

TERMS AND CONDITIONS

for the sale and delivery of software products for services in consulting, organization management, programming and factory licensing (B2B)

As at: May 2017

1. Contract outline and validity

1.1. All contracts and agreements are only legally binding if they are signed by the contractor and duly executed according to the rules of the company. They are only compulsory to the degree indicated in the order confirmation. Purchase conditions of the contracting authority are herewith excluded for the present transaction and the entire business relations. On principle, offers are subject to change.

2. Service and control

2.1. The subject of an order can be:

- Development of an organizational plan
- Global and detailed analysis
- Design of specific programs
- Delivery of library-(standard)-programs
- Acquisition of use rights for software products
- Acquisition of plant-use permits
- Participation during software implementing phase (migration support)
- Consultancy via telephone
- Software maintenance
- Creation of program data carriers
- Other services

2.2. The elaboration of individual concepts and programs are exclusively designed due to the nature and extent of information, documents and resources, provided by the contracting authority. This includes practice-oriented test data and testing capabilities which are provided timely, during contractually agreed normal working hours and at client expenses. If the client is already using the asset in regular operation which was placed at the disposal for testing, the client assumes responsibility for the protection of real data.

2.3. The basis for designing individual programs is a written service description provided by the client which is worked out and charged for by the contractor. The client guarantees an accurate and complete service description when handing over all the documents signed by the client to certify the accuracy of statement. Change requests can be incorporated and are accepted to any point of time according to predefined datelines and price agreement.

- 2.4. Individually developed software or program adaptations require that each program package is approved by the client no later than 4 weeks after delivery. The client approval is carried out via protocol. (Accuracy and completeness check on basis of performance accepted by the contractor using the description in point 2.2 due to the test data available). If there is no client approval carried out in the required period of 4 weeks, the delivered software is regarded as approved by the predefined end date. In the case of software usage in real-time by the contracting authority, the software is regarded by all means as approved.

If there are any defects, deviations from the agreed written service description, the client informs and documents emerging problems in a written form to the contractor to remedy defects efficiently. In the case of written client notifications reporting serious defects which influence regular operations, an additional software approval is required.

The client is not entitled to reject the software due to minor defects.

- 2.5. Ordering library (standard)-programs, the contracting authority confirms with the order to know the scope of supply and services.
- 2.6. The client is obligated to inform immediately the contractor when during the course of project development, the order execution is in accordance with performance specification actual or legally impossible. If the client does not change the performance specification or is able to give the required preconditions to guarantee the execution, the contractor has the right to reject the execution. In the event of client default or changes of service description which influence the successful execution, the contractor is authorized to withdraw from the order. Any costs and expenses caused by the client have to be replaced.
- 2.7. The delivery of program data carriers, documentation, and performance specifications are at the expense and risk of the client. Further training and consultancy are charged separately. Insurances are only offered by client request.
- 2.8. We expressly point out that a barrier-free design (of websites) within the meaning of the Federal Act on Equality of Persons with Disabilities (Federal Disability Equalization Act - BGStG) is not included in the offer unless this has been requested separately by the client. If the barrier-free design has not been agreed upon, the customer is responsible for checking the service for its admissibility with regard to the Federal Disability Equalization Act. Likewise, the customer has to check the contents provided by him for their legal, in particular competition, trademark, copyright and administrative permissibility. The Contractor shall not be liable for the legal permissibility of content in the event of slight negligence or after complying with a possible warning obligation against the customer if these have been specified by the customer.

3. Prices, taxes and fees

- 3.1. All prices are indicated in Euro without VAT. They are valid only for the present order. The given prices relate to the client address of record. The costs for program data carriers, as well as any contractual fees, are charged separately.
- 3.2. For library-(standard) programs, prices are calculated according to the list prices valid on the day of delivery. Any other services (organizational consultancy, programming, training, migration support, telephone consultancy, etc.) are calculated due to the daily valid fees of service support. Contract price deviations related to the expenditure of time, which is not represented by the contractor, invoice will reflect actual costs/expenses.

- 3.3. Travelling expenses, costs for overnight stays are charged to client's account according to current rates. Travel time has to be considered as working time.

4. Date of delivery

- 4.1. The contractor strives to meet the agreed project deadlines.
- 4.2. Desired deadlines can only be met if the client provides all the necessary information and documents in time. Especially the accepted performance specifications mentioned in point 2.3 have to be provided and the client has to make sure to meet the demands of the contractor.

The conductor is not responsible for any delivery delays and cost increases caused by inaccurate, incomplete, or subsequently revised data and information or documents made available. The conductor does not assume responsibility for a possible delay. Consequently the client is charged for any resulting additional costs caused by inaccurate information delivery.

- 4.3. In the case of orders that require multiple units or programs, the contractor is entitled to deliver and invoice partially.

5. Payment

- 5.1. Bills including VAT are payable within 14 days from invoice date, without any deduction. For partial invoices, are considered along the lines of predefined payment terms according the overall order.
- 5.2. Orders that require multiple units (e.g. computer programs and / or training, implementation in stages), entitle the contractor to deliver according to unit and invoice partially after service delivery.
- 5.3. The compliance of agreed payment dates is an essential condition for the implementation of delivery or performance by the contractor. This non-compliance of agreed payments, entitle the contractor, to discontinue the order and rescind the contract. All associated costs and profit losses have to be covered by the client.

In case of late payment, the contractor is allowed to charge interests for default according to current bank interest rates. When according to partial payments, 2 outstanding rates occur, the contractor will be authorized to report a loss and all services are due for payment.

