

## General Terms and Conditions

of Consensive GmbH, Bauhausstr. 7c, 99423 Weimar  
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### Preliminary remark

The provider specializes in the development of software in the field of interactive 3D computer graphics, user interfaces, and virtual reality (VR). It offers customers rental licenses for its software and related services in the form of development services, managed hosting, maintenance, and support within the scope of these General Terms and Conditions.

The following agreements regulate the conditions for the provision and use of the software products offered by the provider and the associated services. This is an English translation of the original version in German language. In case of discrepancies between the German original and this English translation, the German version shall be legally binding.

### A. General agreements

#### 1 Order of precedence

1.1 The agreements set out in this Part A shall apply to all legal transactions of the parties in connection with the provider's software. Additional agreements for specific service components are outlined in Parts B and subsequent sections. In case of contradictions, the following order of precedence applies:

- Quotation/Proposal (highest priority),
- Parts B and subsequent sections of this contract for specific agreements,
- Part A. of this contract for general agreements (lowest priority)

1.2 The client's general terms and conditions of purchase or business shall not apply, even if they are not expressly contradicted in the quotation or order confirmation.

#### 2 Authorized representatives

2.1 Each party shall appoint legally authorized representatives immediately after the conclusion of the contract. Additionally, a deputy shall be named by each party. These representatives and their deputies shall serve as the exclusive contact persons for all legal aspects of the cooperation. If no appointment is made, the managing directors and the purchasing department shall be considered authorized representatives..

2.2 Each party may replace its appointed representatives at any time, provided the change is communicated to the other party in writing. Such changes must be made without causing disruptions to the collaboration, ensuring that new representatives are fully informed.

- 2.3 All declarations under this contract must be made in writing to the designated representative or deputy. The designated representative and deputy shall provide an email address for receiving written declarations.

### **3 Subcontractors**

- 3.1 The provider may engage subcontractors for service delivery. The provider shall notify the customer via email before integrating a new subcontractor. The customer may object only for compelling reasons. If no mutual solution is found, the customer may terminate the affected service component as of the subcontractor's engagement.
- 3.2 The provider shall ensure that agreements with subcontractors comply with the provisions of this contract.

### **4 Remuneration and payment terms**

- 4.1 The fees for services are set out in the quotation/proposal.
- 4.2 All prices are net amounts, subject to the applicable German VAT.
- 4.3 Payment terms are set out in the quotation/proposal. Invoices are due for payment within 14 days of the invoice date.
- 4.4 In the event of default, the provider is entitled to assert a right of retention with regard to the services to be provided for the customer under the same contractual relationship. The payments due shall bear interest during the period of default in accordance with the applicable statutory provisions.
- 4.5 Additional expenses incurred at the explicit request of the customer shall be charged at cost price.
- 4.6 In case of default, overdue payments shall bear interest at 9 percentage points above the German base interest rate.
- 4.7 In the case of continuing obligations, the provider is entitled to increase prices by a maximum of 3% once per calendar year. In the event of a price increase in excess of this, the customer is permitted to terminate the current contract for cause with effect from the date on which the increase takes effect.

### **5 Warranty, guarantees, liability for material defects**

- 5.1 The provider warrants that the software has the agreed functionalities and complies with industry standards. It shall be free from defects that materially impair usability.
- 5.2 The supplier's services are free of material defects if they comply with the subjective and objective requirements and the monthly requirements pursuant to §§ 434, 536 BGB at the time of transfer of risk. If a quality agreement exists, the question of the objective requirements shall be based exclusively on this agreement. Information on the quality or possible uses of the services shall not

constitute guarantees within the meaning of Sections 443, 444 BGB unless the information is expressly designated as such guarantees in writing with reference to the statutory provisions.

