General Terms and Conditions

for the Sale and Delivery of Organizational and Programming Services and Permission to Use Software Products

2016

The following General Terms and Conditions for the Sale and Delivery of Organizational and Programming Services and Permission to Use Software Products (later on abbreviated GTC) are based on the 2004 version provided by the Austrian Chamber of Commerce (WKO), which had been recommended by the Professional Association of Management Consultants and Information Technology Experts as well as the National Committee on Trade in Machinery/National Trade Group Business Machines. The following GTC were updated to meet the content of the updated version by 2011. Some paragraphs had to be altered to meet the concrete business case.

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MEDOVIS Healthcare GmbH

Mostbauerstraße 10, 8530 Deutschlandsberg, Österreich

E-mail: office@medovis.at

http://www.medovis.at

1. Scope and Validity of Contract

All orders and agreements are only then legally binding, when they have been signed by an authorized representative of the seller and they obligate only to the extent set forth in the order confirmation. The terms and conditions of the buyer are invalid for the legal transaction which is the subject of this contract, as well as for the entirety of our business relations. All offers are subject to change without notice.

2. Performance and Inspection

2.1. The subject of an order can be:

- Development of an organizational plan
- Macro- and micro-analyses
- Creation of custom-designed programs
- Delivery of library (standard) programs
- Acquisition of rights to use software products
- Acquisition of exclusive rights to use and to exploit software products
- Support at system start-up / support during system changeover
- Telephone advisory service
- Program maintenance
- Creation of program carriers
- Other services

2.2. Individual organizational plans and programs shall be elaborated in line with the type and scope of the information, documents and accessory aids which have been made available in toto by the buyer. Included are customary test data as well as the opportunity to test to the necessary extent, which the buyer shall make available on a timely basis, during normal business hours, and at his expense. If the buyer has already been working in real time in an operating system that is being made available for testing, the responsibility for securing the real data lies with the buyer.

2.3. The basis for creating custom-designed programs shall be the written performance specifications that either are provided by the buyer or that the seller writes up, at charge to the buyer, on the basis of documentation and information provided to him by the buyer. This performance catalogue is to be inspected by the buyer for correctness and completeness and is to be initialed by him as a sign of his assent. Requests for modifications which are made thereafter can result in separate deadline and price agreements.

2.4. For individually created software or program adaptations, it is required that each program be accepted by the buyer at the latest four weeks after delivery by the seller. This acceptance will be confirmed in a record of the transaction by the buyer (inspection for correctness and completeness in line with the performance specifications accepted by the seller on the basis of the test data made available to him, as described in 2.2). Should the buyer allow four weeks to pass without accepting the program, the delivered software shall be deemed to have been accepted as at the last day of the stated time period. If the buyer uses the software in real-time operations, the software is thereby deemed to have been accepted by the buyer. Possible defects – deviations from the written performance specifications – are to be reported to the seller with sufficient supporting documentation. The seller shall make efforts to correct the defects as quickly as possible. If there are serious defects that have been reported in writing, i.e., if real-time operations have not commenced

or cannot be continued, a renewed acceptance of the work following correction of the deficiency is required. The buyer does not have the right to refuse software because of immaterial defects.

2.5. When library (standard) programs have been ordered, the buyer confirms by virtue of the order his knowledge of the scope of performance of the ordered program.

2.6. Should it prove in the course of the work to be impossible, actually or legally, to complete the order in line with the performance specifications, it is the responsibility of the seller immediately to inform the buyer thereof. If the buyer does not change the performance specifications accordingly or create the conditions to make completion of the order possible, the seller can reject performance of the order. If the impossibility of carrying out the order is due to an omission on the part of the buyer or to a later change by the buyer in the performance specifications, the seller is entitled to withdraw from the order. The buyer is to reimburse the seller's costs and fees that have come due for the work as well as any dismantling costs.

2.7. The shipment of program carriers, documentation, and performance specifications shall be at the expense and risk of the buyer. Should the buyer wish further training and elucidation, these will be billed separately. Insurance will be taken out only at the request of the buyer.

3. Prices, Taxes and Fees

3.1. All prices are in Euro and do not include sales tax. They are valid only for the present order. The quoted prices are ex business domicile or branch office of the seller. The costs of program carriers (e.g., CD's, magnetic tapes, magnetic disks, floppy disks, streamer tapes, magnetic tape cassettes, etc.) as well as any contract fees shall be billed separately.

3.2. For library (standard) programs the valid prices are the list prices in effect on the day of delivery. All other services (organizational consultancy, programming, training, support during changeover, telephone advisory services) will be charged at the rates in effect on the day the services are performed. Deviations from the amount of time calculated as being required for the work (which serves as the basis for the price calculation) and for which the seller is not responsible, shall be charged according to the actual time spent.

