

## I. Applicability

### 1. Applicability

In all contractual relationships in which MEHRWERK GmbH (hereinafter referred to as "MEHRWERK") provides services for customers (hereinafter referred to as "Customer"), only these „Terms and Conditions of Contract and License“ shall apply. Apart from that, the statutory provisions shall apply. Any conflicting or supplementary terms and conditions of the customer shall not become part of the contract - except in the case of MEHRWERK's prior written consent - even if MEHRWERK executes a contract or render a service without expressly objecting to such terms and conditions. These contractual and licensing conditions shall also apply to any pre-contractual obligations, in particular with regard to the limitation of liability and confidentiality obligations. In case of transfer, maintenance and care of third party software and data, the special terms and business, contractual and license conditions of MEHRWERK shall prevail as well as those of the manufacturer of the third party software.

### 2. Services

These Terms and Conditions of Contract and License cover the services offered by MEHRWERK, such as the provision of standard software, the creation of individual software solutions, software maintenance and servicing, technical support and installation work, sale of hardware with or without individual consulting or adaptation, general consulting or other IT services as well as training of the Customer's employees.

## II. Contract initiation and conclusion

### 1. Offers

Offers made by MEHRWERK shall be subject to change and non-binding unless they have been expressly declared as a binding offer. MEHRWERK may accept orders from the Customer within 4 weeks. In case of doubt, the content of MEHRWERK's order confirmation shall be decisive for the content of the contract unless the Customer has immediately objected to the content of the order confirmation.

### 2. Written form

All notices of termination, setting of deadlines and dunning letters by the Customer must be in writing to be effective. Contractual warranties and assurances, especially if they go beyond the scope of these Terms and Conditions, require MEHRWERK's explicit and written confirmation.

### 3. Information provided in advance of the contract

Items and documents (e.g. software, physical and non-physical presentations and proposals) provided to the Customer in advance of the contract shall be the intellectual property of MEHRWERK; they may not be reproduced or made available to third parties. If software is provided to the Customer for testing purposes, the right to use such software shall expire after a reasonable or specifically agreed test phase. In particular, if no contract is concluded, all objects and documents provided shall be returned or proof of their deletion shall be provided to MEHRWERK. In all other respects, the obligations of secrecy pursuant to clause XIII.1 shall apply.

## III. Time of Performance

Deadlines and times of performance shall be non-binding unless they are expressly declared as binding in writing by MEHRWERK. Insofar as the Customer sets deadlines or grace periods for performance or supplementary performance or elimination of a circumstance, such deadlines shall be reasonable, at least 5 working days. If the fruitless expiry of a deadline or grace period is to result in the release from the contractual obligation or a reduction in remuneration, this must be expressly announced by the Customer when setting the deadline. The aforementioned declarations must be made in writing to be effective. MEHRWERK's obligation to implement shall not commence until the Customer's acceptance of the concept.

If MEHRWERK is waiting for the Customer's cooperation or information or is hindered in the execution of the order by strike, lockout or other circumstances for which MEHRWERK is not responsible, delivery and performance deadlines shall be deemed extended by the duration of the hindrance and by a reasonable start-up period after the hindrance has ended.

## IV. Terms of payment

### 1. Remuneration, purchase price

Remuneration or prices shall be determined in accordance with the order confirmation. If the parties agree on invoicing on a time and material basis, the time and material used shall be listed in the invoice or in a separate attachment to the invoice. If the Customer does not object to the listing in writing within 2 weeks, the Customer bears the burden of proof for its incorrectness. Additional services requested by the customer will be invoiced according to MEHRWERK's price list. In the absence of any other

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written agreement, the prices shall apply in accordance with MEHRWERK's current price list, according to which billing shall be based on person-days and hours plus expenses incurred on a monthly basis. All prices shall be subject to the applicable statutory value-added tax, unless the turnover would be exempt from value-added tax, as well as to any customs duties and levies.

