

General Terms and Conditions for the Provision and Maintenance of Standard and Customized Application Software of AAC Infotray AG.

1. Introduction

These **General Terms and Conditions** ("GTC") shall form the basis of all agreements entered into between AAC Infotray AG (hereafter "Infotray") and the client.

The GTC delivered to the client along with the offer shall be incorporated as an integral part of the individual agreement as soon as the actual agreement comes into effect.

The contractual services may be specified in more detail for extensive projects in an individual agreement.

The applicable **Infotray Pricelists** including hourly rates, constitute an **integral element of the present GTC**.

2. Object of the Agreements

The object of the individual agreements entered into shall be the implementation, provision and/or maintenance of standard and/or customized application software (hereinafter software) by Infotray. What is contained in the offer issued by Infotray shall form an integral part of each individual agreement.

The necessary prerequisites on the part of the client with regard to the installation, utilization and care of the standard and/or customized software are defined in the offer, the individual agreement and the GTC.

3. Provision of Software

The software, including the underlying documentation, will be provided to the client for the purpose of unlimited use.

The benefits and risks associated with use of the provided software shall be transferred to the client at the time of installation.

4. Cooperation of the Client

The client shall provide Infotray, without delay, all information which is necessary in order to allow Infotray to perform its obligations.

The client shall provide a suitable database for the installation of the software, shall manage the server(s) involved, shall maintain the hardware and database software, shall provide optimal regular data backup, as well

as protection from hacking, viruses etc. and shall endeavor to ensure that the data base is available to the maximum extent and that its performance is of the highest quality. Infotray shall supply installation instructions and hardware dimension specifications.

5. Execution

The work of Infotray shall be conducted, as a rule, on workdays between 8:00 am and 5:00 pm, at the premises of Infotray, or, where agreed, at the premises of the client. In the case of the latter, all actions and expenses which arise in this context (particularly work times or travel times, travel expenses, petty cash outlays) shall be separately reimbursed pursuant to the rates set out in the applicable Infotray pricelist.

Infotray reserves the right to contract out execution of the work to third parties or subcontractors.

6. Scope of Permitted Use

The client obtains the non-transferable and non-exclusive right, to use the software provided by Infotray, including the underlying documentation, for its own personal use. This right shall not be subject to time limits.

Any exploitation and utilization of the software that extends further than the scope outlined above, particularly the use by a number of people which exceeds the number agreed to in the offer, requires the prior written consent of Infotray. Any such multiple use shall be subject to separate remuneration in accordance with the applicable Infotray pricelists.

Details on the legal use of licenses shall be governed separately in the corresponding price list.

Transfer, by the client, of the rights and obligations ensuing from the concluded contracts, particularly the passing on of software utilization rights or the documentation to third parties, requires the prior written consent of Infotray.

The client shall be liable to Infotray for damages caused by misuse and/or non-contractual application of the software, particularly due to passing on software and/or documentation to third parties.

7. Intellectual Property Rights

The software and documentation – whether they represent copies or originals – provided to the client, are protected by intellectual property rights of Infotray and/or third parties. To the extent that copyrights belong to third parties, Infotray has obtained the relevant utilization and distribution rights. The client does not obtain any kind of property or copyrights with regard to the software provided. The removal, by the client, of copyright signs or any other marks indicating ownership rights, which can be found on data storage devices, documents or other material is prohibited.

Any eventual claims brought by third parties on the grounds of violation of intellectual property rights will be dealt with by Infotray at its own expense and risk. The client shall inform Infotray of such claims in writing and without delay and shall accord Infotray the exclusive authority to eventually litigate as well as adopt any measures in view of reaching a settlement of the legal dispute either in or out of court. Under these conditions, Infotray shall assume any costs and damage claims the client is required to pay.

In the event that an action is initiated, or a provisional measure requested, due to breach of intellectual property rights, Infotray may, at its own expense, either grant the client this right, or provide a substitute which meets the essential contractual requirements. The choice shall rest with Infotray.

The client is not permitted to extract the source programming from the applications (e.g. by means of reverse engineering or disassembly).

