

Terms and Conditions for License, Maintenance and Hosting of the iX NET Internet Shop System

Preamble

imos has developed a standardized Internet shop system called imos NET, which it makes available to the customer for the duration of this contract.

The Internet shop system consists of the components shop system and server system and is operated under the domain of imos. The website for downloading the client is operated under the customer's domain.

The shop system is a modularly structured online software solution for product configuration, planning, and ordering of furniture and items over the Internet. The shop system is configured for the customer through the modules according to the imos price list. The specific configuration can be found in the order documents.

The server system is the hardware and software architecture on which the shop system is installed and maintained. This installation is operated by imos and supervised by qualified imos personnel to ensure continuous operability. imos provides the customer with capacities of the server system for their own use of the shop system as well as for the use of authorized third parties. The provision of the technology and its updating, as well as the associated work, are hereinafter referred to as hosting.

The parties shall refrain from doing anything that could adversely affect the reputation and name of the contracting partner.

1. Subject of the Contract

- (1) Upon payment of the license fee for the shop system, the customer acquires a simple, perpetual, and non-transferable right to use the software.
- (2) The software of the shop system is only functional in conjunction with the server system. Sufficient capacities on the server system are provided to the customer for this purpose.
- (3) Special programming, which is developed as extensions to the shop system at the customer's request, is excluded from the maintenance of the shop system. Adjustments to the special programming, which are necessary due to the further development of the standard systems, are chargeable and will be billed based on the effort.
- (4) The use of the shop system is limited to the customer, who offers their products in the shop system under their own name and on their own account.
- (5) The use of the customer's shop system and the transmission of order and production data is limited to one production site.
- (6) In the case of an unlimited number of users, the right to use the server system for authorized third parties is limited to the customer's national borders.
- (7) The use of the iX NET Shop System strictly requires the conclusion and active maintenance of a valid iX CAD/CAM maintenance contract. The customer commits to maintaining such a maintenance contract for the entire duration of the use of the iX NET Shop System. If the iX CAD/CAM maintenance contract ends or is suspended for any reason, the authorization to use the iX NET Shop System will automatically expire as well.

2. Services Provided by imos

- (1) or use. The use particularly includes the uploading and downloading of data as well as the administration of the Internet shop. The customer receives a password for loading the content onto the server. The customer receives a simple right to use the provided server system for the duration of this contract.
- (2) imos ensures both the trouble-free operation and the functionality of the server system and the shop system.
- (3) imos particularly takes care of the maintenance and servicing of the shop system and the server system. The maintenance and servicing of the modules of the shop system listed in the order documents include the following services:
 - a. Updating new, further developed versions,
 - b. Support for the administrator via telephone and email.

- (4) imos provides the customer with new, further developed versions of the contract software for use after release. The new version of the shop system is then available for application. New versions may fix errors in previous versions and/or change and/or improve existing functions or include new functions. imos determines the content of versions at its own discretion. The customer has no claim to the inclusion of additional functionalities and program extensions of the supported products. New versions are particularly not separately offered additional functions of the contract software or a new development of the contract software with the same or similar functions on a different technological basis. Individual changes to the standard products delivered by imos and self-developed products by imos must be adapted for new versions at a cost. imos grants the customer the right to use the new version of the contract software of the shop system to the extent that they were entitled to use the original contract software through the contract and any usage extensions.
- (5) The customer will promptly examine the installed versions of the software for any defects. If the customer detects defects, they will notify imos immediately.
- (6) A test system will be provided to the customer upon request. The test system serves to check the provided software versions as well as the data provided by the customer. By accepting the test system, the customer confirms the correct, error-free functionality of the Internet shop system and the contained data.
- (7) If necessary and for an additional fee, further obligations, such as the granting of certain response or troubleshooting times, can be agreed upon separately in a Service Level Agreement.
- (8) The extent of the stored data is determined by the physical limits and the speed of the hardware and software used. If the server system reaches its capacity, imos is obliged to provide additional capacities for the server system.
- (9) The availability of the Internet shop system (accessibility) is set at greater than or equal to 99% per year. If the value of 99% is not reached within a month, the customer will notify imos. This does not include the defined or announced maintenance times (§ 4) as well as failures of networks of other operators or due to force majeure, which are not the responsibility of imos.
- (10) imos may restrict access to the services if the security of network operations, the maintenance of network integrity, particularly the avoidance of serious disruptions to the systems, software, or stored data, requires this.
- (11) imos is entitled to process the data transmitted by the customer to the extent necessary to fulfill the contractual obligations.