## 2. Travel expenses

Travel times and cost, unless a lump sum has been agreed with the Customer, will be calculated according to time and effort and depending on the distance from Karlsruhe according to the following

- 0,65 €/km for travel by car
- other means of transport and hotel accommodation costs according to expenditure
- Statutory daily expenses
- Travel time is charged at 50% of the hourly rate plus any night, holiday or weekend surcharges

Rail travel can be booked in 1st Class for travel durations of 3 hours or more, otherwise in 2nd Class; flights of 5 hours or more can be booked in Business Class, otherwise in Economy Class. All business trips require an expressly order by the Customer. MEHRWERK shall not charge the Customer for travel required for the fulfillment of warranty obligations. A calculation of travel expenses in a project offer of MEHRWERK is only a non-binding estimation, the basis of which will be disclosed to the Customer upon the Customer's request. In order to reduce travel expenses, the Customer may agree to set up remote access to its IT infrastructure.

## 3. Due date

Payments are due after invoicing. No discount will be granted. From 30 days after the due date, the Customer shall be entitled to default interest at the statutory default interest rate applicable at the time.

## 4. Partial services

MEHRWERK may invoice partial services before completion of the overall project on a monthly basis or after approval of the respective partial service by the Customer. In case of approval made under restrictions, the Customer may only carry out a reasonable retention.

## 5. Payments on account

MEHRWERK shall have the right to invoice reasonable payments on account. If the fulfillment of the payment claim is endangered due to a significant deterioration of the Customer's financial situation that has become known after the conclusion of the contract, MEHRWERK shall be entitled to demand a payment on account, to withhold software or other services that have not yet been delivered, and to stop further work. MEHRWERK shall also be entitled to these rights if the Customer is otherwise in default of payment. MEHRWERK may claim full down payments if the services are to be rendered abroad or if the Customer is domiciled abroad.

## 6. Retention of title

MEHRWERK shall retain title and rights to the contractual works until its claims under the contract have been settled in full. In the event of resale, transfer or sublicensing, the Customer hereby assigns to MEHRWERK all claims arising therefrom, in particular payment claims but also other claims in connection with the resale, transfer or sublicensing, in the amount of MEHRWERK's outstanding gross invoice amount, irrespective of whether the service has been resold, transferred or sublicensed without or after processing. Until revoked by us for good cause, the Customer shall be entitled to collect the assigned claims in trust.

The resale of the receivables within the scope of genuine factoring requires MEHRWERK's prior consent.

For good cause MEHRWERK shall be entitled to notify the third-party debtors of the assignment of receivables also on behalf of the Customer. Upon notification of the assignment to the third-party debtor, the Customer's right to collect the receivables shall expire. In case of revocation of the collection authority MEHRWERK may demand that the Customer discloses the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and notifies the debtors of the assignment.

Good cause within the meaning of these provisions shall be deemed to exist in particular in the event of default in payment, cessation of payments, opening of insolvency proceedings or justified indications of over-indebtedness or imminent insolvency on the part of the Customer.

## 7. Set-off

The Customer may only set off claims which are undisputed by MEHRWERK or which have been legally established as final and absolute. The Customer shall only be entitled to a right of retention or the defense of non-performance of the contract within

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the respective contractual relationship. The Customer shall only be entitled to the right of retention in case of undisputed or legally established counterclaims.

## V. Rights to the contractual software

### 1. Service content and scope of license

The contractually owed software (hereinafter referred to as "Contractual Software") can be handed over by MEHRWERK directly to the Customer either electronically or by means of data carriers, depending on availability, and has the agreed status according to the service description at the time of handover. The scope of the license results from the order calculation. MEHRWERK owes the transfer of the Contractual Software only in the form of the machine-readable object code. The customer shall not be entitled to receive the source code.

In addition to the Contractual Software, MEHRWERK shall hand over the service description in electronic or printed form as documentation and accompanying material, if available. The service description may also include user instructions.

Upon request, the customer may be provided with an installation guide, if available. Further accompanying material is not owed.

### 2. Rights of use in case of

#### A) PURCHASE:

MEHRWERK grants the Customer a simple, non-exclusive right to use the Contractual Software. The Customer shall only be entitled to use the Contractual Software to process his own data in his own company for his own purposes.