- 5.3 The provider's liability for initial defects pursuant to Section 536a (1) BGB is excluded. Liability for willful or negligent defects remains unaffected.
- 5.4 In particular, claims for defects shall not exist in the event of only insignificant deviation from the agreed quality, only insignificant impairment of usability, natural wear and tear or damage arising after the transfer of risk as a result of incorrect or negligent handling, excessive use, unsuitable operating materials, unsuitable system environment or due to special external influences which are not assumed under this agreement.
- 5.5 The provider guarantees that the customer's use of the software in the contractual scope does not infringe third-party rights. Unless otherwise agreed, this warranty applies only to Germany. If third-party rights are asserted against the customer, the provider shall ensure a legally compliant use of the software.
- 5.6 The software may contain software and other materials from third-party providers, including open source software licensed from third-party providers under separate conditions. In the event of any conflict with the terms of the Individual Agreement, the Third Party Terms shall prevail with respect to Third Party Software.
- 5.7 The notification of a potential defect must be made to the supplier immediately in writing.
- 5.8 Repair or Replacement
  - 5.8.1 In the event of material defects, the Provider shall initially provide warranty by means of subsequent performance. For this purpose, the Provider shall, at its discretion, either provide the Customer with a new, defect-free software version or remedy the defect; the Provider shall also be deemed to have remedied the defect if it shows the Customer reasonable ways of avoiding the effects of the defect (workaround). The Provider shall be entitled to make subsequent performance dependent on the Customer having paid the remuneration in full
  - 5.8.2 The provider's obligation to rectify defects relates to the latest version of the software accepted by the customer.
  - 5.8.3 The customer is obliged to adopt a new software version if the contractual scope of functions is not reduced and the adoption does not lead to significant disadvantages.
  - 5.8.4 Defects shall be diagnosed and rectified at the provider's premises, at the place where the services are installed or, where possible, by remote access, at the provider's discretion.
  - 5.8.5 If two attempts at subsequent performance fail, the customer shall be entitled to set a reasonable grace period to remedy the defect. In doing so, he must

expressly point out in writing that he reserves the right to withdraw from the contract and/or demand compensation in the event of renewed failure.

- 5.8.6 If the rectification also fails within the grace period, the customer may withdraw from the contract or reduce the remuneration, unless the defect is insignificant. After the expiry of a deadline set in accordance with paragraph A 5.7, the provider may demand that the customer exercise his rights resulting from the expiry of the deadline within two weeks of receipt of the request. After expiry of the deadline, the right to choose shall pass to the provider.
- 5.9 If the Provider provides troubleshooting or fault rectification services at the Customer's request without being obliged to do so, it may demand remuneration for these services in accordance with its usual rates. This applies in particular if a defect cannot be proven or is not attributable to the provider.
- 5.10 If third parties assert claims that prevent the customer from exercising the rights of use granted to it under the contract, the customer shall inform the provider of this immediately in writing. The customer shall consult with the provider and shall only take actions with legal effect, in particular acknowledgements and settlements, with the provider's consent.
- 5.11 The customer can only derive rights from other breaches of duty by the provider if he has notified the provider of these in writing and granted him a grace period to remedy the situation. This does not apply if a remedy is out of the question due to the nature of the breach of duty.
- 5.12 The limitation period for all warranty claims is one year and begins with the provision of the software and the notification of the provision to the customer.
- 5.13 In the event of intent or gross negligence on the part of the supplier, fraudulent concealment of the defect, personal injury or defects of title in accordance with § 438 Para. 1 No. 1 a BGB, as well as guarantees in accordance with § 443 BGB, the statutory limitation periods shall apply, as shall claims under the Product Liability Act.
- 5.14 Insofar as employees of the supplier provide guarantees prior to the conclusion of the contract, these shall only be effective if they are confirmed in writing by the supplier's management.

## **6 Contract duration and termination**

- 6.1 The term of the agreement for the operation of the software solution and the respective notice periods are set out in the quotation/proposal.
- 6.2 If agreed between the parties, the subscription term is automatically renewed by the originally agreed subscription term, unless one party terminates the subscription in text form at least three months before the automatic renewal expires. The then current terms and conditions of this agreement shall then apply for the following subscription term instead of this agreement. The fees remain unchanged unless the provider informs the customer at least four months before

the end of the current subscription term of different future fees or the fees for renewed subscription terms are already specified in the individual contract.

