

TERMS AND CONDITIONS
OF IT-POWER SERVICES GMBH (IT-PS)
FOR IT SERVICES

§ 1
SCOPE OF APPLICATION

- 1.1 These Terms and Conditions (Terms) are applicable to all IT services provided by IT-PS. Any terms and conditions of the customer which deviate from these Terms and Conditions or from any amendments and modifications which IT-PS has confirmed in writing are hereby expressly contracted out. Any amendment and any collateral agreement must be confirmed by us in writing in order to be effective and shall only apply in a particular case.
- 1.2 Until IT-PS issues new terms, these Terms and Conditions shall apply also to any future transactions even if those were concluded without any reference to these Terms.

§ 2
CONCLUSION OF CONTRACT

- 2.1 The business relations are based on the respective purchase order which defines all agreed services (scope of services) and the compensation therefor. Purchase orders are based on the written specifications, which IT-PS will prepare against compensation on the basis of the documents and information made available to it.
- 2.2 By signing a contract and placing an order, respectively, the customer confirms that he has reviewed the contractual specifications and that the agreed services correspond to his requirements.
- 2.3 Any commitments made by IT-PS employees or agents are irrelevant, unless confirmed in writing by management.
- 2.4 IT-PS's quotes are without engagement. The contract shall be deemed accepted only if IT-PS issues a written acknowledgment of order.

§ 3
COMPENSATION, PRICES AND PAYMENT

- 3.1 The amount of the compensation is defined by IT-PS in the compensation policy valid from time to time, in the price list or in the contract and is exclusive of value added tax. With the execution of the contract, the customer confirms that he is aware of the compensation and that such compensation is adequate. The mentioned prices are ex IT-PS's corporate seat or place of business or ex Vienna (whichever is closer). The amounts set out in the compensation policy or price list are subject to indexation in accordance with the Consumer Price Index 2010 published by Statistik Austria on an annual basis or any index replacing it. The day on which IT-PS accepts an order shall be regarded as reference day (§ 2.4). Adjustments are carried out during an existing contract automatically as of 1 January of a calendar year.
- 3.2 IT-PS's cost quotes are always without engagement. IT-PS will notify the customer if actual costs are expected to exceed the costs estimated in writing by more than 15 %. The notified cost overrun shall be deemed approved, unless the customer objects in writing within one week. No separate notice is required for cost overruns of up to 15%, and such costs may automatically be invoiced.
- 3.3 IT-PS's cost quotes are chargeable. Any compensation paid for a cost quote will be credited if an order is placed by virtue of that quote.
- 3.4 Changes in orders or supplementary orders will be invoiced according to IT-PS's hourly rates, as amended from time to time. The customer will be separately invoiced for travelling costs, per diems and accommodation (see § 4.6 below). The specific regulations are defined in the specifications.
- 3.5 IT-PS is entitled to a compensation for each single service provided, including for all services of IT-PS which may not be implemented as intended for any reason not attributable to IT-PS. All services relating to an order which are not specifically compensated by a flat-rate fee which may have been agreed will be invoiced separately.

- 3.6 IT-PS may request the customer at any time to make payments on account to cover both the agreed compensation and out-of-pocket expenses. Reasonable payments on account for cash disbursements will be due upon placing of the order. IT-PS may invoice its services on a monthly basis.
- 3.7 Invoices are due and payable without deduction within four weeks from the invoice date. After expiry of the time for payment, the customer is automatically regarded to be in default without reminder. If partial payments have been agreed, the entire amount is due if the customer is in delay with payment of only one installment.
- 3.8 In case of default, IT-PS may charge default interest at statutory rates. If the time for payment is exceeded, IT-PS reserves the right to charge dunning fees of EUR 40.00 net for each (own) dunning letter and all related costs for recovering its claims through third parties (legal fees or costs of collection agency), at the rates laid down in the guidelines on attorneys' fees and the Collection Fee Regulation.
- 3.9 Compliance with the agreed times for payment represents a material condition for the performance of the contract by IT-PS. Failure to make the agreed payments entitles IT-PS to suspend current work within one week after written notice and to withdraw from the contract. The customer is required to pay all related costs and IT-PS's loss of profits.
- 3.10 IT-PS may insist on down payments on outstanding services if the customer does not observe terms of payment or IT-PS becomes aware of circumstances which could affect the customer's creditworthiness.
- 3.11 Payments can be made with debt-discharging effect only directly to IT-PS. If the customer owes us several claims, the customer's payments will be applied to the earliest claim. Payments are always applied towards costs, if any, then towards interests, and finally towards the principal claim.

