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TERMS AND CONDITIONS

of „en-software GmbH" (hereinafter "T&C")

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I. BASIC PRINCIPLES

1. prevalence of the terms and conditions

The terms and conditions set out below (hereinafter referred to as „T&C") govern the mutual rights and/or obligations between

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(hereinafter referred to as "en-software") and en-software's customer and apply as far as not expressly stipulated in writing otherwise. Only the version of the T&C in effect at the time of contract conclusion is decisive. Oral arrangements are only legally binding if expressly confirmed by en-software in writing. The prerequisite of written form can only be waived by a written agreement. en-software declares only to conclude a contract on the basis of the said T&C.

General terms and conditions of a customer apply – even in case of en-software being aware of them – only, if en-software expressly consents to them in writing – save in the case of consumers as defined by the Austrian Consumer Act (hereinafter referred to as "consumer"). In case of the T&C and the customer's terms and conditions being contradictory en-software's T&C prevail.

The T&C of en-software shall be deemed to apply also to all additional requests of a customer and to all future dealings between the contract partners, even if the T&C are not expressly referred to at the conclusion of the additional request or the future contract.

2. Amendments of the T&C

en-software can make amendments of the T&C and they apply also to already existing contractual relationships. The current and relevant version of the T&C is available on the homepage of en-software (www.en-software.com) or can be sent to a customer on demand.

Amendments of the T&C are valid for consumers only, if they are reasonable for the consumer, especially because they are marginal and justifiable. The consumer will be informed about modifications of the T&C in a summarised an due form, e.g. imprint on a periodical invoice. The consumer is entitled to object to the amendments of the T&C in writing within a time-limit of two weeks, otherwise the amendments of the T&C shall be deemed to be accepted by the consumer. When notifying the consumer en-software will especially point out to the consumer that the notified amendments of the T&C will be deemed as accepted by the consumer, if the consumer does not object to the amendments in writing within two weeks after receipt of the notification.

3. Neither normative nor interpretive significance of the headlines

The headlines of the T&C are for clarity purposes only and do not have any normative significance, they do not limit or extent the scope of the T&C and do not provide a basis for interpretation.

4. Cost estimate, entering into an agreement, additional requests

4.1. en-software provides cost estimates without guarantee and those do not oblige en-software to execute the enlisted services. In case of doubt cost estimates are provided for a consideration only, based on the hourly fee for general services (Regiestundensatz) of en-software. In case a considerable exceeding of the cost estimate as laid down in § 1170a Abs. 2 ABGB is unavoidable, en-software will inform the customer at that point of time, at which an exceeding of 30 % of the total amount as laid down in the estimate is foreseeable.

4.2. Offers by en-software are unless otherwise agreed in not legally binding. If offers are directed to en-software, the offeror is then bound to it for eight days commencing with receipt of the offer. A contractual relationship is only then concluded, if en-software - after receipt of a customer's order or request - confirms in writing or sends the ordered or requested delivery to the last notified address of the customer or en-software starts with the actual performance (e.g. conduct necessary orders with third persons, start of programming).

The scope of services and the functional range are in case of software individually programmed by en-software defined in a specification of services, which is either drawn up by en-software on the basis of the data and information provided by the customer or provided itself by the customer.. A specification of services is included in an offer or confirmation by en-software. en-software is not obliged to examine whether the provided data and information is correct. A later desired revision requires an additional request as stipulated in the T&C.

Details of services in catalogues, price lists, mailing pieces, notices, illustrations, brochures, on en-software's homepage (www.en-software.com) etc. shall not be deemed to be an offer, shall not be deemed to include any information specifying the services within the meaning of § 922 Abs. 2 ABGB and shall only then be deemed to be an integral part of an agreement between en-software and the customer, if explicitly referred to in the confirmation. Objects of purchase and hardware offer only such security as can be expected based on the respective authorization provisions, instruction manual , assembly instructions and operating manual or provisions of en-software regarding the handling of the objects of purchase and hardware. Oral or written additional requests made by the customer or its proxy to the original order, which was confirmed by en-software in writing, require a written confirmation by en-software. Persons, who make declarations for the customer to en-software, shall be deemed as being thoroughly authorized.

4.3. Save for business transactions with consumers in the meaning of the ABGB (hereinafter "consumer business transactions") , all objectively justifiable and adequate modifications of en-software's duty to perform and supply, in particular adequate exceeding of the delivery time and short-term exceeding of the period of payment by en-software, are already deemed to be approved. In case of consumers business transactions en-software may make objectively justifiable and marginal modifications which do not concern the price. This applies in particular to reasonable exceedings of the period to supply.

4.4. Distribution partners or distribution employees, as well technical staff of en-software are not authorized to make declarations for en-software, to make a commitment or to accept payments.

5. Acceptance tests

If a customer wants an acceptance test, such a test has to be agreed upon byen-software in written form at the conclusion of the contract. Unless otherwise agreed en-software can decide whether such a test will be conducted at the registered office of en-software or at any other place determined by en-software.

6. Duration of an agreement and commencement of the period of time

6.1. Agreements concluded between the parties concerning the supply of services or any other continuing obligation are entered into for an indefinite time or for the time stipulated in the respective contract. In the later case the agreement is automatically renewed for the original duration of the agreement save for the case that the agreement is terminated in writing within the stipulated period of time or a period of time, which last at least two-months, before the end of the agreement by one party . The requirement of written form is met by a signed fax together with a confirmation of the receipt of the fax or by a confirmed email. The right to terminate the determinable agreement as well as the legal consequences of the non-exercise of this right (renewal of the agreement for the original duration) will be explicitly pointed out to consumers, and this especially before the commencement of termination period, Consumers do have the right to terminate agreements entered into for an indefinite time or agreements with a stipulated duration being more than one year subject to a period of time of two months before the end of the first year of the duration of the agreement.

