GENERAL TERMS AND CONDITIONS

for the sale and delivery of organization, programming services and work use licenses of software products

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1. Scope and validity of the contract

All orders and agreements shall only be legally binding if they are signed by the contractor in writing and in accordance with the company's instructions and shall only be binding to the extent stated in the order confirmation. Terms and conditions of purchase of the client are hereby excluded for the present legal transaction and the entire business relationship. Offers are always subject to change.

2. Performance and testing

2.1 The subject of an order may be:
- Development of organizational concepts
- Global and detailed analyses
- Creation of individual programs
- Delivery of library (standard) programs
- Acquisition of usage rights for software products
- Acquisition of licences to use works
- Participation in commissioning (changeover support)
- Telephone consultation
- Program maintenance
- Creation of program carriers
- Other services

2.2. The development of individual organisational concepts and programmes shall be carried out in accordance with the type and scope of the binding information, documents and aids provided in full by the client. This also includes practice-oriented test data as well as test facilities to a sufficient extent, which the client shall make available in a timely manner, during normal working hours and at its own expense. If the client is already working on the system provided for testing in live operation, the responsibility for securing the live data lies with the client.

2.3. The basis for the creation of individual programs is the written performance specification, which the Contractor prepares against cost calculation on the basis of the documents and information provided to him or which the Client provides. This performance specification is to be checked by the client for correctness and completeness and to be marked with his approval. Change requests occurring at a later date may lead to separate deadline and price agreements.

2.4. Individually created software or program adaptations require a program acceptance by the client for the respective program package at the latest four weeks after delivery. This will be confirmed in a protocol by the client. (Check for correctness and completeness on the basis of the service description accepted by the contractor by means of the test data provided under point 2.2). If the Customer allows the period of four weeks to elapse without accepting the program, the software supplied shall be deemed to have been accepted on the end date of the said period. If the software is used in live operation by the client, the software shall be deemed to have been accepted in any case.

Any defects that occur, i.e. deviations from the service description agreed in writing, shall be reported by the Client to the Contractor with sufficient documentation, who shall endeavour to rectify the defects as quickly as possible. If there are significant defects reported in writing, i.e. if live operation cannot be started or continued, a new acceptance is required after the defects have been rectified.

2.5. The customer is not entitled to refuse acceptance of software due to insignificant defects.

2.6. When ordering library (standard) programs, the client confirms with the order that he is aware of the scope of services of the ordered programs.

2.7. Should it become apparent in the course of the work that the execution of the order in accordance with the performance specification is actually or legally impossible, the Contractor shall be obliged to notify the Client of this immediately. If the Client does not amend the service description or create the preconditions for execution to become possible, the Contractor may refuse execution. If the impossibility of execution is the result of a failure on the part of the Client or a subsequent change to the service description by the Client, the Contractor shall be entitled to withdraw from the order. The costs and expenses incurred for the contractor's activities up to that point, as well as any dismantling costs, shall be reimbursed by the client.

2.8. Any shipment of program carriers, documentation and service descriptions shall be at the expense and risk of the client. Additional training and explanations requested by the client will be invoiced separately. Insurance shall only be provided at the request of the client.

3. Prices, taxes and fees

3.1. All prices are quoted in Euro without value added tax. They apply only to the present order. The prices quoted are ex Contractor's place of business or office. The costs of program carriers (e.g. CDs, magnetic tapes, magnetic disks, floppy disks, streamer tapes, magnetic tape cassettes, etc.) as well as any contract fees shall be invoiced separately.

3.2. For library (standard) programs, the list prices valid on the day of delivery shall apply. For all other services (organizational consulting, programming, training, conversion support, telephone consulting, etc.), the amount of work shall be charged at the rates valid on the day the service is rendered. Deviations from a time expenditure on which the contract price is based, for which the Contractor is not responsible, shall be invoiced according to actual occurrence.

3.3. The costs for travel, daily and overnight allowances shall be invoiced separately to the Client according to the rates applicable at the time. Travel times are considered to be working time.

3.4. If the Client is offered working hours in the form of hourly pools, these shall expire after 24 months without triggering a claim to a price reduction. In the event that the hourly quota is not sufficient, CrossIT shall notify the Client thereof as soon as possible. Exceeding the hourly quota is only permissible with the consent of the Client, unless the exceeding is necessary to take measures that cannot be postponed in order to avert damage to the Client and it is not possible to obtain the Client's consent in due time.

