

TERMS & **CONDITIONS**

as per 01/01/2015

These are the Terms & Conditions (T&C) of netkey information technology gmbh, Amalienstrasse 68/2, 1130 Vienna, Austria, hereinafter referred to as "netkey".

This document is a translation of the original and serves for informational purposes only. The original German document is the legally binding version.

1 SUBJECT AND DURATION

1.1 Contractor accepts orders, sells, rents out and delivers exclusively based on these Terms & Conditions. The conditions below are applicable to all services that the Contractor or one of his subcontractors provide in the framework of this agreement.

1.2 Orally agreed changes or amendments to this agreement require written confirmation by Contractor to be effective. Silence with regard to such differing conditions shall not be interpreted as acceptance or agreement.

2 SERVICES AND VERIFICATION

2.1 The exact scope of services provided by Contractor is agreed with the Client in the relevant agreement, the acceptance of order and/or the Service Level Agreement. If nothing else has been agreed, Contractor provides the services during Contractor's normal working hours. Contractor ensures delivery and availability of the services according to the relevant Service Level Agreement.

2.2 The type and extent of individual organisational drafts and programmes is based on the complete and binding information, documents, and other resources as provided by Client. This includes test data reflecting real life conditions and sufficient test opportunities that Client provides in a timely manner during normal working hours and at his expense. If Client uses the staging installation provided to him for live work, he is responsible for saving and backing up the live data.

2.3 Individual programmes are based on the written specification that was either drafted by Contractor against a charge on basis of the documents and information provided to him or that was provided by Client. Client checks if the written proposal is correct and complete and initials it to mark his agreement. Subsequent change requests may be invoiced and may be implemented with a different deadline.

2.4 In the case of individually programmed software or programme adaptations, each programme package shall be accepted separately by Client at the latest four weeks after delivery. Client confirms acceptance in a separate document. (Correctness and completeness are verified on basis of the specification accepted by Client and based on the test data provided by Client, as described under 2.2.) If Client fails to accept the work within four weeks of delivery, the delivered software is deemed to be accepted as per end date of the stated period. The software is also deemed to be accepted if Client uses it for live operations.

2.5 If any, defects, i.e. deviations from the agreed written specification, shall be notified to Contractor by Client, including sufficient documentation, and Contractor shall attempt to remedy them as soon as possible. If there are substantial defects, i.e. live operation cannot be started or continued, which have been notified in writing, the software needs to be accepted again following remedy of the defects.

2.6 Client is not entitled to refuse acceptance of the software in the case of minor defects.

2.7 By ordering a (standard) library programme, Client confirms that he agrees to the scope of services of the ordered programme.

2.8 Contractor is entitled to change at his discretion the means used for providing the services, if an impairment of the functioning of the services is not to be expected.

2.9 Services outside the agreed specification that Client requires from Contractor are paid for by Client based on the actually incurred personnel and material costs in accordance with Contractor's current rates. This includes, but is not limited to, services outside Client's normal working hours, the analysis and resolution of problems and errors caused by incorrect handling or operation by Client, or other situations outside Client's responsibility. Training services are generally not included in the services and are to be agreed separately.

2.10 If in the course of the works it should turn out that it is factually or legally impossible to carry out the order, Contractor is obliged to inform Client without delay. Should Client fail to change the specification accordingly or to create the conditions for the works to become possible, Contractor is entitled to decline carrying out the order. If carrying out the order is impossible due to a failure of Client or a later change of the specification by Client, Contractor is entitled to withdraw from the agreement. Costs and expenses incurred with Contractor up to this point as well as resource extraction costs are to be reimbursed by Client.

2.11 The sending of media storing the programme, of documentation and specifications is at Client's risk and expense. Insurances are taken out only on request by Client.

3 DELIVERY

3.1 Delivery is at Client's risk and expense.

3.2 Contractor will attempt to keep the agreed delivery deadlines (completion) as closely as possible.

3.3 The desired completion dates can only be met if Client provides Contractor, at the dates stated by Contractor, with all requested works and documents, in particular the approved specification as described under 2.3, and if Client fulfils his duty to co-operate to the required extent. Delivery delays and cost increases that are due to incorrect or incomplete information or documents, or information or documents that have been changed later, are outside Client's responsibility and cannot lead to Contractor's default. Resulting cost increases are borne by Client.

