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bit media e-solutions GmbH, Kaerntner Strasse 337, 8054 Graz

## **1 Scope**

All services and deliveries of goods by bit media e-solutions GmbH („bit media“) are provided exclusively on the basis of the following General Terms and Conditions (AGB).

These General Terms and Conditions of Business shall also apply to any future business between agreement partners whether or not they are referred to again even upon the conclusion of future agreements. The General Terms and Conditions of Business of the customer shall only apply when bit media has expressly provided its approval in written form

## **2 Term of validity of offers**

The term of validity of offers, insofar as not otherwise agreed in individual offers, is 6 weeks. The possibility of a change in price in accordance with 7.1 or the transfer of currency exchange fluctuations in accordance with 7.4 shall remain unaffected.

## **3 Conclusion of agreement**

All orders and agreements are only legally binding if they are signed and duly executed by bit media and are only compulsory to the extent indicated in the orders and agreements.

## **4 Sub-contractor**

bit media is authorised to contract sub-contractors for the fulfilment of its contractual obligations. The status of bit media as agreement partner shall thereby remain unaffected.

## **5 Customer**

### **5.1 Changes in the person of the customer**

The customer will immediately inform bit media as to any change to its name, its company, its legal form, its address (transfer of registered office), its company register number, as well as its VAT number.

### **5.2 Prohibition of assignment**

Any assignment of claims of the customer against bit media to third parties is excluded. This concerns in particular claims arising from or in connection with an offer/contract, as well as claims arising from tort. The enforcement of

known claims by the customer by a third party in its own name is not permitted.

### **5.3 Permits**

The customer is responsible for obtaining necessary permits, licences or other government approvals, as well as for obtaining third party consent. If such permits are not obtained in time, delivery shall be extended correspondingly in accordance with point 9.

All fees, taxes, duties and other costs arising from the contractual relationship, are borne by the customer.

## **6 Security**

### **6.1 Security**

bit media is entitled to make subject to the conclusion of the contract a guarantee of the customer in the form of an abstract bank guarantee of a credit institution authorised in the European Union, which has at least a branch in Austria at the expense of the customer, or an advance payment to secure compliance with the contractual obligations.

bit media will return the security deposit without culpable delay or offset payment obligations, as soon as the conditions for the guarantee have been abolished.

bit media is granted the authorisation to check all information of the customer, as well as its creditworthiness and also to obtain credit information.

## **7 Prices, taxes and fees**

### **7.1 Prices**

The prices listed in the order confirmation shall apply in the absence thereof in the offer or order form. All prices are net, ex Office Graz/Vienna, without packaging, loading, delivery and freight charges or taxes and fees for delivery in euro, unless expressly otherwise agreed. They apply only to the current order. bit media is entitled, upon provision of partial services / partial projects, which were offered as such, specifying the related share price, to submit partial invoices.

If there are price changes, which cannot be influenced by bit media, especially price changes by subcontractors, suppliers, changes to laws, exchange rate fluctuations, which affect the services provided by bit media, bit media has the right to adjust prices correspondingly.

#### 7.2 Travel expenses

The costs for travel, daily allowances and hotel expenses are invoiced separately to the customer, according to the applicable rates. Travel times are considered work time.

#### 7.3 Miscellaneous

Any additional services provided, which are not part of a written order, will be charged in accordance with the applicable hourly rates of bit media according to expenditure. Point 7.2 shall apply analogously.

#### 7.4 Exchange rate

In the case of buying goods or services from foreign countries, the purchase price shall be calculated with the current exchange rate at the time of the quotation. Changes to the exchange rate (foreign exchange rate) in both directions at the time of invoicing by the suppliers or subcontractors are passed on to the customer. The Bank fixing of Bank Austria AG (foreign exchange rate) calculated for the day of the billing shall be used for the effective conversion rate.

### 8 Obligation to cooperate

The customer acknowledges that bit media is dependent on the comprehensive participation of the customer for the successful and timely implementation of the services.

Without prejudice to the participation obligations agreed between the parties for the customer, the customer is therefore obliged to support bit media to the extent required for the provision of the respective services, and to create all the conditions in its sphere of operations necessary for the proper and timely execution of the contract. The customer is obliged to ensure that all documentation necessary for the execution of the order are submitted on time without special request by bit media and that bit media is provided unsolicited knowledge of all transactions and circumstances which can be important for the execution of the order.