- 5.4. The client is not entitled to withhold payment if delivery is not completed or in the case of guarantee or warranty claims or complaints.

6. Copyright and usage

- 6.1. The contractor shall grant the client, after payment of the agreed fee, a non-exclusive, non-transferable, non-sublicensable and unlimited right to use the software for the hardware specified in the contract and to the extent of the number of licenses acquired for simultaneous use on several workstations, and to use all work results drawn up on the basis of the contract for its own internal use. All other rights remain with the contractor.

The participation of the client in the production of the software does not confer any rights over the use defined in the present contract. Any breach of the copyrights of the Contractor shall entail claims for damages, in which case full satisfaction shall be given.

- 6.2. The client is allowed to make copies for archival and backup purposes only if the original software does not contain any explicitly mentioned prohibit of licensors or a third party, and only if all copyright and proprietary notices are transmitted unmodified to the copied version.
- 6.3. Should the production of interoperability of the software, require a disclosure of interfaces, the client has the opportunity to order against payment. If this requirement is not fulfilled and de-compilation under copyright law is carried out, the results establish interoperability. Abuse will cause a claim for damages.
- 6.4. If a software is provided to the client, whose license holder is a third party (e.g. Microsoft standard software), the granting of the right of use is according to the license terms of the license owner (manufacturer).

7. Right of withdrawal

- 7.1. If the contractor is not able to comply with a term and agreed delivery time caused by his exclusive fault or unlawful action, the client has the right to rescind from the contract via registered letter. But only in the case that within a reasonable period of grace the essential part of the agreed performance is not provided and the client cannot be made responsible for it.
- 7.2. Force majeure, work conflicts, natural catastrophes and transport locks as well as other circumstances beyond the control of the contractor release the contractor from the delivery obligation or allow him to re-establish the agreed delivery time.
- 7.3. A client cancellation is only possible with a written consent of the contractor. If the contractor agrees to a cancellation, he has the right, in addition to the services rendered and accrued costs, to charge a cancellation fee of 30% of the still unsettled order value for the overall project.

8. Warranty, maintenance, modifications

- 8.1. The contractor shall ensure that the software complies with the functions described in the accompanying documentation, provided that the software is used on the operating system described in the contract.
 - 8.1.1. The prerequisite for the error correction is that
 - the client describes the error sufficiently in an error message and this can be determined for the contractor;
 - the customer provides the contractor with all necessary information for the correction of the defect;
 - the customer or a third party assigned to it has not intervened in the software;
 - the software is operated under the appropriate operating conditions according to the documentation.
 - 8.1.2. In the case of warranty, improvement shall take precedence over price reduction or conversion. In the case of justified complaints, the deficiencies will be remedied within a reasonable time, whereby the client allows the contractor to take all necessary measures to investigate and rectify the defects.

The assumption of deficiency according to §924 ABGB is considered to be excluded.
- 8.2. Any necessary corrections and modifications caused by organizational or technical deficiencies till delivery of agreed services, will be free of charge.

- 8.3. Costs for assistance, false diagnosis, failures or emergency maintenance, which go along with the contracting authority, as well as other modifications necessary, will be charged for. This is also the case for debugging, program modifications, complements or any additional interventions made by the contracting authority or by third parties.
- 8.4. In addition, the contractor assumes no responsibility for any failures, interferences or damages caused by improper operation or modified operating system components, interfaces and parameters, the use of improper means for organization and data processing medium, as long as they are prescribed, abnormal operating conditions (particularly deviations from the installation and storage conditions) and damages in transit.
- 8.5. Programs modified by internal programmers of the client or any third party are without guarantee.
- 8.6. As the subject of an order amending or supplementing of existing programs, the warranty covers the revision or supplementation. Hence the warranty for the original program is not renewed.
- 8.7. Warranty claims expire six (6) months after delivery.

9. Liability

- 9.1. The contractor shall be liable to the customer for damages caused by him, only in the case of gross negligence. This shall also apply mutatis mutandis to damages caused by third parties contracted by the contractor. In the case of indebted personal injury, the contractor is liable without limitation.
- 9.2. Liability for indirect damages - such as loss of profit, costs associated with a business interruption, loss of data or claims of third parties - is expressly excluded.
- 9.3. Claims for damages shall become statute-barred after the statutory provisions, but no later than one year from knowledge of the damage and the injuring party.
- 9.4. If the contractor supplies the work with the help of third parties and in this connection warranty and / or liability claims arise against these third parties, the contractor shall assign these claims to the client. In this case, the client will primarily address these third parties.

10. Loyalty

- 10.1. Both parties are committed to mutual loyalty. They will refrain from enticement and employment, even through third parties, of employees who participated in the project realization, during the project and 12 months after the project. If one of the parties does not follow these regulations, obliges to pay liquidated damages of an employee annual salary.

11. Privacy and confidentiality

- 11.1. The client is obligated to make sure that his employees act under the terms of § 15 of data protection law.

12. Other

- 12.1 If any single terms and conditions of the present contract be or become invalid, does this consequently not affect the rest of the contract. Both parties will cooperate in

partnership to find a regulation which is as close as possible to the invalid terms and conditions.

13. Final clause

- 13.1 Upon the agreed conditions, coming into force the law of merchants exclusively under Austrian law also if the project is carried out abroad. Any disputes are governed exclusively by the local jurisdiction for the agreed business location. In the case of individual consumer sale, applies the Consumer Protection Law.