

## General Terms of Business of INFO AG

### I. GENERAL

#### 1. Scope

Unless otherwise agreed in writing, the following terms and conditions shall apply to all orders. We do not recognise any conflicting terms and conditions of the principal, even if such terms and conditions are referred to in an order or acceptance of an order.

#### 2. Conclusion and Subject Matter of the Agreement

Offers of INFO AG are subject to confirmation. The placement by the principal of an order relating to an offer merely constitutes an offer on the part of the principal to enter into an agreement, which shall remain binding upon the principal for 4 weeks from the date the order is received by INFO AG. An agreement will be concluded only upon INFO AG's accepting the principal's offer to enter into an agreement by written order confirmation or upon INFO AG's commencing to perform the requested work or services.

#### 3. Remuneration and Payment

3.1 The remuneration is quoted exclusive of statutory VAT without any further discounts. The principal shall be entitled to withhold payment or to effect any set-off against counterclaims only if and to the extent the asserted claims are undisputed or have been recognised by declaratory judgment.

3.2 Payment shall be due upon receipt of the invoice. Payments shall count towards the settlement of costs, interest and the principal's longest standing debt in turn.

3.3 Daily rates are based on eight man hours a day. Save as otherwise provided,

- Travel expenses shall be invoiced and reimbursed as evidenced by voucher. Travel time shall be charged at 50% of the relevant daily rate.
- Surcharges for work performed outside normal working hours shall be 25% between 11 pm and 6 am, 50% for Saturdays, 75% for Sundays, and 100% for statutory public holidays (in the state of Hamburg).

#### 4. Liability

4.1 INFO AG shall be liable for damages or reimbursement of wasted expenditure, including expenses arising from self-help, termination or restitution after rescission, irrespective of the cause in law (e.g. obligations created by legal transactions and obligations similar to legal transactions, material or legal defects, breach of obligation, tort), only to the following extent:

- The liability in case of intent and gross negligence and arising from a guarantee shall be unlimited.
- In case of the negligent infringement of a material obligation jeopardising fulfilment of the agreement's purpose (cardinal obligation, in particular default), INFO AG shall be liable in the amount of the typical loss foreseeable at the time of concluding the agreement, but not exceeding the amount of the order value.

4.2 INFO AG reserves the right to plead contributory negligence. In particular, the principal is obliged to back-up data and avert harmful software in compliance with the prevailing state of the art. The principal shall take appropriate precautionary action for this purpose; in particular, it shall ensure by making daily back-up copies of all data that such data can be reconstructed from machine-readable sources at reasonable expense.

4.3 In case of mortal or physical injury, or injury to health, and in case of claims arising from the product Liability Act, the statutory provisions shall apply without limitation.

4.4 If liability is excluded or limited by the present provisions, this shall also apply to the personal liability of the executive bodies, employees, representatives and subcontractors of INFO AG.

#### 5. Time Limitation

As a general rule, the limitation period shall be one year from commencement of the statutory limitation period. This shall not apply to claims for damages or arising from Art. 438 (1) No. 2 and Art. 634a (1) No. 2 BGB (Civil Code).

#### 6. Warranty

INFO AG shall render its performance in the agreed quality with the due care of a prudent businessman. INFO AG shall not grant warranties or guarantees (in particular quality guarantees) save as otherwise agreed in a delivery note with

express reference to the present provision. Guarantees granted by the manufacturer of the merchandise (manufacturer's guarantees) shall remain unaffected and at the disposal of the principal.

#### 7. Force Majeure

In the event of any strikes and lock-outs (also occurring at INFO AG's suppliers) for which INFO AG is not responsible, any events of *force majeure* and any impossibility to render performance that is due to other reasons, INFO AG shall be released from the duty to perform its contractual obligations and to meet any agreed deadlines as long as the relevant event or circumstance continues to exist. If the events described in this Clause make it impossible for INFO AG to render the performance to be rendered for a period of more than two weeks, both parties shall be entitled to terminate the agreement without any further notice period having to be observed.

