Article 1 Area of Application

(1) Our General Terms and Conditions of Business refer to the delivery of movable objects, the provision of software on a permanent basis and to other services based in each case on the Contract entered into between the Customer and us.

(2) Our General Terms and Conditions of Business apply exclusively; we recognise no derogating general terms and conditions of business, addenda, collateral agreements or terms and conditions of purchase of the Customer, unless we expressly agree in writing to the same. These Terms and Conditions apply even if we make delivery to the Customer without attaching awareness in knowledge of the Customer’s deviating terms.

(3) Our General Terms and Conditions of Business shall apply only to companies, legal entities under public law or special funds under public law.

Article 2 Quotations, Conclusion of the Contract, Quotation Documents

(1) Our quotations and cost estimates are without obligation. Pictures and details contained in catalogues or advertising have no binding effect – the description given in the confirmation of order is solely determinant for the characteristics of the goods. Coal Control reserves the right to undertake necessary technical modifications, even in the case of ordered goods.

(2) The Customer’s purchase order represents a binding offer which we can accept within two weeks by sending a confirmation of order, delivering the goods or handing over the software package.

(3) We reserve industrial property rights to pictures, drawings and other documents – particularly those described as confidential – that we send to the Customer. These may not be passed on to third parties without the consent of Coal Control.

Article 3 Provision of Software

(1) The rights of use are governed by the mandatory provisions of § 69a et seq, German Copyright Act (Urhbergesetz).

(2) The Installation Instructions printed in the documentation apply exclusively to the installation of the software. The Customer is under a duty to ensure that the system requirements (hardware and other software) needed for proper installation are met.
(3) The Customer may pass the software on to third parties only in its entirety as provided, i.e. the original data carriers including the documentation and with the simultaneous transfer of the rights of use of the same.

(4) It is not permissible to transfer the programme by copying it by any means whatsoever.

(5) In the event that the programme is given to third parties, all backup copies lawfully prepared by the Customer must be destroyed or handed over together with the software.

(6) The Customer is prohibited from renting out the software.

(7) If the Customer purchases the standard software, the Customer receives a non-exclusive right to use the software without time limit. Depending on the underlying Contract, the Customer is entitled to use the software on one computer only (single licence) or on several computers (network licence). The software is deemed to be used on one computer if loaded into the working memory (RAM) or installed on a permanent memory (e.g. hard disk).

(8) If the Customer has not purchased standard software, but customised software developed especially for the Customer, he may only exploit the same to the extent contractually agreed. The Customer may only further develop or modify the customised software to the extent permitted by the Contract. All rights of use required for the agreed use of the customised software we have developed are transferred to the Customer.

Article 4 - Prices and Terms of Payment

(1) Unless otherwise agreed, the agreed selling price is binding and applies "net, ex works" excluding packaging, freight, postage and value-assurance sums. Value-added tax is shown in the invoice at the statutory rate in application on the invoice issue date.

(2) If the price has risen by the time the service is provided as a result of a change in the market price or changes in the fees charged by third parties involved in providing the service, the higher price applies. If this price exceeds the agreed price by 20% or more, the Customer has the right to withdraw from the Contract. The right of withdrawal must be exercised without delay after notification of the higher price.

(3) The deduction of discount requires a special written agreement.

(4) Unless otherwise stipulated in the confirmation of order, the selling price is due for payment without deduction within ten days of receipt of the goods. After expiry of the aforementioned period, the Customer is in default of payment. The statutory provisions governing payment default then take effect.

(5) Rights of set-off are available to the Customer only if the Customer’s counter-claims are judicially confirmed as final and non-appealable or are undisputed or recognised by us. Moreover, the Customer is only entitled to exercise a right of retention if the counter-claim arises from the same contractual relationship.
Article 5 Period of Performance and Terms of Delivery

(1) The delivery periods specified are binding only if expressly agreed in writing.

(2) If we have given binding delivery periods, such periods are extended by any occurrences beyond our control, strikes, lockouts, war, power shortages, scarcity of raw materials or force majeure, for the duration of the ensuing delay. The same applies if the Customer fails to comply with any duties of cooperation.

(3) The manner of shipment shall be selected in agreement with the Buyer. Unless otherwise agreed, the Customer pays the costs of shipment, any ancillary costs and any additional costs for urgent or express shipments.

