

## §1 VALIDITY

- (1) Validity for Services and Software. The following terms and conditions shall apply conclusively to all individual contracts for consulting services (hereinafter referred to as 'Services'), and for the sale and lease of software, provided by ASAPIO GmbH & Co. KG (hereinafter referred to as 'ASAPIO') to the Customer, and unless otherwise agreed in writing.
- (2) "Services". Services shall in particular include application consulting, implementation consulting, individual creation and adaptation of software, software installation, support services, training services as well as all other services agreed upon with reference to these Terms and Conditions. Unless otherwise expressly agreed in individual cases, ASAPIO shall provide the Services as services within the meaning of §§ 611 et seq. BGB (German Civil Code).
- (3) "Software". Software and program code produced or delivered by ASAPIO and owned in full by ASAPIO with respect to intellectual property, source code and distribution rights.

## §2 RIGHTS OF USE AND INTELLECTUAL PROPERTY

- (1) If ASAPIO owes the delivery of purchased software ('perpetual license') or other deliverables/work results, which may be subject to its own rights, ASAPIO shall grant the Customer a limited, non-exclusive, non-transferable, non-assignable, non-sublicensable right of use for its own purposes, to the licensed extent, and upon payment of the corresponding fees.
- (2) If ASAPIO owes the provision of software for lease ('subscription license'), ASAPIO shall grant the Customer a limited, non-exclusive, non-transferable, non-assignable, non-sublicensable, revocable right of use for its own purposes, to the licensed extent, and upon payment of the corresponding fees.
- (3) Intellectual property, ownership rights, copyrights, ancillary copyrights and distribution rights for Software or code delivered or developed by ASAPIO shall remain exclusively with ASAPIO.

## §3 CONTRACT TERM

- (1) Term. The duration of contract results from the respective individual contract.
- (2) Termination. If services are agreed in an individual order for a limited duration, premature termination shall only

be possible for good cause and with the consent of ASAPIO.

- (3) Written form. Any termination notice must be in writing to be effective.

## §4 DUTY TO COOPERATE

- (1) The Customer shall support ASAPIO free of charge in the fulfillment of the contractual performance obligations, in particular during delivery of Services and Support services. Customer shall in particular
  - Provide IT system accesses required for the performance of the services, such as URLs, user IDs, passwords and authorizations;
  - Provide internet-based remote access to the required IT systems for ASAPIO free of charge (e.g. via virtual desktop solutions, VPN access or similar);
  - Provide all information, systems, installations and other infrastructure services required to perform the Services in a timely manner;
  - Encourage its employees to cooperate with ASAPIO's staff;
  - Grant the employees commissioned by ASAPIO for the performance of the services access to the computers and premises required for the performance of the services in case of on-site activities;
  - name a contact person who can be reached by ASAPIO at an e-mail address and mobile phone number, in case of emergency also outside normal working hours. The contact person must be able and authorized to make the decisions necessary for the performance of the service on the part of the Customer or to bring about such decisions directly.
- (2) Additional costs, delays and other disadvantages resulting from a breach of the Customer's duty to cooperate shall be borne by the Customer.

## §5 CHANGES IN THE SCOPE OF SERVICES

If, during performance, one of the parties determines that a change in the originally defined scope of performance is necessary or expedient, it shall notify the other party thereof without undue delay, stating the reasons. The parties will consult on the implementation of the proposed change in performance and the possible impact on the performance period and remuneration. There shall be no obligation to accept the proposed change in performance. ASAPIO shall

only be obliged to implement a change in performance if it has agreed to the change in writing.

## §6 ACCEPTANCE OF DELIVERABLES

The following shall only apply to Services that are express provided as deliverables/works:

