

# General Terms and Conditions of Business of ATOSS Software AG

– hereinafter referred to as the "COMPANY" –

Am Moosfeld 3 · 81829 Munich · Telephone +49. 89. 4 27 71-0 · Fax +49. 89. 4 27 71-100 · www.atoss.com

## Services and Works

### § 1 Object

The COMPANY provides services in the form of professional services, hotline services, programming services (source code adaptation programming) relating to previously licensed standard software, and other services, all of which are in accordance with individual agreements and these General Terms and Conditions of Business to be concluded.

The COMPANY renders its services according to the state of technology prevailing at the time when orders are submitted. The COMPANY is not liable for services extending above and beyond this. The scope of services is described in the relevant individual agreements. Individual agreements may be concluded as service agreements or specific task (deliverables) agreements. The special provisions described below apply to this extent.

### § 2 Payment

#### 1. Type and level of payment

In general, payment specifics shall be set out in the relevant individual agreement. The level of payment shall be according to time and expense, and according to the service rates pursuant to the COMPANY's relevant valid price list. The parties may reach agreement on other regulations in individual agreements.

#### 2. Expenses and travel costs

Travel costs, and day and overnight expenses shall be invoiced according to expense, unless specified otherwise in the individual agreement. Time spent travelling shall be deemed to be working hours.

#### 3. Payment terms

The COMPANY shall invoice the CUSTOMER at the latest at the end of each month for services used. For this purpose, the COMPANY's employees shall record daily working hours in time sheets. The CUSTOMER shall be entitled to inspect such time sheets on request. Invoices shall fall due within 10 days, and without discount. All prices quoted are before the addition of the relevant applicable statutory VAT.

### § 3 Execution

The COMPANY shall render its services using its own staff, or the staff of the COMPANY's Group associates or other third parties, which shall be engaged as subcontractors to satisfy service obligations in line with the individual agreement. The COMPANY shall in all cases retain and provide sufficiently qualified personnel to execute its services. The COMPANY shall notify the CUSTOMER in good time concerning modifications to the staff entrusted with the rendering of its services, and, when appointing new staff, take into account the CUSTOMER's requirements irrespective of the obligation to provide sufficiently qualified personnel within the scope of the personnel options available to it.

Within the scope of the individual agreement, the COMPANY shall determine, and be responsible for, the type and manner, how and by whom the individual agreement is satisfied. To this extent, the CUSTOMER shall not be entitled to give instructions to the staff that have been appointed. The COMPANY shall nevertheless always endeavor to take the CUSTOMER's wishes into account.

The COMPANY shall inform the CUSTOMER concerning foreseeable delays as soon as these become known to it. In

particular, the COMPANY shall notify the CUSTOMER in good time concerning any potential failure to meet completion deadlines that have been agreed according to individual agreements, and shall provide the related reasons. The COMPANY may demand an appropriate delay to a deadline as well as an appropriate recommencement period if an event for which the COMPANY is not responsible, particularly strikes, war, unrest, catastrophes, or force majeure, impede its rendering of services.

The COMPANY shall prepare documentation or other documents described in individual agreements on a cost-mandatory basis when an individual agreement is signed.

### § 4 Cooperation duties

Implementation of the business relationship that is entered into, and, in particular, the service to be rendered by the COMPANY, require the CUSTOMER's close cooperation as a key contractual obligation. In particular, the CUSTOMER shall create, free of charge, the preconditions in its sphere of operations that are required to properly execute the order. These preconditions shall include, among other things, that the CUSTOMER provides premises for the COMPANY's staff including all requisite equipment and related infrastructure (e.g. IT equipment, telecoms equipment including telephone and fax), as well as all requisite information and documents disclosing related contact persons.

The CUSTOMER shall also nominate a contact person who shall be available to the COMPANY's staff during the agreed working hours; the contact person shall be authorized to issue statements required as interim decisions as part of the continuation of the order.

The contact person to be nominated by the CUSTOMER shall provide the COMPANY's staff with access at all times to information required for their activities, shall promptly provide them with all requisite documents, and shall inform the COMPANY concerning all events and circumstances that may be of significance for the execution of the order. The same shall also apply for documents, events and circumstances that only become known while the COMPANY's activities are underway. At the COMPANY's request, the CUSTOMER shall confirm the completeness of the documents presented and of the information and statements provided in a written declaration formulated by the COMPANY.

