

8.1 Client undertakes to create free of charge the necessary preconditions for the delivery of DATA and performance of the services agreed upon in the Ancillary Contract.

8.2 Should Client fail to fulfil duties to cooperate, ChartWorld may refuse performance. However, if Client is in breach of such duties notwithstanding an appointment of a performance date and a warning of withdrawal by ChartWorld, ChartWorld may withdraw from the respective Ancillary Contract. In this event, ChartWorld shall cease to be bound to perform duties under the Ancillary Contract and, Client shall bear ChartWorld's expenses, damages and losses ascribable to the withdrawal of contract.

## **Art. 9: Liability for defects**

9.1 Client's strict compliance with inspection and notice obligations as set forth in Sec. 377 Handelsgesetzbuch (German Commercial Code) shall be precondition for any and all of Client's rights and claims in case the delivered DATA should be defective.

9.2 Current technology is such that faults in digital data, especially in digital maritime charts, can never be completely ruled out. Client hereby takes notice of and accepts this fact.

9.3 ChartWorld shall not be liable for defects of or ascribable to data which ChartWorld obtained from third parties. Data which ChartWorld obtained from third parties are checked by ChartWorld's in-house quality insurance service; ChartWorld assumes no further reaching liability or liability for defects which have remained undetected by such service.

9.4 Furthermore, ChartWorld shall not be liable for defects ascribable to incorrect employment, such as, without being limited to, the unauthorised alteration of or the unauthorised link to software, programs, program elements or data, or ascribable to the use of unsuitable resources or to an unusual operating environment.

9.5 In case and to the extent that the objects of the Ancillary Contract are digital maritime charts the following shall apply, as well: The sea-maps which were made to the basis for the digital maritime charts have been obtained by ChartWorld from the respective institutes or companies which produced the sea-maps. Any liability of ChartWorld shall be restricted to the best possible transfer of these sea-maps into the digital format according to the standard of technique at the time of transfer. It is pointed out that the data derived from such sea-maps and – as a consequence – the digital maritime charts as well have solely been prepared and processed with the accuracy possible from a point of view of science, technique as well as an economic and personal aspect at the time of their preparation. The digital maritime charts may not replace official products, like, by way of example, official sea-maps.

9.6 ChartWorld shall not be liable if the software applied by Client to process the delivered DATA should not process or should not longer process the DATA, for the reason that the usability of the delivered DATA had been limited by such software.

9.7 In case and to the extend of a DATA defect covered by ChartWorld's liability, ChartWorld shall be entitled to subsequent performance. ChartWorld may thereto choose – at its own discretion – either to remedy the defect or to supply new and defect-free DATA. If ChartWorld chooses to remedy the defect, ChartWorld shall bear all thereto necessary costs, especially without being limited to, costs of transportation, labour and materials, unless such costs were incurred because the defective DATA were replaced to another place than the agreed upon place of delivery.

9.8 In the event that ChartWorld declines subsequent performance without being entitled to or ChartWorld's subsequent performance had been of no avail or reasonably unacceptable for Client, Client shall be entitled to either claim damages as set forth in Art. 10 or to reduce the agreed upon price. Client shall not be entitled to any other or further claims or rights.

9.9 The period of limitation for Client's rights and claims in case of a defect of the delivered DATA or of the services

performed shall be two (2) years, whereas such period shall begin when risks passed accordingly to Art. 6.

## **Art. 10: Exclusion of Liability**

10.1 Except as stated otherwise in Article 7.2, Article 9 and the following provisions of this Article, ChartWorld's liability for damages and losses shall be excluded, whatsoever cause in law such liability may have and of whatsoever nature such damages and losses may be. Such exclusion of liability shall apply especially to, without being limited to, direct, indirect and consequential damages and losses, to claims based on fault prior to conclusion of contract ("culpa in contrahendo"; Sec. 311 subsec. 2 Bürgerliches Gesetzbuch; German Civil Code), to claims based on breach of contractual duties and obligations not being related to DATA defects, to tortious claims based on property damages and to claims for vain expenses.

10.2 ChartWorld shall be liable in accordance with German Law if Client claims damages and losses based upon ChartWorld's, its agents' or servants' intent or gross negligence. Inasmuch as ChartWorld is not held liable by Client for intentional breach of contract, ChartWorld's liability for damages and losses shall be limited to the reasonably foreseeable and typically incurable damages and losses.

