

General Terms and Conditions of Adacta d.o.o., Ljubljana

1. Scope

The following General Terms and Conditions apply to all deliveries and services rendered by ADACTA programska oprema d.o.o. as the service provider. By signing a contract or by accepting these General Terms and Conditions without any objections, and, in the absence of a written contract, by accepting goods or services without any objections (the execution of the contract), the other contracting party recognises these General Terms and Conditions for any subsequent transactions between the parties. When the client's general terms and conditions differ from these conditions, the latter shall prevail unless otherwise agreed on between the parties. Any amendments or ancillary agreements require written confirmation to be valid and only apply to the respective individual transaction. Should any of the provisions contained herein become invalid, this shall have no effect whatsoever on their fundamental legal validity. In such cases, the contracting parties shall conclude an agreement that will follow the meaning of the invalid provision as closely as possible.

2. Quotations and Contract Conclusion

All contracts, purchase orders and agreements are legally binding only if signed by the service provider's legal representative or by a person with written authorisation from him/her and is only binding to the relevant specified extent. Quotations are generally changeable and do not bind the service provider, unless the quotation states that it is binding. Associates of the service provider cannot make statements that deviate from these conditions, unless they have a written authorisation of the service provider's legal representative.

3. The Service Provider's Services

The service provider provides the following services:

- a. business process analysis,
- b. delivering and selling standard software,
- c. delivering and selling licences for its proprietary software,
- d. implementation services (set-up, data import, installation, start-up assistance),
- e. user familiarisation and training,
- f. developing individual programs and upgrading standard software,
- g. telephone helpdesk,
- h. software maintenance (eliminating delays, upgrading, assistance),
- i. other IT and business consulting services.

4. Terms of Reference

As a rule, the basis for a purchase order is the Terms of Reference drawn up by the service provider against payment based on documents acquired from the client. The client must verify the correctness and completeness of the Terms of Reference and confirm them. Any subsequent requests for changes and extension of the purchase order require a separate agreement. Requests for changes and extension of the purchase order extend the agreed deadlines and give the service provider the right to charge separately any extra costs incurred. By signing the contract or by being awarded the purchase order, the client states that it has reviewed the Terms of Reference, which are the subject of the contract, and that the products and services meet its requirements. Services that are performed before they are determined in detail in the Terms of Reference, or without them or in addition to them, as well as any provided services described as "variable", will be charged according to the actual time spent. In contrast to the binding Terms of Reference, promotional deliveries, prospectus materials, information about products and declarations by the manufacturer or importer are in principle not binding unless approved in writing by the service provider. The service provider points out and explicitly refers to the fact that given the current state of technology, it is not possible to develop software that would be completely without error. Regarding its proprietary software products, the service provider points out to the client that running the software in accordance with its user instructions in a test environment and on the recommended hardware and system software will lead to the same results when using this software on the same hardware and with the same set of data as in the test environment in accordance with current good practice.

5. Standard Software

With standard software, the client acquires the right to use it for its business needs in line with the provisions of the relevant standard software developer. The service provider states that there are no third-party rights that are in conflict with the transfer of the right to use the software for the client's business needs to the client. Purchase orders for delivering standard software shall be carried out when the client has been thoroughly familiarised with the set of functions the ordered programs offer. Orders of standard software shall be deemed as the client's confirmation of having been thoroughly familiarised with its set of functions before concluding the contract.

5.1 Microsoft Dynamics international licensing agreement (this article is used only when implementing Microsoft Dynamics solutions and does not apply to other projects). The international licensing agreement concluded between the client and the software developer, Microsoft, is the basis for using the Microsoft Dynamics software. Any different or supplementary agreements regarding the use of Microsoft Dynamics concluded between the client and the service provider do not and cannot exist. Provisions of the international licensing agreement apply mutatis mutandis for all adjustments and upgrades of the Microsoft Dynamics software solution implemented by the service provider.

5.2. If third-party software is delivered or if third-party modules or operating systems are integrated into the service provider's software, the latter shall not be held liable for the operation and/or errors of such software or modules or for errors caused by such software. Such software is covered by the warranty and guarantee conditions of third-party developers and the client may only enforce claims against these third-party developers.

6. Project Management

Project organisation in line with the size and complexity of the set tasks as well as appropriate project management are two obligatory preconditions for successfully deploying an information system. The extent and content of project management services provided by a relevant service provider are determined in the project documentation.

6.1 Project organisation. The service provider shall provide services in close collaboration with the client. The client and the service provider each designate one project manager. The two reach decisions by agreement. If a joint decision cannot be reached, the matter is turned over to the project board, which consists of two executives – one from the service provider and one from the client. The two project managers jointly set the following parameters:

- a. meeting frequency, duration and list of participants,
- b. the level of detail in project planning and project controlling,
- c. the rules for drawing up and approving minutes. The contracting parties undertake to ensure project continuity to the fullest of their ability. The service provider has the right to hire subcontractors for service performance. In such cases, the purchase order is generally carried out by the service provider who shall also be held jointly liable for it.

