

## GENERAL BUSINESS TERMS OF CORE4 KREATIVAGENTUR GMBH & CO. KG

### A. General clauses

#### §1 Agreement coming into effect

- (1) Agreements for delivery of services of CORE4 Kreativagentur GmbH & Co. KG (hereinafter called CORE4) come into effect with the order acknowledgement of CORE4.
- (2) In as far as CORE4 uses third parties for delivery of the offered services; this does not make these third parties business partners of the customer. Joint use of services alone does not reason any contractual relationship between customers of CORE4.

#### §2 Scope of services

- (1) The scope of the services owed by CORE4 (hereinafter called the "project") result from the offer of CORE4 in conjunction with the order acknowledgement referring to this offer. For software deliveries, the contents of the service and scope of the service are defined in the software specification as far as available. If the contents of the contractual obligations are modified during a project these contractual modifications are subject to written approval from CORE4.
- (2) CORE4 reserves the right to change, extend and improve services according to developments in science and technology and in the interest of the customer.
- (3) In as far as CORE4 provides free deliveries and service; these may be ceased any time by notification to the customer. This does not create a right of reduction, refund or indemnification of damage.
- (4) CORE4 is entitled to make split deliveries or services any time unless the customer proves the split delivery or split services is of no interest to him.
- (5) Delivered goods remain property of CORE4 until full and final payment of the purchasing price. Pledging or assignment as security is not permissible. Processing or conversion always takes place for CORE4 as the manufacturer, but without obligation to CORE4. If the (co-)ownership of CORE4 expires by combination or sales, there is an agreement that the resulting claims of the customer pass over to CORE4, in case of combination, in proportion to the value of the co-ownership.
- (6) The customer is obliged to fully support CORE4 during performance of the order or during the entire course of a project, and in particular to provide CORE4 with detailed documentation (contents, project plans, agreements with other parties involved in the project etc.) in time, which means according to the state of progress. The customer will make all decisions on the contents of the projects in time according to the progress of the project to warrant that the works of CORE4 are not delayed. The customer warrants full support by his employees and by any parties involved in the project.

#### §3 Termination

- (1) Either party may terminate agreements on permanent debt relationships with a notice of 6 weeks per end of the quarter. Agreements with a minimum contract term can be terminated for the first time no sooner than per end of the minimum contract term. This does not affect termination for important cause.
- (2) CORE4 may terminate an agreement with immediate effect if the customer breaches his support duties (see in particular §2 section 6) in a way that endangers the purpose of the agreement.
- (3) If import or export documents or other official permits required for deliveries to the customer cannot be obtained, CORE4 shall be entitled to terminate the agreement with immediate effect.

## **§4 Payment terms**

- (1) Monthly fees are owed monthly without deductions and they become due upon receipt of invoice. They shall be charged proportionally for the rest of the month beginning with the date of the service being supplied ready to operate. CORE4 is entitled to charge a handling fee of EUR 5.00 per invoice unless the customer partakes in the direct debit process.
- (2) Other fees shall become due without deduction upon receipt of the invoice. The invoiced amount has to be credited on the bank account stated on the invoice no later than on the 8th day after receipt of the invoice. The customer is not entitled to make split payments.

## **§5 Payment default**

- (1) In case of payment default, CORE4 may charge default interest in the amount of 3% above the latest valid discount rate. CORE4 reserves the right to assert further default damages.
- (2) CORE4 in case of payment default is further entitled to block the offer to the customer in the Internet with written notification to the customer until full and final payment. In this case the customer remains obliged to pay the monthly fees.

## **§6 Warranty**

- (1) In as far as a service is defective, CORE4 in its own discretion is entitled to remedy or to supply replacement. If the defect is not eliminated within a reasonable notice, regardless of repeated remedy, or if the elimination of the defect has to be considered failed for other reasons, the customer shall be entitled to reduce the compensation (reduction) or to rescind from the contract (rescission). Any rights of the customer for eliminating the defect on his own and claiming compensation of expenses thus incurred according to §633 section (3) BGB (=German Civil Code) is explicitly excluded.
- (2) Warranty claims against CORE4 for third part products delivered or used by CORE4 exist only in as far as CORE4 may assert warranty claims against the supplier of the third party products.
- (3) Service or repair works delivered by CORE4 due to unjustified defect claims have to be compensated by the customer according to the latest valid fee rates of CORE4 for services and repairs.