- 6.3 The right of either party to terminate the contract extraordinarily and without notice for good cause remains unaffected.
- 6.4 An important reason exists for the provider in particular if
- the customer is in arrears with the payment of the agreed remuneration for two consecutive dates or the customer is in arrears with the payment of the remuneration in an amount corresponding to the remuneration for two months in a period extending over more than two dates;
  - the customer is insolvent or insolvency proceedings have been opened against his assets or the application to open insolvency proceedings has been rejected for lack of assets; however, after the application to open insolvency proceedings against the customer's assets has been filed, the provider may not terminate the contract due to a delay in payment of the remuneration that occurred prior to the application to open insolvency proceedings or due to a deterioration in the customer's financial circumstances;
  - the customer does not comply with the contractual obligation to observe legal regulations when using the contractual services and does not immediately remedy this breach even after being notified that the content has been blocked by the provider.
- 6.5 Upon termination of the contract, the customer has a claim against the provider for the return and deletion of the data stored on the server. In the event of termination, the customer is obliged to delete or return to the provider the original of the software affected by the termination, including the documentation and all copies. At the request of the Provider, the Customer shall submit a declaration of deletion.

## **7 Liability**

- 7.1 The provider is liable without limitation for damages resulting from injury to life, body or health that are based on an intentional or grossly negligent breach of duty by the provider.
- 7.2 The provider shall only be liable for minor negligence if an obligation is breached, compliance with which is of considerable importance for achieving the purpose of the contract. In the event of a breach of such an obligation, liability shall be limited to such damages as must typically be expected to occur in the context of the provision of the software.
- 7.3 Liability for data loss for which the provider is responsible shall be limited to the typical recovery effort that would be expected if backup copies were made at least daily.
- 7.4 Liability under the Product Liability Act remains unaffected.
- 7.5 The above provisions also apply in favor of the legal representatives or vicarious agents of the provider.

## **8 Force majeure**

8.1 The Provider shall not be responsible for delays in performance due to force majeure (e.g. natural disasters, pandemics, strikes, lockouts, official orders, general disruptions to telecommunications, hacker attacks, etc.) and circumstances within the Customer's sphere of responsibility (e.g. failure to provide cooperation services on time, delays caused by third parties attributable to the Customer, etc.). They shall entitle the Provider to postpone deadlines for the provision of affected services by the duration of the delay plus a reasonable start-up period. The Provider shall immediately notify the Customer in writing of any delays in performance due to force majeure. If the force majeure lasts continuously for more than 3 months, both parties shall be released from their performance obligations.

## **9 Secrecy**

9.1 Unless the parties have previously concluded a separate agreement on confidentiality, the Provider and the Customer agree to maintain confidentiality regarding confidential information. This obligation and the following provisions on confidentiality shall continue to apply for an unlimited period of time even after termination of the contract. Such confidential information is excluded from this obligation,

- which were demonstrably already known to the recipient when the contract was concluded or which subsequently become known to the recipient from a third party without violating confidentiality agreements, statutory provisions or official orders;
- which are publicly known at the time of conclusion of the contract or are made publicly known thereafter, insofar as this is not based on a breach of this contract;
- which must be disclosed due to legal obligations or by order of a court or authority. As far as permissible and possible, the recipient obliged to disclose will inform the other party in advance and give it the opportunity to take action against the disclosure.

9.2 The Provider and the Client shall only grant access to confidential information to those consultants who are subject to professional secrecy or on whom obligations corresponding to the confidentiality obligations of this contract have previously been imposed. Furthermore, the Provider and the Client shall only disclose the confidential information to those employees who need to know it for the execution of this contract and shall also oblige these employees to maintain confidentiality to the extent permitted by labor law for the period after their departure.

- 9.3 The provider and the customer are obliged to protect the reputation of the contractual partner and to refrain from any actions or statements that are likely to damage or jeopardize the reputation of the contractual partner.
- 9.4 If a party so requests, the documents provided by it, such as strategy papers, briefing documents, etc., must be returned to it after termination of the contractual relationship or, in the case of data, deleted, unless the other party can assert a legitimate interest in these documents.
- 9.5 The contracting parties are aware that electronic and unencrypted communication (e.g. by email) is fraught with security risks. For this type of communication, they will therefore not assert any claims based on the lack of encryption, unless encryption has been agreed in advance.

