

**General Terms and Conditions of arvato systems, N.A.  
Regarding the Procurement and Download of Products  
– Version October 2009 –**

**IMPORTANT: READ THESE TERMS CAREFULLY BEFORE DOWNLOADING OR INSTALLING, PLACING AN ORDER FOR THE PHYSICAL DELIVERY OF, ONE OR MORE PRODUCT(S), OR PLACING AN ORDER FOR ONE OR MORE SERVICE(S). BY SELECTING THE "I ACCEPT" BUTTON BELOW, DOWNLOADING, INSTALLING, OR OTHERWISE USING, OR PLACING AN ORDER FOR THE PHYSICAL DELIVERY OF, ANY APPLICABLE PRODUCT(S) OR SERVICE(S) (EACH AN "ACCEPTANCE" OF THESE TERMS AND CONDITIONS), YOU AND THE ENTITY (IF ANY) IDENTIFIED BY YOU AS A LICENSEE WHEN AGREEING TO THESE TERMS AND CONDITIONS (EACH, A "LICENSEE"; AND YOU AND/OR THE ENTITY IDENTIFIED BY YOU WHEN AGREEING TO THESE GENERAL TERMS AND CONDITIONS, AS APPLICABLE, TO BE HEREINAFTER REFERRED TO AS "YOU" OR "CUSTOMER") ACKNOWLEDGE THAT YOU HAVE READ THESE TERMS AND CONDITIONS, AND THAT YOU AGREE TO BE BOUND BY SUCH TERMS AND CONDITIONS. IF YOU DO NOT AGREE TO ALL OF THESE GENERAL TERMS AND CONDITIONS, NEITHER YOU NOR ANY OTHER LICENSEE ARE AN AUTHORIZED USER OF THE PRODUCT AND IT IS YOUR RESPONSIBILITY TO (A) EXIT THIS DOWNLOADING/INSTALLATION/ORDERING PROCESS WITHOUT DOWNLOADING OR INSTALLING, OR PLACING AN ORDER FOR THE PHYSICAL DELIVERY OF, THE PRODUCT(S) BY SELECTING THE "I DO NOT ACCEPT" BUTTON BELOW, (B) DELETE THE PRODUCT(S) FROM YOUR COMPUTER AND THE COMPUTER(S) OF ANY OTHER LICENSEE (WITHOUT THE RETENTION OF ANY COPIES OF THE SAME) AND (C) ENSURE THAT SUCH PRODUCT(S) IS/ARE NOT USED IN ANY WAY BY YOU OR ANY OTHER LICENSEE.**

**§ 1 Scope**

1. These General Terms and Conditions (hereinafter "GTC") apply to and govern the ordering, procurement and download of products or services from the arvato online store and, where applicable, the physical delivery of the products by arvato and each "contract of sale" (if any) created pursuant to these GTC as described in §3 of these GTC.
2. These GTC of arvato contain the entire understanding between the parties hereto with respect to the matters covered herein, and supersede all prior and contemporaneous oral and written communications.
3. Terms and conditions of the customer will not be deemed to bind the parties hereto with respect to the subject matter hereof unless arvato has expressly agreed thereto in a specific case in a writing which specifically refers to these GTC, stating it is intended to be a modification of the GTC, and is signed by a duly authorized representative of arvato. 2

## **§ 2 Object of the Agreement**

arvato offers to facilitate the procurement of licenses for, and the download and/or physical delivery of, those products then listed on the applicable arvato website as available through the arvato online store. Customers can order products and services over the Internet. When ordering over the Internet, the customer may be allowed by arvato to choose whether to download the respective software product (hereinafter “download”) or whether to have it physically delivered to the customer (hereinafter “physical delivery”).

## **§ 3 Creating an Agreement**

The customer’s order shall constitute an offer to arvato to enter into a contract of sale. The customer will receive a confirmation of receipt of the order by e-mail. This e-mail shall not be deemed as acceptance of the offer, but shall merely serve to inform the customer. A contract of sale shall be created only when arvato ships the product ordered to the customer or makes it available for download.