The production of copies or other duplication of the provided software and documentation is permitted for the exclusive use of the client, particularly for the purposes of securing or storing the software. The client undertakes to treat as confidential any and all information regarding the software, methods of use and procedures as well as the software documentation, and to adopt the necessary measures required to prevent any unauthorized access by third parties to the software and documentation.

8. Remuneration for Development, Use and Maintenance

The amount and kind of remuneration payable for the use of standard software, and for the development of

customized software shall be determined on the basis of Infotray's written offer. The amount and kind of remuneration payable for maintenance and customer support provided for software shall be determined on the basis of the written offer of Infotray. The calculation shall be based on the applicable valid pricelist of Infotray. All prices are quoted excluding VAT.

The remuneration shall cover the performance obligations which are necessary for the orderly fulfillment of the contract terms.

Subject to any alternative arrangement, where the performance consists of one-off delivery an invoice shall be issued to the client at the time the delivery of the order is accepted by the client.

In the case of projects offered at a fixed price, which run for several months, installment payments with payment due dates shall be agreed in the individual agreement.

Unless otherwise noted, the net sum of an invoice must be settled in total within 20 days of receipt. After this time, the client will be notified in writing that it is in default of its payment obligation. The outstanding amount will henceforth be subject to interest of 5% per annum.

9. Confidentiality

The parties to the present agreement undertake not to disclose facts and information, which are neither common knowledge or publicly available. This obligation shall also be imposed upon subcontracted third parties. This non-disclosure obligation shall enter into effect before conclusion of the present agreement as well as after termination of the contractual relationship or following completion of the contract terms. This obligation is subject to statutory obligations on providing information. Data protection rules and security provisions of the client shall be observed.

Infotray is authorized to disclose to possible third party subcontractors the fact that it has made or requested an offer as well as disclosing the essential elements of such offers.

10. Rectification of Software Defects

Infotray undertakes to immediately rectify, free of charge, software defects which prevent operations and which fall within Infotray's responsibility. Defects that

impede operations shall be rectified in the short-term by means of a workaround and within a reasonable time by means of an update.

At Infotray's request, the client shall participate in finding the cause of the defects. The client cannot request reimbursement for its participation. Particularly software defects that are caused by an irregular usage of the software by the client, or by circumvention of data protection measures, shall not fall within the responsibility of Infotray.

Changes to database objects may only be made using the software supplied by Infotray. Read access by the client to the software database objects is permitted. If the client himself or a third party makes changes to the database objects used by the operational software or extends them with database tools without the written consent of Infotray, the software can no longer guarantee the consistency and integrity of the data. In such a case, Infotray may discontinue the delivery and installation of new software program releases and is entitled to discontinue maintenance services immediately, with no maintenance fees being charged. Expenses for troubleshooting as well as correction work on the database objects are not covered by a maintenance contract. They will be charged according to expense and the current price list.

11. Time Limits, Delayed Performance, Breach of Contract

If software is implemented for the client over several months as part of a project the individual agreement shall contain a project plan.

By failing to perform within written or default-triggering time limits, the parties to the present agreement shall automatically find themselves in default. With regard to other time limits, default will commence as per written reminder by the creditor.

Compliance with deadlines and time limits by Infotray shall have as a prerequisite, that the client fulfill its cooperation obligations in a timely and comprehensive manner, particularly providing any information that Infotray requests. Furthermore the client shall be required to comply with its payment obligations.

The client shall bear the costs of any extra work or expenses which Infotray incurs due to work which needs

to be undertaken again because of incorrect information provided by the client, or information which is subsequently subject to corrections by the client.

Where the client does not comply with these obligations, the deadlines and time limits for Infotray shall be extended accordingly and no less than the actual period of delay. In event of a default, each party shall furthermore have the right to withdraw from the agreement after giving the defaulting party a written notice of its intention to withdraw from the contract together with a reasonable grace period to remedy the default.

Deadlines which are quoted by Infotray upon receipt of an order to provide software, which is still in development, are based upon timeframes which have been true in the past as well as a provisional estimate of the extent of the work involved. They are not binding.

