GENERAL TERMS AND CONDITIONS

1. Scope

All deliveries and services provided by NAVAX Customer Experience GmbH as a contractor are based on the following general terms and conditions. These are explicitly accepted by the contracting party or the client by signing the contract, or through irrevocable acceptance of these terms and conditions, however, at the latest by irrevocable acceptance of goods or services (execution of contract) – also for any follow-up business dealings.

Any general terms and conditions or conditions of purchase of the client are hereby expressly contradicted. They shall not represent an obligation for the contractor, even if they are not additionally contradicted on conclusion of the contract. Even the sending of an order confirmation does not imply acknowledgement of the purchaser's conditions.

Modifications or side agreements shall not be valid unless confirmed in writing by us and shall only apply to the respective individual business transaction.

The validity of our remaining terms and conditions shall not be affected by an amendment or any invalidity of individual terms and conditions. In any such case, the parties to the contract shall cooperate to reach a valid provision, which approximates as closely as legally admissible the economic aims of the parties, which were intended by such invalid provision.

2. Offers and Contracts (Closings)

All contracts, assignments and agreements shall only be legally binding, if duly signed by the contractor and they obligate only to the extent set forth. Offers are always subject to change.

All orders, as far as they are received by representatives or other sales employees of the contractor, shall become binding for the contractor only upon written confirmation of the contractor, or when the goods are delivered, respectively, when the service is provided. Employees of the contractor are not entitled to make agreements, which deviate from these conditions.

3. Services of the Contractor

The contractor provides the following services:

- Development of organizational concepts
- Overall and detailed analyses
- Supply of standard software
- Generation of individual programs
- Provision of user authorizations for software products
- Provision of exclusive licenses ("Werknutzungsbewilligungen": Permission to use and exploit a copyrighted work)
- Assistance with start-up (introduction support)
- Advisory services via telephone
- Software maintenance
- Other services

4. Service Description

The basis for the orders shall be the written description of services (performance specifications) which is drawn up and made available by the contractor in return for payment and based on the documentation and information placed at his disposal. This performance specification is to be inspected by the client for correctness and completeness and is to be initiated by him as a sign of his assent. Later occurring change and extension requests could result in a delay of agreed deadlines and entitle the contractor to charge separately for the resulting additional expenses.

With the signing of the contract, respectively with placing the order, the client declares that the service description covered by this contract was inspected by him and that the products and services correlate to his specific requirements.

Services that are performed prior to a more specific definition, or without definition or beyond said definition and services that are marked as "variable" in the service description, will be invoiced according to the actual time spent.

Other than the binding service description, advertising materials, brochures, product information and statements of the manufacturer or importer are – as far as not confirmed by the contractor in writing – in general irrelevant.

The contractor warns and explicitly points out the fact that with the current state of technology, it is completely impossible to create a software program, which is absolutely free of errors. Thus the contractor provides guarantee for software products manufactured by him - that such products execute the program instructions error-free, if the hardware and operating system configuration correlate to recommendations of the contractor, and if all errors according to the state of the art were recognizable and reproducible.

5. Standard Software

Software (programs, program-modules, tools, etc.), which was developed for the needs of a majority of customers in the market and not specifically by the contractor for the client, is referred to as Standard Software. With standard software the client acquires an exploitation right ("Werknutzungsrecht") according to the provisions of the software manufacturer. The contractor is responsible for ensuring that the transfer of this exploitation right

(''Werknutzungsrecht'') to the client does not infringe the rights of third parties. The order for delivery of standard software is conducted - after the client thoroughly informed himself already prior to conclusion of the contract - in knowledge of the scope of performance of the ordered programs.

If the manufacturer of the standard software provides delivery or provision of user documentation, such can be made available to the client upon request to the extent of the scope, language and form intended by the manufacturer.

Program license agreement of the software manufacturer

The basis for the use of standard software products is the software license agreement, respectively, the program license agreement of the respective manufacturer. These software license agreements, respectively, the program license agreement shall be agreed between the client and the software manufacturer. Therefore the software license agreements, respectively, the program license agreements are a prerequisite for and an integral part of the contract between client and contractor. Agreements deviating or supplementing these terms and conditions do not exist. For individual adaptations from the contractor, the provisions of the program license agreement are valid accordingly.

Software licenses can only be created and delivered, if there is an existing assignment/order at hand, which has been duly signed by the client, and if the license fee has been paid by the client.