If no provision concerning a waiver of termination is made, agreements entered into for an indefinite period can be terminated in writing subject to a period of time of three months before the last day of a month.

6.2. For the calculation of a period of time re minimum duration of an agreement ,period of a possible waiver of termination and the like, the commencement of the agreement in all cases in which no express confirmation of order is given, shall be deemed to be the first day of the month after the commencement of the performing of the services. This is not valid for the right to withdraw within the meaning of § 3 or 5e KSchG.

7. Assignment of rights and obligations

7.1. Without prior written consent of en-software the customer is not allowed to assign rights and obligations stemming from a agreement to third persons. The use of the contractual service by third persons as well as the transfer of these services to third persons requires the express and written consent of en-software. If a resale is agreed upon between the parties, the resellers are ,in any case, obliged to confer the T&C to their respective contract partners and indemnify en-software concerning this matter .

7.2. en-software is authorized to assign its obligations, completely or partly therefore for example also concerning individual services, or the whole agreement to third persons , freeing themselves from all obligations stemming from the contract, and will inform the customer respectively hereof. This does not apply to consumers business transactions.

8. Substitution

en-software is authorized to use third persons as substitutes to perform its contractual obligations. In this case the liability of en-software is limited to a diligent selection of the third person. en-software however does not incur any guarantee and/or liability for the services rendered by third persons.

II. PAYMENT

1. Fees

1.1. Unless otherwise agreed in writing en-software's fees stipulated in the offer, order form or confirmation apply. If no fees are stipulated by en-software in its offer, order form or confirmation, the current catalogue price - valid at the time of conclusion of the respective agreement- shall be deemed to apply in case of supply of library (standard) programs. If the fees of en-software for other services (e.g. programming, initial training, telephone helpdesk, support services, etc.) are not proper stipulated, then en-software is entitled to charge the customer for to be rendered services based on the actual demand and the resulting time and effort shown by the respective supporting documents . Commenced half hours are charged as full half hours.

1.2. The fees do not include the respective effective VAT. When invoiced the legal VAT will be added to the fees. Fees specified for consumers are gross fees.

1.3. en-software is entitled to the full fee charged, even if the completion of the order was ceased out of reasons which do not lie in the sphere of en-software. The provisions concerning setting-off laid down in § 1168 Abs. 1 ABGB as well as the § 1168a first sentence ABGB are waived.

2. alteration of fees

In case of alterations of those costs which are relevant for en-software's fee calculation (e.g. personnel costs, tarif rates, taxes, energy costs, occupancy costs, interconnection costs, etc.) en-software's fees are subject to alterations themselves (raise or reduction). In case of consumers, raised fees may only be charged, if the occurrence of the those circumstances being relevant for the fees alterations are not depended on en-software's will and may also not be charged for such services which have to be performed within two months after the conclusion of the contract.

3. Separately allocated services

3.1. Unless otherwise agreed the fees do not include the costs for delivery, shipping, mounting, assembly, training course or installation. Those services are performed by en-software on request only if separately ordered and thus separately charged. Unless otherwise agreed en-software will charge for delivery or shipping the cost actually accrued together with an additional charge, however at the least the transportation charges of the selected delivery method in effect on the delivery day or the usual ones .Insurances, especially transport insurances, will only be concluded on request of the customer.

3.2. The fees do not include – save an agreement to the contrary – the cost for program media (e.g. magnetic tapes , magnetic discs, floppy discs, CD/DVD´s, streamer tapes, magnetic tape cassette etc.). The customer will be charged for these separately.

3.3. If services are performed by en-software in the office of the customer, the travel expenses, the cost for the sojourn and the „home-to-office time" to the office of the customer are charged separately. „home-to-office time" shall be deemed to be working hours.

III. TERMS OF PAYMENT, EXPENSES FOR DEFAULT, SET-OFF, RETENTION OF TITLE

1. Due date, payment and deposit

1.1. Unless otherwise agreed in writing are invoiced amounts are promptly due at the time of receipt without discount or any other allowance. Payments by a customer shall be deemed to be performed not until received on the business account of en-software. In case of default of payment, even with an instalment, possible agreements re discounts are suspended and en-software is entitled to make all receivables which en-software holds against the customer, due even if concerning individual invoices or a bill of exchange a later due date was stipulated. In case of sound doubt concerning the solvency or creditworthiness of a customer en-software may from all current contracts with respect to those deliveries and supplies which have not yet been fulfilled withdraw or make the further fulfilment dependent on securities which are suitable for en-software (including prepayment). en-software reserves itself the right to use incoming payments for the settlement of the oldest invoice item plus the accrued interests for default as well as for expenses for reminder, collection and keeping in evidence as stipulated in item III.4. below and namely in the following order: „expenses for reminder, collection and keeping in evidence", „interest" and then the „principal receivables". Payments may be credited against the oldest invoice following the order laid out above even against a contrary dedication of the customer. Notations to the contrary, for example on a voucher for payment, are ineffective. Offering of a bill of exchange needs the consent of en-software and is accepted only in part-exchange. Discount, expenses for bill of exchange, taxes for bill of exchange or similar charges are for the customer's account. Partial deliveries are due with that amount which correspond to the partial delivery already made.

