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Terms and Conditions of Contract of AKI GmbH (Provider) for the Provision of Software (Purchase) -VÜ AKI-

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1. Subject matter of the contract and price

1.1 The quality and scope of performance of the software, including functionality and compatibility, as weÄll as the approved operating environment, shall be determined by the respective programme description – supplemented by the operating instructions – unless otherwise agreed. The safety of the software shall be governed by the rules of technology tested on the market at the time of the transfer of risk, unless otherwise agreed or prescribed by law. Public statements can only be decisive for the owed quality insofar as they concern specific properties of the concretely agreed software.

1.2 The software shall only be delivered in executable form, including an operating manual (user documentation or online help) and, unless otherwise agreed, the installation instructions. The operating instructions and the installation instructions may also be made available to the Customer electronically. Further instructions shall only be supplied if this has been specifically agreed, for example in a parts list.

Prior to any permissible decompilation, the Customer shall first request the necessary information from the Provider. Insofar as interfaces to software not to be supplied by the Provider exist in the Provider's software, Section 69 d of the German Copyright Act (UrhG) shall apply.

1.3 Unless otherwise agreed, the software shall be installed and put into operation by the Customer. All further services provided by the Provider at the request of the Customer (in particular, preparation for use, installation and demonstration of successful installation, instruction, training and advice) shall be remunerated on a time and material basis.

1.4 The prices shall apply for three months from the conclusion of the contract. Thereafter, the Provider may pass on an increase in the list price by its upstream supplier to the Customer accordingly no later than one week before delivery. The customer may withdraw from the contract until delivery, but at the latest within one month after notification of the price increase, if the price increase exceeds 5%.

2. Rights of use to software and protection against unauthorised use

2.1 Upon full payment of the agreed remuneration, the Provider shall grant the Customer the right to use the agreed software to the extent stipulated in the contract. If the scope of use is not agreed in the contract, this concerns a simple, non-exclusive right of use in perpetuity. This entitles the Customer only to use the software on one computer by one user at a time. The right of use only includes use for the Customer's internal purposes.

Any further use must always be contractually agreed before it begins. The remuneration shall be based on the scope of the right of use.

2.2 A transfer of the rights of use to a third party shall only be permissible if the Customer fully relinquishes his rights. The Customer shall be obligated to impose the obligations and restrictions of use incumbent upon him on the third party. This applies in particular to the obligations under Clause 3.5. The Customer shall confirm the relinquishment of his own use in writing at the request of the Provider.

2.3 The Customer may only copy software insofar as this is necessary for use in accordance with the contract. Copyright notices in the software may not be changed or deleted.

2.4 The Provider is entitled to take appropriate technical measures to protect against non-contractual use. The use of the software on the basis of an alternative or successor configuration may not be significantly impaired by this. If the Customer uses the software beyond the agreed scope (overuse), he shall be deemed to be in breach of contract. The Customer shall notify the Provider of the overuse without delay. The Customer has the right to conclude an agreement with the Provider on increasing the scope of use. Claims for damages by the Provider shall remain unaffected by this.

The Provider shall be entitled to check regularly, as a rule once a year, whether the software is being used to the agreed extent. The Customer shall be obligated to either provide the Provider with a self-disclosure or, at the Provider's discretion, to support the Provider in checking the scope of use. For this purpose, the Customer shall grant the Provider insight into the systems to the extent required, either via remote access or enable such a review on site. The Provider shall announce the review with reasonable notice. If the review reveals that the software is not being used in accordance with the contract, the Customer shall bear the costs of the review. The Provider may commission third parties with the review.

If an instance of overuse is determined in the course of the review, the Customer undertakes to pay a contractual penalty in the amount of three times the remuneration that would have been payable for said overuse.

2.5 Ownership of reproductions made available shall remain reserved until the remuneration owed has been paid in full. Insofar as rights of use are granted individually beforehand, these are always only granted on a provisional basis and are freely revocable by the Provider.