The license granted shall only entitle the Customer to use the Contractual Software to the extent stipulated in the contractual agreement.

For any further use beyond this scope, a new contractual agreement must be concluded.

The scope of performance and use is further defined in the license calculation/contractual agreement.

The right of use is limited in terms of content to the contractual use by the Customer and all companies affiliated with the Customer pursuant to § 16 of the German Stock Corporation Act (AktG). The right of use is unlimited in terms of location and time.

#### B) Lease:

If a rental model is offered for specific software, the specific agreements in the contractual agreement shall also apply.

### 3. Testing of the contractual software

Prior to use in the productive system, the Contractual Software shall be adequately tested by the Customer. The Contractual Software as well as any documentation provided shall be inspected immediately after delivery and any defects identified shall be reported in detail and in writing.

§ Section 377 of the German Commercial Code (HGB) shall apply. If such immediate notification is not given, the service shall be deemed to have been approved except in the case of defects that are not recognizable. Should such a defect become apparent at a later date, the notification shall be made immediately after such defect has been detected, otherwise the performance shall be deemed approved also in view of such defect. If MEHRWERK has fraudulently concealed the defect, it shall not be entitled to invoke a failure to notify or a delay in notifying the defect on the part of the Customer.

### 4. License exceedance

As soon as the actual use of the Contractual Software exceeds this scope, the Customer shall notify MEHRWERK of this in writing and acquire the necessary licenses for this purpose. The current price list of MEHRWERK shall be decisive. Any further claims of MEHRWERK shall remain unaffected.

At MEHRWERK's request, the respective user of the Contractual Software shall enable MEHRWERK to verify the proper use of the Contractual Software, in particular whether the Contractual Software is being used qualitatively and quantitatively within the scope of the purchased licenses.

For this purpose, the respective Customer shall provide information to MEHRWERK upon its request, grant access to relevant documents and records, and enable an inspection of the hardware and software environment used.

### 5. Error correction, backup copies, interoperability

In addition to the simple right of use, a right to rectify errors is granted. The Customer may make backup copies of the Contractual Software to the extent necessary, but all of them must be marked with the copyright notice in favor of MEHRWERK and must be stored safely afterwards.

The service description as well as any other documentation provided may only be reproduced for internal purposes. The Customer may decompile the Contractual Software as well as parts thereof (such as interface information) only within the limits

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of § 69e UrhG (German Copyright Act) and only if MEHRWERK is notified of this intention in writing with a reasonable period of time to provide the necessary information.

Information about the source code shall be subject to secrecy pursuant to Section XV.1, regardless of whether it was provided by MEHRWERK or a third party or became known by way of decompilation. In addition, changes and processing of the Contractual Software (modification, reworking, decrypting, decoding, translating, etc.) require the prior written consent of MEHRWERK.

## 6. Passing on to Third Parties

Insofar as the Contractual Software has been provided to the Customer electronically, any transfer of the Contractual Software by the Customer to third parties - whether against payment or free of charge - , in particular acts of utilization such as resale, sublicensing, renting, lending, public reproduction or making publically available by wire or wireless means, the use of the Contractual Software by and for third parties (e.g. outsourcing, data center activities, application service providing) shall not be permitted without MEHRWERK's prior written consent. In addition, the transfer of the Contractual Software requires at least prior written notification to MEHRWERK.

In the case of software solutions created individually for a Customer, MEHRWERK may object to the transfer of the individual part of the software.

## 7. Rights to the contract software and work results

MEHRWERK shall be entitled to all intellectual property rights to the Contractual Software and the work results including the documentation (e.g. copyright, trademark rights, technical property rights) in relation to the Customer, even if and to the extent that the work results were created according to specifications or in cooperation with the Customer.

## 8. Third party software

If MEHRWERK uses or provides the Customer with third-party software within the scope of the contractual performance, MEHRWERK shall notify the Customer thereof. The Customer undertakes to comply with the license terms of the third-party software and to use it only in accordance with the purpose of the contract. In case of transfer, maintenance and servicing of third-party software, MEHRWERK's Special Terms and Conditions of Business, Contract and License as well as the license terms of the third-party software provider shall prevail.

