

General Terms and Conditions of M-Way Solutions GmbH (GTC)

§ 1 Scope of Application

1. In all contractual relations in which M-Way Solutions GmbH (hereinafter „M-Way Solutions“) provides other companies, legal entities under public law or public law special funds (hereinafter the „client“) with products and services, only these General Terms and Conditions (hereinafter „Terms“) of M-Way Solutions apply. These following special conditions take precedence over the GTC, depending on the type of products and services:

- for the provision of their own or other standard software (hereinafter „software“), the special conditions for the provision of standard software („special conditions for software licenses“) apply;
- for the provision of software maintenance, the special conditions for software maintenance („Special Conditions for Software Maintenance“) apply;
- for work and consulting services within the framework of projects, the „Special Conditions for Work and Consulting Services“ apply;

With regard to consumers, M-Way Solutions applies Special Terms and Conditions.

2. Any conflicting contractual conditions of the client shall not be included in the contract, even if M-Way Solutions executes a contract without contradicting such conditions. This also applies to the disadvantage of M-Way Solutions deviating from statutory conditions of the client, even if in the Terms and Conditions of M-Way Solutions do not explicitly refer to the legal to the legal regulations.

3. These GTCs also apply to future contractual relationships between M-Way Solutions and the client, even if not stated.

4. These GTCs and the Special Conditions apply in their entirety; the naming of individual conditions serves only to clarify and does not waive the validity of the other conditions.

§ 2 Conclusion of Contract

1. Offers from M-Way Solutions are non-binding and without obligation, unless expressly designated as binding or limited. For unspecified bonds and limitations, M-Way Solutions is bound for 14 days after submission of the binding or limited offer. A contract for goods and services shall be concluded by signing or by the fact that M-Way Solutions carries out the contract. The client remains bound for four weeks following the conclusion of the contract. If in doubt, the offer and the order confirmation for the contract from M-Way Solutions shall prevail.

2. Software or other documents (such as proposals, test programs) pre-contractually provided by M-Way Solutions to the client are the intellectual property of M-Way Solutions (see § 4); they may not be copied or disclosed to third parties. If no agreement is reached, they are to be returned or deleted and may not be used. In addition, the provisions of these Terms and Conditions, and in particular the liability clause of § 10 also apply to pre-contractual liability

3. Specifications and illustrations in product and project descriptions and documentation, among others, represent no guarantee for the quality of goods and services, unless M-Way Solutions has expressly declared this in writing.

§ 3 Goods and Services

1. M-Way Solutions provides the goods and services at the contractually agreed quality, and according to the current state of the art at the time the contract is concluded. Software is delivered in its current version unless otherwise agreed. The concluded contract (e.g. contract, license agreement) as well as project documents and other assets designated as binding by M-Way Solutions constitute the basis for the nature and quality of the goods and services. Specifications of the client must be in writing and must be accepted in writing by M-Way Solutions.

2. M-Way Solutions does not owe further conditions of the software or other goods and services beyond the product description. Such an obligation to the client may not be derived from representations of the software in the public statements of third parties, or in the advertising of third parties, unless M-Way Solutions has expressly confirms it in writing.

3. In the course of continuous product development and improvement (releases) of the software, M-Way Solutions reserves changes in goods and services, provided it is reasonable for the client.

4. The client is informed of the essential functional features of the software and bears the risk that this corresponds to his wishes and needs; he will be advised about doubts by an employee of M-Way Solutions or third-party expert prior to the conclusion of the contract. The technical permutations and conditions of the software (e.g. with respect to database, operating system, hardware, software and disk requirements) are provided by M-Way Solutions on request. M-Way Solutions may document conversations about clarification or modification of contractual conditions, and in particular of the subject of agreement. The notes will be binding for both parties if M-Way Solutions gives them to the client and there is no justified written objection within a week. M-Way Solutions will inform the client to this effect in each case.