## **10 Data protection**

- 10.1 The parties shall comply with the data protection laws applicable to them.
- 10.2 If the Customer intends to use the service provided by the Provider to process personal data, it shall inform the Provider of this without delay. In this case, the parties shall conclude a separate order processing agreement. The parties shall immediately provide all further necessary information with regard to the specification of the processing.

## **11 References, advertising rights**

- 11.1 The customer agrees to be named as a reference by the provider. For this purpose, the customer grants the provider a temporally and spatially unrestricted right to use the trademarks and company logos for the purpose of naming the reference, irrespective of the transmission, carrier and storage technologies.

## **12 Non-solicitation clause**

- 12.1 The Customer undertakes not to directly or indirectly entice away any employees of the Provider for the duration of the cooperation between the parties and for a period of one year thereafter. For each case of culpable infringement, the customer undertakes to pay a contractual penalty to be determined by the provider and, in the event of a dispute, to be reviewed by the competent court.

## **13 Free test phase**

- 13.1 The provider may allow the customer to use the software free of charge for a test phase to be agreed individually. Free use during the test phase is not suitable for productive purposes, but solely to gain an impression of the software.
- 13.2 It should be noted that the test package may differ in functionality and limitations from the package subsequently booked by the customer. Specific features of the software are not owed and use by the customer for purposes other than testing is not permitted during the free trial period.

- 13.3 The test customer must ensure that the software is used exclusively in a test environment and therefore cannot cause any damage to other software and hardware in the event of a malfunction.
- 13.4 The provider assumes no warranty or liability for the free use of the software during the test phase.
- 13.5 The provider is entitled to terminate the contract prematurely at any time during the test phase.

## **14 Assignment, right of retention, offsetting**

- 14.1 The assignment of claims is only permitted with the prior written consent of the other party. Consent may not be unreasonably withheld. The provision of § 354 a HGB remains unaffected by this.
- 14.2 A right of retention can only be asserted on the basis of counterclaims arising from the respective contractual relationship.
- 14.3 The parties may only offset claims that have been legally established or are undisputed.

## **15 Choice of law and place of jurisdiction**

- 15.1 German law applies. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.
- 15.2 The exclusive place of jurisdiction for all disputes in connection with this agreement is the registered office of the provider.

## **16 Written form**

- 16.1 Amendments and/or additions to this contract or its annexes as well as all future additions and all legal acts during its execution are only effective if they are made in writing. Both parties confirm that no other verbal or tacit agreements exist outside of this document at the time of the mutual signing of this contract.

## **17 Interpretation of the contract**

- 17.1 Should individual provisions of this contract be invalid, this shall not affect the validity of the remaining provisions. The parties shall endeavor to replace the invalid provision with a provision that best meets the legal and economic purpose of the contract.

# **B. Special agreements on the rental of software licenses**

## **1 Subject of performance**

- 1.1 The following agreements apply to the rental of software licenses.

- 1.2 The customer rents the provider's software specified in the quotation.
- 1.3 The source code of the software is not part of the service. A separate escrow agreement can be concluded at the customer's request.
- 1.4 The use of the software may require the licensing of standard software from third-party manufacturers, which must be provided by the customer, insofar as this is indicated accordingly in the quotation. The customer must ensure that the licenses for the standard software do not result in any restrictions on the use of the contractual software. ASee also point A 5.6.
- 1.5 The technical requirements for the customer's hardware and software environment for the use of the software are specified in the quotation.
- 1.6 The quality of the software supplied by the provider is conclusively determined by the service description contained in the quotation in conjunction with the product description referred to. The provider does not owe any additional quality of the software. In particular, the customer cannot derive such an obligation from other representations of the software in public statements or in the advertising of the provider, its employees or sales partners, unless the provider has expressly confirmed the additional quality in writing.
- 1.7 The software and documentation in German and/or English shall be provided to the customer. The customer may print out and copy any number of copies of the documentation for internal use. At the end of the contract term, copied files must be deleted and physical copies destroyed.