- (1) Presentation for acceptance, inspection. After completion of the deliverables to be accepted, ASAPIO shall present the deliverables to the Customer for acceptance. The Customer will perform the acceptance test of the submitted deliverables for its conformity with the contract within fourteen (14) days.
- (2) Acceptance declaration. After the acceptance test has been successfully performed, the Customer shall immediately declare acceptance to ASAPIO in writing. The acceptance test shall be deemed to have been successfully performed if the work performance meets the requirements provided for in the scope of performance in all material respects.
- (3) Defects. If the Customer detects defects or nonconformity of services with the contract, he shall notify ASAPIO thereof without undue delay. The notification must contain a description of the defect found. ASAPIO shall eliminate defects as soon as possible. After elimination, the acceptance test shall start again. Non-substantial deviations shall not entitle the Customer to refuse acceptance; they shall be recorded by the Customer in writing in the acceptance declaration as a defect and shall be remedied by ASAPIO under the warranty.
- (4) Fictitious acceptance in the event of failure to meet the deadline. If the Customer does not declare acceptance without undue delay in accordance with the above provisions, ASAPIO may set the Customer a period of fourteen (14 ) days in writing for declaring acceptance. Acceptance shall be deemed to have taken place unless the Customer specifies the reasons for refusal of acceptance in writing within this period.

## §7 REMUNERATION

- (1) Remuneration for Services: Unless otherwise agreed, the services provided by ASAPIO shall be remunerated by the Customer on a time and material basis in accordance with ASAPIO's current price list applicable at the time the order is placed. Unless otherwise agreed, invoices will be issued monthly.

- (2) Remuneration for software for lease ('subscription license') and support services: Unless otherwise agreed, the fee shall be paid no later than the beginning of the contract term or the beginning of each renewal term.
- (3) Remuneration for software for purchase ('perpetual license'): Unless otherwise agreed, the purchase price will be invoiced upon effectiveness of the contract.
- (4) Unless otherwise agreed, travel time and expenses shall be remunerated separately.
- (5) Due date: The remuneration shall be due upon invoicing by ASAPIO.

## §8 PAYMENT TERMS

Unless otherwise agreed in an individual contract, the following terms apply:

- (1) All prices are subject to the statutory VAT and any other applicable taxes, duties or fees.
- (2) Payment term is 30 days net.
- (3) Payments are not subject to any discounts or rebates.
- (4) Set-off, right of retention: The Customer shall only be entitled to set-off or to assert rights of retention if its counterclaim has been legally established or acknowledged by ASAPIO in writing.

## §9 INFRINGEMENTS OF PROPERTY RIGHTS ('INDEMNIFICATION')

- (1) ASAPIO shall indemnify the Customer at its own expense against all claims of third parties arising from infringements of property rights for which ASAPIO is responsible. The Customer shall inform ASAPIO without undue delay of the claims asserted by third parties. If the Customer does not inform ASAPIO immediately about the asserted claims, the claim for indemnification shall expire.
- (2) In the event of infringement of property rights, ASAPIO may, without prejudice to any claims for damages of the Customer, at its option and at its own expense either make changes with regard to the affected performance after prior consultation with the Customer which ensure that an infringement of property rights no longer exists or acquire the necessary rights of use for the Customer.

## §10 WARRANTY

The following shall only apply to Software for purchase ('perpetual license') or Services that are express provided as

deliverables/works or for other reasons where statutory warranty obligations of ASAPIO would apply:

- (1) Warranty Period. The warranty period shall be one (1) year, in case of work performances beginning with the acceptance, otherwise with the delivery of the object of performance or the software.
- (2) Notice of defects. Defects must be notified by the Customer to ASAPIO in writing immediately after discovery. The written notification must contain a description of the defect. Upon request, the Customer shall provide ASAPIO to a reasonable extent with documents and information required by ASAPIO to assess and remedy the defect.
- (3) Remedy of defects. Defects which are recorded in the acceptance declaration or are notified by the Customer in writing before expiry of the warranty period shall be remedied by ASAPIO by way of subsequent performance at ASAPIO's own discretion by rectification of the defect or delivery of a replacement item. If the defect cannot be remedied within a reasonable period of time or if the subsequent performance is deemed to have failed for other reasons, the Customer may withdraw from the contract or reduce the remuneration if the statutory requirements are met.
- (4) Exclusion of warranty. The warranty shall not apply if the Customer makes any modification or processing of the object of performance or the software not authorized by ASAPIO, unless the Customer proves that the defects in question were not caused by such modifications, neither in whole nor in part, and that the remedy of the defects is not impeded by the modification.
- (5) ASAPIO warrants that the Software will conform to the descriptions and specifications set forth in the individual contract under normal use and maintenance and will be free from defects in materials and workmanship for one (1) year measured from the date of delivery of the Software. ASAPIO's sole obligation under this warranty is to repair or replace defective Software and/or correct any nonconformity of the Software to conform to the functional specifications set forth in the individual contract. This warranty is effective only if the Software is used on or in conjunction with the product(s) to which it relates. In addition, the warranty assumes proper use of the Software by the Customer and shall not apply if the Software has been modified without ASAPIO's prior

written consent. ASAPIO does not warrant that the use of the Software will be uninterrupted or error-free.