6. Services provided

Services provided are services which the contractor provides/performs upon the client's request and demand (e.g. programming, consultation, project management services, development of concepts, support services, etc.).

6.1 Project

For the successful introduction of an information system on the basis of standard software, it is an absolute prerequisite for both contracting partners to conduct an appropriate project organization and correlating project coordination or project management, according to the size and complexity of the task.

Scope and content of the services provided by the contractor in the area of project coordination or project management are defined in the service description. The contractor will perform the services in close collaboration with the client.

Contractor and client will each appoint a project manager or project coordinator. They will decide together. If it is not possible to reach a joint decision, then the Project Steering Committee shall be invoked, consisting of one member of each management board from contractor and client.

Both of the project managers or project coordinators will jointly define the following parameters:

- Frequency, duration and group of participants for project discussions
- Level of detail for project planning and project controlling
- Rules governing the preparation and approval of discussion protocols and other elaborations.

To the extent that this is within their power, the contractual partners are obliged to ensure project continuity, which particularly means the prevention of constant transfer of the employees involved in the project.

The contractor is entitled to have services rendered by subcontractors.

6.2 Information obligation

Both contracting parties are obligated to inform each other immediately about circumstances of whatever type, if those significantly impair the project's progress. This applies irrespective of, whether it is within their own sphere of responsibility, the responsibility of the other contracting party or third parties.

In such a case, the representatives nominated by the contracting parties in particular (project manager, project coordinators, customer advisor) shall decide in mutual agreement about appropriate measures, in order to meet the original aim of the project as close as possible.

6.3 Client participation

Individual organizational plans and programs shall be carried out in line with type and scope of the binding information, documents and accessory aids, which have been made available in their entirety by the client. This includes also practice-oriented test data and sufficient test options, which will be made available by the client in due time.

The client is obligated to ensure availability of adequately qualified staff, equipment, premises and test data for the dates laid down by the particularly appointed representatives (project manager, project coordinator, customer advisor) at the location of the client.

The client covers this involvement at his own expense. A compensation for involvement (participation) is precluded.

In addition, the client is at liberty to carry out part of the services offered by the contractor by himself - that means through employees of the client. The particularly nominated representatives (project manager, project coordinator and customer advisor) decide on the operational aspects, potentially necessary training and support, etc.

6.4 Development System, Test System and Real System

The contractor installs the programs initially in a development system, which is usually located in his own facilities, where he conducts adjustments and setups. Apart from that the conditions contained in section 12 of these terms and conditions (''AGB'') shall apply.

The real system and the test system for the facility, training purposes and execution of test cases are usually installed on the premises of the client. In the event that, the client also arranges delivery of hardware, operating systems, etc. with the contractor, a separate contract will be concluded.

In the event that the client obtains Hardware, operating systems, etc., from third parties, the contractor will provide a non-binding evaluation of the basic suitability of these facilities for the declared objectives upon request. Expenses for tests, works on equipment within these facilities of the client, etc., as far as they are not included in the service description, will be billed on the basis of the actual time incurred. The client ensures that the software components made available by him are properly licensed and are free of any third party rights. This applies particularly in the event that the client assigns the contractor with the further development and maintenance of an already existing software system.

In both cases the client will cover current operating risks and costs within the facility at his own expense, which includes the appropriate technical and organizational data security and protection against unauthorized data access and viruses.

6.5 Review of analyses/elaborations
The contractor will provide the client with elaborations/analyses for approval. These elaborations can be protocols and descriptions (process solution descriptions, performance specifications, etc.). Process solution descriptions will be generated by the contractor in return for payment after an analysis of client's business processes. The dates for generating and testing these documents will be determined by both project managers jointly. If the acceptance is delayed beyond the agreed time period through no fault of the contractor, then the contractor is not liable for any delay arising. Furthermore, the contractor is entitled to deem elaborations (analyses) as partially approved and take it as a basis for the next projects steps, if no well-founded complaint is received within two weeks after readiness for acceptance.

Later requests for modifications or changes in specifications, which are announced by the client after completion of specification, respectively release/approval of elaborations, could delay the agreed deadlines and cause additional costs. Therefore such requests for modifications are reviewed by the contractor in terms of their impact on quality, effort and dates. The extra work for the review may be invoiced separately. If the change request can be realized, the result will be conveyed to the client in form of an additional offer or amendment offer. Until the client places the order, the project is continued due to the former provisions.

