

General Terms and Conditions

Move IT Software GmbH

1. General

- 1.1 These "General Terms and Conditions" shall exclusively apply to all our deliveries and services.
- 1.2 The complete wording of our company name reads as follows: Move IT Software GmbH, hereinafter referred to as Move IT.
- 1.3 Orders and agreements shall only be legally binding if placed by Move IT in writing by authorised signatories or signed by agents holding commercial power and shall bind the parties only to the extent stated in the acknowledgment of order.
- 1.4 Terms and conditions of purchase of the Customer shall hereby be excluded with respect to the present legal transaction and the entire business relationship. As a matter of principle, offers shall be subject to change.
- 1.5 If individual provisions of these "General Terms and Conditions" are ineffective due to mandatory statutory provisions the "General Terms and Conditions" shall remain legally binding except for the ineffective provision.

2. Service and Testing - Organisation Services, Programming Services and Licences to Use the Work

- 2.1 Subject-matters of an order may be:
 - drafting of organisational concepts
 - global analyses and detailed analyses
 - developing of individual programs
 - delivery of standard programs
 - acquisition of licences
 - training of operating staff
 - co-operation in putting into operation (migration support)
 - advice via phone
 - program maintenance
 - provision of software for online use (application service)
 - other services
- 2.2 Individual organisational concepts and programs shall be developed according to type and extent of the binding information, documents and aids which have been made available completely by the Customer. This includes, inter alia, practical test data and sufficient testing opportunities, which the Customer shall provide in time, during normal working hours, and at his cost. If the Customer already uses the system which has been made available for testing purposes in operation, the Customer shall be responsible for back-up of real data.
- 2.3 Individual programs shall be developed exclusively on the basis of written specifications which Move IT prepares against payment of the costs incurred on the basis of the documents and information made available to it or those documents which the Customer makes available in this respect. Unless otherwise expressly stated in the written specifications, neither existing software solutions nor other documents or existing work processes shall be considered the basis for development of individual programs. The Customer shall check accuracy and completeness of the written specifications and shall add an approval note. Change requests which are made at a later point may result in separate agreements on dates and prices.
- 2.4 Individually developed software and/or program adaptations shall be accepted by the Customer with respect to each program package concerned not later than four weeks after delivery. Such acceptance shall be confirmed by the Customer in an acceptance report. If the Customer fails to accept the program within such period, the delivered software shall be deemed accepted. If the software is used in operation, it shall be deemed accepted in any case.

- 2.5 If standard programs are ordered for purchase or provision for use the Customer confirms that he knows the scope of the services of the ordered programs by placing the order.
- 2.6 If it turns out in the course of the work that execution of the order in accordance with the specifications is not possible in fact or for legal reasons, Move IT shall be obliged to immediately inform the Customer thereof. If the Customer fails to change the specifications accordingly and/or fails to create the prerequisites for making execution of the order possible, Move IT may refuse to execute the order. If execution of the order is not possible as a result of failure on the part of the Customer or due to a subsequent change of the specifications by the same, Move IT shall be entitled to cancel the order. The costs and expenses incurred by then as well as the costs of disassembly, if any, shall be reimbursed by the Customer.

3. Warranty

- 3.1. Provided that the Customer has used the delivery items/services in accordance with the installation requirements and instructions of the contractor applicable from time to time and has used the same under the operating conditions applicable from time to time Move IT shall warrant in accordance with the provisions of these GTC that the delivery items/services are of the agreed functionality and free from defects in title.
- 3.2. The warranty period shall be six months as of delivery.
- 3.3. As used in these GTC shall be any failure and any software error. However, a defect only exists in the case of deviations from the applicable specifications that disturb functionality.

No warranty shall be assumed for minor or insignificant defects or impairments; this shall apply, in particular, to defects by which the agreed or usually expected usability is not impaired and to non-reproducible defects. Move IT shall assume no warranty either that the programs as selected by the Customer are compatible, that the programs work without interruptions or absolutely free of errors or that all defects can be repaired.

Move IT shall not be responsible for a defect even if the defect is based on the task defined by the Customer or an insufficient or faulty duty of the Customer to co-operate or if the functions do not comply with the requirements of the Customer; furthermore, no warranty shall exist if the Customer single-handedly modifies or has modified the software. Move IT shall assume no warranty whatsoever for compliance of the functions with the law, in particular abroad. The Customer shall be solely responsible for ensuring that he complies with the statutory provisions applicable to him of whatsoever type and content; the Customer shall fully indemnify and hold Move IT harmless in this respect.
- 3.4. The Customer shall notify defects in writing by giving a detailed description of the problem. Warranty in the case of a justified notice of defects shall include diagnosis and repair of defects. Any functional failures shall be notified by the Customer immediately and in detail. Move IT shall support the Customer in identifying defects and causes of defects; unless the Customer can prove that the defect is attributable to Move IT, Move IT shall be entitled to charge the customer for the services rendered by it in this connection.

