

# General terms and conditions of the company

## Innovations Softwaretechnologie GmbH

- hereinafter Supplier -

### § 1 General Terms

(1) The term "Service(s)" of the Supplier refers throughout the following general terms and conditions to deliveries and/or Services which Supplier must provide and/or has already provided.

(2) The Supplier delivers and/or performs exclusively on the basis of these general terms and conditions. These general terms and conditions also apply to the initiation of business relations with the Supplier. The Supplier does not accept contradicting terms and conditions.

(3) Agreements between Supplier and customer diverging from these general terms and conditions require the written form or a written confirmation in counterparts to be effective. This also applies to a potential waiver of the written form, which likewise requires written form or a written confirmation in counterparts to be effective.

(4) These general terms and conditions become part of every individual contract of the Supplier within the scope of its business.

(5) The Supplier may withdraw offers without a fixed term at any time. Offers of the Supplier with a fixed term only lead to a contract, if the customer accepts the offer within the term. If the Supplier did not submit an offer, the contract only becomes valid and binding, if and when the Supplier confirms the order to the customer in writing.

(6) The Supplier reserves the right to variations in technology and design compared to descriptions and statements in brochures, catalogues and comparable written documents. The customer may only derive rights against the Supplier based thereon, if the variations lead to a materially inferior value of the Service.

(7) The Supplier may at all times deliver according to the state of the art technology, even if it changed after the conclusion of the contract.

### § 2 Remuneration

(1) The Supplier quotes its prices with its place of business as place of performance.

(2) All Services of the Supplier must be remunerated. This rule applies accordingly in case no explicit agreement concerning the amount of remuneration has been made. In this case, a remuneration according to the valid price list as applicable from time to time is deemed to have been agreed upon. A remuneration customary to the trade for the respective Services is deemed to have been agreed upon if there is no valid price list or if the rendered Services are not covered therein in part or in their entirety.

(3) The agreed upon remuneration only covers the development work of the Supplier. Data carriers and other items which incorporate the development work of the Supplier are subject to separate list prices of the Supplier as applicable from time to time.

(4) The agreed upon remuneration for individual Services does not include business trips. They will be charged to the customer after delivery of the Service based on travel expense guidelines of the Supplier as applicable from time to time. They will be charged at the maximum rate permissible for tax purposes in case the Supplier does not dispose of travel expense guidelines.

(5) Likewise, the remuneration does not include telecommunication cost necessary for the performance of the Services. This applies in particular, but is not limited to costs for data transmission, video conferences, data base enquiries via Internet and on-line services, which will be charged as incurred.

### § 3 Additional services

(1) The customer owes the Supplier the customary remuneration for such additional Services, which are requested by the customer subsequent to the placement of

an order and which are not covered by the scope of the initial order, even if the Supplier did not indicate such additional remuneration before rendering the Services.

(2) The stipulations in paragraph 1 apply accordingly to all Services rendered by the Supplier based on incorrect or incomplete customer input or because of unwarranted customer complaints.

### § 4 Terms of payment

(1) All price quotations made by the Supplier are to be increased by value added tax (VAT), as applicable at the time of the conclusion of the respective contract. In case of ongoing Services, the VAT rate applicable at the point in time when payment is due shall govern.

(2) The Supplier is entitled to raise user royalties that are periodically due for payment by written notification with a three months notice period. Between the receipt of any two such notifications must at least be a period of 12 months apart. The customer is entitled to an extraordinary termination of the contract per the date, when the raise of the user royalties takes effect, if the royalties are raised by more than 10%. The right to said extraordinary termination expires, if not exercised within 14 days after receipt of the notification.

(3) The customer may only set off a counterclaim against a claim of the Supplier or allege a right of retention therefrom, if said counterclaim has become res indicata or is undisputed.

### § 5 User rights

(1) With the delivery of the Service to the customer, the Supplier transfers the non exclusive and non transferable right to the customer to use the Services within the scope of the contract.

(2) The assignment of exclusive right of use requires an explicit stipulation in writing. The customer may assign exclusive rights of use to third parties only upon prior written consent of the Supplier.

(3) The assignment of the rights of use is subject to the condition precedent of full payment of the remuneration due by the customer. In case the customer is in arrears with payment of remuneration due, the Supplier is entitled to revoke the rights of use, once a reasonable grace period, set by the Supplier to enable the customer to remedy the default has expired without result.

(4) The customer is not entitled to duplicate, to change and/or to elaborate the Services of the Supplier. He is in particular not entitled to develop, to decompile, to disassemble or to reverse engineer the Services.

### § 6 Retention of title

(1) Any and all tangible documents and/or programs disclosed to the customer within the scope of the initiation of the contract remain property of the Supplier and must be returned to him unsolicited, unless a contract is concluded.