§ 4
SERVICES

- 4.1 IT-PS is deemed to fulfill its obligations if it uses its best efforts to achieve the best possible result, applying the state of the art and its own knowledge and experience.
- 4.2 Scope and content of IT-PS's services are described in the specifications.
- 4.3 For the purpose of executing the order, IT-PS needs all relevant information and documents in the customer's possession in order to issue a sound opinion and recommendations as to the further course of action. The customer undertakes to provide in due time and without special request any technical and economic information and documents in its possession to the extent this is necessary for the proper execution of an order. IT-PS may base the further course of action on the information received from the customer without verification, unless IT-PS is aware of any error or misinformation on the customer's part.
- 4.4 The customer will not entice away and employ or procure the solicitation or employment by third parties of those IT-PS employees who were involved in the execution of the orders throughout the business relationship and during a period of twelve months after termination thereof. If the customer breaches that obligation, he shall be required to pay liquidated damages equal to an annual compensation of the respective employee.
- 4.5 Services are provided during IT-PS's regular working hours. Where services are provided outside normal working hours by way of exception and at the customer's request, the resulting extra costs will be charged separately. The specific regulations are defined in the specifications and in the respective contract.
- 4.6 The customer will be separately invoiced for travelling costs, per diems and accommodation. The specific regulations are defined in the specifications.

§ 5
PROJECT MANAGEMENT

- 5.1 A successful execution of commissioned projects requires a project organization of a dimension and complexity adequate for the respective tasks and a corresponding project management of both parties.
- 5.2 Scope and content of services to be provided by IT-PS under contracted projects are described in the specifications.
- 5.3 IT-PS will provide the services in close cooperation with the customer. IT-PS and the customer will each nominate a project manager. These individuals will make decisions collectively. Should it be impossible to make a collective decision, the case shall be referred to the project steering committee consisting of a member of IT-PS's and the customer's managements. Both project managers collectively define in a project manual all parameters necessary for a successful implementation of the project.
- 5.4 The parties shall, insofar as is in their power, procure project continuity, and shall not permanently exchange the staff working on the project. IT-PS may procure services to be provided by sub-contractors. In this event, IT-PS shall have overall responsibility as general contractor.
- 5.5 Both parties shall keep one another immediately posted of any circumstances whatsoever which materially obstruct the progress of the project, whether or not such circumstances are within the other party's or a third party's control. In such a case, the project managers will consensually adopt adequate measures to closest meet the original project objective.
- 5.6 Individual organizational concepts and programmes are prepared based on the type and scope of binding information, documents and aids completely provided by the customer, including also practice-oriented test data and sufficient testing opportunities, which the customer will provide in due time.
- 5.7 The customer undertakes to procure that sufficiently qualified staff, facilities, rooms and information is/are provided at the dates determined by the project managers at the customer's locations. The customer will so cooperate at its own cost and expense.

