

costdata GmbH General Terms and Conditions (GTC)

1. Preliminary note and structure

- 1.1 costdata GmbH (hereinafter referred to as **costdata**) provides its customers with specialised services in the area of product and service costing. This includes the following individual services: Providing cost databases and providing cost software and associated services, such as installation, customisation, updates, maintenance, training and data research. In addition, costdata performs various consulting services for its customers, such as product cost analysis.
- 1.2 These costdata GTC consist of the following four parts:
- A. General part of the GTC
 - B. Special terms and conditions for licensing software and using the cost database
 - C. Special terms and conditions of service
 - D. Special terms and conditions for work contracts
- 1.3 The specific provisions in Parts B to D follow the general provisions of Part A.

A. General Part of the GTC

2. Scope and amendment of the GTC

- 2.1 All business relations costdata has with a customer are exclusively subject to these terms and conditions. The customer's deviating terms and conditions shall not apply unless costdata expressly agrees to them.
- 2.2 costdata is entitled to amend or add to the terms and conditions at any time, including with effect for contracts under way, subject to a reasonable notice period. The customer has the right to object to the amendment or addition. If the customer does not object within six weeks of receiving notification of the changes, the amendments or additions will take effect. costdata informs the customer about the possibility of objection and the objection period together with the change notification.

3. Contractual content

- 3.1 Offers from costdata are always binding, unless described as non-binding.
- 3.2 A contract is concluded with the acceptance of the offer.
- 3.3 Amendments and additions to a contract require at least a written form. Amendments and additions must be expressly marked as such, and approved by the customer and costdata. No additional verbal agreements can be made.

4. Terms of payment

- 4.1 The respectively agreed prices apply. The prices are plus VAT, the valid rate of which is calculated by costdata and shown separately on the invoice.
- 4.2 All payments are to be made to costdata, without deduction, within 14 days of receiving the invoice. The presence of the credit in costdata's account is decisive in determining compliance with the deadline. In individual cases, different terms of payment can be negotiated and agreed (see 3.3) according to the respective offer.
- 4.3 The customer is not entitled to the set-off of claims that are disputed or not legally established. The same applies to the customer's right of retention insofar as it is not based on the same contractual relationship. Assigning or pledging claims from the contractual relationship between the customer and costdata to third parties is only permitted with the agreement of the respective other contracting party.
- 4.4 The customer must assert any objections against costdata's invoices in writing within 14 days after receiving the invoice from costdata. After the deadline, objections can only be asserted if the customer was prevented from observing the deadline through no fault of their own.

5. Customer's obligation to cooperate

- 5.1 The economic success of costdata's activities also depends on whether and to what extent the customer participates in costdata's services. The customer is prepared for this.
- 5.2 Unless otherwise stipulated in the individual contract, the customer shall
- 5.2.1 support costdata, to a reasonable extent, in the execution of the contract,
 - 5.2.2 check, on its own initiative, that costdata's services are compatible with its IT systems, and only use costdata's products on systems that meet costdata's system requirements,
 - 5.2.3 hand over/send to costdata all information, templates, documents or data required for the execution of the contract,

- 5.2.4 grant costdata access to premises and equipment, as well as contact with employees, insofar as this is necessary for the execution of the contract, and will in each case name a contact person for organisational questions and a contact person for technical questions,
- 5.2.5 inform costdata about safety regulations and rules for occupational health and safety relevant to the execution of the contract,
- 5.2.6 keep the latest data and software versions, as well as the associated documentation,
- 5.2.7 coordinate and prepare the necessary times or meetings with costdata for the execution of the contract,
- 5.2.8 test all services, and in particular software, for their own use, in an IT testing environment for their intended purpose, before using them operationally, and
- 5.2.9 carry out regular backups, at least daily, and ensure they are stored carefully.

