

anexia



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**GENERAL TERMS AND CONDITIONS**  
SOFTWARE DEVELOPMENT

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# GENERAL TERMS AND CONDITIONS

## SOFTWARE DEVELOPMENT

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### 1. Scope and validity

All orders and agreements are legally binding only if they are drawn up by the Contractor in writing and signed by an authorized representative of the company and only if the obligations they contain are limited to those laid out in the order confirmation. Purchasing terms and conditions of the Client are hereby excluded for the legal transaction in question and the entire business relationship. Offers are always subject to change.

### 2. Performance and event monitoring

**2.1.** The possible subject matter of an order may include:

- Development of organizational concepts
- Global and detailed analyses
- Creation of individual programs
- Delivery of library (standard) programs
- Acquisition of rights of use for software products
- Acquisition of permissions to use copyrighted works
- Participation in commissioning (transition assistance)
- Telephone consultation
- Program maintenance
- Creation of program carriers
- Other services

**2.2.** The development of individual organizational concepts and programs is carried out according to the type and extent of any binding information, documents and tools provided in full by the Client. This includes any practical test data and testing options required, which are to be provided by the Client in good time, in normal working hours and at its own expense. If the Client already provides a system for testing in the live environment, the responsibility for backing up the real data rests with the Client.

**2.3.** The basis for the creation of individual programs is the written specification to be drafted by the Contractor in return for the payment of costs on the basis of the documents and information provided to it or, as the case may be, to be provided by the Client. These specifications are to be checked for accuracy and completeness by the Client and furnished with its stamp of approval. Subsequent requests for amendments can result in separate scheduling and price agreements.

**2.4.** Individually created software or program adaptations require inspection and acceptance by the Client no later than four weeks after delivery of the program packages in question. This will be confirmed in a log by the Client. (Checks for accuracy and completeness on the basis of the specifications accepted by the Contractor using the test data provided under section 2.2.). If the Client allows four weeks to elapse without inspecting and accepting the program, the software delivered will be deemed to have been accepted at the end of the aforementioned period.

If the software is used in a live environment by the Client, it will likewise be deemed to have been accepted.

Any defects which come to light, by which is meant deviations from the written specifications agreed, are to be sufficiently documented and communicated to the Client, who will then make every effort to rectify the defect as soon as possible. Should there be significant defects of which the Client has been notified in writing, meaning that live operation cannot commence or continue, inspection and acceptance will be repeated after remediation of the defects.

The Client is not entitled to refuse to accept software on the basis of insignificant defects.

- 2.5. When ordering library (standard) programs, the Client confirms by placing the order that it is aware of the scope of performance of the programs ordered.
- 2.6. If it should become apparent in the course of the work that execution of the contract in accordance with the specifications is factually or legally impossible, the Contractor must immediately notify the Client thereof. If the Client should fail to change the specifications or create the conditions to make the work possible, the Contractor may refuse to carry out the order. Should this impossibility of execution be the consequence of an omission by the Client or a retrospective change to the specifications by the Client, the Contractor will be entitled to withdraw from the contract. Any costs or expenses incurred until that point by the work of the Contractor and any dismantling costs are to be borne by the Client.
- 2.7. Program carriers, documentation and specifications will be shipped at the expense and risk of the Client. Any additional training and explanations required by the Client will be chargeable separately. Insurance cover will be taken out only if requested by the Client.

### 3. Prices, taxes and charges

- 3.1. All prices are quoted in euros, without value-added tax. They apply only to the present order. The prices listed are ex registered office or business office of the Contractor. The cost of any program carriers (e.g. CDs, magnetic tapes, magnetic disks, floppy disks, streamer tapes, magnetic tape cassettes, etc.) plus any contract fees will be charged separately.
- 3.2. The list prices on the day will apply to the delivery of library (standard) programs. For all other services (organizational consulting, programming, training, transition support, telephone consultation, etc.), the rates charged will be those in force on the day the service is provided. Deviations from the expenditure of time for which the Contractor is not responsible will be charged according to the actual time spent.
- 3.3. Travel costs, daily allowances and hotel expenses will be separately charged to the Client at the applicable rates. Travel time is considered to be work time.