- 5.8 If the customer sources hardware, operating systems or the like from third parties, IT-PS will assess the principal fitness of these facilities for the proposed objectives upon request. Services such as costs for testing and setting up these customer facilities and the like are charged according to actual expenditure, unless included in the specifications.
- 5.9 In both cases, the customer will bear costs and risk for the ongoing operation of the facilities, including technically and organizationally adequate data backup, protection against unauthorized access and virus attacks.
- 5.10 IT-PS will make available to the customer documents, including protocols and rough and detailed written specifications, which shall be accepted by the customer. Both project managers will collectively determine the dates on which those documents shall be submitted and reviewed. Should there be any delay in acceptance without IT-PS's fault, IT-PS shall not be liable for the resulting delay. Furthermore, unless reasoned complaints are filed within two weeks after documents were submitted for acceptance, IT-PS can assume that (parts of) these documents were accepted and may base the next project steps on those documents.
- 5.11 Subsequent change requests or changes in requirements notified after conclusion of the specifications or release by the customer of the documents may delay the agreed target dates and cause additional expenditure. As a result, IT-PS will review such change requests as to whether they impact quality, expenditure and target dates. Any expenditure incurred for reviews may be invoiced separately. If a change request is practicable, the result will be delivered to the customer in the form of a change in or supplement to the offer. The project execution will continue according to existing requirements, until an order for change is placed.
- 5.12 Services IT-PS provides at the customer's request beyond the agreed original scope are invoiced at IT-PS's hourly rates ruling on the service provision date.

§ 6

ACCEPTANCE OF SERVICES

- 6.1 The respective part of customized software or program adjustments shall be accepted four weeks after delivery by IT-PS at the latest. The parties will determine the individual parts and the corresponding deadlines. A record is drawn up in

which the customer confirms to have accepted the services (review of the services' correctness and completeness based on the specifications accepted by both parties). If the customer does not specifically accept a program within a period of four weeks, he shall be deemed to have accepted the delivered software on the last day of that period. Software is deemed to be accepted if the customer uses it in live operation.

- 6.2 Also IT-PS's services shall be accepted by the customer at least six weeks after the service provision date. The parties will determine the corresponding deadlines. A record is drawn up in which the customer confirms to have accepted the services (review of the services' correctness and completeness based on the specifications accepted by both parties). If the customer does not specifically accept a service within a period of six weeks, he shall be deemed to have accepted the provided service on the last day of that period.
- 6.3 The customer shall properly document and notify to IT-PS in writing any non-conformities, these are features inconsistent with the specifications agreed in writing. IT-PS will endeavour to take corrective action as soon as possible. If non-conforming features reported in writing are material so that live operation cannot be commenced or continued, these features shall be corrected and again accepted by the customer.

§ 7

TELESERVICE, MAINTENANCE, MONITORING AND SUPPORT

- 7.1 A remote access for teleservice and/or monitoring software may be installed to ensure prompt support by IT-PS in case of a warranty event or if the customer requires any other assistance. Either party will pay for the costs thereby incurred on its premises (hardware, software, telephone lines etc). Both parties will collectively determine the technical solution and the relevant safety aspects. IT-PS may implement software at the customer's location which allows proper monitoring and teleservice. IT-PS will retain all copyrights and exploitation rights to that software, and no rights whatsoever to the software are granted to the customer.
- 7.2 The customer may elect to confine remote access for teleservice to certain times of the day, to certain IT-PS employees, or to certain other criteria.

- 7.3 IT-PS may separately charge the customer for any disadvantage or extra efforts due to any non-availability of the monitoring software and/or the remote access for teleservice which is within the customer's control. IT-PS shall not be liable for any damage caused by non-availability of monitoring software and/or remote access for teleservice.
- 7.4 Maintenance and support can be offered after the start of live operation. The parties will collectively determine the precise point in time of transfer to support and the details thereof. A separate maintenance agreement will be concluded to govern maintenance and the scope of the respective services IT-PS is required to provide.

