



## General Terms and Conditions of the ACP Group in Austria (Status July 2014)

### 1. Scope of Application

- 1.1. These General Terms and Conditions shall apply to all contracts concluded by ACP Holding Österreich GmbH and its affiliated companies within the group in Austria (hereinafter abbreviated to "ACP"), unless otherwise expressly agreed.
- 1.2. The term contract shall refer to any placing of an order for the purposes of a service provision (confirmed offer, order, purchase order, service as well as maintenance contract).
- 1.3. The present General Terms and Conditions shall apply without reservation, unless expressly otherwise agreed in writing by the contractual parties. Any terms and conditions of sale or business provided by the contractual party are hereby expressly contradicted, and these shall not be assumed to form part of any contractual agreements, unless ACP expressly consents to their validity in writing. The aforesaid shall also apply in the event ACP does not expressly contradict to a subsequent contractual document referring to other terms and conditions. The General Terms and Conditions shall also apply in the event of tacit acceptance of an offer. All offers provided by ACP are principally subject to change and without obligation.
- 1.4. Without repeated reference to the General Terms and Conditions, any additional, subsequent and follow-up orders with the contractual party shall exclusively be concluded on the basis of the present General Terms and Conditions.
- 1.5. Purchase orders of any kind; in particular, if placed verbally or by telephone, shall only be accepted by ACP provided that these terms and conditions are accepted in their entirety.
- 1.6. In the event that ACP arranges services/deliveries upon request of the contractual partner, such contracts shall be concluded solely between the contractual party and the respective third party, subject to terms and conditions of said third party.

### 2. Changes to Services/Change Request

- 2.1. A change request (hereinafter abbreviated to "CR") generally refers to a change of the mutually agreed scope of contractual services or of the present framework conditions.
- 2.2. ACP and the contractual party shall both submit their CR in writing. CR shall be described and formulated with sufficient precision. Any such change request shall include a detailed description of the change requested, the reasons for requesting the change, the impact the change will have on time schedules, and the costs of the change, in order to enable the addressee of the change request to adequately evaluate and assess it.
- 2.3. ACP shall support the contractual party in formulating the CR free of charge to the extent necessary from a professional point of view. In the event that the creation of requirement specifications is necessary due to the scope of the content, such activities shall be remunerated separately to ACP.
- 2.4. Each change request submitted by the contractual party shall be reviewed by ACP, and the contractual party shall be informed whether the CR is reasonable and practicable to ACP within 10 working days. In the event that ACP negates the practicability, ACP shall provide written reasons for this decision to the contractual party.
- 2.5. In the event the CR is reasonable and practicable, ACP shall inform the contractual party of the way, in which the

CR will be implemented and the timing of its implementation. In particular, effects on the defined scope of services, the contract period and remuneration shall be presented.

- 2.6. Payment for implementing the CR shall be due, if the review and implementation of the CR incur costs not only very slightly exceeding contractually agreed expenses for services rendered by ACP. If this is the case according to ACP, ACP shall inform the contractual party in writing and submit an offer including information about the scope of services as well as the requested remuneration. The contractual partner shall be obliged to either place the order in writing within ten working days or to withdraw the CR.
- 2.7. Until implementation of a CR, ACP shall be obliged to render the concerned contractual services according to the previously applicable contractual agreements, unless the contractual party stipulates in writing that the rendering of services shall be interrupted.
- 2.8. ACP shall be obliged to maintain documentation of CR as well as of their implementation. Such documentation shall include the following details at the least:
  - a) date of the CR;
  - b) content of the CR;
  - c) date of the completed implementation of the CR;
  - d) signature of all contractual parties.
- 2.9. This documentation shall be enclosed to the respective concluded contract as a new appendix.

### 3. Data Migration

- 3.1. In the event of a data migration, which is contractually required as a service, ACP shall transfer the contractual party's existing productive data (real data) to the new system upon completion of the system installation.
- 3.2. ACP shall accept no responsibility for the correctness and completeness of the content of data to be transmitted.
- 3.3. The contractual party shall be responsible for ensuring that his or her real data is secured sufficiently and is suitable for restorability at any point in time, before the migration is started (if necessary, also several times during the migration procedure).
- 3.4. The contractual party shall provide his or her real data to ACP, in a format appropriate for migration, which ACP previously indicates to the contractual party. In the event the migration of real data requires adjustments to existing data sets (field descriptions, mapping etc.), the contractual party shall undertake such adjustments. In the event ACP is to take on this task, a separate order requiring compensation shall be required.
- 3.5. ACP shall notify the contractual party of the beginning of the migration procedure and indicate the necessity to secure data.
- 3.6. The contractual party shall expressly assure and guarantee that no third-party rights are infringed due to the migration. In the event of an infringement of third-party rights, the contractual party shall indemnify and hold ACP entirely harmless.

### 4. Programmes and Developments

- 4.1. The elaboration of individual organisational concepts and trainings, of system analysis and programming shall be performed in line with the type and scope of the binding information, documents and accessory aids, which have been

made available in total by the contractual party. Included are customary test data as well as the opportunity to test to the necessary extent, which the contractual party shall make available on a timely basis, during normal business hours and at his or her own expense. If the contractual party has already been working in real time in an operating system that is being made available for testing, the responsibility for securing the real data lies with the contractual party.

- 4.2. The basis for creating custom-designed programmes and individual trainings shall be the written performance specifications that either are provided by the contractual party or that ACP writes up on the basis of documentation and information provided to ACP by the contractual party. Performance specifications drawn up by ACP shall be reviewed by the contractual party for correctness and completeness. If the contractual party does not contact ACP to object to these performance specifications within two weeks, they shall be deemed to have been approved. Requests for changes, which are made thereafter, result in separate deadline and price agreements.
- 4.3. For created software or programme adaptations, it shall be required that each programme package be accepted by the contractual party at the latest two weeks after delivery. This acceptance shall be confirmed in a record of transaction by the contractual party (review for correctness and completeness in line with the performance specifications on the basis of the test data made available to the contractual party). If the contractual party allows two weeks to pass without accepting the programme, the delivered software shall be deemed to have been accepted as at the last day of the stated time period.
- 4.4. When standard programmes have been ordered, the contractual party confirms by virtue of the purchase order his or her knowledge of the scope of performance of the ordered programmes; otherwise, it shall be the responsibility of the contractual party to acquire this knowledge prior to placing the purchase order.

