

GENERAL TERMS AND CONDITIONS

of **Wolfgang M. Roser Software-Support GmbH** – hereinafter referred to as „Company“

1. Scope of Application

The present General Terms and Conditions shall apply to all business transactions, orders, activities, services and other business-related dealings of the Company and of the persons acting on behalf of the Company. Any application of the (general) terms and conditions, purchasing and/or sale terms and conditions of the counterparty/contractual partner shall be excluded without exception and without limitation. These General Terms and Conditions shall apply unless otherwise agreed and set forth in writing on an individual basis.

2. Conclusion of Contract

A contract (an agreement, etc.) is concluded by an offer and a corresponding acceptance. Both offer and acceptance shall require written form. The Company shall be entitled to accept oral offers by sending a written confirmation of acceptance. The contents of the contract shall, in this case, be according to such confirmation of acceptance. The Company reserves the right of modification at any time, in particular in case of error, change of legal framework, technical developments, etc.

3. Scope of Work, Duties of Cooperation, Acceptance

The scope of work is determined by the respective agreement. In case of doubt, services ordered, such as, for example, support enquiries made by telephone, shall be outside the agreed scope of work.

For orders of hardware, the Customer confirms its knowledge of the product characteristics of the respective hardware upon placing its order. If only hardware is delivered, the respective order shall not include configuration/installation/assembly. In case of delivery of hardware, the Company does not make any representation, guarantee or warranty with regard to the usability of the existing software or the software intended/envisaged to be used by the Customer.

For orders of library (standard) programs, the Customer confirms its knowledge of the features of the programs ordered upon placing its order.

The creation of individual organizational concepts and programs by the Company shall be carried out on the basis of the type and scope of the information, documentation and auxiliary resources provided by the Customer in binding and complete form. This shall also include test data in practical form as well as sufficient testing

possibilities, which shall be made available by the Customer in due time, during normal working hours and at the expense of the Customer. Should the facilities provided by the Customer for testing purposes already be in real/live operation, the Customer shall be responsible for the back-up of the real data.

The creation of individual programs shall be based on the written specification of services, as drafted by the Company against reimbursement of costs on the basis of the documentation and information submitted to the Company and/or as provided by the Customer. This specification of services shall be verified by the Customer for correctness and completeness and shall be marked by the Customer as approved. Any subsequent requests for modification shall require a separate agreement on timing and pricing.

Individually created software and/or program adaptations require a program approval for the respective program package not later than 4 weeks after delivery by the Customer. Such program approval shall be confirmed in a protocol by the Customer. (Verification for correctness and completeness on the basis of the approved specification of services by means of the test data provided.) Should the Customer allow the time period of 4 weeks to expire without program approval, the delivered software shall be deemed accepted as of the end date of the aforementioned time period. In case of utilization of the software in real/live applications by the Customer, the software shall in any case be deemed accepted. Any defects, which are defined as deviations from the approved specification of services, shall be notified to the Company by the Customer in writing and with adequate supporting documentation; the Company will endeavor to remedy such defects as quickly as possible. In case of material defects notified in writing, which prevent the start or continuation of real/live application, the parties shall carry out another acceptance procedure according to the above-mentioned principles after remedy of the defect. The Customer shall not be entitled to refuse acceptance of the software due to immaterial defects.

Should the parties come to the conclusion during the carrying out of the works that the execution of the order is impossible for factual or legal reasons, the Company shall inform the Customer thereof without delay. Should the Customer not be willing to modify the specification of services and/or establish the requirement(s) in a manner that enables the execution of the order, the Company shall be entitled to refuse performance. Should the impossibility be the result of a failure or default by the Customer or of a subsequent modification of the specification of services by the Customer or in any other manner be attributable to the

Customer's sphere, the Company shall be entitled to withdraw from the order. Any and all costs and expenses incurred by the Company for its services up to such date shall be reimbursed by the Customer.