The CUSTOMER shall store all documents, information and data forwarded to the COMPANY in original copy form, so that they can be reconstructed in the instance of damage or loss of data carrier material.

The CUSTOMER shall be responsible for ensuring that reports, organizational plans, drafts, drawings, surveys and calculations prepared by the COMPANY as part of the order shall be used exclusively for its own purposes.

All cooperation duties listed in these provisions, or agreed in the individual agreement, shall comprise key cardinal duties for the CUSTOMER, and shall be agreed as such. If the CUSTOMER fails to fulfill one of its cooperation duties as agreed, the resultant consequences, such as additional services and delays, shall be deemed to be at the CUSTOMER's expense. The COMPANY may invoice the CUSTOMER for the additional expense incurred. Furthermore, the COMPANY may set an appropriate period for the CUSTOMER to subsequently render its cooperation duties, thereby stating that it will cancel the individual agreement if such duties are not fulfilled within this period.

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### § 5 Special regulations for specific tasks (deliverables)

#### 1. Specification

Only if explicitly agreed upon the delivery of specific tasks (deliverables), the COMPANY shall assume the obligation to deliver the contractual and CUSTOMER-specific programming or adaptation of previously licensed software, or to the delivery of other operating results. Obligation with respect to the delivery of documentation and the supply of source code files when programming services are agreed shall arise only if this is expressly agreed between the parties.

#### 2. Special CUSTOMER cooperation duties in the case of specific tasks

Irrespective of the general cooperation duties, and according to these provisions, the CUSTOMER must provide the COMPANY with the following documents and information required to conduct its specific tasks, both completely and on time.

These shall include, to the extent that they have not already been provided before the issuing of the offer or order, a complete list of responsibilities (including a catalogue of requirements and descriptions of services), as well as test data for the performing of acceptance tests. The scope of the above information is regularly set out in the individual agreement. To the extent that nothing particular is agreed in the individual agreement, the requisite documents, information and data must be available in binding form before the commencement of work.

In the case of CUSTOMER-specific programming/adaptations agreed for individual contracts, the CUSTOMER shall ensure that the IT environment is described in the description of services to the extent required to integrate the operating results, and corresponds to the relevant status of the technology.

The provision of project staff or the correctly timed completion of complementary products in the CUSTOMER's area of responsibility may also be agreed as part of the relevant individual contract.

Furthermore, the CUSTOMER shall provide the software and hardware required for the execution of specific tasks, including all requisite licenses, approvals and other rights. This shall also include any of the COMPANY's standard software that requires adaptation or implementation according to the individual agreement.

The CUSTOMER shall satisfy the above CUSTOMER obligations and services (cooperation duties) at its own cost.

#### 3. List of responsibilities; acceptance test documentation

*List of responsibilities:* The list of responsibilities shall comprise conclusive documentation of the CUSTOMER's requirements relating to CUSTOMER-specific programming, CUSTOMER-specific adaptations and other operating results (including description of services, development and documentation guidelines etc). The list of responsibilities must be presented to the COMPANY in binding form when specific task work orders are issued.

*Acceptance test documentation:* The parties must prepare the acceptance test documentation on the basis of the list of responsibilities, and both parties must recognize it with their signatures. The acceptance test documentation is a conclusive description of all acceptance tests, their execution, and the determination of defect categories and of the expected test results, adherence to which is recognized by the parties amicably as the satisfaction of the list of responsibilities by the individual software, or the modifications applied to the system (acceptability). Both parties must approve the acceptance test documentation with their signatures - to the extent not otherwise agreed in the relevant performance certificates - according to project process and necessity, at the latest, however, four (4) weeks before the start of the system test as per the project plan.

If the COMPANY is also mandated to prepare the list of responsibilities or the acceptance test documentation, such documents shall become binding when they have been approved by the CUSTOMER. The CUSTOMER shall approve the documents immediately after they have been presented by the COMPANY, or the CUSTOMER shall decline approval while providing the related reasons. After renewed mandating by the CUSTOMER, the COMPANY shall make changes to the initially presented list of responsibilities in the form of services. If the CUSTOMER fails to make a declaration within 10 working days after the presentation of the list of responsibilities or the acceptance test documentation by the COMPANY, the document that has been presented shall become binding.

#### 4. Project organization

Each contractual partner shall nominate a project director or subproject director for the other party, who shall be responsible for procuring information and decisions in connection with CUSTOMER-specific programming/adaptations. The parties may agree further regulations relating to the project organization on an individual contract basis.