### 4. Delivery date

- 4.1. The Contractor endeavors to comply as exactly as possible with the agreed dates of the performance (completion).
- 4.2. The Contractor will be able to comply with the envisaged dates of performance only if the Client provides all the works and documentation required by the Contractor, with particular reference to the specifications accepted by it pursuant to section 2.3., according to the schedule set out by the Contractor and fulfills its duty of cooperation to the necessary extent.

The Contractor will not be liable for any delays or cost increases resulting from the incorrectness or incompleteness of, or subsequent modifications to, the information or documents provided, and such delays and costs increases cannot result in default of delivery on the part of the Contractor. Any resulting additional costs will be borne by the Client.

- 4.3. In the case of orders that include several units or programs, the Contractor may carry out partial deliveries or present partial invoices.

### 5. Payment

- 5.1. Invoices submitted by the Contractor, including sales tax, are payable without any deduction and free of charges no later than 14 days after receipt of the invoice. The payment terms set for the total order apply to partial invoices by analogy.
- 5.2. In the case of orders that include several units (e.g., programs and/or training, realizations in stages), the Contractor may raise an invoice after the supply of each individual unit or service.

- 5.3.** Compliance with the agreed terms of payment is an essential condition for the implementation of the delivery or fulfillment of the contract by the Contractor. Non-compliance with the agreed payment terms will entitle the Contractor to suspend any ongoing work and withdraw from the contract. All associated costs and lost profits will be borne by the Customer.

In the event of default of payment, default interest will be charged at the usual bank rate. If, in the case of partial payments, the Client is in default with two installments, the Contractor will be entitled to demand immediate payment of all installments and acceptances.

- 5.4.** The Client is not entitled to withhold payments on the grounds of incomplete delivery, guarantee or warranty claims, or complaints.

## 6. Copyright and use

- 6.1.** The Contractor or its licensors are entitled to all copyrights in respect of the agreed services (programs, documentation etc.). The Client will be granted the right to use the software only after payment of the agreed fee, exclusively for its own purposes, only for the hardware specified in the contract and only for the number of licenses purchased for simultaneous use on multiple workstations.

The present contract confers on it only the permission to use copyrighted works. Distribution thereof by the Client is excluded pursuant to copyright law. The involvement of the Client in the production of the software will not confer on it any rights beyond the right of use set forth in the present contract. Any violation of the intellectual property rights of the Contractor will result in claims for compensation which must be satisfied in such a case.

- 6.2.** The Client is permitted to make copies for archival and data backup purposes, provided that the software contains no express prohibition by the licensor or third parties and that all copyright and proprietary notices in these copies are transferred unchanged.
- 6.3.** Should publication of the interfaces be required to bring about the interoperability of the software, the Client must apply to the Contractor for such publication and compensate it for any costs that may be incurred in the process. If the Contractor does not comply with this request and decompilation takes place pursuant to copyright law, the results may be used only to bring about interoperability. Any misuse will result in claims for compensation.

## 7. Right of withdrawal

- 7.1.** Should an agreed delivery date be missed on the grounds of the sole culpable responsibility or an unlawful act of the Contractor, the Client will be entitled to cancel the order in question by registered letter if the essential elements of the agreed performance are not provided within the reasonable grace period and the Client is in no way culpable for this failure to perform.
- 7.2.** Force majeure, industrial disputes, natural disasters, transportation locks and any other circumstances which are not in the sphere of influence of the Contractor will release the Contractor from the obligation to deliver or, alternatively, allow it to set a new delivery date.
- 7.3.** Cancellations by the Client are possible only with the written consent of the Contractor. If the Contractor consents to a cancellation, it has the right to charge a cancellation fee of 30% of the as yet unsettled order value of the overall project in addition to the services provided and accrued costs.