6.6 Testing and certification / approval
Individually created software or program adaptations require an acceptance by the client for the respective part of the program at latest within six weeks after the date of delivery. The individual parts and respective dates are determined by the particularly appointed representatives (project manager, customer advisor, etc.). The approval will be confirmed in a protocol by the client (examination on correctness and completeness on the basis of performance specifications, respectively, elaborations, accepted by both contracting parties in line with the test data made available by the client). Should the buyer allow six weeks to pass without accepting the program, the delivered software shall be deemed to have been accepted as at the last day of the stated time period. The client is responsible for providing the contractor with sufficient quantity and quality of test data in a timely manner.

If the client uses the software in real operations, the software is regarded as approved in any case. Defects, which shall be defined as deviations from the service description, respectively elaborations, agreed upon in writing, shall be sufficiently documented by the client and reported to the contractor, who shall strive to eliminate the defects as soon as possible. In the case of material defects, which have been reported in writing, i.e. defects due to which commencement or continuation of real/live operation is not possible, a new acceptance shall take place after repair of the defects. Material defects must be reported to the contractor in writing in a sufficiently precise and clear manner.

6.7 Remote maintenance/management
A remote maintenance access will be installed, in order to ensure that the contractor is able to provide immediate support to the client in the case of warranty or other assistance. Each contracting party shall be responsible for its respective costs incurred in its premises (for hardware, software, telephone lines, etc.). The specifically designated persons (project manager, project coordinator, customer advisor, etc.) decide jointly on technical solutions and relevant security aspects.

The client is entitled to limit the access to the remote maintenance, for example to certain times of the day, to certain employees of the contractor, or according to other criteria. Should it come to restrictions in this regard, which are caused by the client, this must be documented accordingly in the elaborations/analyses.

If the contractor experiences any disadvantage or additional costs due to the non-availability of the remote maintenance access caused by the client, then the client will be charged a separate fee for the additional costs (extra work). The contractor is not liable for any loss/damages that are caused by the restriction/non-availability affecting the remote maintenance access.

6.8 Transfer to maintenance and support
After the start of live operation the further support is conducted through software maintenance and support. The precise date associated with the transfer to support and the details for processing of this transfer are jointly determined by the client's and contractor's project leaders.

For the software maintenance and respective scope of services to be rendered by the contractor, a separate maintenance agreement will be concluded. In the absence of any corresponding contractual arrangement, services will be invoiced at cost at the currently prevailing prices of the contractor.

7. Prices, taxes and fees
Unless otherwise indicated, all prices are quoted net, in Euro, without value-added tax. They are valid only for the respective present order. The quoted prices are ex business domicile or branch office of the contractor. The costs for program carriers, printed training material, etc., and contract fees shall be charged separately to the client.

7.1 Standard Software

The prices for standard software modules stated in the service descriptions are binding (fixed) until the date defined as "Valid until" in the service description. Possible price increases through the software manufacturer that took place after this date, shall be charged to the client. On request of the client, the contractor will provide respective documentation (information letters of the software producer, actual price list).

7.2 Services

Prices for services as stated in the service description are fixed until the date defined as "Valid until" in the service description. After that date the contractor is entitled to reflect any such increase in labor and material costs or other costs and expenses in his hourly rates. The new hourly rates must be announced to the client at least one month prior to their first implementation. Such increases are deemed to be accepted by the client a priori, if they do not exceed 10% per annum.

Services (e.g.: change requests, extensions, etc.), which the contractor provides on request of the client beyond the originally agreed upon scope, will be charged at the contractor's current hourly rate at the time of the service performance.

Services are performed within regular business hours of the contractor (Monday through Thursday from 8:00 am – 5:00 pm and Friday from 8:00 am - 2.30 pm). Should the client wish services to be provided outside of normal business hours as an exception, the additional costs will be invoiced separately. The exact regulation is defined in the service description.

7.3 Travel expenses

The costs for travel, per diem, and overnight accommodation costs shall be invoiced separately to the client. The exact regulation is defined in the service description.

8. Deadlines and right to withdraw

The contractor is to endeavor to keep as closely as possible to the agreed dates for completion of the order.

The intended dates of performance can only be met, if the client places all necessary work and documents, in their entirety, at the contractor's disposal at the established dates, and if the purchaser fulfills its obligation to cooperate to the extent required.

