

# Standard Terms and Conditions

of

## Solutions Factory Consulting GmbH

Version 01/2015

### 1. SCOPE OF VALIDITY

**1.1** The following Standard Terms and Conditions (hereinafter **STD**) apply to services and consulting services as well as the sale and supply of hardware and software on the part of Solutions Factory Consulting GmbH (hereinafter **SF**) for a customer (hereinafter [a/the] **Customer**) in the course of fulfilling assignments (hereinafter [a/the] **Project/s or Project Agreement/s**).

**1.2** The subject matter of a Project or Project Agreement may relate in particular to:

- Consultancy services
- Services related to the installation of hardware and software
- The development and provision of bespoke software
- The supply of standard software and/or standard software components
- Hardware and software-related support
- The purchase of software licenses and software rentals
- The sale and supply of hardware and accessories

**1.3** These STD shall apply regardless of whether their application is explicitly agreed upon or in the case of no other formal contractual basis having been established in connection with a delivery and/or service provided.

**1.4** These STD shall always apply as amended at the point in time that the relevant project-related agreement is concluded. The Customer has the option to view and download these STD online at [www.sf-ax.com](http://www.sf-ax.com). These will also be mailed by SF on request.

**1.5** Even if known to SF, any deviating or supplementary standard terms and conditions of the Customer shall not form an integral element of the Project Agreement unless explicitly agreed in writing between the parties thereto.

**1.6** In the event of an agreement concluded with the Customer deviating from these STD, these

terms and conditions of the Project Agreement shall nonetheless take precedence.

**1.7** SF shall have the right to amend or supplement these STD at any time. Such amendments and/or supplements shall come into effect upon the Customer being informed thereof and shall apply to all transactions concluded from this point in time.

**1.8** SF hereby informs the Customer that employees of SF are not authorized to enter into verbal subsidiary agreements or to provide verbal assurances beyond the scope of the relevant Project Agreement or these STD.

### 2. SUBJECT MATTER / SCOPE

#### 2.1 General information

**2.1.1** The nature and scope of the goods and services to be provided by SF shall be based on the terms set out in the specific Project Agreement concluded.

**2.1.2** SF commits to exercise due care and diligence when providing the contractually agreed goods and services under the agreements concluded and to adhere to the principles of due diligence.

**2.1.3** The selection of employees to provide services shall be undertaken by SF. SF shall have the right to replace the employees deployed with other employees with appropriate qualifications at any time. Moreover, SF shall also have the right to arrange for services to be provided by suitably qualified third parties.

**2.1.4** SF retains the right to revise or improve the services contractually agreed with the Customer in as far as such changes or improvements are customary, necessary on the grounds of legal provisions, or reasonable when taking the interests of both contractual parties into account.

**2.1.5** In the event that SF acquires intellectual property rights to deliverables related to the provision of goods or services, e.g. from third parties, then SF shall assign the Customer a simple, non-transferable and non-exclusive license to exploit these deliverables at its company upon full payment. All other rights to the deliverables shall be retained by SF. The Customer shall, in particular, not be authorized to permit third parties to use the deliverables, to grant sub-licenses or to either modify or further develop the deliverables.

## **2.2 Special terms relating to third-party software (standard software)**

**2.2.1** In the event that the Customer sources software licensed by SF from a third party, the former shall be obligated when using this software to accept and comply with the licensing terms and conditions (Condition of Use) made available by SF. By placing an order for licensed software developed by third parties, the Customer confirms their understanding of the scope of services and the license terms and conditions applicable to this software.

**2.2.2** The provision of standard software or standard software components shall be on the basis of the terms and conditions defined in each specific case. In the case of doubt, the Customer shall only be granted an unlimited, non-exclusive and non-transferable license. Rights of use to standard software which are assigned on the basis of the payment of a regular license fee shall revert to SF at the point in time that the relevant agreement is suspended and no later than the point in time that license payments are in arrears despite a written notification of a grace period.

