



# **GENERAL TERMS AND CONDITIONS**

**of NOUS Wissensmanagement GmbH (“NOUS”)**

**Ullmannstraße 35, 1150 Vienna (Austria) /**

**reg. no. FN276940s**

## **1. General provisions**

- 1.1. NOUS provides information technology services, operates hardware and software components, and creates multimedia content for the customer.
- 1.2. These General Terms and Conditions (GTC) apply to all services provided or to be provided to the customer by NOUS, even if these GTC are not expressly referred to when signing the individual contract. Terms and conditions of the customer apply only if and to the extent that they are accepted by NOUS in writing.

## **2. Scope of services**

- 2.1. The exact scope of the services to be provided by NOUS is agreed upon with the customer in the respective contract and/or Service Level Agreement (SLA). Unless otherwise agreed, NOUS will provide the services during the normal business hours of NOUS as specified in the SLA. NOUS will ensure the provision and availability of the services in accordance with the respective SLA.
- 2.2. The equipment and technologies used by NOUS to provide the services depends on the demand of the customer in terms of quality and quantity as identified on the basis of the information provided by the customer. Should new requirements of the customer require a change in the services and/or technologies used, NOUS will submit an offer for such changed services and/or technologies at the request of the customer.

- 2.3. NOUS is entitled to change the equipment used to provide the services at its own discretion, provided that such change is not expected to affect the services.
- 2.4. The customer will pay for any services, which are provided by NOUS beyond the scope of services agreed upon, at the applicable rates of NOUS and on the basis of the actual staff and material costs incurred. This includes, without being limited to, services provided outside the normal business hours of NOUS or the analysis and removal of failures and errors caused by improper handling or operation on the part of the customer or by other circumstances beyond the responsibility of NOUS.
- 2.5. As a principle, training services are not included in the services and require a separate agreement.
- 2.6. If NOUS procures third-party services at the request of the customer, the respective contracts will be entered into exclusively between the customer and the third party on the basis of the terms and conditions agreed upon. NOUS is only responsible for services provided by NOUS.

### **3. Duties of cooperation and supply on the part of the customer**

- 3.1. The customer undertakes to support all measures which are required for the provision of the services by NOUS. The customer furthermore undertakes to take all measures, which are necessary to perform the contract and which are not part of the scope of services of NOUS.
- 3.2. If the services are provided on the customer's premises, the customer will supply free of charge all network components, connections, supply current incl. peak voltage equalization, emergency power supply, storage space for equipment, workstations, and infrastructure in the scope and quality (e.g., air conditioning) required by NOUS to provide the services. In any case, the customer is responsible for compliance with the special requirements of the manufacturer regarding the operation of the hardware and software. In addition, the customer is responsible for the security of rooms and buildings, including without being limited to, protection against water, fire, and unauthorized access. The customer is responsible for special safety precautions (e.g., safety cells) on its premises. Unless specifically agreed as part of the scope of service of NOUS, the customer will provide a network connection at its own risk and expense.

- 3.3. The customer is not entitled to give any kind of instructions to the staff of NOUS and will address all requests regarding the service provision exclusively to the contact person named by NOUS.
- 3.4. On the agreed dates, the customer will provide, at its own expense and in the form requested by NOUS, all information, data, documents, and content required by NOUS to perform the contract, and, if requested, will support NOUS with problem analysis and failure remedy, and the coordination of processing orders and services. Changes in the workflow of the customer and potential changes in the services to be provided for the customer by NOUS require prior consultation with NOUS as to their technical and commercial impact.
- 3.5. The customer is and remains solely responsible for any content it provides. The customer warrants that it holds all necessary rights and will fully indemnify and hold NOUS harmless from and against all consequences should the content provided violate any legal provisions. NOUS is under no obligation to verify whether the content provided is in compliance with the law and is entitled to refuse the distribution of content suspected to be in violation of legal or contractual provisions.
- 3.6. The customer must keep the data and information provided by NOUS safe on its premises so that they may be reconstructed at any time in case of loss or damage.
- 3.7. The customer will perform all of its duties of cooperation in such a timely manner that NOUS is not hindered in the provision of the services. The customer will make sure that NOUS and/or the third parties commissioned by NOUS are granted access to the premises of the customer as required to provide the services. The customer is responsible for ensuring that the staff members of its affiliated companies or subcontracted third parties who are involved in the performance of the contract adequately contribute to the performance of the contract.
- 3.8. If the customer is an entrepreneur within the meaning of sec. 1 of the (Austrian) Consumer Protection Act (KSchG) and fails to comply with its duties of cooperation on the agreed dates or to the specified extent, the services provided by NOUS will be deemed to have been provided in accordance with the contract even if there may be certain limitations. Schedules for the services to be provided by NOUS will be delayed by a reasonable time period. The customer will reimburse NOUS separately for any additional costs and expenses incurred at the rates of NOUS applicable at that time.