The same applies to the documents, tasks and circumstances which become known to it only during the execution of the order by bit media. The customer undertakes in particular, free of charge, to provide all premises, materials and infrastructure services completely and in a timely manner necessary for the proper performance of bit media. For the integration of hardware, software and services into any already existing systems, it is necessary for the customer to fulfil all prerequisites in a timely manner for the proper implementation with the agreed the state of the art facilities (such as: required facilities, hardware, air conditioning).

Delays, due to violations of the obligations to inform and cooperate, are the liability of the customer. Agreed release or performance deadlines shall be extended accordingly. Resulting downtimes and additional expenses are to be borne by the customer.

### 9 Delivery

#### 9.1 Delivery date

The agreed delivery period shall commence at the latest of the following dates:

- a) date of the order confirmation.
- b) date of fulfilment of all obligations of the customer, technical, commercial and other requirements.
- c) date on which bit media receives a deposit payable prior to delivery of the goods or security. bit media may also perform and invoice partial or advance deliveries.

#### 9.2 Force majeure

Insofar unforeseeable or circumstances occur that are independent of party intention, such as all cases of Acts of God, that hinder compliance with the agreed delivery deadline, this is in any case extended by the duration of these conditions; these include strikes, as well as the loss of important, difficult to replace suppliers and the loss of infrastructure.

The above mentioned circumstances also entitle the extension of the delivery deadline when they occur to suppliers or sub-contractor of bit media.

## **10 Performance**

The scope of services arises either from the description in the order confirmation or in the offer or from the specifications.

### **10.1 Offer**

The offer becomes the subject of the agreement through the written purchase order or order confirmation.

Requests for changes requested after that time by the customer can be agreed in writing in agreement with bit media and the customer under separate invoicing.

### **10.2 Specifications**

For the case that due to the provided documents and information from bit media a written service description (description of the project) is worked out with the customer, the customer undertakes to check these specifications for accuracy and completeness and to confirm with company authorised signature.

The specifications becomes subject of the agreement, subsequent amendments are understood to be amendments to the agreement. They must be in writing and cause changes in the prices and terms of delivery. The desired performance dates can only be met if the customer provides all necessary works and documents are properly provided by the dates specified by bit media, in particular according to the specification accepted by it in this specification

## **11 Acceptance**

During initial usage of the goods supplied and services rendered in real-time operation by the customer, the delivery or performance is regarded as accepted. If the order can be divided into sections, partial acceptances are permitted.

If bit media is the supplier of goods and not the Integrator, the delivered goods after delivery by bit media are considered as accepted even if they have not yet been installed by the responsible Integrator.

## **12 Transfer of risk and place of performance**

Use and risks are transferred to the customer with the departure of the delivery in accordance with 7.1, regardless of the price position agreed for the delivery.

This also applies if the delivery takes place in the context of an assembly, or if the transport is carried out or organised by bit media.

The shipment of program media, documentation and specifications are at the customer's risk.

Exclusive place of fulfilment is Graz.

## **13 Payment**

### **13.1 Terms of payment**

If no payment terms have been agreed, the invoice amount is due 14 days from the date of the invoice.

Payments are to be made net cash without any discounts and in the agreed currency to bit media. Payment is accepted by cheque or bill of exchange. All the related interest and charges (such as collection and discount charges) are payable by the customer. All the related interest and charges (such as collection and discount charges) are payable by the customer. In the case of partial payments, the corresponding partial payments are due upon receipt of the respective invoice.

This also applies to invoiced amounts resulting from additional deliveries or other arrangements beyond the original final amount, regardless of the terms of payment agreed upon for the main delivery.

Payment shall be considered made on the day on which the funds are available to bit media.

### **13.2 Default of payment**

If the customer is in default of an arranged payment or other performance from this or other transactions, bit media may, without prejudicing its other rights

- a) postpone its own obligations until payment is affected or delay other performance and claim a reasonable extension of the delivery deadline,
- b) make due all open claims from this or other transactions and for these amounts charge the respective default interest from the due date in the amount of 12% p.a. insofar as bit media does not prove costs that exceed this.

