Terms and Conditions of the Communardo Software GmbH for any delivery of the software "Communote"

Preamble/General

These are the Terms and Conditions of Communardo Software GmbH (hereinafter called supplier) for any delivery of the Communote Software (hereinafter called Software) per Download or any other data carrier.

The following offers exclusively address customers within their commercial or self-employed professional activities.

§ 1 Contract formation and applicable law

(1) The data contained in the internet presentation are subject to change.

(2) If you wish to purchase one of the software products presented, please complete the order form within the internet presentation and then click the "Confirm" button". Your order will then be shown to you again. Once all the details are correct and complete, then please click the "Confirm" button.

By sending the order, you are submitting a binding offer to buy.

 (3) You can save the submitted binding order, including these Terms and Conditions of Business, as a PDF document on a data carrier of your choice (e.g. on your computer's hard disk) by clicking the "save" button.

By clicking the "Print" button you can print the submitted binding order, including these Terms and Conditions of Business.

(4) After leaving the order level, your order can no longer be called up from the provider in the internet. The provider saves and uses the details thus sent to it for processing the desired purchase agreement. In particular, it sends the data, if required to process payment, to the specified credit card institution and to companies entrusted with collection.

(5) The provider shall confirm the order upon approval. Confirmation shall be sent to the e-mail address specified in the order form. As soon as this confirmation can be called up under the specified e-mail address, the contract has been concluded.

(6) As an alternative to purchasing via the online order process described in Point (2) to (5) you have the option of purchasing the respective software product by written order or by concluding a purchase agreement.

(7) An assurance is hereby given that an order will only be made in the pursuit of your commercial or self-employed professional activities.

The purchaser's terms and conditions of business do not apply.

§ 2 Object and form of delivery

(1) You receive the contractual software in an executable form (object code) as a download from the website www.communote.com together with the documentation released by the provider to this end.

(2) The software has the functionality specified in the documentation. You can already view this functionality documentation prior to contract formation in the internet presentation on the website www.communote.com.

(3) Delivery is carried out by sending a license code to the delivery e-mail address specified in the order form. Forwarding of the issued license code is not allowed, with the exception of the cases specified in § 4 (8).

(4) Software updates are also provided as a download on the website www.communote.com. Use of the software updates is subject to the existence of a valid update and support agreement (see §5) at the time of publication of the respective software update.

 (5) A hard copy of the documentation is not supplied. The documentation mainly consists of electronic documents.

(6) Installation of the software is not the object of the contract. This may be separately agreed with the provider. The provider's service conditions then apply to the installation.

§ 4 Rights of use

(1) For the free version, the provider grants you a non-exclusive, spatially-unrestricted right to use the software on a permanent basis. For software subject to charges, this right shall not be granted until the agreed one-off fee has been paid.

(2) One "copy" of the software gives the right to install one (1) instance on one (1) server and entitles a maximum of ten (10) users registered by name to use it simultaneously.

(3) If you want to use the software for more than ten users registered by name, more than one instance or one server, the right of use must be accordingly extended. For the extension of rights of use without renewed delivery of software the provider's separate price list applies to extension of the right of use. Subsequent extension of the right of use without renewed delivery is not accompanied by a new guarantee.

(4) Any usage beyond the contractually-agreed level, especially simultaneous use of software on a larger number of instances or servers or users registered by name per acquired software copy, is a breach of contract. In this event, you are obligated to inform the provider of any overuse without delay. The parties shall then try to reach an agreement on the extension of rights of use. For the period of overuse, i.e. until the conclusion of such an agreement or until overuse has ceased, you are obliged to pay compensation for the overuse according to the provider's price list. Four-year linear depreciation shall form the basis for calculating the compensation. If the overuse is not notified, a contractual penalty amounting

to three times the price of the enjoyed usage shall be due in accordance with the provider's price list.

(5) You are entitled to create back-up copies of the software and carry out daily data backups. The creation of additional copies beyond what is required for the contractual use, including back-up copies and data saving, is not allowed.

(6) You are not entitled to decompile, modify or process the software beyond the extent prescribed by law, i.e. unless this is necessary to create an interface to other software products or to remedy faults in the software.

(7) Copyright and other proprietary notices within the software may neither be removed nor modified. They must be transferred to each copy of the software.

(8) Resale of the software (incl. license code) is only admissible for each software copy in its entirety; i.e. under surrender of own use of the remunerated copy, you are entitled to transfer the right of use to a third party by sending it the software and the license code in accordance with the existing agreements for use between the provider and you. You are obligated to inform the provider of the resale, surrender to the receiving third party all the material for the contractual software and to delete the license code on the data carriers remaining in your possession.

(9) If the third party to whom you forward the software is a service company (outsourcing) that carries out your data processing on your behalf, this service company is only entitled to use the software for your sole benefit. No contractual relationship is created between the provider and the third-party company by the transfer of the rights to use to this third-party company.