## **§ 4 Delivery**

1. Physical delivery of the product, if requested pursuant to a customer order accepted by arvato, shall be made to the shipping address provided by the customer. Details of the delivery shall be non-binding unless there is a binding promise of a specific delivery date which has been expressly agreed to by arvato in a specific case in a writing which specifically refers to these terms and conditions and is signed by a duly authorized representative of arvato.
2. arvato shall be entitled to make partial deliveries to the extent reasonable under the circumstances. Any additional shipping costs incurred as a result shall be borne by arvato.
3. If delivery is delayed due to reasons for which the customer is solely or primarily responsible, or if delivery is temporarily impossible due to reasons for which neither arvato nor the customer is responsible, then the agreed delivery period (if any) shall be extended for as long as such reasons prevail plus the period of time needed to resume delivery. arvato shall notify the customer of such delays.
4. As regards physical delivery of the product, the risk shall pass to the customer once the product is handed to the person/entity engaged to perform the shipping of the product.
5. With respect to a software product which is downloaded from the arvato online store, the risk shall pass to the customer when the software leaves arvato’s sphere of influence (i.e. its server).
6. arvato shall use reasonable efforts to make available to customer all software products ordered through customer orders placed with arvato through the arvato online store and for which a contract of sale is created pursuant to these GTC as described in §3 of these GTC. arvato shall inform customer if a product which customer attempts to order is not available, in which case (notwithstanding any other provision to the contrary) no “contract for sale” is made for such product, arvato shall have no further obligation to customer with respect to such product and arvato shall refund any payments that the customer has already made for such product in connection with the unfulfilled order.

## **§ 5 Ownership; Return of Products**

1. The software products which may be ordered, procured, and/or downloaded through the use of the arvato online store are licensed and not sold to those customers who download such software products, or have such software products delivered to them, pursuant to these GTC. All such software products, including without limitation, all rights to patents, copyrights, trademarks, trade secrets and any other intellectual property right inherent therein or appurtenant thereto, in all media now known or hereinafter developed, are (and shall at all times remain) the sole and exclusive property of arvato and/or the applicable licensor(s) of such products. The products include certain computer software which is copyrighted by arvato and/or the applicable licensor(s) of such software products. Without limitation of the foregoing, Licensee agrees and acknowledges that arvato and/or the applicable licensor(s), shall at all times retain title to the applicable software products and any copies thereof. Licensee is not purchasing title to any software product or copies thereof pursuant to these GTC or the applicable End User License (as defined in §8 of these GTC).

2. If the customer fails to meet his payment obligations despite a reminder, arvato shall be entitled to withdraw from the "contract of sale" with respect to the software products downloaded by customer, and/or delivered by arvato, hereunder after a reasonable period of notice set previously (which if not previously set shall be no longer than five (5) calendar days) and to request the deletion and/or return of the corresponding software products. If software products are recalled in this way, as of the date of arvato's request for the deletion and/or return of the software products, you and any other Licensee will no longer be an authorized user(s) of the software products and it is your responsibility to return the software products (if requested by arvato) and delete all copies of the software products from your computer and the computer(s) of any other licensee (without the retention of any copies of the same) and to ensure that such software products are not used after the date of such request in any way by you or any other Licensee. The shipping costs incurred with respect to any return of products pursuant to this §5 shall be borne by you.

3. Notwithstanding any other provision to the contrary, you and any other Licensee shall only be permitted to use the software products after full settlement of all outstanding invoices from the corresponding contract of sale.

## **§ 6 Prices and Payment**

1. The prices shown in the order confirmation shall apply. Unless stated otherwise, all prices are exclusive of any and all Taxes (as defined in sub-item 3. of this §6).