5. Contract items, documents, proposals, test programs, etc., that are made available to the client by M-Way Solutions, before or after conclusion of the contract, are the intellectual property of M-Way Solutions and must be kept as business and trade secrets by the client (see § 11).

6. The staff at M-Way Solutions does not enter into an employment relationship with the client. The client will give instructions only to the employee designated by M-Way Solutions with effect for and against M-Way Solutions. M-Way Solutions is at liberty to employ subcontractors for the provision of goods and services.

§ 4 Rights of M-Way Solutions and Reservation of Proprietary Rights

1. All rights to the work results of M-Way Solutions, especially to software, are exclusively given to M-Way Solutions in relation to the client, even those caused by software specifications or cooperation of the client. With payment of the appropriate fee, the client receives the non-exclusive rights to use the software mentioned in §§ 3, 4 of the Special Conditions for Software Licenses.

2. Paragraph 1 applies accordingly to the customer for all other possible outputs in the context of contract negotiations and execution, including subsequent performance, training, software provided during support and maintenance, documents and information (work results).

3. The parties are at liberty, expressly and in writing, to designate individual software, individually programmed for the client and other work products as „exclusive material“. In this case, the client receives the exclusive, transferable, irrevocable and factually, temporally and spatially unlimited right to usage and ownership. The client is entitled in this case to reproduce, translate, revise, distribute, and sublicense the exclusive material to any third party to distribute, display, commercially exploit and to report about publically. The client receives the source code and development documentation and all other documents as a copy or the original. M-Way Solutions is not prevented from developing materials, software or other work products similar to the exclusive material delivered to the client, or from making them available for use. Apart from this, §§ 3, 4 of the Special Conditions for Software Licenses apply accordingly.

4. At the delivery of goods, M-Way Solutions retains ownership of the delivered goods until receipt of all payments under the respective contract, and

from all open claims from this and all past and future contracts with the client. By breach of contract by the client, in particular in case of default, M-Way Solutions is entitled to extraordinary termination, denial of service and to take back the supplied goods after providing a reminder and deadline, and the client is obliged to return them. The client must notify M-Way solutions of attachments and other third party interventions immediately and in writing. M-Way Solutions will release its due securities by their own choice or on behalf of the client only cases where the securities due exceed the secured claim by more than 20%.

§ 5 Cooperation of the Client

1. The client gives M-Way Solutions all the necessary information for implementation of the contract in a timely manner, and checks for any faults and defects, reporting them immediately in writing with a precise description of the defect. M-Way Solutions under no circumstances waives the excuse of a delayed investigation and notification of defect. Cooperation services do not entitle the client to payment, rebate or similar.
2. Where it is necessary or useful for the fulfillment of the contract, the client supports M-Way Solutions in implementing the contract free of charge, so that it is fulfilled in a timely manner and to the extent required e.g. through provision of employees, working space, the appropriate IT environment, telecommunication equipment, and data to use in the specifications, tests, acceptance tests, etc. The client shall ensure that his employees have the skills and experience required to support these services. If an employee of the client does not provide the required service, the client will designate an appropriate additional or other employee as a replacement. In particular, the client shall provide a workplace and computer with Internet access (access to the mail server of M-Way Solutions) and a telephone to M-Way Solutions employees providing services on-site as agreed. He shall grant M-Way Solutions access to hardware and software directly and via remote data transmission.
3. The client provides the working environment for the software (e.g. hardware and operating system) according to the specifications laid out by M-Way Solutions. It is his responsibility to ensure the proper operation of the necessary working environment for the software, if necessary by licensing and maintenance contracts with third parties. The client observes in particular the specifications in documentation and in references given by M-Way Solutions.
4. The client designates by writing to M-Way Solutions a contact person and deputy along with contact information (address, phone number and E-Mail address) under which their availability is ensured. The contact person must be able to make the necessary decisions for the client or be able to obtain them without delay. The contact person ensures good cooperation with the contact person at M-Way Solutions.
5. If the client provides third party software in the context of the deliverables of M-Way Solutions (e.g. application managing or hosting), he is responsible for ensuring that M-Way Solutions receives the necessary third party license to use the third party software if necessary. The client indemnifies M-Way Solutions in this respect from all claims made by third parties due to infringement (including court and attorney fees). As far as a third party can credibly claim his own rights to software provided by the client and others against M-Way Solutions, such that, if correct, the service performance of M-Way Solutions violated these rights, M-Way Solutions shall inform the client about it. If the client does not refute these claims within 14 days of notice from M-Way Solutions, M-Way Solutions will cease all services in connection with the affected third-party software and return the affected third-party software to the client, unless the client previously requested it, or it reaches a sound verdict or official agreement.
6. The client tests the software thoroughly for defects and usability in the specific situation before he starts operational use of the software. This also applies to software he receives under warranty and maintenance. He shall take adequate precautions for the event that the software might not work properly in whole or in part (e.g. by data backup and regular review of output). In the absence of express written notice in a particular case, M-Way Solutions employees can always assume that all data with which they may come into contact is secure.

