

## Reseller Terms and Conditions

General Terms and Conditions of Cleverbridge AG and VERBI Software Consult Sozialforschung GmbH for Resellers

Last revised: January 7, 2008

### 1. Subject Matter, Territory

1. VERBI Software. Consult. Sozialforschung GmbH (hereinafter referred to as "VERBI") is the author and manufacturer of the software MAXQDA, MAXDictio, MAXMaps (hereinafter referred to as "Software"). Vendors of the software are VERBI and Cleverbridge AG, Aachener Strasse 209, 50931 Cologne, Germany. The company where the order has been placed is the contractual partner to the customer (hereinafter referred to as "Reseller"). The Vendor/s grant/s the Reseller certain rights within the framework of the Terms and Conditions contained in this document.

2. The Reseller shall be entitled to purchase the Software from the Vendors for the purpose of reselling or to establish the contact for the sale of the Software to final customers.

### 2. Legal Position of the Reseller

1. The Reseller shall act on behalf of the Vendors as a commercial agent.

2. The Reseller shall not be entitled to accept on behalf of VERBI GmbH customer payments or to represent VERBI GmbH in any transactions.

### 3. Obligations of the Reseller

1. The Reseller shall perform the tasks and rights assigned to him pursuant to these Terms and Conditions with the diligence of a prudent businessman. He shall protect the interests of VERBI GmbH.

2. The Reseller shall observe the rules of fair competition.

3. The Reseller shall treat as strictly confidential any trade and business secrets made known to him by VERBI GmbH or the Vendor within the scope of the performance of the contract. He shall ensure that such obligation is also observed by his own employees. Such obligation shall survive a termination of contract.

4. The Reseller warrants that he is in possession of all the official approvals and licenses which may be required under national law in order to perform any activities within the scope of these Terms and Conditions.

5. The Reseller shall be obliged to provide the end user's contact data during the ordering process. If the Reseller obtains the software for sale at a later date, he shall ensure that the end user registers the Software online with VERBI GmbH by entering the serial number of the Software. The purpose of such entry and registration is to enable VERBI GmbH to identify whether the final user is in possession of a legitimate serial number and to enable the end user to obtain support services and access to communities, newsletters and updates from VERBI GmbH.

6. Reseller is expressly prohibited to

- sell upgrades and student licenses of the software
- The Reseller purchases licenses from VERBI/cleverbridge by order of an end-user client (individual or institution). It is strictly forbidden to bundle orders from DIFFERENT end users into ONE reseller order. All licenses placed on one specific order have to be delivered to the ONE end-user client (individual or institution) who is indicated on the Resellers order form. The end-user client is defined as the one **who orders** the software from you and **who is invoiced** by the Reseller. The Reseller has to reimburse VERBI any discounts resulting from illegally bundled orders.

- sell VERBI software products to costumers resident in any European countries without explicit written permission of VERBI.
- rent or lend the software
- create custom installer packages without the written permission of VERBI GmbH
- bundle or integrate VERBI software with other software products without written permission.

7. The Vendors offer so-called educational licenses of the Software to educational institutions and their employees. The Reseller must inform buyers of educational licenses that the educational price reduction will only be granted to institutions or their employees who can document their accredited educational status by legally binding written proof. If the Reseller fails to inform the buyer or if the written proof is not provided immediately after the sale, the Reseller must pay the difference in price between the commercial and the educational version to the Vendor.

Non-profit organizations and government agencies are eligible for Governmental/NGO pricing. The Reseller must verify the eligibility for this pricing. A careful investigation of the website of the ordering institution is considered to be sufficient criteria to verify the eligibility.

#### **4. Special Obligations of the Reseller as an Authorized Distributor**

1. The Reseller as an authorized distributor shall be obliged to distribute the Software under the brands, name and in the form of presentation specified by VERBI GmbH.

2. The Reseller shall not change the Software supplied nor the make-up or packaging thereof; the Reseller shall, in particular, not change or remove any existing warnings related to the improper use of the products or any information concerning their correct use. In the event that the Reseller violates his obligations under the preceding sentence, the Reseller as an authorized distributor shall within the scope of the internal relationship between the parties hereto indemnify and hold harmless VERBI against any product liability claims raised by third parties if and to the extent to which such damage was caused by him.

3. The Reseller shall notify the Vendors immediately of any risks which come to his knowledge during the use of the Software as well as of any product defects.

4. The Reseller shall be obliged to ensure that the final user agrees to VERBI GmbH's General Terms and Conditions for Final Customers which are available online at all times.