6. Material and legal defects and liability

6.1. Software, data, and purchase licences and work contracts

- 6.1.1 The customer must immediately inspect any items delivered by costdata (including software and data) for obvious defects. If they do not report obvious defects to costdata immediately in written form, the warranty claims for the unreported defects expire.
- 6.1.2 If a defect (which the customer will describe as precisely as possible) occurs on new items delivered (including software and data) by costdata, costdata will either eliminate it within a reasonable period of time, or provide the reported items again, free of defects (full subsequent fulfilment).
- 6.1.3 If the subsequent fulfilment fails, in particular because the defect is not remedied despite at least two attempts at elimination, the subsequent fulfilment is unreasonably delayed or unjustifiably refused by costdata, the customer may, at their discretion, withdraw from or reduce the contract.
- 6.1.4 The customer can make no warranty claims due to errors caused by damage, incorrect connection or incorrect operation by the customer. They also have no claims for defects if they or a third party commissioned by them alters the delivered items (including software and data), rights or works, unless they can prove that the change does not significantly increase the cost of analysis or processing by costdata and the defect was present at delivery.
- 6.1.5 If the customer withdraws from the contract, they pay costdata a reasonable usage fee for the time until the withdrawal date. The usage fee is based on the agreed remuneration.
- 6.1.6 Claims for defects become statute-barred within one year from delivery or service provision. This does not apply to claims based on injury to life, limb or health caused by costdata's negligent breach of duty, or a wilful or negligent breach of duty by costdata's legal representative or vicarious agent, and not to claims based on costdata's grossly negligent breach of duty or due to a wilful or grossly negligent breach of duty by costdata's legal representative or vicarious agent.

6.2. No claims for defects in service contracts

costdata fulfils service contracts with the usual commercial care. Our customers cannot make warranty claims for service contracts.

6.3. Data quality

costdata strives for the highest possible degree of topicality, correctness, completeness and quality of the provided information, databases and input factors. However, costdata cannot guarantee absolute accuracy, and does not assume any liability for this or for any consequential damage. The customer shall therefore perform other checks on their results using the cost database and/or cost software before using it operationally.

6.4. Liability

- 6.4.1 The customer's claims for damages or reimbursement for wasted expenditure are based on the following subsections 6.4.x, including with regard to all other liability-limiting provisions in these GTC.
- 6.4.2 costdata shall be liable without limitation for damages resulting from injury to life, limb or health caused by costdata's wilful or negligent breach of duty or that of costdata's legal representative or vicarious agent.
- 6.4.3 In the case of other liability claims, costdata shall be liable without limitation only in the absence of the guaranteed quality, as well as for intent and gross negligence on the part of its legal representatives and vicarious agents.
- 6.4.4 costdata shall only be liable for slight negligence if an obligation is violated whose compliance is of particular importance in achieving