3. Customer Obligations

- (1) The customer is an economically independent entrepreneur. They buy and sell in their own name and on their own account. The customer is liable for all claims made by third parties in connection with the online shop, regardless of their nature.
- (2) The customer is obliged to run only compatible and error-free programs/content on the imos server. The customer is obliged to grant access to the online shop system only to registered users.
- (3) The customer will design the data or content on their website in such a way that it poses no danger to children or young people. Furthermore, the customer will particularly respect the copyrights of third parties and will not offer any other prohibited content, especially child pornography or right- or left-wing extremist propaganda. The customer will not introduce or refer to any content on the internet that violates legal provisions, the personal rights and protective rights of third parties, or good morals.
- (4) The customer is solely responsible for the content of the data. The customer will indemnify imos from all claims made by third parties against imos due to the legal inadmissibility of the content. imos will support the authorities' investigations in case of suspected criminal offenses or violations of other security regulations upon their order. imos generally does not check the legality of such official orders. Only in the case of obviously recognizable illegality of such orders will imos defend against them in an appropriate manner. In this case, there is a claim against the customer based on the legal provisions on agency without authority.
- (5) If the customer violates the above obligations and introduces illegal content to the internet, imos reserves the right to remove the data content. To avoid its own criminal or civil consequences, imos will temporarily block the content in the event of a sufficient suspicion of illegality, which may be indicated by the initiation of police investigations. imos will temporarily remove the content until the suspicion is dispelled, whereby the customer is always entitled to prove that the content is lawful.

During the temporary removal of the data content, imos may, at its discretion, offer the customer the opportunity to load other content onto the agreed storage space. A block will only occur without prior warning or setting a deadline for a statement if the illegality is obvious and/or there is imminent danger.

- (6) Moreover, imos is entitled to permanently delete or remove content if it is offensive, discriminatory, or otherwise legally questionable. This particularly applies to criminal content or content that violates good morals. This permanent deletion by imos is considered if there would also be a right to terminate without notice and if imos has previously warned the customer. However, a warning is not required if the breach of duty is so significant that further storage of the content is unreasonable for imos.
- (7) imos points out to the customer that there is a legal obligation for website providers to have an imprint. The customer must specify their postal address (street, postal code, and city) and their name as well as their email address in this imprint. Additional information obligations can be found in § 6 of the Telemedia Act.

4. Additional Obligations of imos

- (1) imos performs maintenance work on its systems for the security of network operations, maintaining network integrity, service interoperability, and data protection. For this purpose, it may temporarily suspend or restrict its services, taking into account the customer's interests, as far as objective reasons justify this.
- (2) imos will carry out irregular maintenance work, as far as possible, during off-peak times. If longer temporary service suspensions or restrictions are necessary, imos will inform the customer about the nature, extent, and duration of the impairment in advance, as far as this is objectively possible under the circumstances and the notification does not delay the elimination of already occurred interruptions.
- (3) imos reserves the right to carry out regular maintenance work on Fridays from 14:00 CET/CEST with prior notice, which may lead to restrictions on the system's accessibility or short-term unavailability of the online shop system.
- (4) imos must block illegal content immediately upon becoming aware of it.
- (5) imos must inform the customer about incoming complaints regarding the content of the pages they have posted online.
- (6) If the customer cannot delete intended content themselves, imos is obliged to delete it.

5. Intellectual Property Rights

- (1) As far as copyrights have arisen on the online shop system, these belong exclusively to imos.
- (2) The customer is obliged to inform imos of any known violations of the mentioned intellectual property rights.
- (3) imos is entitled to make its copyright on the online shop system recognizable to the user, including visibly placing the imos company logo or the logos of the used software components.

6. Remuneration

- (1) The customer pays imos the license fee for the shop system listed in the order documents for the services specified in this contract from the start of the contract. The claim for payment of the hosting fee agreed in the order documents (provision of the server system and its maintenance) arises from the installation of the shop system on the server system in coordination with the customer. Furthermore, the customer pays the maintenance fee for the shop system agreed in the order documents from the activation of the online shop system.
- (2) The maintenance fee for the shop system and the hosting fee for the server system are due on the first working day of the billing period. The remuneration for the license fees of the shop system and additional services are due within five working days from the invoice date.