Should the contractually agreed services to be provided by the Company also include software maintenance, the following services shall be included in the contractually agreed remuneration:

- i. Transmission of the most-current version of the standard version of the software provided within the framework of the license contract; only the last two versions of the software can be subject of maintenance services.
- ii. Transmission (together with the most-current data storage medium for program installation, if applicable) of modifications of the existing version, insofar as such modifications are not the consequence of material changes in statutory or other binding regulations.
- iii. Transmission of new or adaptation of existing documentation components.
- iv. Remedy of defects in the (software) product being the subject of maintenance and in the documentation provided for which the Company is responsible, which destroy or materially reduce the value or the usability for the intended use in accordance with the license contract.

Not included in the maintenance services are the following services, which require a separate order and separate remuneration:

- i. Installation of the transmitted most current version of the software product.
- ii. Installation of the transmitted modifications.
- iii. Transmission and installation of adaptations of the software to material changes in statutory or other binding regulations.
- iv. Remedy of defects for which the Company is not responsible.
- v. Carrying out of additional trainings that become necessary due to changes/improvements performed or caused by the Company.
- vi. Necessary adaptations to the software in case of changes to existing operating systems by their producer.
- vii. Consulting and advice in all questions relating to the use or application of the software product including the passing-on of use and application experiences from the whole user group.

If the contractual partner has purchased certain hourly quotas for services, all services subject to remuneration may be called upon from the Company within this framework.

4. Place of Performance

The performance of the services being the subject of the contract by the Company shall, unless otherwise agreed and set forth in writing, at the Company's discretion, be carried out at the location of the computer system, in the office premises of the Company or at any other suitable location during normal working hours of the employees of the Company instructed therewith. Should, as an exception and according to the wishes of the contractual partner, services be performed outside normal working hours or at a location different from the location intended by the Company, the Company shall be entitled to separately charge any additional costs. The selection of the employee(s) instructed with the performance of the services being the subject of the contract shall be at the Company's sole discretion. The Company shall also be entitled to make use of third parties for the performance of its services.

5. Prices, Taxes and Fees

All prices are quoted in Euro without value-added tax (VAT) included. They only apply to the current order. The prices quoted are calculated from the business seat and/or branch office of the Company. The costs of program storage media (for example, magnetic tapes, magnetic disks, floppy disks, streamer tapes, magnetic cassettes, etc.) as well as any applicable contractual fees and duties shall be separately paid by the contractual partner. For packaging, shipping and insurance separate fees to be borne by the Customer apply.

Any services above and beyond the agreed scope of services shall be paid for by the Customer to the Company on the basis of the then-current prices and rates of the Company.

Unless agreed otherwise, for library (standard) programs the list prices prevailing on the date of delivery shall apply. For all other services (organizational consulting, programming, training, adjustment support, support by telephone, etc.) the amount of work will be charged on the basis of the rates prevailing on the date of performance of such services. Deviations from the time expenditure being the basis of the contractual prices shall be adequately taken into account by the parties.

The expenses for travel, daily allowances and accommodation will be separately charged to the Customer on the basis of the then-current rates. Travel time shall be considered working time.

6. Date of Delivery and Performance

The Company will endeavor to adhere as closely as possible to the agreed dates for performance (completion).

The envisaged dates of performance can only be achieved if the Customer provides all required specifications and documentation, in particular the approved specification of services, not later than the dates set by the Company and complies with its duties of cooperation to the necessary extent. Any delays in delivery and increase in costs that are caused by incorrect, incomplete or subsequently changed specifications and/or documents provided shall not be the responsibility of the Company and cannot lead to a default of the Company. Any additional costs resulting therefrom shall be borne by the Customer.

In case of orders comprising multiple units and/or programs, the Company shall be entitled to effect partial delivery and/or partial performance.

Events of Force Majeure that make performance by the Company impossible or significantly impede performance shall entitle the Company to postpone the performance of its obligations for a reasonable period of time, at least for the duration of the obstructive event and reasonable lead time. Strikes, lock-out, labor disputes, transport blockades and similar events that directly or indirectly affect the Company shall also be deemed to be events of Force Majeure.

7. Payment and Default

For orders comprising multiple units (for example, programs and/or trainings, implementation in partial stages), the Company shall be entitled to issue an invoice after each individual unit or service.