7. The client shall bear all consequences and additional costs arising from a breach of these obligations. If the client does not fulfill his duty to cooperate, M-Way Solutions is not in default, unless the cooperation was required for the provision of services by M-Way Solutions. If missing, incorrect, incomplete, or subsequently corrected cooperation leads to additional costs, M-Way Solutions may issue an invoice, unless negligence by M-Way Solutions contributed to the insufficient cooperation. Other claims by M-Way Solutions remain unaffected.

§ 6 Place of Delivery, Delivery and Service Time

1. The place of performance, unless otherwise agreed, is M-Way Solutions' office location. Specified deadlines and dates for all deliveries and services are only fixed dates if expressly agreed. Delivery dates are subject to correct and timely self-delivery, unless M-Way Solutions is responsible for the non-delivery by the supplier. Partial deliveries are permissible as long as the parts supplied are reasonably usable in isolation. Any partial performance or delivery may be invoiced separately.
2. For the observance of delivery dates and the passing of risk, the time at which M-Way Solutions passes the disk to a courier is decisive for physical shipping, for electronic delivery, the time at which the software is made available for download to the client is communicated to him.
3. If M-Way Solutions must wait for participation or information from the client, or is hampered by strikes, lockouts, official intervention, force majeure or other unforeseen events hindering the execution of the contract, delivery and service deadlines are extended for the duration of the hindrance plus a reasonable start-up time after the end of the hindrance. M-Way Solutions will inform the client about the obstruction.
4. When the client delays the acceptance of the services of M-Way Solutions (especially when not retrieving service and consulting services despite the due date), M-Way Solutions will try to collect the arrears. If this is not possible, M-Way Solutions can bill the client for the unused services, as long as M-Way Solutions cannot use the provided employees elsewhere.