6.2 Obligation to Provide Information. The contracting parties shall at all times keep each other updated about any circumstances that might significantly hinder the project's progress. This applies regardless of whether such circumstances present themselves within their own sphere of responsibility every time or within the sphere of responsibility of the other contracting party or a third party. In such cases, the two project managers jointly decide on reasonable measures to be taken in order to achieve the project's original objective to the fullest extent possible.

6.3 Client Cooperation. Organisational concepts and programs shall be designed in compliance with the type and extent of binding information, documentation and accessories that were made fully available to the service provider by the client. This includes test data compliant with practice as well as testing possibilities that are provided duly and to a satisfactory extent by the client at its own expense. The client undertakes to ensure that there will be properly qualified employees and associates, devices, rooms and test data available on its premises at the time determined by the two project managers. The client cooperates at its own expense. The client shall participate in the making of the functional specification. The client shall enable the service provider Internet access to the delivered software when necessary for carrying out the purchase order. Furthermore, the client may by itself (i.e. the client's employees and associates) carry out parts of the services provided by the service provider. The two project managers decide on the practical implementation, training (if needed) and support, etc. If software or hardware supplied by the service provider does not function as specified in the functional specification, or if the service provider does not perform services pursuant to the functional specification, the client shall carry out adequate measures whereby it, above all, tries to prevent (further) damage, safeguard saved data, simultaneously verify results reported by the program and determine and describe in detail the disruptions and faults that occur in the functioning of any software or hardware or services rendered by the service provider. This reference material must be compiled and stored on computer-readable media and must allow reconstruction with relatively low costs. For the duration of this contract, the contracting parties mutually undertake to abstain from influencing each other's employees and associates in such a manner that they would cease working for the other contracting party, and neither will they start collaborating in any way with the other contracting party's employees and associates. For any breaches of this obligation, the contracting parties agree that the contracting party that influenced the work of, or started working with, the other contracting party's employee or associate will pay to the other party a contractual lump sum penalty equalling two years' worth of the employee's or associate's gross salary.

6.4 Product checks. The service provider shall submit products to the client for acceptance. This primarily applies to records and the functional specification. The two project managers jointly set the deadlines for document delivery and checking. Should acceptance fail to meet the agreed deadlines through no fault of the service provider, the latter shall not be liable for damage caused by the resulting delays. The service provider may consider products for which the client does not submit reasoned complaints within two weeks of taking delivery as (partially) accepted and rely on them in the project's next steps.

6.5 Test and acceptance. Each substantive part of the individually designed software or program adaptation must be accepted by the client no later than six weeks after delivery. The two project managers shall set the extent and terms for (sub)acceptance. The client shall confirm acceptance using a record document (Report on successful testing using the client's test data). Should the deadline of six weeks expire before the client accepts the program, the delivered software shall be deemed accepted as of the last day of the indicated deadline. The software shall in any case be deemed accepted when the client uses it in its production system. The client shall report any errors (i.e. deviations from the functional specification agreed upon in writing) that may appear to the service provider and document them whereby the service provider shall strive to eliminate such errors as soon as possible. If the errors reported in writing are significant to the extent that use of the production system cannot commence or continue, another acceptance procedure must be carried out once the error is eliminated.

6.6 Development, test and production system. The service provider shall as a rule install programs first on a developer system located in its offices in order to perform any adjustments and prepare the software for installation on the client's premises. The production system as well as the test system for establishing, training and implementation of test cases shall be installed on a dedicated server in the client's offices. The client shall be obligated to thoroughly test the software on the test system. In this testing procedure, the client must use the same data sets that will be used during regular business and test the system to the extent and manner it will be used during regular business. Generally, the software is transferred from the test environment to the production environment and into the client's business by the client itself. The client shall in any case perform the transfer and start using the software at its own risk. If the client orders hardware, operating systems, etc. from third parties, the service provider shall submit an assessment on the general compliance of these devices with the desired purposes at the client's request. Testing costs and costs of installation tasks related to these client devices, etc. shall be charged according to actual costs if these have not been included in the functional specification. In both cases, the client shall by itself bear the costs and risk associated with regular running of the devices, which includes technically and organisationally sound data protection, protection against unauthorised access and against viruses.

6.7 Remote access. A remote access system shall be established so that the service provider may quickly assist the client when needed or in relation to a warranty claim. Both contracting parties shall bear the costs incurred in their offices (hardware and software, telephone line, etc.). Both project managers jointly decide on technical solutions and on relevant security aspects. The client may limit remote access, e.g. allow access only during a specific time of day, to specific service provider employees or in line with other agreed criteria. If the service provider incurs damage or extra costs due to unavailability of the remote access, which is the client's responsibility, this extra cost may be charged to the client separately. The service provider shall not be held liable for any damage incurred due to remote access unavailability.