5. The Reseller must conduct all orders online through the safe ordering process provided by the Vendors, using his dedicated Reseller ID and password.

#### **5. Obligations of VERBI GmbH**

1. The Vendors shall assign to the Reseller during the performance of his work a revocable license to use VERBI's company name, its brands and other logos. The Reseller shall ensure that the Reseller's legal status is clearly stated in this context. Advertising measures shall be subject to coordination with VERBI prior to their publication.

2. The Reseller must conduct all orders online through the safe ordering process provided by the Vendors, using his dedicated Reseller ID and password.

#### **6. Commission for the Reseller**

1. We will initially give a 5% commission fee on all sales. As soon as Reseller sales surpass the total amount of 2000 Euro within the first six months the commission will be increased to 10%. In case your sales total is less than 1500 Euro per year your reseller account will be frozen. All other commission regulations have to be negotiated on an individual basis with VERBI.

2. In case of the existence of a separate agreement on a commission between VERBI and the Reseller, the Reseller shall be entitled to claim commission for any transactions made and entered into

with the Vendor initiated by him during the term of this contract and which are the result of his activities.

3. The commission shall be calculated on the basis of the net invoice sum, minus separately billed ancillary costs (such as backup CD, transport and packaging costs, freight, discount, etc.). No commission shall be claimed for transactions carried out directly by the Reseller.

4. The Reseller shall be entitled to commission as soon as and in as far as the Vendors have performed the transaction and have received payment from the customer.

5. Follow-up commission for the Reseller shall be excluded. This shall apply particularly in the event that the customer purchases updates of the Software online from the Vendors even if the customer originally purchased the Software in a transaction initiated by the Reseller as a commercial agent.

6. Commission claim accounts shall be rendered on a monthly basis, at the latest on the final day of the following month. With the rendering of the account by the Vendors or an authorized third party, the claims for commission shall be payable 14 days following receipt of the account. In as far as the Reseller is obliged to charge value-added tax; such value-added tax shall be additionally paid and stated in the commission account.

7. The payment of commission shall be deemed as full consideration of all claims by the Reseller which arise in conjunction with his activities on behalf of the Vendor. The Reseller shall not be entitled to raise any special claim for the refunding of expenses, fees, costs or other expenditure, unless such refunding has been explicitly agreed to in writing from case to case.

8. In the event that the customer fails to pay or in the event of non-performance of a transaction due to circumstances beyond the Vendor 's control, the claim for commission shall be cancelled or reduced. Any commission already received shall be returned.

## **7. Defects of Quality and Defects in Title**

1. The Vendors shall supply the Software to the Reseller in a condition free from defects in quality or defects in title. Defects affecting the suitability for use of the Software to a minor extent only shall not be considered as defects for the purposes of this agreement. Functional impairment caused by the hardware and software environment made available by the Reseller, operator error, defective external data, computer network malfunction or any other reason belonging to the Reseller's sphere of responsibility shall not be considered as defects for the purposes of this agreement.

2. The Vendors shall initially eliminate any defects in quality by repair. The Reseller shall be entitled to demand repair or a new copy of the Software unless VERBI GmbH is entitled by law to refuse such repair or replacement. The Reseller shall grant to VERBI GmbH a reasonable period of grace for repair/replacement. Such repair/replacement may also take place in such a manner that VERBI GmbH supplies the Reseller with the latest service pack in order to eliminate the defect unless it can be ruled out that such action will succeed in eliminating the defect.

3. In the case of failure to repair or replace as aforesaid the Reseller shall be entitled to reduce its payment(s) or to cancel the agreement. Damages shall be subject to section 10 hereof.

4. The Reseller is hereby notified that VERBI GmbH shall offer at regular intervals on its homepage free service packs for downloading which enhance the functionality of the software and which close any security gaps which may arise. The reseller shall pass such information on to the customer.

## **8. Liability**

1. The Vendors shall pay damages or refund futile expenditure for whatever legal reason (including, but not limited to, failure to fulfil obligations, tortuous act) to the following extent only.

- In the case of willful action and in the case of a guarantee concerning agreed properties: to the full amount.

- In the case of gross negligence: to the amount of the typical or foreseeable damage to be prevented by the vendor obligation to exercise due care.
- In any other case, always subject to a violation of a material contractual obligation and in the case of default, to the amount of typical and foreseeable damage.

2. Notwithstanding the foregoing, statutory liability for personal injury and liability under the product liability act shall remain unaffected.

3. In the event of a loss of data, the Vendor's liability shall be limited to the damage which would have occurred even with the Reseller performing correct data backup procedures.

