

## GENERAL TERMS AND CONDITIONS

of 4activeSystems GmbH

Version dated 1<sup>st</sup> May 2015

### 1. Scope of Application

**1.1.** The following General Terms and Conditions (hereinafter the "*Terms*") are applicable to all contracts or services and supplies (hereinafter collectively the "*Services*") concluded by **4activeSystems GmbH**, of Industriepark 1, 8772 Traboch, as contractor (hereinafter "*4a*") and all offers submitted by 4a. These Terms form an integral part of every contract which 4a concludes with a customer (hereafter the "*Customer*").

**1.2.** These Terms apply exclusively to contracts between 4a and Customers which have entered into the legal relationship with 4a as part of the conduct of their operations pursuant to Section 1 (2) of the Consumer Protection Act; these Terms are not applicable to consumers.

**1.3.** The Customer's deviating or supplementary terms and conditions are not applicable, unless granted explicitly by written approval from 4a.

**1.4.** These Terms are applicable to all contractual relationships, whether present or future, between 4a and the Customer, until 4a discloses amended Terms to the Customer. Unless the Customer objects to amended Terms in writing, along with a statement of reasons, within 14 days after notification, he shall be deemed to have accepted the amended Terms.

### 2. Offers, Quotations

**2.1** Offers, quotations and any other information provided by 4a on Services are non-binding and noncommittal until the conclusion of a contract and 4a has no obligation to provide Services. We reserve the right to make technical as well as other changes.

**2.2** The Customer shall treat technical content from an offer or quotation of 4a as confidential and may not disclose this information to third parties without 4a's express written consent.

### 3. Conclusion of Contract

**3.1** A contract is concluded once the Customer has accepted the corresponding offer.

**3.2** A contract between the Customer and 4a is concluded (i) with the signing of a contract deed by the Customer and 4a, or (ii) as soon as 4a has accepted the Customer's order in writing, via fax or e-mail, or (iii) as soon as 4a has actually executed the Customer's order. The contract execution date shall be the date on which a contract is concluded or the date on which the acceptance declaration is dispatched, or in case of actual execution of an order, the date on which the Services are dispatched.

### 4. Subject-matter of Contract, Scope of Services

**4.1.** Type and scope of the Services to be provided by 4a are subject to the terms and conditions of a contract which is concluded between 4a and the Customer in a particular case.

**4.2.** Unless otherwise agreed, 4a will provide the Services in a manner customary for the industry within 4a's regular working hours. If Services are provided outside normal working hours at the Customer's request or due to special circumstances, 4a will separately charge the Customer for any extra costs. 4a is entitled to select the individuals who will provide the Services and may also use third parties for that purpose.

**4.3.** Services of 4a which the Customer uses beyond the agreed scope of Services will be paid for by the Customer, based on actual personnel and material expenditure at the applicable rates of 4a at that time. These include, but are not limited to Services provided outside business hours, analyzing and eliminating faults and errors caused by improper handling or operation by the Customer or any circumstances beyond 4a's control.

**4.4.** Should 4a provide free Services in a particular case, 4a may discontinue those Services at any time without prior notice.

**4.5.** Partial deliveries and advance deliveries are permitted.

### 5. Customer's Duty of Cooperation

**5.1** The Customer undertakes to take any measures which are necessary for the provision of Services by 4a.

**5.2** The Customer may not issue instructions to 4a employees, and will address the contact person nominated by 4a for any requests relative to the Services provided. .

**5.3** The Customer will make available any information, data and documents which 4a requires for the execution of the order at the agreed dates at the Customer's own cost and expense. 4a is not obligated to verify the correctness and completeness of such information. 4a is entitled to separately charge the Customer for any additional expenditure incurred by 4a due to incorrect or incomplete information or any other reasons within the Customer's control at the applicable current rates of 4a.

**5.4** The Customer shall fulfil these obligations in a timely manner so that 4a is not obstructed in the provision of its Services. The Customer ensures that 4a and/or the third parties appointed by 4a are able to access the premises of the Customer which they need to access for the provision of the Services. The Customer shall ensure that employees which are involved in the performance of the contract, his affiliated companies or any third parties appointed by the Customer participate in the performance of the contract.

**5.5** If the Customer fails to fulfil his cooperation duties at the agreed dates or in the proposed scope, the time limits for the Services to be provided by 4a will be deferred accordingly. The Customer will separately compensate 4a for any additional effort and/or costs thereby incurred by 4a at 4a's applicable rates at that time.