## **§7 Obligation to inspect and complain**

- (1) The customer's warranty rights are subject to the condition that he properly fulfilled his duties of inspection and complaining he owes according to §§377, 378 HGB (=German Trade Code). The complaint about the defect has to include a detailed description of the defect.
- (2) In case of breach of the duty to inspect and complaint the service is considered approved in respect to the related defect.

## **§8 Acceptance**

- (1) After completion of the program, CORE4 shall prove the existence of the promised features and the essential project functions by acceptance tests that are reasonable and have been agreed amicably with the customer. The details of the acceptance tests and the data to be used in them are defined in the specification as far as available.
- (2) If the project passed the acceptance test, the customer upon request of CORE4 is obliged to give a written declaration of accept. Any minor defects noticed have to be recorded in the declaration of acceptance.
- (3) The acceptance must not be refused due to inessential defects. CORE4 may define a notice period for giving the acceptance declaration and upon expiry of this notice, the project is considered accepted.

## **§9 Liability**

- (1) CORE4 is fully liable in accordance with the statutory provisions for damages to life, body and health, which are based on a negligent or intentional breach of duty by CORE4, its legal representatives or its vicarious agents, as well as damages resulting from liability under the Product Liability Act As well as for damages which are based on intentional or grossly negligent breaches of contract as well as fraudulent acts of CORE4, their legal representatives or vicarious agents. Insofar as CORE4 has issued a quality and / or durability warranty with regard to the goods or parts thereof, it shall also be liable

under this guarantee. CORE4 shall only be liable for damages which are based on the absence of the guaranteed quality or durability, but not directly on the goods, if the risk of such damage is clearly covered by the quality and durability guarantee.

(2) CORE4 shall also be liable for damages caused by simple negligence, in so far as such negligence concerns the violation of such contractual obligations, the observance of which is of particular importance for the achievement of the purpose of the contract. The same applies if the customer is entitled to claims for damages instead of performance. However, he is liable only to the extent that the damages are typically connected with the contract and foreseeable.

(3) A further liability of CORE4 on sale of a thing is excluded without regard to the legal nature of the asserted claim; This also applies in particular to tortious claims or claims for reimbursement of futile expenses instead of performance. Insofar as the liability of CORE4 is excluded or restricted, this also applies to the personal liability of its employees, employees, employees, representatives or vicarious agents.

### **§10 Default in performance of service**

(1) Delivery and service periods shall be reasonably prolonged in case of labour fights, force majeure, or occurrence of other unpredictable events outside the control of CORE4. This also applies if the circumstances occur at suppliers or subcontractors, or if the customer failed to fulfil his support duties according to §2 section 6. CORE4 shall notify the customer immediately of the

(2) The liability of CORE4 for default damages of the customer shall be limited to typical and predictable damages.

### **§11 Software and rights of use**

(1) CORE4 reserves the property as well as all rights, in particular copyrights and utilization rights on the project results and computer programs (in any form, including the draft materials, all updates, as well as program modifications or translations). The customer is granted the non-exclusive and non-assignable right of use to use the project results and the computer programs CORE4 let to him in the object code on an agreed system. This right of use permits the use of the project results and any let computer programs subsequently on several computers, but not on several computers at the same time.

(2) The customer is going to use the project results including any computer programs CORE4 developed already prior to the beginning of the project and let to the customer exclusively for the project only, and make the results of this project, wholly or partly, accessible to third parties only with prior written consent from CORE4. Third parties as defined in this regulation include companies affiliated or related to the company as well as separate business units organisationally segregated from the customer.

(3) The customer has the right to make a back-up copy of the program. This copy has to be labelled as back-up copy. Other reproductions and copies of the program are permissible only in as far as required for contractual use.

(4) Direct or indirect use of the programs by third parties is permissible only after written consent of CORE4. In case of final transfer of the program by the customer to a third party, the customer has to inform CORE4 in advance about the person of the third party. The customer then is also obliged to finally cease his own use of the program, and to delete all existing copies and to destroy all documents and data media. CORE4 may refuse the consent to the final transfer of use only if the customer fails to fulfil his above obligations, or the third party does not consent to the terms of use of CORE4.