(10) The provider points out that the software is shipped with other open source software which is subject to its own licensing rights. Within the scope of the service performance for the client, the contractor shall provide software licenses in the framework of GPL ("general public license") or other open source licensing regulations ("open source software"), so that the client can use software within the meaning of this contract. Such open source software is specified in more detail in the corresponding documents and licensed in accordance with special open source regulations. If there are any contradictions between these regulations and regulations for open source software, the regulations for open source software in relation to open source software shall take precedence.

(11) In the case of an open source license, the performance guarantee is limited to the software transferred by the provider and does not cover the entire content. Owing to the specific nature of open source software, which is developed by a large number of persons outside the provider's company, the contractor does not accept any responsibility for any defects in title in the event of further development, forwarding or sale of the software.

§ 5 Update contract and additional services

(1) You may commission update and/or service performances in addition to the purchase of software pursuant to § 6 (1). The respective scope of performance is defined as follows:

Updates:

(2) Development by the provider continues after approval of a product release. Improvements and extensions are thus continuously carried out, which are available as software updates or new product releases. In this case, these updates and product releases are provided as a download.

(3) Information regarding the availability of updates is available on the product website www.communote.com.

Service performances:

(4) When ordering other service performances, ensure that the problem is described in detail and provide all the system information for the corresponding faults which do not fall under § 7, and cooperate in a supporting capacity in solving the problem. Unless there are important reasons precluding this, provide the provider with data which is suitable for ensuring that the support staff can understand the problems.

(5) The support service can be used round the clock by e-mail. You should leave an enquiry in as much detail as possible, giving your support ID (accessible in the system administration of the software product), and will receive a reply from an expert in the support service team within the reaction time. The reaction time for incoming enquiries is a maximum of one working day. If more time is needed to process and deal with an enquiry, you will receive an initial message within the reaction time informing you of the status of the enquiry.

(6) The provider's support service supplies information by e-mail or telephone. If necessary, you are under obligation to give a direct extension so that swift communication can be ensured. It is up to the provider to select the means of communication for processing a support enquiry. A problem should as a rule be described in an e-mail and sent to the provider.

(7) The following services are not covered by this § 5:

- Maintenance work which becomes necessary through use of the software on a different hardware system or under a different operating system.
- Maintenance work following intervention by the contractual user in the program code of the software or the databases.
- Repairs
- Recovery of data
- Data back-up
- Maintenance work relating to cooperation of the contractual software with other computer programs which are not the subject of this § 5.

(8) The provider is not responsible for outside products and the services of third-party providers. Should the contractual user wish to make use of the excluded services specified in § 5 (3), they shall be remunerated separately according to time spent.

Extension:

(9) Upon purchase of the software product and payment of the purchase price, you initially receive update and service performances for a period of one year. To make use of updating and service performances beyond this period, an extension of the update and service performances is required based on these terms of contract according to the currently applicable price list. Extension may be carried out under www.communote.com by applying the ordering process described in §1.

(10) Extension of the update and service performances must always follow on immediately after the last valid period for an existing update and service contract. If the extension is acquired after the last valid period has expired, the extension period begins retroactively starting from the day after expiry of the last valid period.

§ 6 Remuneration

(1) The prices specified under www.communote.com are based on the number of users registered by name. Prices are exclusive of the statutory value added tax.

(2) It is also possible to test the software product without a license code with the full range of functions. The test phase is limited to three months. At the end of the test phase further free use of the software product is limited to 10 users.

(3) The provider reserves the right to the contractual items up until full payment. The provider is especially entitled to prohibit further use of the software if it withdraws from the contract, e.g. due to payment default by the customer, and demand the surrender of all copies or, if surrender is not possible, their deletion. Should a third party gain access to the reserved item prior to full payment of the contractual software, you are obligated to inform this third party of the provider's reservation and inform the provider immediately in writing of the third-party access.

§ 7 Defects of quality and title

(1) You receive the software free of defects of quality and title with the software package or the download.

(2) A defect of quality exists if the software is not suitable for use as described in the documentation which is contained in this internet presentation and is supplied or downloadable.

(3) A defect of title exists if the rights required for the contractually prescribed use have not been effectively granted after surrender of the software.

(4) Claims due to defects of quality and/or title shall regularly become statute-barred within 12 months. If the provider has willfully concealed the defects of quality, the limitation period for claims due to this defect is three years. After expiry of the limitation period, payment of the remuneration may be refused to the extent that you are thereto entitled due to cancellation or a reduction.

(5) The limitation period shall commence as soon as you have received the necessary code for the download.

(6) You are obliged to report any defects that occur immediately after their detection and to report them to the provider in writing as soon as possible. In doing so, you should, where possible, also specify how the defect manifests itself and its impact and the circumstances in which it occurs.

