

# General Terms and Conditions of Workflow HR Systems GmbH

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## 1. Subject of contract and validity

- 1.1. The following General Terms and Conditions apply to all deliveries and services provided by Workflow HR Systems GmbH (here “Contractor”) for the customer (here “Customer”) and apply for the entire duration of the business relationship.
- 1.2. In addition to these general terms and conditions, the software conditions, the maintenance conditions and the ASP conditions of the contractor shall apply depending on the subject matter of the delivery or service.
- 1.3. Unless expressly agreed otherwise, our General Terms and Conditions of Business shall apply as notified to the contractual partner.

## 2. Offer and conclusion of contract

- 2.1. Our offers are subject to confirmation with regard to price, quantity, delivery periods, delivery options and additional services. A contract is only concluded when we confirm the order in writing. If we do not confirm the contract in writing, the contract shall be concluded at the latest upon performance of the service or delivery. All agreements made between us and the customer must be specified written in the contract. Oral agreements made before or at the time of conclusion of the contract with our employees, who are not granted any legal power of representation, must be confirmed by us in writing or by a secure electronic signature in order to be effective.
- 2.2. We reserve the right to customary or technically unavoidable deviations in the subject matter of the contract after conclusion of the contract, in particular through adaptation to technical change and in the event of series changes by our suppliers, provided that this does not result in unacceptable changes for the customer.

## 3. Prices and terms of payment

- 3.1. Our prices are in Euro and net prices. Value added tax at the respective statutory rate will be added to the prices.
- 3.2. The costs for travel and departure as well as daily and overnight allowances will be charged to the customer according to the applicable rates. Travel times are regarded as working time and are invoiced at half of the respective daily rate. Travel costs within Vienna will be charged at a flat rate.
- 3.3. We are expressly entitled to make monthly partial invoices for services if they provided in parts.
- 3.4. Our invoices are payable without cash discount no later than 14 days after receipt. The date of receipt of payment shall be the day on which the amount is credited to our bank account. The risk of the method of payment shall be borne by the customer.
- 3.5. If the customer is in default of payment, we shall be entitled to charge interest at a rate of 8 percentage points above the base interest rate (§ 352 UGB) for the duration of the default.

- 3.6. If the customer is in default of payment or if there are concrete indications of the customer's impending insolvency, we may cease further work on current orders, withdraw from the contract if necessary and invoice the customer for any costs incurred up to that point, including lost profit.
- 3.7. Justified complaints by the customer do not entitle the customer to withhold the entire invoice amount but only a reasonable part.

#### **4. Delivery date and performance pool**

- 4.1. If no delivery date is agreed, the contractor shall schedule the delivery in accordance with the contractor's usual delivery periods and inform the customer of the delivery date in good time. The delivery date can only be met if the customer provides all necessary documents including specifications in full and fulfils his obligations to cooperate.
- 4.2. The contractor shall endeavour to meet the agreed deadlines for performance (completion) as closely as possible.
- 4.3. In the case of orders which comprise several programs or units or whose deliveries or services can be divided, the contractor is entitled to deliver in partial steps or to render partial services and to invoice after delivery of each individual unit or fulfilment of a partial service.

#### **5. Right of withdrawal**

- 5.1. If an agreed delivery time is exceeded due to the sole fault or unlawful action of the contractor, the customer shall be entitled to withdraw from the contract in writing if the agreed performance is not performed in essential parts within the reasonable grace period and the customer is not at fault for this.
- 5.2. Force majeure, industrial disputes, natural disasters and other circumstances beyond the control of the contractor shall release the contractor from its delivery obligations and allow it to set new delivery deadlines.
- 5.3. Cancellations by the customer are only possible with the written consent of the contractor, whereby, however, services already rendered by the Contractor shall always be invoiced.

#### **6. Protection of confidential information/data protection**

- 6.1. Each contracting party undertakes to treat confidentially all business and trade secrets, documents, program codes, plans of the other party which become known to it within the scope of the business relationship and to use them only for the purposes of the respective contract. The recipient shall not make such business and company secrets, documents, program codes, plans and the like accessible to any third party and shall only allow his employees access to such business and company secrets to the extent that is necessary for the purposes of the respective contract. The obligation to maintain secrecy shall also apply after termination of the business relationship.