§ 8

RESULTS, REGISTRATION OF PROPERTY RIGHTS

- 8.1 For the purpose of this contract, results are patentable inventions, qualified know-how pursuant to Commission Regulation (EC) No. 772/2004 of 7 April 2004, as well as ordinary, non-patentable know-how. Collective results are results achieved by both parties, with each party having made its own creation.
- 8.2 If IT-PS or its employees create patentable inventions in the course of a contract, IT-PS will be entitled to those inventions.
- 8.3 The parties undertake to assert in due time all rights to an invention towards their employees in case collective results represent employee inventions (collective inventions). The entitlement to an invention is shared between the parties in a proportion in which their employees have truly contributed to an invention.
- 8.4 If already existing property rights of IT-PS, which the client requires to exploit the contractual services, are used during execution of a contract, the client will be granted a non-exclusive, chargeable right to use those rights, unless IT-PS has any other obligations to the contrary. That right of use shall be agreed separately.
- 8.5 The customer is granted a non-exclusive, free right to use the inventions made during execution of the contract and the property rights registered by and granted to IT-PS for the application underlying the customer's contract.

8.6 IT-PS's concepts, opinions etc. are copyrighted. IT-PS has the exclusive right to exploit those works. Unless expressly agreed otherwise, IT-PS will only grant permits but no rights to exploit those rights. Unless evident from the purpose of the contract, the grant of a permit to the customer to use these works requires IT-PS's written consent. Unless agreed otherwise, a permit granted to the customer to use copyrighted works of IT-PS is confined only to the scope of application covered by the contract. Any permission or right to use works granted to the customer shall be deemed granted only after full payment of the compensation agreed therefor.

§ 9

THIRD-PARTY PROPERTY RIGHTS

- 9.1 The customer shall be obliged to verify or procure the verification of any property rights related to the contract, including but not limited to third-party property rights. The customer undertakes to promptly notify IT-PS in writing if it turns out in the course of a contract that the successful execution of work requires the use of third-party property rights. The customer may either elect to seek a license or to have the work continued in a non-infringing manner.
- 9.2 The customer shall verify or procure verification as to whether all measures recommended by IT-PS are lawful, especially pursuant to data privacy and copyright laws. An external legal review will be conducted only upon the customer's written request, and the customer shall pay for all related costs. The customer will release measures proposed by IT-PS only after he has convinced himself that these are lawful or if he is ready to accept the risk arising from implementing the measure.
- 9.3 The customer will seek the necessary licenses independently at his own cost and expense. The customer releases IT-PS from any liability and will hold harmless and indemnify IT-PS for infringements of property rights, unless the subject-matter of a contract specifically includes a review of industrial property rights.

§ 10

DEADLINES

IT-PS endeavours to meet fixed deadlines. However, its failure to meet fixed deadlines entitles the customer to assert his statutory rights only if a grace period of at least 14 days granted after a written reminder has expired without IT-PS having met the dead-

line. The customer is entitled to the resulting claims for warranty and damages only if IT-PS has acted with intent or gross negligence. Inevitable or unpredictable events, including but not limited to delays of its agents, will not trigger consequences of default.

§ 11 WARRANTY AND DAMAGES

- 11.1 The customer shall file complaints by written notice along with a statement of reasons within one week after IT-PS has provided the respective service. A notice of complaint must describe the specific non-conforming features as detailed as possible. Non-conforming features shall be sufficiently documented within four weeks after they have occurred. If a complaint is justified and filed in due time, the customer is only entitled to corrective action. The customer is entitled to reduction of his payments or withdrawal from the contract only if and when IT-PS's efforts to take corrective action were unsuccessful even after three months, or in case of more complex non-conformities, within a longer reasonable time limit. The assumption of defectiveness pursuant to Section 924 Civil Code (*ABGB*) shall be precluded.
- 11.2 IT-PS shall not be liable for any damage, unless IT-PS has breached primary contractual obligations with intent or gross negligence. Subject to these Terms, the customer's right to warranty shall not be affected. The customer may not assert damages due to consequential damage. IT-PS's liability for personal injury and property damage and pecuniary damage shall not exceed the contractual compensation.
- 11.3 IT-PS specifically accepts no warranty in case any service provided or measure recommended by IT-PS does not lead to the expected development or optimization results.
- 11.4 IT-PS does not accept any liability for the customer's documents made available for processing. However, the customer shall be liable to ensure that any documents made available by him for processing do not infringe upon rights of third parties, may be used pursuant to the contractually proposed scope, and are not in breach of applicable laws. The customer shall promptly inform IT-PS if he becomes subsequently aware that the documents he has made available are unfit for use. Any extra costs thereby incurred shall be borne by the customer.