4. Delivery date

4.1. The Contractor shall endeavour to meet the agreed dates of performance (completion) as closely as possible.

4.2. The targeted performance dates can only be met if the Client provides all the necessary work and documents in full by the dates specified by the Contractor, in particular the performance specifications accepted by him in accordance with point 2.3, and fulfils his obligation to cooperate to the extent required. The Contractor shall not be responsible for delays in delivery and increases in costs resulting from incorrect, incomplete or subsequently changed details and information or documents made available and such delays shall not result in default on the part of the Contractor. Any additional costs resulting therefrom shall be borne by the Client.

4.3. In the case of orders comprising several units or programs, the Contractor shall be entitled to make partial deliveries or to issue partial invoices.

5. Payment

5.1. The invoices issued by the Contractor, including value added tax, are payable without any deductions and free of charges no later than 14 days after receipt of the invoice. For partial invoices, the terms of payment specified for the overall order shall apply analogously.

5.2. In the case of orders comprising several units (e.g. programs and/or training, realizations in partial steps), the Contractor shall be entitled to invoice after delivery of each individual unit or service.

5.3. Compliance with the agreed payment dates is an essential condition for the execution of the delivery or fulfilment of the contract by the contractor. Non-compliance with the agreed payments entitles the contractor to stop the current work and to withdraw from the contract. All associated costs and loss of profit shall be borne by the client.

5.4. In the event of late payment, interest on arrears shall be charged at the rate customary in banking. In the event of non-compliance with two instalments in the case of partial payments, the contractor shall be entitled to allow loss of dates to take effect and to make handed over accents due for payment.

5.5. The client is not entitled to withhold payments due to incomplete total delivery, warranty or guarantee claims or complaints.

6. Price adjustment

It is expressly agreed that the services rendered by the Contractor shall remain stable in value. To this end the last valid consumer price index of the index series published by STATISTIK AUSTRIA (e.g.: Consumer Price Index 2020) shall serve as a measure for calculating the stability of value.
The calculation is generally performed once a year.
The first adjustment of the agreed conditions for the services provided by the Contractor under this Contract shall be made according to the following procedure:
The first calculation shall be based on the calculated rate of change (in %) of the period between the month of signature of this Contract and the month of the last retrievable monthly rate of change at the time of adjustment.
For further adjustments, the following procedure shall apply:
For this calculation, the first month of the validity of the last adjusted conditions and the month of the last retrievable rate of change (on a monthly basis) at the time of the adjustment will be used.

7. Copyright and use

7.1. The Contractor or its licensors shall be entitled to all copyrights to the agreed services (programs, documentation, etc.). The Customer shall exclusively receive the right to use the software after payment of the agreed remuneration exclusively for its own purposes, only for the hardware specified in the contract and to the extent of the purchased number of licences for simultaneous use on several workstations.

The contract in question merely grants permission to use the work. Distribution by the client is excluded in accordance with copyright law. No rights beyond the use stipulated in the present contract are acquired through the cooperation of the client in the production of the software. Any infringement of the Contractor's copyrights shall result in claims for damages, whereby full satisfaction shall be paid in such a case.

7.2. The Customer is permitted to make copies for archiving and data backup purposes on condition that the Software does not contain any express prohibition by the Licensor or third parties and that all copyright and proprietary notices are transferred unchanged to these copies.

7.3. Should the disclosure of the interfaces be necessary for the creation of interoperability of the software in question, this shall be ordered by the Client from the Contractor against reimbursement of costs. If the contractor does not comply with this requirement and decompilation takes place in accordance with copyright law, the results are to be used exclusively for the creation of interoperability. Misuse shall result in compensation for damages.

7.4 If any software is made available to the Customer whose license holder is a third party (e.g. standard software from SAP), the granting of the right of use shall be governed by the license terms of the license holder (manufacturer).

8. Right of withdrawal, cancellation of dates

8.1. In the event that an agreed delivery time is exceeded due to the sole fault or unlawful action of the Contractor, the Client shall be entitled to withdraw from the relevant order by registered letter if the agreed service is not provided in essential parts even within the reasonable grace period and the Client is not at fault for this.

8.2. Force majeure, labour disputes, natural disasters and transport blockades as well as other circumstances beyond the control of the Contractor shall release the Contractor from the delivery obligation or allow the Contractor to redifine the agreed delivery time.

8.3. An overall cancellation of a contract by the client is only possible with the written consent of the contractor. If the Contractor agrees to a cancellation, it shall be entitled to charge a cancellation fee in the amount of 30% of the order value of the overall project not yet invoiced, in addition to the services rendered and costs incurred.