3.3. The costs for travel, per diem, and overnight accommodation costs shall be invoiced separately to the buyer according to the valid respective rates. Transit time is to be considered as work time.

4. Delivery Dates

4.1. The seller is to endeavor to keep as closely as possible to the agreed dates for completion of the order.

4.2. The targeted completion dates can only then be met if 1) the buyer makes available to the seller in full, on the dates established by the seller, all the necessary preliminary work and documents, especially the performance specifications accepted by him in accordance with §2, Item 3, and if 2) the buyer fulfills his obligation to cooperate to the extent required. Delays in delivery and cost increases that result from incorrect, incomplete, or subsequently changed data and information or supporting documentation provided to the seller, are not the responsibility of the seller and cannot result in the seller's being in default of delivery. Additional costs so arising are to be borne by the buyer.

4.3. In the case of orders that encompass a number of units or programs, the seller is entitled to make partial deliveries and to submit partial invoices.

5. Payment

5.1. If not stated different, invoices submitted by the seller, inclusive of sales tax, are payable at the latest 14 days from receipt of the invoice, , without and deductions and free of charges. For partial invoices, the terms of payment for the entire order obtain analogously.

5.2. Where orders encompass a number of units (e.g., computer programs and/or training sessions, completion in stages), the seller is entitled to submit an invoice after the delivery of each unit or service.

5.3. Payment on the agreed-upon dates is an essential condition for delivery and for fulfillment of the contract by the seller. Failure on the part of the buyer to comply with the agreed payment schedule entitles the seller to discontinue current work and to withdraw from the contract. All costs connected therewith as well as loss of profit are to be borne by the buyer. In case of delayed payment, interest on payment in arrears will be charged at customary bank rates. In case two consecutive installments are not paid on time, the seller has the right to enforce non-compliance and to call accepted drafts.

5.4. The buyer is not entitled to withhold payment because of incomplete total delivery, guarantee or warranty claims, or complaints.

6. Copyright and Use

6.1. The seller or his licensors are entitled to all copyrights on the agreed services (programs, documentation, etc.). The buyer obtains only the right to use the software after payment of the agreed remuneration strictly for his own purposes, only with the hardware as specified in the contract, and, in accordance with the number of licenses acquired, simultaneously at different workplaces.

The buyer does not by virtue of participating in the production of the software acquire any rights beyond its use as set forth in this contract. Any infringement of the copyrights of the seller will result in the right to claim damages, in which case the seller is entitled to full satisfaction.

6.2. The buyer is permitted to make copies for archival and data backup purposes only on condition that the software does not contain an express prohibition on the part of the licensor or a third party and that all notices of copyright and ownership are transferred unchanged into these copies.

6.3. Should the disclosure of the interfaces be necessary to produce the interoperability of the software covered by this contract, the seller is to request this of the buyer with remuneration of costs. If the seller does not comply with this stipulation and decompilation follows in accordance with copyright la w, the results are to be used exclusively for the production of interoperability. Misuse will result in claims for damages.

6.4 In case the provided software is intellectual property of a third party, the license terms of the third party become binding.

7. Right of Cancellation

7.1. Force majeure, work conflicts, natural catastrophes, and transportation stoppages, as well as other circumstances that cannot be influenced by the seller relieve the seller of the obligation to deliver or permit him to redetermine the agreed delivery period.

7.2. Cancellation by the buyer is only possible with the written agreement of the seller.

If the seller agrees to the cancellation, he is entitled to charge not only for services rendered and accrued costs, but also a cancellation fee that represents 30% of the value of the total order not yet settled.

8. Warranty, Maintenance, Alterations

8.1. The seller guarantees that the software meets the functions described, if it is used as stated in the agreement.

8.2. Conditions for the elimination of errors are:

- The buyer has to state the mistakes sufficiently in context of an error message and transmit the error message to the buyer.
- All documents and information necessary for solving the problems have to be transmitted by the buyer to the seller.
- The seller or a third party attributable to him has not taken action to modify the software.
- The software was used to the purpose stated in the agreement.

8.3 Notices of defects are valid only if they concern defects that are reproducible and if they are submitted within 4 weeks after delivery of the agreed service or, in the case of custom-designed software, after acceptance of the program in accordance with §2 Item 4, and documented in writing. In fulfillment of the warranty, rectification of defects takes precedence over price reduction or rescission of the order. If the notice of defects is justified, the defects are to be remedied within an appropriate period of time, and the buyer is to make available to the seller all measures required by the latter to investigate the problem and remedy the defects.

The presumption of defectiveness in accordance with § 924 of the ABGB is ruled out.

