



# EASY SOFTWARE

## GENERAL BUSINESS TERMS OF EASY SOFTWARE AG FOR THE PROVISION AND ADJUSTMENT OF SOFTWARE

### 1. APPLICABILITY

- 1.1 The following terms and conditions shall apply to the provision of standard software and its adjustment to the purposes of the customer by EASY SOFTWARE AG (hereinafter referred to as "EASY"). To be understood under the adjustment of software within the meaning of these General Business Terms is not just the adjustment of standard software, but also the individual software creation for the customer. Insofar as the „software“ is used below this comprises both the adjusted standard software as well as the individually created software.
- 1.2 These General Business Terms shall also apply to follow-up orders irrespective of whether reference explicitly made to these terms and conditions once again with the individual follow-up business.
- 1.3 Deviating business terms of the customer shall not become part of the contract unless they are explicitly recognised by EASY in writing. The execution of services by EASY does not mean a recognition of business terms of the customer.

### 2. CONCLUSION OF THE CONTRACT

The offers of EASY are, insofar as not otherwise explicitly agreed, without obligation. The contract shall only be concluded with the confirmation of the order placed by the customer by EASY or, insofar as no confirmation of the order is carried out, with the start of the software adjustment or software creation by EASY.

### 3. OBJECT OF CONTRACT, PERFORMANCE SPECIFICATIONS, SOURCE CODE

- 3.1 The object of the contract depending on the agreement of the parties is the provision of standard software and its adjustment for the purposes of the customer and/or the individual software creation for the customer. A further part of the services of EASY are a documentation of the software (product documentation with installation instructions in an electronic form), installation and first instructions insofar as not otherwise agreed in an individual case.
- 3.2 EASY shall carry out the adjustment of standard software or the individual software creation according to the requirements created in the performance specifications.
- 3.3 The performance specifications shall be created by EASY. The creation of the performance specifications is liable to remuneration.
- 3.4 At the start of the contract the customer shall make the requirement specifications available to EASY, which is the starting point for the creation of the performance specifications. The requirement specifications show the actual condition existing at the customer together with existing hardware and software environment, the need on the part of the user as well as a first presentation of the functional requirements from the software.
- 3.5 The provision of the source code is not owed by EASY.

### 4. OTHER SERVICE OBLIGATIONS

- 4.1 EASY shall make the software available to the customer in the object code and in a form which is ready for installation.
- 4.2 The software shall – if not otherwise agreed – be installed by EASY in the software and hardware environment of the customer envisaged according to the order confirmation.
- 4.3 EASY shall carry out initial training in the use of the software for the employees envisaged for the software use by the customer against payment. The initial training shall take place as collective instructions, not as individual instructions, at the registered seat of the customer.



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## 5. DEADLINES AND DATES FOR SERVICES

- 5.1 Deadlines and dates for the execution of services shall be agreed by EASY and the customer by mutual agreement and recorded in writing. Only deadlines and dates, which can be determined in terms of the date, can be binding.
- 5.2 If circumstances and events occur of the kind that additional required time can be expected EASY shall inform the customer hereof. Circumstances and events which lie outside of the area of responsibility of EASY, such as e.g.
- the customer does not satisfy a contractual duty to provide assistance,
  - unforeseeable and exceptional events such as e.g. strikes, lock-outs, natural disasters, catastrophes and other events of force majeure,
- shall extend agreed deadlines and dates by a reasonable duration, at least however by the duration of the impediments.

## 6. CHANGES TO THE OBJECT OF CONTRACT

- 6.1 Requests for changes and extensions with regard to the scope of function, programme structure, screen design or other features EASY does not have to take into consideration insofar as they represent a deviation from original contents of the contract, in particular do not comply with the performance specifications or with other service descriptions.
- 6.2 EASY is at liberty to take the requested changes into consideration against an additional payment. The basis for this are the necessary additional time required as well as the per diem rates agreed between the customer and EASY.

## 7. ASSISTANCE OF THE CUSTOMER

- 7.1 The customer undertakes to reasonably support EASY with the execution of the agreed services, in particular with the creation of the performance specifications, with the adjustment to the software or the creation of the software and the installation. The duty to provide assistance of the customer in particular comprises the provision of the information which is necessary for the agreed services of a data processing technological and project organisational kind (e.g. requirements specifications according to Subclause 3.4).
- 7.2 During acceptance tests and if applicable necessary test runs the customer shall provide competent employees who are authorized to assess and make decisions about defects, changes to function and changes to the programme structure. It shall make the envisaged data processing system available to a suitable extent and in the necessary period of time.
- 7.3 The customer shall make the test data which are necessary for acceptance tests and if applicable necessary test runs available to EASY in time.
- 7.4 Insofar as EASY owes the installation of the software the customer shall provide the software and hardware which is necessary for this. The software and hardware environment at the customer which is necessary according to the order confirmation is to be guaranteed by it.
- 7.5 The customer shall name a competent contact for all questions relating to the execution of the contract.