2. In the event of physical delivery, shipping costs shall be added to the prices indicated.

3. You shall, in addition to all other payments required hereunder, pay any and all applicable sales, use, transfer, value-added or other taxes and all duties, levies, import and export fees, tariffs and similar fees and charges (in each instance whether international, national, state, or local), however designated, which are levied or imposed by reason of the transactions contemplated hereby ("Taxes"); excluding, however, income taxes on profits which may be

levied against arvato. You shall reimburse arvato for the amount of any such Taxes paid or accrued directly by arvato as a result of the transactions contemplated hereby.

4. In the event of download or physical delivery, the purchase price and Taxes can be paid either by credit card or against invoice. In the event of payment by credit card, arvato shall charge the purchase price to the credit card account provided by you prior to allowing download of the software product or delivering the software product, and is hereby authorized to charge any applicable Taxes to the credit card. In the event of payment against invoice or check, the software product shall be delivered following receipt of payment of, the purchase price (and any Taxes included on the invoice for (or any invoice provided with the invoice for) the purchase price) in arvato's bank account and you will pay any invoice provided by arvato for any Taxes by not later than 30 days after your receipt of such invoice.

5. If payment is not received by arvato from your credit card issuer or its agents or your credit card issuer seeks return of payments previously made to arvato, you agree to pay all amounts due upon demand by arvato. If you or another Licensee fails to pay any amounts due pursuant to these GTC by their due date, without limitation of other rights and remedies, at arvato's request, you shall pay late charges per month of one and one half percent (1.5%), or the maximum permitted under applicable law, whichever is less, together with all of arvato's expenses and collection costs, including reasonable attorneys' fees, incurred in enforcing the payment obligation. Payments shall be paid in U.S. currency or any currency that is explicitly mentioned in the store as payment currency. Any rate of exchange which may be applicable to payments due or other monetary calculations for purposes of these GTC shall be the rate set forth in the Wall Street Journal on the day that the payment is due.

## **§ 7 Right of Revocation in the Case of Contracts with Consumers**

1. The customer shall be entitled to the following right of revocation. Customers shall be entitled to revoke an order in respect of a contract of sale within thirty days of order date, without having to justify such revocation as long as product has not been downloaded, has not been used and in case of a physical delivery the product packaging has not been opened or damaged. Such revocation shall be declared by providing arvato with a letter of destruction so revoke the order in writing or in case of a physical delivery by following the return instructions on the "Refunds & Returns" page. A revocation with respect to a particular software product shall be deemed to have been expressed within the proper time period if the notice of revocation has been received by arvato, on or before the date which is thirty days after the order date.

Any notice of revocation shall be directed to:

arvato systems North America, Inc.  
6 East 32<sup>nd</sup> Street, 11<sup>th</sup> Floor  
New York, NY 10019  
Fax: 519-772-4300  
E-mail: shop.avid@arvatosystems.com

Software products should be returned to the address indicated on the delivery slip.

2. In the event of an effective revocation, (a) as of the date on which the revocation is deemed to have been expressed, you and any other Licensee will no longer be an authorized user(s) of the software product(s) and it is your responsibility to (i) return the product(s) (if requested by arvato) and delete all copies of the software product(s) from your computer and the computer(s) of any other Licensee (without the retention of any copies of the same) and (ii) ensure that such software product(s) is(are) not used after the date of such request in any way by you or any other Licensee, and (b) any benefits already received by either party shall be returned as well as any benefits already derived from such performance. If the customer cannot return the benefits received in full, or if he can only return them in part or in deteriorated condition, he shall be liable for damages.

3. Except as otherwise set forth in this section, the costs of returning software products (if requested by arvato) shall be borne by customer, unless the software product delivered does not correspond to the software product ordered or the customer uses the prepaid return label provided by arvato.

4. There shall be no right of withdrawal or revocation in the following cases:

- a) If software products are obtained by download;
- b) The customer has removed the seal from the product delivered by the person/entity engaged to perform the shipping of the software products to customer.