6.8 Handover into maintenance and support. The start-up of the production system is followed by further consulting through software maintenance and support.

The client's and service provider's project managers shall determine the exact time of software delivery and start of support as well as details of how this delivery will be carried out. A special software maintenance contract shall be concluded in relation to software maintenance and the extent of related services that the service provider must carry out.

7. Prices, Taxes and Fees

All prices are in EUR and without VAT and apply only to the individual order unless stated otherwise. The program medium costs (e.g. CDs), printed material for training, etc. as well as any fees related to the contract shall be accounted for separately.

7.1 Standard Software. The standard software module prices listed in the quotations are binding until the "Valid until" date. If the software developer raises prices after the indicated date, the client shall be charged according to the new prices. The service provider shall present the relevant documents at the client's request (developer's notification, current price list).

7.2 Services. The prices of services listed in quotations and price lists are binding on the service provider for 30 days after the price list has been published or the quotation has been made unless indicated otherwise in the quotation or price list. After that, the service provider may include in its hourly rates any increased costs related to labour and material or its usual costs and taxes. The client must be notified of the new hourly rates at least one month before they enter into force. It shall be deemed that the client has accepted these increases in advance if they do not exceed 10% on an annual level. Any services performed by the service provider at the client's request that exceed the originally agreed extent of services shall be charged according to the hourly rates that were in force at the time the services were performed. Such services shall be performed during the service provider's normal working hours (Mondays through Fridays 08.00 to 16.00). If a service is performed outside the normal working hours, in exceptional cases at the client's request, the extra costs shall be charged separately as prescribed herein and in the contract.

7.3 Travel expenses and costs of working outside the working hours. Travel expenses, per diems and overnight stay costs are charged to the client separately. The exact arrangement is stipulated in the contract. In general, the customary norms according to the Slovenian business practice apply. Time spent travelling shall be charged at half price. For services outside working hours required by the client, the following extra costs shall be charged hourly as a certain percentage of the agreed price of the service: 50% for night work (Mondays through Fridays 18.30/06.30),

- a. 50% for work on Saturdays,

- b. 100 % for work on Sundays,
- c. 150% for work on holidays.

If two of the above coincide, the item with the highest extra cost will apply. In the case of night work on Sundays or holidays, the night work item applies in addition to the items for work on Sundays or holidays.

8. Deadlines and Right of Withdrawal

The service provider shall strive to observe the agreed deadlines for implementation to the fullest extent possible. The set deadlines for implementation can be respected only if the client fully carries out all the necessary work, provides documentation, confirms any received functional specifications and carries out its duty of cooperation. The service provider shall not be responsible for late deliveries and price increases that occur due to incorrect, incomplete, or subsequently revised data, information and documents made available by the client. Any extra costs incurred because of this shall be borne by the client. Each of the contracting parties may set new deadlines in the case of unforeseeable, unexpected events such as force majeure, labour disputes, natural disasters or failures/delays by the customers' suppliers. If the agreed delivery date is exceeded solely due to the fault of the service provider, the client may withdraw from the relevant order by registered letter if the agreed upon service is not carried out in its essential parts even after the deadline has been duly extended by at least 14 days. Withdrawing from any partial deliveries and services that have already been carried out is not possible.

9. Payment

The service provider will charge for the software licence in accordance with the quotation. Invoices for services will be issued once per month. For orders that include multiple units or software modules, the service provider may perform partial deliveries or issue partial invoices. In the absence of a specific agreement, invoices issued by the service provider as well as VAT must be paid within 14 days of receipt of the invoice at the latest, without any deductions or excluded costs. For partial invoices, the payment terms stipulated for the total purchase order shall apply by analogy. Compliance with the agreed payment deadlines is an essential condition for the service provider to carry out deliveries or complete contracts. In the event of failure to observe the agreed payment deadlines, the service provider may, within one week after a written notification, stop any ongoing work and withdraw from the contract. The client shall bear all costs associated with it along with the loss of profit. For all invoices that are not issued in EUR, if the exchange rate changes by more than 3% from the invoice date to the date of payment of the invoice, the service provider shall be eligible to compensation for the difference. The service provider shall issue a new invoice for the difference created due to an exchange rate difference. If the client defaults, a contractual default interest shall be agreed in accordance with the statutory interest for late payment. If the client fails to comply with the terms of payment or if the service provider has knowledge of circumstances which it finds to be detrimental to the creditworthiness of the client, the service provider may require advance payment for future deliveries. Payments are effected only through direct payments to the service provider. If the service provider has several receivables due from the client, the client's payments shall cover the oldest receivable first. Any expenses are always covered first, followed by interest and finally the principal claim. The client may compensate its obligations towards the service provider only using its recognised and finally determined claims due to the service provider. The service provider retains title to the goods, products and documentation intended for the client as a user until full payment is received.