(7) If defects are reported to the provider during the term of the limitation period, the provider shall provide subsequent performance free of charge.

(8) Within the context of the subsequent performance, you will again be supplied with the corrected software in the agreed manner. No fault analysis or rectification is carried out on your system on-site. Should you already have created your own data within the framework of the software, the software offers you the chance to store this data separately and then install it again with minimum effort after reinstalling the software. Correction of software equipped with your own information would cause the provider an unreasonable amount of effort. It may only be demanded on an exceptional basis if, owing to the reason for the software defect, the information configured in the software cannot be stored separately and reinstalled and the provider can still be reasonably expected to make this correction. The provider shall bear the expenses incurred within the scope of subsequent performance, especially transport, traveling, labor and material costs. You remain personally responsible for the installation. The provider shall especially not carry out the installation of software on site as part of his obligations with respect to defects of quality or title. Insofar as the program is modified within the context of subsequent performance the provider shall make the necessary documentation adjustments free of charge.

(9) After the abortive expiry of a deadline for subsequent performance set by you, you may withdraw from the contract or demand a reduction of the purchase price and compensation instead of performance or the reimbursement of futile expenses.

(10) Establishing a time limit is not necessary if

      a) the provider refuses both types of subsequent performance, even if he is entitled to do so due to the costs incurred thereby or

      b) the subsequent performance is impossible or

      c) the subsequent performance is unacceptable to you or

      d) the subsequent performance was unsuccessful.

Subsequent performance shall be deemed to have been unsuccessful after the abortive second attempt, unless this involves in particular results due to the type of software or the defect or the other circumstances.

(11) You are not entitled to withdraw from the contract if the defect is negligible. In this case you can also not demand compensation in place of the full performance.

(12) In the event of withdrawal, any uses enjoyed shall be reimbursed. The compensation for use shall be calculated based on four-year linear depreciation of the purchase price.

(13) As a result of the reduction, the purchase price shall be reduced by the amount by which the defect decreases the value of the software, based on the purchase price. The value at the time of contract formation shall apply. If necessary, the amount shall be calculated by making an estimate. In the case of reduction the amount already paid in excess of the reduced purchase price shall be reimbursed.

(14) Should it transpire that a reported problem is not attributable to a software defect, the provider shall be entitled to calculate any costs incurred to analyze and rectify the problem according to the price lists for the provider's services if you can be accused of intent or gross negligence.

(15) The warranty shall cease to apply if changes have been made to the software without express written consent or if the software is used in a way other than in the prescribed manner or software environment, unless you can prove that these facts are not connected to the fault which has occurred.

§ 8 Limitation of the amount of compensation

(1) The provider shall be liable for compensation on any legal grounds limited in amount according to this § 8.

(2) The provider shall be liable for damage he causes on any legal grounds up to a sum of EUR 1,000,000 unless it is based on the loss of life, personal injury or illness or grossly negligent or intentional breach of duty.

(3) Irrespective of the amount, the liability also applies to damage attributable to serious failure by the management of the provider to provide proper organizational channels and to damage caused by the lack of a guaranteed quality.

(4) In the case of the infringement of essential contractual obligations, the provider shall be liable, if none of the cases specified in 8 (2) – 8 (4) apply, limited in terms of the amount to the contractually typical foreseeable damage.

(5) The liability shall be limited in the case of a negligent breach of duty by the customer or its agents to 50% of the damage, insofar as the contractually typical, foreseeable damage is covered by the sum of this amount and the provider is not guilty of grossly negligent conduct.

(6) Any further liability for compensation is excluded; in particular, liability without negligence is excluded.

(7) Liability according to the Product Liability Act is not affected.

(8) If the damage is attributable to negligence by both the provider and the customer, the customer shall be liable for his contributory negligence.

(9) The customer is responsible for backing up his data regularly. In the case of data loss which is the fault of the provider the provider shall therefore be liable solely for the costs of duplicating the data from the back-up copies to be created by the customer and for the recovery of data which would have also been lost if the data had been backed up properly.

§ 9 Final provisions

(1) The law of the Federal Republic of Germany applies. The standard UN Convention on Contracts for the International Sale of Goods (CISG) is excluded. This choice of law only applies to consumers who do not conclude a contract for professional or commercial purposes, unless the protection granted by mandatory provisions of the law of the country in which the consumer has its habitual residence is withdrawn.

(2) If the customer is a business person, legal person under public law or a fund under public law, the sole place of jurisdiction for all disputes arising from this contract is Dresden/Germany. The same applies if the customer does not have a general place of jurisdiction in Germany or its domicile or place of habitual residence is not known at the time when legal proceedings are instituted.

(3) The customer may only offset against claims of the provider with claims which are undisputed or have been finally established in law.

(4) Any modifications and amendments of this contract must be in writing. This also applies to amendments of this provision.