#### 8. Subcontractors

Employees of INFO AG who were deployed at the principal's business in connection with an order may for a period of six months following completion of such work be employed by the principal outside a contractual relationship between the parties only with the consent of INFO AG. The relevant date for determining the commencement of such six-month period shall be the later of the date on which the deployment was actually completed or the end of the performance of the order. For each case of infringement of the undertaking accepted by way of the present Clause, the principal shall pay a contractual penalty in the amount of 25,000.00 euros.

#### 9. Cooperation Rules

9.1 In order to achieve the objectives of this agreement, the parties have to rely on mutual cooperation. Both parties will therefore adequately support each other to the extent possible for them, even if no further details are stipulated.

9.2 In particular, the principal shall procure that all preconditions falling within its business sphere that are required for the proper performance of the order will be satisfied free of charge. The principal shall in particular ensure that

- sufficient office space is made available for the employees of INFO AG together with all required equipment as and when necessary;
- a contact person is named who will be available to the employees of INFO AG during the agreed working hours; such contact person shall be authorised to make any statements that are necessary as interim decisions for the continued processing of the order;
- the employees of INFO AG at all times have access to the information required for their work and are provided in good time with all necessary documentation; and
- where programming work is concerned, sufficient computer time (including operating), test data and data inputting capacities are made available in good time.

9.3 The principal shall be obliged to make available free of charge, in good time and in the contractually agreed condition any infrastructure, hardware and/or software that are to be made available by it in order for INFO AG to be able to provide the work or services. The principal warrants that it is entitled to make available such infrastructure, hardware and/or software as appropriate for the purpose of the respective order.

#### 10. Change Request Procedure

10.1 The principal is entitled to request changes to the performance scope ("change request" or "CR") provided that such changes do not impose an unreasonable technical or operating burden on INFO AG. If the changes requested by way of the CR are capable of jeopardising the success or the intended outcomes of the project, INFO AG shall be obliged to notify the principal thereof without undue delay.

10.2 If the CR desired by the principal gives rise to a delay in performance and/or substantial additional expense, INFO AG shall without undue delay notify the principal in writing of the anticipated delay and/or additional costs, also indicating the underlying reasons. The parties shall appropriately amend the agreement, whereas the costing base shall correspond to that applied in the existing remuneration agreement.

10.3 In the absence of an appropriate agreement concerning the CR, the agreed time limits and dates, remuneration rates and performance specification shall remain valid.

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### 11. Confidentiality and Data Protection

- 11.1 The parties undertake to keep confidential information relating to the respective other party strictly secret and to consult the other party before publicly disclosing any information relating to the cooperation. This shall also apply for a period of 2 years after the ending of the agreement.
- 11.2 Both parties shall comply with the statutory provisions relating to personal data and other data required to be kept secret and shall cooperate in good faith in doing so. Where the nature of the cooperation so requires, the parties shall enter into a separate agreement concerning the protection of such data.

### 12. Assertion of Claims by Third Party

Where infrastructure, hardware and/or software are delivered by one party to the other (this also applies to infrastructure, hardware and/or software made available by the principal) and such delivery leads to claims for infringement of proprietary rights being asserted by a third party against the party receiving the delivery, the delivering party shall at its own expense indemnify the other party against any justified claims of such third party. The party receiving the delivery shall be obliged to adequately support the delivering party and to make available to it all information necessary and requested for the defence against such claim. The party receiving the delivery may enter into any settlement with the third party, or acknowledge the claim, only with the consent of the delivering party.

### 13. Other Provisions

- 13.1 Any amendments or supplements to these General Terms and Conditions shall be effective only if made in writing (including the legally binding signatures of both parties on one document or the exchange of signed documents with the same contents). For the purposes of this Clause, the written-form requirement shall also be deemed complied with by fax communication, but not by e-mail transmission.
- 13.2 INFO AG shall be entitled to transfer its rights and obligations arising from the present agreement to companies affiliated to same (verbundene Unternehmen) within the meaning of Section 15 AktG (German Stock Corporation Act). The principal shall not be entitled to make such a transfer to third parties without the written consent of INFO AG.
- 13.3 These General Terms and Conditions are exclusively governed by German substantive law, with the UN Convention of Contracts for the International Sales of Goods and the conflict-of-laws provision of the Introductory Act to the German Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuch*) being excluded.
- 13.4 The parties shall endeavour at all times to solve any disputes at the operating level. Should this fail, both parties shall be entitled to take legal action.
- 13.5 The place of performance and venue for all disputes arising from the agreement shall be the court having competence for the seat of INFO AG.