§ 7 Price, Payment Clause

1. If no price is contracted, M-Way Solutions' current valid price list at the time of concluding the contract applies. All prices are applicable plus VAT.
2. Unless otherwise arranged, the daily rates cover a working time of 8 hours. Any additional work per day will be paid pro rata. For weekend and public holiday work, as well as for work at night (from 20:00 to 07:00), a 50% surcharge will be added if the weekend, public holiday (public holiday scheme in Baden Württemberg and the 24th and 31st of December) or night work is on the client's request or is necessary for reasons that are not to do with M-Way Solutions. Unless otherwise agreed, M-Way Solutions will bill the client a flat rate for travel and travel time costs, as well as expenses, accommodation and other incidental costs for on-site visits by employees of M-Way Solutions.
3. Invoices are issued upon provision of the respective (partial) delivery or (partial) performance. Ongoing provisions of services are billed monthly or at the end of the project. Unless otherwise agreed, fixed prices are generally billed one-third after conclusion of the contract, one third after reaching the first milestone, and one third after completion of the delivery or service. Payments are payable immediately upon receipt of the invoice and must be made within 14 days without discount.
4. The client may only offset undisputed or legally established claims from the same contractual relationship. A right of retention of plea of unperformed contract may only be made by the client within this contractual relationship and only in the case that M-Way Solutions itself has committed a gross breach of contract or has already received the fee for a defective delivery or service, which corresponds to the value of a correct delivery or service, or if the customer's counterclaim is legally established or undisputed.
5. M-Way Solutions may increase the cost-based fee for ongoing services and recurring license fees by written notice to the client within a period of three months. The increase is effective with billing at the beginning of a calculation period or date specified in the notification. One-off fees may be charged for software or other goods and services without notice. Such an increase in one-off costs does not affect existing contracts, as long as the client's order is received prior to the announcement of the price rise by M-Way Solutions and within four months after receipt of the order i) M-Way Solutions provides the software, delivery or service to the client, ii) the client creates and authorized copy of the software, or iii) a change in the defined use or the amount of use for a delivery or service is made (e.g. an increase in the number of users). A reduction in general prices/fees is passed on to the client by M-Way Solutions. The price or fee reduction applies only to those allowances, which are payable upon or after their entry into force.

§ 8 Inspection and Reporting

1. The client bears all responsibility for an immediate inspection and notification of all deliveries and services from M-Way Solutions.
2. The client must declare complaints in writing with a detailed description of the problem at the request of M-Way Solutions. Only the contact person or his representative (§ 5 para. 4) or an otherwise qualified employee is entitled to do so.

§ 9 Material Defects and Defects of Title, Other Performance Errors

1. M-Way Solutions warrants that the software and other work products described in the agreement correspond to the product specifications and user documentation, and therefore are of the agreed quality and ensure that the contractual use of the software and other work results by the customer do not conflict with the rights of third parties. Defects in terms of the guarantee are only reproducible errors caused by quality defects in the software or other work results. A functional impairment that results from hardware failures, environmental conditions, misuse, faulty data and other reasons originating from the client, are therefore not included as a defect in terms of the guarantee.
2. M-Way Solutions warrants for defects by subsequent services by providing the client with a new, defect-free version of the software or, if one is owed, another object of agreement is provided, or the defect is remedied; the defect can also be remedied if M-Way Solutions shows the client reasonable ways to avoid the effects of the defect. Upon evidence of defects in title, M-Way Solutions warrants subsequent performance by providing the client with a legally correct way to use the supplied software, or exchanging or choosing to either change or exchange the equivalent software. The client will accept a new version of the software, if the contractual functionality is preserved and it is not unreasonable for them to do so. M-Way Solutions may make at least two remedial attempts per defect reported. In special cases, it may be reasonable for a higher number of subsequent remedial attempts to be made for the client.
3. If the supplementary performance fails after a reasonable grace period set by the client, the client may withdraw from the contract or reduce payment. Claims for damages or compensation of expenses accrued due to a defect are made by M-Way Solutions within the limits laid outlined in § 10.
4. The client shall take all measures necessary for the reasonable detection, containment and documentation of defects. This includes the preparation of a report of defects, system logs and dumps, the provision of the relevant input and output data, intermediate and test results, and other documents

suitable for describing the defect. The client shall provide all available information in breach of warranty to M-Way Solutions, and support the removal of defects in accordance with § 5.

5. If M-Way Solutions provides services for the identification or removal of defects, without being obliged to, they may require a fee in accordance with the current price list. This is especially true if a reported defect is not detectable, or not associated with M-Way Solutions, unless the client can prove that he did not recognize the non-existence of a defect and that is also not his fault. Any extra expenses accrued by M-Way Solutions due to the removal of defects must also be reimbursed, including costs created if the client fails to meet his obligations to cooperate, improperly operates software, or doesn't use services/patches (by M-Way Solutions or a third party) recommended by M-Way Solutions.