8.4. In the event of cancellation on the part of the client of a consultancy appointment agreed between the contractor and the client and for reasons for which the client is responsible, the following cancellation fees, which are in a percentage ratio to the daily rate in question, shall be charged to the client:
In case of cancellation by the client up to 2 weeks before the agreed date: 50% of the daily rate (excluding expenses).
In the event of cancellation by the client up to 1 week before the agreed date: 75% of the daily rate (excluding expenses).
In case of cancellation by the client up to 2 days before the agreed date: 100% of the daily rate (excluding expenses).
The daily rate is understood to be the contractually agreed daily rate of the consultant concerned. A daily rate is understood to be a sum of 8 hours.

9. Warranty, maintenance, modifications/changes

9.1. In the case of warranty, improvement shall in any case have priority over price reduction or rescission. In the event of a justified notice of defects, the defects shall be remedied within a reasonable period of time, whereby the Customer shall enable the Contractor to take all measures necessary for the examination and remedying of the defects. The presumption of defectiveness pursuant to § 924 ABGB (Austrian Civil Code) shall be deemed excluded.

9.2. Corrections and additions that prove necessary up to the handover of the agreed service due to organisational and programming deficiencies for which the Contractor is responsible shall be carried out by the Contractor free of charge.

9.3. Costs for assistance, defect diagnosis as well as defect and fault elimination for which the client is responsible as well as other corrections, changes and additions shall be carried out by the contractor against payment. This also applies to the elimination of defects if program changes, additions or other interventions have been made by the client himself or by a third party.

9.4. Furthermore, the Contractor shall not assume any warranty for defects, malfunctions or damage resulting from improper operation, changed operating system components, interfaces and parameters, use of unsuitable organisational means and data carriers, insofar as such are prescribed, abnormal operating conditions (in particular deviations from the installation and storage conditions) and transport damage.

9.5. Programs that are subsequently changed by the client's own programmers or third parties, are no longer covered by any warranty.

9.6. Insofar as the subject of the order is the modification or supplementation of already existing programs, the warranty refers to the modification or supplementation. The warranty for the original program shall not be revived thereby.

9.7. The Customer shall give the Contractor the necessary time and opportunity to remedy the defect.

9.8. A prerequisite for the rectification of defects is that
- the Customer sufficiently describes the defect in an defect message and this can be determined for the Contractor;
- the Customer provides the Contractor with all documents required for the elimination of the defect;
- the customer or a third party attributable to him has not interfered with the software;
- the software is operated under the intended operating conditions in accordance with the documentation.

9.9. Warranty claims shall become time-barred six (6) months after delivery.

10. Liability

10.1. The Contractor shall be liable for damages, insofar as intent or gross negligence can be proven against him, within the scope of the statutory provisions. Liability for slight negligence is excluded.

10.2. Compensation for consequential damages and financial losses, savings not achieved, loss of interest, further indirect damages and damages from third party claims against the Contractor shall be excluded in any case to the extent permitted by law.

10.3 To the extent permitted by law, the Contractor shall not be liable for loss of profit, anticipated but unrealised savings, damages from third party claims against the contractor, indirect damages and consequential damages.

10.4 If the Contractor performs the work with the assistance of third parties and warranty and/or liability claims arise against these third parties in this context, the Contractor shall assign these claims to the Client. In this case, the Client shall give priority to these third parties.

10.5 If data backup has been expressly agreed as a service, liability for the loss of data shall not be excluded in deviation from Clause 9.2 and Clause 9.1, but shall be limited for the recovery of data to a maximum of EUR 10 % of the order sum per case of damage, up to a maximum of EUR 15,000.

11. Loyalty

The client shall refrain from any enticement and employment, also via third parties, of employees of XIT who have worked on the realization of the orders, for the duration of the contract and 12 months after the termination of the contract. In the event of a breach thereof, the client shall be obliged to pay a penalty in the amount of one year's salary of the employee concerned.

12. Data protection and IT-Security

12.1. The Contractor shall oblige its employees to comply with the provisions of Section 6 of the Austrian Data Protection Act.

12.2. The Contractor shall process data and their processing results exclusively within the framework of the Client's orders, in particular within the framework of the order data processing agreement which is to be concluded for the Client and is mandatory under data protection law. In this respect, the Contractor is bound by the Client's instructions under data protection law.

12.3. The Contractor shall be entitled, taking into account the requirements of data protection law, to also use subsidiaries or qualified subcontractors for the execution of the order.

