# General Terms and Conditions for Consultancy Services

## 1 Scope of application

1.1 Unless expressly stipulated otherwise in writing, these general terms and conditions shall apply to all service and business transactions between apsolut GmbH, Oelmühlenstr. 30, 33604 Bielefeld (hereinafter referred to as **"apsolut"**) and the customer, in particular to the customising of software, the creation of software, consulting, training or services and deliveries related thereto, and to related offers, orders, purchase orders, order confirmations and contracts.

1.2 They shall also apply to future business relations, even if they are not expressly agreed again. Any deviating general terms and conditions of the customer shall not be recognised, even if apsolut does not expressly object to them.

## 2 Conclusion of contract

2.1 Offers made by apsolut are without engagement unless they are expressly marked as binding in the quotation text.

2.2 The contract shall not become effective until it has been signed by both parties, or until apsolut confirms an order by the customer in writing, or and until the customer confirms a binding offer by apsolut.

2.3 Collateral agreements and amendments require mutual written confirmation.

## 3 Remuneration, terms of payment, set-off, right of retention

### 3.1 Remuneration

The contracting parties shall agree upon the remuneration for the support services, the software to be delivered and all other deliveries and services in the individual contract.

Other services, such as customising, programming, form adaption, installation and training, shall be remunerated according to the actual time and effort spent on the basis of apsolut's respective valid rate card for services.

If training courses are included in the price or additionally offered by apsolut for a fee, this shall not include any travel, accommodation or subsistence expenses of the customer and the participants nominated by the customer. Such costs shall be borne by the customer.

### 3.2 Terms of payment

All remunerations shall be payable without deduction within 30 calendar days after performance of the service and receipt of the invoice by the customer. apsolut shall be entitled to issue partial invoices for partially performed services. The remuneration shall be paid plus the applicable value added tax.

### 3.3 Set-off, right of retention

A set-off or the exercise of a right of retention by the client is only permissible with undisputed, recognised or legally established counterclaims.

## 4 Customising and delivery of individual software

apsolut undertakes to extend or adjust the standard software delivered in such a way that it meets the customer's requirements as agreed in the contract or the requirements in the event of subsequent extensions or adjustments as described by apsolut in the order confirmation.

## 5 Cooperation between the customer and apsolut

The customer shall provide apsolut with all information necessary for the provision of services with regard to the customer's operations.

If apsolut establishes that the customer requires services other than those listed in the offer/individual contract, it shall notify the customer thereof in writing without delay and submit alternative proposals. The contracting parties shall then decide mutually decide on a supplement to the service description.

If apsolut establishes that data or information provided by the customer is incorrect, incomplete or unsuitable for the execution of the order, it (or it as a limited liability company) shall notify the customer thereof in writing without delay. The customer shall immediately decide on any change resulting from this notice insofar as it affects the creation process.

Each contracting party shall designate a competent person to the other party who is authorised to make decisions relating to the provision of the service.

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## 6 Delivery period

The customising or customer-specific programming shall be delivered on the dates agreed in the contract between apsolut and the customer. All dates are planned dates unless they are expressly designated as binding.

## 7 Rights

The customer obtains the right to use the customer-specific programming for its own business operations.

## 8 Liability for defects for individual software

apsolut guarantees that the customising or the individual software meets the requirements according to the contract.

## 9 Acceptance

If acceptance of the individual software has been agreed, apsolut shall submit the services specified in the contract to the customer for inspection after their completion.

The customer shall inspect the services immediately and accept them within 10 calendar days after receipt of the services or refuse acceptance due to defects. The customer may not refuse acceptance due to insignificant defects. If the customer does not respond within this period, apsolut may request the customer to provide a comprehensible description of the substantial defects – if such defects exist – in text form. If the customer then fails to deliver such a representation within a further 10 calendar days after having been requested to do so by the contractor, acceptance shall be deemed to have been granted.

In the event that the customer discovers during the acceptance test that the service is defective, the customer shall notify apsolut thereof in writing with a comprehensible description of the respective defect. apsolut shall present a corrected and complete version of the services for renewed acceptance within 30 calendar days from receipt of the notice of defects. Use of the service for the customer's productive operation shall be deemed as acceptance by the client.