Non-compliance with the agreed payments entitles bit media to stop ongoing work and to withdraw from the agreement. All related costs and damages are to be borne by the customer.

## **14 Reservation of ownership**

Delivered and sold goods remain the unreserved property of bit media until complete payment or from claims resulting from the business relationship.

With the full acquisition of programme media, the customer acquires the rights specified in the license agreement.

The customer shall maintain the goods with commercial diligence and adequately protect them at its own expense against fire, water, theft and other risks. The customer assigns its appropriate claims arising from the insurance contracts with the conclusion of this agreement to bit media. bit media accepts the assignment.

By qualified default of payment, to expected suspension of payments or other breach of this agreement, bit media is entitled to take back the reserved goods at the customer's expense or to demand the assignment of claims of the customer against third parties concerning the goods; where appropriate, to sell them and to satisfy the outstanding claims from the proceeds.

By this right of retraction, bit media is also entitled to collect the goods still in the possession of the customer. In this event, the staff of bit media shall be allowed access to the premises during office hours even without previous appointment.

Before complete payment of the claim, the customer is not allowed to sell the goods, pledge, transfer as security, or grant other rights therein to third parties.

The customer shall immediately notify bit media of any execution measures or other attachments of third parties that prejudice the legal ownership of the goods by bit media. The customer shall immediately object to such measures by referring to reservation of ownership by bit media.

## **15 Warranty**

The warranty on goods and services delivered by bit media is 24 months for hardware, software and other services. The warranty period begins at the time of acceptance in accordance with point 11 of this GTCB.

No warranty claims can be derived from data contained in catalogues, brochures, advertising material and written or oral statements which were not included in the agreement.

Defects falling under the warranty will be remedied at the discretion of bit media either through improvement or replacement delivery.

Conversion or price reduction shall be excluded upon reasonable expectation of improvement. Warranty claims require that the client has reported the occurred defects in writing and in detailed form.

The guarantee expires if the customer itself or a third party undertakes modifications or repairs.

bit media accepts no liability for errors, breakdowns or damage attributable to inappropriate use, changes to operating system components, interfaces and parameters, the use of unsuitable organisation measures and data media (insofar as these are stipulated), unusual operating conditions (in particular deviations from the installation, storage and operating conditions) stipulated by bit media and its sub-contractors and sub-suppliers as well transport damages. If a service is performed on the basis of specifications, drawings or other instructions or at the concrete behest of the customer, the liability of bit media shall be limited to the agreed upon performance.

The original warranty period shall not be extended by the elimination of the deficiencies.

### **15.1 Notice of defects**

bit media shall properly eliminate the alleged deficiencies within a reasonable period of time whereby the customer shall provide all existing documents and data to bit media required for the assessment of the deficiency and its causes

## **16 Liability**

bit media shall be liable for damage to property and personal injury caused by it or its employees or agents only in cases of intent or gross negligence. Liability for slight negligence is excluded except in the case of personal injury. The liability is limited to the amount of the order volume.

The liability for lost profits, savings, financial losses, interest losses, lost data, consequential damages, consequential damages, moral damages, and damages resulting from claims by third parties against bit media is excluded.

bit media is also not liable for damages or errors in the operation or actions attributable to third

parties. The warranty does not apply to the replacement of parts that are subject to natural wear.

bit media shall not be liable for damages in case of non-compliance with any conditions of its sub-contractors and sub-suppliers for installation, commissioning and use or training or the regulatory conditions of approval. The liability for damages as a result of deadline extensions and delivery delays, which are not the fault of bit media, is excluded.

bit media is only liable for vicarious agents only insofar as damages were caused through gross negligence which was unavoidable to fulfil the agreement obligations.

Damages for data or software destruction shall be made in any case only insofar as the customer has complied with its duties for proper computer operation (e.g. documented data backup etc.).

In case of third-party installation, bit media assumes no liability whatsoever for any resulting damages and defects.

bit media assumes no liability whatsoever for the compatibility of the delivered goods.

### **17 Industrial property rights and copyrights**

All copyright and proprietary rights on the agreed-upon services (programmes, documentaries, etc.) remain with bit media and/or its suppliers. With in-house developed software, the license agreement including the integrated license schedule of bit media shall apply, and for purchased software, the license terms of the respective licence holder shall apply.