## 2 Rights of use

- 2.1 When this contract comes into force, the provider grants the customer a simple right of use, limited in time to the term of this contract and unlimited in territory, to the software specified in the quotation and the associated documentation for the intended use. The Provider may revoke the rights of use in the event of non-payment of the agreed remuneration.
- 2.2 The use of the software is restricted to the extent that the right of use granted under this agreement only permits the use of the software with the number of application instances specified in the quotation at the same time (concurrent clients). A "concurrent client" is any instance of the software running at the same time. *The software **may** only ever be used simultaneously by the number of clients defined in the quotation. If more concurrent application instances are used than those agreed in the quotation and regularly invoiced, the provider is entitled to invoice this additional use retroactively on a monthly basis at 1/6 of the annual value per additional application instance.*
- 2.3 The customer may use the software in his own business operations. In particular
  - a data center operation for third parties or
  - the temporary provision of the software (e.g. as Software as a Service or Application Service Providing) for third parties

- the use of the software for the training of persons who are not employees of the customer,

are only permitted in accordance with a corresponding individual provision. Such a provision may include that the provider is permitted to operate the software for affiliated companies in the group's own infrastructure. Transfer to third parties outside the group and commercial redistribution are only permitted with the express permission of the provider. The customer shall not modify the software or merge. The customer shall not subordinate the software to any open source software license that conflicts with this agreement or is otherwise not applicable to this software.

- 2.4 The customer is not permitted to edit or modify the software in any way, with the exception of the rights to which he is entitled in accordance with Sections 69d and 69e of the German Copyright Act (Urheberrechtsgesetz). Excluded from this are all changes to the software that are possible without interfering with the source code, which are intended in the sense of this contract and the specific quotation and correspond to the purchased and regularly maintained scope of the license.
- 2.5 The customer is only entitled to decompile the software within the limits of § 69 e UrhG and only if the provider has not provided the necessary data and/or information to establish interoperability with other hardware and software in accordance with the service description after a written request with a reasonable deadline.
- 2.6 The customer is not permitted to carry out penetration tests, security checks or the like with or on the services, data and services provided without express written permission
- 2.7 If the provider provides the customer with additions (e.g. patches) or extensions to the software (e.g. update, release) within the scope of rectification or maintenance, which replace previously provided versions of the software, these are also subject to the provisions of this agreement. If the Provider makes a new version of the Software available, the Customer's rights under this Agreement with regard to the old version shall expire as soon as the Customer makes productive use of the new version, even without an express request for return by the Provider.
- 2.8 The customer is entitled to make a copy of the software exclusively for backup purposes and insofar as this is necessary for use in accordance with the contract. The customer shall acquire the same rights to this copy as to the original. The copy must be deleted immediately after the end of the contract term.
- 2.9 The customer is not permitted to change or remove copyright notices, marks and/or control numbers or marks of the provider. If the customer modifies or edits the software, these notices and marks must be incorporated into the modified version of the subject matter of the contract.

### **3 Provision of the software**

- 3.1 The Provider shall provide the Customer with the software and documentation (insofar as this is the subject of the service) for download. Standard documentation is available for download on the provider's website. The software shall be supplied in the current version or in the version specified in the quotation.
- 3.2 If the provider operates the software for the customer as part of managed hosting, it shall install the software on the rented server after the contract comes into force on the date specified there and inform the customer of this.

### **4 Obligations of the customer**

- 4.1 The customer shall pay the remuneration in accordance with the quotation.
- 4.2 The customer has informed himself about the essential functional features of the offered software and bears the risk that it meets his wishes and needs; in case of doubt, he must seek advice on its suitability from employees of the provider or from expert third parties before concluding the contract.
- 4.3 Unless otherwise agreed, the customer shall be solely responsible for setting up a functional hardware and software environment that meets the technical requirements of the software in accordance with the quotation and is adequately dimensioned, taking into account the additional load caused by the software.
- 4.4 The customer shall grant the provider access to the software for troubleshooting and rectification within the scope of the warranty, at the provider's discretion directly and/or by means of remote maintenance.
- 4.5 The customer shall protect the software from unauthorized access in order to prevent misuse. The customer shall only make the software accessible to third parties with the prior written consent of the provider. Third parties do not include the customer's employees.
- 4.6 The customer shall support the provider appropriately upon request in the examination and assertion of claims against other parties in connection with the provision of services. This applies in particular to recourse claims of the Provider against upstream suppliers.
- 4.7 The customer shall take appropriate precautions in the event that the software does not work properly in whole or in part (e.g. through daily data backups, fault diagnosis, regular checks of the data processing results). The data backup must ensure that the data can be restored with reasonable effort. This does not apply if the provider has assumed this obligation as part of managed hosting.
- 4.8 Unless the customer expressly points this out in advance, the provider may assume that all of the customer's data with which it may come into contact is secure.