Insofar as the customer has refused acceptance and apsolut has not remedied the defects complained of within twice set grace periods, the customer shall be entitled to have the defects remedied by third parties. Any costs of substitute performance shall be borne by apsolut, taking into account the contractual remuneration saved due to apsolut's non-performance.

apsolut may demand acceptance of individual service components if these are functionally usable and assessable independently as separable parts of the (overall) service. If the customer declares partial acceptance with regard to individual service components, the warranty period for these service components shall commence upon the partial acceptance.

## 10 Project management

The introduction of the software shall be carried out in consultation with the customer. To this end, the customer shall designate a contact person in writing immediately after conclusion of the contract.

The assignment of responsibility for project planning, set-up and installation is regulated in the individual contract.

## 11 Software product training

Insofar as apsolut holds product training courses for the customer, these shall be conducted in seminar form or as web-based training courses. apsolut reserves the right to appoint the respective speakers and uses qualified and competent personnel for the respective software.

The customer assures to assign the appropriate personnel for these appointments.

## 12 Training plan

For the organisation of the training measures, apsolut and the customer jointly draw up a training plan within the framework of the project management.

## 13 Change Request

If, in the course of the performance of the service, it becomes apparent to the customer that the service changes significantly, the customer or apsolut may at any time request a change of the requirements in writing.

If a change request results in additional expenses regarding performance and consideration, the contracting parties shall undertake to adjust the contractual provisions (particularly dates, remuneration) in writing and without delay.

The customer may demand that apsolut suspends the work until the parties have agreed on the new conditions. In this case, the customer shall be responsible for the effects, in particular for the postponement of the dates.

If the contracting parties do not agree on the new conditions, the previously agreed conditions shall apply and apsolut shall continue the individual contract as previously agreed.

## 14 Data protection and privacy

The customer is obliged to ensure appropriate backup of its data, materials and programmes. If the customer becomes aware of upcoming work or other services to be performed by apsolut, the customer shall in each case check whether a current data backup exists; and if such backup does not exist, it shall be carried out by the customer without delay even before apsolut starts to provide the service.

apsolut shall comply with the rules of data protection, in particular when being granting access to the customer's operations or hardware and software. apsolut shall ensure that its vicarious agents also comply with these provisions; apsolut shall particularly oblige them to maintain data secrecy before they start with their activities. apsolut does not intend to process or use personal data on behalf of the client. Personal data may only be transferred in exceptional cases as a side effect of the contractual services provided by the customer. apsolut treats personal data in accordance with the provisions of data protection law. If access by apsolut to personal data cannot be excluded, the customer shall conclude an agreement with apsolut that complies with the requirements of Section 11 of the Federal Data Protection Act [Bundesdatenschutzgesetz, BDSG] or the GDPR.

General regulations on data protection can be found on the apsolut website at: https://www.ap-solut.com/de/datenschutz.html

## 15 Obligation of secrecy

The contracting parties mutually undertake to maintain secrecy about such facts, documents and knowledge that the other contracting party discloses to them in the course of the cooperation, provided that the other party refers to the respective information as confidential or has an obvious interest in keeping it secret ("confidential information"). The contracting parties shall also maintain secrecy about the conclusion of the contract, the subject matter and the content of the contract as well as about individual contracts and offers concluded thereunder. An exception to this is that the contractor may name the client as a customer reference. Publications by the customer regarding the conclusion of the contract require the prior written consent by apsolut. The contracting parties further undertake to use confidential information exclusively for the execution of the contract and to make

it accessible only to those of their employees, vicarious agents and consultants who require the confidential information for the implementation of the contract and who are themselves bound to secrecy in the same way. They will, in particular, not use confidential information received for their own developments or for the further development of their own products, nor will they make it the subject of property right applications or use it to oppose property right applications of the disclosing contracting party.

The obligation to maintain secrecy and the restrictions of use shall not apply if it can be proven that the respective confidential information
- is publicly accessible state of the art or becomes so without any action on the part of the receiving contracting party, or
- was already known to the receiving contracting party or is disclosed by a third party authorised to disclose it, or
- is developed by the receiving contracting party without use of the confidential information or
- must be disclosed due to mandatory legal provisions or sovereign orders.

Should the cooperation between the contracting parties be terminated, each contracting party shall be obliged, at the request of the other contracting party, to return the confidential information received to the other contracting party or to destroy it at the latter's request. Electronically stored data shall be completely deleted in this case.