The (partial) invoices issued by the Company, including VAT, shall be immediately payable upon receipt without any deductions or fees.

Any purchased hourly quotas shall be payable in advance for the following month. In case of a permanent invoice within the meaning of the VAT Act (UStG), the due date shall be on the fifth day of the month preceding the month for which payment is made.

The absence of a (formal) acceptance shall not postpone the due date.

In case of delay in payment, the contractual partner shall pay default interest in the amount of 10 percent (p.a.) above the base rate to the Company.

In the case of payment by installments granted by the Company, all installments shall immediately become due and payable if upon the due date of one installment the previous installment is outstanding in whole or in part. The entire

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outstanding amount shall become due and payable, whereas the amounts paid up to this point shall be designated to first cover interest, then costs and thereafter outstanding capital.

Any delay in payment by the contractual partner shall entitle the Company to terminate all, or only some, agreements with the contractual partner with immediate effect, if the contractual partner does not effect full payment despite granting of a reasonable period of grace, which does not have to exceed 2 weeks.

Any default by the contractual partner shall entitle the Company to withhold its own performance, whereas this shall apply to all agreements concluded with the contractual partner, not only to the individual case at issue.

In the event that the Company exceeds the agreed delivery and/or performance deadlines for reasons which are the sole fault of the Company, the Customer shall be entitled to withdraw from the specific order at issue by sending a registered letter, if the agreed delivery / performance is not carried out in material parts and without any fault of the contractual partner after expiry of an adequate period of grace, the duration of which shall be at least 4 weeks.

8. Cancellation

There is no right of cancellation.

9. Set-Off and Retention

The contractual partner shall not be entitled to offset claims of the Company with its own claims, unless such claims have been acknowledged by the Company or have been adjudicated by a court with legally binding effect or if the legal basis of such claim is the same legal transaction as the claim of the Company.

The contractual partner shall not be entitled to withhold payment on the grounds of incomplete delivery, guarantee or warranty claims, asserted defects or for other reasons.

10. Retention of Title

Any goods ordered shall remain property of the Company until full payment. Before transfer of ownership rights, any disposal of the goods (re-sale, renting, pledging, transfer of ownership for security purposes, processing, remodeling, etc.) without the consent of the Company, to be sought in each individual case, shall be prohibited.

11. Warranty

Any warranty by the Company shall be limited to a period of 4 months after delivery / performance,

unless the contractual partner is a consumer within the meaning of the Consumer Protection Act (KSchG).

Notifications of defects shall be addressed to the Company in writing without delay and with a detailed description of the defect. Defects asserted which are not directly reproducible according to this description shall not be deemed defects.

Software shall be considered have a defect in need of remedy if the respective software program being the subject of the contract deviates from the specifications in the corresponding specification of services/documentation in the most-current version and such deviation is reproducible.

Asserted defects that result from program modifications, additions or other interference by the Customer itself or by other third parties shall not be considered defects.

For products or parts of products that are later modified by the contractual partner or by third parties there shall be no warranty claims whatsoever against the Company.

In case of a justified notification of a defect, such defect(s) shall be remedied within a reasonable period of time of not less than 4 weeks. The Company shall be free from any obligation to remedy a defect if a deficiency for which the contractual partner is responsible or which is attributable to its sphere prevents the Company from remedying the defect and such hindrance is not removed by the contractual partner. In order to be able to examine potential defects in more detail, the Customer shall be obligated to make available its computer system in use (in case of systems with online connections to other computers, also the appropriate connection), software programs, protocols, diagnosis documentation and data to a reasonable extent for testing purposes during the normal working hours of the Company free of charge and to support the Company in any necessary or useful manner.

The solution to a defect shall be implemented either by a software update or by appropriate work-around solutions.

The Company assumes no warranty for defects, disruptions or damages that are the consequence of improper operation, the use of unsuitable organizational means or data carriers – if prescribed –, abnormal operating conditions (in particular deviations from the installation and storage conditions) as well as damages during transport.

If a modification of, or addition to, an already existing program is the subject of a certain order, the warranty shall be limited to such modification or addition. The warranty for the original program shall not be renewed.