## 5. Obligations to Cooperate of the Contractual Party

- 5.1. The contractual party shall be obliged to provide any information, documentation, processes and circumstances required for the project to ACP. In this context, the contractual party shall be obliged to disclose financial as well as all other factual circumstances, which may be relevant for a proper fulfilment of contractual services. In particular, this includes circumstances thematically related to the industry of the contractual party that are not immediately noticeable to ACP, and it is consequently not possible or required for ACP to inquire about.
- 5.2. The contractual party's duty to provide information shall also apply to circumstances that first become known during the performance of ACP's activities for the contractual party. ACP shall assume that all information provided by the contractual party is correct and complete; and therefore, shall not be obliged to review this information. Upon ACP's request, the contractual party shall be obliged to confirm in writing the correctness and completeness of any documents, information and verbal statements provided by him or her.
- 5.3. The contractual party shall inform ACP in writing and with immediate effect about any software-specific changes, which may affect a contract component and which have been carried out by the contractual party himself/herself, or

by a third party (proprietary developments). In the event such self-developed software results in additional support effort/costs for ACP, the contractual party shall bear all costs arising thereof according to the agreed valid price list.

- 5.4. Any failures, faults or hazards occurring in the contractual party's own system, e.g. compromise of data or malware, shall be reported to ACP by the contractual party with immediate effect and shall be documented in a comprehensible manner, in order to prevent a possible risk to the overall operation of services on the part of ACP. Any documentation required for fault clearance shall be made available to ACP for inspection. The contractual party shall be further obliged to comply with any requests made by ACP, if applicable, in order to minimise further damage. Upon ACP's request, the contractual party shall use the ACP Service Portal for fault reports.
- 5.5. Furthermore, the contractual party shall be obliged to support ACP in rendering agreed services in all conscience and to create the necessary conditions for a proper service provision. The contractual party shall make available to ACP all employees that are required for fulfilling the contractual services. In addition, the contractual party shall make available all the necessary, correct and binding documentation, data, accesses and information that are required for the performance of contractual services. Both employees and information shall be made available by the contractual party in due time and free of charge.
- 5.6. As far as contractual services are provided on the contractual party's premises or on the premises of the contractual party's customer, sufficient workplaces and necessary work equipment (e.g. network components, connections, power supply including peak voltage equalisation, emergency power supply etc.), space for equipment as well as infrastructure shall be made available to employees of ACP free of charge and in the quantity and quality (e.g. health and safety protection, air conditioning) required by ACP to provide its services. The contractual party shall ensure that ACP, its employees and/or any subcontractors of ACP are granted unhindered access during service provision and that appropriate requirements for the protection of the safety and health of employees of ACP are fulfilled. In particular, the effective legal provisions for the protection of workers shall be complied with by the contractual party.
- 5.7. The contractual party shall be responsible that all employees of the contractual party's affiliated companies or his or her subcontractors will contribute accordingly to fulfilling this contract.
- 5.8. The contractual party shall be obliged to handle all passwords and log-ins required for the use of services provided by ACP in a strictly confidential manner.
- 5.9. Unless otherwise expressly agreed in the scope of services to be rendered by ACP, the contractual party shall provide a network connection at his or her own risk and costs.
- 5.10. The contractual party shall obey the instructions issued by ACP referring to the description, localisation, detection and reporting of failures. If necessary, the contractual party shall use checklists provided by ACP.
- 5.11. ACP shall be entitled to render contractual services via remote maintenance. The contractual party shall provide an appropriate communications standard in accordance with the latest technologies, particularly referring to suitable hardware and software, and grant ACP access to applications required for the provision of contractually agreed services.