**2.2.3** In the case of software purchased by SF from third parties and licensed on to the Customer, the contractual parties agree to the exclusion of any warranty or liability, particularly with regard to software errors (bugs). SF shall nonetheless assign its rights to assert claims against its supplier to the Customer.

**2.2.4** In the event that the Customer sources software which represents 'public-domain', 'freeware' or 'shareware' which has not been developed by SF, then the latter shall neither provide any warranty nor accept any liability. The Customer shall respect the license terms (Conditions of Use) of the relevant rights holder to such software.

**2.2.5** By providing SF with software for processing, modifying or further developing said software, the Customer confirms that it is authorized to perform such processing, modification or further development work.

## **2.3 Special terms relating to software developed by SF (bespoke software)**

**2.3.1** In the case of bespoke software developed by SF, the scope of the services provided shall be defined in the Project Agreement by means of specifications. The scope of the services provided shall extend to include the source code executable in the defined IT infrastructure and a program description. The rights to the program and the documentation shall be retained by SF in their entirety. In the case of doubt, the Customer shall only be granted an unlimited, non-exclusive and non-transferable right of use. Rights of use to the software which are assigned on the basis of the payment of a regular license fee, shall revert to SF at the point in time that the relevant agreement is suspended and no later than the point in time that license payments are in arrears despite a written notification of a grace period.

**2.3.2** The Customer acknowledges that minor deficiencies relating to the software can never be entirely excluded due to the nature of the subject matter. In as far as this is not explicitly defined as a contractual element, SF shall provide no warranty for and accept no liability in connection with (i) the software supplied complying with all specifications of the Customer; or (ii) the software provided being compatible with other programs run by the Customer; or (iii) the programs running reliably and bug-free; or (iv) it being possible to resolve all software bugs.

**2.3.3** The warranty provided by and the liability of SF shall exclude, in particular, deficiencies caused by any inappropriate installation on the part of the Customer or third parties, unauthorized operating conditions as well as atmospheric or static discharges, natural wear and tear, inappropriate use, changes to operating system components, interfaces and parameters, the use of unsuitable work organizational means and data media, unauthorized processing of the software by the Customer or third parties, or the transportation of the goods.

**2.3.4** The warranty is restricted to reproducible (regularly repeatable) deficiencies relating to the functionality of the program.

**2.3.5** In the event that SF provides both hardware and software, any defects relating to the software shall not entitle the Customer to withdraw from the Project Agreement which relates to the supply or use of the hardware.

#### **2.4 Special obligations borne by the Customer**

**2.4.1** The Customer shall provide SF with all of the details and information necessary in connection with the provision of the contractually defined services and performances. SF is not obligated to review this information in terms of its logic (accuracy, completeness, etc.). In the event of additional work performed on the part of SF on the grounds of incorrect or incomplete information, or on other grounds for which the Customer is responsible, this additional work can be billed separately by SF at the relevant applicable rates.

**2.4.2** The Customer shall, as required and upon request, provide SF with access to all the premises and technical infrastructure required in order for the latter to provide its goods and services.

**2.4.3** In the event of it not being possible for SF to provide services on grounds for which the Customer is responsible, or not in a timely manner, in particular if the Customer has failed to comply with its obligation to cooperate, has failed to report defects or errors in a timely manner, or has failed to comply with agreed deadlines, then the latter shall reimburse SF for the additional work caused as a result. In such a case, the deadlines agreed for the provision of the goods and/or services shall be extended by the same period of the delay caused by the Customer.

### **3. DELIVERY / SHIPMENT**

**3.1** The completion date for the services to be provided by SF and the delivery dates for the supply of hardware and software shall be based on the terms defined in the specific Project Agreement. SF shall in all cases strive to strictly comply with the agreed completion dates.