(5) If a right of use is transferred to a third party in any form, free or against charge, all copies have to be labelled with the original copyright remark with reference to the company and address of CORE4 as well as all other protective remarks.

(6) If under this project CORE4 contributes copyrights or commercial protective rights, or originally reasons such rights, these rights including all rights of use according to the legal regulations exclusively fall to CORE4 unless otherwise explicitly defined.

### **§12 Right of withholding, returning, and safekeeping of documents**

(1) After the compensation claims from a contract have been settled, CORE4 upon request of the customer has to hand out all documents that have been given to CORE4 on occasion of the contract by the customer or by a third party. Excluded

from this obligation are correspondences between the parties of the contract as well as simple copies of the reports, organisation plans, drawings, lists and calculations made under the contract provided the customer received the originals.

(2) Until full and final settlement of its receivables, CORE4 has a withholding right on the documents it received. This right does not apply if withholding the documents or individual deeds would infringe against faith and belief according to the circumstances, in particular if the owed amount is only minor. The withholding right otherwise may not be exerted on those parts of the documents withholding of which would infringe against protection-worthy interests of the customer.

(3) The obligation of CORE4 to safekeep the documents expires

a) for documents withheld according to section 2 after 5 years

b) otherwise after 3 years upon the end of the contractual relationship or 6 months upon delivery of the written request to pick-up the documents.

### **§13 Right of setting off and withholding**

The customer may set-off against receivables from CORE4 with undisputed or legally decreed claims only. The customer has no withholding right.

### **§14 Secrecy clause**

(1) CORE4 agrees to keep all business and operative secrets of the customer of which CORE4 gets aware in relation to its activities confidential.

(2) The customer agrees to keep all information, in particular methods and procedures of CORE4 of which it gets aware in relation to the contractual relationship secret. The customer shall also apply the acknowledged principles of data security, especially in relation to passwords, and protect all documents and programs against access or inspection by unauthorized third parties.

(3) CORE4 and the customer agree to oblige their employees, cooperating companies and other persons entitled to use the related contractual object to the aforementioned secrecy and confidentiality obligations.

(4) The mutual secrecy obligation survives the end of the contractual relationship.

### **§15 Data protection**

(1) The contract partner is herewith notified according to §33 section 1 of the Bundesdatenschutzgesetz (=German data security law and §4 of the Teledienst-Datenschutzverordnung (=German data protection regulation for telecommunication services) that CORE4 will automatically process its address in machine-readable form and for jobs resulting from the contract.

(2) In as far as CORE4 uses third parties to deliver the offered services, CORE4 is entitled to disclose the data of attendees as required for securing the operations.

(3) CORE4 warrants that all persons CORE4 entrusts with handling of this contract apply the pertinent data protection law regulations as last amended. The customer on the other hand is not entitled to obtain for himself or for third parties data or information through CORE4 services which are not intended for him or for third parties.

### **§16 Validity of the business terms**

(1) CORE4 exclusively delivers its services based on these business terms. These terms also apply to all future business relations, even if not again explicitly agreed. At least with the first use of the CORE4 services these terms are considered accepted.

(2) Different business or purchasing terms of the customer are herewith explicitly contradicted.

(3) Deviations from these business terms or their detailing, as well as special promises and agreements are valid only if defined by CORE4 in writing or if confirmed by CORE4. If they are declared by employees of CORE4 they are valid only if CORE4 gives a written consent. CORE4 is entitled any time to modify or supplement these General Business Terms within a reasonable notice. The customer may object to the changed terms within two weeks upon receipt of the notification of the change. If the customer does not object, the modifications shall come into effect as announced. If however the customer

objects in due time, CORE4 shall be entitled to terminate the contract with effect of the date at which the changed terms should have come into effect.

## **§17 Other stipulations**

- (1) If the customer is a full businessman, a legal person under public law, or a special asset under public law, Hannover shall be agreed the place of jurisdiction for all disputes arising from this contractual relationship.
- (2) All legal relationships under this agreement are exclusively governed by the law of the Federal Republic of Germany, with the exception of the UN purchasing rights convention.