- 5.12. The contractual party shall solely be liable for the protection of the licensor's rights (e.g. intellectual property rights including copyright notice right) with regard to software and for the licensor's entitlement to nondisclosure of operating and business secrets including employees as well as auxiliary persons and third parties. This shall also apply, if the software has been changed or combined with other programmes. This obligation shall remain in force even after the termination of the contact. The contractual party shall be solely responsible for obtaining the required knowledge about the content of the respective software licensing conditions imposed by the respective manufacturer (licensor). The contractual party shall agree to comply with these licensing conditions by carrying out the action required by the respective software manufacturer as a declaration of consent. This may be done either by the contractual party himself/herself or by his or her subcontractors. Upon the express request of the contractual party, ACP shall provide the respective licensing conditions in advance.
- 5.13. The contractual party shall ensure that any hardware and software is operated under appropriate operating conditions and as stated in the respective documentation. Furthermore, the contractual party shall be liable for the safety of buildings and premises; especially, with regard to fire and water protection or unauthorised access. The contractual party shall be responsible for special safety precautions (e.g. safety cells) on his or her own premises.
- 5.14. The contractual party shall be obliged to observe all applicable laws (in particular, the Pornography and Prohibition Act, Criminal Code, Data Protection Act 2000, Telecommunications Act 2003, Media and Copyright Law as well as the Unfair Competition Act) and to assume the sole responsibility to comply therewith towards any third parties.
- 5.15. All services to be rendered by the contractual party shall also be rendered in the event that an elimination of defects is required.
- 5.16. The contractual party shall fulfil all his or her obligations to cooperate in good time, so that ACP is not hindered in rendering its services.
- 5.17. The fulfilment of the entire range of services on the part of ACP requires the full and timely fulfilment of all obligations to cooperate as well as of any other contractual obligations on the part of the contractual party. The contractual party shall be aware thereof and shall expressly accept it.
- 5.18. If the contractual party fails to perform his or her obligations to cooperate at the agreed dates or in the agreed scope, the services provided by ACP shall be deemed to have been rendered as agreed, even in case of limitations. In such a case, the schedule for the services rendered by ACP is rearranged to a reasonable extent. The contractual party shall pay separately for extra costs incurred to ACP in such a case and/or costs at ACP's respective applicable rate. ACP shall have the right to withdraw from the contract with immediate effect, in case of a breach of the obligations to cooperate.
- 5.19. The contractual party shall not be entitled to issue any instructions, irrespective of their nature, to the employees of ACP and shall address all requests regarding the provision of the services exclusively to the responsible contact person named by ACP.
- 6. Terms of Payment**
- 6.1. All prices and remunerations payable by the contractual party shall be in EURO and subject to value added tax at the prevailing rate.
- 6.2. ACP shall charge the contractual party for provided contractual services after delivery and acceptance thereof. The contractual party shall be obliged to accept services immediately after completion. Where orders encompass a number of units (e.g. computer programmes, services and/or training sessions, completion in stages), ACP shall be entitled to submit an invoice after the delivery of each unit or service. The smallest billing unit is thirty minutes.
- 6.3. For other additional services, the following shall apply: As far as the additional service provision is completed over a period of more than four weeks, ACP shall be entitled to invoice partial payments based on the progress of services. They usually take place on a monthly basis in retrospect.
- 6.4. Bills made out by ACP inclusive of value added tax are payable from the invoice date without deduction and free of expenses. Payments on account already effected shall be deducted.
- 6.5. The contractual party shall agree that invoices issued by ACP may also be transmitted by electronic means.
- 6.6. Irrespective of the relevant due date, outstanding invoices as well as payments, for which easy terms were granted, such as bills of exchange or cheques, become due for immediate payment, if there is a significant deterioration in the contractual party's financial circumstances.
- 6.7. Payment shall be considered to have taken place on the date, on which ACP can dispose of it.
- 6.8. Payment on the agreed-upon dates shall be an essential condition for delivery and for fulfilment of the contract by ACP. Failure on the part of the contractual party to comply with the agreed payment schedule for two weeks, also with regard to partial invoices and down-payments, entitles ACP to discontinue current work and to withdraw from the contract after sending one reminder and after extending the deadline by one week. In case of partial payments, ACP shall also be entitled to enforce default and demand immediate payment of the total outstanding amount.
- 6.9. In case of delayed payment, ACP shall be entitled to charge the contractual party with interest payable on arrears amounting to 8 % p.a. above the base interest rate. In addition, the contractual party shall be obliged to compensate any reminder costs and collection expenses that have already been incurred due to the delayed payment as well as possible other additional costs.
- 6.10. ACP shall have the right, at any time, to make the provision of services dependent on adequate advance payments or the provision of other collaterals by the contractual party.
- 6.11. Additional supplies/services necessary to perform the agreed contractual services (e.g. equipment, software licences, data lines, standby service) as well as any contract fees shall be billed separately. The costs of programme carriers (e.g. magnetic tapes, magnetic disks, streamers, tapes, magnetic tape cassettes, etc.) as well as any contract fees shall be billed separately.
- 6.12. For standard programmes the valid prices shall be the list prices in effect on the day of delivery, unless otherwise specified in an order confirmation. All other additional services shall be charged at the rates in effect on the day the services are performed. Deviations from the amount of time calculated as being required for the work shall be accordingly considered by the contractual parties.

- 6.13. The costs for travel, per diem and overnight accommodation costs are invoiced separately to the contractual party according to the valid respective rates. All quoted rates shall be subject to changes by means of the price variation clause as described in clause 7 of this contract. Transit time shall be considered as work time.
- 6.14. Any customs, taxes, duties, fees, imposts, tariffs and charges related to the conclusion or the execution of the contract shall be borne by the contractual party. In the event ACP is required to pay such charges to any authority, the contractual party shall indemnify and hold harmless ACP for any such payments.

## 7. Indexation/Price Adjustment

- 7.1. The amount payable for the ordered services shall be determined based on the respective contract concluded with the contractual party including appendices, unless otherwise agreed.
- 7.2. Cost increases (e.g. wage and ancillary wage costs, training costs, material costs, purchase prices, overhead expenses, delivery costs, telephone costs and charges, transportation and travel costs, expenses) or limitation of funds may be passed on to the contractual partner in due proportion to the extent of the respective increase. The contractual party shall be promptly informed about any such causes, and this adjustment shall take place proportionally for the remaining period of the current contractual year. In the event of changes to the law on import duties or similar during the time period between the conclusion of the contract and the provision of contractual services, ACP shall also be entitled to adjust prices or remunerations to the appropriate extent.
- 7.3. If the price increase according to clause 7.2 does not exceed 10 % per contractual year, the contractual party shall have no special right of termination due to this price increase. If the increase exceeds 10 % per contractual year, the contractual party shall be entitled to terminate the contract within a deadline of fourteen days. Otherwise, the changed prices shall be considered accepted after expiration of this deadline. However, the customer, who is not the consumer, shall not be entitled to this right, in the event that price increases result from changes in exchange rates, increased wage costs and increased purchase prices for consumable material.
- 7.4. An annual value guarantee shall be agreed for the respective prices and remunerations that are contractually agreed with the contractual party. The basis of calculation for the stability of value shall be the Consumer Price Index 2010 published monthly by the Austrian Central Office for Statistics or some other index replacing it. The price adjustment due to the value stability clause shall always take place on 1<sup>st</sup> January of each calendar year and shall automatically become effective. For contracts concluded in the last quarter of the year (between 1<sup>st</sup> October and 31<sup>st</sup> December), the adjustment shall take place as at 1<sup>st</sup> January of the second following year (example: contract conclusion on 1<sup>st</sup> October 2014; next index adjustment consequently on 1<sup>st</sup> January 2016). The index value published for the first day of the year shall serve as a reference value for the adjustment. All rates of change shall be rounded off to one decimal place. ACP shall furnish proof of the increase due to indexation. If ACP fails to do a price adjustment, for whatever reason, this shall not imply a waiver of the right to make such adjustment in itself. It shall in any case be excluded

that prices or remunerations fall under the respective prices agreed in contracts and appendices.