These obligations and restrictions of use shall begin upon the first receipt of the confidential information and shall end 5 years after the complete performance or termination of the respective contract for the performance of which the information was disclosed.

## 16 Customer's obligations to cooperate

If services are to be performed on the customer's premises, the customer shall provide suitable workplaces for this purpose in due time and free of charge. This includes a functioning technical system environment, the necessary technical system support, required licences and the provision of the necessary system literature.

Unless agreed otherwise, apsolut shall perform the services to be performed on the customer's premises during the customer's normal working hours.

The customer undertakes
- to grant apsolut and its personnel deployed to provide the services access to the IT systems concerned and in

each case to share all necessary information and details in good time in advance;
- to provide suitable staff itself insofar as this is necessary for the performance of the contract, to provide timely and sufficient training to the staff to be appointed by it and to agree appropriate training dates with apsolut;
- to comply with the contractor's project-related instructions;
- to ensure that its data is adequately backed up.

As long as the customer fails to meet its obligations to cooperate or fails to do so properly, apsolut shall not be in default.

Additional expenses incurred by apsolut as a result of the customer's failure to fulfil its obligations to cooperate properly or on time shall be borne by the customer.

## 17 Liability for damages

apsolut shall be liable for claims
- as a result of culpable injury to the life, body or health of persons,
- arising from the German Product Liability Act [Produkthaftungsgesetz],
- as a result of non-compliance with a guarantee,
- due to fraudulent concealment of a defect or
- as a result of intentional or grossly negligent breach of duty

with the existing liability insurance for property damage and personal injury up to the amount of EUR 5 million.

Apart from that, apsolut's liability is limited or excluded as follows:

In the case of a violation of material contractual obligations caused by ordinary negligence, liability shall be limited to the typical damage foreseeable at the time of conclusion of the contract. A material contractual obligation is an obligation which the contract is specifically deemed to impose upon apsolut according to its content and purpose or the fulfilment of which makes the proper performance of the contract possible in the first place and on the observance of which the customer regularly relies and may rely.

In the case of a violation of non-material contractual obligations caused by ordinary negligence and in the case of other violations of obligations caused by ordinary negligence, apsolut's liability shall be excluded.

Contractual claims for damages by the customer against apsolut shall become statute-barred 12 months after

knowledge of the preconditions giving rise to the claim. This shall not apply to the claims mentioned in the section above and to claims arising from liability for defects.

A change in the burden of proof to the detriment of the customer shall not be associated with the above provisions of the sections.

## 18 Liability for indirect damage

apsolut shall not be liable for indirect damage resulting from a defective delivery or breach of duty, such as loss of production and loss of profit, unless in cases of intent or gross negligence.

## 19 Contract duration, termination

If the contract is concluded for an indefinite period, it can be terminated in writing with three months' notice. The right to terminate for good cause shall remain unaffected.

Even after termination of the contract, the obligations which already arose from it before the termination took effect shall remain in force.

Even after termination of a concluded framework agreement, individual contracts already concluded under the framework agreement before the termination took effect shall remain in force.

## 20 General provisions

Unless temporary employment is expressly agreed in the individual contract, apsolut's employees shall not enter into an employment relationship with the client, even if they work on the customer's premises. There shall be no hiring out of employees.

Verbal collateral agreements do not exist. Amendments or supplements to the agreement reached, including these general terms and conditions, require the written form to be effective. This shall also apply to an agreement, cancellation or amendment of the written form requirement itself. The use of emails does not comply with the written form requirement.

## 21 Severability clause

If any provision of these general terms and conditions or of the contract into which they are incorporated is or becomes invalid in whole or in part, this shall not affect the validity of the remaining provisions. The contracting parties must jointly endeavour to find an effective

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provision that comes closest to the economic purpose of the invalid provision.

## 22 Choice of law

These general terms and conditions shall be governed by German substantive law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG), concluded in Vienna on 11 April 1980.

## 23 Place of jurisdiction

In the case of contracts with merchants, with persons who act in the exercise of their commercial or self-employed professional activity when concluding the contract (entrepreneurs) as well as with legal entities under public law, Bielefeld is agreed as the exclusive place of jurisdiction.