- the purpose of the contract (cardinal obligation). In the case of a slightly negligent breach of a cardinal obligation, the liability for a software licence or data usage contract is limited to 20% of the annual licence fee paid by the customer or 50% of the agreed remuneration for other services, and in each case only to such damages whose occurrence typically must be expected in the context of executing the contract.
- 6.4.5 Liability for loss of data is limited to the typical recovery effort that would have been incurred in the case of regular and risk-adequate backup copies, unless one of the prerequisites according to Items 6.4.2 to 6.4.4 is present.
- 6.4.6 Liability under the Product Liability Act remains unaffected.
- 7. Confidentiality/privacy and data protection**
- 7.1 The contracting parties undertake to treat all knowledge of the trade and business secrets of the respective other contracting party or its business partners, obtained in the course of the contract, in strict confidence, and not to use it for themselves or third parties, or pass it on to third parties.
- 7.2 Information or data is not confidential if
- 7.2.1 it is public, or publicly known at the time of the other party's disclosure,
- 7.2.2 it becomes public knowledge after disclosure to the other party, and this is not directly or indirectly due to the other party's behaviour,
- 7.2.3 the other party is legally or officially obliged to disclose it.
- 7.3 costdata is obliged to treat the documents provided to it with strict confidentiality, to secure them against access by unauthorised persons, and to neither duplicate them nor distribute them to third parties without the customer's consent, nor to otherwise make the content available to third parties. The customer must also ensure that within their organisation, the data/files/information/documents are only made available to the employees for whom it is strictly necessary.
- 7.4 Insofar as the contractual parties process personal data within the framework of the business relationship, they will comply with the statutory provisions on data protection and in particular the General Data Protection Regulation (GDPR) and the Federal Data Protection Act (FDPA), and inform and obligate their employees and any third parties involved.
- 7.5 The obligations of secrecy and compliance with data protection shall continue to apply throughout the term and, mutatis mutandis, after the end of the business relationship.
- 8. Contractual penalty**
- If the customer violates their confidentiality/privacy obligation, they shall pay costdata an appropriate contractual penalty, which may be determined by costdata. The contractual penalty shall not be less than €5,000.00 and can be reviewed by the competent court upon the customer's request. In the event of lasting infringements, each new quarter is considered a new violation.
- 9. Final provisions**
- 9.1 If individual clauses have not become part of the contract in whole or in part or are ineffective, the contract remains otherwise valid. Insofar as provisions have not become part of the contract or are ineffective, the contents of the contract shall be governed by the statutory provisions.
- 9.2 The exclusive place of jurisdiction – insofar as no exclusive legal place of jurisdiction exists – for all disputes arising from and in connection with contracts between the customer and costdata, as well as over the existence of such contracts, is Cologne. The place of fulfilment is costdata's place of business.
- 9.3 Only the law of the Federal Republic of Germany, excluding the UN sales law, applies to the business relationship.
- B. Special Terms and Conditions for Licensing Software and Using the Cost Database (Licence Agreement)**
- 10. Scope of application**
- 10.1 These special conditions apply exclusively to the provision of cost databases and cost software, including introductory presentation and the software description (hereinafter referred to as **software**).
- 10.2 Any installation, adaptation (customisation), further development, maintenance, instruction and training is not the licensor's responsibility. Such services are therefore provided solely on the basis of separately concluded contracts.
- 11. Rights of use and cease and desist obligations of the customer**
- 11.1 costdata grants the customer the non-exclusive, non-transferable right to use the software (including any patches, updates, upgrades, releases, etc. contractually provided during the term of the contract), limited to their own business and their own purposes. The customer is entitled to reproduce it exclusively due to technical requirements, and may in particular load the software onto the main memory and save it on a hard disk, as well as in a data backup. Productive use is permitted on the agreed local workstations (named user on single-user computer). Further scope (e.g. individual cost databases) and the duration of the right of use, as well as the remuneration, depend on the costdata offer accepted by the customer.
- 11.2 The customer may only fully transfer the granted rights of use to a "different owner" in the case of a transfer of business according to § 613a of the German Civil Code, and only after prior notification to costdata. The "different owner" is entitled to use the usage rights to the same extent.
- 11.3 The copyright/creator/authorship notices, trademarks, other legal reservations and serial numbers, as well as other features of the programme identification contained in the software, may not be changed or made illegible. The customer may not pass the software on to a third party. All other types of exploitation, in particular translation, editing, arrangement, reworking and distribution (offline or online) are not permitted. Any use for commercial purposes, particularly acquiring the software for the purpose of distribution, sale and other dissemination of the software, particularly in a programme collection, is expressly prohibited without prior written consent. This applies to both current and previous versions of the software.
- 11.4 The customer undertakes to refrain from using the software, and in particular the cost databases, outside the rights of use granted to them in the preceding items, and in particular from reproducing, distributing and/or making it (publicly) accessible to third parties. The customer shall also ensure, through appropriate technical and organisational measures, that third parties cannot obtain the cost databases (they are costdata's business/trade secrets). For this, the IT system provides protection, inter alia, with a managed firewall and by using a suitable role concept. These obligations also apply after termination of the contract, as long as the cost databases are in the customer's possession.
- 11.5 The customer further undertakes to refrain from using the knowledge from use of the software (the software's functioning or its data or calculation results) for the development and programming of a comparable competitor product for themselves or for third parties, and/or from forwarding it to third parties or promoting their distribution/sale of such software. This obligation is fully applicable even after termination of the contract, as long as the cost databases are in the customer's possession, and limited to two years after the complete deletion of the cost databases.
- 11.6 costdata may in extraordinary circumstances terminate the granting of rights of use if the customer uses the software outside the rights of use granted or, in particular, violates the obligations under the preceding items, or if the customer is more than one month late with the licence payment.
- 11.7 In the event of a breach of the obligations under item 11.4 and item 11.5, costdata may demand a **contractual penalty** from the customer according to item 8.
- 12. Trial period**
- 12.1 If costdata grants the customer a trial period, the regulations governing the rights of use (licence) in the preceding item apply accordingly. The remuneration for the duration of the trial depends on the respective offer.
- 12.2 The customer may use the software exclusively for trial purposes and only on one computer. Productive use by the customer is prohibited. Any use for commercial purposes, particularly using the calculation results for the purpose of distribution, sale and other dissemination, particularly in a programme collection, is also prohibited.
- 13. Delivery and scope of services**
- 13.1 The cost software consists of the programme, a brief introduction by presentation and the software description. costdata is not obliged to provide any further software documentation. In addition, cost databases are delivered, as agreed, with or without cost software.

