

General terms and conditions

for the sale and delivery of software support service

These GTC are based on those of Fachverband Unternehmensberatung, Buchhaltung und Informationstechnologie, Wiedner Hauptstraße 63, A-1045 Vienna (2018 edition).

1. scope of contract and validity

The following terms and conditions shall apply to all services and deliveries performed by the Contractor under this contract. Terms and conditions of purchase of the client are hereby excluded for the present legal transaction and the entire business relationship. Offers are in principle subject to change.

2. scope of services

2.1 The performance of the contractual services by the Contractor shall be carried out, unless otherwise agreed, at the Contractor's discretion at the location of the computer system or at the Contractor's business premises within the Contractor's normal working hours. If, by way of exception and at the request of the Customer, the services are performed outside normal working hours, the additional costs shall be invoiced separately. The Contractor shall be responsible for the selection of the employee performing the contractual services and shall be entitled to call in third parties for this purpose.

2.2 The Contractor undertakes to fulfill the contractual software programs in accordance with the scope of services of the respective contractually agreed support class below:

Support Class A:

- **Information service:** The client will be informed about new program versions, available updates, program developments, etc.

- **Hotline service:** The Contractor shall be available to the Customer within the Contractor's agreed hotline hours for consultation in connection with the use of the software programs that are the subject matter of the contract in the event of problems arising on a case-by-case basis. In the event of repeated use of this advice for similar problems, the Contractor shall be entitled to make further advice under the subject matter of the contract dependent on additional training measures which are outside the scope of this contract and which are subject to a charge.

- **Archiving and provision of the contractual software programs:** The Contractor undertakes to archive the software programs developed by it and which are the subject of the contract in computer-readable form as well as the documentation to an extent necessary for the fulfillment of the obligations under this contract and, if necessary, to make them available to the Customer in accordance with the provisions of the contract on which the acquisition is based.

Support class B:

- **Update Service:** The Contractor shall provide the Customer with the program updates provided by the manufacturer on the date set by the Contractor. These include corrections of errors, elimination of any program problems that do not occur during the trial run or during practical use within the warranty period, improvements to the scope of services, changes to the software programs due to legal changes.

Legal changes that lead to new program logic, i.e. changes to already existing functions that lead to new programs and program modules, as well as any necessary extensions to the hardware, are not covered by services under this contract. These programs shall be offered separately to the Customer in addition to the necessary data carriers and documentation.

Support class C:

- **Installation of program updates:** The Contractor shall install or set up the new program updates on the computer system that is the subject of the contract.

- **Installation of new program versions of an already existing installation:** The Contractor shall install or set up the new program versions on the computer system that is the subject of the contract. New program versions offer an extension of the existing program functionality or a significant increase in speed.

- **On-site troubleshooting:** If the troubleshooting of the contracted scope of services cannot be solved by hotline service, remote support, etc., the Contractor shall perform it at the location of the computer system.

2.3 A defect to be dealt with shall be deemed to exist if the software program which is the subject matter of the contract in each case exhibits a behavior which deviates from the corresponding performance description/documentation in the latest valid version and this behavior can be reproduced by the Customer. Notices of defects shall be addressed to the Contractor in writing. For the purpose of precise investigation of any errors that may occur, the Customer shall be obliged to make the computer system used by it (in the case of systems in an online network with other computers, also the corresponding connection), software programs, protocols, diagnostic documents and data available to the Contractor free of charge to a reasonable extent for test purposes during normal working hours and to support the Contractor. Detected errors for which the Contractor is responsible shall be resolved by the Contractor within a reasonable period of time: The Contractor shall be exempt from this obligation if defects lying within the

Client's sphere of responsibility hinder this and are not remedied by the Contractor. A solution to the error shall be provided by a software update or by appropriate alternative solutions.

3. services not covered by this contract

3.1 Unless explicitly stipulated otherwise in this Contract, the costs of travel, stay and travel time for the Contractor's persons assigned to perform the Service.

3.2 In the event of unauthorized use of services, the Contractor shall be entitled to invoice the Client for the costs incurred at the applicable cost rates.

3.3. services that are caused by operating system changes, hardware changes and/or by changes to mutually program-dependent software programs and interfaces that are not the subject of the contract.

3.4 Individual program adjustments or reprogramming.

3.5. program changes due to changes in legal regulations, if they require a change in the program logic.

3.6 The Contractor shall be released from all obligations under this Agreement if program modifications are made to the software programs covered by this Agreement by the Customer's employees or third parties without the Contractor's prior consent, or if the software programs are not used in accordance with their intended purpose.

3.7. a barrier-free design iSd Bundesgesetz über die Gleichstellung von Menschen mit Behinderungen (Bundes-Behindertengleichstellungsgesetz - BGStG)", this can be requested separately.