1.2. In case of separable services (e.g. orders which comprise of several programs or units or programs and /or initial trainings; services in partial stages) en-software is entitled to render partial- invoices .

1.3. en-software is entitled to request an adequate deposits for covering its expenses.

2. Rendering of invoices and objections against the invoices

2.1. Invoices are render either by email or by mail to the last notified address of the customer, whether email- or postal address. The customer expressly consents that invoices are not rendered by telefax etc..

2.2. Objections against the accounts receivables laid down in the invoices have to be raised within 7 days from date of invoice, otherwise the account receivables shall be deemed to be accepted. en-software will especially point this period of time and the legal consequences in case of non-compliance out to consumers at the latest at the time of rendering the invoice.

2.3. In case of payment by credit card the customer is obliged to ensure that the credit card is not cancelled or expired, failing that the resulting delays in payment are for the account of the customer, the resulting expenses have to be borne by the customer and interest for default may in this case be charged as well. The customer has to renew his credit card timely before the expiration. All this applies analogously for payment by direct debit authorization, in particular the customer has to bear the expenses for a possible back posting.

3. Default of payment and interest for default

Even in case of default of payment being independent of negligence on the customer's side en-software is entitled to charge interest for default in the amount of 12 % per annum. In case of default of payment by consumers en-software is entitled to charge interest for default in the amount of 5 % above the base lending rate per annum.

4. Expenses for reminder, collection and keeping in evidence

In case of default, the customer is obliged to compensate en-software for all the expenses for reminder and collection accrued which are necessary for an adequate prosecution. Provided that en-software itself carries out the dunning, the obligor (customer) commits to pay at least € 10,90 per effected reminder as well as € 3,65 for keeping in evidence of the obligation per term. Furthermore the customer has to make up any further damage resulting from according higher interests being charged on possible en-software's credit accounts in case of default of payment , independent of negligence on the customer's side regarding the default of payment. In case of default of payment en-software is released from all further contract obligations and delivery commitments and is entitled to hold back still outstanding deliveries and services , to request prepayment or securities or to withdraw from the contract.

5. set-off

Set-off against outstanding receivables by en-software and the retention of payment based on alleged, but not acknowledged receivables of the customer by en-software is excluded.

In case of consumers business transactions the following applies in alteration of this point above : set-off with receivables against en-software is possible only if en-software is insolvent, or the reciprocal receivables do have a legal context, or the counterclaim of the contract partner is judicially ascertained, or acknowledged by en-software.

6. exclusion of retention of title

The right of the customer to refuse to comply with his contractual obligations according to§ 1052 ABGB in order to induce the performance or the securing of the service in return, as well as his statutory rights of retention are excluded. This provision does not apply to consumers business transactions.

IV. DELIVERY PERIOD – DEFAULT OF ACCEPTANCE

1. terms of delivery and non-performance

1.1. en-software is entitled to exceed the stipulated deadlines and terms of delivery about up to four weeks. After expiry of this deadline the customer can give en-software in writing an adequate period of grace lasting another four weeks at least and according to § 918 ABGB withdraw from the contract if en-software does not within this given period of grace fulfils or offers to fulfil. The withdrawal is only valid if en-software culpably does not meet the period of grace. In case of successive-delivery contracts this right of withdrawal is only valid regarding each individual delivery. en-software is entitled to make partial deliveries or advanced deliveries and to charge them respectively. en-software is only then obliged to fulfil its obligations once the customer has fulfilled all of his obligations which are necessary for en-software's performance, in particular has fulfilled all technical and contractual particulars, preparations and prearrangement measures as well as handed over the essential documents/documentations. en-software is entitled to retain its performance until the customer has fullfilled its stipulated obligations. In case of commencement of insolvency proceedings over the assets of the customer all possible stipulated sales allowances, discounts or rebates become likewise due for payment, as far as the remaining consideration is still partly or entirely outstanding. Delay of delivery and cost increase which result from false, incomplete or subsequently altered instructions, information or documentation provided by the customer, can not give rise to a default of delivery by en-software. The additional costs resulting therefore are borne by the customer.

1.2. Operation disturbances and all events which occur outside of en-software's sphere of influence, especially default of delivery by substitutes or pre-supplier, entitle en-software to extend the delivery periods or to cancel the contract excluding all claims regarding warranty, error and/or indemnity . This also applies even if the above mentioned events occur at a time at which en-software is already in default.

2. default of acceptance

In case of default of acceptance by the customer en-software is entitled to store the commodities, for which en-software charges – according to the agreement – a storage charge in the amount of 0,1% of the invoice's gross amount per calendar day commenced, or to place into stock with an authorized businessman at the customer's risk and expense and at the same time demand the fulfilment of the agreement. Save being a consumer business transaction en-software is alternatively entitled to withdraw from the contract after giving an adequate period of grace and to commercialise the commodities otherwise; in this instance a contractual penalty in the amount of 25% of the invoice amount shall be deemed to be stipulated.

V. WARRANTY

1. period of warranty

The warranty period shall be two years vis-à-vis consumers and one year in case of used commodities. In all other instances the warranty period shall be 6 months. This period is extended in case of an instalment contract with a consumer until the due date of the last instalment, whereas the customer still reserves the assertion of a warranty claim if he notified en-software until then about the defect. An enhancement or an exchange does not suspend the original period of warranty.