- (6) Exclusion of warranty for deliverables and Software provided free of charge. The warranty shall not apply to deliverables or software provided by ASAPIO free of charge.

## **§11 WARRANTY FOR SOFTWARE FOR LEASE ('SUBSCRIPTION LICENSE')**

For software for lease, the following shall apply:

- (1) Technical data, specifications, and performance data in public statements, in particular in advertising material, are not statements of quality. The functionality of the software shall be based on the description in the offer and the documentation provided. In all other respects, the software must be suitable for the use presupposed under the individual contract.
- (2) ASAPIO shall provide and maintain the Software in a condition suitable for the contractual use. The obligation to maintain does not include the adaptation of the software to changed conditions of use and technical and functional developments, such as changes of the IT environment, in particular changes of the SAP systems required, if any, adaptation to the functional scope of competing products or establishment of compatibility to new interfaces and data formats.
- (3) The liability for damages regardless of fault for defects that were already present at the time of conclusion of the individual contract is excluded.
- (4) The Customer shall support ASAPIO in the determination and elimination of the defect and shall without undue delay grant inspection of the documents from which the more detailed circumstances of the occurrence of the defect result.
- (5) Unless otherwise agreed, the ASAPIO Support Terms and Conditions shall apply to the support services to be provided.

## **§12 LIABILITY**

- (1) ASAPIO shall be liable for intent and gross negligence. ASAPIO shall only be liable for slight negligence in the event of a breach of a material contractual obligation (cardinal obligation), the fulfillment of which is a prerequisite for the proper performance of the contract and the observance of which the Customer may

regularly rely on, as well as in the event of damage resulting from injury to life, body or health.

- (2) To the extent permitted by law, ASAPIO excludes liability for consequential damages such as lost profits, savings not achieved, business interruption, third party claims or loss of data. Contributory negligence may be asserted.
- (3) To the extent permitted by law, liability shall be limited to the value of the contract for the twelve (12) months preceding the occurrence of a loss.
- (4) If the liability for ASAPIO is excluded or limited, this shall also apply to the liability of the employees, representatives or vicarious agents of ASAPIO.
- (5) To the extent permitted by law, all claims for damages shall become time-barred after one (1) year.

## §13 SUBCONTRACTORS

The Customer agrees that ASAPIO may use subcontractors for the provision of services.

## §14 MISCELLANEOUS

- (1) Amendments and supplements to the individual contract or terms and conditions must be made in writing. This also applies to the amendment of this clause itself.
- (2) Force Majeure. In the event of force majeure events such as war, riots, forces of nature, fire, strikes, lockouts, sabotage by third parties or the like, neither party shall be liable to the other for any delay or failure to perform due to the force majeure event. If an event of force majeure lasts longer than one (1) month, both parties shall be entitled to terminate the contract for cause. In this case, there shall be no claims for compensation or damages.

## §15 GOVERNING LAW

- (1) These Terms and Conditions and any contract with ASAPIO shall in all respects be governed by the laws of Germany.
- (2) To the extent permitted by law, Munich is agreed as the place of jurisdiction for all disputes.

## §16 SEVERABILITY CLAUSE

- (1) If there is any conflict between the terms and conditions herein and the terms and conditions of the Customer, the individual contract and the terms and conditions herein shall prevail. Any different or

additional terms of any related Customer purchase order or confirmation shall have no force or effect.

- (2) If any provision of the individual contract or terms and conditions herein is held invalid or unenforceable under applicable law by a court of competent jurisdiction, it shall be replaced with the valid provision that most closely reflects the intent of the parties and the remaining provisions will remain in full force and effect.

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