Where Infotray should find itself in default in a manner for which it is liable and for a period of more than one month, the client may, to the extent that it is capable of demonstrating damages resulting from this default, claim default damages, of maximum 8% per annum, based upon the agreed remuneration for the delivery or partial delivery which cannot be used due to late delivery. Any further liability on the part of Infotray for damages resulting from late delivery is expressly excluded.

12. Termination without Notice

Where a party commits a breach of any of the substantial obligations of the individual agreement such as the project agreement or the comprehensive maintenance and support agreement including these GTC, the other party shall be authorized to terminate the contract at any time without notice.

The term a 'substantial obligation' within the meaning of the present agreement shall in particular apply to the regular and timely payment of the project costs by the client. The payment due in the event of termination without notice shall be calculated *pro rata temporis*, in the case of a one-time delivery, on the basis of the time expended by Infotray according to the rates set out in the applicable Infotray pricelists. Infotray reserves the right to claim damages.

13. General Exclusion of Warranty or Liability

All warranties and liability on the part of Infotray and its auxiliaries is **comprehensively excluded** to the greatest extent permitted by law. This particularly applies to any and all defects as well as to damages which could be incurred by persons, property and assets of the client, whether directly or indirectly, by means of the operation and use of products provided by Infotray, by the provision of services by Infotray or through transport. Particularly the (analogous) liability for defects on the part of Infotray or the warranty claims of the client pursuant to Art. 197 ff., Art. 258 ff., Art. 288 and Art. 367 ff. of the Swiss Code of Obligations (hereinafter CO), are completely excluded. Any liability for slight negligence on the part of Infotray is equally excluded in the event of poor compliance (Art. 97 ff. CO) and in connection with Art. 398 f. CO (analogous), as well as any liability on the part of Infotray for auxiliaries (Art. 101 CO).

Infotray shall therefore not be liable for damages resulting from *lucrum cessans* or for third party claims. Any liability for the loss, damage or defective processing of client data, including the costs of any eventual data recovery efforts, is also excluded.

14. Cession and Transfer

The rights and obligations of Infotray ensuing from the present agreement can be ceded to others without obtaining the prior consent of the client. In such cases Infotray shall guarantee the orderly fulfillment of all contractual obligations towards the client.

15. Export Provisions

The export of software without the written consent of Infotray is prohibited.

16. Applicability of the GTC

The present GTC contain all rights and obligations between the client and Infotray and shall be exclusively applicable regardless of any diverging terms and conditions of the client.

An agreement may be made in writing in the individual agreement to derogate from the GTC.

Unilaterally handwritten deletions and/or additions on the standard contract documents produced by Infotray, as well as supplementary oral agreements shall be void and not binding upon the parties. Amendments to the standard contract documents produced by Infotray shall only be valid where they have been legally signed and dated by both parties. This rule shall also apply for any subsequent amendments to the agreement.

Otherwise any arrangements which diverge from the present GTC or any additional agreements must be concluded in the form of a written supplementary agreement, in which reference is made to the provisions which have been modified. In cases of conflict, the provisions of the written supplementary agreement shall take precedence over those of the GTC.

Where one or any of the provisions of the present GTC or the agreement concluded between Infotray and the client, should fail to have legal effect, this shall have no influence on the force and effect of the other contract provisions. An ineffective provision shall be replaced by one that enjoys legal effect and which most closely fulfills the economic objective of the ineffective provision.

17. Applicable Law and Choice of Forum Clause

The agreements concluded between the client and Infotray shall be subject to Swiss law. The provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (Vienna Convention) shall not apply.

The parties undertake, at first to attempt to resolve any conflict within the framework of commercial mediation proceedings. Where such mediation should fail, the parties agree to litigate in **Winterthur, in the Swiss Canton of Zurich**. Nevertheless, Infotray reserves the right to initiate proceedings at the place of the client's offices or residence. In the event of litigation in Winterthur, the parties agree, where this is permitted by law, to the jurisdiction of the Commercial Court of the Canton of Zurich.

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