## 8. Set-Off

- 8.1. The contractual party shall only have the right to offset payment on the grounds of undisputed claims approved in writing by ACP or asserted by court order.
- 8.2. The contractual party may not withhold any agreed contractual services. In particular, the contractual party shall not be entitled to withhold payment from ACP because of incomplete total service delivery, guarantee or warranty claims or claims for damages.

## 9. Rights of Use Regarding Software Products & Documentation

- 9.1. The contractual party shall assure that he or she is entitled to all copyrights and/or other rights on the work he or she has provided for the execution of agreed contractual services, and ACP consequently does not infringe the copyrights and/or any other rights of a third party.
- 9.2. The contractual party shall only be entitled to use the results obtained through performed contractual services after payment thereof and strictly for his or her own purposes. The use of these results for companies, in which the contractual party holds a major stake, requires a separate written agreement between the contractual party and ACP. Other than this, all rights of use for all types of use shall remain with ACP.
- 9.3. The contractual party shall not be entitled to pass on organisational compositions, training concepts, training material, programmes or programme concepts, orders, performance specifications etc. or copies derived therefrom to third parties, with or without remuneration, without ACP's written consent. Specially created programmes and organisational services are exclusively ACP's intellectual property. Independently thereof, the contractual party obtains only the right to use them – also after payment of the agreed remuneration – strictly for his or her own purposes and only in combination with the hardware specified in the contract. Each transfer of the material, which takes place in spite of this, in any legal form whatsoever, even for short-term reproduction purposes, shall result in claims for damages. In this context, the contractual party shall grant full satisfaction even in cases of slight negligence.
- 9.4. For purchased software, the contractual party shall receive the non-transferable and non-exclusive right to use the sold software product in compliance with contractual specifications on the agreed site of installation. This right shall be limited to the exclusive use of the supplied hardware, if such hardware is included. Moreover, this right shall be limited to the exclusive type, number and site of installation of the contractually defined hardware, in case independent software is supplied. All other rights to the software shall be retained by the licensor. Without the prior written consent of the licensor, notwithstanding the provisions of Sect. 40(d) Copyright Law, the contractual party shall particularly not be authorised to duplicate, alter, or render accessible the software to third parties or use it on any other type of hardware than the one that is the subject of the contract. The use of software products in a network shall require a license for each and all simultaneous users. The use of software products on stand-alone PCs shall require a license for each PC. If the intended use shall include the simultaneous use on more than one workstation, this requires an express

agreement. The use of software on hardware other than the one that is subject of the contract shall only take place on the basis of a separate, written agreement against payment.

- 9.5. For any third-party software products delivered by ACP to the contractual party the standard license terms of the software manufacturer shall be applicable prior to clause 9.4.
- 9.6. ACP shall assist the contractual party, if any eligible claim is brought against the contractual party by a third party. Such assistance shall be to the extent the claim is based on any infringement of intellectual property rights ("proprietary rights"), as but not limited to patents protected under the laws of Austria or copyrights, which is caused by the provision of products or licensed software by ACP or use of such products or licensed software for their contractually intended purpose by the contractual party.
- 9.7. ACP shall at its choice modify or replace the service as to avoid infringement of proprietary rights; or grant the right for the contractual use of the service to the contractual party. If this is not possible with ACP's reasonable effort, ACP shall notify the contractual party immediately. Within 4 weeks after such notice the contractual party may cancel the services or partial services that are affected by such infringement. For the purpose of this clause, claims shall be defined as eligible only, if ACP has acknowledged such claim or the claim is affirmed by a legally binding adjudication.
- 9.8. The contractual party shall be obliged to (a) give ACP prompt written notice of any claims on the grounds of infringement of proprietary rights; (b) allow ACP to control the defence measures and settlement negotiations with the third party; (c) give ACP notice in case of a legal proceeding; otherwise any claims arising shall not be accepted.
- 9.9. ACP shall not be liable with respect to any claims if (a) ACP did not cause the infringement of proprietary rights wilfully or negligently, (b) the use of the products or licensed software is other than as permitted under the contract, (c) the product or licensed software is modified by the contractual party or any third party after delivery without ACP's prior written consent, (d) the product or licensed software is supplied according to specific design or instructions of the contractual party, (e) the product or licensed software is combined by the contractual party with items not furnished or approved by ACP.
- 9.10. The contractual party shall agree that ordered programmes are added to ACP's programme library for the general use by the ACP sales organisation. In return, the contractual party's programmes are created significantly more economically and cost-effectively, due to the use of additional experience and documentation, than without recourse to such accessory aids.

## 10. Retention of Title

- 10.1. The contractual party shall acquire the ownership of products and other items supplied by ACP as well as of all other rights only upon full payment of the agreed prices. Previously, the contractual party shall hold an exclusively provisional right of use under the law of obligations.
- 10.2. The contractual party shall not be entitled to pledge reserved items or to assign them as security. In case of a delay in payment, the risk of cessation of payments or in the event of execution upon the contractual party's assets, ACP shall be entitled to dismantle the reserved items and/or otherwise require them to be returned without resulting into the

cancellation of the contract. The contractual party shall be obliged to return said items.

- 10.3. In the event of attachment or any other claim of the items by third parties, the contractual party shall be obliged to assert ACP's right of ownership and notify ACP immediately. The contractual party shall bear any costs and damages incurred to ACP due to such third-party attachment.

## 11. Contact Persons

- 11.1. ACP and the contractual party shall provide the required number of highly competent contact persons with power of decision for the entire contract period. Unless otherwise agreed, this shall apply to at least two contact persons. The contractual party shall take any decisions necessary for the execution of services immediately on notification of decision-making needs by ACP.
- 11.2. The contractual party shall ensure that the contact persons named by him or her, or the persons empowered by him or her, are authorised to provide binding declarations to ACP.
- 11.3. Contact persons shall be specifically determined and named in the contracts to be concluded.