## **6. Service Periods, Target Dates, Default**

- 6.1.** The agreed service periods and target dates are non-binding, unless agreed otherwise.
- 6.2.** If a non-binding service period is exceeded by more than six weeks and a binding service period by more than three weeks due to 4a's fault, the Customer may set a reasonable grace period of at least two weeks by written notice to 4a, and may withdraw from the contract by written notice if that grace period has expired without success.
- 6.3.** If any temporary and non-foreseeable obstacle beyond 4a's control prevents 4a from providing the Services, the agreed time limit and the agreed target date will be extended throughout the period during which that obstacle exists. These obstacles include, but are not limited to government action, industrial action, failure of transport facilities or power failures, non-foreseeable lack of deliveries by our suppliers (all this also in undertakings which 4a relies upon to perform this contract), as well as in case of force majeure. If the original Service provision date was already exceeded by 2 months in such a case, both parties may withdraw from the contract; the Customer is not entitled to recover damages in these cases.
- 6.4.** If 4a cannot provide the Services for reasons within the Customer's control, 4a may withdraw from the contract, if the Customer fails to observe a reasonable at least two-week grace period set by 4a. In this case, the Customer shall compensate 4a for the expenses 4a has incurred for the work already performed and for the unwinding of the already provided Services which was necessary due the withdrawal from the contract. If it is impossible or unreasonable to return the Services already provided by 4a, the Customer shall compensate 4a for their market value.

## **7. Transfer of Risk, Price Risk**

- 7.1** Unless otherwise agreed, the Customer bears the price inflation risk from making the Services available for collection from, or delivery to, a carrier.
- 7.2** Unless otherwise agreed, the Customer shall promptly accept properly provided (partial) Services of 4a. While the Customer is in default of acceptance, 4a may store the Services at the Customer's risk and expense. For this purpose, 4a may also use a forwarding agent or a warehouse keeper.

## **8. Compensation, Terms of Payment**

- 8.1.** All compensations are net prices denominated in Euros, unless VAT is expressly stated; these prices are valid until further notice. Unless otherwise agreed, indicated prices are without commitment.
- 8.2.** Unless otherwise agreed, the compensation for the main Service does not include ancillary costs for ancillary services, costs for the disposal of packaging, as well as transport costs (e.g. freight, customs duties, insurance, commission), disbursements of 4a's employees and subcontractors, if any (e.g. travel expenses, accommodation, per diems, fixed allowances for travels, travel times), duties, if any, or other taxes and levies in amounts actually incurred; these costs shall be paid separately by the Customer.
- 8.3.** Additional services, including but not limited to maintenance work beyond the scope of obligations pursuant to warranty claims, shall be commissioned separately and will be invoiced separately at 4a's rates applicable at that time.
- 8.4.** Unless otherwise agreed, invoices are due for payment immediately upon receipt. All payments shall be made free and clear of charges and without any deduction. Bank transfers are made at the Customer's risk. Collection and discount charges shall be borne by the Customer.
- 8.5.** 4a may make the provision of its Services subject to down-payments or the provision of other reasonable collateral by the Customer.
- 8.6.** In case of late payment, 4a may charge statutory default interest at a rate of currently 8% p.a. above the prime lending rate of the Austrian National Bank. Furthermore, in case of default in payment, 4a may also suspend the performance of all contractual obligations pending the fulfilment of all payment obligations of the Customer.
- 8.7.** The Customer's default with a payment or service despite a reasonable grace period of at least two weeks, or his refusal to accept a Service without cause shall trigger legal consequences pursuant to Section 6.4.

## **9. Objections, Set-off, Retention Right**

- 9.1.** Claims shall be deemed acknowledged, unless the Customer objects in writing to invoiced claims within 14 days from the invoice date.
- 9.2.** The Customer's objection to an invoice will not invalidate the due date of the invoice amount, unless objections refer to obvious errors in the invoice.
- 9.3.** The Customer may only deduct 4a's claims which have been determined by judgment or were expressly acknowledged by 4a's written notice. The Customer shall not be entitled to assert any retention right.
- 9.4.** The Customer agrees that any payments made by him be first applied towards costs incurred, then towards interest, and finally towards the Services (including but not limited to goods) for which we reserve title. Any payment references of the Customer shall be irrelevant.

## **10. Reservation of Title**

- 10.1** The Services supplied and/or the rights to use works and property rights of 4a shall remain the property of 4a pending full payment of the compensation along with ancillary costs. The Customer is obligated to carefully treat the Service while 4a has reserved title to it and to regularly carry out the necessary maintenance and inspection work at its own expense and to provide documented evidence to 4a. The Customer shall promptly inform 4a in writing if third parties exercise any rights in respect of the Service, including but not limited to compulsory enforcement measures and damage, if any, destruction of the Service, any change of possession and any change in the Customer's own address. The Customer shall compensate 4a for any damage and costs which arise due to any breach of these obligations and due to any necessary intervention to defend third-party claims.