#### 5. Special regulations concerning delivery deadlines for specific task agreements

Deadlines for the rendering of CUSTOMER-specific programming/adaptations, or of other operating results, and for the other services to be rendered by the COMPANY, shall require express agreement in the individual agreement, and shall be designated as project completion deadlines. The deadlines shall extend correspondingly if, in the case of the preparation of the list of responsibilities by the COMPANY, the CUSTOMER approves it after the envisaged deadline, or if other documents required for the rendering of CUSTOMER-specific programming/adaptations are not presented by the deadline envisaged for the start of work for reasons for which the COMPANY is not responsible. The same shall apply if the COMPANY is prevented from correctly executing the order as the result of a later modification to the list of responsibilities, or other circumstances for which the COMPANY is not responsible. Circumstances for which the COMPANY is not responsible shall comprise, in particular, delays or defects to services, or to the system environment that is to be provided, which are to be rendered by the CUSTOMER as part of the cooperation.

#### 6. Acceptance

The COMPANY shall release the CUSTOMER-specific programming, CUSTOMER-specific adaptations or other specific tasks performed, for acceptance after the test phase.

The CUSTOMER shall be obligated to perform the acceptance immediately after the release of the operating results. The CUSTOMER shall involve the COMPANY when conducting the acceptance.

The acceptance shall be performed using the documentation agreed between the parties (list of responsibilities, acceptance test documentation). An acceptance memorandum concerning the results of the acceptance shall be prepared. This shall differentiate between any defects that occur according to the following three defects categories:

*Defect category 1:* severe defects, e.g.:

Defects that result in the overall CUSTOMER-specific programming/adaptation or operating results being unusable. Defects in central functions of the CUSTOMER-specific programming/adaptation that result in a breakdown of the entire application.

*Defect category 2:* medium-level defects, e.g.:

Defects in CUSTOMER-specific programming/adaptation or in other results that do not belong to the defects listed in defect category 1, and which at the same time are so significant that acceptance and defect rectification as part of the warranty is inappropriate since operationally critical functions are not

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without key defects. It would prove inappropriate to circumvent the defect using organizational means.

*Defect category 3:* minor defects, e.g.:

Defects that have no significant effect on the functionality and usability of the CUSTOMER-specific programming/adaptation or of the operating results. Such defects do not, or do not significantly, restrict the use of the CUSTOMER-specific programming/adaptation or other operating results.

Defects in defect categories 1 or 2 must be rectified during the acceptance test, or circumvented in such a way that use of the product is possible at least within the meaning of defect category 3. The progress of the acceptance test shall be delayed during the period in which the product can no longer be tested as a consequence of any category 1 or 2 defect, whereby the delay shall commence when the CUSTOMER provides the documentation required for the rectification of the error, and shall end when the COMPANY delivers and announces the correction of the defect.

In the case of defect category 1 defects, the CUSTOMER shall be entitled to a complete repetition of the acceptance process, while defect category 2 defects will result in a repetition of the acceptance process relating to the functions affected by the defect. The CUSTOMER shall also be entitled to refuse acceptance following repeated failure of a defect rectification (at least twice) within an appropriate period. Defects in defect category 3 shall be rectified as part of subsequent satisfaction of the order.

Acceptance shall be deemed to have been issued if no statement is made within a period of 30 days following release by the COMPANY, or the start of operation.

### § 6 Modifications to services

The scope of services shall be agreed to be what was accepted in the individual agreement, or, in the case of specific tasks, also the contents of the list of responsibilities, the acceptance test documentation, or the acceptance of milestones as operating results, including plans, designs, and arrangements for subsequent phases that they contain, as well as other amicably approved project documentation.

Both the CUSTOMER and the COMPANY may issue modification requests. All modification requests must be formulated in writing (including e-mail and fax), and forwarded to the other party's contact partner.

Once the corresponding written (including e-mail and fax) modification request has been received by the COMPANY, it is obligated to communicate the adaptation expense immediately. The corresponding modification agreement shall become a component of the original order when the parties acknowledge it in writing. The COMPANY shall investigate the described modification within two weeks following receipt of the modification request, and shall communicate the effects of the modifications by summarizing them in writing (including e-mail and fax) in a follow-up offer. If the COMPANY issues the modification request, the follow-up offer shall include, besides the points set out above, at least the following disclosed effects:

Description of the functional modification and its effect on approved documents and other results,

Effects on the defined scope of services, and the modifications to expense and agreed deadlines that they trigger.