The contractual partners undertake to comply with the provisions of the General Data Protection Regulation (GDPR) in the version applicable at the time. The contractor shall take all necessary technical and organizational measures to protect the data. Likewise, the contractor shall take all steps to ensure that natural persons (subject to it), who have access to confidential and personal data do only process these on the instructions of the customer, unless they are obliged to process them under the law of the EU or the EU member states.

## **7. Retention of title**

7.1. The delivered products remain the sole property of the contractor until the complete payment of all services owed by the customer from the business relationship. Furthermore, licences shall only be validly granted upon full payment of all claims of the contractor, i.e. licences shall only be granted under the condition precedent of full payment.

## **8. Copyrights, license conditions for software**

8.1. Workflow HR Systems GmbH is exclusively entitled to all copyrights to agreed services. The source code including all rights remains the property of the contractor. The contractor will support the customer in defending against all claims based on the fact that software used in accordance with the contract violates an effective industrial property right or copyright under Austrian law. The customer shall immediately notify the contractor in writing and, in the event of a legal dispute, shall notify the contractor of the dispute if such claims are raised against the customer. If claims are asserted arising from the infringement of industrial property rights or copyrights for which the contractor is responsible, the contractor may modify or replace the software or obtain a right of use at his own expense. If this is not possible with reasonable effort, the customer shall have the right to dissolve the contract immediately. This conclusively regulates all claims of the customer with regard to the infringement of industrial property rights or copyright to the exclusion of any further obligations on the part of the contractor.

## **9. Warranty**

### **9.1. General warranty conditions**

9.1.1. The contractor points out that, according to the current state of the art, malfunctions of computer programs and systems can occur even with the greatest care and that their elimination cannot be guaranteed in every case. If system requirements and/or installation conditions are specified by the contractor, these are created with the best possible care. Due to the nevertheless existing technical imponderabilities, however, no guarantee can be given for the always faultless functioning of the software even if the system requirements and installation requirements are complied with.

- 9.1.2. For all deliveries, the contractor may decide to fulfil his warranty obligation initially by improvement or replacement delivery. For the purpose of fulfilling the warranty obligation, the customer shall provide the contractor with access to hardware and software on site during the contractor's normal working hours and, if required, access via data lines. Preferably, the fulfilment of the warranty obligation via data lines shall be attempted. Only if the troubleshooting via data line is not successful, the troubleshooting takes place on site at the customer's premises.
- 9.1.3. The term of the statutory warranty period begins with the delivery or acceptance.
- 9.1.4. All defects must be reported in writing within two weeks of their discovery, with a detailed description of the defect together with sufficient documentation, otherwise the warranty is excluded.
- 9.1.5. If the customer interferes on his own authority or through third parties with the delivered software or the results of the service provided, any warranty claim shall lapse.
- 9.1.6. The warranty obligation shall in no case include reimbursement of the costs of a replacement measure undertaken through third parties which was ordered by the customer on his own initiative.
- 9.1.7. If the repair or replacement delivery fails, the customer may choose between a price reduction or termination of the contract (with immediate effect, but not retroactively) after setting an appropriate period of grace. Minor defects do not entitle the customer to dissolve the contract.

## 9.2. Warranty for software

- 9.2.1. The contractor warrants that the software complies with the specifications valid or agreed at the time of delivery, provided that the software is used in accordance with the installation and system requirements announced by the contractor and is used under the applicable conditions of use. If the system requirements also contain information about third-party software (e.g. operating system), the versions specified by the contractor shall be used. Compatibility with versions of third-party software that were not yet on the market at the time the contract was concluded is not guaranteed. Templates and examples provided by the contractor are always non-binding and do not become part of the contract.
- 9.2.2. At the discretion of the contractor, defects shall be remedied by delivery of new software or by improvement. Defects are only those deviations from the valid specifications that interfere with the function and prevent the intended use of the software.
- 9.2.3. If the contractor chooses improvement, this shall include fault diagnosis and fault or malfunction rectification for the entire duration of the warranty obligation.