7. Remuneration Rules for License and Maintenance Fees Based on User Numbers

- (1) The amount of the license fee and the maintenance fee for the shop system is determined by the number of registered users in the customer's online shop system, as fixed in the order documents. The scaling is done according to the price list attached to this contract. The verification of the customer's registered users is carried out by imos once a year.
- (2) If deviations in the average number of registered users from the contractually agreed number over the past 12 months are found, imos reserves the right to adjust the license and maintenance fees for the following billing period. The increase in the license fee for the shop system will be charged

to the customer after verification, and the customer is obliged to pay any additional amount within 5 working days from the invoice date. The maintenance fee for the shop system increases according to the scaling of the price list based on the registered users. The recalculation of the fee according to the price list will be invoiced by imos at the end of the respective agreed billing period, and the new fee will apply for the new billing period.

- (3) imos reserves the right to immediately recalculate the license fee and maintenance fee for the shop system according to the price list if there is a difference of more than 30% between the agreed license fee and the applicable license fee according to the price list.
- (4) The customer is in default without further reminder if the payments are not credited to the imos account by the agreed dates. In the event of default, the customer is obliged to pay interest at a rate of 8% above the base rate to imos, unless imos can prove a higher interest rate.
- (5) With regard to all payment claims, the customer's right to retention or set-off is excluded, unless the customer's counterclaims are undisputed or legally established.
- (6) imos is entitled to adjust the fee at the beginning of a billing period according to its current price list. imos will notify the customer of a change in remuneration at least three months in advance in writing. In the event of an increase in the fee by more than 10%, the customer is entitled to terminate the contract at the end of the current billing period within one month of receiving the increase notice.

8. Warranty Rights

- (1) imos warrants that the functionality of the online shop system is free from defects that significantly restrict or eliminate its usability for the intended use under this contract.
- (2) The extent of storable data is determined by the physical limits and the speed of the hardware and software used. A maximum of 1 TB of storage is available per shop system.
- (3) If imos's performance is defective, imos is entitled to remedy the defects. If this supplementary performance fails twice, the customer has the right to remedy the defect themselves and claim reimbursement of the necessary expenses or reduce the remuneration. Claims for damages and claims for reimbursement of futile expenses remain unaffected.
- (4) Withdrawal from the contract or a right to extraordinary termination of the entire contract is only considered if the continuation of the contractual relationship is unreasonable or a not insignificant or minimal breach of contract persists despite a warning or setting a deadline. A warning is not required if the breach of contract is so severe that a warning does not appear suitable to end the breach and/or restore trust. imos regularly has two attempts to remedy the defect before such an extraordinary termination of the contract.
- (5) imos is no longer obliged to provide a warranty if the customer violates the obligation to run only compatible and error-free programs on the system.
- (6) However, the customer is entitled to demonstrate and prove that the changes are not related to the occurred error and do not significantly complicate the analysis and correction of the error.

9. Liability

- (1) imos is liable for breaches of duty
 - a) in cases of intent and gross negligence by its organs and senior employees as well as its vicarious agents,
 - b) in cases of slight negligence, limited to the typical, foreseeable damage under the contract.
- (2) Liability for consequential damages, particularly for lost profits or damages claimed by third parties, is excluded unless imos is guilty of intent or gross negligence.
- (3) imos is only liable for data recovery according to the previously described differentiations if the customer has taken the usual and reasonable precautions for data backup and ensured that the data can be reconstructed with reasonable effort. In particular, the customer is obliged to take appropriate and state-of-the-art protective measures to prevent data impairment by computer viruses or similar phenomena that render data unusable.
- (4) Contributory negligence on the part of the customer is attributable to them.
- (5) Liability for guarantees, under the Product Liability Act, fraudulent behavior, and personal injuries remains unaffected.
- (6) The customer is obliged to report any damages in the sense of the aforementioned liability regulation to imos in writing without delay or have them recorded by imos so that imos is informed as early as possible and can possibly work with the customer to mitigate the damage.

- (7) The customer has no claim for damages if a service cannot be performed on an agreed date or if the start of a service is significantly delayed and the reasons for this are beyond imos's control.