(2) Tangible property delivered to the customer by the Supplier, which embodies the Services of the Supplier, particularly data carriers and accompanying material, remain property of the Supplier until full payment of the remuneration owed by the customer.

(3) In case the customer copies the Services of the Supplier on disk, CD or comparable data carrier, the Supplier and the customer herewith agree, that the Supplier acquires ownership of the respective data carrier at the time the copy is made subject to the condition subsequent of full payment of the remuneration owed by the customer. The transfer of physical possession of the respective data carrier to the Supplier is substituted with a contract of loan for use between the Supplier and the customer.

(4) In case of attachment of items collateralised to the Supplier according to paragraph 2 or paragraph 3 above by third parties (hereinafter "Collateral"), the customer must inform the Supplier without undue delay and point out the preferential right of the Supplier to the third party. This applies in particular but is not limited to any and all enforcement acts. The customer shall bear possible costs and damages to the Collateral.

(5) In case the customer is in arrears with the remuneration due, the Supplier may request that the customer marks the Collateral visibly as property of the Supplier.

(6) In case the customer is in arrears with the remuneration due, the Supplier may furthermore take back the Collateral at the expense of the customer upon expiration of a reasonable grace period set by the Supplier. In case the Collateral is into the physical possession of a third party, the Supplier may demand assignment of the customer's claim against the third party to return such items in their physical possession. Repropriation of Collateral by the Supplier in case of arrears with remuneration shall be deemed as withdrawal from the contract only, if expressly stated by the Supplier.

### § 7 Contractual deadlines and delivery dates

(1) Delivery dates stated by the Supplier are non-binding estimates, unless expressly stipulated in writing as contractual deadlines or binding delivery dates.

(2) Contractual deadlines and binding delivery dates are subject to the condition precedent that the Supplier properly receives the necessary deliveries by third parties in a timely manner. Periods of arrears with remuneration due or periods of default on cooperation owed by the customer shall extend said time lines accordingly.

(3) The Supplier is not liable for delays of Services due to acts of god or circumstances beyond the control of the Supplier, which make it temporarily difficult or impossible for the Supplier to render its Services, such as unexpected shortage of material, labour strikes and external interruptions of operations. Contractual deadlines and binding delivery dates shall be extended by the respective periods of the interference.

### § 8 Deliveries

(1) In case of shipping, the risk of accidental loss or deterioration shifts to the customer as soon as the Supplier hands over to the shipping company. If handing over to the shipping company is delayed due to reasons not attributable to the Supplier, the risk shifts to the customer as soon as he receives notification stating that the delivery is ready for shipment. The Supplier owes transport insurance only, if the customer explicitly declares that he will bear the associated costs.

(2) The Supplier is entitled to render performance in part, unless acceptance of such performance entails disproportionate expenses for the customer.

(3) Data carriers, accompanying material et al, delivered by the Supplier for purposes of tests, remain property of the Supplier.

### § 9 Warranty

(1) All warranty claims against the Supplier lapse after 12 months as of the date of delivery of Services rendered by the Supplier, unless the Supplier has fraudulently concealed a defect.

(2) The customer is obligated to examine the Services of the Supplier for detectable defects upon delivery without undue delay and to notify the Supplier of any defect. If the customer foregoes this notification, the Services are deemed to be approved with the defect.

(3) The Supplier shall warrant by handing over a new version of the Services, free of the defect - hereinafter "Cure" - within a reasonable time period. The customer may rescind the contract or reduce the remuneration for the Services, if the Cure fails despite repeated attempts. Any further objective warranty is excluded. The limitation of liability in section 10 applies to warranty claims based on fault.

(4) The statute of limitation period of warranty for the alleged defect is suspended as of receipt of the notification by the Supplier until the Cure, if the customer notifies the defect and the Supplier undertakes to cure the defect. In this case the statute of limitation of the warranty occurs at the earliest three months after performance of the Cure. Interruption of the statute of limitation by performance of the Cure, leading to a new beginning of the statute of limitation period, is excluded.

(5) Further duties of the customer to act as prudent businessman concerning examination and notification of defects remain unaffected.

### § 10 Limitation of liability

Any liability of the Supplier for damages caused by negligence is excluded, unless cases of gross negligence or damages for injury to life, body or health are at hand.

### § 11 Customer obligations

(1) The customer shall secure his own electronic data that are impacted by the Services of the Supplier as comprehensively as possible in order to enable a reconstruction with reasonable expenses in cases of damage.