The Customer shall allow Move IT to take all measures necessary for examination and repair of defects.
- 3.5. Application of Sections 924 and 933b of the Austrian General Civil Code [ABGB] shall be excluded.

- 3.6. Defects shall primarily be repaired through improvement. Improvement shall be effected at Move IT's choice either through repair of the defect, making appropriate changes to the software, making available of a new program version, delivery of new software or by Move IT showing reasonable possibilities of avoiding the effects of the defect. The Customer shall support Move IT accordingly; a prerequisite of any repair of defects shall, in particular, be that Move IT is given all documents and information necessary and that Move IT is granted unrestricted access to hardware and software during the normal working hours of the Customer. The Customer shall accept a new program version in any case unless it causes unreasonable adjustment and migration problems to the Customer.
- 3.7. The Customer may demand cancellation of the contract or reduction of the price only if and when several attempts to improve the defect finally fail although a grace period of not less than ninety days was granted in writing. Defects of individual programs shall not entitle the Customer to rescind the contract with respect to the other programs.
- 3.8. Any compensation for an (attempted or successful) repair of defects by the Customer itself or by third parties (substitute performance) shall be excluded.
- 3.9. The costs of support, wrong diagnosis, bug-fixing and troubleshooting for which the Customer is responsible as well as other corrections, changes and supplements shall be carried out by Move IT exclusively for a charge. This shall also apply to repair of defects in the case that program changes, supplements or other interferences have been carried out by the Customer itself or by third parties.
- 3.10. Furthermore the Contractor shall assume no warranty for errors/bugs, failures or damage caused by improper operation, changed components of the operating system, interfaces or parameters, use of unsuitable organisational resources and data carriers, to the extent that they are prescribed, due to abnormal operating conditions or transportation damage.
- 3.11. To the extent that changing or supplementing of existing programs is the subject-matter of the order the warranty shall also cover such change or supplement. However, the warranty for the original program shall not be renewed thereby.

4. **Scope of Services: Software Support Services - Maintenance**

- 4.1 The services which are the subject-matter of the contract shall be carried out by Move IT within the normal working hours of Move IT. If as an exception and at the Customer's request services are rendered after normal working hours the additional costs shall be invoiced separately. The staff to provide the service which is the subject-matter of the contract shall be selected by Move IT and Move IT shall be entitled to employ third parties for that job.
- 4.2 Move IT undertakes to produce the software programs which are the subject-matter of the contract in accordance with the relevant scope of services of the maintenance class agreed hereinafter unless the Customer uses a version that is older than the last but one program version:

Maintenance class A:

* **Update service:** At the date fixed by it Move IT shall make available to the Customer the program updates provided by the manufacturer. Such program updates include corrections for errors/bug fixes, repair of program errors, if any, that have neither occurred during test run nor during use in operation within the warranty period, improvements of the scope of services, modifications of software programs that are necessary due to changes of statutory provisions.

Changes of statutory provisions that result in a new program logic, i.e. changes of existing functions which result in new programs and program modules and hardware extension that may become necessary shall not be included in the services to be rendered under this contract. Such programs and the necessary data carriers and documentations shall be offered to the Customer separately.

The supplier shall expressly not be responsible for updates of master data which the customer acquired in connection

with the software that is the subject-matter of the contract and in connection with contracts concluded with third parties.

* **Archiving and provision of the software programs which are the subject-matter of the contract:** Move IT undertakes to archive the software programs which were developed by it and are the subject-matter of the contract in a computer-readable form and the documentation to the extent that is necessary to fulfil the obligations under this contract and, if necessary, shall make them available to the Customer in accordance with the provisions of the contract underlying the purchase.

* **Analysis of reported errors**

* **Update of online support according to further developments of the program(s)**

Maintenance class B:

* **Scope of services of maintenance class A**

* **Hotline service:** With respect to problems that may occur from time to time Move IT shall be available to the Customer during Move IT's agreed hotline hours for consultation in connection with use of the software programs which are the subject-matter of the contract. In the case that such hotline support is used several times Move IT shall be entitled to make further contractual support for similar problems subject to the requirement that additional training measures are taken which are subject to a charge and not included in the contract.

