

General terms and conditions

General

1 Scope of Application

1. The general terms and conditions stated herein shall govern all business relations between Sereviso AG, Riedstrasse 1, 8953 Dietikon (hereinafter called Sereviso) and its customers. The terms and conditions become applicable as soon as a customer obtains services or products from Sereviso and form an integral part of every contract between Sereviso and a customer. They apply equally to any future business relations between the two parties without the need for explicit confirmation each time.
2. The customer expressly waives his own terms and conditions and accepts these terms and conditions in full. The use of own order forms by the customer will not void these provisions notwithstanding conflicting provisions on such order forms.
3. Any deviations from these terms and conditions are only effective if they are expressly agreed to in writing. Changes to these terms and conditions are possible at any time; a new version will be applicable to any contracts concluded after the new version comes into force.

2 Contract structure and conclusion

1. The contract between Sereviso and its customers consists of a contract document and these terms and conditions. The contract document may consist of an offer accepted by the customer or an actual written agreement. It contains commercial and technical specifications.
2. The contract between Sereviso and the customer shall be deemed concluded after the customer accepts an offer made by Sereviso or after both parties sign a separate written contract document. An offer may be accepted by conclusive action, namely if the customer accepts or utilizes Sereviso services.
3. Sereviso offers are valid for 30 days unless otherwise specified.

Performance, Obligation to Cooperate and Payment

3 Scope of performance

1. Sereviso shall render the services described in the contract document. Services not explicitly mentioned in the contract document are not part of the scope of performance and will be charged separately according to time and effort spent. Documents that are part of the offer (illustrations, brochures, etc.) shall only be relevant if they are referred to as binding by Sereviso.
2. Sereviso shall carefully and expertly fulfill its contractual obligations according to the contractual performance specification. Sereviso may use sub-contractors but will remain fully responsible towards the customer for the delivery of services.
3. Without express guarantee, deadlines for delivery, installation, and commissioning are indications only and not binding.

4 The customer's general obligations to cooperate

1. The customer shall ensure the fulfillment of any necessary obligations to cooperate in a timely manner, to the extent required, and at no cost to Sereviso.
2. The customer shall notify Sereviso in a timely manner regarding any stipulations regarding contract fulfillment. The customer shall provide offices and machines as well as competent contact persons required to deliver the services. If Sereviso has not been expressly charged with data backup, the customer is solely responsible for such backup.
3. Further obligations for the customer to cooperate, if any, will be defined in the contact document.
4. If the customer does not render a required obligation to cooperate, or does not render it in a timely manner or in an agreed manner, Sereviso shall issue a formal warning to the customer. Consequences arising from a breach of the customer's obligation to cooperate (such as delays, additional expenses, etc.) shall be borne by the customer.

5 Payment

1. The customer undertakes to pay the compensation for services provided by Sereviso as specified in the contract document. Such compensation does not include value added tax.
2. Invoices are due for payment within 10 days after invoice date without any deductions. After the period for payment has expired and the invoice is past due, the customer falls automatically into arrears without the requirement of an overdue notice by Sereviso. An annual interest rate of 6 percent shall be charged for late payments.
3. Sereviso may stop its delivery until all open invoices are settled if the customer is in arrears.
4. The customer is only permitted to offset invoices with claims that are acknowledged in writing by Sereviso or legally established.

6 Rights to intellectual property

1. All intellectual property rights to works created during fulfillment of the contract belong to Sereviso. The customer holds a non-exclusive right to use and exploit such results without limitations of time and place.
2. Pre-existing intellectual property rights remain with Sereviso or the third party lawful owner. The customer acknowledges the terms of use as well as the licensing terms of third party owners of intangible assets, especially where software licenses of third party manufacturers are concerned; Sereviso will provide such terms of use as well as licensing terms to the customer for information purposes.

Warranty and disruption of performance

7 Default

1. In case of non-compliance with a binding deadline due to impediments which are not the responsibility of Sereviso, said deadline shall be extended accordingly.
2. Should Sereviso be responsible for non-compliance with a binding deadline, the customer shall grant an appropriate extension period of at least ten work days for

related compliance. In case of non-compliance during said extension period the customer may insist on contract performance and grant further extension periods or withdraw from the contract if Sereviso is in default by more than 40 workdays in total. Any services (or parts thereof) already rendered according to contract shall be paid for if they may be utilized in a reasonable technical and commercial way by the customer. A possible withdrawal from the contract shall have no bearing on such services; they remain to be governed by the appropriate contractual provisions.