6. If a third party asserts claims that the client's exercise of the usage rights granted to them by M-Way Solutions conflict with their own, the client shall inform M-Way Solutions of this claim in writing and without delay. The client already authorizes M-Way Solutions to conduct the dispute with the third party themselves, both in and out of court. The client will not recognize the claims of the third parties without the consent of M-Way Solutions, M-Way Solutions will use this authorization, with their sole discretion, to fend off the claims at their own expense, and prevent any harm to the client through any claims for defense costs and damages within the limits listed in § 10, as long as these claims are based on faults caused by M-Way Solutions.

7. The limitation period for claims for subsequent performance in accordance with para. 1-3 is one year, and begins with the transfer or delivery of the software. This also applies to claims arising from withdrawal and reduction in accordance with para. 3 sentence 1, and claims for damages. Shortening the statute of limitations shall not apply in cases of intent or gross negligence by M-Way Solutions, fraudulent concealment of the defect, personal injury or defective title.

8. If M-Way Solutions does not or improperly provides services of damage and liability for legal defects, or if M-Way Solutions commits any other breach of duty, the client must rebuke M-Way Solutions in writing, and M-Way Solutions should be allowed a grace period within which M-Way Solutions is given the opportunity to perform the service properly or to otherwise remedy it. The limits outlined in § 10 apply for claims for damages or compensation for expenses.

9. If M-Way Solutions has provided or distributed third party software as a part of their deliveries and services, and there are defects that affect the third party software but don't affect the performance of M-Way Solutions (including the integration and parameterization of the third party software), the client must make the case against the third party licensor himself. M-Way Solutions already assigns its warranty claims against the third party licensor to the client for this purpose. Only to the extent that the client cannot indemnify himself against the third party ceded claims is there a warranty obligation on the part of M-Way Solutions. As long as M-Way Solutions satisfies the demands of the client, existing claims against the third party licensor fall back to M-Way Solutions (reverse assignment). This also applies to deliveries and services of other third parties, which have been distributed to the client by M-Way Solutions.

§ 10 Liability

1. In all cases of contractual, pre-contractual and non-contractual liability, M-Way Solutions pays damages or reimbursement of expenses to the following extent: a) in case of intent and a guaranteed quality: in full; b) in case of gross negligence: for compensation of the foreseeable and typical damage which should be prevented by due diligence, unless not complementarily and contractually defined otherwise; c) in other cases: only in case of breach of a contractual obligation that jeopardizes the achievement of the contractual purpose (cardinal obligation), as well as impossibility, for claims under warranty and from delay: for the reimbursement of the foreseeable and typical damage, but limited to the total contract value for a single case of damage and for all cases of damage. All fees in a calendar year for continuing obligations (e.g. maintenance) to the respective contract whose obligations have been violated must have been paid in full. In the case where a calendar year has already started, the fees due will be extrapolated for all damages resulting from the contractual relationship up to a maximum of €50,000.

2. The defense of contributory negligence remains open, particularly in the event that the client inadequately backs up his data. For loss of data, M-Way Solutions shall be liable for slight negligence according to para 1, only if the client has secured his data at appropriate intervals according to the current technical standards, so that they may be restored at reasonable cost.

3. The statutory liability for personal injury under the product liability law remains unaffected.

4. A statute of limitations of one year applies to all claims against M-Way Solutions to pay damages or compensation for expenses for contractual and non-contractual liability. This does not apply to liability for damages caused by intent, gross negligence, fraud or personal injury under the product liability law. The statute of limitation period begins at the end of the year in which the claim was created, or when knowledge of negligent claim circumstances are known or should have been known by the person making the claim, and expires, at the latest, five years after the claim arises. The period begins at the end of the year of the accrual of the claim, as well as by the knowledge or grossly negligent ignorance of the person about the circumstances that gave rise to challenge of the debtor and expires no later than the five years after the claim arises. The limitations of material and legal defects in § 9 para. 7 remain unaffected.