The CUSTOMER shall notify the COMPANY with an appropriate period - in all cases within 14 days - whether it accepts the follow-up offer. The CUSTOMER shall provide separate remuneration for the COMPANY's expense for investigating the modification as well as any stoppage costs (neutral periods) if the CUSTOMER has issued the modification request, or, if the COMPANY issues the modification requests, and the modification is objectively necessary, but was unidentifiable for the COMPANY when the order was issued.

### § 7 Industrial property rights, confidentiality

#### 1. Industrial property rights

The COMPANY shall grant to the CUSTOMER a perpetual, nontransferable and non-exclusive right of use for the operating results for their reproduction, processing and distribution within the CUSTOMER's associated companies, to the extent that they do not relate to adaptations to the COMPANY's standard software.

Where they relate to adaptations to standard software, related manuals, training documents or other related documentation of the COMPANY, the COMPANY shall grant the CUSTOMER a basic right of use according to the provisions of the license agreement relating to previously licensed COMPANY software. In all other respects, all rights shall remain with the COMPANY.

#### 2. Confidentiality

The parties shall agree strict confidentiality of all mutually disclosed operating and business secrets and of all other information designated as confidential. The obligation to confidentiality shall not apply to ideas, models, designs, methods, techniques and other significant know-how, as well as to information already known to the party that receives it, or that becomes known in a manner unrelated to the relationship based on the order. The COMPANY shall treat as confidential documents and information provided by the CUSTOMER, and shall not forward them to third parties - to the extent this is not required by the satisfaction of the order - and using them exclusively for the satisfaction of the order. At the end of a relevant order, the recipient shall be obligated to return the documents containing confidential information to the other party upon request. Statutory data protection regulations must be observed.

#### 3. Duty of fidelity

The parties shall be obligated to mutual loyalty. In particular, the active poaching of the other contractual party's employees is prohibited.

### § 8 Freedom from third-party rights

The COMPANY shall guarantee that the granting of rights of use according to these provisions does not stand in contradiction with third-party rights, and shall indemnify the CUSTOMER against third-party claims that assert the infringement of these rights. This shall particularly not apply, however, if the asserted legal infringement has its origins in modifications to services effected by the CUSTOMER. It shall also not apply if the CUSTOMER uses the unmodified operating results provided by the COMPANY together with third-party software in such a way that third-party rights are infringed.

The CUSTOMER is obligated to inform the COMPANY immediately in writing concerning any claim that has been asserted against the CUSTOMER. It shall authorize the COMPANY to act in its defense against the claims both in court and out of court, and to settle the dispute at its discretion. The CUSTOMER shall provide the COMPANY with all requisite information to exercise the authorizations, and will provide it with appropriate support. The CUSTOMER shall not influence the COMPANY's defense either through actions or the neglect of actions that are not coordinated with the COMPANY, and will not acknowledge the claim without the prior written consent of the COMPANY.

### § 9 Warranty, qualitative service malfunctions

#### 1. Warranty (only in the case of specific tasks)

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When specific tasks have been agreed, the COMPANY shall provide warranty that the operating results have been produced according to the agreement. Unless expressly described as a guarantee in the individual agreement, special agreements relating to the properties of the CUSTOMER-specific programming/adaptations do not comprise guarantees in the meaning of § 639 of the German Civil Code (BGB).

Warranty claims shall not extend to CUSTOMER-specific programming/adaptations or other operating results that the CUSTOMER modifies, or that the CUSTOMER fails to utilize in the system environments described in the list of responsibilities, unless the CUSTOMER proves that this was not the reason for the defect. The reproducibility or demonstrability of the defects shall be the precondition for warranty claims. The CUSTOMER must report defects immediately by providing information known to it and which allows the defect to be identified, and must take measures to a requisite extent to alleviate the identification of the defects and their causes.

Following the proper reporting of a defect, the COMPANY is initially entitled to make subsequent satisfaction of the order by removing or circumventing the defect, or by the delivery of an operating result that is essentially free of defects. In the case of an obligation to supply CUSTOMER-specific programming/adaptations, defect rectification is effected by forwarding a data carrier medium bearing a version free of defects, which the CUSTOMER shall install. To the extent that it is technically possible, the COMPANY shall also be entitled to provide the defect-free version to the CUSTOMER by download version, instead of by sending a data carrier medium. If the subsequent satisfaction of the order fails to occur within an appropriate period, or if the COMPANY fails to eliminate or circumvent a significant divergence from the product specification within an appropriate time period, and in such a way that the operating result can be used by the CUSTOMER, or solely defect category 3 defects persist, the CUSTOMER shall be entitled to withdraw from the agreement, or to demand a reduction of the agreed payment, and, if legal prerequisites are present, also demand compensation for damages along with withdrawal.