12.4. In the event of data protection incidents and IT security incidents (including Trojan horses, virus infections, similar malware, hacker attacks, etc.) at the Customer's premises that may have an impact on the Contractor's IT security and data protection, the Client shall inform the Contractor immediately upon becoming aware thereof. The notification shall be made to datenschutz@crossit.at.

12.5. The notification shall contain, in addition to other information, the following mandatory information:
— Information on the measures taken or proposed to address the breach or mitigate the incident;
— Information on the nature and extent of the personal data breach or IT security breach;
— Name and contact information of the data protection or IT security officer or designation of another responsible person to obtain further information;
— description of the likely consequences of the incident (in particular, any potential impact on the Contractor's systems, services and infrastructure or the Contractor's end customers);
— Naming of other useful information.

12.6. The Contractor shall be entitled to take security measures after consultation with the Customer in cases of violations of the security precautions contained in items 12.4 and 12.5 caused by the Customer or in case of suspicion of such. By taking the measures, infrastructure, systems and services may not be available or may only be available to a limited extent.

13. Confidentiality

13.1. The Client undertakes to treat all Confidential Information of the Contractor obtained prior to and in the course of the performance of the Contract as confidential for an unlimited period of time and to use it only in the course of the performance of the Contract. The copying of Confidential Information in any form whatsoever is prohibited unless it is done in fulfilment of the purpose of the Service Contract. Reproductions of Contractor's Confidential Information shall contain all notices and annotations as to its confidential or secret nature contained in the original.

13.2 In respect of Contractor's Confidential Information (a) Customer shall take all reasonable steps (as defined in definition below) to keep all Confidential Information confidential, and (b) Customer shall only grant access to Contractor's Confidential Information to those persons who require such access in order to perform the Contract. For purposes of this Agreement, "Reasonable Steps" means steps taken by Recipient to protect its own comparable Confidential Information that are at least equivalent to reasonable care, including, on the part of Principal, the careful custody and protection of the Confidential Information against misuse.

13.3 The foregoing Section 12.2 shall not apply to Confidential Information that (a) has been independently developed by Customer without recourse to Contractor's Confidential Information, (b) has become generally available to the public without breach of contract by Customer or has been lawfully obtained without obligation of confidentiality from a third party authorized to provide such Confidential Information, (c) was known to Customer without restriction at the time of disclosure, or (d) is exempt from the foregoing provisions upon written consent of Contractor.

13.4 The Client shall treat the provisions of the Service Agreement, in particular the prices contained therein, as confidential. The Client shall not use the name of the Contractor in publicity, advertising or similar activities without its prior written consent. In deviation from this, however, the Contractor shall be entitled to use the name and the company logo of the Principal in reference customer lists, as well as to prepare analyses (e.g. for demand forecasting) on the basis of the contractual contents and - subject to mutual agreement in each case - to use them in other marketing activities of the Contractor. The Contractor shall be entitled to pass on information about the Client to its affiliated companies for marketing and other business purposes, taking into account the applicable data protection law.

14. Other

14.1 Should individual provisions of this contract be or become invalid, this shall not affect the remaining content of this contract. The contracting parties shall cooperate in partnership to find a provision that comes as close as possible to the invalid provisions.

14.2 If a service is provided in relation to SAP software, all rights to the SAP software - in particular the copyright and other IP rights – in relation to Customer shall be exclusively vested in SAP, SAP AG (SAP's parent company) or their licensors, even to the extent that SAP software has been created by Customer's specifications or collaboration.

15. Final provisions

15.1 The right is reserved to make changes and additions to this contract, for example in order to make adjustments to changes in the legal framework or to integrate new services.

15.2. Changes and amendments of these General Terms and Conditions („GTC") must be made in writing in all cases, otherwise they are legally invalid. The amendments shall become effective if the Client does not object to them in writing within a period of 14 days from delivery. The Contractor shall notify the Client in writing of any amendments to the GTC and of the Client's right to object.

15.3 Terms and conditions that contradict or supplement the service contract, in particular general terms and conditions of the client, do not become part of the contract, even if XIT executes a contract without expressly contradicting such terms and conditions.

15.4. Unless otherwise agreed, the statutory provisions applicable between entrepreneurs shall apply exclusively in accordance with Austrian law, even if the order is executed abroad. For any disputes, the local jurisdiction of the court with subject-matter jurisdiction for the Contractor's place of business shall be exclusively agreed. For sales to consumers within the meaning of the Consumer Protection Act, the above provisions shall apply only to the extent that the Consumer Protection Act does not mandatorily provide for other provisions.