

§ 1 Scope of Update Terms and Conditions, Order of Precedence of Regulations

- (1) All of ACROSS Systems GmbH's (hereinafter called 'ACROSS') business relations that are based on the development and provision of updates (= upgrades and new features) for standard software developed or programmed by ACROSS, are subject to the following update terms and conditions. These update terms and conditions do not apply to customer-specific software developments and adaptations, which are subject to separate agreements.
- (2) The latest version of these Update Terms and Conditions can be viewed and printed at ftp://ftp.across.net/legals/update_en.pdf. The latest version of the Update Terms and Conditions as of the date of contract apply.
- (3) ACROSS' General Terms and Conditions (T&C), which can be viewed and printed out at <http://across.net/en/terms-of-trade.aspx> always apply in conjunction with these Update Terms and Conditions. If these Update Terms and Conditions do not include certain regulations or fail to address a certain issue in full, ACROSS' T&C apply. The latest version of ACROSS' T&C as of the date of contract apply.
- (4) Any terms and regulations of the software license buyer (hereinafter called 'Purchasing Partner') that diverge, are hereby expressly rejected; other terms and conditions shall neither become the subject matter of this contract, even if ACROSS fails to expressly reject them.
- (5) All agreements between ACROSS and the Purchasing Partner shall apply in the following order of precedence, with respect to which the respective former document(s) shall take precedence over that/those listed subsequently:
 - Individual modifications and/or supplements to contractual agreements;
 - Individual-contractual agreements and especially ACROSS' offer;
 - ACROSS' special conditions (e.g. support, update, and license conditions (End User License Agreement - (EULA))
 - ACROSS' General Terms and Conditions;
 - System requirements defined by ACROSS;
 - Standards / DIN standards;
 - Legal rules.

§ 2 Fees, Invoicing Period, Due Dates

- (1) The fees due for the update services provided by ACROSS depend on the software purchased by Purchasing Partner. All fees are based on the non-discounted list price of the purchased software as advertised. A limitation to individual licenses or program parts is not possible.
- (2) The annual fee amounts to 9% of the list price valid at the time of purchase. Additional licenses purchased after taking out these Update Terms and Conditions are subject to an additional fee. The additional fee shall be calculated proportionally for the entire number of months remaining until the key date for final billing.
- (3) ACROSS also offers its software as ASP and SaaS solutions (Application Service Providing and Software as a Service respectively). Unless agreed otherwise, the monthly fee for SaaS solutions already include the update service fee.
- (4) The prices as of the date of order apply. These prices are subject to VAT at the prevailing rate, which is 19% at present, or as indicated in the provisions of the respective state law. There are no discounts.
- (5) The billing period shall constitute one (1) year and the fee is payable in advance. Fees are payable by transfer onto the account designated by ACROSS within 14 days of invoice receipt for the corresponding update service period.
- (6) ACROSS has the right to alter the fees at the end of the period of validity, provided it announces the alteration at least three months before the end of the period of validity. In this case, the Purchasing Partner shall be entitled to terminate the agreement by giving one month notice at the end of the validity period.
- (7) All offers and advertisements clearly state the fees and how they are calculated.
- (8) All payment particulars are governed by the ACROSS T&C, which can be viewed and printed at <http://across.net/en/terms-of-trade.aspx>.

§ 3 Scope of Services

- (1) Update services in terms of these Terms and Conditions comprise only those kind of update services ACROSS is not required to provide in order to remove problems under statutory warranty law. These latter services are always provided free of charge by ACROSS to the Purchasing Partner.
- (2) ACROSS' update service comprises the provision of updates for ACROSS programs. The particulars of update services in terms of these Terms and Conditions as specified in this paragraph are definitive.
- (3) ACROSS shall provide Purchasing Partner with updates in terms of these Terms and Conditions only for use and installation by Purchasing Partner.
- (4) Purchasing Partner shall have to take out a separate ACROSS update service package for each one of his software licenses.
- (5) Third-party products in terms of these Terms and Conditions (e.g., trade products designated as such and/or products from other vendors) are excluded under this agreement. Where applicable, services for such products must be agreed with and obtained from their relevant manufacturers.
- (6) Updates in terms of these Terms and Conditions comprise changes to a particular version or generation of software (e.g. service releases, software upgrades, software adaptations legally required to ensure conformance with particular regulations or standards, software expansion, inclusion of smaller features, general upgrades that improve performance, updated software documentation). Updates can be identified by the number shown after the version number of each ACROSS component. Purchasing Partner may also download updates upon request directly from the ACROSS website (www.across.net). ACROSS may release updates for its software on CDs or other media.
- (7) Updates in terms of these Terms and Conditions also comprise new generations of software that are released under new version numbers and form part of the same product line.
- (8) Updates are provided only for the software licensed for operation at Purchasing Partner's location(s) and the relevant version and language version of that software. The provision, installation and/or use of updates at/for any other Purchasing Partner locations, country or language versions, require the prior acquisition of additional software licenses by Purchasing Partner at an additional charge. It is not possible to restrict the update service to individual licenses or individual parts of a program.
- (9) Updates shall be offered only within the latest software version. Updates for older versions can, however, also be made available retrospectively upon special request.

