§1 VALIDITY

(1) The following terms and conditions shall apply conclusively to all consulting services ('Services') to be provided by ASAPIO GmbH & Co. KG ('ASAPIO') to the Customer, as well as to the sale and lease of ASAPIO software ('Software'), unless otherwise expressly agreed.

(2) 'Services'. Services shall in particular include application consulting, implementation consulting, individual creation and adaptation of custom-specific software, installation services, 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 provides Services as services, not as works or deliverables.

(3) 'Software'. Software and program code produced by ASAPIO and offered as standard software.

(4) Amendments, supplements and declarations to any contracts and terms must be made in writing.

§2 RIGHTS OF USE AND INTELLECTUAL PROPERTY

(1) If ASAPIO owes the delivery of Software for purchase ('Perpetual license') or other work results which may be the subject of its own rights, ASAPIO shall grant the Customer a non-exclusive, non-transferable, non-assignable, non-sublicensable right for its own purposes, limited to the licensed extent, upon payment of the corresponding fees.

(2) If ASAPIO owes the provision of Software for lease ('Subscription license'), ASAPIO shall grant the Customer a non-exclusive, non-transferable, non-assignable, non-sublicensable right for its own purposes, limited to the licensed extent, during the subscription period.

(3) Customer may not sell, give away, lend or sublet the Software.

(4) Intellectual property rights, ownership rights, copyrights, ancillary copyrights and distribution rights to software and code supplied or developed by ASAPIO remain exclusively with ASAPIO.

(5) Customer agrees to notify ASAPIO about any non-licensed use or license overuse, within fourteen (14) days from occurrence, in writing. Customer will accept the invoicing of any due additional subscription fees.

§3 CONTRACT TERM AND TERMINATION

(1) The contract term is stated in the respective individual quotation or contract.

(2) If Services or Subscription licenses are agreed with a fixed term, premature termination shall only be possible for good cause and with the consent of ASAPIO.

(3) Any termination notice requires to be in writing.

(4) 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.

§4 CUSTOMER OBLIGATIONS TO COOPERATE

(1) Before purchasing or leasing Software, the Customer shall ascertain the suitability of the Software for its specific purpose by provided product information.

(2) The Customer shall support ASAPIO free of charge in the delivery of Services. He 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 the information, systems, installations and other infrastructure services required to perform the Services in a timely manner;
- grant access to the computers and premises required for the performance of the services to the employees deployed by ASAPIO in case of on-site activities;
- name a contact person who can be reached by ASAPIO at an e-mail address and cell phone number, in case of emergency also outside normal working hours. The contact person must be able and authorized to make or bring about the decisions necessary for the performance of the service on the part of the Customer.

(3) The Customer shall perform backups on a regular basis, especially prior to the installation and commissioning of software or updates thereof.

(4) 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 one of the parties determines in the course of the provision of the service that a change to the specified scope of service is necessary or beneficial, it shall inform the other party of this immediately, stating the reasons ('Change request'). The parties will agree on the implementation of the proposed service change and the possible impact on the service period and the remuneration. There is no obligation to accept the proposed change in service. ASAPIO is only obliged to implement a service change if it has agreed to the change in writing.

§6 ACCEPTANCE OF DELIVERABLES (SERVICES ONLY)

The following shall only apply to Services that are expressly agreed and provided as work deliverables:

(1) Presentation for acceptance, inspection. After completion of the deliverable to be accepted, ASAPIO shall present the deliverable to the Customer for acceptance. The Customer undertakes to inspect the submitted deliverable for its conformity with the contract within fourteen (14) days at the latest.

(2) Acceptance declaration. After the acceptance test has been successfully performed, the Customer shall declare acceptance to ASAPIO in writing within seven (7) days. The acceptance test is deemed to have been carried out successfully if the deliverables meet the requirements specified in the scope of work in all essential points.