* **Remote support:** If support via the hotline service is not sufficient and/or if use of a remote tool defined by Move IT is reasonable, the problem shall be solved at the Customer's computer if such tool is available. Acquisition and installation of such tool shall not be part of the scope of services.

* **Troubleshooting on site:** In the case that troubleshooting as included in the agreed scope of services cannot be provided by the hotline service, remote support, etc., on which Move IT shall decide, Move IT shall effect troubleshooting at the place where the computer system is located and all travelling and commuting expenses and expenses for overnight stays, if any, shall be invoiced separately.

- 4.3 An error to be dealt with shall exist if even the latest version of the software program which is the subject-matter of the contract shows a behaviour that deviates from the relating specifications/documentation and if such behaviour can be reproduced by the Customer.

Any errors that may occur and notices of defects shall be reported immediately to Move IT (in writing). For the purpose of a detailed examination of errors that may occur, the Customer shall be obliged to make available free of charge and to support the computer system used by him (in the case the system is connected online with other computers also the relevant connection), software programs, protocols, diagnosis documentation and data to a reasonable extent for testing purposes during normal working hours of Move IT. Errors identified for which Move IT is responsible shall be solved by Move IT within a reasonable period of time.

Move IT shall be released from this obligation if this is impeded by defects for which the Customer is responsible and which are not repaired by the Customer.

Troubleshooting shall be effected by means of a software update or a reasonable alternative solution.

5. **Services not Covered by this Contract**

- 5.1 Unless expressly agreed otherwise in this contract the costs of travel, stay and commuting times of the persons of Move IT instructed to carry out the service.
- 5.2 In the case of unauthorised use of services Move IT shall be entitled to invoice the costs incurred to the Customer at the rates applicable from time to time.
- 5.3 Services which are necessary due to changes of the operating system, the hardware and/or changes of the software programs and interfaces that depend on other programs and are not the subject-matter of the contract.
- 5.4 Individual program adaptations and/or new programming.
- 5.5 Program changes due to changes of statutory provisions if they make a change of the program logic necessary.