## **§ 8 Rights of Use**

These GTC do not set forth the terms and conditions under which you or any other Licensee are granted a license to the software products being downloaded from the arvato online store or otherwise being delivered to you by arvato, and no license or other rights to any software product is/are being granted to you or any other Licensee pursuant to these GTC. The rights of use (licenses) with respect to each such software product are granted to you and/or the other applicable Licensee(s) directly by the applicable licensor of the software product. The terms and conditions of the license(s) to each software product being downloaded by, or physically delivered to, you or any other Licensee pursuant to these GTC are set forth in the applicable license agreement of the software licensor of such software product which accompanies such software product (the "End User License"). **IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THE APPLICABLE LICENSE AGREEMENT(S) OF THE LICENSOR(S) WHICH ACCOMPANY(IES) THE SOFTWARE PRODUCT(S) BEING DOWNLOADED OR OTHERWISE DELIVERED TO YOU BY ARVATO, (A) YOU ARE REQUIRED TO NOTIFY ARVATO OF THE SAME, (B) NEITHER YOU NOR ANY OTHER LICENSEE ARE AN AUTHORIZED USER OF THE SOFTWARE PRODUCTS AND (C) IT IS YOUR RESPONSIBILITY TO RETURN THE SOFTWARE PRODUCTS (IF REQUESTED BY ARVATO) AND DELETE THE SOFTWARE PRODUCTS FROM YOUR COMPUTER AND THE COMPUTER(S) OF ANY OTHER LICENSEE (WITHOUT THE RETENTION OF ANY COPIES OF THE SAME) AND TO ENSURE THAT SUCH SOFTWARE PRODUCTS ARE NOT USED IN ANY WAY BY YOU OR ANY OTHER LICENSEE.**

## **§ 9 Warranty; Warranty and Indemnity Disclaimer**

1. You and each other Licensee hereby represent and warrant that all order, payment and other information provided by you or any other Licensee to arvato relating to the transactions contemplated by these GTC, whether via online forms or otherwise, is accurate and complete and that the person accepting the terms hereof is authorized to bind to these GTC himself and the entity (if any) identified by you as the Licensee when agreeing to these GTC.

2. All product specifications, images and information that we provide on the arvato online store or elsewhere are intended for illustration purposes only. The properties of the featured software products are based exclusively on the specifications and documentation provided by the applicable licensor of the software product.

3. CUSTOMER ACKNOWLEDGES THAT (A) ARVATO DOES NOT MAKE ANY WARRANTIES, REPRESENTATIONS OR CONDITIONS WHATSOEVER, EXPRESS OR IMPLIED, IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE TO CUSTOMER, OR PROVIDE ANY INDEMNITY TO CUSTOMER, WITH RESPECT TO ANY SOFTWARE PRODUCTS WHICH ARE THE SUBJECT OF THE TRANSACTIONS CONTEMPLATED BY THESE GTC, INCLUDING WITHOUT LIMITATION THE SOFTWARE PRODUCTS BEING ORDERED, PROCURED, DOWNLOADED OR OTHERWISE DELIVERED TO CUSTOMER IN ACCORDANCE WITH THESE GTC AND (B) THE WARRANTIES AND INDEMNITIES FOR, AND/OR OTHER OBLIGATIONS WITH RESPECT TO THE OPERATION, REPAIR OR OTHER SUPPORT OR MAINTENANCE OF THE SOFTWARE PRODUCTS, (IF ANY) SHALL BE MADE BY, AND/OR BE THE OBLIGATIONS OF (AS APPLICABLE), THE APPLICABLE LICENSOR(S) OF SUCH PRODUCT(S) PURSUANT TO SEPARATE TERMS AND CONDITIONS OF THE END USER LICENSE. ARVATO EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE, AND/OR NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, ARVATO DOES NOT WARRANT THAT THE OPERATION OF ANY PRODUCT SHALL BE OPERABLE, UNINTERRUPTED OR ERROR FREE OR THAT IT WILL MEET CUSTOMER'S REQUIREMENTS OR WILL FUNCTION OR OPERATE IN CONJUNCTION WITH ANY OTHER PRODUCT. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR DOWNLOADING OR OTHERWISE OBTAINING, AND FOR INSTALLING, OPERATING AND MAINTAINING, SUCH OTHER SOFTWARE OR OTHER PRODUCTS WHICH ARE REQUIRED TO OPERATE THE SOFTWARE PRODUCTS DOWNLOADED BY, OR PHYSICALLY DELIVERED TO, CUSTOMER AS CONTEMPLATED BY THESE GTC.