**3.2** All circumstances which lie beyond the influence of SF, e.g. business disruptions or restrictions on the supply of merchandise of all

kinds at SF or a supplier of SF, shall represent force majeure. The incidence of such events shall correspondingly extend the deadlines agreed for the provision of the goods and services and shall entitle the Customer neither to withdraw from the Project Agreement nor to assert any other claims of any kind against SF.

**3.3** The Customer is responsible for obtaining the official permits and other approvals necessary from third parties in connection with the provision of the goods or services. In the event that such approvals are not available in a timely manner, the deadlines for the provision of the goods and services shall be extended accordingly.

**3.4** In the event that the delivery of goods or provision of services is not possible on the grounds of circumstances defined under 3.2 and 3.3. above, SF shall have the right to withdraw from the Project Agreement without the Customer accruing any rights to assert claims of any kind as a result. This shall also apply in the event of the abovementioned circumstances arising during an existing delay.

**3.5** Any modifications requested by the Customer after the Project Agreement has been concluded may also entail an extension of the deadlines for the provision of goods and services accordingly.

**3.6** The Customer must issue reminders and define deadlines in writing.

**3.7** SF shall provide all goods and services from its registered head office or other business premises. Shipping shall always be at the request, risk and on the account of the Customer. At the request and expense of the Customer, SF shall conclude transport insurance to cover the goods while in transit.

### **4. PRICES / RATES / TERMS OF PAYMENT**

**4.1** The rates and prices to be paid by the Customer will be defined in the relevant Project Agreement. Unless otherwise agreed in the relevant Project Agreement, the prices and rates shall be those applicable at the head offices of SF and exclusive of VAT, expenses and ancillary costs and other charges, packaging, shipping and installation costs.

**4.2** In addition to the prices and rates for goods and services set out in the Project Agreement, the Customer shall reimburse SF for all cash expenditures and expenses (e.g. mileage allowances, tickets, accommodation expenses) incurred in the course of implementing the Project Agreement at the relevant applicable rates. Travel time will be expensed as working time.

**4.3** Fees payable on a recurring basis shall increase to the extent of the change between the index rate published in the Austrian Consumer Price Index (*VPI 2010*) for the January of the comparable year and the index rate published in the *VPI 2010* for the January of the prior year, with effect from the first day of the relevant calendar year. The baseline shall be the index rate published for October 2014. Index rate differences of up to 3% shall not be taken into consideration. SF shall have the right to refrain from imposing an increase in fees on the grounds of a change in the index in any given calendar year, albeit without this having any impact on the admissibility of future amendments.

**4.4** In the event of the Customer requesting services to be performed outside of normal business hours, surcharges of 100% shall be charged for these services on the basis of the hourly rates defined in the Project Agreement.

**4.5** Unless otherwise defined in the Project Agreement, invoices issued by SF shall be payable in full within 14 days of receipt. A payment shall be considered to have been received on the day on which SF has access to the funds.

**4.6** Any offsetting of receivables due to the Customer from SF, the retention of payments on the grounds of purported receivables due to the Customer not recognized by SF and any withholding of contractually agreed performances on the part of the Customer is not permitted.

## **5. PAYMENT ARREARS**

**5.1** In the event of payment arrears, SF shall have the right, irrespective of any other rights, (i) to postpone the performance of its own obligations until such payment or other performance has been rendered, and (ii) to impose an appropriate extension of delivery or other deadlines, and (iii) to demand immediate payment in connection with all open receivables associated with this or other transactions with the Customer, and (iv) to charge interest on arrears at a rate of 12%

p.a. on all receivables from the relevant due date, in as far as SF does not provide evidence of costs over and above this level, and (v) to withdraw from the Project Agreement if an appropriate grace period is not complied with.

**5.2** In the event that SF becomes aware of circumstances which call into question the creditworthiness of the Customer, e.g. the Customer suspends its payments, SF shall have the right to declare this as a default and to demand immediate payment of the entire invoiced amount outstanding, provided that the Customer is already in arrears with its payments. In such a case, SF shall also have the right to only provide outstanding services only subject to prepayment or the provision of collateral or to demand collateral to cover outstanding payments.