## 12. Service Provision/Delivery

- 12.1. Any information with regard to time of delivery and performance shall be non-binding. This shall generally apply unless ACP has consented to delivery and performance dates as binding in writing. Fixed dates require an express written agreement.
- 12.2. Agreed dates shall be based on an estimate to the best of knowledge at the time of contract conclusion. If compliance with the agreed dates is not possible, the contractual party shall grant a reasonable grace period to ACP.
- 12.3. Deadlines for deliveries and services of agreed contractual services shall be deemed as observed by ACP with the beginning of the delivery or service. The contractual party shall principally carry the costs and risks for shipping. Insurances shall only be taken out at the written request and cost of the contractual party.
- 12.4. Unless expressly otherwise agreed, ACP shall provide all contractual services during ACP's normal business hours. Detailed business hours of individual ACP branches are available at: <http://www.acp.at/ueberacp/seiten/home.aspx>.
- 12.5. Charges shall be added by ACP for services performed outside normal working hours. Such surcharges shall be agreed upon separately.
- 12.6. Any official or third-party authorisations required in connection with the delivery or service provision shall be obtained by the contractual party. If such authorisations are not obtained in due time, deadlines for deliveries and services shall be extended respectively and shall in no case lead to a default on the part of ACP. Objectively justified and appropriate changes of the service and delivery obligation of ACP; in particular, adjustments that might become necessary in order to set reasonable deadlines for deliveries and services shall be considered authorised by the contractual party in advance. ACP shall be entitled to carry out part or advance deliveries. If a delivery on-call has been agreed upon, the products shall be deemed to have been requested one year after the order date at the latest.
- 12.7. In the event of force majeure, the contractual party shall inform the other contractual party in writing within three months after the occurrence of the event causing force majeure, if the contractual party intends to rely on it. Force

majeure under this agreement shall refer to any influences or circumstances occurring after the contract has been signed, due to factors beyond the contractual party's control. These may include, but shall not be limited to: legal labour disputes, strike and lockout; execution of sovereign jurisdiction; war, mobilisation, revolution or riots; natural disasters; fire; earthquake; sabotage and terrorism; embargo; breakdown or major repair of a significant machine or equipment directly and essentially used for the production of the deliveries; failure of power supply; failure of means of transport; failure of telecommunications networks or data lines, transportation accidents or delays; other uncontrollable events such as bombs, etc.; acts, omissions or interventions of public authorities with responsibility for granting licenses, approvals or releases in due time, including any changes in law after contract conclusion, as well as delays in obtaining such licenses, approvals or releases.

12.8. Delays in delivery and cost increases that result from incorrect, incomplete, or subsequently changed data and information, or supporting documentation provided by the contractual party, or by third parties related to the business sphere of the contractual party, shall not be responsibility of ACP and shall not result in ACP's being in default of delivery. Any additional costs arising therefrom shall be invoiced by ACP.

### 13. Disposal of Waste Electrical and Electronic Equipment

13.1. The contractual party purchasing electrical/electronic equipment for commercial purposes, incorporated in Austria, shall be responsible for the financing of the collection and treatment of waste electrical and electronic equipment as defined by the Austrian Ordinance Regulating the Handling of Waste Electrical Equipment, if he or she is himself/herself the user of the electrical/electronic equipment. If the contractual party is not the end user, he or she shall transfer the full financial commitment to his or her customer by agreement and furnish proof thereof to ACP.

13.2. The contractual party, incorporated in Austria, shall ensure that ACP is provided with all information necessary to meet ACP's obligations as manufacturer/importer, in particular, according to Sect. 11 and Sect. 24 of the Austrian Ordinance Regulating the Handling of Waste Electrical Equipment and the Waste Management Act.

13.3. A contractual party, incorporated in Austria, shall be liable to ACP for any damage and other financial disadvantages incurred to ACP due to the contractual party's failure to meet or fully meet his or her financing commitment or any other obligations according to clause 13. The contractual party shall bear the burden of proof of performance of this obligation.

### 14. Contract Period/Termination

14.1. Contracts with ACP shall principally be deemed to continue for an unlimited period of time and shall enter into force on the day they are signed by both contractual parties on behalf of the company, unless an alternative beginning or completion of a service is contractually stipulated.

14.2. Unless agreed otherwise in the concluded contract, both parties shall have the right to terminate the contract by registered mail subject to twelve months' prior notice, but not earlier than at the end of the minimum duration agreed by contract.

14.3. Moreover, ACP shall be entitled to prematurely terminate the contract for good cause, if key parameters of service

provision have changed and, for this reason ACP can no longer be expected to continue providing these services from an economic point of view.

14.4. The right to extraordinary termination shall remain unaffected. ACP shall be particularly entitled to extraordinary termination, if the contractual party fails to comply with the payment schedule agreed in the concluded contract for over two weeks, after one reminder has been sent and the deadline has been extended by one week. Moreover, ACP shall be entitled to extraordinary termination in case of a serious breach of essential contractual duties on the part of the contractual party, a significant deterioration of the contractual party's financial situation, a transfer of the contractual party's place of registered office or place of residence to a foreign country, or in case of any service use by the contractual party that is in breach of existing legislation.

14.5. If the cause that entitles to extraordinary termination is culpable and defaulting behaviour, ACP shall have the right to claim compensation.

14.6. Termination notices and grace period notifications shall be exclusively made in written form to become effective.

14.7. ACP and the contractual party shall co-operate in case of a termination of the contractual relationship, in order to enable the proper transfer of contractual services to be rendered to the contractual party or to a third party authorised by the contractual party. Upon termination of the contract, the contractual party shall immediately return all documents and documentation provided by ACP to ACP. Likewise, ACP shall transfer all data processing results and documents containing data to the contractual party or destroy them. A separate agreement shall be made with regard to the termination assistance and its remuneration.

### 15. Warranty

15.1. ACP shall principally ensure the proper execution of contractual services and shall be liable that contractual services correspond to those services that have been presupposed and agreed between the contractual parties. Without express written agreement, ACP shall assume no warranty that contractual services are technically or economically usable for purposes of the contractual party.

15.2. The contractual services to be performed by ACP shall be considered free of material defects, if they correspond to their contractually agreed purpose from a practical point of view upon delivery. Malfunctions of a system resulting from environmental conditions, improper operation or the like shall not constitute a defect. Furthermore, a negligible reduction in quality shall remain unconsidered.