## 8. Warranty, maintenance, changes

- 8.1.** Notices of defects will be valid only if they concern reproducible defects and are documented in writing within four weeks of delivery of the agreed service or individual software after program acceptance under the provisions of section 2.4. In the case of a warranty, improvement will in all cases take precedence over a reduction in price or conversion. In the event of a justified complaint, the defects are to be remedied within an appropriate period of grace, where the Client will make it possible for the Contractor to carry out all measures necessary for

investigation and rectification.

The presumption of defectiveness pursuant to section 924 of the Austrian General Civil Code (ABGB) is deemed to be excluded.

- 8.2.** Corrections and additions which prove necessary until the point of delivery of the agreed service due to organizational and technical defects for which the Contractor is responsible will be carried out free of charge by the Contractor.
- 8.3.** Costs for the provision of assistance, of misdiagnosis and for the rectification of errors and faults for which the Client is responsible, and other corrections, changes and additions will be covered by the Contractor in return for payment. This applies also to the remediation of defects, if program changes, additions or any other interventions have been carried out by the Client itself or by a third party.
- 8.4.** Moreover, the Contractor offers no warranty for errors, faults or damage that can be attributed to incorrect operation, changed operating system components, interfaces and parameters or use, abnormal operating conditions (in particular deviations from the installation and storage conditions) or transport damage.
- 8.5.** Any warranty of the Contractor for programs that are subsequently modified by programmers of the Client or third parties will be void.
- 8.6.** If the subject matter of the order is the modification of, or addition to, existing programs, the warranty will relate to the modification or addition. The warranty for the original program will not be revived thereby.

## 9. Liability

The Contractor will be liable for damage if intent or gross negligence on its part can be demonstrated in line with the statutory provisions. Liability for slight negligence is excluded. Compensation for consequential damage and financial losses, unachieved savings, interest losses and damage resulting from claims of third parties against the Contractor are, as far as is legally permissible, excluded in all cases.

## 10. Loyalty

The contracting parties hereby commit themselves to mutual loyalty. They will refrain for the duration of the contract and for 12 months after the end thereof from any recruitment and employment, including through third parties, of employees who have worked on executing orders. Any contracting party which acts in breach of this provision will be required to pay a flat-rate sum of compensation of one year's salary of the employee.

## 11. Privacy, confidentiality

- 11.1.** When handling personal data, the Contractor observes the provisions of the EU General Data Protection Regulation (GDPR), the Austrian Data Protection Act (DSG) and the Austrian Telecommunications Act (TKG) and adopts the technical and organizational measures required for data protection in the Contractor's sphere of responsibility. The Contractor will process the Client's personal data exclusively in connection with the provision and administration of the products or services and accounting in accordance with the (pre-) contracts and offers and in compliance with the applicable statutory provisions.
- 11.2.** In the case of contract data processing pursuant to the GDPR by the Contractor as contract data processor, with the Client as data controller, Anexia's currently valid "General Privacy Policy" as published on the Anexia homepage will apply or, alternatively, a separately concluded, individual "Contract Data Processing Agreement" will be concluded which will stand alongside these General Terms and Conditions and apply to all products and services used by the Client in the course of performance by the Contractor and existing and future contracts between the Client and the Contractor, and thus constitute a binding, written legal instrument in accordance with Article 28 (2) and (9) GDPR. This ensures GDPR-compliant collaboration for both parties in the case of contract data processing.

## 12. Miscellaneous

Should individual provisions of this contract be or become ineffective, the remaining content of this contract will remain unaffected. The contracting parties will work together in partnership to find a regulation that comes as close as possible to the ineffective provisions.

## 13. Final provisions

Unless otherwise agreed, the statutory provisions that apply to relationships between registered traders are those enshrined in Austrian law, even if the order is executed abroad. In the event of disputes, the territorial jurisdiction of the court that is competent for the registered office of the Contractor is deemed agreed, to the exclusion of all other jurisdictions. The foregoing provisions apply to sales to consumers within the meaning of the Austrian Consumer Protection Act only if said Act does not prescribe other mandatory provisions.