## **B. Additional terms for Internet/Intranet services**

### **§18 Scope of services**

- (1) CORE4 and the customer prior to making or changing the service amicably agree the form and type of data presentation in a specification or quotation. The specification/quotation shall be decisive for the scope of the services to be delivered by CORE4. Modifications of the scope of service are considered agreed only if confirmed by CORE4 in writing. CORE4 does not promise certain characteristics. In particular this applies to the contents of the specification which in so far serves only to describe the scope of the service. Characteristics are considered promised as defined under law only if this is explicitly declared in the quotation or in the order acknowledgement.
- (2) The service of CORE4 for providing offers of the customer in the Internet is considered delivered if the customer's information offer is released on the server for the Internet/Intranet.

### **§19 Delivery of data**

- (1) The customer transmits the data and information required for uploading and updating the service in due time, fully and completely, and in a suitable form to CORE4. If he fails to do so, CORE4 is not obliged to feed the data into the Internet/Intranet, or otherwise to process them. If the customer updates his information offer in the Internet/Intranet himself, he is obliged to use only complete data in a suitable form for this purpose.
- (2) The basic design of the data and information the customer contributes has to be agreed with CORE4 with respect to certain basic characteristics (design and functionalities). The contract partner is obliged to design his information offer in a way that the user can clearly see no contractual relationship might be created between the latter and CORE4 in relation to the use of this information offer.

### **§20 Warranty/disturbance of service**

- (1) CORE4 operates the offered server services under the aspect of greatest possible care, reliability and availability. CORE4 however assumes no warranty that these services are accessible without interruptions or that the desired connections can be produced at all times.
- (2) In case a service fails because of a disturbance outside control of CORE4, in particular to the breakdown of communication networks, errors at Internet server providers, gateways of operators, the customer has a right of reduction only in case of essential hindrances. Otherwise, fees will be refund only if CORE4 or one of its agents or employees caused the error at least by negligence, and the breakdown lasts for more than one business day.
- (3) CORE4 shall not be liable for the success or proper handling of services or the payment transactions the customer offers to third parties through the CORE4 server. The customer further warrants that the offer switched on CORE4 servers is lawful, and indemnifies CORE4 against all claims asserted against CORE4.

### **§21 Troubleshooting**

CORE4 shall eliminate errors in its technical equipment in the limits of the available technical and operative possibilities during business hours (Mondays through Fridays from 09:00 a.m. to 05:00 p.m.).

## **§22 Data protection by the customer**

Access of users to the customer service may be recorded in as far as possible and permissible. Information thus collected is provided to the contract partner against a fee only if he covenants in writing to comply with the relevant regulations under data protection law. In as far as personal data are recorded which to use the contract partner has no justified interest, the recorded data will be anonymized.

## **§23 Object of service**

- (1) The object of the consulting order is the contractually agreed service, but not a certain economic outcome.
- (2) The service is considered delivered if the required analyses and studies as well as the resulting conclusions are elaborated with the customer.

## **§24 Customer's support duties**

The customer is obliged to provide all documents and information required for performance of the order in time and fully and completely. He also lets to CORE4 materials and personnel required for performance of the order, and warrants access to the customer's IT systems at all times, as well as the opportunity to make project works on these systems during business hours. This support by the customer is free of charge unless otherwise defined in writing.

## **§25 Warranty**

- (1) CORE4 shall deliver the contractual service in compliance with the offer an/or the order acknowledgement. Characteristics are promised only if explicitly stated in the offer and/or the order acknowledgement. We assume no warranty for the contents of recommendations or forecasts.
- (2) CORE4 may correct obvious errors (typos, miscalculations, formal errors etc.) in records, memos, calculations etc. any time, also towards third parties. However claims for elimination of such obvious defects are excluded unless immediately notified to CORE4.

## **§26 Preparatory activities of the customer**

- (1) The customer is obliged to provide all required electric connections as well as other installation conditions according other contract terms prior to delivery of the goods by CORE4. Upon request the customer has to confirm to CORE4 in writing the readiness for take-over and the completion of all required preparations.
- (2) In as far as preparatory activities of the customer are required to perform the delivery, CORE4 is not obliged to deliver prior to completion of these activities.