3.8 The elimination of defects caused by the Client or third parties.

3.9. loss or damage caused directly or indirectly by acts or omissions in the operation by the client or user.

3.10. Data conversions, recovery of data files and interface adjustments.

4. prices

4.1 The prices quoted are ex place of performance. The costs of program carriers (e.g. magnetic tapes, magnetic disks, magnetic tape cassettes, etc.) as well as documentation and any contract fees shall be invoiced separately.

4.2 For services that can be performed at the Contractor's premises, but which are exceptionally performed at the Client's premises at the Client's request, the Client shall bear the costs of travel, accommodation and travel time for the Contractor's persons commissioned to perform the service.

4.3 In the event of increases in wage and material costs or other costs and charges occurring after conclusion of the contract, the Contractor shall be entitled to increase the lump-sum amounts stated overleaf accordingly and to charge them to the Customer from the beginning of the month following the increase. The increases shall be deemed accepted by the Customer from the outset if they do not exceed 10% per annum.

4.4 All fees and taxes (in particular VAT) shall be calculated on the basis of the respective valid legal situation. If the tax authorities subsequently prescribe taxes or duties in addition, these shall be borne by the client.

5. delivery dates

5.1 The Contractor shall endeavor to provide information within a reasonable period of time in response to the Client's respective inquiries during the Contractor's normal working hours.

5.2 The Client shall not be entitled to withdraw from the contract or to claim damages for exceeding the promised deadlines.

5.3 Partial deliveries and advance deliveries are permissible.

6. payment

6.1 The agreed lump-sum cost amounts are payable by the Client in advance for the calendar year/partial year.

6.2 Invoices issued by the Contractor shall be due 14 days after the invoice date without deduction and free of charges.

6.3 Compliance with the agreed payment dates is an essential condition for the Contractor's performance of the delivery or fulfillment of the contract. Non-compliance with the agreed payments entitles the Contractor to stop the current work and to withdraw from the contract. All related costs as well as loss of profit shall be borne by the Client. In the event of late payment, interest on arrears shall be charged at the rate customary in banking. In the event of non-compliance with two installments in the case of partial payments, the Contractor shall be entitled to enforce loss of dates and to call in handed-over acceptances.

6.4 The Customer shall not be entitled to withhold payments due to incomplete total delivery, warranty or guarantee claims or complaints.



7. contract duration

7.1 The contractual relationship, which requires a professional installation of the duly acquired software program that is the subject matter of the contract, begins with the signing of the contract and is concluded for an indefinite period of time. This contract may be terminated in writing by one of the contracting parties subject to a notice period of 3 months to the end of a calendar year, at the earliest, however, after the expiry of the 36th month of the contract. If the software program that is the subject of the contract is demonstrably put out of operation or goes under, the contractual relationship may be terminated prematurely subject to a three-month notice period. In this case, the aliquot part of the annual flat rate for the service not consumed shall be transferred to an Austrian bank account to be made known by the Customer.

8. service disruptions

8.1 The Contractor undertakes to provide the Services in accordance with the contract. If the Contractor does not provide the Services at the scheduled times or provides them only defectively, i.e. with significant deviations from the agreed quality standards, the Contractor shall be obliged to start remedying the defects immediately and to provide its Services properly and free of defects within a reasonable period of time by repeating the affected Services or performing any necessary subsequent improvements, at its discretion.

8.2 If the defectiveness is based on provisions or cooperation of the Client or on a breach of the Client's obligations pursuant to Section 3.9, any obligation to remedy defects free of charge shall be excluded. In such cases, the services provided by the Contractor shall nevertheless be deemed to have been provided in accordance with the contract despite possible restrictions. The Contractor shall undertake a remedy of the defect at the Client's request and at the Client's expense.

8.3 The Customer shall support the Contractor in the elimination of defects and provide all necessary information. The Customer shall immediately notify the Contractor in writing or by e-mail of any defects that have occurred. The Customer shall bear any additional expenses incurred in the elimination of defects due to a delayed report.

8.4 The warranty period shall be 6 months. However, notices of defects shall only be valid if they concern reproducible defects and if they are documented in writing within 4 weeks after delivery of the agreed service. In the case of warranty, improvement shall in any case have priority over price reduction or rescission. In the event of a justified notice of defects, the defects shall be remedied within a reasonable period of time, whereby the Customer shall enable the Contractor to take all measures necessary for the investigation and remedying of the defects. The reversal of the burden of proof, i.e. the obligation of the Contractor to prove its innocence of the defect, is excluded.

9. liability

9.1 The Contractor shall only be liable to the Customer for damage for which it is demonstrably responsible in the event of gross negligence. This shall also apply mutatis mutandis to damage caused by third parties engaged by the Contractor. In the event of personal injury for which the Contractor is responsible, the Contractor shall be 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 by third parties - is expressly excluded.