2.6 The Provider may revoke the Customer's right of use, if the Customer violates restrictions on use or other regulations for protection against unauthorised use (see also Clauses 3.4 and 3.5) to a not inconsiderable extent. The Provider shall set the Customer a grace period for remedial action beforehand. In the event of a repeat occurrence and in the event of special circumstances which, after weighing the interests of both parties, justify immediate revocation, the Provider may issue the revocation without setting a deadline. The Customer shall confirm the cessation of use vis-a-vis the Provider in writing after said revocation. The Provider shall grant the Customer the right of use again after the Customer has stated and assured in writing that there are no longer any violations of the right of use, and that any previous violations (and their consequences) have been eliminated.

3. Obligations of the Customer

3.1 The Customer shall ensure that competent personnel are available to support the Provider and to use the Software, at the latest at the time of delivery.

3.2 The Customer shall notify the Provider without delay of any changes to the deployment environment. Clause 1.1 shall remain unaffected.

3.3 The Customer shall support the Provider to the extent deemed necessary in the elimination of defects, in particular, at the Provider's request, it will send a data carrier with the relevant software and provide working materials.

3.4 The Customer acknowledges that the software, together with the operating instructions and further documents – including future versions – are protected by copyright. Furthermore, these may be trade secrets, either in whole or in part.

Source programmes, in particular, are trade secrets of the Provider, unless they are freely available or something else is stipulated in an individual contract. The Customer shall take unlimited precautions to ensure that source programmes are not made accessible to third parties without the consent of the Provider. In addition, the provisions under Clause 3.6 of the AV AKI shall apply.

The transfer of source programmes shall require the consent of the Provider, which may not be refused in breach of good faith. The Provider shall only supply source programmes on the basis of an express agreement.

3.5 The Customer may not do anything that could encourage unauthorised use. In particular, he may not attempt to decompile the programmes unless he is legally entitled to do so . The Customer shall inform the Provider immediately if he becomes aware that unauthorised access is imminent or has occurred in his sphere of influence.

4. Claims for defects by the Customer

4.1 The Provider warrants that the software, when used in accordance with the contract, will comply with the agreements pursuant to Clause 1.1. The limitation period for claims based on defects begins with the delivery or – if the Provider installs – with the completion of the installation. An extension of the scope of use (Clause 2.1 Paragraph 2) shall not affect the course of the limitation period.

In addition, Clause 6 of the AV AKI shall apply to defects of title.

In addition, Clause 5 of the AV AKI shall apply to material defects in accordance with the following provisions in Clause 4.2 - 4.4. § 475a BGB remains unaffected.

4.2 The Customer shall only be able to assert claims for defects if reported defects can be reproduced or otherwise proven by the Customer. Clause 3.4 of the AV AKI shall apply, in particular, to the notification of defects.

4.3 If the Customer is entitled to assert claims for defects, he shall initially only have the right to subsequent performance within a reasonable period. Subsequent performance shall include, at the Provider's discretion, either rectification of the defect or delivery of replacement software. Subsequent improvement can also be achieved by means of circumvention measures, provided that this is reasonable for the Customer in the individual case and the performance data and quality specifications agreed for the software are achieved. The interests of the Customer shall be given due consideration in the choice. The Customer shall allow the Provider reasonable access to the Software for the purpose of subsequent performance.

The Customer shall enable the Provider to install and remove the software within the scope of subsequent performance, unless this is deemed unreasonable for the Customer. The Customer shall consult with the Provider before taking its own measures to remedy said defect.

If the Customer wishes to assert a claim for the reimbursement of expenses, this shall only exist to a reasonable extent, taking into account the value of the service in question in a defect-free condition and the significance of the defect.

4.4 If the subsequent performance fails or cannot be carried out for other reasons, the Customer may reduce the remuneration, withdraw from the contract and/or – within the scope of Clause 7 of the AV AKI – assert a claim for damages or the reimbursement of expenses under statutory conditions.

If subsequent performance is delayed, Clause 4.4 of the AV AKI shall apply to the Provider's compensation for damages and expenses.

The Customer shall exercise a right of choice to which it is entitled with regard to these defect claims within a reasonable period of time, as a rule within 14 calendar days after the possibility of the Customer becoming aware of the right of choice.

5. Validity of the AV AKI

The General Terms and Conditions of Contract of AKI (AV AKI) shall apply in addition.