(4) The risk of accidental destruction and accidental deterioration passes to the Customer either at the time of handing over the goods to the Customer or, in the event of a sale by delivery, when the goods are delivered to the transport company, freight-forwarder or other person or institution responsible for shipment.

(5) In the event of delivery with erection or assembly, the risk passes to the Customer at the time of acceptance of the work.

Article 6 Liability for Defects

(1) In the event of a defect, we reserve the right to select the type of subsequent performance.

(2) The warranty period lasts one year.

(3) If delivery takes place without erection or assembly and if the assembly instructions we have supplied are defective, we are obliged to deliver defect-free assembly instructions only and we are obliged to do so only if the defect in the assembly instructions prevents proper assembly.

(4) We warrant that customised software that we have developed is free of proprietary rights of third parties and that, to our knowledge, no other rights exist which restrict or exclude its use. If the contractual use is nevertheless impaired by the proprietary rights of third parties, then, without prejudice to the rights accruing to the Customer, we have the right either to modify the contractual services to an extent reasonable for the Customer in such a way that such services cease to be within the protected area but simultaneously conform to the Contract, or to obtain the right to use the contractual services in conformity with the Contract without restriction and without additional costs for the Customer. Warranty claims of the Customer are, however, excluded if the latter modifies the software or allows it to be modified.

(5) Excluded from the provisions of Article 6 are claims to compensation for damages based on defects. Article 7 of these General Terms and Conditions applies in this case.
Article 7 Liability for Damages

(1) Our liability for breaches of contractual duties and tort is limited to intent and gross negligence. This does not apply in the event of harm to the life, physical injury or harm to the health of the Customer or to claims based on cardinal obligations, i.e. of obligations resulting from the nature of the contract and upon the violation of which achievement of the purpose of the contract is endangered, as well as in the case of compensation for damage/loss caused by default (Art. 286 of the German Civil Code (BGB)). In this event, we are liable for all degrees of fault. Where damages are concerned that are not the result of harm to life, physical injury or harm to the health of the Customer, we are liable only for typically arising damages.

(2) Liability in the event of default in delivery is 0.5% of the delivery value for each full week of default as a flat-rate amount of default damages, however, a maximum of 5% of the delivery value.

(3) The aforementioned exclusion of liability also applies to slightly negligent breaches of duty by our employees and agents.

(4) In the event that liability for damages, which are not due to of harm to life, physical injury or harm to the health of the Customer, is not excluded for slight negligence, such claims become time-barred within one year of the date on which the claim arose or, for claims to damages based on a defect, from the time of handover of the defective item.

(5) Where our liability to compensate for damages is excluded or limited, this also applies in respect of the personal liability for compensation of our employees, representatives and agents.

Article 8 Reservation of Title

(1) We reserve title to the goods until all claims against the Buyer have been met, even if the specific goods have already been paid for.

(2) The Customer must notify us without delay of any enforcement measures taken by third parties on the reserved-title goods while providing us with the documents required for intervention; this also applies in the event of impairments of any other kind. Independently thereof, the Customer must notify third parties from the outset of the existing rights to the goods. The Customer must pay the costs of intervention if the third party is unable to refund these costs.

(3) In the event of the resale or rental of the reserved-title goods, the Buyer already now assigns to us all receivables accruing to the Buyer from its own customers out of the aforesaid transactions as security until satisfaction of all our claims. In the event of the reserved-title goods being processed or connected with other items, we acquire immediate title to the item manufactured. This item is deemed to be reserved-title goods.

(4) If the value of the security exceeds our claims against the Buyer by more than 20% we shall, if the Buyer so requests and at our discretion, release securities accruing to us to this extent.
Article 9 Limitation Period for Own Claims

In derogation of § 195 Civil Code (BGB), our own claims to payment become time-barred after five years. § 199 Civil Code (BGB) applies with regard to the start of the limitation period.

Article 10 Form of Declarations

Declarations and notifications of relevance for legal purposes to be given to us by the Customer or third parties must be made in writing.

Article 11 Place of Performance, Choice of Law and Court of Jurisdiction

(1) Unless otherwise stated in the Contract, our registered office is place of performance and payment.

(2) This Contract is governed by the law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

(3) Exclusive court of jurisdiction for contracts with registered merchants or legal persons under public law or public-law special funds is the court of jurisdiction for our registered office.