## 8. RIGHTS OF USE

- 8.1 The customer shall receive the non-exclusive, unlimited and non-transferable right to use the software including documentation. This shall include the rights stated in Subclauses 8.2 to 8.6 below.
- 8.2 The customer may reproduce the software insofar as this is necessary for the respective reproduction for its use as intended. The necessary reproductions include the installation on the used hardware as well as the loading in the main memory for the purpose of the flow of the software. Insofar as not otherwise agreed in an individual case only one single back-up copy may be produced and stored, which is to be marked as a backup copy of the provided software.
- 8.3 The customer is entitled to use the software within a network or any other multiple station computer system so that it can be operated at the same time or consecutively from more than one workplace, so-called multiple station application. The type and the number of the users authorized to access the software shall be determined according to the stipulations in the order confirmation. If accordingly



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the number of users authorized to access is limited compared with the total number of users connected to the computer system the customer has to ensure the restriction by technical and organisational measures and to substantiate this towards EASY. For each further increase in the number of users who are authorized to access it has to pay a separate licence fee, which is oriented to the type and the number of additionally authorized users.

- 8.4 The re-translation of the software provided for use and delivered in the object code into other code forms (decompilation) or other types of the reverse engineering of the various production stages of the software are not permitted.
- 8.5 Programme changes are only permitted insofar as they are necessary for using the software in the scope as per contract, in particular for remedying faults, and insofar as EASY does not intend to carry out the requested changes to the programme against a reasonable charge. Excluded from this are supplements and changes to interfaces of the software insofar as these are envisaged for the supplementation and / or change by the customer (so-called scripting). Scripting in the afore-mentioned form is permitted.
- 8.6 The sale or giving as a gift of the software as well as its provision to third parties for a limited period of time – insofar as this is not carried out by way of the rental for purposes of acquisition or of leasing – is only permitted insofar as the third party declares that it agrees with the continued validity of these conditions for use; in this case the customer must hand over all programme copies available in its company to the third party or destroy the copies which are not handed over. As a result of the forwarding of the software the customer's right to use the programme shall lapse or it shall not be entitled to use this for the duration of time-limited provision. The customer undertakes to inform EASY of the name and address of the new user. A rental for purposes of acquisition as well as the forwarding by way of the leasing are not permitted.
- 8.7 The customer shall not receive any further rights to the software than those stated in Subclauses 8.1 to 8.6.
- 8.8 The customer shall not remove copyright notices and other references to ownership, which are located on data carriers, in the programme or in the documentation.
- 8.9 In all cases of the termination of its use authorization (e.g. by cancellation of the contract) the customer shall hand over the software provided to it as well as if applicable other provided objects of contract immediately and shall delete all copies insofar as it is not obliged to a longer storage by law. It shall assure this settlement towards EASY in writing.

## 9. REMUNERATION AND TERMS OF PAYMENT

- 9.1 For the provision of the software the customer shall pay the agreed licence fee to Easy. The remuneration of the further services (e.g. performance specifications, software adjustment) is carried out based on the actual time required by EASY at the per diem rates agreed between the customer and EASY. The amount of the remuneration which is specifically to be paid as well as if applicable agreed instalment or partial payments can be derived from the stipulations in the order confirmation. All prices shall be deemed plus the incurred costs for postage, packaging, insurance, travelling expenses and costs and the respective applicable statutory value added tax.
- 9.2 Invoices are due and payable 14 days after receipt of the invoice.
- 9.3 The customer shall only be entitled to rights to offset insofar as its counter-claims are undisputed or have been determined final and binding.

## 10. ACCEPTANCE

- 10.1 The software shall be accepted after its completion, as a rule after the adjustment and installation of the software.
- 10.2 Insofar as EASY and the customer have not otherwise agreed in an individual case EASY shall demonstrate to the customer based on reasonable acceptance tests the existence of the functions with the software described in the performance specifications or otherwise agreed.
- 10.3 If the software complies with the functions described in the performance specifications or the otherwise agreed functions in all essential points EASY and the customer shall create a written acceptance protocol immediately and sign it. The software shall be deemed as accepted with the signing of the acceptance protocol by the customer and EASY. Possibly determined insignificant defects are to be recorded in the protocol and shall be remedied by EASY within a reasonable period of time. The acceptance may not be



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refused by the customer owing to insignificant defects.

- 10.4 If the customer is obliged to acceptance and if he nevertheless does not sign the acceptance protocol EASY can set a reasonable deadline for carrying out the signature after the unsuccessful expiry of which the software shall be deemed as accepted.