## **§ 10 Liability**

1. ARVATO SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THESE GTC OR OTHERWISE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, OR LOSS OF INFORMATION ARISING OUT OF THIS GTC OR THE ARVATO ONLINE STORE, INCLUDING WITHOUT LIMITATION, THE USE OF OR

INABILITY TO USE ANY SOFTWARE PRODUCT DOWNLOADED FROM THE ARVATO ONLINE STORE OR DELIVERED TO YOU BY ARVATO AS CONTEMPLATED BY THESE GTC, EVEN IF ARVATO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN BY ARVATO.

2. IN NO EVENT SHALL ARVATO BE LIABLE FOR ANY REASON AND UPON ANY CAUSE OF ACTION WHATSOEVER RELATING TO ANY THIRD PARTY SOFTWARE OR HARDWARE NOT DOWNLOADED OR OTHERWISE DELIVERED TO CUSTOMER IN ACCORDANCE WITH THESE GTC.

3. IN NO EVENT SHALL ARVATO'S AGGREGATE LIABILITY FOR ANY REASON(S) AND UPON ANY CAUSE(S) OF ACTION WHATSOEVER EXCEED, IN THE AGGREGATE, WITH RESPECT TO LIABILITY RELATED TO A PARTICULAR SOFTWARE PRODUCT, THE AMOUNT OF THE PURCHASE PRICE ACTUALLY PAID BY CUSTOMER TO ARVATO PURSUANT TO THESE GTC FOR THE SOFTWARE PRODUCT WHICH IS THE SUBJECT OF THE CLAIM(S), PROVIDED THAT, NOTWITHSTANDING THE FOREGOING OR ANY OTHER PROVISION TO THE CONTRARY, IN NO EVENT WILL ARVATO'S TOTAL AGGREGATE LIABILITY FOR ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH ANY MATTER RELATING TO THESE GTC OR ANY TRANSACTION CONTEMPLATED BY THESE GTC BE GREATER THAN THE TOTAL AMOUNT OF THE PURCHASE PRICE ACTUALLY PAID BY CUSTOMER TO AVATO PURSUANT TO THESE GTC.

#### **§ 11 Personal Data**

1. In the course of Customer's use of the arvato online store, Customer may be asked to provide certain personalized information to arvato (such information referred to hereinafter as "personal data"). arvato's information collection and use policies with respect to the privacy of such personal data are set forth in the arvato's Privacy Policy.

2. arvato shall collect, process and use any personal data received from the customer solely for the purposes of performing its obligations pursuant to these GTC and the contract of sale (if any) created pursuant to these GTC as described in §3 of these GTC, and otherwise for the purposes set forth in arvato's Privacy Policy.

3. arvato will share the customer's personal data with the applicable licensor(s) of the software products ordered, procured, downloaded and/or delivered to customer pursuant to these GTC for the purposes of performing its obligations pursuant to these GTC and the contract of sale (if any) created pursuant to these GTC as described in §3 of these GTC, and otherwise for the purposes set forth in arvato's Privacy Policy.

4. To the extent that the provisions of this §11, conflict with arvato's Privacy Policy, the Privacy Policy will be deemed to be amended to include the provisions of this §11 with respect to the collection, processing and use of the personal data provided in connection with your use of the arvato online store.

5. Customer acknowledges and agrees that customer is solely responsible for the accuracy and content of personal data, and customer agrees to keep it up to date.

## **§ 12 Customs, Export Regulations, Permits**

1. The customer shall be responsible for obtaining, at his own expense, the official permits and licenses required for the procurement, transport, download and use of the software products.