## **C. Special agreements for development services**

### **1 Subject of performance**

- 1.1 Insofar as services in the area of development and implementation of software (hereinafter referred to as "development services") are agreed, which the provider is to provide for the customer, the following agreements shall apply in this respect.
- 1.2 Within the scope of development services, the provider provides in particular, but not exclusively
- Software development
  - Parameterization
  - Training
  - Data import
  - Migrations
  - Furnishings
  - Creation of concepts
  - Creation of specific documentation
- 1.3 Services in the areas of managed hosting and maintenance and care are not considered development services.
- 1.4 The provider shall implement the development services described in the offer for the customer. In particular, the quotation shall contain a concrete description of the services and the scope of services, the time required and the time frame and, if applicable, a fixed price for the implementation of the development services.

### **2 Service provision**

- 2.1 The supplier shall provide the development services in accordance with the recognized rules of technology and project approach methods customary on the market.
- 2.2 The Provider shall generally provide the services on its own premises. Assignments at the customer's location shall only take place if they are absolutely necessary and have been explicitly agreed.
- 2.3 The completeness of the requirements is generally the responsibility of the customer. This does not apply if the provider acts in an advisory capacity on behalf of the customer to specify the requirements in return for payment. Subsequent changes to the agreed services can be agreed as part of a change request.

### **3 Change requests**

- 3.1 Change requests are all subsequent change requests made by the customer during the implementation of the project.
- 3.2 Changes to works that have already been accepted shall not be deemed to be change requests and shall be agreed separately as new orders.

- 3.3 Following the submission of a change request, the Provider shall carry out a summary review of the effects of the desired change, in particular with regard to anticipated additional costs, remuneration and deadlines. If the provider recognizes that the originally agreed development services cannot be carried out temporarily as a result of the review, it shall inform the customer of this and point out that the change request can only continue to be reviewed if the provision of the originally agreed development services is postponed for the duration of the review of the change request. If the customer agrees to this postponement, the provider shall carry out the review of the change request. The customer shall be entitled to withdraw a change request at any time; the initiated change procedure shall then end. CPara. C 7 applies with regard to the review expenses.
- 3.4 After reviewing the change request, the provider shall explain to the customer the effects of the change request on the agreements made. The presentation shall contain either a detailed proposal for the implementation of the change request or information as to why the change request cannot be technically implemented.
- 3.5 The customer and provider shall immediately agree on the content of a proposal for the implementation of the change request and its effects, in particular on the remuneration and the schedule, and, in the event of an agreement, attach the result to the individual order to which the change relates as a supplementary agreement.
- 3.6 If the change request cannot be technically implemented, if an agreement on implementation cannot be reached or if the change procedure ends for any other reason, the original scope of services shall remain unchanged. The same applies in the event that the customer does not agree to a postponement of the development services for further testing.
- 3.7 The customer shall bear the expenses arising from the change request, including the expenses for examining the change request and preparing a change proposal.

#### **4 Obligations of the customer**

- 4.1 The customer shall support the provider in the fulfillment of the contractually owed development services. The obligations to cooperate include, in particular, the provision of the information, data and documents from the customer's sphere that are necessary for the provision of services. In addition, the customer shall provide any licenses required for the use of standard software from third-party providers as specified in the quotation.
- 4.2 The customer shall support the provider appropriately upon request in the examination and assertion of claims against other parties in connection with the provision of services. This applies in particular to recourse claims of the Provider against upstream suppliers.