## 9. Revocation of the rights of use

When the Contractual Software is provided, a license key limited to the term of payment may be implemented. MEHRWERK shall initially grant the rights of use to the Contractual Software only revocably subject to the condition precedent of full remuneration or payment and may revoke the granting of the rights of use to the extent to which no remuneration or payment has been made in the event of default in payment after the fruitless expiry of a reasonably set grace period. Upon payment in full, the Customer shall be provided with a correspondingly activated license key.

## VI. Creation of individual software

### 1. Service content

The Customer determines the task, whereby the solution and the detailed content and technical implementation are worked out jointly by the parties. The details can be found in the individual contract and its appendices (e.g. specifications, requirements), in the absence of a written individual contract in the order correspondence. The Customer shall bear the risk that the task formulated by him or the services specifically commissioned by him correspond to his actual ideas and requirements.

### 2. Change request procedure and changes

In the event of change requests during an ongoing project, the Customer may request MEHRWERK to examine the technical feasibility of the change within a reasonable period of time and to inform MEHRWERK how it affects the content of the contract, the schedule and the agreed remuneration. MEHRWERK shall start implementing the change request only after the Customer's release or order.

If MEHRWERK proposes a necessary or expedient change compared to the specifications, the Customer may object to the change only if there is a justified interest. The objection shall be made without delay.

If the contracting parties do not install the change request procedure or expressly exclude it, MEHRWERK may invoice changes requested by the Customer or subsequent order extensions separately on the basis of the respective valid price list according to time spent.

### 3. Authority to issue instructions

MEHRWERK shall decide how many and which employees - at its own discretion also freelancers and subcontractors - shall be used or which services shall be assigned to third parties.

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The customer shall not be authorized to issue instructions to MEHRWERK's employees. The contact person is always the project manager or the management of MEHRWERK.

When initiating the contract, both parties shall name their responsible contact persons who shall coordinate the cooperation of both parties and make the necessary decisions or bring them about without delay.

#### 4. Acceptance

After all services or partial services MEHRWERK may demand a written declaration of acceptance from the Customer or the preparation of a joint acceptance report. In particular, MEHRWERK may make the continuation of a project dependent on the acceptance of the performance specification or other performance description. The Customer may not refuse acceptance due to insignificant defects, but may declare acceptance under reserve. Acceptance shall be implied at the latest when the Customer has used the Contractual Software in operation for 14 days.

#### 5. Testing

Irrespective of the acceptance under the contract for work and services, the customer shall check the work results and interim results provided (including the specifications) for completeness and freedom from defects without delay and within a reasonable and technically feasible scope, in particular before the work results are used in its operational business.

### VII. Other Services

#### 1. Scope of Service

MEHRWERK offers consulting and training services for the conception and operation of software, MEHRWERK software as well as customizing, installation and programming services and system support.

The exact content and scope shall be determined by the service ordered by the Customer and confirmed by MEHRWERK or by the service level agreement concluded.

#### 2. Cooperation of the customer

The Customer shall support MEHRWERK in the provision of the services owed to the extent reasonable, necessary and expedient. In doing so, the Customer shall follow MEHRWERK's technical instructions and provide the necessary information and equipment (specification of hardware or software, network capacity and lines, telecommunication equipment).

#### 3. Training courses

In case of training courses, the Customer shall provide appropriate premises and technical equipment in consultation with MEHRWERK. The Customer may cancel an agreed training course date only for good cause. In case of justified dissatisfaction of the customer, MEHRWERK shall have the option to remedy the situation by repeating the training.

#### 4. Remuneration

The remuneration shall be determined on the basis of the service level agreement concluded with the Customer, otherwise on the basis of MEHRWERK's respectively valid price list. An offer or the order confirmation of MEHRWERK shall only be a calculation unless a lump-sum remuneration is expressly agreed upon. The Customer confirms the performance of the respective service by signing a proof of work submitted by MEHRWERK or its employee upon request.