## 11. SUBSEQUENT SATISFACTION

- 11.1 In the event of a defect to the contractually agreed services, in particular the software including the associated documentation the customer shall report this immediately by stating the information which is useful for recognising the defects.
- 11.2 If the customer reports a defect according to Subclause 11.1 EASY shall remedy the defect. The subsequent satisfaction shall be carried out at the choice of EASY in the form of the remedy of the defect or the new creation.
- 11.3 If EASY is not successful with the subsequent satisfaction within a reasonable period of time the customer is entitled to reduction or to cancellation. The waiting for deadlines is only dispensable in the cases regulated by law, in particular if the subsequent satisfaction is finally and seriously refused, has failed or is deemed unreasonable for the customer.
- 11.4 A right of the customer for damages instead of the service is assessed according to the limitations to liability according to Subclause 12 of these General Business Terms. A right to cancellation and to damages instead of the whole service shall however only exist with substantial defects.
- 11.5 The claim for subsequent satisfaction shall become statute-barred within one (1) year beginning with the acceptance of the service. In the event of the fraudulent intent and with the assumption of a guarantee the statutory warranty provisions shall remain unaffected.
- 11.6 The parties make it clear: If Scripting of the customer leads to a deviation of the actual from the plan functionality of the software then this deviation is not to be classified as a defect to the software. The customer shall carry out Scripting at its own responsibility and own risk.

## 12. Limitation to liability

- 12.1 EASY shall be liable for damages according to the statutory provisions for the injury to life, the body or health and for damages according to the Product Liability Act.
- 12.2 EASY shall be exclusively liable for other damages according to the following conditions:
- (a) EASY shall be liable according to the statutory provisions
    - for damages, which were caused by malicious conduct or the absence of a condition guaranteed by EASY;
    - for damages, which were caused by wilful intent or gross negligence of EASY, one of its statutory representatives or vicarious agents.
  - (b) For damages from a slightly negligent breach of duties which are essential for the contract, except in the cases stated in 12.1 and 12.2 (a), first dash, EASY shall be liable for damages limited to the amount of the foreseeable damages, the occurrence of which typically has to be expected with contracts of this kind. To be understood as duty essential for the contract in the afore-mentioned sense is such a duty which is essential for achieving the object of the contract or the satisfaction of which makes the proper execution of the contract possible at all and on the compliance with which the customer may as a rule rely.
- 12.3 A co-fault of the customer is to be offset against the amount of a possible claim for damages. EASY shall in particular only be liable for the replacement of data insofar as the customer has taken all necessary and reasonable precautionary measures for data backup and ensured that the data can be reconstructed from data material, that is kept available in a machine-readable form, with a reasonable amount of work.
- 12.4 With so-called scan programmes of the software (programmes, which provide an electronic entry of paper documents and their conversion into machine-readable data material) Subclause 12.3 Sentence 2 applies accordingly with the additional condition that the customer has ensured that the data until their conversion into a machine-readable form can be reconstructed from data material, which is kept available physically, with a reasonable amount of work.
- 12.5 Incidentally all liability is excluded.



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## 13. NON-DISCLOSURE OBLIGATION AND DATA PROTECTION

- 13.1 The customer and EASY undertake to treat the information respectively received about the other contractual partner within the framework of the initiation and execution of the contract strictly confidential. The term „information“ is principally to be understood in a broad meaning hereby and comprises all documents of an electronic kind and in a print form, including the terms and conditions of the contract as well as the information which becomes known during an oral presentation or discussion. Excluded from this is such information which is public knowledge or which the customer or EASY as proven received from third parties without being obliged to non-disclosure. The use of the received confidential information shall only take place insofar as it is necessary for satisfying the object of the contract. A use for other purposes is not permitted unless the customer or EASY previously declare their consent in a letter form.
- 13.2 EASY or the customer shall return possibly received confidential information after termination of their services and delete all remaining copies.
- 13.3 EASY shall comply with the statutory provisions of data protection.

## 14. ASSIGNMENT

The assignment or transfer of rights and/or duties from a contract by the customer require the consent of EASY.

## 15. Sub-contractors

Die EASY is entitled to use sub-contractors in full or in part with the execution of services.

## 16. FINAL PROVISIONS

- 16.1 All agreements, which include a change, supplement or specification of these General Business Terms, are to be recorded in writing. This shall also apply to the amendment to this written form clause.
- 16.2 Should individual clauses of these General Business Terms be or become invalid or non-enforceable in full or in part this shall have no effect on the validity of the other provisions. The same shall apply to the event that these General Business Terms feature a loophole in the regulations.
- 16.3 The place of jurisdiction for all disputes from a contract is Mülheim (Ruhr).
- 16.4 The law of the Federal Republic of Germany shall apply. The application of the UN Convention on the International Sale of Goods of 11 April 1980 (CISG Convention of Vienna) is explicitly excluded.