15.3. The contractual party shall review the contractual services provided by ACP with regard to defects and quality immediately after service provision. Apparent defects shall be duly given notice of by the contractual party to ACP within one week. The notification of defects shall be made to ACP by a competent and authorised person provided by the contractual party. If notification is done otherwise, the notification shall be regarded as being provided only, if it is confirmed by ACP in writing or via e-mail immediately. Extra effort attributable to a belated notification shall be borne by the contractual party. If the contractual party fails to notify ACP of any defects, the legal consequences in accordance with Sect. 377 (2) of the Austrian Commercial Code shall come into effect. For any defects detected at a later stage, reference shall be made to Sect. 377 (3) of the Austrian

Commercial Code, and a deadline of one week shall be deemed to be agreed.

- 15.4. The improvement of defects shall be performed by ACP at its choice either by eliminating or remedying the defect, or by (additional) delivery of a defect-free programme or other items, or by demonstrating possibilities, by means of which the effects of the defect can be avoided. Defects may also be eliminated by ACP by telephonic or written or electronic instructions given to the contractual party. The contractual party shall take all measures required to investigate the problem and remedy the defects and shall cooperate to the required extent. If there is no defect, for which ACP is under warranty obligation, the contractual party shall reimburse the costs incurred to ACP. The contractual party shall not be allowed to remedy any defect himself/herself.
- 15.5. An equivalent new programme version or the equivalent previous programme version, which had not contained the defects, shall be accepted by the contractual party, if this is considered reasonable and appropriate.
- 15.6. ACP shall be entitled to at least two attempts of improvement within a reasonable time period. If the second attempt of improvement fails, this shall not necessarily be considered a final failure of the improvement. Given the individual circumstances of the case, the contractual party and ACP shall make efforts to achieve a mutually agreed solution with regard to further attempts of improvement.
- 15.7. If the elimination of errors (improvement) ultimately fails, ACP shall notify the contractual party and request the contractual party to determine further procedure within a reasonable time period. After the improvement has ultimately failed, the contractual party shall at his or her choice be entitled to either reduce the agreed price or the agreed remuneration to an appropriate level or to request a cancellation of the contract (rescission). In case the defect is only minor, the contractual party shall only have the right to reduce the price.
- 15.8. For errors of standard software or software that has not been produced by ACP, the rules relating to rights arising from defects as set out in the respective licensing agreement or in the contract on the purchase of updates shall be applicable. ACP shall assume no warranty that the operation of said software is error-free in particular combinations and applications without express written agreement. Upon request, the contractual party shall receive free supplementary versions of software (error corrections provided by the software manufacturer) including the related documentation during the warranty period. This includes software versions that are not newer and contain functional improvements of the licensed software. The installation of supplementary versions shall be carried out by the contractual party and is not covered by warranty. On-site software support provided by ACP is also not covered by warranty.
- 15.9. The rights arising from product defects as set out in the agreement drawn up for this purpose shall apply for the creation of modules (individually created or adapted software). ACP shall remedy any errors of programme modules created by ACP that occur in this context as quickly as possible. Should an elimination of the error prove to be impossible, ACP shall develop an acceptable alternative solution.
- 15.10. A warranty for defects that are due to a not careful or improper use, altered components in the operating system, the use of inappropriate organisation resources or unusual system intervention by the contractual party or third parties shall be excluded. If the defectiveness is due to services and products or cooperation and assistance efforts supplied by the contractual party, any obligation to remedy defects free of charge shall be excluded on the part of ACP. ACP shall assume no warranty for defects, failures or damages that are due to the use of inappropriate data carriers, hardware, software, abnormal or unusual operating conditions (particularly deviations from the installation and storage provisions), improper use or any changes to the system made by the contractual party or third parties, atmospheric or static discharge, viruses, natural wear or damage during shipment. In the abovementioned cases, the services provided by ACP shall be deemed to have been rendered as agreed even in case of limitations. Upon the request of the contractual party, ACP shall carry out corrective work in order to remedy the defect, which is subject to charges.
- 15.11. The agreed warranty period between ACP and the contractual party shall be 6 (six) months. The warranty period shall start with the delivery of the work and shall be asserted in court within this time limit, or else it expires. Moreover, the contractual party shall furnish proof that the defectiveness of the provided contractual service already existed at the time of delivery. The possibility of recourse against ACP shall be excluded in accordance with Sect. 933b Austrian General Civil Code. For any third-party hardware products delivered by ACP to the contractual party the standard warranty terms of such third parties shall be applicable prior to this clause.
- 15.12. Should the contractual party allow four weeks to pass without accepting the contractual services for reasons other than a serious defect, which significantly restricts or renders impossible the use of contractual services, although having been requested by ACP to accept the services, the delivery shall be deemed to have been duly accepted as at the last day of the stated time period. It shall be considered a serious defect, when real-time operations have not commenced or cannot be continued. The costs for support provided, diagnosis of errors, remedying defects and failures that are the responsibility of the contractual party, as well as other corrections, revisions and additions carried out by ACP shall be charged separately to the contractual party. This shall particularly be the case for remedying of errors, when programme revisions, additions or other interventions have been carried out by the contractual party himself/herself or by a third party.
- 15.13. Insofar as the subject of the order is the revision or supplementation of ACP's existing services, the warranty shall solely cover the current subject of the contract. The warranty for the original performance shall not thereby come into effect.
- 15.14. Obvious errors (typing and calculation errors or formal deficiencies etc.) contained in notes, records, calculations etc. can be corrected by ACP at any time. The entitlement of having corrective work carried out due to such obvious defects shall be excluded, unless ACP is notified by the contractual party in writing before the warranty period expires.