9.3 Claims for damages shall become statute-barred in accordance with the statutory provisions, but no later than one year after knowledge of the damage and the damaging party.

9.4 If the Contractor performs the Work with the assistance of third parties and warranty and/or liability claims arise against these third parties in this context, the Contractor shall assign these claims to the Customer. In this case, the Customer shall give priority to these third parties.

9.5 Insofar and as long as obligations cannot be fulfilled on time or properly as a result of force majeure, such as war, terrorism, natural disasters, fire, strike, lockout, embargo, sovereign intervention, failure of the power supply, failure of means of transport, failure of telecommunication networks or data lines, changes in the law affecting the services after conclusion of the contract or other non-availability of products, this shall not constitute a breach of contract.

10. location

The location of the computer systems that are the subject of the contract is specified in the contract. In the event of a possible change of location of the computer systems, the Contractor shall be entitled to redefine the flat-rate cost or to terminate the contract prematurely.

11 Copyright and use

11.1 The Contractor or its licensors shall be entitled to all copyrights to the agreed services (programs, documentation, etc.). The Customer shall exclusively receive the right to use the software after payment of the agreed remuneration exclusively for its own purposes, only for the hardware specified in the contract and to the extent of the acquired number of licenses for simultaneous use on

several workstations. Only a license to use the work is acquired by the present contract. Distribution by the client is excluded in accordance with copyright law. The Customer's participation in the production of the software shall not result in the acquisition of any rights beyond the use stipulated in the present contract. Any infringement of the Contractor's copyrights shall result in claims for damages, in which case full satisfaction shall be paid.

11.2 The Customer shall be permitted to make copies for archiving and data backup purposes on condition that the Software does not contain any express prohibition by the Licensor or third parties and that all copyright and proprietary notices are transferred unchanged to these copies.

11.3 If the disclosure of the interfaces is required to establish the interoperability of the software in question, the Customer shall apply to the Contractor for this against reimbursement of costs. If the Contractor does not comply with this request and decompilation takes place in accordance with the Copyright Act, the results are to be used exclusively for the purpose of establishing interoperability. Misuse shall result in compensation for damages.

12. loyalty

The contracting parties undertake to be loyal to each other. They shall refrain from any enticement and employment, also via third parties, of employees who have worked on the realization of the orders, of the other contractual partner for the duration of the contract and 12 months after the termination of the contract. The contracting party violating this provision shall be obliged to pay liquidated damages in the amount of one year's salary of the employee.

13. data protection, secrecy

The Contractor shall oblige its employees to comply with the provisions pursuant to Section 6 of the Data Protection Act.

14. miscellaneous

Should individual provisions of this contract be or become invalid, this shall not affect the remaining content of this contract. The contracting parties shall cooperate in partnership to find a provision that comes as close as possible to the invalid provisions.

15. final provisions

15.1 Unless otherwise agreed, the statutory provisions applicable between fully qualified merchants shall apply exclusively in accordance with Austrian law, even if the order is executed abroad. For any disputes, the local jurisdiction of the court having subject-matter jurisdiction for the Contractor's place of business shall be exclusively agreed. For sales to consumers within the meaning of the Consumer Protection Act, the above provisions shall apply only to the extent that the Consumer Protection Act does not mandatorily provide for other provisions. Non-compliance with essential parts of the contract shall entitle the contracting parties to terminate the contract prematurely without notice.

15.2 Amendments and supplements to the contract must be made in writing. This shall also apply to the cancellation of this formal requirement.

15.3 Should one or more provisions of the contract be or become invalid or unenforceable in whole or in part, the validity of the remaining provisions shall not be affected thereby. The invalid or unenforceable provision shall be replaced by a mutatis mutandis valid provision which comes as close as possible to the economic purpose of the invalid or unenforceable clause.

15.4 Any disposal of the rights or obligations existing on the basis of the contract shall require the prior written consent of the respective other contracting party. However, the Contractor shall be entitled to transfer the contract to a company affiliated with the Contractor under group law even without the consent of the Principal.

15.5 The Contractor shall be entitled to use third parties to fulfill its obligations in whole or in part.

Mediation clause:

In the event of disputes arising from this contract that cannot be settled by mutual agreement, the contracting parties mutually agree to involve registered mediators (ZivMediatG) specializing in business mediation from the list of the Ministry of Justice for the out-of-court settlement of the conflict. If no agreement can be reached on the selection of the business mediators or on the content of the dispute, legal action will be taken at the earliest one month after the failure of the negotiations.

In the event of a mediation that does not materialize or is terminated, the following shall apply in

any court proceedings that may be initiated shall be governed by Austrian law. All necessary expenses incurred as a result of prior mediation, in particular also those for a legal advisor, may be claimed as "pre-litigation costs" in court or arbitration proceedings as agreed.