- 3.9. The customer will ensure that its staff and any third parties attributable to the customer treat with care all equipment and technologies used by NOUS and any assets provided to the customer. Moreover, the customer is liable to NOUS for any damage sustained.
- 3.10. Unless otherwise agreed, the customer will perform these duties of supply and cooperation free of charge.

#### **4. Intellectual Property Rights**

- 4.1. Unless otherwise expressly agreed in writing, NOUS will not transfer any proprietary rights or claims to the software to the customer or to third parties. All claims and rights to software, supplies, deliverables, technical know-how, and company secrets in such respect, including without being limited to copyrights, rights to inventions, and other intellectual property rights, belong exclusively to NOUS. This includes without being limited to all works created by NOUS or its agents or subcontractors on the basis of specifications of the customer or with the participation of the customer. All license rights not expressly granted to the customer in writing are reserved by NOUS.
- 4.2. Any translation, decompilation, reverse engineering, or other alteration of the software on the part of the customer requires the express consent of NOUS.

#### **5. Default in performance**

- 5.1. NOUS undertakes to provide the services as agreed in the contract. If NOUS fails to provide the services at the agreed times or provides them inadequately, i.e., with essential deviations from the agreed quality standards, NOUS will be obliged to start remedying the defects without delay and to provide the services properly and free of defects within a reasonable time period, at the discretion of NOUS, either by repeating the services concerned or taking necessary corrective measures.
- 5.2. If the defectiveness is caused by supplies or cooperation provided by the customer or a violation of the obligations of the customer under Clause 3.1., any obligation to remedy the defect free of charge is excluded. In such cases, the services

provided by NOUS will be deemed provided in accordance with the contract even if there may be certain limitations.

- 5.3. The customer will support NOUS in remedying the defects and provide all necessary information. The customer must notify NOUS of the occurrence of any defects without delay, either in writing or by email. Extra fault removal costs caused by delayed notification are borne by the customer.
- 5.4. With the necessary modifications, the provisions of this Clause apply to all supplies of hardware or software products from NOUS to the customer. The warranty period for such supplies is 6 months from the date of delivery. The “presumption of defectiveness” pursuant to sec. 924 of the (Austrian) Civil Code (ABGB) is excluded by mutual consent provided that the customer is an entrepreneur within the meaning of sec. 1 KSchG. In the case of third-party hardware or software products provided to the customer by NOUS, the respective warranty terms of the manufacturer of such products take priority over the provisions of this Clause.
- 5.5. The period of limitation for these claims is 6 months from first use of the product.
- 5.6. NOUS retains ownership of all delivered hardware and software products until full payment is made.

## **6. Liability**

- 6.1. NOUS is liable to the customer for any damage (except for personal injury) exclusively if it can be demonstrated that such damage was caused by NOUS by willful gross negligence or intent. With the necessary modifications, this also applies to damage attributable to third parties consulted by NOUS. The customer bears the burden of proof that NOUS has acted with intent or willful gross negligence.
- 6.2. Liability for indirect damage, such as lost profits, costs related to business interruptions, data loss, or third-party claims, is expressly excluded for legal transactions with entrepreneurs.
- 6.3. If the customer is an entrepreneur within the meaning of the KSchG, claims for damages will become time-barred after expiry of one year from knowledge of the damage and the damaging party. In the event that a longer time period is provided

for by law or Supreme Court decision, such claims will become time-barred no later than provided for by these legal provisions.