## 16. Liability

- 16.1. ACP shall only be liable to the contractual party in the event of damage caused by at least gross negligence and only up to the amount of EUR 50,000 per occurrence of damage caused by ACP or its vicarious agents or legal representatives. If securing information and data is expressly agreed as a service, the liability for restore shall be limited to EUR 30,000 per claim. However, the entire liability of ACP for all

damages and expenses per contractual year shall be limited to a maximum of 50 % of the total of payments owed by the contractual party in the contractual year, in which the claim arises. ACP shall be fully liable for any personal injury, for which ACP or its vicarious agents or legal representatives are responsible. ACP shall not be liable for slight negligence, excepting personal injury. Moreover, ACP shall not be liable for any other damage; in particular, due to lost profits, lost turnover and lost business opportunities as well as claims of compensation for indirect damages, consequential damages, damages due to malfunctions, loss of information or data and expected but not occurring savings. Liability according to the Product Liability Act and any further possible no-fault liability cases that are mandatorily required by law shall remain unaffected.

- 16.2. If any contractual penalties or claims for reductions in payment have been agreed with the contractual party, the limit for the total liability of damage mentioned above also includes all contractual penalties or the entitlement to reductions in payment. The assertion of claims for further damages exceeding these contractual penalties or claims for reductions in payment shall be excluded.
- 16.3. Damage compensation claims against ACP shall be valid only, if they are submitted in writing by registered mail within four weeks after occurrence of damage and shall be asserted in court within six months after the occurrence of damage, or else they expire.
- 16.4. If a third party legitimately takes action against the contractual party due to an infringement on the part of ACP, the contractual party shall be obliged to grant ACP the opportunity to remedy the infringement. This may be achieved by negotiating with the third party or by rendering a contractual service that does not infringe the rights of the third party.
- 16.5. The contractual party shall solely be liable for the legality of the use of documents provided to ACP by the contractual party. ACP shall not be obliged to review the legality of use. If a claim is made on ACP by third parties due to the use of such documents, the contractual party shall indemnify and hold ACP harmless against claims by third parties.
- 16.6. All previously agreed limitations of liability apply also in the event of rescission or any other retroactive termination or cancellation of a contract concluded with ACP.
- 16.7. ACP shall assume no liability or responsibility that the operation of the delivered software meets the contractual party's requirements, will be free from errors or that all defects in the software will and may be corrected. ACP shall set up firewall systems in accordance with the respective technical standard; however, shall not guarantee the absolute safety thereof, and shall not be liable for it. Moreover, ACP shall not assume liability whatsoever for any disadvantages resulting from bypassed or disabled firewall systems that have been installed at the contractual party's premises.

## 17. Insurance

- 17.1. The contractual party shall bear the risks associated with the loss of any service objects (equipment and systems) owned by ACP that are used in connection with performed services. Consequently, it is agreed that the contractual party shall insure said service objects against all risks. The contractual party shall take out sufficient insurance for all losses, damages and delays within his or her sphere; in particular, fire, explosion, theft, vandalism, water damages of all kinds and force majeure and shall prove conclusion of

this insurance to ACP. The contractual party shall restrict transferability of the services from the insurance contract in favour of ACP up to the amount of the unpaid remuneration. The contractual party shall furnish proof thereof by providing a signed confirmation of hold by the insurer and shall assign the claim for the insurance benefit to ACP. This shall be indicated to the insurer by the contractual party.

- 17.2. ACP shall be informed of any changes in insurance policy conditions. Moreover, ACP shall be entitled to gather information about the respective status of the insurance policy from the insurer, provided that the contractual party fails to comply with his or her information obligations, although one reminder has been sent and the deadline has been extended by one week.
- 17.3. In case of failure to comply with insurance obligations on the part of the contractual party and if ACP considers necessary to cover these risks, ACP shall be entitled to take substitute action with regard to the conclusion of the insurance.

## 18. Enticement

- 18.1. The contractual party shall refrain from enticing away or employing, either directly or indirectly, employees of ACP without ACP's prior express written consent for the duration of the contract and for twelve months after the expiry or termination of the contract. This shall also apply to the enticement of ACP subcontractors or their employees by the contractual party.
- 18.2. In case of non-compliance with these provisions, the contractual party shall be obliged to pay a stipulated penalty in the amount of EUR 36,000, regardless of whether or not such violation can be attributed to the contractual party. The right to claim damages exceeding this penalty shall remain unaffected.

## 19. Data Protection

- 19.1. Within the scope of the service provision, ACP shall comply with the provisions of the Austrian Data Protection Act (DSG 2000).
- 19.2. With regard to the processing of personal data provided by the contractual party, ACP shall act as a service provider in accordance with Sect. 4 Data Protection Act 2000 and shall use the personal data exclusively within the scope of the contracts concluded with the contractual party. ACP shall take appropriate technical and organisational measures in order to ensure the security and confidentiality of such personally identifiable information provided by the contractual party.
- 19.3. The contractual party's data (commercial register data, address, telephone and facsimile number as well as other information required for correspondence following from modern communication tools, locations, contact persons, ordered goods, and supply volumes), which become known to ACP in connection with the respective business transaction, will be automatically processed only for the execution of the contract; in particular, for administration and billing purposes. For technical reasons, it may be necessary to store such data on servers of a company affiliated to ACP that is part of the same group.
- 19.4. Upon conclusion of the contract, the contractual party shall expressly agree that the data obtained from each business transaction may be passed on to other companies affiliated to ACP for information purposes and within the scope of the

ACP Group's reporting duties for statistical and risk management purposes and that these companies as well as ACP may use such information according to the contracts concluded with the contractual party. Companies affiliated to ACP are considered companies in which ACP, either directly or indirectly, holds a stake exceeding 50 % or assumes the industrial leadership; or companies that, either directly or indirectly, hold a stake in ACP exceeding 50 % or assume its industrial leadership; or companies that, either directly or indirectly, are under the same industrial leadership as ACP or the stakes of which are, either directly or indirectly, held by the same company by more than 50 %, which also holds the majority of ACP stakes. The contractual party shall expressly agree that ACP or any other company affiliated to ACP may send the contractual party information on products or services in writing or by e-mail or make contact in some other way (e.g. by phone). Such consent may be revoked in writing or by e-mail at any time.