### VIII. Cooperation obligations of the customer

#### 1. Data backup

The Customer shall be responsible for regular data backup and IT protection measures (including virus defense) in accordance with the current state of the art. MEHRWERK may assume that all data with which employees or agents of MEHRWERK come into contact have been previously secured by the Customer in another way.

#### 2. Protection of the software

The Customer shall be obligated to take appropriate measures to protect the Contractual Software from access by unauthorized third parties (virus defense, firewall, etc.), in particular to keep all copies of the software in a protected location.

#### 3. IT infrastructure

The Customer shall provide the documents and information necessary for the performance of the services as well as the IT infrastructure required for the Contractual Software (sufficient computer and storage capacities, Internet connection, operating systems, software as well as trained employees) and shall be exclusively responsible for their operation and maintenance.

Specifications of MEHRWERK shall be complied with. The warranty of quality and liability shall not extend to defects or damages caused by the fact that the Contractual Software is used in a hardware and software environment which does not meet the requirements formulated in the service description.

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#### 4. Further Duties to Cooperate

Further duties to cooperate on the part of the Customer result from the individual contract as well as from the general duties of common standard and due diligence. In the event of a breach of the duties to cooperate, the Customer shall bear the risk of damage. MEHRWERK is not responsible for checking whether the Customer complies with his duties to cooperate. The English language version only serves as a convenience translation for better understanding. In case of deviations, the German language version of these Terms and Conditions of Contract and License shall prevail.

#### 5. Costs of cooperation

The Customer's entire cooperation shall be free of charge.

### IX. Defects of quality and title

#### 1. Material defects

If the parties do not agree on a specific quality of services or partial services, the liability for defects shall be limited to the fact that the service or partial service is suitable for the contractually presumed, otherwise customary, use and is customary for services of this type. In the event of material defects MEHRWERK may initially, at its discretion, provide the Customer with a new, defect-free service or remedy the defect by repair.

#### 2. Defect of title

In case of defects of title, subsequent performance shall be effected by granting a legally flawless possibility of use of the delivered work or, at MEHRWERK's option, by granting a right of use to a modified but equivalent work.

If a third party asserts claims against the Customer due to an infringement of rights with respect to the contractual performance, the Customer shall immediately notify MEHRWERK thereof in detail in writing.

The Customer authorizes MEHRWERK already now to conduct the dispute with the third party judicially and extrajudicially on its own. If MEHRWERK makes use of this authorization, which is at its discretion, the Customer may not acknowledge the claims of the third party without MEHRWERK's consent.

Furthermore, MEHRWERK shall be obligated to defend the claims at its own expense and in doing so shall indemnify the Customer against the costs and damages which are exclusively attributable to MEHRWERK's legal defense. This shall not affect the statute of limitations for liability claims based on the defect of title.

#### 3. Rights of the Customer

If supplementary performance finally fails after expiry of a reasonable period to be set by the Customer which allows at least two attempts at supplementary performance, the Customer may reduce the remuneration, withdraw from the contract or (in the case of a continuing obligation) give notice of termination. Compensation for damages or reimbursement of futile expenses shall be owed by MEHRWERK in accordance with clause XII. Further claims based on defects of quality or title are excluded.

#### 4. New software version

If MEHRWERK provides the Customer with a new software version (e.g. update) for the elimination of material defects or defects of title after performance, the Customer shall accept this new software version in order to preserve the warranty rights, unless such acceptance is unreasonable.

#### 5. Unsubstantiated notice of defects

In case of an unsubstantiated notice of defect MEHRWERK may charge the expenses for troubleshooting according to the time spent, in particular also if a reported material defect is not verifiable or reproducible or cannot be attributed to MEHRWERK.

### X. Liability

MEHRWERK shall be liable without limitation in case of intent or gross negligence, for injury to life, body or health, according to the provisions of the Product Liability Act as well as to the extent of a guarantee assumed by MEHRWERK. In case of breach of an obligation which is essential for achieving the purpose of the contract, MEHRWERK shall be liable in case of slight negligence to the extent that the damage is foreseeable and typical according to the nature of the business in question, with the liability being limited to a maximum of € 25,000 for each individual case of damage and € 50,000 per year. Any further liability of MEHRWERK does not exist. The above limitation of liability shall also apply to the personal liability of MEHRWERK's employees, vicarious agents, representatives and bodies.