3.4 When an order consists of several units or programmes, Contractor has the right to perform part-deliveries and to raise partial invoices.

4 PRICES

4.1 If it is not explicitly stated, the given prices are without VAT.

4.2 Prices are in Euro.

4.3 Prices for (standard) library programmes are the current list prices at the day of delivery. All other services (consultancy, programming, training, advice by phone, etc.) are charged by working time at the current rate at the day when the service is provided. If the amount of time spent exceeds what has been calculated for a contract and if this is not acceptable to Contractor, the exceeding time is invoiced according to the actual time spent.

4.4 The cost of media for storing programmes (e.g. hard disks, floppy disks, streamer tapes, DVDs, etc.) as well as contract charges, if any, are calculated separately.

4.5 Travel expenses, daily allowances and overnight accommodation costs are calculated separately according to the current rates at the time. Travel time is considered as work time.

5 OBLIGATIONS OF CLIENT

5.1 Client undertakes to support all activities necessary for Contractor to be able to provide the services. Client also undertakes to carry out all measures that have not been agreed in the specification but are necessary for fulfilling the agreement.

5.2 If services are provided at Client's premises, Client provides free of charge and in the required amounts and quality (e.g. air conditioned) the following items required for providing the services: network components, connections, supply power including peak equalisers, emergency power supplies, floor space for equipment, work stations and infrastructure. Client is without exception responsible for maintaining the conditions necessary for hardware operation as requested by Contractor. Client is also responsible for safety and security in rooms and buildings, amongst others for the protection from water and fire and for keeping out unauthorised persons. Client is responsible for special security measures (e.g. safety cages) at his premises. Client is not entitled to instruct Contractor's employees (in any way) and will address all requests regarding the provision of the services exclusively with the contact designated by Contractor.

5.3 Client provides at his expense at the agreed dates all information, data and documents required by Contractor for providing the services, in such a way as requested by Contractor, and Client supports Contractor on request with troubleshooting and resolving the problems, with the co-ordination of processing requests and the fine-tuning of the services. Changes of Client's workflows that may lead to changes in the services that Contractor is providing for Client need be agreed in advance with Contractor with regard to their technical and commercial impact.

5.4 If nothing else has been agreed with Contractor in the specification, Client provides internet connectivity at his expense and risk.

5.5 Client is obliged to treat the passwords and login data required for using the services and provided by Contractor as confidential.

5.6 Client will also store at his premises the data and information provided to Contractor so that they can be retrieved at any time in the event of loss or damage.

5.7 Client will perform his obligations to co-operate in a timely manner so that Contractor is not impeded in rendering the services. Client ensures that Contractor and/or third parties employed by Contractor are granted the access at Client's premises that is required for providing the services. Client ensures that his employees or the employees of affiliated companies or third parties who co-operate in the performance of the contract co-operate as required.

5.8 If Client does not fulfil his obligations to co-operate at the agreed dates or to the agreed extent, the services rendered by Contractor are still deemed as rendered in accordance with the contract, even if there are limitations. Schedules for the services to be provided by Contractor will be adapted appropriately. Client will pay Contractor separately for the ensuing additional efforts and/or costs at Contractor's current rates.

5.9 Client ensures that his employees and third parties attributable to him treat the equipment and technologies used by Contractor as well as property items given to them, if any, with care; Client is liable for any damage.

5.10 If nothing else has been agreed, provisions and co-operation by Client are free of charge.

6 PAYMENT

6.1 If nothing else has been agreed, payments shall be either single payments following the provision of the services, or quarterly advance payments in the case of regular remuneration.

6.2 The invoices raised by Contractor, including VAT, are to be paid without deductions and free of charges within 14 days of receipt of the invoice, if nothing else has been agreed in the order confirmation and/or invoice. After this period has passed, Client is in default.

6.3 When an order consists of several units, Contractor has the right to raise invoices following the delivery of each individual unit or service. The payment conditions agreed for the entire contract apply accordingly to the part-deliveries.