11.5 IT-PS may refuse to accept or may eliminate materials, documents and similar materials the customer has made available for processing, if those materials are in breach or reasonably suspected to be in breach of applicable laws. The customer cannot derive any claims whatsoever in this case.

11.6 The customer is solely responsible to ensure compliance with legal provisions, including but not limited to copyright laws, patent laws, data protection laws, competition laws or trademark laws during any implementation of measures (see Section 9), unless the subject-matter of a contract expressly covers also a legal review. IT-PS shall therefore not have any liability. The customer declares to hold harmless and indemnify IT-PS for and against any claims asserted by third parties in reliance on any such breach.

§ 12 TERMINATION

The contract expires at the end of its contractually defined term without notice. If a contract was awarded for an indefinite period of time, it may be terminated by either party with three months' notice at the end of the month. This shall not affect a party's right to terminate a contract immediately for good cause.

§ 13 CONFIDENTIALITY

13.1 IT-PS obliges its employees to comply with the provisions of Section 15 of the Data Protection Act 2000. IT-PS hereby guarantees to the customer to keep confidential any matters which IT-PS becomes aware of in connection with its activities and which are not intended for the public. IT-PS will procure that this confidentiality obligation is observed also by its employees and agents. This confidentiality obligation survives also after termination of the contract.

13.2 However, this contractual confidentiality obligation does not apply in judicial proceedings or towards the representative of a party who is subject to a professional confidentiality obligation, including but not limited to judicial or non-judicial disputes with the customer (e.g. action for recovery of compensation), to the extent this is necessary to safeguard IT-PS's rights.

13.3 Notwithstanding the above, until further written notice, IT-PS is entitled to include the customer and a brief description of the services provided for the customer in its list of references and to use that information for promotional and presentation purposes in any lawful form, including but not limited to the Internet. Any other publication of work results by either party, other than the fact that an order was placed and a description of its basic parameters (company name and address, general list of applications to be covered, approximate number of users, etc), shall require the verifiable consent of the respective other party.

§ 14

RESERVATION OF TITLE

14.1 IT-PS retains title to the goods supplied to customer pending full payment of all claims hereunder existing until the delivery date or arising thereafter, or if payment is made by bill of exchange, pending collection of such bill. Pending full payment, utilization permits are granted only for the period allowed for payment. The customer shall procure extensions from IT-PS prior to the expiry of the time limit. The expiry of a fixed-term utilization permit due to delays in the payment of all claims existing on the delivery date or arising thereafter hereunder shall not affect the customer's obligation to full payment.

14.2 If the customer has caused any arrears of payment or breaches material duties of diligence and care, IT-PS's assertion of its reservation of title shall not operate as withdrawal from the contract, unless IT-PS so notifies the customer.

§ 15

FINAL PROVISIONS

15.1 The customer may not set off counter-claims against claims of IT-PS or retain payments in reliance on non-conforming features. The customer may only set-off its own claims against claims that were acknowledged in writing or established with final effect.

15.2 All agreements representing changes, modifications or specifications of these Terms, including but not limited to covenants and understandings, shall be made in writing. This shall also apply to any waiver of this written form requirement.

Statements made by representatives or vicarious agents of IT-PS are binding only if IT-PS has approved these in writing.

15.3 Place of performance shall be at A-2512 Tribuswinkel. Exclusive place of jurisdiction shall be the court having subject-matter and local jurisdiction. These Terms shall exclusively be governed by and construed in accordance with Austrian law to the exclusion of the conflict of law rules of Austrian International Private Law.