2. With regard to imported goods, the customer may be subject to additional costs relating to the payment of customs fees, import duties and taxes, which shall be at the sole cost and expense of customer. The customer can request additional information on the relevant guidelines and rules from the customs office.

3. WITHOUT LIMITING THE FOREGOING PROVISIONS OF THIS §12, THE TRANSACTIONS CONTEMPLATED BY THESE GTC, AND EACH CONTRACT OF SALE CREATED PURSUANT TO THESE GTC AS DESCRIBED IN §3 OF THESE GTC, IS EXPRESSLY MADE SUBJECT TO ANY LAWS, REGULATIONS, ORDERS, OR OTHER RESTRICTIONS ON THE EXPORT, REEXPORT OR IMPORT OF THE SOFTWARE PRODUCT(S) OR INFORMATION ABOUT SUCH SOFTWARE PRODUCT(S) WHICH MAY BE IMPOSED FROM TIME TO TIME BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA OR ANY OTHER GOVERNMENT. CUSTOMER SHALL NOT EXPORT, REEXPORT OR IMPORT THE SOFTWARE PRODUCT(S), DOCUMENTATION, OR INFORMATION ABOUT THE SOFTWARE PRODUCT(S) OR DOCUMENTATION WITHOUT THE WRITTEN CONSENT OF ARVATO AND COMPLIANCE WITH SUCH LAWS, REGULATIONS, ORDERS, OR OTHER RESTRICTIONS.

## **§ 13 U.S. GOVERNMENT RESTRICTED RIGHT**

The software products downloaded by, and/or delivered by arvato to, customer pursuant to these GTC is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the United States government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause of DFARS 252.227-7013 or subparagraph (c)(1) and (2) of the Commercial Computer Software-Restricted Rights clause at 48 CFR 52.227-19 as amended, or any successor regulations thereto.

## **§ 14 General**

1. The legal relationship between the customer and arvato which is contemplated by these GTC and any action related hereto shall be governed by the laws of the State of New York, without reference to the conflict of laws provisions thereof. arvato and customer hereby agree on behalf of themselves and any person claiming by or through them that the sole and exclusive jurisdiction and venue for any litigation arising from or relating to the legal relationship between the customer and arvato which is contemplated by these GTC or the subject matter hereof shall be the federal or state courts located in the County of New York, State of New York and any courts of appeal therefrom, and submit to the jurisdiction of such courts over it. The parties acknowledge and agree that: (i) relationship between the customer and arvato which is contemplated by these GTC and any action related hereto will not be governed by the Uniform Commercial Code of any State having jurisdiction and (ii) the parties agree to exclude the



application of the United Nations Convention on Contracts for the International Sale of Goods (1980). No action, regardless of form, arising out of the legal relationship between the customer and arvato which is contemplated by these GTC may be brought by customer more than one (1) year after the cause of action has arisen.

2. Customer may not assign, without the prior written consent of arvato, its rights, duties or obligations under or in connection with these GTC, in whole or in part, to any person or entity.

Any notice provided by customer to arvato pursuant to these GTC shall be in writing to arvato systems North America, Inc. at 2711 Centerville Road, Wilmington, DE 19808, and shall be deemed given (i) if by hand delivery, upon receipt thereof; (ii) if mailed, three (3) days after deposit in the U.S. mail, postage prepaid, certified mail, return receipt requested; or (iii) if by next day delivery service, upon such delivery. Any notice provided by arvato to Customer pursuant to these GTC shall be sent to the e-mail or mailing address provided by Customer when agreeing to these GTC, and shall be deemed given (i) if by hand delivery, upon receipt thereof; (ii) if mailed, three (3) days after deposit in the U.S. mail, postage prepaid, certified mail, return receipt requested; (iii) if by next day delivery service, upon such delivery; or (iv) if by e-mail, upon the date sent. Either party may change its address by giving written notice to the other party.