In case of maintenance services, the warranty of the Company shall be limited to the maintenance

services themselves and that such maintenance services are not defective in a manner that destroys or materially reduces their value or their usability for the intended use as set forth in the contract. This shall not create any (new) warranty with regard to the underlying product.

The costs of assistance, diagnosis of defects as well as the remedying of defects and disruptions for which the contractual partner is responsible as well as other corrections, modifications and additions will be performed by the Company only on the basis of separate charges. This shall also apply to the remedying of defects in case of program modifications, additions or other interferences by the Customer itself or by third parties.

12. Copyright and Right of Use

The Customer is granted solely a non-transferable, non-exclusive right to use the software. Without the written consent of the Company, the contractual partner shall refrain from passing on organizational reports, programs, specifications of services etc. or copies thereof to third parties, whether for remuneration or free of charge. In view of the fact that the programs developed and organizational services performed are the intellectual property of the Company, the right to use such programs and services shall, also after payment, be limited exclusively to the contractual partner's own use and only in connection with the hardware mentioned in the contract. Any passing-on in violation of these terms, including during the dissolution of the business undertaking and/or insolvency proceedings, and also including any short-term passing-on for the purpose of reproduction, shall give rise to damage claims for the full amount of damages, including loss of profit.

The Customer gives its consent that the programs developed according to the Customer's orders may be placed in the program library of the Company for general use by the distribution organization of the Company, in consideration of the fact that its programs could be developed more economically and more cost efficiently for it by making use of other experiences and documents than would have been possible without making use of such additional means.

13. Liability

The Company shall be liable, irrespective of the legal basis of the claim, within the framework of the applicable statutory provisions, only if it proven that the Company or its vicarious agents have acted intentionally or with gross negligence. Any liability for ordinary negligence shall be excluded. The burden of proof shall always be on the contractual partner. Any indirect or consequential damages, pure financial losses, loss of savings, loss of interest as well as any damages

resulting from claims of third parties against the contractual partner shall be excluded in any event. This shall also apply to damages resulting from a performance of services, provided that a liability would result according to the statutory provisions at all.

Any claims of the contractual partner shall be limited to the amount of the remuneration payable for the services of the Company, and in any case shall not exceed a maximum amount of EUR 30,000.

14. Loyalty

The contractual partners commit themselves to mutual loyalty. They will refrain from any hiring or employment – including via third parties – of employees of the other partner who have worked, or currently work, on the realization of the projects during the duration of the contract and for a period of 12 months after termination of the contract.

15. Advertising

The contractual partner authorizes the Company to issue press releases and advertising measures naming the contractual partner (for example as reference).

16. Data Protection, Confidentiality

The Company shall obligate its employees to comply with the provisions of the Data Protection Act, in particular also with regard to data becoming available during the performance of services.

The processing of data by the Company shall be carried out in accordance with the statutory regulations. Customer data shall, in particular, be collected, processed, used and transmitted to authorized partners to the extent necessary or appropriate for the conclusion and performance of

the contract with the Customer and the continuing business relationship with the Customer.

17. Communication

The contractual partner shall designate a person responsible for the particular case, who shall be the contact person and whose declarations / statements shall be decisive. The Company shall be justified in assuming that every employee of the contractual partner shall have the authority to request certain services, if such services are related to the contractual partner or are to its benefit.

All communication shall, in general, be made in writing. In case of declarations given by other means, such declarations shall be promptly followed by a written confirmation. Without such written confirmation, the Company shall be entitled, but not obligated, to observe such declarations.

18. Severability

Should any provisions of this contract be or become invalid or unenforceable, this shall not affect the remaining provisions of the contract. The contractual partners shall work together in a cooperative manner in order to find a substitute provision that comes as closely as possible to the invalid or unenforceable provision.

19. Jurisdiction and Governing Law

The contract shall be governed by substantive Austrian law. The application of the U.N. Convention on Contracts for the International Sale of Goods shall be excluded. If the Customer is not a consumer within the meaning of the Consumer Protection Act, the parties agree on the exclusive jurisdiction of the court having subject-matter jurisdiction for the registered seat of the Company.