6.4 A payment is considered as made on the day that Client can dispose over the money. If Client makes payments late, Contractor is entitled to charge legal interest for default, all costs required for collecting the money, as well as reminder fees.

6.5 Payments made to Contractor are used first to offset compound interests, then interests and incidental expenses, then pre-court legal costs (as required for preparing action), such as costs for lawyers and collection agencies, and then the owed money starting with the oldest debts.

6.6 If Client is late with substantial amounts for more than 14 days, Contractor is entitled to halt services from the same legal relation that he has agreed to and to call in all due amounts from that relation immediately. In such cases, agreed deadlines and due dates for Contractor to

perform outstanding deliveries and provide services become invalid without Contractor being required to explicitly notify Client. Contractor is also entitled to immediately call in the payment for all services already rendered regardless of any payment periods.

6.7 Contractor has the right to make the provision of services dependent on advance payments or on other securities by Client of the appropriate value.

6.8 Client is not entitled to delay payments due to incomplete total delivery, guarantee or warranty claims, or defect claims.

6.9 Client renounces any right to offset amounts. This is, however, not applicable to consumers in the event of insolvency of Contractor and for counter claims for which there is either a legal connection or that have been determined by a court, or recognised expressly in writing by Contractor.

6.10 The complete or partial subrogation of third parties to Client's rights and obligations requires express written confirmation by Contractor.

7 RESERVATION OF TITLE

7.1 All delivered and installed goods as well as hardware and software remain the unrestricted property of Contractor until fully paid for (including interest and costs).

7.2 Assertion of the reservation of title only constitutes a withdrawal from the contract if this is expressly stated.

7.3 When goods are returned, Client is entitled to charge for the incurred transportation and handling costs.

8 RIGHTS TO USE SOFTWARE PRODUCTS AND DOCUMENTS

8.1 All copyrights in agreed Contractor services (programmes, documentation, etc.) are owned by Contractor or his licensors. Distribution by Client is not allowed. Client's co-operation in producing the software does not lead to the acquisition of rights to the usage established in this contract. Any violation of Contractor's copyright leads to damage claims, whereby full satisfaction must be effected.

8.2 Where the Client has been provided with software products or is allowed to use software products in connection with the services and if nothing else has been agreed, Client, for the duration of the agreement only, has the non-exclusive, non-transferrable, and non-sublicensable right to use the unaltered software products within the purchased scope.

8.3 Client is allowed to make copies for archive and data backup purposes on condition that the software does not contain an explicit statement by licensor or third parties that it is not allowed and on condition that all copyright and property notices are transferred in an unchanged manner into these copies.

8.4 No documents that have been provided to Client by Contractor, including but not limited to documentation about the software products, may be reproduced or distributed, neither against a charge nor for free.

8.5 If Client is provided with a software whose licensor is a third party, the granting of the usage right is in accordance with the licensing conditions of licensor (producer).

9 QUOTATION

9.1 The quotation is prepared in accordance with the best technical knowledge, however no guarantee can be given for its correctness.

9.2 The quotation is payable if a charge has been agreed for it.

10 WARRANTY, MAINTENANCE, CHANGES

10.1 Contractor warrants that the software will fulfil the functions as described in the documentation belonging with it, on condition that the software is used on the operating system stated in the agreement. The conditions for resolving errors are as follows:

- Client documents errors in the error notification in a way that allows Contractor to troubleshoot the errors.
- Client provides Contractor with all documents required for resolving errors.
- Client or third parties associated with him have not interfered with the software.
- The software is used in accordance with the designated usage conditions as described in the documentation.

In a warranty case improvements take precedence over price reduction and redhibition. In the case of a valid notice of defect, defects are remedied within an appropriate timeframe, whereas Client enables Contractor to perform all measures necessary for remedying the defects. The presumption of defectiveness in accordance with § 924 of the ABGB (Civil Code) is excluded.

10.2 If corrections and amendments are necessary until the completion of the agreed services and they are due to organisational or programme defects on Contractor's side, they will be carried out by Contractor free of charge.