10. Confidentiality Obligation

- (1) The customer undertakes to carefully protect the online shop system - insofar as it has been handed over - along with the user manual and other informational materials, as well as backup copies, from unauthorized access by third parties, including unauthorized employees.
- (2) imos must obligate its employees to maintain confidentiality regarding customer information obtained in the course of their duties and to uphold data secrecy. The customer will timely inform imos if particularly confidential data/information needs to be observed and subjected to special confidentiality, especially in the area of business and trade secrets.

11. Contract Duration and Termination

- (1) A minimum contract duration of 12 months is agreed upon. The contract start date is fixed in the order documents.
- (2) Each party may terminate the contract with a notice period of 3 months to the end of the contract duration. The termination must be in writing. If the contract is not terminated at this date, the contract duration is extended by 12 months each time. Here too, a notice period of 3 months to the end of the respective contract duration applies.
- (3) Each party is entitled to terminate the contract for good cause. Good cause for termination exists if, considering all circumstances of the individual case and weighing the mutual interests, the continuation of the contractual relationship until the agreed termination or until the end of the notice period is unreasonable. Prior to such termination, a warning is required unless success is not to be expected or the trust relationship is so severely disrupted that immediate termination of the contract appears justified.
- a. A good cause is particularly deemed to exist if the other party becomes insolvent, a petition for the opening of insolvency proceedings is filed against them and is not dismissed as unfounded, or the conduct of insolvency proceedings is rejected due to lack of assets;
 - b. if the other party breaches contractual obligations and this breach is not remedied within a reasonable period of five working days following a written request by the contractual partner. A warning or setting a deadline is dispensable if the continuation of the contractual relationship appears unreasonable due to the severity of the breach of duty, success is not to be expected, or immediate termination appears justified after weighing the mutual interests, whereby in the case of a defect, imos generally has the right to rectify twice. Immediate termination is generally not considered if this breach of duty is insignificant, so that immediate termination does not appear appropriate after weighing all circumstances.
- (4) imos is also entitled to terminate the contract without notice if the customer is in arrears with the payment of the fee for more than one month or a significant part of the fee. The assertion of further claims due to payment arrears remains reserved for imos.
- (5) For the customer, a further good cause exists if imos is unable to make the online shop accessible on the internet for more than five working days due to force majeure.
- (6) Termination must be in text form to be effective.
- (7) A refund of the paid license fees for the shop system to the customer at the end of the term or upon termination for other reasons is excluded.

12. Force Majeure

In the event that a party is unable to perform the owed service due to force majeure (especially war, strike, natural disasters, and power outages), it is released from its performance obligations for the duration of the hindrance. If imos is unable to fulfill a significant contractual obligation for more than five working days due to force majeure, the customer has the right to extraordinary termination.

13. Release of Programs and Data of the Shop System

- (1) At the end of the term or upon termination for other reasons, the customer has the option to receive the shop system on a data carrier for installation on a server other than the imos server system. The delivered software can be used without further fees to the same extent as on the imos server system. The installed modules and the number of registered users of the customer are decisive for this.

- (2) At the end of the term or upon termination for other reasons, imos will delete the entire installation (programs/data) on the server system and, at the customer's request, provide their data on a separate data carrier.

14. Data Protection

- (1) The parties undertake to comply with the applicable data protection regulations. The customer will particularly ensure whether they need to obtain consent from the affected persons for the transmission of data and obtain it if necessary.
- (2) imos processes personal data, especially data of authorized users as well as data processed in the context of order planning and disposal execution, as a processor within the meaning of Art. 28 GDPR.
- (3) To improve the software, the following information may be collected during the use of our software: operating system, version, frequency of imos function calls.

15. General Provisions

- (1) The customer's general terms and conditions do not apply, even if their inclusion is not expressly contradicted.
- (2) The customer may only transfer the claims and rights to which they are entitled under this contract to third parties with the prior consent of imos.
- (3) This contract contains all agreements made between the parties. No additional agreements have been made. Amendments and additional agreements to the contract must be in writing. Oral agreements require written confirmation.
- (4) This contract is exclusively subject to the law of the Federal Republic of Germany. The UN Sales Convention does not apply in cross-border transactions.
- (5) If any provision of this contract is or becomes wholly or partially invalid, the validity of the remaining provisions shall not be affected. Instead, the parties undertake to agree on a provision that comes closest to what was actually intended in place of the invalid provision.
- (6) The place of jurisdiction for disputes arising from this contract is the registered office of imos AG.