### **18 Confidentiality**

All quotations and project documentation may not be made accessible to third parties without written consent from bit media. They can be reclaimed at any time and if the order is placed elsewhere they are to be returned immediately to bit media.

bit media is obligated to keep confidential all of the obtained documents from the customer required for the proper execution of the order.

Plans, sketches, concepts, formulations and technical, graphic or other documents, as well as brochures, catalogues, samples and similar remain the intellectual property of bit media. Any use, particularly distribution, reproduction and

publication requires the express consent of bit media, even if payments have been made for any eventual presentation.

### **19 Data protection**

bit media and the customer agree to comply with all relevant data protection legislation. Personal data which are made available to bit media or the customer as part of their contractual relationship, may be used only for the purpose of fulfilling the respective contractual obligations and must be protected against access and reading by third parties.

bit media shall take all technically feasible measures to protect the customer data it has stored. However, bit media is not liable if third parties use illegal measures to access this data. The assertion of damages of the customer or third parties against bit media in such context is excluded by mutual agreement.

### **20 Compensation**

The customer is not entitled to withhold or offset payments due to warranty claims or other counterclaims.

### **21 Withdrawal**

A prerequisite for the withdrawal of the customer from the contract is a delay in delivery, which is due to gross negligence on the side of bit media, as well as the unsuccessful expiration of a set, reasonable extension. The cancellation has to be made in writing by registered letter.

bit media is particularly entitled to withdraw from the contract

a) if the execution of delivery or the commencement or the continuation of the performance due to reasons for which the customer is responsible, make it impossible or despite setting a reasonable grace period causes further delay, or

b) are due to legitimate concerns about the solvency of the customer and it, upon request by bit media does make advance payment or does not provide appropriate security before delivery, or

c) if the extension of the delivery time due to circumstances listed under point 9.2 amounts to more than half of the originally agreed time of delivery, but not less than 6 months.

If it is established in the course of the work that the execution of the order in accordance with specifications is actually or legally impossible, bit media is obligated to immediately inform the customer. If the customer does not change the specifications accordingly or creates the conditions that make completion possible, bit media may refuse the performance thereof. If the impossibility of execution is the result of a failure by the customer or a subsequent change of the specifications by the customer, bit media is entitled to withdraw from the agreement.

The withdrawal can be explained with regard to a remaining part of the delivery or performance for the reasons listed above.

If insolvency proceedings are opened against the assets of a party to the agreement or an order to initiate insolvency proceedings due to lack of sufficient assets is rejected, the other party to the agreement is entitled to withdraw from the agreement without setting a grace period.

Without prejudice to the claims of bit media, including the procedural costs in case of withdrawal, services or partial services already performed shall be invoiced and paid in accordance with the agreement. This applies also insofar as the delivery or service has not yet been accepted by the customer, as well as for preparatory actions performed by bit media. bit media shall also be entitled, in lieu of this, to demand the return of already delivered items.

In the event of the legitimate withdrawal of bit media for a reason attributable to the customer, bit media is entitled, regardless of the possibility of additional claims, to invoice a cancellation fee of 10% of the net order value in invoice which is not subject to reduction at judicial discretion.

## **22 Agreement in writing**

Changes and additions to these terms and conditions, as well as the order or other agreement items require the written form (paper form) and are possible only by mutual agreement. There are no verbal agreements and they are therefore prohibited.

## **23 Invalidity of individual clauses**

If individual provisions of these GTC or the other agreement elements should be found to not be legally valid or become invalid, the validity of the remaining provisions shall not be affected. The invalid provision shall be adapted to the legislation through the reduction of the invalid provisions to preserve validity, or be replaced by a valid one which comes closest to the desired target.

## **24 Jurisdiction, law and language of the agreement**

Austrian law shall apply exclusively to all contractual relations between the customer and bit media.

The factually competent court in Graz shall be deemed agreed for any disputes arising from a contract or these terms and conditions.

Linguistic ambiguity in relation to these terms and conditions, or in other cases of doubt and problems of interpretation, the German text version shall be deemed final and binding.

In addition to these terms and conditions, the following order shall apply: the information contained in the offer or specifications, catalogues and brochures, as well as the correspondence between the agreement parties.