- 5.6 Move IT shall be released from all obligations under the present contract if program changes of the software programs which are the subject-matter of the contract are effected without Move IT's prior consent, by staff of the Customer or third parties or if the software programs are used for purposes other than those agreed.
- 5.7 Repair of errors caused by the Customer or third parties, in particular including expenses incurred by reports arising from inadequate training, non-observance of online support, or operating errors.
- 5.8 Loss or damage caused directly or indirectly by acts or omissions in the course of operation by the Customer or user.
- 5.9 Data conversions. Data recovery and adjustment of interfaces.
- 6. Prices**
- 6.1 All prices are stated in euros exclusive of VAT. They shall only be applicable to the current order. Unless otherwise stated costs of trainings and courses included refer to the location of Wels.
- 6.2 The list prices applicable at the date of delivery shall apply to standard programs. All other services shall be invoiced on the basis of the work carried out, at the rates applicable on the day the service is rendered. Deviations from the working time that forms the basis of the contract price for which Move IT is not responsible shall be invoiced according to the hours actually worked.
- 6.3 Travel expenses, per diem allowances and overnight expenses actually incurred shall be invoiced separately to the Customer at the rates applicable from time to time. Commuting times shall be considered working time.
- 6.4 Agreed lump-sum cost contributions shall be payable by the Customer for the calendar year/partial year in advance.
- 6.5 With respect to services which can be rendered on the premises of Move IT but, at the Customer's request, are rendered at the Customer's as an exception, the Customer shall bear the costs for travel, stay and commuting times of the persons of Move IT instructed to carry out the service.
- 6.6 Stability of value of maintenance fees and hotline service rates is expressly agreed. The basis for calculation of the stability of value shall be the 2005 Consumer Price Index, as published monthly by Österreichisches Statistisches Zentralamt, or an index replacing the same. The index figure applicable at the time of conclusion of the contract shall be the basis of calculation. The prices shall increase in the same way as the index figure increases.
- 6.7 All charges and taxes (in particular VAT) shall be calculated on the statutory basis applicable from time to time. In the case that the tax authorities subsequently invoice taxes or duties in addition, they shall be borne by the Customer.
- 7. Terms of Payment**
- 7.1 Unless otherwise agreed our invoices shall be promptly due for payment without any deductions and free of charges. Irrespective of a different purpose stated by the Customer Move IT shall be authorised to use payments received first to cover costs, out-of-pocket expenses, cash expenses and default interest incurred and at last to settle the invoice amount outstanding. If cheques are accepted this shall be made on account of payment without exception. The same shall apply to assignment of accounts receivable. Collection charges, discount interest and expenses shall be borne by the Customer.
- 7.2 The date of receipt of the invoice amount in the account advised by us on the invoice shall be expressly agreed to be the date of payment with debt-releasing effect. The risk of the duration of the remittance and of the remittance procedure until receipt of the amount in our account shall be borne by the Customer.
- 7.3 Observance of the agreed payment dates shall constitute a material condition for execution of the delivery and/or performance of contract by Move IT: non-observance of the agreed payment dates shall entitle Move IT to discontinue ongoing work and to demand advance payments or a security deposit for services still outstanding. If the Customer is in delay of payment of at least one invoice that is already due despite a reminder and having been granted a grace period of two weeks, all claims under the business relationship with the Customer shall become immediately due for payment, irrespective of the payment periods granted or incoming cheques. In the case of a delay Move IT shall also be entitled to rescind the contract; this shall apply in particular if no advance payments or security deposits have been effected for outstanding services. All costs incurred by Move IT and the damage suffered by Move IT, including lost profit, due to the delay or rescission of the contract shall be reimbursed by the Customer.
- 7.4 Furthermore, Move IT shall have the right to rescind the contract if opening of bankruptcy proceedings or composition proceedings over the assets of the Customer has been petitioned for.
- 7.5 In any case Move IT shall be entitled to charge default interest at a rate customary in the banking industry, however not for the period of delay in payment for which the customer is provably not responsible.
- 7.6 The Customer shall not be entitled to withhold payments on the grounds of incomplete total delivery, guarantee claims or warranty claims or complaints.
- 7.7 The Customer shall not be entitled to set off claims, if any, against claims of Move IT; this shall also apply in the case of Move IT's insolvency.
- 8. Delivery, Delivery Date**
- 8.1 Our delivery obligation shall be fulfilled by handing over of the goods to the Customer or dispatch to the address advised by the Customer. Shipment of the goods shall be at the Customer's risk. If the goods are collected, Move IT shall be entitled but not obliged to examine the power-of-attorney.
- 8.2 Move IT shall be entitled to withhold deliveries or services as long as invoices for previous services have not been settled. Furthermore, Move IT may refrain from performance of a delivery or a service if opening of bankruptcy proceedings or composition proceedings over the assets of the Customer has been petitioned for.
- 8.3 Move IT shall immediately continue its service as soon as the prerequisites listed in the foregoing paragraph do no longer exist.
- 8.4 Any claims for damages vis-à-vis us on the ground of rescission of contract, non-fulfilment or delay in delivery shall exist only in case of gross negligence; compensation for consequential damage shall be excluded.
- 8.5 In the case of an update service Move IT shall endeavour to provide information regarding the respective inquiries of the Customer within a reasonable period of time during normal working hours of Move IT. If the envisaged dates are not met, the Customer shall have no right to rescission of the contract or damages.
Partial shipments and advance shipments shall be permitted.
- 9. Delivery Date - Programming Services**
- 9.1 Move IT endeavours to observe the agreed performance dates (completion) to the best possible extent.
- 9.2 The performance dates aimed at can only be observed if the Customer makes available all necessary works and documents, in particular the specifications which have been accepted by the Customer, at the dates fixed by Move IT and if the Customer fulfils its obligation to co-operate to the extent required. Move IT shall not be responsible for delays in delivery and increases in costs resulting from incorrect, incomplete or subsequently changed details and information and/or by documents made available; and such default or increases shall result in no default on the part of Move IT. Any additional costs arising therefrom shall be borne by the Customer.
- 9.3 In the case of orders which include several units or programs Move IT shall be entitled to effect partial deliveries and to render partial invoices.
- 10. Liability**
- 10.1. Move IT shall pay damages only in the case of wilful intent or gross negligence; liability for ordinary negligence shall be excluded in any case.
The Customer shall bear the burden to prove that Move IT acted with wilful intent or gross negligence. Liability of Move IT for any claims of the customer arising out of or in

connection with the contract shall, irrespective of the legal ground, be limited to the amount of the consideration payable by the Customer under a contract or other written agreement.