**5.3** In the event of falling into arrears with its payments, the Customer shall be obligated to reimburse SF for dunning expenses and the debt collection expenses of a lawyer or a debt collection agency in addition to all other costs and expenses incurred in connection with the arrears.

## **6. RETENTION OF TITLE**

**6.1** Goods and software supplied shall remain the unrestricted property of SF until such time as all of the receivables of SF arising out of the business relationship with the Customer have been settled in full. The Customer shall not be entitled to pledge or to assign as collateral goods subject to retention of title.

**6.2** In the case of payment arrears, a suspension of payments or foreclosure on the Customer, SF shall have the right to disassemble and/or otherwise repossess the goods subject to retention of title without this constituting a withdrawal from the Project Agreement. The Customer shall be obligated to surrender the goods.

**6.3** In the event of the seizure or other attachment associated with the goods subject to retention of title by a third party, the Customer shall be obligated to make reference to the ownership of SF and to inform SF without delay. All costs incurred by SF in connection with such seizures by third parties shall be borne by the Customer.

## 7. BUG-FIXING AND WARRANTY

**7.1** SF essentially only provides a warranty that the goods supplied comply with the contractually agreed specifications.

**7.2** The warranty period shall be 12 months from the point in time of the supply of the goods or the provision of the services. The relevant burden of proof shall be borne by the Customer.

**7.3** Identifiable deficiencies must be notified by the Customer immediately upon receipt and hidden deficiencies as soon as these are identified. These notifications must be made in writing and must include a detailed description of the deficiency. The burden of proof for the timeliness of notifications in connection with deficiencies is borne by the Customer. If a notice of defect is not asserted in a timely manner, the corresponding delivery or service shall irrevocably be considered to have been approved and accepted.

**7.4** In the event that defects are notified in a timely manner, SF shall initially be obligated to rectify these. Should SF not be successful in rectifying the issue or regard this option as commercially implausible, then an appropriate price reduction shall be agreed upon. Any annulment on the part of the Customer is hereby precluded.

**7.5** Any right of recourse against SF is precluded pursuant to Article 933b of the Austrian Civil Code (*ABGB*).

## 8. LIABILITY

**8.1** With the exception of personal injury, SF shall be liable for damage or losses only in the case of malicious intent or gross negligence.

**8.2** The liability of SF in the event of losses of or damage relating to data or information, business interruptions, loss of earnings, indirect losses, futile expenditures and any consequential damage or losses is excluded in all cases in as far as legally permissible.

**8.3** Claims for compensation asserted by the Customer against SF shall expire one year after the supply of goods or the provision of services.

**8.4** Any liability on the part of SF vis-a-vis the Customer shall in all cases be limited to the value of the respective Project.

**8.5** Any claims for recourse asserted against SF by the Customer or third parties on the grounds of product liability pursuant to the Austrian Product Liability Act (*PHG*) shall not be permitted unless the party asserting such a claim can demonstrate that the defect has been caused within the sphere of influence of SF or is at least attributable to gross negligence.

## 9. DATA PROTECTION / DATA SECURITY

**9.1** SF shall be entitled to store, process and pass on personal data subject to compliance with the relevant data protection regulations (in particular the Austrian Data Protection Act [*DSG 2000*] and Articles 92ff of the Austrian Telecommunications Act [*TKG 2000*], and from 25 May 2018 onwards the GDPR Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data) in the course of implementing the Project Agreement and for the purposes defined therein. The Customer shall not be permitted to assert any legal claims in connection with the passing on of data on the grounds of legal obligations.

**9.2** SF employs state-of-the-art data protection procedures standard in the IT industry as required by the Austrian Data Protection Act and by the EU GDPR Regulation. SF otherwise accepts no liability in this connection.