- 4.3 If necessary, the Customer shall guarantee the Provider access to the place of use and shall encourage its employees to cooperate with the Provider insofar as this is necessary for the provision of the development services.
- 4.4 If the parties have agreed to provide the services by way of remote maintenance, the customer shall create the necessary technical conditions for this at its own expense.
- 4.5 The customer must provide the cooperation expressly mentioned above within one week of the provider's request at the latest. The Provider is entitled to set the Customer a reasonable deadline for the provision of further acts of cooperation.
- 4.6 The customer shall provide the required number of its own employees with the necessary expertise to fulfill its contractual obligations.
- 4.7 The customer is aware that, in case of doubt, the provider's development services cannot be provided as agreed due to a breach or delay in the obligations to cooperate. In particular, this may lead to delays in the agreed schedule and/or to additional expenses.
- 4.8 All acts of cooperation to which the customer is obliged shall be carried out at the customer's own expense.

## **5 Remuneration**

- 5.1 The remuneration rates agreed between the parties in the quotation shall apply.
- 5.2 Travel time is remunerated 100% as working time. Travel expenses and ancillary costs (e.g. flight and train tickets, vehicle and hotel costs) are only paid separately for trips lasting several days.
- 5.3 Invoicing shall be based on the payment plan agreed in the quotation. If no payment plan has been agreed in the quotation, invoicing shall take place on a monthly basis according to actual expenditure.
- 5.4 If a fixed remuneration is to be agreed between the parties, this must be expressly designated as a "fixed price" in the quotation.

## **6 Rights of use**

- 6.1 The provider shall grant the customer a simple, spatially and temporally unlimited right to use the work results individually produced for him and eligible for copyright protection in accordance with their intended use. In the case of supplements to rental software (e.g. supplementary software modules), the duration of the rights of use shall be bound to the period of use of the supplemented basic software. Unless expressly agreed otherwise, the intended use includes the mere use of the work results. Rights to the source code are not granted. The right to process and further develop the work results, including the source code, is only

included if this is expressly agreed between the parties in text form. No further rights are granted.

- 6.2 The transfer of rights of use to third parties is prohibited.
- 6.3 The work results may contain components that have been licensed by third parties as standard software or open source software. In case of doubt, the respective license terms apply exclusively to this software. In this respect, these General Terms and Conditions do not apply to standard software and open source software from third parties. A list of any open source software used with the applicable license conditions can be requested by the customer from the provider.
- 6.4 Until payment has been made in full, the customer is only permitted to use the work results produced on a revocable basis. The Provider may prohibit the use of such services for which the Customer is in default of payment for the duration of the default.

## **7 Dates**

- 7.1 Dates for the provision of services are only binding for the provider if they are expressly confirmed to the customer by the provider in text form as "binding".

## **8 Acceptance**

- 8.1 The Provider shall make the completed work products available to the Customer for acceptance and notify the Customer of their availability. The Customer shall subject these to an acceptance test within 6 weeks. The acceptance test shall be carried out in the test environment agreed between the parties at the customer's premises at the customer's expense.  
At the customer's request, the productive system can also be used as a test system. In this case, the Provider shall not be liable for any effects on the productive system. The customer is obliged to accept the work products insofar as they meet the contractual requirements. Merely insignificant defects shall not prevent acceptance.  
Insignificant defects are those that do not or do not significantly impair usability. Any existing defects must be reported to the Provider in writing in an acceptance report
- 8.2 Defects reported by the customer that are relevant to acceptance shall be rectified within a reasonable period of time. The work products shall then be made available again for acceptance and acceptance shall then be repeated.
- 8.3 8.1If no declaration of acceptance and no notification of defects in text form is received by the Provider within the period specified in Section the work products shall be deemed to have been accepted without defects upon expiry of the deadline. The work products shall also be deemed to have been accepted without defects if the Customer puts them into operation, publishes them or pays the agreed remuneration in full.