## II. SPECIAL CONDITIONS

### 1. For Work and Services

- 1.1. Any work or services for which no fixed prices have been expressly agreed, shall be remunerated on the basis of time spent at the hourly rates of INFO AG applicable at the time the order is placed.
- 1.2. INFO AG shall produce invoices monthly in arrears, based on the actual expenses incurred. The working hours are to be recorded and charged in periods of 15 minutes each.
- 1.3. The principal shall report any defects to INFO AG in writing. INFO AG shall remove these defects within an appropriate period of time. Should INFO AG fail to do so even within a second grace period, the principal can, in case of Material Deviations, instead of a price reduction after first giving warning of refusal, withdraw from the relevant project and, if continuing with other projects or the agreement as a whole would be unreasonable, from the agreement entirely. In the case of Immaterial Deviations, a rescission of the agreement shall be excluded. Instead, the principal may reduce the agreed remuneration, provided the preconditions are met.
- 1.4. The principal may assert any claims for damages based on a defect only after the attempt to effect subsequent performance (*Nacherfüllung*) has failed.
- 1.5. No warranty claims shall exist with respect to any performance qualifying as services.

- 1.6. INFO AG shall produce a concept in the form of a written document based on the offer. The purpose of the concept is to provide the principal with the fundamental outline of a new IT solution and/or an IT solution that is to be modified, in particular parameterised. In the concept, INFO AG shall analyse, evaluate and document the principal's requirements. The concept shall describe both the functions and tasks that are to be fulfilled by the IT solution in order to meet the principal's goals, and the workflows, interfaces and interaction of functions, as well as the required information. The concept is to be produced by INFO AG in close collaboration with the principal. INFO AG shall grant the principal the non-exclusive and non-transferable right to use the concept produced for the principal's business as the basis for implementation. The right of INFO AG to produce for third parties concepts having similar terms of reference shall remain unaffected.

- 1.7. Where performance is rendered under an agreement for work and services, INFO AG and the principal shall agree upon a date and, where applicable, criteria for acceptance. An acceptance test is to be carried out in order to verify whether the quality features have been met. If performance was rendered in accordance with the order, the principal shall accept the work or service performed. Immaterial Deviations from the agreed quality features shall not entitle the principle to refuse acceptance.

- 1.8. Results or partial results that are used by the principal after the agreed test/trial period shall be deemed to have been accepted. The work or services performed shall also be deemed to have been accepted if the principal fails to report any defects falling into failure category 1 to INFO AG in writing within four weeks from the date of acceptance or the completion of the tests.

#### Failure category 1:

Failures of this type will lead to the use of the work result for the intended purpose (in an economically viable manner) being impossible or unreasonably restricted or impeded. Category 1 failures are deemed to be "Material Deviations".

#### Failure category 2:

The use of the work result for the intended purpose is not affected to such an extent that acceptance cannot be effected. Failures of this type will be removed, to the extent possible, during the agreed duration of the acceptance test.

#### Failure category 3:

The use of the work result for the intended purpose is not, or not materially, restricted by failures of this type. Failures of this type will normally be removed only after acceptance has been effected.

Category 2 and 3 failures shall be deemed to be "Immaterial Deviations".

The parties shall mutually agree upon the final categorisation of failures following the failure categories described above. Any category 2 and 3 failures remaining after the acceptance shall be removed under the warranty in accordance with a time schedule to be agreed between the parties. The facilitation of a reasonable workaround for the defect shall constitute an acceptable removal of the defect.