## **§27 Acceptance**

- (1) Upon assembly and connection of instruments, their readiness for operation is verified with a test run using standard test programs. The customer is obliged upon request from CORE4 to deliver a written declaration of acceptance. Any detected minor defects have to be recorded in the declaration of acceptance.
- (2) Acceptance must not be refused because of inessential defects. CORE4 may define a reasonable notice for delivery of the declaration of acceptance, and upon expiry this notice the goods are considered accepted.

## **§28 Passage of risk**

The risk passes over to the customer as soon as the shipment was handed over to the person making the transport, or to the warehouse manager or supplier specified by the customer, or has left the business premises of CORE4 for shipment.

## **C. Additional terms for software**

### **§29 Service design/warranty**

- (1) CORE4 and the customer prior to making or changing the software amicably define the software requirements, especially concerning its duties, functions, interfaces and interaction of interfaces in a specification. The customer is aware that the state of the art does not permit to make a program absolutely free of errors.
- (2) The contents of the specification may be understood as promise of certain characteristics only in as far as this is explicitly defined.
- (3) The warranty is also limited to reproducible defects in the programming function.

### **§30 Scope of services**

- (1) If the scope of order does not explicitly include installation and administration of the software on a defined system, CORE4 shall supply the software on a CD-ROM in a manner that a system administrator acquainted with this kind of software using required standard software may install and administrate it.
- (2) Unless otherwise explicitly agreed, the scope of service of CORE4 does not include the basic software. Basic software means in particular server and webserver software, databases, compilers and interpreters of programming languages, operating systems, browser software and especially all software not exclusively produced for the customer. Before the date of acceptance of the project, CORE4 shall notify the customer which third party software (product names) is required at least until putting into operation of the CORE4 components. Unless otherwise explicitly agreed, the customer is responsible for obtaining the rights of use for the required software. The same applies if the delivered software is operated on CORE4 systems. In which event CORE4 shall notify the customer before the date of acceptance of the project which standard software the customer has to procure for operation of the software to be delivered on a CORE4 system. Other terms apply only if the parties in advance explicitly agreed that the fee for use of the third party software is included in the monthly costs of operation.
- (3) Unless explicitly specified as (customized) order development in the quotation or order acknowledgement, CORE4 will not perform (customized) order development of software for the customer, but only adjust already existing, pre-fabricated software modules of CORE4 specifically to the project. The software thus provided is not for universal use, it may be used exclusively in the project specific scope as defined in the quotation, order acknowledgement etc., or if available, in the specification.

### **§31 Data delivery**

The customer provides to CORE4 the documents, data and information required for software production in time, fully and completely, and in suitable form.

### **§32 Decompilation**

The customer is obliged not to decompile or let someone else decompile the program or parts of it. This does not prejudice the rights according to §69 UrhG (=German copyright law). Prior to any decompilation, the customer covenants to negotiate with CORE4 to find a solution for his information needs without decompilation by the customer. The same applies for disassembly or reverse engineering of CORE4 programs.

### **§33 Third party rights**

- (1) If in the context with the respective object of agreement (software development or performance of other projects) claims are asserted due to infringement against commercial protective rights or any other exclusivity right, liability of CORE4 shall be excluded if the customer fails to notify CORE4 immediately in writing. Without prior consent from CORE4 the customer is not going to undertake process litigation, and upon request shall leave the defence against such claims to CORE4, in particular any litigation for composition settlement.
- (2) If the use of the contractual object, or parts of same, is prohibited by a court decision, or if in the opinion of CORE4 a legal suit for infringement against protective rights is imminent, CORE4 under consideration of the customer's interest has the right to choose from following actions:

- a. to modify the object of agreement in a way that in no longer infringes against protective rights,
- b. to supply the customer with the right to continue the use of the object of agreement,
- c. to replace the object of agreement by another object of agreement that does not infringe against protective rights and that either complies with the requirements of the customer, or is equal to the replaced object of agreement.
- d. to take back the object of agreement, and to refund the paid fees to the customer less a reasonable sum for the use and the loss of value.

(3) The above obligation of CORE4 is redundant for objects of agreement where the infringement against protective rights is based on a concept created/provided by the customer, or the customer modified the object of agreement, or operated it with objects of agreement not supplied by CORE4, unless the infringement would have taken place regardless of one of these clauses.

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