8 Material guarantee and warranty rights – third party products

1. Warranty for third party products (all hardware as well as third party software delivered by Sereviso separately or integrated in its services or products) is solely determined by the warranties granted by the respective manufacturers/providers or licensors. This applies to the scope of the warranty, the warranty period, the conditions for claiming the warranty and any other warranty rights of the customer.
2. Warranty rights for third party products solely pertain to Sereviso in that Sereviso shall claim such warranty from the manufacturer /provider or licensor on behalf of the customer. If the manufacturer /provider or licensor does not meet its warranty obligation voluntary Sereviso shall transfer the warranty rights to the customer for legal enforcement.

9 Material guarantee and warranty rights – Sereviso products

1. Sereviso guarantees that its products and services feature their warranted characteristics and are free from defects canceling or significantly impairing their suitability.
2. In case of a defect, the customer may initially demand rectification or replacement at Sereviso's option.
3. If rectification or replacement attempts fail due to the same defect, the customer may still demand fulfillment or demand a reasonable reduction in price, or withdraw from the contract in case of a substantial defect according to clause 9.6.
4. A substantial defect exists if products do not feature their warranted characteristics while utilized in a manner compliant with the contract or if such products are unusable for the customer due to defects.
5. The warranty shall be void if the customer modifies hardware or software or has hardware or software modified by a third party without being able to prove that the defect in question has not been caused by such modifications either totally or partly and that such modifications will not make the rectification of defects more difficult. The warranty shall also be void if the customer does not properly fulfill his obligations to cooperate according to clause 4.
6. Notices of defects must be filed in written form within the complaint periods stated under clause 13 for purchase agreements or clause 14 for work contracts; such notices must contain a comprehensible description of the symptoms of the defect. Deficiency claims by the customer shall be void if a defect is not registered on time.
7. Any customer claims arising from a defect shall lapse within six months after acceptance of the services or the installation, or after acceptance by the customer if such delivery occurred without installation.

10 Material Guarantee and Warranty Rights – Common provisions

Any warranties and rights arising from defects not expressly mentioned above shall be excluded to the extent permitted by law.

11 Warranty of Title

1. Sereviso warrants that it shall not breach any third party property rights with its products and services.
2. In case of a product or service or parts of it becoming subject to legal action due to breach of industrial property rights, or if in the opinion of Sereviso the possibility exists that such legal action becomes possible, Sereviso may give the customer the right to utilize the item in question while being indemnified against all liability for the breach of industrial property rights, to replace the product with another that will fulfill the substantial contractual obligations, to modify the product to ensure that it will no longer breach any intellectual property rights, or, if above listed possibilities are not reasonably and viably realizable, to take the product back and to reimburse the purchase price minus amortization based on a five year linear amortization.
3. If claims against the customer are made by third parties due to violation of property rights allegedly belonging to such third parties, Sereviso shall assume the defense at its own expense and assume any possible expenses and payment for damages imposed by the courts on the customer, if the customer (i) informs Sereviso without delay and in writing regarding the claim raised, and (ii) authorizes Sereviso to assume the defense, including negotiating a settlement, and assists Sereviso to a reasonable extent in these endeavors, and (iii) the third party claim is based on the intended use of the unmodified product or service breaching a property right existing in Switzerland or constituting unfair competition.

12 Liability

1. Sereviso shall be liable for culpably caused direct damage to the customer arising from the contractually agreed fulfillment of performance. Liability for indirect damages and consequential damages such as lost profit, additional expenses, additional payroll costs, unrealized cost savings, third party claims, data loss, etc. shall be excluded.
2. Sereviso shall not be liable for damages due to software faults in software not manufactured by Sereviso. Likewise, Sereviso shall not be liable for damages due to computer malware, provided that Sereviso in its area of responsibility has taken protective measures according to the current state of technology.
3. Liability is limited to the amount of actual loss incurred; however, it shall not exceed the amount of the annual remuneration under the contract in question.
4. Liability limitations pursuant to clause 10 shall not apply to personal injuries and likewise, if Sereviso has acted with willful intent or gross negligence or if such limitations are precluded by mandatory statutory provisions.