- 6.4. In the event that NOUS provides the services with the assistance of third parties and warranty and/or liability claims against third parties arise in such connection, NOUS will assign these claims to the customer. In such case, the customer will primarily address its claims to such third parties.
- 6.5. If any of the services or works are subsequently altered by the customer or by third parties without any essential participation by NOUS, any warranty on the part of NOUS will be excluded.
- 6.6. In derogation of Clause 5.2., if data backups are expressly agreed to be part of the services, liability for data loss will not be excluded, but limited to a maximum of 10% of the contract value per claim, however not exceeding EUR 15,000 in the aggregate for the restoration of the data.
- 6.7. Regardless of their legal basis, any warranty claims and claims for damages on the part of the customer other than the ones mentioned in the contract are excluded provided that the customer is an entrepreneur pursuant to sec. 1 of the KSchG.
- 6.8. Moreover, NOUS does not give any warranty for the up-to-dateness, accuracy, correctness, completeness, or quality of the information, calculations, and content provided on the website or in the applications.

## **7. Obligations of the customer**

- 7.1. The customer is obliged to inform NOUS of any information of relevance to the contract. However, NOUS is under no obligation to verify whether such information is accurate and/or complete. Extra work resulting from inaccurate and/or incomplete information for which the customer is responsible will not be borne by NOUS and will be charged to the customer separately at the hourly rates applicable at that time.

## **8. Fees**

- 8.1. The fees payable by the customer and all terms and conditions derive from the contract. All prices are in euros; statutory value added tax will be added as applicable.
- 8.2. Travel times of NOUS staff members are regarded as working hours and will be charged at the agreed hourly rates.
- 8.3. In addition, travel costs and accommodation expenses, if any, will be reimbursed by the customer on the basis of actual expenses. Travel costs and incidental expenses will be reimbursed upon submission of the corresponding receipts (photocopies).
- 8.4. NOUS is entitled at all times to make the provision of the services conditional on the receipt of down payments or the provision of other collateral in an adequate amount by the customer.
- 8.5. Unless otherwise agreed by contract, one-time fees will be charged after service provision and current fees will be charged quarterly in advance. The amounts invoiced by NOUS, including value added tax, are payable without any deductions and free of charges no later than 14 days from receipt of the invoice. The payment terms agreed for the total contract apply to partial invoices with the necessary modifications. Payment is deemed made on the date on which the amount is at the disposal of NOUS. If the customer defaults in payment, NOUS will be entitled to charge statutory interest on arrears and all necessary collection costs. If the customer continues to be in default for more than 14 days, NOUS will be entitled to discontinue the provision of all services. Furthermore, irrespective of the payment terms agreed, NOUS will be entitled to make the fees for services already provided payable with immediate effect.
- 8.6. Current fees are calculated on the basis of the collective agreement for employees of service providers in the field of automatic data processing and information technology at the experienced level for specific tasks (ST2).
- 8.7. Unless mandatory legal provisions to the contrary apply, the customer has no right of retention, in particular not in connection with payments for incomplete overall delivery, claims under guarantees or warranties, and/or notifications of defects.
- 8.8. The customer bears all duties and taxes arising from the contractual relationship such as legal transaction fees or withholding taxes. The customer will indemnify

and hold NOUS harmless should NOUS be held liable for any of these duties and taxes.

- 8.9. In the event of services comprising several units, NOUS is entitled to perform partial deliveries and issue partial invoices for them.

## **9. Offsetting**

- 9.1. Any offsetting against claims the customer is entitled to against NOUS is excluded unless such claims are undisputed by NOUS or have been finally established by a court.

## **10. Force majeure**

- 10.1. If and as long as proper performance of the services or performance in due time is prevented by events of force majeure, such as war, terrorism, natural disasters, fire, strike, lock-out, embargo, sovereign interventions, failure of power supply, means of transport, telecommunication systems, and/or data lines, amendments of laws that took place after the contract was entered into and have an effect on the services, or any other non-availability of products, this will not constitute a violation of contract.

## **11. Rights to use software products and documents**

- 11.1. If NOUS provides the customer with software products or grants the customer the right to use software products within the scope of the services, the customer is entitled to the non-exclusive, non-transferrable, non-sublicensable right to use the software products during the term of the contract without changing them.
- 11.2. If software products are used in a network, a separate license will be required for each simultaneous user. If software products are used on stand-alone PCs, one license for each PC will be required.
- 11.3. Software products provided to the customer by NOUS are governed by the respective license terms of the manufacturer of these software products, which take

precedence over the provisions of this Clause.

