



Vienna, 21.09.2007

General terms and conditions

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1. Application of the general terms and conditions

1.1 This general terms and conditions apply to all orders given to mquadr.at software engineering and consulting GmbH (Supplier) provided that the parties to the contract have not expressly agreed on an amendment to the contract in writing.

1.2 Any contrary general terms and conditions by the customer (Customer) shall be expressly excluded herewith.

1.3 The Customer confirms to have read thoroughly and understood this general terms and conditions. The Customer accepts these general terms and conditions completely and there exist no uncertainties.

2. Service; Right of use

2.1 The Supplier undertakes to create a work subject to the extent and content of the accepted order which is usable exclusively in terms of the communications intent of the Customer and confirms to the technical requirements of the medium.

2.2 The Supplier in particular develops software programs, the essential parts of which are well known to the Customer.

2.3 The Supplier shall grant the Customer with regard to the work especially, but not exclusively, the software components a non – transferable right of use for a term to be agreed on separately from the state of execution of the contract, for the purpose the software or the work have been delivered. A non – localized right of use shall not be granted in any case, unless it shall be separately agreed on and compensated. Any copies shall only be made for backup purposes and only with consent of the Supplier, whereas any notes on the original by the Supplier shall also be affixed to the copy. The removal or change of any notes (copy rights, serialnumbers etc...) is expressly prohibited. In case of violation the Customer shall be obliged to hand over the copies immediately to the Supplier without any right of compensation. The assertion of claims by the Supplier shall remain unaffected.

2.4 Any further developments (especially updates) shall not be provided free of charge. The Supplier undertakes himself to offer to the Customer any progresses (especially updates) of the ordered work or software prior to possible other interested parties. The further development shall be paid for and require a written consent as well as the amicable departure from the written form requires the written form. The deadline for acceptance of the order shall be restricted to 14 days. During this period an agreement has to be reached by both parties acting in good faith. After this period the Supplier shall have the right to offer the further developments to any other interested party.

2.5 All rights as to amendments, developments and other adaptations of the works ordered or software shall remain with the Supplier.

2.6 The Supplier has the right to sign works created by him and use them for its marketing purposes.

2.7 The good cooperation by the Customer required for the creation of the work shall not include a (joint) copy right. The Customer herewith waives the assertion of any such claims against the Supplier.

2.8 The Customer shall only have the right to use the works ordered in accordance with the order (including this general terms and conditions) after he has fulfilled his obligations under this contractual relationship, especially after the fee agreed on has been fully paid.

2.9 Any other or further use, for example the resale of the right of use to a third party, shall only be permitted with written consent of the Supplier and the payment of an adequate compensation to the Supplier.

2.10 The work created by the Supplier shall remain in the sole ownership of the Supplier unless it is fully paid for by the Customer.

2.11 The transfer of exploitation rights of merchandising products or any similar products to the Customer is expressly excluded, unless a single agreement with the respectively beneficiary is agreed on.

3. Liability

3.1 The Customer acknowledges that a production without any defects especially of software, websites and/or other visual display units is not possible. Therefore the Supplier shall only be liable for any defects which would have been recognisable in accordance with the state – to – the – art. The Supplier shall be obliged to perform the orders received carefully and conscientiously and to safeguard the Customers interests. Therefore the Customer shall be obliged to safeguard all business secrets confided in him and to maintain silence about these.

3.2 The Supplier shall be liable for all damages which are the result of gross negligence or intent. Any liability for lenient negligence as well as damages for consequential damage, financial loss and loss of profit shall be excluded. Damages for destruction of data and software shall only be granted if the Customer has fulfilled his obligations for a proper handling of his equipment (e.g. documented data back – up).

3.3 Warranty of the supplier shall be excluded if any defects occur due to used goods, improper service by the Customer or any other third parties, changes or repairs have been effected without written consent by the Supplier or non-compliance of instruction or assembly manuals.

3.4 Immediately upon delivery or receipt of the service the Customer shall be obliged to check these as to their correctness and completeness and in the case of programs to carry out a test run. Claims for defects shall be asserted immediately upon delivery or receipt, respectively, of the service in writing, otherwise the Customer shall not be entitled to any claims for warranty.

3.5 The granting of a contractual warranty ("Garantie") needs a separate agreement which shall specifically set forth all benefits, other terms and the duration of the contractual warranty and shall be signed by both the Supplier and the Customer.

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3.6 Warranty period shall be limited to six months beginning with the date of delivery. Any extension of the warranty shall not be accepted. The Customer's obligations to check the products for defects and make a complaint shall not be subject to exclusion. Any exclusion of §§ 377 HGB shall not be accepted.

3.7 Penalties on the Supplier shall only be valid if they amount to a maximum of 0.1 % and a total of a maximum 8 % of the volume of the order. If delays occur due to facts in the Customer's sphere the Supplier shall not be obliged to pay any penalty.

4. Prices and payment – set off – rescission/termination

4.1 All prices are excluding VAT unless otherwise agreed. Upon invoicing the VAT shall be added.

4.2 Unless otherwise agreed the prices set forth in the offer valid 30 days after placement of the offer. The agreed fee/price shall be payable without further deductions upon receipt of the invoice – unless otherwise agreed explicitly in writing. If the Customer is in default of payment he shall be liable to pay default interest amounting to 8 percent points over the base interest rate (published on <http://www.oenb.at>). The base interest rate effective at the last calendar day of half year shall also apply for the following half year. The assertion of claims for further damages caused by delay shall be unaffected. Furthermore the Customer shall be obliged to pay all costs due to extrajudicial collection (e.g. collection agency, lawyer etc.).

4.3 If the Customer does not adhere to the conditions of payment or any circumstances are revealed that are – subject to the discretion of a business- man - give rise to doubts of the credit standing of the Customer the Supplier shall be entitled to request advance payments or the issuing of acceptable securities (eg bank guarantee) for services still to be performed regardless of any other legal rights the Supplier may have. If the advance payments are not made as the securities are not issued by the end of a reasonable grace period the Supplier may rescind from the contract and claim compensation for damages.

4.4 Unless otherwise agreed continuing obligations can be cancelled with three month notice by both the Customer and the Supplier to the end of the month.

5. Other terms

5.1 Title to goods delivered by the Supplier shall remain with the Supplier until the Customer has fully settled the balance.

5.2 The Customer shall be obliged to safeguard and to maintain silence about all business secrets.

5.3 All obligations undertaken by the Customer shall be ceded to any third parties and companies who get in touch with the order. The ineffectiveness or non – enforceability of a clause of this general terms and conditions shall not effect the effectiveness or enforceability of all other clauses of this general terms and conditions. In this case all parties shall use their efforts to replace the ineffective or non – enforceable clause by an effective and enforceable one which is as close as possible to the purpose of clause to be replaced.

5.4 Any agreements on the exclusion of challenge due to error or due to the disproportion more than the half between consideration and performance shall not be accepted by the Supplier.

5.5 The conferring of rights and obligations on third parties by the Customer is only admitted after written consent of the Supplier, This shall apply also to third parties in which the Customer has even a minimum share.

5.6 All changes and amendments to the order or this general terms and conditions shall require written form. The departure from the written form requirement shall also require the written form.

5.7 Exclusive jurisdiction with regard to all disputes arising from or in the context of this contract or its cancellation shall be the verbal in the component court in Vienna.

Austrian right shall apply.

The UN Sales Convention shall not apply.