10.3 Costs for support, troubleshooting, and the resolution of problems and errors that are due to Client, as well as other corrections, changes, and amendments are charged to Client by Contractor. This also applies to the remedy of defects in the case that Client or third parties have made programme changes or amendments or in other ways interfered with the programme.

10.4 Furthermore, Contractor is not responsible for errors, problems or damage that result from mishandling, changed operating systems com-

ponents, interfaces and parameters, usage of unsuitable organisational means and storage devices in case certain storage devices are compulsory, abnormal operation conditions (in particular deviations from the installation and storage conditions), as well as from transport damage.

10.5 In the case of programmes that have been changed later by Client's own programmers or programmers of third parties, Contractor is not liable in any case.

10.6 If the object of the contract is the changing or amendment of existing programmes, liability applies only to the changes or amendments. Liability for the original programme does not come into force again through such works.

11 IMPAIRMENTS OF PERFORMANCE

11.1 Contractor undertakes to provide the services according to the agreement. If Contractor does not provide the services at the agreed dates or provides them with defects, i.e. there are substantial deviations from the agreed quality standards, Contractor is obliged to start remedying the defects immediately and provide the services without defects within an appropriate time by either repeating the concerned services or improving them, according to his discretion.

11.2 If a defect is due to Client's provisions or duty to co-operate, or to a breach of obligations by Client in accordance with 5.9, any duty to remedy defects free of charge is excluded. In such cases, the services rendered by Contractor are still deemed as rendered in accordance with the contract, even if there are limitations. On request of Client, Contractor will undertake a remedy of defects against a charge.

11.3 Client will support Contractor in remedying defects and will provide him with all necessary information. Defects are to be notified to Contractor by Client immediately in writing or by e-mail. Costs for additional work remedying defects which are due to late notification are to be borne by Client.

12 LIABILITY

12.1 Contractor is liable to Client for damage verifiably caused by him only in cases of gross negligence. This also applies to damage that is caused by third parties used by Contractor. Contractor has unrestricted liability in cases of personal injuries caused by him.

12.2 Liability in case of indirect damage, for example loss of profits, costs associated with interruption of operation, data loss, or claims of third parties, are expressly excluded.

12.3 Claims for damages expire in accordance with legal regulations but at the latest a year after Client became aware of the damage and of who is responsible for the damage.

12.4 If Contractor carries out the works with the help of third parties and warranty and/or liability claims arise against the third parties in connection with these works, Contractor assigns these claims to Client. Client will primarily deal with the third parties in such cases.

12.5 If data storage has been exclusively agreed as a service, liability for data loss is not excluded as according to 12.2, however costs for the restoration of the data are limited to a maximum of 10% of the order total for each claim, and a maximum amount of EUR 15,000.--. Warranty and damages claims by Client are excluded if they exceed what has been stated in this agreement, independent of their legal grounds.

13 CANCELLATION AND RESCISSION

13.1 If the agreed delivery date is exceeded due to Contractor's exclusive fault or unlawful conduct of Contractor, Client is entitled to cancel the agreement in question by means of registered letter if the agreed service is not in a substantial part provided within an appropriate extension of time and there is no fault of Client.

13.2 Force majeure, industrial disputes, natural disasters and transportation stoppages as well as other circumstances outside Contractor's influence relieve Contractor of the obligation to deliver or permit him to agree a new delivery date.

13.3 Cancellation by Client, who is an entrepreneur, are only possible with Contractor's written agreement. If Contractor agrees to the cancellation, he is entitled to charge for the provided services and incurred costs as well as a cancellation fee of 30% of the part of the contract value of the overall project that has not yet been invoiced.

13.4 If the Client is a consumer, according to the Austrian Fernabsatz- und Auswärtsgeschäfte-Gesetz (FAAG) he will in many cases have a right of withdrawal after contract conclusion. In order to comply with the deadline he just needs to send the withdrawal notice to us on time (per letter to netkey information technology gmbh, Amalienstrasse 68/2, 1130 Vienna, Austria, or per e-mail to contact@netkey.at).