- 1.9. The principal grants to INFO AG a free licence (limited to the duration of the relevant order) relating to its proprietary rights, copyrights and/or rights of use under copyright law to its own work results to the extent necessary for the performance of the relevant order.
- 1.10. To the extent that industrial property rights and/or copyrights to software are constituted in the course of performing an order based on work results of employees of INFO AG, such rights shall, in the relationship with the principal, be exclusively due to INFO AG on a world-wide basis and without any limitation as to time or content, with no separate remuneration being payable.
- 1.11. The principal as well as the principal's affiliated companies within the meaning of Section 15 AktG shall have the non-exclusive right (unlimited in time) to comprehensively use such industrial property rights and/or copyrights for their internal business purposes. Such right of use shall not include the commercial exploitation of the industrial property rights and/or copyrights on the basis of agreements with third parties which are not affiliated companies of the principal within the meaning of Section 15 AktG.

### 2. For the Sale of Hardware, Software and Other Merchandise

- 2.1. The conclusion of a sale agreement shall not constitute any claim on the part of the principal as to the performance of maintenance or other

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- services by INFO AG. The performance of such services shall be governed by a separate agreement.
- 2.2. All dates or periods for delivery that are not expressly agreed to be binding shall be deemed exclusively to be non-binding. Delivery dates that are agreed to be binding shall be deemed to have been met if the purchased goods are handed over to the carrier on the agreed delivery date.
  - 2.3. Loading and shipping shall take place at the principal's risk with no insurance being taken out. Upon the principal's request and at its cost, INFO AG will take out transport insurance for the goods to be delivered.
  - 2.4. INFO AG shall at any time be entitled to effect partial delivery and partial performance, to the extent reasonable for the principal.
  - 2.5. The delivery of goods as well as any dates or periods set for delivery (to the extent agreed to be binding) are subject to timely receipt of the relevant goods by INFO AG, if and to the extent INFO AG is not in a position to exert any influence with respect to the provision of the goods to be delivered. If INFO AG does not receive the goods to be delivered timely, or does not receive such goods at all, despite having entered into a congruent covering transaction, so that it is not able to render the contractually agreed performance, and if such inability is not due to any fault on the part of INFO AG, INFO AG shall not be in default and any claims for damages shall be excluded. In the event that INFO AG does not receive the goods to be delivered, it shall nevertheless use all efforts to procure a timely delivery.
  - 2.6. Until all existing and future claims of INFO AG against the principal have been settled, the supplied merchandise ("merchandise subject to retention of title") shall remain the property of INFO AG.
  - 2.7. The principal shall be entitled to sell the merchandise subject to retention of title in the normal course of business. The principal already assigns all claims (receivables) accruing to same from or in connection with the resale to INFO AG for security purposes. INFO AG hereby accepts such assignment. INFO AG revocably authorises the purchaser to collect the receivables assigned to INFO AG in its own name and for its own account. The authority to collect can be revoked if the purchaser does not properly meet its payment obligations.
  - 2.8. Any processing of the merchandise subject to retention of title shall be performed for INFO AG. If the merchandise subject to retention of title is processed together with other things not belonging to INFO AG, INFO AG shall acquire co-ownership of the new thing pro rata the value of the merchandise subject to retention of title to the value of the other processed thing at the time of processing.
  - 2.9. In the event of attachment, in particular seizure, of the merchandise subject to retention of title by third parties, the principal shall notify the third party of INFO AG's ownership and inform INFO AG without undue delay, so that it can assert its property rights. If the third party is unable to reimburse INFO AG for the judicial or extra-judicial costs arising in this connection, the principal shall be liable for same.
  - 2.10. INFO AG is obliged to release the security provided to same to the extent that the realisable value of such security exceeds the secured claim by more than 10%. INFO AG shall itself decide which security is to be released.