### XI. Limitation

In the case of claims for damages and reimbursement of expenses arising from intent, gross negligence, warranty, fraudulent intent as well as in the case of personal injury and claims under the Product Liability Act, the statutory limitation periods shall always apply. Otherwise, the limitation periods shall be as follows

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- for claims for repayment of the purchase price arising from withdrawal or reduction 1 year from delivery of the Contractual Software, but for properly notified defects not less than 3 months from submission of the effective declaration of withdrawal or reduction;
  - for other claims arising from material defects 1 year;
  - in the case of claims based on defects of title, 2 years, if the defect of title does not lie in a right in rem of a third party, on the basis of which the third party can demand the return of the objects provided under the contract (Contractual Software, documentation);
  - in the case of other claims for damages or reimbursement of futile expenses, 2 years, commencing from the time at which the Customer became aware of the circumstances giving rise to the claim or should have become aware without gross negligence.

The limitation period shall commence at the latest upon expiry of the maximum periods stipulated in § 199 of the German Civil Code (BGB).

The limitation period shall be suspended during the examination of a material defect or defect of title or during the subsequent performance until the supplementary performance is completed or finally refused or finally fails. The limitation period shall then commence at the earliest 3 months after the end of the suspension.

## **XII. Data protection**

The Customer processes the data required for the business transaction in compliance with the data protection regulations. The Customer assures that he has created all necessary conditions for MEHRWERK to be able to provide the agreed services without violating data protection regulations.

## **XIII. Final provisions**

### **1. Secrecy**

The Customer undertakes to treat as confidential all information (e.g. software, documents, information) received from MEHRWERK before or during the performance of the contract which contain business or trade secrets or are designated as confidential, even beyond the end of the contract, unless,

- they are or become public knowledge or are demonstrably known to the Customer at the time the business relationship is entered into or become known to the Customer thereafter from a third party, without thereby violating a confidentiality agreement, statutory provisions or official orders;
- they must be disclosed due to legal obligations or by order of a court or authority. To the extent permissible and possible, the Customer shall notify MEHRWERK in advance in the event of an obligation to disclose and give MEHRWERK the opportunity to take action against the disclosure.

The Customer shall store and secure information to be treated confidentially in such a way that access by third parties is prevented. The Customer shall make the information to be treated confidentially accessible only to employees and other third parties who need access to perform their official duties.

He shall instruct these persons about the need for secrecy and shall oblige these persons in writing to comply with the obligation to maintain secrecy. Any not merely insignificant, culpable breach of the confidentiality obligations shall result in a contractual penalty of between € 10,000.00 and € 50,000.00.

The amount may be determined by MEHRWERK and reviewed by the competent district court as to its appropriateness. Further claims shall remain unaffected, whereby the contractual penalty shall be offset against the actual damage.

### **2. Surrendered documents**

Items handed over by the Customer, such as templates or data carriers, shall only be stored or archived beyond the time of performance of the service after prior express agreement and against special remuneration. If items to be archived are to be insured, this must be arranged by the Customer or agreed upon with MEHRWERK.

### **3. Reference**

MEHRWERK may publicly name the Customer as a reference customer after successful completion of the services.

### **4. Choice of law, place of jurisdiction, place of performance**

The entire business relationship between MEHRWERK and the Customer shall be governed by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods and the provisions of international private law. The place of performance and jurisdiction for all disputes arising from and in connection with this

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contract shall be MEHRWERK's registered office. MEHRWERK may also choose the Customer's general place of jurisdiction in case of legal disputes.

5. Amendments and addenda

Amendments and addenda to the contracts between MEHRWERK and the Customer must be made in writing. This shall also apply to the amendment of the written form requirement.

6. Severability clause

Should any of these provisions be invalid, this shall not affect the validity of the remaining provisions. The contracting parties shall endeavor to replace the invalid provision with a valid provision that comes as close as possible to the economic meaning of the invalid provision. The same shall apply to loopholes in the contract.

**Status 04/01/2020**