2. defect cured and obligation to cooperate

2.1. Defects given rise to warranty shall be at en-software's discretion cured either by enhancement or replacement. A redhibitory action and price reduction are excluded amicably. En-software is at it's own discretion - in case of insignificant defects - entitled, but not obligated, to refrain from correcting or replacing and to offer instead an adequate price reduction, in particular when a correction or a replacement would give rise to inadequate time and effort for en-software. En-software is entitled, but not obligated, in case of all, even not insignificant defects to take the commodities for a credit voucher about the net order value back excluding all further claims. ItemV.2 does not apply to consumer business transactions.

2.2. The customer is obliged to support en-software in detecting and correcting the defects and to facilitate all necessary measures, e.g.: access, inspection of documentation or a data transfer and especially provide during the business hours and free of charge free access to his computer system (in case of systems being in an online-network with other processors the respective connection as well), software programs, protocols, diagnosis data etc. to an adequate extent for necessary test runs in course of the correction of the defects. If the customer does not even comply with his duty to cooperate within a period of grace, given in a written reminder, the assertion of any claims which result from a faulty performance is excluded.

3. duty to notify defects

The customer is obliged - otherwise en-software is released from it's obligation to perform – to inform en-software about all claims, whether claims of warranty or liability, as far as they are not excluded by the following provisions, immediately, however three days after discovery of the defect at

the latest, by registered letter with sufficient information and give en-software an opportunity to examination. The customer is not allowed to remedy a defect on his own or by a third party.

The customer is obliged – otherwise he will loose all its claims resulting from a defect- to immediately and in-detail examine the services performed and to notify every identifiable defects being adequately documented within three days by registered mail and to facilitate en-software an examination. Defects resulting from transport or shortfalls have to be notified in writing either by the recipient of the commodities or the customer within 24 hours after delivery at recipient stating in detail the occurred defects and/or the number and specific product designation of the faulty, damaged or missing commodities, otherwise all claims are lost. Notifications of defects do not entitle partial or total retention of the amounts invoiced. Item V.3. does not apply to consumer business transactions.

4. caveat emptor

4.1. Excluded from claims of warranty are defects, resulting from assembly not conducted by en-software and installation or setting up (this does not apply, as far as the self installation by the customer or a third party was agreed upon), changed operating systems components, interface and parameter, non-observance of the installation requirements and instruction manuals or given instruction by en-software, through later modification of the software delivered by en-software through the customer, overstraining of the software over the capacity specified by en-software, non-compliance of stipulated applications conditions during the use of the licensed software, or by false handling and use of inadequate operation material; this does apply as well in case of defects which result from the material provided by the customer . Warranty does not include the elimination of errors which result from outside influences , handling error, or from operating the commodities together with other equipment or accessories not purchased from en-software and the compatibility of which with the commodities was not explicitly agreed upon in writing. Liability or warranty for compatibility with other products or systems or for a specific purpose of use is excluded. Advice re application technique for the customer, both orally and in writing, as well as re property rights of third parties, does only serve as a noncommittal instruction , and does not exempt the customer from examining the products on his own with respect to their suitability for the envisaged operation and purpose. Application, utilisation, and possible handling of the commodities take place - in the absence of a written agreement - outside of the control of en-software and thus lie solely in the sphere of responsibility of the customer. Warranty does furthermore not include the substitution of parts which underlie the natural wear and tear as well as insignificant alterations of the work and its components.

4.2. The right of recourse according to § 933b ABGB is excluded.

5. burden of proof

The customer bears the full burden of proof for all claims prerequisites, especially for the defect itself, for the time of its discovery and the existence of the defect and for the timeliness of the notification of the defect u. Item V.5. does not apply to consumer contracts.

VI. LIABILITY, PRODUCT LIABILTY AND TRANSFER OF PERILS

1. disclaimer and – limitation of liability

1.1. All liability claims against en-software -except for liability claims regarding personal injury - (e.g. negligence in course of the negotiation of a contract, positive breach of contract, tort etc.), which are connected with the contract relationship between en-software and the customer prior or after the performance of the ordered services by en-software , are excluded, unless they are caused by intent or gross negligence of en-software, its legal representatives, its executive staff, auxiliary persons or assistants. In case of delay and impossibility en-software incurs liability vis-à-vis non-traders also for negligence, but only up to the amount of those additional costs for a hedging transaction or a execution by substitution. As far as en-software is liable together with others as a joint debtor, en-software is always subsidiary liable in last place.

1.2. en-software does not guarantee that the delivered software does meet the customer's demand, unless this was expressly included in the content of the contract; that the delivered software is compatible with other programs of the customer, further that the programs operate continuously and faultless (unless in case of defects within the meaning of the rights of warranty) or , that all software bugs can be remedied. In case of business transactions liability is limited to reproducible (continuously repeatable) defects within the programming function. All claims of warranties of consumers are not affected by this.

1.3. For all claims of the customer based on what legal ground ever, the duty to notify according to item V.3. of these T&C's apply.

1.4. Claims based on rescission due to error, which are caused by a possible faulty delivery or service, are explicitly excluded, unless employees of en-software caused those claims by intent or by gross negligence. Liability for lost profits, subsequent damages, not realized private savings, loss of interest, mere property loss of the customer as well as damages of third persons resulting from claims against the customer are excluded.

1.5. The aggrieved party shall evidence the existence of gross negligence and intent as well as the causing of the damage. At all events, any claims for damages of the customer are limited to the simple net value of the article or the net remuneration for the service and, in case of licensed software, to the minimum royalty of such programme which is object of the claim or which has directly caused the damage. In the latter case the royalty without turnover tax valid when the claim will be arising shall be decisive. The assignment of warranty claims and claims for damages and the like by the customer shall be inadmissible.