10.3 Furthermore, ChartWorld shall be liable in accordance with German Law if ChartWorld is at fault with a breach of an essential contractual obligation ("cardinal obligation"). However, liability shall be limited in this case to the reasonably foreseeable and typically incurable damages and losses, as well.

10.4 ChartWorld's liability for faulty injury of life, body or health remains unaffected as well as its liability in accordance with product liability laws.

10.5 In case ChartWorld may be held liable, liability for the loss of Client's data shall be limited to the reasonable costs of recovery of such data which would have been incurred if a backup copy of such data would have been made at reasonable intervals.

10.6 Insofar and inasmuch as ChartWorld's liability is limited or excluded, such limitation or exclusion shall apply to ChartWorld's members of staff, employees, servants and agents, as well.

## **Art. 11: Assignment of Rights**

11.1 Client may not assign to third parties Client's rights and claims under the Ancillary Contract unless ChartWorld has given prior approval in writing.

11.2 ChartWorld shall be entitled to assign to third parties ChartWorld's rights and claims under the Ancillary Contract. ChartWorld shall furthermore be entitled to transfer the contractual relationship entered into by way of Ancillary Contract in its entirety with all duties there under to a third party.

## **Art. 12: Term of Contract, Cancellation**

12.1 Should the Ancillary Contract by its purpose be arranged for a definite or indefinite period of time, Client undertakes in the event of the expiration of the contract term, as well as in the event of cancellation of such contract to forbear using the delivered DATA and the accompanying materials upon termination of the Ancillary Con-

tract and to return the delivered DATA, data carrier and the accompanying materials free of charge without undue delay.

12.2 Furthermore, Client shall delete irrevocably any and all copies of the delivered DATA and the accompanying materials upon termination of the respective Ancillary Contract.

#### **Art. 13: Obligation to Limit Liability**

Should Client be entitled by law or by prior written approval of ChartWorld to sell the DATA, goods and services covered by Ancillary Contract, Client undertakes to limit Client's liability at least to the extent as set forth in Art. 9 and Art. 10 of this GSPTC.

#### **Art. 14: Duty to avoid unauthorized Access to DATA**

Client shall undertake all necessary precautions to prevent unauthorized access to the DATA, goods and services covered by Ancillary Contract, especially, without limitation to, by third parties. Furthermore, Client shall assure, that Client's members of staff, employees, servants, agents, workgroups, subsidiary companies and branch-offices obey such duty, as well.

#### **Art. 15: Place of Performance, Jurisdiction and Governing Law**

15.1 In the event, that a provision contained in the Ancillary Contract or this GSPTC should be or become fully or in part invalid or unenforceable, the validity or enforceability of the remaining provisions of the Ancillary Contract and this GSPTC as well as the validity or enforceability of the Ancillary Contract and this GSPTC itself shall not be affected or impaired in any way. In such an event, the parties shall undertake to replace in writing the invalid or unenforceable provision by a provision which best meets the purpose, particularly the aspired economic and legal purpose of the replaced provision.

Same shall apply in the event that the execution of the Ancillary Contract or this GSPTC should reveal an omission, which the parties would have avoided, if they would have perceived such omission.

15.2 Place of performance for all deliveries, services and obligations under the Ancillary Contracts or this GSPTC shall be the domicile of ChartWorld, unless stated otherwise in such contracts.

15.3 ChartWorld's principal place of business shall be the exclusive place of jurisdiction if Client has the status of a merchant pursuant to the Handelsgesetzbuch (German Commercial Code) or if Client should relocate Client's domicile or place of abode after conclusion of the Ancillary Contract out of the area of application of the Zivilprozessordnung (German Code of Civil Procedure) or if Client's domicile or place of abode should be unknown at the moment the action was brought to court. ChartWorld, however, shall be entitled to prosecute its rights and claims in Client's local court, as well.

15.4. The ancillary contracts and this GSPTC shall be governed by the laws of the Federal Republic of Germany without regard to conflict of law provisions thereof and without regard to the United Nations Convention on Contracts for the International Sale of Goods.

As of February 2009