- 19.5. Prior to the transfer of data to companies affiliated to ACP outside a signatory state to the agreement on the European Economic Area (EEA), and/or to third parties (unless specifically stipulated in the contract) for purposes of data processing agreed according to contract, ACP shall obtain prior consent of the contractual party.
- 19.6. If the contractual party gives his or her consent that such data may be processed outside the member states of the European Union and/or this is expressly agreed in the contract, ACP shall hereby be granted authorisation to ensure an appropriate level of data protection in the third country; in particular, by signing standard contractual clauses for the transfer of personal data to processors established in third countries, under Directive 95/46/EC of the European Parliament and following the Council Decision of 5<sup>th</sup> February 2010 together with the recipient of personal data.
- 19.7. Upon the contractual party's justified request, ACP shall make its data processing equipment available for review with regard to the data processing operations agreed according to contract. This review shall either be performed by ACP or by a review committee consisting of independent members with the required technical qualification, who are bound to secrecy.
- 19.8. In the event that the security of personal data has been compromised or breached, ACP shall inform the contractual party without undue delay. Both contractual parties shall closely co-operate with regard to restoring the security of personal data, as well as to informing the public and/or the competent supervisory authority.
- 19.9. Upon termination of the contract, ACP shall immediately terminate any processing of data and either transfer personal data to the contractual party and/or destroy it within one month after the termination of the contract.

## **20. Confidentiality**

- 20.1. Each party shall assure the other party that it will treat all contract details as well as any confidential information about technical, commercial or operational matters disclosed to it within the context of this contract and the execution of this contract as confidential, unconditionally and without any time limit (i.e. also after termination of the respective concluded contracts), and not disclose them to third parties as far as this information is not in the public domain, or was already known to the receiving party without involving a breach of confidentiality, or is disclosed and surrendered to the receiving party by a third party not imposing

an obligation for secrecy, or has verifiably been independently developed by the receiving party, or is liable to being disclosed due to a court decision or decision by any public authority with legal effect.

- 20.2. Affiliated companies to ACP as well as subcontractors of ACP shall not be regarded as third parties, as far as they are subject to a corresponding confidentiality obligation according to this clause.
- 20.3. The same applies to personal data relating to ACP or any third party, information according to Sect. 38 Banking Act or Sect. 48a Stock Exchange Act etc. that the contractual party has acquired in connection with the contract to ACP. The contractual party shall protect such information from access by third parties, ensure compliance with Sect. 15 Data Protection Act 2000 and commit his or her employees dealing with contractually relevant tasks to the same level of confidentiality.

## **21. Withdrawal**

- 21.1. In the event of delays in delivery exceeding the agreed upon service delivery period of twelve weeks, due to gross negligence caused by ACP, the contractual party shall be entitled to withdraw from the respective contract by giving notice to ACP in writing by registered mail, provided that ACP fails to complete the agreed (partial) performance after the contractual party has set a reasonable grace period, at least of two weeks, and there is no fault on the part of the contractual party.
- 21.2. Otherwise, cancellation by the contractual party is only possible with ACP's written agreement. If ACP agrees to such a mutually agreed termination of contract, ACP shall be entitled to charge not only for the services rendered and accrued costs, but also a cancellation fee that represents 40 % of the value of the total order not yet settled. The same regulations shall apply, if the contractual party commits an action that entitles ACP to withdraw from the contract. Damage compensation claims on the part of ACP exceeding this limit shall remain unaffected.
- 21.3. In the event that it turns out during the execution of the contract that the execution thereof is factually or legally impossible, ACP shall be obliged to inform the contractual party with immediate effect. In this case, each party shall be entitled to withdraw from the concluded contract. Any costs and expenses incurred due to activities on the part of ACP until that time shall be reimbursed by the contractual party upon presentation of the internal project settlement, unless there is gross negligence on the part of ACP for the occurred impossibility.

## **22. Legal Succession**

- 22.1. ACP may assign its rights and obligations arising from the contract with the contractual party to another company within the ACP Group. The contractual party shall have no right to cancel the contract for reasons of such assignment. However, the contractual party shall only be entitled to assign, transfer or forward in any other way all rights and obligations under the contract concluded with the contractual party with the written consent of ACP.
- 22.2. Any change in ownership structure or sale of the contractual party's company, shall entitle ACP to terminate all concluded contracts for exceptional reasons with immediate effect.



### **23. Written Form**

- 23.1. Any and all changes and amendments to a contract concluded with ACP shall be submitted in writing. This shall also apply to a waiver of this written form clause. Unilateral declarations shall require proof of delivery.

### **24. Applicable Law/Jurisdiction**

- 24.1. Austrian law shall apply, with the exception of such legal provisions, which make reference to the law of other countries. The application of the rules of the United Nations Convention on Contracts for the International Sale of Goods shall in any case be excluded.
- 24.2. Disputes, in particular those relating to the formation of contract or any claims arising thereunder, shall be exclusively decided by the appropriate court of the ACP branch. However, ACP shall also be entitled to bring proceedings against the contractual party before any other court, e.g. before the contractual party's court of general jurisdiction.

### **25. Concluding Clauses**

- 25.1. In the event that individual provisions of these General Terms and Conditions or of the contract are or become ineffective or impracticable, the effectiveness of the remaining regulations shall remain unaffected. Ineffective or impracticable regulations shall be replaced by mutual agreement by an effective and practicable regulation that serves the commercial purpose of the ineffective and impracticable provision most closely.
- 25.2. The fulfilment of contract on the part of ACP shall be subject to the provision that there are for the fulfilment of the contract no barriers caused of national or international regulations of the foreign trade legislation as well as no embargos or other sanctions to be opposed.
- 25.3. In accordance with the laws and regulations currently in force, ACP shall be entitled to keep this project in a reference list, to publish it as a reference project for advertising purposes and to use photographs of the contractual object or of services rendered at such location, unless opposed by any concerns, which are legally protected or worthy of protection on the part of the contractual party or of any third parties.
- 25.4. The contract shall be negotiated and concluded in the German language. The contractual party shall agree that technical terminology as well as software may be provided in the English language.