**10.2** The Customer will process and/or treat the Services always in the name of 4a. 4a will obtain co-ownership of a new item created through processing of the Services in proportion of the Service 4a has delivered. The same applies if Services are processed or mixed with other items not belonging to 4a.

**10.3** Should a Service be pledged or subject to any other claim, the Customer shall assert 4a's ownership, notify 4a immediately in writing, and compensate 4a for all expenses incurred for the purpose of preserving its ownership.

## **11. Warranty**

**11.1** The warranty period is 24 months from the transfer of risk date. After the expiration of that time limit, all warranty claims will be forfeit, and the Customer can no longer assert any recourse claims against 4a pursuant to Section 933b of the Austrian Civil Code (*ABGB*) and Section 379 of the Austrian Companies Code (*UGB*). Warranty does not encompass a certain economic success.

**11.2** The Customer is obligated to assert warranty claims and dealer recourse claims by way of a written, detailed and timely complaint. The Customer shall inspect the Services as to whether they are defect immediately after provision of those Services. The same applies in respect of hidden defects, which the Customer must notify as soon as a defect is discovered. Whenever any portion of a delivery contains defects, the Customer is not entitled to file a complaint in respect of the whole shipment. Unless a complaint is filed in due time, the goods shall be deemed approved, and warranty claims can no longer be asserted.

**11.3** The Customer shall have the full burden to prove all requirements for claims, including but not limited to the defect itself, the point in time when the defect was discovered, and the timeliness of the complaint. The assumption of defectiveness pursuant to Section 924 Civil Code (*ABGB*) shall be precluded.

**11.4** If a deficiency is subject to warranty, 4a may elect to either replace the defect supplies or Services or the deficient parts thereof, improve the Service on site, or insist on return of a Service for improvement, or grant a reasonable reduction of the purchase price. The option of rescission of the contract is excluded.

**11.5** 4a is subject to a warranty obligation only if the Customer has fully fulfilled his payment obligations. The Customer may not withhold payments even while asserting warranty claims.

**11.6** If 4a is not able to restore the contractually agreed condition after repeated requests and a grace period of at least four weeks, the Customer may withdraw from the contract with immediate effect by written notice.

**11.7** The Customer cannot assert any damages towards 4a on the grounds of his withdrawal from the contract.

**11.8** 4a is not obligated to warrant for supplies or Services that were subsequently changed by the Customer's own staff or by third parties. Similarly, 4a accepts no warranty for improper operation and non-observance of safety provisions by the Customer or his employees.

**11.9** Warranty does not cover the replacement of parts that are subject to normal wear and tear. Warranty does not cover errors, failures or damage caused by the Customer's or his employees' operating errors or use contrary to the Services' purpose.

## **12. Liability and Damages**

**12.1** Beyond the scope of the Austrian Product Liability Act, 4a shall be liable only in case of intentional misconduct or gross negligence. 4a shall not be liable towards the Customer for slight negligence, for the compensation of consequential damage, pecuniary damage, lost profits, actions of its vicarious agents, and for damage arising from third-party claims.

**12.2** The Customer may assert claims for warranty, damages and non-performance only if he immediately files a written and detailed complaint pursuant to Section 11.2.

**12.3** 4a shall not be liable for any damage caused by acts of third parties or force majeure.

**12.4** If claims are asserted against 4a by third parties because the Customer has misused the Services, the Customer will promptly inform 4a. 4a will allow the Customer to defend the claim or to procure full rights for himself.

**12.5** 4a does not accept any warranty if commercial software programs or those specifically developed by 4a are being used for the provision of the Services. 4a does not accept any liability for consequential damage in case of program errors or any other software errors.

**12.6** Unless caused by intent or gross negligence, 4a's liability towards a single injured party for each incident shall not exceed EUR 10,000, and its liability towards all injured parties shall not exceed EUR 50,000. If the total damage exceeds the maximum amount, the damage claims of single injured parties will be reduced on a pro rata temporis basis.

## **13. Term**

**13.1** Unless otherwise agreed, 4a may terminate all contractual relationships with one month's written notice without stating any reasons.

**13.2** 4a is also entitled to terminate only individual components of a contractual relationship.

**13.3** 4a may terminate a contract with six days' notice at the close of each business day if insolvency proceedings are opened in respect of the Customer's assets. Saturdays shall not be considered business days. However, along with the termination letter, 4a may request the trustee in bankruptcy to provide reasonable collateral or to make advance payments for all compensations and claims of 4a arising or incurred from the date on which insolvency proceedings are opened. Notice of termination shall be deemed revoked, provided that the trustee in bankruptcy provides collateral or makes advance payments within the notice period. Collateral or advance payment can also be made or provided in the form of a personal letter of liability issued by the trustee.