Special provisions for individual contract types

13 Special provisions for the delivery of goods and licenses

1. Provisions under this clause shall be applied if Sereviso delivers goods or licenses to the customer based on a purchase agreement.

2. Installation is not part of the scope of performance if not expressly stipulated and agreed upon.
3. The customer shall inspect the purchase object within 10 days after delivery. If the object is installed by Sereviso the verification period starts only after the installation has taken place. The customer shall notify Sereviso about identified defects in writing within this period of time.
4. Defects which despite due diligence are not discernible during inspection shall be reported to Sereviso in written form within 10 days after they have been discovered.
5. In case of a defect, the customer may assert his rights arising from a defect pursuant to clause 8.
6. The extent of permitted software use is based on the license provisions of the software manufacturer.

14 Special Provisions for the creation of works

1. In case of a special-order contract (Werkvertrag) to be performed by Sereviso, a joint examination shall take place before acceptance by the customer.
2. Sereviso shall invite the customer to this examination in a timely manner by indicating readiness for acceptance. A report regarding such examination and its results shall be drawn up and signed by both parties. Partial acceptance of an order shall be possible within a contractual framework. Unless otherwise agreed acceptance shall take place within 10 days after the indication of readiness for acceptance by Sereviso. If such acceptance is delayed by the customer beyond this period and if there is no written notice of defects within this period, acceptance shall be deemed to have taken place. Likewise, acceptance shall be deemed to have taken place if the customer starts to operate the delivered products or modifies them.
3. If the examination results in discovering insignificant defects, acceptance shall nevertheless take place upon completion of the examination. Sereviso shall rectify said defects and report this rectification to the customer.
4. If the examination results in discovering significant defects pursuant to clause 10.6 acceptance shall be postponed. Sereviso shall rectify said defects and invite the customer for a new examination. If acceptance is prevented a second time due to the same defect, the customer may assert his rights arising from a defect pursuant to clause 10.5 (fulfillment, or a reasonable reduction in price, or withdrawal from the contract in case of a substantial defect).
5. Defects which despite due diligence are not discernible during inspection shall be reported to Sereviso in written form within 10 days after they have been discovered.

15 Special Provisions for support services

1. The provisions under this clause shall apply in case of delivery of support services by Sereviso to the customer.
2. Sereviso shall deliver such support services with proper care. However, Sereviso cannot guarantee that the supported products may be utilized without interruption and error-free.
3. All service contracts with third parties for the customer's hardware and software shall be borne by the customer.

4. Support services by Sereviso shall be delivered during support time. Unless otherwise agreed, support time is deemed to be the time from Monday to Friday, 08.00 am – 12.00 am and 01.00 pm – 05.00 pm (excluding Sundays and official public holidays at the place where Sereviso is established). On request of the customer and for a surcharge in addition to regular fees Sereviso shall begin delivery of its services outside support time and also proceed with support work already begun. Surcharges are defined as follows:
 - a. Monday to Friday, 11.00 pm to 07.00 am: 50%;
 - b. Weekends / Holidays, midnight to midnight: 100%.

Miscellaneous

16 Confidentiality

The parties undertake to keep facts and data confidential which become known to them in connection with this agreement and which are neither evident nor publicly available, including any associated documents and data storage media. This obligation shall also be established for commissioned third parties. Analyses, summaries, and extracts created on the basis of confidential data shall be considered confidential information. In case of doubt any facts and data shall be treated confidentially. The confidentiality obligation shall be in force before conclusion of the contract and remain in force after termination of the contractual relationship or after fulfillment of the services agreed upon. The confidentiality requirement is subject to legal disclosure requirements.

17 Severability clause

If any term of this Agreement is to any extent invalid or incapable of being enforced, such term shall be excluded to the extent of such invalidity or unenforceability; all other terms hereof shall remain in full force and effect. The invalid or unenforceable term shall be replaced by a valid provision meeting the economic purpose of the invalid or unenforceable term as closely as possible.

18 Written form

Agreements between the parties (offers, approvals, orders, etc. as well as modifications and amendments of such agreements) shall only be valid if set down in writing.

19 Applicable Law and Jurisdiction

1. The agreement is subject to Swiss substantive law.
2. The provisions of the United Nations Convention on Contracts for the International Sale of Goods, 11 April 1980 (Vienna Convention), shall not apply hereto.
3. Sereviso's place of business shall be the sole place of jurisdiction.