In no case shall Move IT assume liability for lost profit, savings expected but not earned, lost interest, losses from claims of third parties vis-à-vis the customer, increases in costs or additional expenses for legal transactions not concluded, concluded late or faultily between the customer and third parties by use of the software, indirect damage and consequential damage or for damage to recorded data, all of this irrespective of whether it was caused by a defect or a malfunction of the software, no or limited usability of the software or by non-compliance with other contractual obligations.

Move IT shall, in particular, not be liable for recovery of destroyed data.

The statutory period of limitation for claims for compensation based on whatsoever legal ground shall be one year; such period shall commence to run at the point in time at which the Customer obtains knowledge of the damage.

10.3. Move IT shall promise no protective effect for the benefit of third parties.

10.4. In addition, no liability shall be assumed for success of a training, a course or any other service and the resulting benefit. In addition, no right to refuse payment or to withhold agreed payments shall exist on such ground.

10.5. Any liability of Move IT beyond the provisions of these GTC based on whatsoever legal ground shall be excluded.

10.6. In no case shall Move IT assume any warranty whatsoever for the fact that the software is in conformity with any functions or laws, in particular not abroad. The Customer shall be solely responsible for compliance by him with any statutory provisions of whatsoever type and content applicable to him; he shall fully indemnify and hold Move IT harmless in this respect.

11. Secrecy, Data Protection

11.1 Move IT and the Customer undertake to comply with the relevant provisions of data protection, in particular with Section 15 of the Austrian Data Protection Act [Datenschutzgesetz], and to impose this obligation also on their staff.

11.2 However, Move IT shall be entitled to comply with its obligation to furnish information (e.g., company name, number and scope of licences granted) under contracts concluded by Move IT with manufacturers and/or suppliers of programs, software, etc. and other suppliers of master data and to include such data also in its list of references. The Customer expressly grants his consent thereto.

12. Trainings and Courses

12.1 Move IT reserves the right to cancel courses without stating reasons until ten days prior to commencement of the course; afterwards courses may only be cancelled if there are reasons (e.g., sickness of the course instructor).

12.2 If attendance at a course or training is cancelled not later than ten days prior to commencement of the same no costs shall be incurred; thereafter the course fees shall be charged.

13. Loyalty

13.1 The parties undertake to be loyal towards each other. During the term of the contract and for twelve months after termination thereof the parties shall refrain from enticing away or employing staff of the other party who worked on execution of the orders, including via third parties. The party violating this provision shall be obliged to pay liquidated damages in the amount of one annual salary of the staff concerned.

14. Final Provisions

14.1 Also in the case of Customer-specific program adaptations or program developments the right to use the work and copyrights, if any, shall remain with Move IT.

14.2 All disputes arising out of or over this contract shall be exclusively settled in accordance with Austrian law. Applicability of the UN Convention on Contracts for the International Sale of Goods shall be excluded by mutual consent.

14.3 Unless otherwise agreed, the statutory provisions applicable to full merchants shall exclusively apply according to Austrian law, even in the case of execution of the order abroad. Any disputes shall be settled by the court having subject-matter jurisdiction and jurisdiction over the place of the registered office of Move IT. The above provisions shall apply to sale to consumers as defined in the Austrian Consumer Protection Act [Konsumentenschutzgesetz] only to the extent that no different compulsory provisions are provided by the Austrian Consumer Protection Act. Non-compliance with material parts of the contract shall entitle the parties to early termination of the contract without notice.

14.4 For all disputes arising out of or in connection with the contract, including proceedings regarding bills of exchange or cheques, the parties agree on jurisdiction of the court for Wels/Upper Austria having jurisdiction over the subject-matter. Move IT (the Supplier) shall, however, be entitled, at its option, to sue the customer before any other court which may have jurisdiction under national or international law, in particular before the court at the customer's registered office. The regulations stipulated in the foregoing provisions shall also apply in the case of disputes over the coming into existence and/or validity of the contract and/or the effectiveness of the agreement on the place of jurisdiction.

14.5 All legal transactions shall exclusively be subject to Austrian substantive law; the rules of conflict of laws, in particular those of private international law shall be excluded to the extent they provide for applicability of foreign laws. If in the case that a transaction relates to a foreign country Austrian law provides for application of special international substantive laws which are also applicable in Austria, such as, e.g. the adopted UN Sales Law, such laws shall not be applied.

14.6 Any charges and taxes related to delivery of goods or provision of services to the customer shall be borne by the customer alone.

With reference to my official oath of office as a court-appointed and certified interpreter I hereby certify that the above translation is in full conformity with the meaning of the attached copy of the German language original.
Vienna, this 30 April 2008

Andrea Hubalek
Court-appointed and certified interpreter for English