(2) The customer shall treat as confidential during and after application any and all information on Services of the Supplier, on methods and procedures for their creation including corresponding written or other tangible documents, which were disclosed to him within the scope of the initiation or consummation of a contract. He shall not disclose the above-mentioned information to third parties without prior written consent by the Supplier. The customer undertakes to impose such an obligation also on his employees.

(3) The customer shall make necessary provisions to avoid an unauthorized use by third parties, which is not covered by the rights of use. In case the customer is entitled to transfer the rights of use to a third party based on an

individual contract, he undertakes to impose this obligation to his contracting partner.

(4) The customer shall without remuneration take any and all steps to enable the Supplier to provide its Services. Upon request of the Supplier, the customer shall in particular:

- provide adequate workspace including all corresponding work equipment for the Supplier's staff,
- grant the Supplier prioritized unrestricted and adequate computer access time,
- provide test data and comparable tools for the provision of Services in a timely manner,
- provide a functioning data processing system necessary to install and test the Services of the Supplier,
- provide staff, particularly data processors and typists to support of the Supplier and
- appoint a responsible contact person for coordination.

(5) The delivery and performance dates are extended accordingly, if the customer does not fulfil his obligations according to paragraph 4 in a timely manner. If the customer is in arrears with the performance of his obligations to cooperate, the Supplier may refuse to continue to fulfil the contract once the grace period set by the Supplier for performance of these obligations to cooperate has expired without result. In this case the Supplier may charge all expenses incurred until the refusal as well as the lost profits caused by the premature termination.

(6) Unless individually stipulated otherwise, the customer shall determine the system specifications and submit them to the Supplier for counter signature.

(7) The customer grants to the Supplier the right to make copies of the Services rendered by for purposes of survey of compliance with contractual use at any time during common working hours.

(8) The customer shall neither himself nor through third parties solicit for employment any employees of the Supplier, who he got acquainted with during the consummation of a contract.

#### **§ 12 Intellectual Property rights**

(1) The customer may make copies of the Services and/or of parts thereof rendered by the Supplier for backup purposes only. The simultaneous use of the Services on several computers requires a separate contractual agreement.

(2) The customer may not delete any displays of intellectual property rights of the Supplier in the Services, but shall rather include them also in the backup copies.

(3) The Supplier is not obligated to check components or parts of components, provided by the customer for possible intellectual property rights of third parties. The Supplier is not liable for any third party claims in connection with components or parts thereof which the customer instructed to be integrated into the Services.

(4) The customer shall notify the Supplier without undue delay in writing, if third parties make claims alleging of violation of intellectual property and/or copy rights by the Services delivered by the Supplier.

(5) The Supplier may make modifications to the Services at its own account, if it appears reasonable because of alleged third party claims concerning intellectual property rights and if there is no decrease in the value of the Services.

#### **§ 13 Assignment of rights**

(1) The customer may only assign rights under this contract upon prior written consent of the Supplier.

(2) The supplier is entitled to assign to third parties the rights and obligations under contracts that are subject to these general terms and conditions. Consent thereto by the customer is not required. The customer however may terminate the respective contract without notice upon receipt of the notification concerning the transfer of the contract. The right of termination expires, if it is not exercised within two weeks after receipt of the notification concerning the transfer of the contract.

(3) The right of the Supplier to fulfil its contractual obligations with the help of third parties as vicarious agents remains unaffected.

#### **§ 14 Advertisement**

(1) The Supplier may publicise and use the Services rendered to the customer for advertisement purposes by mention of the customer, unless, in individual cases, there are predominant operational concerns of the customer.

(2) The Supplier may include the customer into its list of references for purposes of presentation to third parties.

#### **§ 15 Place of performance; place of jurisdiction**

(1) Place of performance for all deliveries and performances made by the Supplier shall be its place of business.

(2) The place of jurisdiction is Überlingen to the extent an agreement concerning the place of jurisdiction is permissible.

#### **§ 16 Applicable law; severability clause**

(1) For all contractual agreements German law is exclusively applicable. The application of the UN Convention of International Sale of goods is excluded.

(2) The effectiveness of any other regulations of an individual contract remains unaffected, if one of the regulations in these general terms and conditions should be or become ineffective. In this case a regulation which comes closest to the commercial purposes pursued with the ineffective regulation shall replace the invalid regulation.

(3) These general terms and conditions entirely supersede any previously existing general terms and conditions.

#### **§ 17 Governing Language**

These general terms and conditions are presented in the English and German languages. In case of discrepancy, the German language shall govern.

as of 2006-10-09

Innovations Softwaretechnologie GmbH  
Ziegelei 7  
88090 Immenstaad  
Germany  
Amtsgericht Ulm, HRB 631622

Tel.: (49) 7545/202-300  
Fax: (49) 7545/202-301  
<http://www.innovations.de>