§ 11 Confidentiality and Data Protection

1. The contract partners undertake to keep acquired knowledge of confidential information and trade secrets of the other party indefinitely confidential, and only use this knowledge in the context of order fulfillment. The trade secrets of M-Way Solutions include the software and know-how, processes, techniques and concepts, customer and partner information, information about the third party software used, flow charts, documentation and product specifications and terms of the contract work with the client. The contract parties must store and secure the confidential information and trade secrets (especially software) according to the current standard and general practice, such that abuse by third parties is unlikely.

2. Exempt from the obligation of confidentiality is information that has been proven at the time of disclosure to be generally known and accessible or was already known to the receiving party at the time of disclosure or that has been legitimately made available by third parties or developed by the receiving party regardless of communications.

3. The client may make software and other work results of employees and other third parties accessible only to the extent necessary to exercise the right to use it. Moreover, he holds all contractual items secret. It is the client's responsibility to inform all persons to whom he granted access to these items of their duty to maintain secrecy and require their compliance with these rules.

4. M-Way Solutions observes the rules of data protection law. As far as personal data is processed, M-Way Solutions commits to entrust staff to maintain data confidentiality (§ 5 BDSG). As far as M-Way Solutions receives access to the hardware and software of the client (e.g. during remote maintenance), M-Way solutions does not process or use personal data. Rather, a transfer of personal data may occur only in exceptional cases as a secondary consequence of the contractual services of M-Way Solutions. In this respect, M-Way Solutions holds the position of a data processor in accordance with

§ 11 BDSG. M-Way Solutions will proceed with this data according to the instructions of the client, as well as the requirements of the German Federal Data Protection Act (BDSG) and other relevant legislation. M-Way Solutions is entitled to disclose personal information to subcontractors, provided that such disclosure is necessary for the fulfillment of a delivery or service. M-Way Solutions thereby obliges the subcontractor to comply with the applicable data protection law. The client is responsible for ensuring that all legal requirements are met so that M-Way Solutions can fulfill the contract without violating the right to privacy in relation to the data protection law. This applies e.g. for obtaining the informed consent of persons concerned with a possible processing of their personal data.

5. M-Way Solutions is entitled to record the client in their reference list of customers. M-Way Solutions requires the consent of the client to mention them for advertising purposes.

§ 12 End of Contract, Termination

1. The client may terminate work contracts at any time. In this case, the statutory provisions shall apply. In the case of continuous obligations without a defined end, each party may terminate in writing with a notice period of three months to the end of the month, unless contractually agreed otherwise.

2. Either party may terminate the contract for good cause. The termination notice must be made in writing. A good reason exists in particular if – the other party ceases his payments, has requested insolvency proceedings or a comparable legal process, or if such proceedings are opened or rejected due to lack of mass; - claims of the other contract partner are under attachment and the attachment is not removed within two weeks; - the client substantially violated his duty to cooperate or violates the terms of use in a significant manner.

3. The termination for good cause must be preceded by the issue of a written warning with the threat of termination and a deadline included, unless the delay would be unacceptable for the terminating party.

§ 13 Final Provisions

1. The conclusion of the contract, all contract amendments, additions and cancellations, reminders and deadlines und other contract formative statements are only valid if made in writing. This written form requirement can only be lifted explicitly and in writing by the contracting parties. The contracting parties do not meet the written form requirement by sending documents via fax or E-Mail. Oral collateral agreements are not accepted. Appendices form part of these GTC and related contracts.
2. If any provision in these GTC or any other agreement between the parties are or become invalid, or should this be incomplete, the rest of the contract shall not be affected. The parties shall replace the invalid provision with a new provision which fulfills the meaning and purpose of the invalid provision in a legally effective manner. The same applies for gaps or possible loopholes in the contract.
3. German law exclusively applies under exclusion of the UN Sales Convention. The exclusive place of jurisdiction for all disputes arising from and in connection with the present contractual relationship is Stuttgart. M-Way Solutions can sue the client at its headquarters or in any other jurisdiction competent under national or international law.

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