§ 4 Services that are not included

- (1) The following services are not included in these Update Terms and Conditions and shall be separately invoiced according to an individual quotation by ACROSS, insofar as they are not included in the number of hours ordered as part of a standard quota:
 - Consultations, provision of training or instruction to Purchasing Partner employees, troubleshooting on-site or repair of secondary failures or damage, irrespective of cause;
 - Installation of updates that shall be charged according to the corresponding amount of work involved;
 - Services rendered as a result of an update (e.g. training, changes to forms, customization of reports, etc.) shall be charged based on the amount of work involved, according to the currently valid price list and are available upon special request only;
 - Correction of program errors not caused by ACROSS or not included under the warranty;
 - Individual customization/programming that improves or extends the standard range of the software.
- (2) ACROSS shall be free to decide whether changes are offered as an update, as an additional program or as a new product. Such products will be provided only if ordered separately by Purchasing Partner at the T&C, license, update and support conditions applicable to the product at the time of sale and shall be subject to a separate charge.

§ 5 Limitations, Obligations to Cooperate

- (1) The proper functioning of the software updates provided by ACROSS requires that Purchasing Partner complies with the system environment specifications provided by ACROSS, and that the update is and remains compatible with Purchasing Partner's other programs, system software and hardware.
- (2) The Purchasing Partner is obliged to contact ACROSS before utilizing software and/or hardware other than that required or recommended by ACROSS in the respective documentation. ACROSS does not accept any liability for damage or other problems caused as a result of Purchasing Partner's non-compliance with this provision.
- (3) The latest minimum system requirements are detailed at ftp://ftp.across.net/documentation/SystemRequirements_v50_en.pdf and constitute a minimum standard.

§ 6 Validity Period

- (1) ACROSS' update service is purchased by the Purchasing Partner for a period of 12 months ('validity period') from the date the contract was entered into.
- (2) Upon expiry of the 12-month term, the validity period shall automatically be extended by another 12 months, subject to the same conditions, unless the agreement is terminated in writing one month prior to the end of the term. ACROSS reserves the right to change the type and scope of any update or renewal conditions, and any other special additional agreements, with respect to their subsequent validity period by giving three months notice prior to their expiry.
- (3) If Purchasing Partner receives ACROSS' update services as part of an ASP/SaaS service package, the Update Service Agreement's validity period expires simultaneously with that of the hosting service, and will not require separate notice.
- (4) These terms and conditions do not affect the right to termination without prior notice. Both of the parties to this agreement are entitled to extraordinary termination at any time for important reasons. Important reasons with respect to ACROSS comprise in particular:
 - Approval of an application for the opening of insolvency proceedings on the Purchasing Partner's assets by the insolvency court;
 - The opening of insolvency proceedings on the Purchasing Partner's assets or rejection of opening insolvency proceedings for insufficiency of assets;
 - Purchasing Partner's failure to meet his payment obligations in full or part during two consecutive calendar months, or more than twice during one agreement year, or following expiry of an additional reasonable period of grace (usually ten (10) days).
- (5) The Purchasing Partner shall not be entitled to extraordinary termination of this agreement without notice if he is prevented from using or deprived the use of the subject of the contract in whole or part as stipulated by agreement in due time (§543 Paragraph 2, Clause 1 BGB (German Civil Code)).
- (6) Should ACROSS terminate the update agreement for an important reason that falls under the Purchasing Partner's responsibility, Purchasing Partner shall have to reimburse ACROSS all of the costs, losses, expenses or damage generated as a result of this early termination. The above reimbursement must be paid within seven (7) days of the agreement's termination date and applies irrespective of any other legal or contractual claims.

§ 7 Changes to these Update Terms and Conditions

ACROSS reserves the right to change these Update Terms and Conditions. As part of its recurring obligations, ACROSS will inform the Purchasing Partner of any changes and notify him of the – highlighted – changed provisions. The Purchasing Partner will be deemed to have silently accepted the changes from which time the contractual relationship will be deemed subject to the new version, if he does not advise within six weeks after being notified that he does not accept the new version. In all other cases, the contractual relationship will be continued subject to the unchanged version of the Update Terms and Conditions. ACROSS assumes the duty to specifically inform the Purchasing Party regarding the desired changes and the significance that they have as to his conduct.

§ 8 Severability Clause and Binding Language Version

- (1) Should one of the provisions of these Update Terms and Conditions prove to be or become invalid, or should they contain a loophole, this shall not have any affect on the validity of the remaining provisions.
- (2) If these Update Terms and Conditions are available in more than one language version, only the Germany version shall be legally binding.