The CUSTOMER shall support the COMPANY to an appropriate extent in the elimination of defects. If it is impossible to eliminate defects with an appropriate level of expense, the COMPANY, with respect to the related CUSTOMER-specific programming/adaptation or other operating result, shall be entitled to withdraw from the agreement irrespective of any claims on the part of the CUSTOMER.

Warranty claims shall be limited to a period of 12 months from the acceptance date.

### 2. Qualitative service malfunctions (only in the case of services)

If the service fails to be rendered according to the contract, and the COMPANY is responsible in this respect, it shall be obligated to render the service in accordance with the contract within an appropriate time period, and without additional costs for the CUSTOMER. This must be preceded by an immediate and written complaint submitted by the CUSTOMER. The complaint must be submitted at the latest within two weeks following identification of the source of the complaint, or from the time at which the CUSTOMER would have become aware of the source of the complaint without gross negligence. The CUSTOMER shall be entitled to cancel the agreement immediately without notice if the service fails to be rendered to a

significant degree within an appropriate grace period notified in writing by the CUSTOMER, and reasons for which the CUSTOMER is not responsible.

The COMPANY in this instance shall be entitled to payment for services rendered on the basis of the agreement until the coming into force of the cancellation. This payment shall be inapplicable only for such services for which the CUSTOMER provides evidence within two weeks following the cancellation that the services are of no use and without interest for it. The right to extraordinary cancellation shall be hereby unaffected. More extensive CUSTOMER claims with respect to qualitative service malfunctions shall be excluded. This exclusion shall not be valid for qualitative service malfunctions caused intentionally or as the result of gross negligence, as well as not in the instance of damage to life, body or health.

### § 10 Liability

Irrespective of legal reason, the COMPANY's liabilities shall be limited to €25,000.00 or the level of the payment for the service order that has given rise to the damage, or is the object of the claim, or stands in direct relationship with it. The higher amount shall apply in each case. The COMPANY shall not be liable for lost earnings, unrealized cost-savings, damages arising from third-party claims and other direct and indirect losses, as well as for recorded data. The above liability limits and liability exclusions shall not apply for damages based on a guarantee, the malicious concealment of defects, or on an infringement of key contractual obligations jeopardizing the purpose of the agreement (cardinal duties), and for damages which the COMPANY or its vicarious agents have caused intentionally or as the result of gross negligence, or which were caused as the result of slight negligence and have resulted in damages arising from injury to life, body or health.

### § 11 Limitation of actions

Liability claims and claims arising from qualitative service malfunction shall be subject to a limitation period of one year from the time when the circumstances giving rise to the claim became known, or from the date on which the CUSTOMER would have become aware of this matter without gross negligence, at the latest, however, five years following the delivery of the CUSTOMER-specific programming/adaptation or other operating result. Limitation of actions in the case of liability as the result of intentional actions shall be according to statutory regulations.

### § 12 Data protection

The CUSTOMER shall ensure that the COMPANY is informed of all relevant matters above and beyond statutory regulations that the COMPANY is required to know for data protection and confidentiality reasons. The COMPANY shall ensure that all persons entrusted with the processing and satisfaction of the agreement adhere to data protection terms. Both the CUSTOMER and the COMPANY shall be obligated to treat with confidentiality all confidential information, and business and operating secrets acquired as part of the contractual agreement, and, in particular, not to forward them to third parties, or to reuse them for purposes other than the contractual purposes.

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### § 13 Written form requirement, legal system, place of jurisdiction

Modifications and supplements shall require written form for them to be effective. Contrary business terms on the part of the CUSTOMER shall not be applicable. Exclusively German law shall be applicable to this agreement; application of the "UN Sales Convention" (United Nations Convention on Contracts for the International Sale of Goods) shall be expressly excluded. The location for the satisfaction of all obligations arising from this agreement, and the exclusive place of jurisdiction, shall be Munich.

### § 14 Safeguarding clause

Should individual provisions prove ineffective, the efficacy of the remaining provisions shall be hereby unaffected. The parties shall cooperate in order to replace ineffective regulations with such regulations that correspond as far as possible to the ineffective provisions.