11.4. Unless a separate agreement is made, no further rights to the software products will be conveyed to the customer. The rights of the customer pursuant to secs. 40(d), 40(e) of the (Austrian) Copyright Act (UrhG) will not be affected.

11.5. All documents provided to the customer by NOUS, including without being limited to documentation for software products, must not be reproduced or distributed in any other way, neither in return for payment nor free of charge.

## **12. Term of contract**

12.1. The contract becomes effective when signed by both parties and continues in effect until the agreed end date. Contracts entered into for an indefinite period of time may be terminated by either party by letter upon 6 months' notice; however, no earlier than at the end of the minimum term agreed in the contract.

12.2. In addition, NOUS is entitled to terminate the contract for good cause if essential service provision parameters change and, as a consequence, it can no longer be expected from NOUS to continue with the provision of the services for financial reasons.

12.3. Upon termination, the customer must return to NOUS without delay all records and documentation provided to it by NOUS.

12.4. If requested, in case of termination NOUS will support the customer in returning the services to the customer, or to a third party named by the customer, at the hourly rates applicable at NOUS at that time.

## **13. Data protection**

13.1. NOUS will handle the data of the customer in compliance with the provisions of the (Austrian) Data Protection Act (DSG, Federal Law Gazette BGBl. I No. 24/2018) and of the General Data Protection Regulation (GDPR) and take all necessary technical and organizational data protection measures within the responsibility of NOUS.

- 13.2. The data will be archived exclusively for the time periods provided for by law or required for fulfilling the contractual obligations.
- 13.3. After expiry of the time periods mentioned in Clause 10.2, the customer will be entitled to request deletion of its data archived by NOUS or restriction of their processing.
- 13.4. The customer is entitled to exercise its right of access to the data being processed by NOUS (Art. 15 GDPR), its right to rectification of the data (Art. 16 GDPR) and its right to data portability (Art. 20 GDPR) free of charge at any time.

## **14. Secrecy**

- 14.1. Both parties undertake to treat confidentially all confidential information and company secrets of the respective other party of which they gain knowledge in connection with the performance of the contract and which are expressly marked as confidential or protected information or which, given the circumstances of their disclosure or their nature, have to be deemed confidential or protected information ("confidential information").
- 14.2. Neither party is entitled to use and/or pass on any data subject to secrecy obligations. This does not apply to contractual agreements to the contrary or mandatory legal provisions.
- 14.3. The secrecy obligation does not apply to information, which at the time it is provided is made available to a third party or to the public without any violation of this or any other confidentiality agreement. Moreover, the secrecy obligation does not apply to information that was already publicly known provided that its disclosure is not in breach of the confidentiality obligations laid down in the contract. Moreover, the use of information received by a third party entitled to disclose such information is not deemed a violation of contract.

## **15. Miscellaneous**

- 15.1. In the contract, the parties will name staff members who have the technical

expertise and competence to make or initiate the necessary decisions.

- 15.2. During the term of the contract and for one year after termination thereof, the customer will neither itself nor via third parties entice away any of the staff members employed by NOUS to provide the services. In the event of any violation thereof, the customer undertakes to pay to NOUS a contractual penalty of twelve times the gross monthly salary last received by the respective staff member at NOUS; however, at least the salary under the collective agreement for employees of service providers in the field of automatic data processing and information technology at the experienced level for specific tasks (ST2).
- 15.3. Amendments and supplements to the contract must be made in writing. The same applies to any waiver of this requirement of written form.
- 15.4. Should one or several provisions of the contract be or become ineffective or unenforceable in whole or in part, the validity of the remaining provisions will not be affected. The ineffective or unenforceable provision will be replaced by an equivalent valid provision, which comes closest to the economic purpose of the ineffective or unenforceable clause.
- 15.5. Any disposition of the rights and obligations under the contract requires the prior written consent of the respective other party. However, NOUS is entitled to transfer the contract to a company legally affiliated with NOUS without the consent of the customer.
- 15.6. NOUS is entitled to engage third parties for the full or partial performance of its obligations.
- 15.7. Unless otherwise agreed upon, exclusively Austrian law to the exclusion of the national and international conflict-of-law clauses and the UN Sales Convention apply. Any disputes will be settled exclusively by the locally competent court having subject-matter jurisdiction at the registered offices of NOUS.