- 9.2.4. The fault diagnosis shall be carried out exclusively on the basis of an immediate error message of the customer or on the basis of the contractor's own perception. Malfunctions shall be notified to the contractor by the customer without delay and together with sufficient documentation.
- 9.2.5. A malfunction shall only be regarded as a defect subject to warranty if it is a malfunctioning defect which is reproducible and prevents the intended use of the software, if new versions or updates offered to the customer free of charge within the warranty period have been installed and if the contractor receives from the customer all documents or information necessary for the elimination of the defect.
- 9.2.6. There shall be no warranty for software to which the customer or third parties have made changes without the written consent of the contractor, even if the error occurs in an unmodified part of the software. If, in the course of the fault diagnosis, it is determined that there is no warranty claim or that the cause of the fault is not in the delivered software, the customer shall bear all costs incurred as a result.
- 9.2.7. The contractor does not guarantee that the software meets all requirements of the customer, that it works together with all other programs used by the customer and that the software always runs uninterruptedly or without errors or that all software errors can be eliminated.
- 9.2.8. If the software does not meet the requirements in a functionally disruptive manner under a continuing warranty and if the contractor, despite sustained efforts within a reasonable period of time, is not in a position to bring the software into conformity with the requirements, each contractual party shall be entitled to dissolve the contract for the software in question with immediate effect (but not retroactively).
- 9.2.9. Errors in individual programs do not give the customer the right to dissolve the contract with regard to the remaining programs.
- 9.2.10. If the customer enters into a software maintenance contract with the contractor, the general maintenance conditions apply.

### 9.3. Warranty for maintenance contracts

- 9.3.1. When providing support services, the contractor shall owe professional efforts and careful performance. Due to the current state of the art, however, the contractor cannot guarantee the results of the maintenance work carried out or that all software or data errors can be corrected.
- 9.3.2. Furthermore, the contractor does not assume any warranty for errors, malfunctions or damage caused by improper operation, contamination with computer viruses, the use of unsuitable organisational means and data carriers, deviations from the installation and storage conditions or transport damage.

#### 9.4. Warranty for ASP Services

9.4.1. When rendering ASP services, the contractor shall owe professional efforts and careful performance. Due to the current state of the art, however, the contractor cannot guarantee the uninterrupted and error-free operation of hardware, software and data connections or the completely trouble-free provision of ASP services.

9.4.2. In the event of malfunctions and complaints, the customer shall immediately inform the contractor in writing of the detailed circumstances and possible causes of the case and support the contractor in the search for the cause of the malfunction to the best of his ability.

### 10. Liability

The contractor shall be liable for all damages, as far as intent or gross negligence can be proven, within the scope of the statutory provisions. The burden of proof lies with the customer. Liability for slight negligence is excluded.

In any case, the amount of damages shall be limited to the order value. Compensation for consequential damage, financial loss, loss of profit and the like and for damage arising from third-party claims is excluded.

The contractor is also liable for damages caused by his assistants or employees in accordance with § 1313a ABGB only so far as the damage was caused by gross negligence or wilful intent as a result of an action which was unavoidable for the fulfilment of the contractual obligations.

The customer is solely responsible for data backup and the regular production of backup copies.

The contractor's products are merely aids for the administration of employee data, time recording and other functions of operational personnel management and do not replace expert advice from tax consultants, accountants and the like. The customer undertakes to check the correctness of the content of the data supplied by the contractor's products at all times. If too low or too high payments, bookings, reports, etc. are made using the data supplied by the contractor's products, the contractor shall assume no liability.

### 11. Final provisions

The law of the Federal Republic of Austria shall apply. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.

For the decision of all disputes arising from this contract, the competent court at the registered office of our company shall have local jurisdiction. However, we also have the right to sue at the general place of jurisdiction of the contractual partner.