8.4. Revisions and additions, which, before the agreed work is handed over, prove to be necessary because of organizational deficiencies or technical deficiencies in the program, and for which the seller bears responsibility, are to be carried out free of charge by the seller.

8.5. The costs for support provided, diagnosis of errors, remedying defects and failures that are the responsibility of the buyer, as well as other corrections, revisions and additions are to be carried out by the seller and the costs charged to the buyer. This is also the case for the remedying of errors when program revisions, additions or other interventions have been carried out by the buyer himself or by a third party.

8.6. Furthermore, the seller assumes no warranty for defects, failures or damages that are due to improper use, altered components in the operating system, interfaces and parameters, the use of inappropriate organizational resources and data carriers, insofar as these are stipulated, unusual operating conditions (particularly deviations from the installation and storage provisions) or damage during shipment.

8.7. For programs that are subsequently altered by programmers of the buyer or by third parties, any existing warranty of the seller’s is no longer applicable.

8.8. Insofar as the subject of the order is the revision or supplementation of existing programs, the warranty covers the revision or supplementation. The warranty for the original program does not thereby again come into effect.

8.9. All warranty claims are subject to a limitation period of six months after delivery.

8.10. As far as service or products under the Contract are provided on an ongoing basis, each party shall have the right to terminate the Contract in written by registered mail at the end of each quarter, giving 6-months prior notice. Maintenance services, however, shall not be terminated before the end of the minimum duration agreed upon in the Contract. Any software programs not yet accepted at the time the Contract is terminated shall in any case be completed and compensated under the terms and conditions of the Contract.

8.11. In all other respects each party shall have the right to prematurely terminate for good cause, in writing by registered mail, a Contract concluded on an ongoing basis. Good cause shall be deemed to exist, in particular, (a) when the other party's property and assets are subjected to insolvency proceedings or when the opening of such proceedings is rejected due to a lack of assets, or (b) when the other party violates material obligations under the Contract, unparticular payment obligations, in spite of having been granted an adequate period of grace, so that the terminating party can no longer be reasonably expected to continue the Contract, or (c) the provision of services is obstructed or prevented due to force majeure for a period in excess of six months.

9. Liability

9.1. The seller shall be liable to the buyer for damages attributable to him, only to the extent that these are the result of serious fault. This is also applicable to faults by third parties employed by the seller. In case of personal damages the seller is fully liable.

9.2. The liability for indirect damages are expressly excluded.

9.3. Any damage claims shall be subject to a limitation period of one year from the beginning of the statutory limitation period.

9.4. In case the seller has to fulfil the agreement with assistance of a third party and guarantee and/or liability claims against the third party may incur, the seller assigns claims to the buyer. In this case, the buyer shall primarily refer to the third party.

9.5. The seller shall be liable for damage to the customs property up to 3% of Contract value, if and so far ITH is demonstrably responsible for such damage. The seller shall in no case be liable for indirect damage, loss or damage of information, damages due to business interruption, loss of earnings, loss of profits and other consequential damages. Remuneration for maintenance, installations, implementations and other services shall be taken into account until the first possibility of ordinary termination of the Contract with notice.

10. Loyalty

The parties to the contract obligate themselves to reciprocal loyalty. They will not hire away staff or employ, including by way of third parties, staff of the other party to the contract who have worked on the realization of the projects, during the duration of the contract or for 12 months after the end of the contract. A party to the contract in violation of this clause is obliged to pay lump-sum damages in the amount of one annual salary of the employee.

11. Protection of Data Privacy, Nondisclosure

The seller obligates his employees to observe the provisions of §15 of the Data Privacy Law.

12. Other

Should individual terms of this contract be or become inoperative, this will not affect the remaining terms of this contract. The parties to the contract will work in a spirit of partnership to find an arrangement that approximates as nearly as possible the inoperative terms.

13. Concluding Terms

Insofar as not otherwise agreed, the statutory regulations applicable to registered merchants are exclusively those in force under Austrian law. This is the case also when the order is carried out outside of Austria. In case of conflict, it is agreed that only the responsible local court in the seller's place of business has jurisdiction. For sales to consumers within the meaning of the consumer protection law, the above terms are valid only insofar as the consumer protection law does not insist on other conditions.

14. Mediation Clause

In order to settle disputes arising from this contract the contract parties agree by common accord on out-of court settlements by consultation of a registered mediator with specific knowledge in business mediation proposed by the Austrian Ministry of Justice. In case the mediation is not successful not prior to a month before failure of the negotiations legal action shall be taken.

Austrian law shall apply to a possible lawsuit in case mediation was not successful or discontinued. All costs occurred to meet the mediation process, including expenses for legal advisors involved, can be made valid in any legal or arbitration proceedings as "pre-legal costs".