1.6. Claims for indemnity for a loss have to be legally asserted in any case within one year from the execution of the services otherwise the claim is lost .

1.7. The customer is prior to installation or transport of IT accessories and installation of computer programs obliged to save the current data stock adequately, otherwise the customer is responsible for the lost data as well as all connected damages , unless en-software caused these claims by intent or gross negligence.

1.8. en-software is not liable for damages which are caused by the customer breaching the contract or part thereof, especially these T&C, or by using the commodities against their intended purpose.

1.9. In case of vis major, in which form ever, en-software is released from its duty to perform. All unpredictable incidents shall be deemed vis major as well as those incidents the impact of which with respect to the fulfilment of the contract has not to be borne by either party. The above mentioned incidents include in particular fire, forces of nature, riots, wars, earth quakes, loss of production, disruption of operation- or traffic hold-ups, fires damages, flooding, shortage of staff, power, raw materials and auxiliary materials, measures of collective action, as well in third party enterprises, lock-out, disruption with shipping or transport, official decree or other obstacles which hinder, delay, minimize, or make the production, shipping, transport, acceptance or the consumption unacceptable.

1.10. The limitation of liability mentioned above apply with respect to the legal representative, executive staff, auxiliary persons and assistants and subcontractor of en-software .

1.11. In case third parties claim against en-software, its legal representative, executive staff, auxiliary persons and assistants and subcontractor of en-software based on reasons which have some connection with the contractual relationship between en-software and the customer prior or after the performance of the ordered services by en-software or its legal representative, executive staff, auxiliary persons and assistants or subcontractor , , the customer is obliged to indemnify en-software or its legal representative, executive staff, auxiliary persons and assistants or subcontractor, as far as en-software or its legal representative, executive staff, auxiliary persons and assistants or subcontractor are not liable according to these T&C.

2. product liability

The customer explicitly waives the assertion of claims for damages with respect to property damages based on the Act of Product Liability (hereinafter „PHG") which were incurred in course of his enterprise. Insofar the right to resale of the contractual commodities is agreed upon

between en-software and the customer, the customer is in case of a resale obliged to to impose the above mentioned waiver on his or possible business partners. In case the waiver is not imposed as described above the customer is obliged to indemnify en-software and to bear all costs which arise in connection with such a liability. In case the customer himself is made liable within the scope of the PHG he waives any recourse vis-à-vis en-software. This provision does not apply to consumers.

3. Transfer of perils

3.1. Peril of random demise and random deterioration of the commodities is transferred to the customer with delivery, in case of shipping-purchase with handing over to the shipper, freight carrier or the person or establishment appointed for the handling of the shipping.

3.2. In case of download and sending of data via the internet the peril of demise and alteration of the data is transferred upon the customer with crossing the first network interface between the server of en-software and the internet.

3.3. Customer's default of acceptance resembles delivery.

4. legal examination

4.1. The customer acknowledges that neither the documents provided by himself nor the services performed by him or by third parties as substitutes will be legally examined by en-software. The customer bears the responsibility to himself conduct a legal examination at his own costs.

4.2. en-software does not incur liability or guarantee for possible violations of legal provisions which form ever by the customer as well as for the damages and costs resulting there from, like especially costs for legal proceedings, remedial action etc. The customer is indemnifies en-software in that respect.

VII. LEGAL RESERVATION AND RETENTION OF TITLE

1. Retention of title

1.1. Works, delivered commodities as well as miscellaneous performances of en-software remain in the proprietary of en-software until all receivables have been fully paid by the customer(capital plus interest for default and expenses for reminder, collection as well as keeping in evidence), regardless of the legal ground, regardless whether the receivables are connected to this or prior dealings between the customer and en-software . The customer is obliged to secure in the period of lingering proprietary of en-software the preservation of the conditional commodities in fully resalable condition. On open accounts the reserved proprietary shall be deemed to be a securing for the balance receivable. The customer bears the full risk for the conditional commodities, in particular for the risk of demise, loss or deterioration.

1.2. During the existence of the lingering proprietary resale, processing or pledging, assignment for security or other dispositions re the purchased or repaired commodities to a third party is impermissible. The customer has to reimburse en-software all costs for measures necessary to remidate the third party intervention, in particular costs for selection proceedings.

1.3. The customer assigns his claim against a third party en-software, as far as his rights emerge from a resale or processing or any other legal ground in connection with the conditional commodities, until the customer settles all his claims against en-software. The customer is obliged to immediately inform en-software of an access by a third party to the conditional commodity otherwise facing a claim for damages. The customer is obliged to specify on en-software's demand his recipients and to inform them about the assignment in time. The assignment has to be journalised in the account books, in particular in the „open-item"-list and has to be made apparent to the recipient on delivery notes, invoices etc.. In case of default of payment by the customer against en-software all sale revenues coming in to the customer have to be separated and the customer holds them only in the name of en-software.

1.4. Without period of grace and without withdrawal from the contract en-software is entitled to demand the return of the conditional commodities from the customer excluding any right of retention by the customer, if he is in default with the fulfilment of his obligations against en-software. The assertion of the retention of title does not require the withdrawal from the contract and shall not be deemed as a withdrawal from the contract and furthermore does not release the customer from his obligations, in particular his obligation to pay the purchase price or the repair fee. The retraction of the conditional commodities shall only then be deemed as a withdrawal from the contract, if en-software expressly declares so in writing. In case of retraction of commodities the customer is obliged to bear the resulting costs for transport and manipulation.