(3) Deviations. If the Customer detects deviations from the agreed scope of services during the acceptance test, it shall notify ASAPIO thereof without undue delay. The notification must contain a specific description of the deviations found. ASAPIO shall eliminate significant deviations as soon as possible. After elimination the acceptance test shall start again. Non-substantial deviations shall not entitle the Customer to refuse acceptance of the work deliverables; they shall be recorded by the Customer in writing in the acceptance declaration as a defect and shall be eliminated by ASAPIO within the scope of subsequent performance.

(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 to declare 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 agreed otherwise, 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 effective date of the individual contract. Unless agreed otherwise, ASAPIO provides monthly invoices.

(2) Remuneration for Software for lease ('Subscription license') and support services: Unless agreed otherwise, invoices will be issued prior to the start of the first contract term and the start of each renewal term.

(3) Remuneration for Software for purchase ('Perpetual license'): Unless agreed otherwise, the purchase price will be invoiced upon effectiveness of the contract.

(4) Unless agreed otherwise, travel time and ancillary costs (travel costs and expenses) shall be remunerated separately.

(5) Due date: invoices shall be due upon invoicing by ASAPIO.

§8 TERMS OF PAYMENT

(1) All prices are exclusive of the applicable VAT and any other applicable taxes, duties and fees.

(2) Payment term is 30 days net.

(3) Discounts or rebates are not granted.

(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

(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 there is no longer any infringement of property rights or acquire the necessary rights of use for the Customer.

§10 WARRANTY

(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 is based on the description in the offer and the associated product information. In all other respects, the Software must be suitable for the use assumed under the contract.

(2) The following shall apply to Software for rent ('Subscription license'): ASAPIO shall provide and maintain the Software in a condition suitable for use in accordance with the contract. 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 change 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) For Software for purchase ('Perpetual license'), work deliverables, or for services where ASAPIO has statutory obligations to remedy defects for other reasons, the following applies: the period for notification of a defective performance shall be one (1) year, unless the defect results from liability under §11.1, in which case the period shall be two (2) years, in case of work deliverables beginning with the acceptance, otherwise with delivery of the object of performance or the Software.

(4) Notification of defects. Defects must be notified by the Customer to ASAPIO in writing immediately after discovery via the agreed contact channels (e.g. support portal or e-mail). The 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.

(5) Elimination of defects. Defects shall be remedied by way of subsequent performance at ASAPIO's own discretion temporarily by a workaround, finally by remedying the defect or correction (e.g. bug fix or update) or by a replacement item. If the defect cannot be remedied within a reasonable period, in this case the workaround shall have the effect of extending the period, or if the subsequent performance is to be regarded as having failed for other reasons, the Customer may withdraw from the contract or reduce the remuneration if the statutory requirements are met. In the event of withdrawal from the contract, the Customer shall be obligated to compensate ASAPIO for the value of the use on a pro rata basis of 1/12 of the fees per started month of use prior to notification of the defect.

(6) Exclusion of liability for defects. The liability for defects shall not apply if the Customer makes any modification or alteration of works/deliverables or 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 defects is not impeded by the modification.

(7) Known bugs. ASAPIO informs about the current status of known errors ('bugs') on a website. These are fixed continuously and do not represent a defect at delivery.

(8) Exclusion of liability for defects for Services or Software free of charge. To the extent permitted by law, liability for defects shall not apply to Services or Software provided by ASAPIO free of charge (e.g. evaluation licenses, free content packages, code samples).

§11 LIABILITY

(1) ASAPIO shall be liable for malice, 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.

(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) Contributory negligence of Customer may be asserted.

(5) 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.

(6) To the extent permitted by law, all claims for damages shall become time-barred after one (1) year.

§12 SUBCONTRACTOR

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

§13 JURISDICTION

(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.

§14 DATA PRIVACY

Contracts with ASAPIO are always subject to the GDPR. By entering into the contractual relationship, the data privacy information of ASAPIO is accepted, which can be found at https://asapio.com/terms/.

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