**9.3** The Customer consents to SF using the former's business data for the purposes of implementing the Project Agreement and providing its consulting services as well as for the further development and marketing of its own services. This consent can be withdrawn at any time.

**9.4** Within the legally permitted scope, SF shall also rely on automated processing of data and delete these at the end of the contractual relationship in as far as the ongoing storage of these data is not required by SF in order to comply with legal obligations.

**9.5** The Customer acknowledges that SF is neither obligated nor entitled to store and make available certain content-based data (relating to third parties) on behalf of the Customer for an indefinite period of time. Should the Customer not access such data within a period of three working days, SF shall accept no liability for the accessibility of these data thereafter.

**9.6** SF commits to undertake all technically feasible and reasonable efforts to protect the data it stores. Nonetheless, SF shall not be responsible in the event that one or more third parties is successful in obtaining illegal access to the data. The Customer is required to safeguard the confidentiality of passwords in order to guarantee the necessary level of data protection. The Customer shall be liable for all damage or losses as a result of a failure to comply with this obligation. Unless otherwise agreed, the Customer itself shall be responsible for backing up its data.

## **10. CONFIDENTIALITY**

### **10.1 Confidentiality**

The contractual parties shall be obligated to treat all commercial and technical details not already in the public domain revealed by the respective other party in the context of the business relationship as strictly confidential. Employees and other agents are to be obligated by the contractual parties to appropriately respect this confidentiality.

## **11 NAMED REFERENCES**

**11.1** The Customer authorizes SF to include its name and/or that of the company in its reference list.

**11.2** SF shall have the right to refer to the Customer by company name, logo and URL on the SF website and in other advertising materials as a customer. Testimonials and other references to the business ties with SF shall be explicitly requested from the Customer by SF and approved by the latter. The Customer shall only have the right to refuse on grounds of good cause.

## **12 NON-SOLICITATION AGREEMENT**

**12.1** During the implementation of the Project and for a period of 12 months thereafter, the Customer commits to neither directly nor indirectly employ or solicit any of the employees or third parties otherwise appointed by SF to provide services. In the case of every violation of this point, the Customer commits to pay to SF a contractual penalty of an amount equivalent to the gross annual salary of the relevant employee.

The assertion of claims for compensation in excess thereof shall remain unaffected by this contractual penalty.

## **13. CONCLUDING TERMS**

**13.1** Should any individual terms and conditions contained herein be or become ineffective, invalid and/or otherwise unenforceable, this shall have no bearing on the effectiveness, validity and/or enforceability of the remaining terms and conditions hereof. The ineffective, invalid and/or unenforceable term or condition is to be replaced by an effective, valid and/or enforceable terms or condition which as closely as possible reflect the intended commercial intentions of that replaced. The same shall apply to supplementary interpretations of the Project Agreement in the event of any contractual loopholes.

**13.2** SF shall be entitled to assign rights and obligations arising out of any contractual relationship with the Customer to subsidiaries in which SF holds at least 50% of the shares. The Customer shall accrue no terminations rights as a result of such an assignment.

**13.3** In order to be legally binding, declarations, notifications and the like addressed to SF must be made in writing and signed by hand. Any agreements to waive the above obligation must also be made in writing. Verbal subsidiary agreements shall be invalid.

**13.4** No assignment of any claims derived from this Agreement shall be permitted.

**13.5** Any and all decisions pertaining to disputes arising out of this Agreement between SF and the Customer, including any pertaining to its existence or non-existence, shall be settled exclusively before the competent court of law in Vienna, Austria. The Agreement shall be subject to Austrian Law with no resort to conflict of law rulings or the United Nations Convention on Contracts for the International Sale of Goods.

**13.6** This document is an unofficial translation of a German-language original and is provided for information purposes only. In the event of any disputes arising in connection herewith, the German-language original hereof shall be legally binding and authoritative.