2. rights concerning the delivered software

2.1. In case of delivery of software en-software, unless otherwise expressly stipulated, grants the customer a non-transferable, not exclusive right of use of the said software, , in doing so the customer accepts the then current applicable license provisions, even in case of third-party-software. In case of violations the customer indemnifies en-software. In any case the customer has to contribute within his means to a possible damage prevention .

2.2. In case of use of licensed third-party-software by the customer the customer is obliged to study and closely comply with the license provisions. No guaranty is given for software retrieved by the customer qualified as "Public Domain" or "Shareware" and not being created by en-software. The customer has to observe the provisions on usage given by the author and possible license provisions and refrain from any transmission of the software, even a short term license, to third persons. This applies also to parts of software products. In any case the customer fully indemnifies en-software in case of claims based on the infringement of the above mentioned obligations.

2.3. Any proprietary or intellectual property rights, including, but not limited to the copyright, with respect to the software products and licensed software products and any copy therof rest with en-software or its suppliers. Proprietary rights and intellectual property of and with respect to the content, being accessed via the software product, rest with the respective owner and are secured by adequate copy rights or other laws on intellectual property. Save other written provisions the customer holds no rights on this content.

3. Intellectual property rights

3.1. Diagrams, drawings, cost estimates and all other technical documents, the technical realisation of planning as well as brochures, catalogues, samples or the like remain in the intellectual property of en-software. The customer accepts that the above mentioned material is exclusively copyrighted for en-software. No right to use or right of exploitation is acquired by contribution of the customer , in particular in the creation and/or enhancements of a software product. Any usage, in particular transfer, copy, reproduction, circulation and publication, particularly of licensed software products, requires the express consent of en-software. In case of infringements of this provision, the customer is obliged to pay a contractual penalty in the amount of € 30.000,00 per infringement to en-software.

3.2. The customer warrants en-software not to infringe any trademark rights, rights to a name, personality rights, copy rights, labelling rights or any other rights of third persons by or in connection with the placing of orders, for example by transmitting data or documents. The customer indemnifies en-software with respect to all claims, in particular such according to the MSchG or UWG, which are made be third persons with respect to an infringement in such rights, including the expenses of the defence against such claims.

3.3. The acquisition of all written stipulated rights of usage and exploitation by the customer occurs only after payment in full of all invoices to en-software. Until this time en-software reserves all rights of usage and exploitation. en-software is furthermore entitled in case of default of payment to enjoin the customer from using the work performed.

3.4. All intellectual property rights and proprietary rights not expressly granted to the customer in writing are reserved by en-software.

VIII. SPECIAL PROVISIONS FOR THE GRANT OF LICENSES FOR THE USAGE OF SOFTWARE (LICENSE PROVISIONS)

1. general issues and extent of usage:

1.1. The software product contains the stipulated, corresponding software components, media, printed material and documents in electronic form („softwareproduct"). Every additional software code, which is provided to the customer by en-software as a part of support performances (item IX. of the T&C) , shall be deemed as part of the softwareproduct.

1.2. As far as the transferral of a license for the usage of software is stipulated en-software grants the customer as an end-user the non-exclusive and non-transferable right, to install copies of the licensed softwareproduct on the computer of the customer and use them. The softwareproduct may only be used in accordance with all applicable laws.

The number of the simultaneously installed copies of the softwareproduct on the customer's computers/servers may not exceed the number of granted licenses (depending on the stipulated license model: one place license; multi-user license for the stipulated number of workstations; Server/Client-license for the stipulated number of clients; site license). The customer is however entitled to make the necessary copies for saving and archival storage. The customer is obliged to immediately disclose to en-software the place of the saving and the processing of the programms/softwareproduct.

Further rights of usage for the customer do not exist. A usage of the licensed software by access of third persons through electronic exchange of data/data transfer is not included by the license and requires a separate agreement between the contract parties. The customer is in particular not entitled to transfer the rights referred to herein to third persons or to grant them respective rights of usage. The customer is not entitled to sell, let, lease, lend or to export the softwareproduct.

1.3. The customer is not entitled to remove or alter the copyright-notation from the copies of the softwareproduct.

1.4. Reverse Engineering, decompilation and disassembly of the softwareproduct by the customer or third persons is – unless otherwise agreed in writing - forbidden.

2. period of usage

The period of usage is in principle stipulated in the offer, the confirmation of the order and in the invoice respectively. In the absence of a stipulation the duration of usage is open-ended; it commences on the day on which the customer declare acceptance of the programs. The contract with respect to the usage of the license renews itself after expiry of the stipulated minimum period of usage indefinitely, unless terminated in writing by either party to the expiry of the stipulated minimum period of usage . Item I.6. applies. The customer is obliged after lapse of the right of usage with respect to a software product, in particular in case of termination of the contract, to destroy the programs and program documents received from en-software and possible copies thereof. The customer has to notify en-software in writing about the destruction of the software being the subject of the contract within 10 days after lapse of the right of usage at the latest, otherwise a contractual penalty in the amount of € 10.000,00 is agreed upon.