**13.4** 4a may unilaterally terminate a contract for just cause at any time and with immediate effect. Just cause is deemed to exist in particular (i) if insolvency proceedings are opened in respect of the Customer's assets or if a petition to open proceedings is rejected for lack of assets to cover costs (the termination right may be asserted until complete provision of the Service), or (ii) if the Customer breaches material confidentiality obligations or (iii) if the Customer infringes 4a's copyrights or industrial property rights or (iv) if the Customer breaches other material contractual provisions.

**13.5** Notwithstanding 4a's right to damages, in case of a withdrawal from the contract, Services or partial Services already provided shall generally be invoiced and paid pursuant to the terms of the contract. 4a may also insist that the Customer return Services already provided.

#### **14. Copyrights and Trademarks**

**14.1** The product and service names used by 4a are protected as trademarks, signs, copyrights and/or pursuant to competition law. Any use thereof by the Customer requires a prior written agreement with 4a.

**14.2** The designs, brochures, technical documents, software and other works etc created by 4a are copyrighted. Any use thereof by the Customer requires a prior written agreement with 4a.

**14.3** If 4a delivers software to the Customer, the Customer will be granted the non-transferable and non-exclusive right to use the software and the related documentation, if any, for the purpose of his business and for the maximum number of users stated in 4a's offer, provided that the Customer has fully paid the agreed compensation. 4a reserves all other rights to the software; notwithstanding Sections 40d and 40e of the Austrian Copyright Act (*UrhG*), the Customer is not entitled to reproduce, process, reverse engineer, decompile or remove any parts of software, or make available (in any manner whatsoever) to third parties, analyze, decompile or disassemble software.

**14.4** 4a will provide the Services in reliance on its patented and non-patented know-how (e.g. software tools). The processes, methods and FE models used constitute prior knowledge and remain the property of 4a. The same shall apply for any further developments or inventions in respect of 4a's prior knowledge created during the execution of the project; 4a shall exclusively be entitled to all rights to such further developments and inventions.

#### **15. Confidentiality, Data Privacy, and Security**

**15.1** The Customer is obligated to keep confidential any information received in the course of the execution of a contract, unless 4a has released the Customer from this obligation in writing.

**15.2** Furthermore, the Customer commits to comply to 4a's safety regulations as applicable at that time, as well as all other legal provisions, especially those of the Data Privacy Act in its valid amendment.

**15.3** The obligations set forth herein will also persist after 4a has fully executed the contract and after termination of all ongoing obligations.

#### **16. Transfer of Rights and Obligations**

**16.1** The parties may not transfer rights and obligations to third parties except with the consent of the respective other party.

**16.2** The Customer shall be deemed to have approved the transfer of rights and obligations to 4a's universal and partial legal successors as well as to companies directly or indirectly controlled by 4a.

#### **17. Other Provisions**

**17.1 No Solicitation:** The Customer is prohibited to hire or to entice away either directly or indirectly during the term of the contract and twelve months thereafter any 4a employees assigned to the Customer or any other third parties 4a has appointed for the provision of the Services.

**17.2 Written Form:** Unless these Terms provide otherwise, all declarations the Customer issues to 4a shall be made in writing to be legally effective. Any agreements in derogation of the above shall also be made in writing. Oral subsidiary agreements are invalid.

**17.3 Time Limits:** Electronic contractual declarations, other legally relevant electronic declarations and electronic confirmations of receipt shall be deemed received when the party for which they are intended is able to retrieve these under normal circumstances. Declarations are deemed to be effective and have been issued in due time if they were received as defined herein.

**17.4 Place of Jurisdiction, Applicable Law:** All disputes arising between the parties shall exclusively be governed by Austrian law. The parties expressly exclude the application of the UN Sales Convention and the conflict of law rules of International Private Law. Place of jurisdiction shall be the competent court in Graz, Austria. 4a may also sue the Customer before any competent court having jurisdiction pursuant to the legal provisions applicable in the state in which the Customer is domiciled.

**17.5 Interpretation:** Headings used herein are for convenience only and do not interpret, limit or restrict the respective provisions.

**17.6 Severability:** Should any term hereof be or become invalid or inadmissible, this shall not affect the validity of the remaining terms hereof. An invalid or inadmissible term shall be replaced by a term which closest reflects the economic purpose of the invalid or inadmissible term. The same shall apply in case of omission.

**17.7 Mailings:** The Customer agrees pursuant to Section 101 of the Telecommunications Act (*TKG*) that we may regularly send him electronic mail as bulk mail and/or for advertising purposes (including but not limited to newsletters and invitations to technology days).