- 13.2 The delivery takes place via download link, unless otherwise agreed.
- 13.3 costdata is not obliged to issue the software's source code to the customer or to deposit the source code for the customer.
- 13.4 Under the terms of the licence agreement, the customer has no claim to the provision of updates (including new versions or releases) that extend the scope of service and/or the functionality of the cost software. The customer can purchase such updates for a separate fee.
- 13.5 costdata always endeavours to keep the data up to date and to expand the content and scope of the data sets. It provides the customer with an update of the cost database data sets at least every three months, unless otherwise agreed. An update can only refer to individual modules of the cost database. Updating the data sets requires the use of the current version of the cost software.

14. Termination

Upon termination of the contract, for whatever reason, the software must be completely deleted. The customer undertakes to assure costdata of the deletion upon request and in writing, and describe the deletion in a comprehensible manner (e.g. explanation of the IT system, storage location, deletion with date, time, amount of data).

C. Special Terms and Conditions of Service

15. Scope of application

These special conditions refer exclusively to costdata's services towards the customer. According to the current service portfolio, these are the following: any installation support, customisation, further development, maintenance, support, briefing and training, as well as data research and individually commissioned consulting services. For all these services, costdata is obliged to provide - for lack of an express agreement to the contrary - not success, but work involving their best efforts.

16. Scope of services

- 16.1 costdata always provides its services within its business hours. These are from 9:00 am to 5:00 pm, Monday to Friday. They exclude public holidays in North Rhine-Westphalia, as well as Christmas Eve, New Year's Eve and Rose Monday (Shrove Monday).
- 16.2 The place of fulfilment is essentially costdata's place of business; system access may take place remotely. If the customer requests onsite work from costdata, or if such an assignment is necessary or expedient, the customer pays the costs for overnight stays, arrival and departure, as well as expenses according to documentary evidence or mileage. In individual cases, travel reimbursement can be arranged individually (see 3.3) and then depends on the respective offer. The remuneration for travel time also depends on the offer.
- 16.3 costdata provides its software-related services exclusively to customers who use an up-to-date version of the software or commission services to use the current software.
- 16.4 In the case of maintenance agreements, the parties agree on the following error classes and costdata's corresponding reaction

times within business hours and upon receipt of a qualified error message:

- 16.4.1 Error Class 1: significant errors that make general or limited use of the software impossible. costdata promptly initiates error analysis and immediately informs the customer about further action.
- 16.4.2 Error Class 2: errors that limit the use of the software. costdata arranges error analysis on the same working day and informs the customer about the further course of action no later than the next working day.
- 16.4.3 Error Class 3: Minor errors that do not or only insignificantly affect the software's usage and functionality. costdata analyses these errors as part of the preparation and programming for their usual patches, updates, upgrades, releases etc.
- 16.5 costdata will analyse the following errors, and correct them if necessary, only on the basis of separately agreed remuneration:
- 16.5.1 errors caused by interventions and incorrect operation by the customer or by third parties commissioned by the customer,
- 16.5.2 errors caused by hardware or software that do not meet the system requirements defined by costdata,
- 16.5.3 errors caused by the intervention of third parties or by force majeure,
- 16.5.4 errors caused by environmental conditions at the place of setup or installation, by faulty or non-performance of the power supply, by faulty hardware, or by other actions for which costdata is not responsible.

17. Duration and remuneration

The duration or service period, as well as the remuneration, depend on costdata's offer.

D. Special Terms and Conditions for Work Contracts

18. Scope of application

These special conditions govern the contents of the contract if costdata provides work services for the customer, i.e. has guaranteed a concrete performance in the offer (accepted by the customer).

19. Scope of services

The exact specification depends on the respective offer.

20. Acceptance

- 20.1 The customer shall declare their acceptance immediately after the handover and notification of readiness for acceptance by costdata (acceptance test), and perform a functional test for this purpose. If parts are subject to partial acceptance, the customer is obliged to provide partial acceptance upon costdata's request.
- 20.2 If the functional test shows that the work complies with the specifications, the customer immediately declares their acceptance of the work in writing.
- 20.3 The (partial) acceptance shall be deemed to have taken place if costdata has set the customer a reasonable period from the acceptance date, which is normally 10 working days, and the customer has not refused acceptance within this period, indicating at least one defect. At the beginning of the period, costdata will inform the customer of the importance of their conduct.