  - 2.11. In the case of standard software, the exclusive subject matter of the agreement shall be the supply and granting of rights to use pursuant to Clause II. 2.13 ff. The principal has verified before concluding the agreement that the specification of the software satisfies its wishes and needs. The principal is aware of the software's material operating characteristics and requirements. The scope, type and quality of the goods and services shall be governed by the agreement signed by both parties or the order confirmation of INFO AG, or otherwise the offer of INFO AG. Any other information or requirements shall become a constituent of the agreement only if agreed in writing by the parties or confirmed in writing by INFO AG. Subsequent changes to the performance scope shall be invalid save as agreed in writing or confirmed in writing by INFO AG. Product descriptions, depictions, test programs etc. are performance descriptions, but not guarantees. A guarantee shall be invalid save as declared in writing by the senior management of INFO AG. The principal shall receive the software, consisting of the computer program and the user guide. The delivery format for the software shall be as agreed or, save as otherwise agreed, the program and guide shall be delivered on CD-ROM. The principal shall not be entitled to receive the source program.
  - 2.12. The software (program and user guide) is legally protected. The copyright, patent rights, trademark rights and all other related rights in the software and other items surrendered or made accessible by INFO AG to the principal within the framework of bringing about and implementing the agreement, shall remain, in the relationship between the parties, at the exclusive disposal of INFO AG. If the rights are held by third parties, INFO AG holds the relevant exploitation rights.
  - 2.13. Upon full payment of the agreed remuneration, INFO AG shall grant the principal the non-exclusive right without limitation in time to use the software within the Federal Republic of Germany by wholly or in part loading, displaying, running, transferring or saving same in its company for its own purposes and own data. All data processing devices (e.g. hard disks and central processing units) to which the programs are copied or transferred wholly or in part, temporarily or permanently must be situated on the principal's premises and directly owned by same. The right to use shall be granted only for the data processing unit(s) specified in the offer, the users and number of users specified therein, and the scope of duplication specified therein. Further contractual rules concerning use (e.g. the restriction of the number of workstations or persons) are to be established by technical means and complied with in practice.
  - 2.14. The principal is allowed to make the back-up copies of the programs required to ensure reliable operation. The back-up copies must be kept in safe custody and, if technically possible, carry the copyright notice attached to the original data medium. Copyright notices are not to be deleted, edited or suppressed. Copies that are no longer required are to be deleted or destroyed. The user guide and other documents furnished by INFO AG can be copied only for internal purposes.
  - 2.15. The principal is allowed to edit the software in order to remedy faults, provided that such action is necessary for the intended own use of the software by the principal, and that INFO AG is not willing to take such action within a reasonable time limit and on reasonable conditions.
  - 2.16. Any other acts of exploitation, in particular hiring, lending and distribution in physical or non-physical form, and use of the software by and for third parties (e.g. outsourcing, computer centre activities, application service providing), are not allowed without the prior written consent of INFO AG.
  - 2.17. Subject matter of the agreement, documents, proposals, test programs etc. belonging to INFO AG and becoming accessible to the principal before or after conclusion of the agreement shall be deemed intellectual property, and business and trade secrets of INFO AG. They are not to be used in any way whatsoever without the written consent of INFO AG, and must be kept secret pursuant to Clause I. 11.
  - 2.18. Save as otherwise provided in the offer, the principal can permanently transfer to a third party the right to use the software, including the user documentation, granted hereby, and thus relinquish its own right to use, provided that the third party has agreed in writing to the continued validity – including with effect for the third party – of the principal's obligations arising from the present agreement, in particular concerning the right to use. The principal must without undue delay notify INFO AG of the transfer, and name the third party. In the event of a transfer, the principal must surrender to the third party all copies of the software, including existing back-up and archive copies, or destroy any copies that are not surrendered. Upon the transfer, the right of the principal to use the software shall expire. If the software is obtained by downloading, a transfer is ruled out.
- ### 3. For Continuing Services
- Save as otherwise agreed in an individual case, the continuous services agreed pursuant to the present conditions shall take effect in each case upon commissioning or, in case of doubt, on the first day of the calendar month following that in which all conditions precedent are fulfilled. Save as otherwise agreed in an individual case, a continuous service shall run for an indefinite period and be subject to a regular notice period of 3 months, effective the end of a month.