Supply delays or cost increases arising through incorrect, incomplete or subsequently modified disclosures and information or documents made available, shall not be the responsibility of the contractor and cannot result in the contractor's being in default of delivery. Additional costs so arising are to be borne by the client.

Unexpected or unforeseeable circumstances, such as force majeure, industrial conflicts, natural disasters, failure or delay by the preliminary supplier, permit both contracting parties to re-determine the agreed delivery period.

In the case that the delivery time is exceeding the agreed date due solely to the fault of the contractor, the client is entitled to withdraw from the order via a registered letter, after an adequate grace period of at least 14 days, if essential parts of the agreed service are still not performed after an appropriate extension of time.

However, a withdrawal from partially performed deliveries and rendered services is excluded.

The client obligates himself to refrain from any form of enticement or employment (directly or indirectly, in an employment relationship, an assigned contract relationship or other contractual relationship, over third parties as well) of employees from the contractor and affiliated companies of the contractor, which were involved in the fulfilment of the agreement, during the duration of the business relationship and for a time frame of 24 months after the business relationship ended. For each case of enticement or employment of such employees, the client obligates himself to pay the standard damage compensation in the amount of the annual gross income plus non-wage labor costs of the respective employee to the contractor, respectively the employer.

This shall also apply to enticement or even just assignment of subcontractors or their employees through the client. The client obligates himself to pay the standard damage compensation in the amount of EUR 50,000.00 for each instance of such infringement.

In the case of enticement of employees through the client, the contractor is in any case entitled to cease service provision with immediate effect. Any related disadvantages are borne entirely by the client.

9. Payment

The contractor will charge for the software licenses at the time of generating, respectively, at delivery. The software licenses are only provided to the client upon receipt of full payment. Services will be charged regularly after service provision. The contractor is entitled to conduct partial deliveries and to submit partial invoices or to render services only against advance payment.

Unless agreed otherwise, the invoices submitted by the contractor, inclusive sales tax, are payable upon receipt of the invoice without any deductions and free of charges. For partial invoices, the terms of payment for the entire order obtain analogously.

Payment on the agreed-upon dates is an essential condition for delivery and for fulfilment of the contract by the contractor. The noncompliance of agreed payments, entitles the contractor, to discontinue current work within one week after notice has been given in writing and to withdraw from the contract. All costs connected therewith, as well as loss of profit, are to be borne by the client.

In the event of default of payment by the client, interest on late payment is due to the contractor in the amount of 3% above the 1-month EURIBOR rate (Euro Interbank Offered Rate) at payment due date.

Payments with debt-discharging effect may only be made directly to the contractor. If there are several outstanding claims against the client, then the client's payments are always applied against the oldest outstanding invoice. Settling off is always carried out on the costs, then on the interest and finally on the principal claim.

A client shall only be entitled to set-off undisputed counterclaims and counter claims finally asserted by a court.

Title to all merchandise delivered or manufactured by the contractor shall continue to be held by him until all claims arising from the contract have been paid in full. Prior to complete settlement of invoice, the client/customer is prohibited from pledging the goods, transferring title to the goods as security or granting third parties other rights therein.

The reservation of title applies to all services rendered by the contractor in the course of the service provision, as well. Permit for use and rights of use will be granted only under the reservation of the complete payment of all agreed charges.

10. Copyrights and rights of use

The client acquires an exclusive license ("Werknutzungsbewilligung"), according to the license provisions of the software manufacturer. Further distribution of the product by the client is not permitted, as per the copyright law. The client does not by virtue of participating in the production of the software acquire any rights beyond its use, as set forth in this contract.

The client or his licensors are entitled to all copyrights on the agreed services (programs, documentation, etc.). The client obtains only the right to use the software after payment of the agreed remuneration as agreed in the contract, strictly for his own purposes, only with the hardware and operational system as specified in the service description, and, in accordance with the number of licenses acquired, simultaneously at different workplaces. Should the client be in default of contractual payment, despite two reminders in writing, he is already agreeing to his obligation to stop using the software upon receipt of written request.

Any infringement of the copyrights of the contractor, or licensor will result in the right to claim damages, in which case the contractor is entitled to full compensation. Copyright infringement, among other things, already exists, if it comes to an unauthorized intervention in the programming code by the client or a third party instructed by him.

The client is permitted to make copies for archival and data backup purposes only on condition that the software does not contain an express prohibition on the part of the licensor, or a third party and that all notices of copyright and ownership are transferred unchanged into these copies.