3. Fee

The customer is obliged to pay en-software for the minimum duration stipulated in the license-for-usage-contract a usage fee as stipulated in the license-for-usage-contract either one-time or in monthly instalment, payable after receipt of the licensed software. If the obligation to pay commences during a calendar month the usage fee amounts to 1/30 of the monthly usage fee per day. The reimbursement for data processing media and shipping and handling is effected separately . As far as incurred, the reimbursement for the support with the usage of the programmes and the training of the personnel will be invoiced to the customer monthly, at the end of the calendar month respectively, according to the stipulated reimbursement.

4. Relationship to miscellaneous provisions of the T&C

The other provisions of the T&C, in particular item V. („*Warranty*"), item VII. („*Legal reservation and retention of title*") and item VI. („*Liability, product liability, transfer of peril*"), are not affected by this item VIII. („Special provisions for license-rights and software") and complete this item.

IX. SPECIAL PROVISIONS FOR THE SOFTWARE SUPPORT

1. The purchase of a software product, an organisation or programming service or a license for usage of a software product does not include software support services of en-software. The service „software support" has to be ordered separately by the customer to the software product or other services of en-software.

2. The scope of services re support service by en-software depends upon whether support class A and/or B and/or C were agreed upon.

2.1. Support class A includes the support service „*information service*" and „*hotline-service*" to the following extent:
2.1.1.„*information service*": en-software informs the customer about new program versions, available updates , program developments.
2.1.2. „*hotline-service*": en-software is in case of possible emerging problems at the customer's disposal for telephone advise with respect to the application of the contractual software during the usual business hours of en-software . en-software is entitled in case of recurrent claiming of the adivse service for similar problems, to make further „*hotline-service*" depended upon that the customer orders a training course against reimbursement from en-software .

2.2. Support class B includes the support service „*Update Service*" to the following extent:
en-software provides the customer on dates set forth by en-software with the program-updates provided by the producer of the software. These program-updates can include corrections and/or adjustments of errors or program problems, which appeared neither during the test run nor in the daily application during the period of warranty, or enhancement of the existing scope of services etc. The upgrading of programs as well as alterations due to legal provisions, which lead to new programs and program modules, as well as possible necessary expansion of the hardware, are not included in the support service „*Update Service*", and therefore have to be ordered separately with en-software against consideration.

2.3. Support class C includes the support service „*installation of program updates*" and „*trouble-shooting on-site*" to the following extent:
2.3.1. „*Installation of program updates*":   program-updates are levelled and put on by en-software onto the contractual computer systems at the stipulated location of the computer system.

2.3.2. „trouble-shooting on-site": in case an emerged problem being object of the support service can not be solved by the„hotline-service" en-software will carry out the problem solving on the location of the computer system.

3. If software support services have been ordered by the customer separately, they are - unless otherwise agreed upon in writing – performed at en-software's discretion at the location of the computer system or in the office of en-software or by remote maintenance via the internet during the business hours of en-software. If support services by en-software outside of the business hours of en-software are stipulated or only possible in that period of time, the resulting additional costs (labour expense; costs for a subcontractor etc.) are charged separately.

4. The software support services of en-software in the support classes A, B and C do not in particular include:
- services, which result from alterations of the system software, hardware and/or alterations of software programs being reciprocal program-dependent and not being subject of the contract, ;
- individual adjustments of the program and reprogramming by en-software;
- alterations of programs due to change of legal provisions, if they require an alteration of the program logic;
- the elimination of errors, data loss and damages which were caused by the customer or third persons or which result from program alterations of the contractual software programs without prior written consent of en-software or which result from the usage of the software program for purposes other than intended
- data conversion, rebuilding of data stocks and adjustments of interfaces.

5. If en-software is unjustified called upon by the customer in the scope of the „support services", in particular because it concerns excluded support services according to item. IX.4., en-software is entitled to separately invoice all costs resulting from the service rendered.

6. The location of the contractual computer systems has to be contractually stipulated. The customer is obliged to immediately notify en-software about a change of location. In case of a change of location en-software is entitled to terminate the contract with immediate effect or to newly fix the charges for the support. Consumers are thoroughly informed about the obligation of the immediate notification in case of change of location as well as the legal consequences of a change of location already at the conclusion of the contract and this is especially pointed out to them.

7. The other provisions of the T&C are not affected by this item IX. („Special provisions for the software support") and complete this item.

X. CUSTOMER'S DUTY TO CO-OPERATE

1. The respective duties of the customer to co-operate depend on the respective order. The customer is in any case obliged to support en-software during the fulfilment of its order to the best of his abilities and to participate in the fulfilment of the order. The customer will in particular pass all information and will transfer documents and data on time and completely as well as in appropriate form (as well as in electronic form), as necessary and beneficial for the fulfilment of the order. The customer has in particular to fulfil all necessary or stipulated perpetrations and pre-arrangements .

2. The customer has to immediately notify en-software about all problems, troubles and circumstances in writing which are relevant for or which may influence the fulfilment of the order.

3. In case of programs being individually created by en-software the customer has to unless otherwise stipulated in writing provide en-software at his costs with sufficient test data and to facilitate test-options at the customer's site.

4. Further duties to co-operate laid down in the T&C are not affected.

XI. TERMINATION OF THE CONTRACT

1. reasons for a termination of a contract

1.1. The observance of the stipulated dates of payment is an essential condition for the performance of the services by en-software. Thus in case of default of payment en-software is at his own discretion entitled after unsuccessful reminder via email or in another written form stating a period of grace in the amount of two weeks and a threat of termination of the contract to terminate the contract with immediate effect .