10. Copyrights and Rights of Use

For the software, the client shall obtain a non-transferable, nonexclusive and perpetual permission to use copyrighted work, limited to the territory of the Republic of Slovenia, unless stipulated otherwise in the contract. For the Microsoft Dynamics software, the client shall obtain permissions in accordance with the international licensing agreement. Facilitating application to third parties is excluded pursuant to the Copyright Act. All copyrights and related rights concerning the agreed deliveries (programs, documentation, etc.) belong solely to the service providers or its licensors, unless they were explicitly transferred to the client together with the right to use. After payment in accordance with the contract, the client acquires only the right to use the software in unchanged form, exclusively for its own needs and purposes and only for the hardware systems and to the extent corresponding to the number of licences obtained. The client agrees to cease using unpaid software or unpaid parts of software (developed improvements) upon written notice from the service provider if it does not settle its contractual obligations even after two letters of notice from the service provider. Participating in the development of software does not give the client any rights to this software. Any copyright infringements by the service provider or licensor shall result in claims for damages being filed. In such circumstances, full reparation shall be provided. Watermarks on program media and documentation designed for the client as the software user, which concern industrial property rights or other exclusive rights, may not be removed. The client may make copies for archival and data protection purposes, provided that the software does not contain an express prohibition by the licensor or a third party and that all watermarks concerning copyright and statements of reservation of title are transferred in their unchanged form to these copies.

11. Liability for Defects

The service provider shall eliminate defects that are in its domain and that occur during the warranty period of six months after the production system becomes operational – free of charge. Liability applies only to defects that are substantial and reproducible and are reported within three working days after the defects occur. In the case of a legitimate claim, the defects shall be rectified within a reasonable time frame, whereby the client will allow the service provider to carry out all measures necessary to identify and eliminate defects. If the client claims that there are shortcomings or defects by mistake and without appropriate findings and documentation, which results in additional costs for the service provider, these will be charged separately. The service provider will carry out consulting and support and eliminate defects and disruptions that are the responsibility of the client as well as any other changes and additions, against payment. This applies also to the elimination of defects when the client itself, or a third party, implemented program changes, additions or other modifications. The service provider shall not be liable for any defects, disruptions or damage resulting from unfinished or incomplete implementation of the program (e.g. basic data and parameters) and from improper use. Furthermore, the liability for defects excludes defects due to modified production system components, interfaces or parameters, inadequate or defective hardware, media, etc. The service provider is completely absolved from liability for defects if the programs have been subsequently modified by the client's programmers or by a third party. If the service provider supplies the software of other developers, the liability of the service provider is limited to the liability to select another developer and to the liability arising from the relevant (additional) contract for the purchase or supply of software from a different developer concluded between the client and service provider. If the subject of the purchase order is a modification or an addition to the existing programs, the liability relates to the modification or addition. This does not renew the liability for the main program. The client shall ensure protection of programs and data related to installed software at its own responsibility.

12. Data Protection

For the duration of this contract or after its termination, both contracting parties undertake not to provide to third parties information on the content of their contractual arrangements or any internal information or data concerning the counterparty that they acquired during cooperation. If a contracting party wants to publish the results of work, it shall obtain written consent of the counterparty for each publication (except references) that includes more information than just the facts on the conclusion of the contract and its basic parameters (company name and address, an approximate list of areas to be covered by the software, etc.).

13. Liability for Damages

Within the framework of statutory provisions, the service provider shall be held liable for damages if the client proves that the service provider caused damage deliberately or through gross negligence. The service provider shall not be held liable for material damage caused due to slight negligence. The service provider shall not be held liable for indirect damage. The service provider shall not be held liable for loss of data. The client is obliged to ensure appropriate data protection and backup. The service provider must be notified of any claims for damages within three months, otherwise the client loses the right to enforce them. Claims for damages that were not submitted to the service provider by the client within three months from the date the client gained knowledge of them shall be considered time-barred. Maximum compensation the client may demand from the service provider is limited to a total maximum of €50,000.

14. Place of Contract Completion, Local Court Jurisdiction

Any disputes arising from this relationship shall be resolved by a court in the Republic of Slovenia, specifically in Ljubljana. Unless agreed otherwise, the relationship of the contracting parties is governed solely in accordance with provisions of the Slovenian law of obligations for commercial contracts, even when the purchase order is being fulfilled abroad. Use of the United Nations Convention on Contracts for the International Sale of Goods is excluded.

15. Validity

These General Terms and Conditions apply from 5 January 2009 onwards.