11. Warranty and modifications

Corrections, which turn out to be necessary until the delivery of the agreed service, because of organizational and/or programming defects, which have to be carried by the contractor are accomplished free of charge by the contractor.

Furthermore, defects are corrected by the contractor free of charge for a warranty period of six months from the day of live launch, as far as he is responsible for such defects.

A defect only falls under guarantee, if the software deviates from the mutual elaborations (process solution descriptions, service descriptions, etc.) in a quality which is expressly warranted, if this deviation is reproducible under test conditions and such defect has to be carried by the contractor.

The contractor decides about the corrective actions, such as change of the defective program, reconfiguration of the software, installation of a patch. The elimination of the defect can also be conducted through a series of approaches for the application ("work arounds"), which ensure that the defect has no significant impact on the use of the program through the client.

Notices of defects are valid only if they concern defects that are essential and reproducible, and if they are submitted immediately, at latest within 4 weeks after their occurrence, and documented in writing. If the notice of defects is justified, the defects are to be remedied within an appropriate period of time, and the client is to make available to the contractor all measures required by the latter to investigate the problem and remedy the defects. Essential defects are to be reported to the contractor in writing, immediately after they occur.

If the client falsely claims defects or faults without adequate examination and documentation, and the contractor thus incurs additional expenses/extra work, then such shall be charged separately.

The costs for support provided, elimination of errors and troubleshooting that are the responsibility of the client, as well as other changes and amendments shall be carried out by the contractor and the costs charged separately to the client. This also applies for the remedying of errors when program revisions, additions or other interventions have been carried out by the client himself or by a third party.

The contractor assumes no warranty for defects, failures or damages that are due to reasons beyond the contractors responsibility, resulting from insufficient set-up (e.g.: master data and parameters), and from improper operation. Also excluded from the warranty and liability are defects, due to altered operating system components, interfaces and parameters, use of inappropriate or defect hardware, data carrier, etc.

The contractor does not accept any warranty or liability for software programs, which have been altered or changed subsequently by programmers of the client or third parties.

Insofar as the subject of the order is the revision or supplementation of existing programs, the warranty covers the revision or supplementation. The warranty for the original program does not thereby again come into effect.

12. Data Protection

The contractor obligates his employees to observe the provisions of the federal act concerning the Protection of Personal Data 2018 (DSG).

Both agreement partners mutually obligate themselves to maintain confidentiality about the content of the contractual agreement and any internal information and data of the other contractual partner, which they receive in the context of their cooperation, and which shall not be disclosed to third parties.

This English translation is provided for your reference as a reading and comprehension aid only.
The original German version has exclusive legal validity for all matters of interpretation and dispute.

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The client is obligated, to treat all confidential information and data, documents and, especially but without being limited to them, purchasing documentation (offers, price indications, etc.) perpetually, without restriction to territory, premises or time, in strict confidence and kept secret. The client will ensure that third parties will not receive or gain any knowledge of confidential information.

Each publication of work results through a contractual partner, which goes beyond the fact of the order assignment and its elementary parameters (company name and address, rough list of the required areas of application, approximate number of users, etc.), requires the explicit consent of the other contracting partner.

13. Liability

The contractor is liable for damages insofar as intent or gross negligence can be proven, within the framework of statutory regulations. Liability for slight negligence in the event of damage to property is excluded.

The contractor contracted an insurance to cover public liability (business liability insurance). Any liability is limited in amount to the insurance coverage.

Any reimbursement for consequential damage, property damage, loss of profit and savings, loss of interest and damage resulting from third party claims vis-à-vis the contractor, shall be excluded. The contractor assumes – as far as not legally mandatory - no liability in the sense of the product liability law.

The contractor is liable for damages, which his employees cause during the provision of services, according to § 1313a "ABGB" (Austrian Civil Code).

Damage compensation for destruction of data or software, in any case, only applies as far as the client did fulfill his duties to proper operation of the computer system (for example technically updated well-documented data backup and relocation availability).

All claims for compensation must be immediately announced to the contractor (otherwise loss of entitlement to claim). All claims which are not announced to the contractor within three months from acknowledging the damage, are deemed to be time-barred.

14. Place of Venue

Place of venue is Vienna.

Unless otherwise agreed, the Austrian law regarding contracts between companies shall be applied, even if the assignment is executed in a foreign country. The applicability of the UN-commercial law ("UN-Kaufrecht") is excluded.