1.2. Beside default of payment and default of acceptance, the commencement of insolvency proceedings over the assets of the customer or the dismissal of such proceedings due to lack of cost-covering assets, the following shall be deemed as a good cause shown which entitles en-software to terminate the contract : ; the application for an out of court reconciliation ; the pendency of to at least two restraint proceedings by creditors of the customer; the commencement of liquidation proceedings; in case of infringements of duties of the customer which are laid down in the T&C; if the behaviour of the customer or a person imputable to the customer makes the continuation of the contractual relationship unaccept-able for en-software as well as all other important reasons which are tantamount to the reasons mentioned above.

1.3. All cases of termination with immediate effect in accordance to the T&C which result from a reason lying within the sphere of the customer, does not affect the claim of en-software in case of continuing obligation for fees for the stipulated duration of the contract until the next date of termination and the assertion of damage claims. The further performance of services can generally, in case the on-time payment of invoices of en-software is at risk, be made depended upon an adequate security or an advanced payment; this in particular in case en-software is or may be entitled to immediately terminate the contract according to item XI. 1.1. or 1.2..

2. en-software's rights to choose in case of termination of the contract

In case of withdrawal from the contract or termination of the contract en-software has in case of default of the customer the choice to either claim a liquidated damages in the amount of 25 % of the net invoice amount or the reimbursement of all actually incurred damages . In case the customer withdraws from the contract without being entitled to do so or demands it en-software has the choice to either demand the fulfilment of the contractor consent to the annulment of the contract; in later case the customer is obliged to at en-software's discretion either pay liquidated damages in the amount of 25% of the gross invoice amount or the actually incurred damages.

XII. INFORMATION ABOUT DATA PROTECTION

1. In case of conclusion of a contract en-software collects and processes the individual-related data provided by the customer unless otherwise statutory set forth and uses them during the contract duration. Individual-related data shall be deemed all information, upon which a person can be directly or indirectly identified e.g. name, address, e-mail address, date of birth, occupation, account details etc.

2. For the purpose of market research as well as for a demand-optimised layout of the offer en-software creates and utilizes anonymous user-profiles. Against this an objection can be raised, which can be exercised by the customer anytime either by declaration or sending an e-mail. en-software provides the customer information free of charge about the individual-related data saved by en-software. The customer can at any time request the correction, deletion and blocking of his individual-related data saved by en-software, provided that no statutory provisions stipulates otherwise.

3. For the purpose and for the duration of the credit assessment and for the prevention of payment loss en-software provides the therefore necessary individual-related data to the respective creditor organisation. For the purpose and for the duration of the shipping of commodities en-software provides the therefore necessary individual-related data to the undertaking commissioned with the shipping. Furthermore the customer consents that in case of a payment via credit card desired by him all invoicing details are transmitted to the respective credit card institute in such a form necessary for the invoicing.

4. The customer consents that en-software sends him advertisement and information related to products and services of en-software to an adequate extent by e-mail. The customer can at any time revoke this consent. en-software grants the customer in every advertising e-mail the possibility to decline the receipt of further notices.

5. The customer expressly consents that the inquiry, processing and usage of his individual-related data which were provided by him in course of the contract can be used for the purpose of en-software's marketing vis-à-vis the customer, inter alia for the creation of a customer file. This consent can be revoked at any time by the customer with effect for the future.

6. The customer takes note of the Act on E-Commerce (ECG), on the basis of which en-software is under certain requirements entitled and obliged, to provide information about the customer.

7. In completion of the above mentioned provisions the customer expressly consents that en-software is entitled to put the individual-related data of the customer including his company logo on his list of references.

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XIII. MISCELLANEOUS PROVISIONS

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1. Applicable law

Unless statutory excluded, the statutory provisions applicable between two general merchants apply. This provision does not apply to consumer business transactions.. Austrian law shall be applicable, except for the UN Convention on contracts for the International Sale of Goods and not obligatory reference provisions.

2. Language

The language of the contract is English.

3. Locus standi, place of performance

1. All disputes arising out or in connection with this contract shall be settled in front of the factual competent court at the registered seat of the en-software, save for the instance of a consumer contract . For all disputes arising out or in connection with this contract against a consumer who have their registered residence, customary residence or place of occupation inland, the court shall be competent in which district the consumer has his registered residence, customary residence or place of occupation.

2. Place of performance is – unless otherwise agreed, the registered office of en-software.

4. Written form for deviations and amendments of these T&C

Deviations and amendments of the T&C as well as the order or other parts of the agreement between en-software and the customer must be in written form (the requirement of written form is also met by a signed telefax or e-mail). Oral subsidiary agreements do not exist.

5. Written form for customer's notifications

All notifications and declarations of the customer, which affect the contractual relationship, must be in written form.

6. Change of address; access to electronic declarations

The customer has to immediately inform en-software in writing of changes of his name or address. In case no change of address notice is given, all documents shall be deemed received, if sent to the address of the customer last notified by him. If the customer desires in case of a change of name, which has not been notified on time, the issuance of a new invoice en-software will as far as possible comply with it; This however does in no case hinder the maturity of the original invoice.

Electronic declarations shall be deemed received, if send to the e-mail address last notified by him; in case of consumers, an e-mail shall only then be deemed received (§ 12 ECG), if the e-mail can be accessed by the consumer under ordinary circumstances.

7. Saving clause

The possible ineffectiveness of individual provision shall not affect the validity of the remaining provisions of the T&C. Save in the case of consumers, the invalid provision shall be replaced with a valid one which comes economically closest to the intended spirit and purpose of the invalid provision.