14 DURATION

14.1 The agreement becomes effective with the signature of both parties and is made for an indefinite period. The agreement can be cancelled by registered letter by each party by giving 3 months notice, but at the earliest at the end of the agreed minimum duration.

14.2 Both parties are entitled to cancel the agreement by registered letter without notice for good cause. Among others, a good cause is if a contracting party continues to commit a breach of essential contract duties despite written warning and threat of cancellation or if bankruptcy or other insolvency proceedings have been requested, opened or rejected for lack of funds, or if the services of the other party are hampered or have become impossible for more than six months due to force majeure.

14.3 Furthermore, Client is entitled to cancel the contract early for good cause if essential parameters for rendering the services have changed and because of this Contractor cannot be reasonably expected to carry on providing the services under an economic viewpoint.

14.4 In the case of contract cancellation, Client immediately has to return to Contractor all documents and documentation given to him by Contractor.

14.5 On request, Contractor will support Client at contract termination at Contractor's current hourly rates with the return of services to Contractor or to a third party named by Contractor.

15 FORCE MAJEURE

15.1 Force majeure and other unforeseeable hindrances on Contractor's side, such as operational and transport disruptions, relieve Contractor from the agreed obligations. Force majeure and other unforeseeable events relieve Contractor from delivering the service for the duration of the hindrance without Client being entitled to claim for a price reduction.

16 PRIVACY

16.1 In handling personal information, Contractor will adhere to the regulations of the privacy and the telecommunications acts and take the required technical and administrative measures regarding privacy that he is responsible for. Contractor and his employees specifically undertake to adhere to the conditions contained in § 15 of the privacy act.

16.2 Contractor is not obliged to check if the data processing measures that Client has ordered comply with privacy rules and regulations. It is Client's duty to ensure it is legal to provide Contractor with personal data and that it is legal for Contractor to process these data.

16.3 Contractor will take all reasonable measures to protect Client's data and information saved at his premises from unauthorised access by third parties. However, Contractor is not responsible if third parties nevertheless succeed in gaining access to the data and information by illegal means.

16.4 By concluding the agreement, Client agrees that the data from this business case can also be transferred to subcontractors involved in carrying out this order.

17 CONFIDENTIALITY

17.1 The contracting parties undertake to treat the other party's trade secrets that become known to them in connection with this agreement and with carrying out this agreement as confidential and to not make them accessible to third parties, unless they are publicly known or have been known to the recipient beforehand without confidentiality obligation, or were told or provided to recipient by a third party who is not obliged to confidentiality, or have been proved to have been developed independently by recipient, or have to be made public due to a final decision by a public authority or judge.

17.2 The subcontractors affiliated with Contractor are not considered as third parties if they are bound by an appropriate confidentiality obligation.

18 JURISDICTION AND APPLICABLE LAW

18.1 This agreement shall be governed by Austrian substantive law. The application of the UN Convention on Contracts for the International Sale of Goods is excluded. The contract language is German. The place of jurisdiction is Vienna. This also applies if the order is carried out outside of Austria.

18.2 The above conditions apply to sales to consumers according to consumer protection law only to the extent that the consumer protection law does not prescribe other conditions.

18.3 Should a condition of these Terms & Conditions be or become invalid or ineffective, the other conditions are not affected.

19 MISCELLANEOUS

19.1 In the agreement the contracting parties name competent and qualified employees who can make the required decisions or ensure these are taken.

19.2 Client will not, for the duration of the contract and until a year after termination, contract away employees used by Contractor for providing the services, neither himself nor through a third party. In every case of breach Client is obliged to pay to Contractor a contractual penalty in the amount of twelve times the gross monthly salary that the employee in question has last received from Contractor, or the equivalent to level ST2/specialised activities of the Austrian IT-industries collective labour agreement salary ("Kollektivvertragsgehalt für Angestellte in der elektronischen Datenverarbeitung und Informationstechnik, spezielle Tätigkeiten, ST2"), whichever is higher.

19.3 Any act of disposal of the rights and obligations under this agreement requires the advance written agreement of the other contracting party. However, Contractor is entitled to transfer the agreement to an affiliated group company without Client's consent.