**D. Special agreements for managed hosting**

**1 Subject of performance**

- 1.1 The following agreements apply to managed hosting.
- 1.2 The services for operating the software solution include in particular
  - the provision of system resources for the operation of the software (including third-party software required for this purpose) and the storage of data (hereinafter collectively referred to as "server").
  - the connection to the Internet in accordance with Section D 1.3 below;
  - Services (Managed Services) in accordance with the following Section D 3.
- 1.3 The transfer point for the services is the router output of the data center. The transmission from the transfer point is not within the provider's sphere of influence. The establishment of the connection via the Internet or other networks not exclusively operated by the provider or the successful access to content are not the subject of the provider's obligation to perform
- 1.4 The availability of the servers used is regulated in separate service level agreements. Otherwise, the provider does not commit to any specific availability rate. Generally excluded from mandatory availability are downtimes due to maintenance of the technical infrastructure and, if applicable, maintenance of the software environment as part of managed hosting. The provider shall notify the customer of this with a reasonable period of notice and communicate the estimated downtime. Also excluded are times during which the server cannot be reached due to technical or other disruptions beyond the control of the provider (force majeure, fault of third parties, etc.).
- 1.5 The provider is entitled to adapt the hardware and software used to provide the service to technical changes, provided that the provider's contractually owed service is not negatively affected by this.

**2 Provision of system resources**

- 2.1 The Provider shall provide the Customer with storage space and computing power as well as other necessary system resources on a server (also virtual if necessary) for the operation of the software solution in accordance with the quotation.
- 2.2 The Provider manages the server in accordance with the following Section D 3. Accordingly, the Customer is not authorized to access the server independently and make changes there. The customer may only access the server by prior arrangement and under the supervision of the provider.
- 2.3 The content stored on the storage space is regularly backed up in accordance with section D 3.1 below.

### **3 Services, Managed Hosting**

- 3.1 The provider provides managed services in accordance with the offer in connection with the operation of the software solution on the server. The services include in particular
- Installation of the software solution and consulting;
  - Installing updates for the software solution (software and third-party software, if approved by the manufacturer);
  - Monitoring the software solution and system resources
  - The provider sets up a backup system for the server with daily incremental backups;

### **4 Obligations of the customer**

- 4.1 Should there be any disruptions in the use of the server, the customer shall inform the provider of these disruptions without delay.
- 4.2 The customer assures that he will not store and use any content on the server that violates criminal law, copyrights, trademark and other labeling rights or personal rights of third parties or other legal regulations. If the customer breaches this obligation, he shall be obliged to remove the breach immediately, to compensate the provider for any damage incurred and still to be incurred and to indemnify the provider against claims for damages and reimbursement of expenses by third parties caused by the breach. The indemnification obligation also includes the obligation to fully indemnify the provider from reasonable legal defense costs (court and attorney's fees, etc.). Other claims of the provider, in particular for blocking the server and deleting the content as well as for extraordinary termination, remain unaffected.
- 4.3 The customer shall ensure that the content transmitted by him does not jeopardize the operation of the provider's server or communication network or the security and integrity of other data stored on the provider's servers.
- 4.4 If content transmitted by the customer endangers or impairs the operation of the provider's server or communication network or the security and integrity of other data stored on the provider's servers, the provider may deactivate or delete this content. If the elimination of the threat or impairment requires this, the provider is entitled to interrupt the connection of the content stored on the server to the Internet. The provider shall inform the customer of this measure without delay.
- 4.5 The customer shall license and keep available the necessary third-party software within the scope of the installation and during the term of the contract to the extent agreed.
- 4.6 The customer shall provide all cooperation services at his own expense.

## **5 Temporary blocking**

- 5.1 The provider is entitled to temporarily interrupt the availability of the server (blocking) if there is sufficient suspicion of the storage or use of illegal content, in particular due to a not obviously unjustified warning from a third party or investigations by state authorities. The customer shall be notified immediately of the blocking, stating the reasons, and requested to remove the content concerned or to provide evidence of its legality. The blocking shall be lifted immediately as soon as the suspicion has been dispelled by the customer.
- 5.2 Temporary blocking may also occur if the customer is in arrears with the payment of at least two consecutive monthly installments. The account will be unblocked as soon as the customer has settled his arrears in full.

## **6 Rights of use**

- 6.1 The customer grants the provider the rights of use to the data (databases) necessary for the execution of the contract, which are processed on the server in connection with the use. The customer remains the sole owner of his data in all cases.

## **7 Liability**

- 7.1 The provider is not liable for data that the customer stores on the server.
- 7.2 When providing storage space on the server, the provider excludes any strict liability for initial defects of the server. Subsequent objections due to obvious or hidden defects are therefore also excluded.