4. To the extent to which liability is limited or excluded, this shall also apply to personal liability on the part of the Vendor's employees, representatives or agents.

## **9. Copyright and License**

1. The Software (program and manual) supplied by the Vendor is protected by copyright. For the purposes of the relationship between the parties hereto, the Vendors shall be solely entitled to the rights relating to the Software as well as any other documentation made available during the phase of preparing and implementing this agreement.

2. The Reseller shall not be entitled to change or obscure in any manner any copyright notices, trademarks, other legal reservations, serial numbers or other features used for program identification purposes.

3. The Reseller shall be entitled to transfer the Software only to such parties who have agreed to adhere to the VERBI's General terms and conditions in a legally binding manner. These conditions are available online from the VERBI website at <http://www.maxqda.com/index.php/terms/> at any time for download, viewing, and printing.

4. Any other form of using the Software, including, but not limited to, its compiling, editing, arranging, or modifying in any other manner whatsoever or the (offline or online) dissemination of the Software in any other manner as well as the renting or lending out thereof shall be subject to the prior written consent of VERBI GmbH.

5. The Vendors shall be entitled to revoke the license rights for a material reason. A material reason shall, in particular, be deemed to exist if the Reseller is in default with the payment of a substantial part of the remuneration or if the Reseller fails to abide by the terms and conditions of the license and fails to immediately remedy such default after the Vendor's written request, including the Vendor's announcement to terminate the license otherwise. In the event that the license is terminated, the Reseller shall return to VERBI GmbH the original Software as well as any copies thereof, and delete any programs stored. At VERBI GmbH's request, the Reseller shall confirm in writing that he has returned such Software and deleted such programs as aforesated.

## **10. Term; Consequences of a Termination Hereof**

1. The contractual relationship shall commence as soon as the Reseller registers on the VERBI GmbH website and VERBI GmbH, by way of the Vendors, grants an identity number to the Reseller. This contract shall be made and entered into for an indefinite term. Ist das Procedere wirklich so oder besser: Reseller received the confirmation of the acceptance of his Reseller account.

2. This contract can be terminated by both parties effective as of the end of the month subject to the period of notice set forth in Section 89, subsection 1 of the German Commercial Code [§ 89 Abs. 1 HGB].

3. Each party hereto shall be entitled to terminate the contract without notice for a material reason. A justified important cause for termination without notice shall be deemed to exist if the trust existing

between the parties hereto is impaired by the other party to the contract to such an extent that the party terminating the contract cannot accept a continuation of the Reseller contract.

4. Any termination hereof shall not be valid unless made in writing, however, an email shall be deemed to be sufficient.

5. In the event of a termination hereof, Resellers having their place of business outside the Federal Republic of Germany shall not be entitled to raise equalisation claims.

## **11. Non-Competition Clause**

1. During the term hereof, the Reseller shall not be entitled to participate either directly or indirectly in any VERBI GmbH competitor company. This shall not include investments in public limited companies listed on the stock exchange as long as such investment does not grant to the Reseller significant influence on the company.

## **12. Penalty**

1. In the event that the Reseller violates his obligations under sections 3. (3); 12. (3) to (5); 14 hereto before, he shall pay to the Vendors for each culpable violation a penalty, to be determined according to the Vendor 's reasonable discretion and in the case of dispute to be examined by a court having jurisdiction.

2. Notwithstanding the foregoing, the Vendors shall also be entitled to terminate this contract without notice for a material reason due to violations of this contract and to enforce its claims for information and damages and/or forbearance.

## **13. Privacy**

1. The Reseller is herewith informed that the Vendors collect, store, process and – if necessary – pass on to third parties the Reseller's data to the extent necessary for the performance hereof and subject to the applicable data protection and data privacy laws.

## **14. Place of Jurisdiction/Applicable Law**

1. The place of jurisdiction and place of performance for all claims and disputes arising in conjunction with the business relationship between the parties on the grounds of these Terms and Conditions shall be Cologne.

2. This contract shall be exclusively subject to the laws of the Federal Republic of Germany.

3. The language of this contract shall be German.

## **15. Ancillary Agreements**

1. In the event that a provision of this contract is or becomes invalid or unenforceable, such invalidity or impossibility to enforce shall not affect the validity of the remaining provisions hereof. Instead, the parties hereto agree to replace such invalid or unenforceable provision with a valid or enforceable provision that reflects in as far as possible the economic and immaterial intent of the contract.

2. Any act deviating from the contract shall neither modify nor delete any agreed rights, nor shall it establish any new rights or obligations.