

## 1. Validity of the conditions

These conditions shall apply in addition to the fiwa General Terms and Conditions of Business and Delivery and shall apply to the temporary and indefinite provision of standard software and/or individual software, which are provided for use as part of or in connection with a delivery of the associated hardware (system). Conditions to the contrary, in particular the Client's general terms and conditions, shall not become part of the contract, even if they are not expressly contradicted. Fiwa also provides service activities and customizing services. These require a separate agreement.

## 2. Rights of use and scope of services

### 2.1

The scope of services owed by fiwa for the provision of software shall be determined exclusively by fiwa's order confirmation, insofar as such has been transmitted. The software is created by fiwa according to the requirements elaborated in the order or in a functional specification.

### 2.2

In the case of the delivery of standard software, the quality resulting from the manufacturer's documentation of the respective delivery items shall be deemed agreed. If the object of the services to be rendered by fiwa is the delivery of standard software, the scope of the Client's right of use shall be determined exclusively in accordance with the terms of use of the respective manufacturer to be recognised by the Client in each individual case.

### 2.3

For software for which fiwa only has a derived right of use and which is not open source software (third-party software), the terms of use agreed between fiwa and the manufacturer shall apply insofar as they relate to the Client (e.g. as End User Licence Agreement). If such conditions apply, fiwa shall inform the Client accordingly.

### 2.4

If commissioned, fiwa also hands over the respective source code to the Client when creating individual software in addition to the executable program and the user doc-

umentation. If ordered, not only the pure program code is handed over as the source code, but also a descriptive and explanatory documentation.

## 2.5

If the object of the services to be rendered by fiwa is the creation of individual software, fiwa shall grant the Client the exclusive right, unlimited in time and place, to use the software for all business purposes. The right of use is unlimited in time unless a time limit has been agreed.

## 2.6

In the event of any disagreement between fiwa and the Client regarding the meaning of EDP terms and symbols, quality requirements, format/requirements or similar in the course of the development of the software, compliance with the DIN/ISO standards applicable at the time of conclusion of the contract shall be deemed to have been agreed. If a DIN/ISO standard is changed after conclusion of the contract but before completion of the program, fiwa is obliged to take into account the requirements of the new standard.

## **3. Remuneration**

### 3.1

The remuneration of fiwa for programming and software development or adaptation is specified in the respective order. All services to be rendered by fiwa, including advice on drawing up the functional specifications as well as instructions after program installation, shall be remunerated at agreed hourly rates. The usage fee for individual software is included in the agreed remuneration according to the order. The Client does not owe a separate licence fee.

### 3.2

Requests for changes by the Client with regard to the scope of functions, the programming structure, the screen design or other features shall be remunerated separately by the Client.

### 3.3

Fiwa is free to make the desired changes for an appropriate additional fee. The basis for the corresponding appropriate determination of charges is the necessary additional time required.

## **4. Obligation of the Client to cooperate**

### **4.1**

The Client is obligated to cooperate appropriately in the measurement loop-related functional specifications necessary for the creation of the program (unless explicitly offered otherwise). The obligation to cooperate includes in particular the provision of information of a technical and organisational nature (hardware and operating systems, standard software used, organisational plans) required for the production of the programme, as well as, if applicable, the hardware on which the programme is later to be used. During necessary test runs, the Client must be personally present or assign employees for this purpose who are authorized to identify defects and to commission functional extensions and changes to the measurement loop-related functional specifications and the program that changes as a result.

### **4.2**

If fiwa is also responsible for the installation of the software, the Client must provide the hardware for this and, if necessary, discontinue other work with the computer system or with system operation partially or completely for the required period.

### **4.3**

The Client must take all necessary and reasonable measures to prevent or limit damage caused by the software. In particular, the Client shall ensure that programs and data are regularly backed up. If the Client culpably violates this obligation, fiwa shall not be liable for the consequences arising therefrom, in particular not for the replacement of lost or damaged data or programs.

## **5. Secrecy**

### **5.1**

All documents and materials provided by fiwa to the Client for the execution of the order shall be treated confidentially and may only be reproduced for the Client's own use and may not be made accessible to third parties.

### **5.2**

The Client shall treat as confidential all information made available to him in the course of the processing of the software transfer and relating to methods and procedures used by fiwa.

## **6. Warranty, liability**

### **6.1**

Fiwa shall only be liable for intent and gross negligence. Fiwa shall only be liable for slight negligence if essential contractual obligations are breached or life, limb and health are injured. Essential contractual obligations are the fundamental, elementary obligations arising from the contractual relationship, the fulfilment of which is essential for the performance of the contract, the breach of which endangers the achievement of the purpose of the contract and the observance of which the Client may regularly rely on.

### **6.2**

Fiwa's liability within the scope of the provision of individual software shall be limited in amount to the damage typical of the contract and foreseeable at the time of conclusion of the contract. Liability shall be limited in amount for each individual case of damage to a maximum liability amount equal to the order value. This shall not apply if fiwa is guilty of malice, intent or gross negligence, for claims based on injury to life, limb or health or in the case of a claim based on a tortious act or an expressly assumed guarantee or the assumption of a procurement risk or in cases of legally mandatory higher liability sums. Fiwa shall not be liable if standard software has been provided to the Client or if the manufacturer's terms of use have been passed on to the Client, with the exception of material defects which significantly impair the functionality of the software. Any further liability is excluded. These aforementioned exclusions and limitations of liability shall apply to the same extent for the benefit of the organs, employees, other vicarious agents and subcontractors of fiwa.

### **6.3**

Liability for loss of data shall be limited to the typical cost of recovery that would have been incurred if backup copies had been made on a regular basis as is customary in the industry.

### **6.4**

The liability according to the product liability law remains unaffected by this.

## **7. Warranty**

### **7.1**

The limitation period for claims due to material defects in the software is 12 months. This shall not apply if longer periods are prescribed by law or in cases of culpable injury to life, body or health, in the event of an intentional or grossly negligent breach of duty by fiwa, fraudulent concealment of a defect or non-compliance with a guarantee of quality. The period begins at the time of the transfer of risk.

### **7.2**

Only those deviations from the agreed specification which are proven by the Client and reproducible shall be deemed to be material defects of the software. Notifications of defects by the Client must be made immediately in writing. The defect and the corresponding data processing environment shall be described in detail.

## **8. Acceptance**

Acceptance takes place after software creation, usually after installation of the program on the hardware/system in the form of a FAT (Factory Acceptance Test). If, after instruction, the software has passed the test run and has the essential program functions, the Client shall be obliged to submit a written acceptance declaration upon request by fiwa. Acceptance may not be refused on the grounds of insignificant defects. Fiwa may set a reasonable deadline for the submission of the declaration of acceptance, after the expiry of which the software shall be deemed to have been accepted.

## **9. Written form clause**

### **9.1**

All agreements which contain a change, supplement or concretisation of these conditions, as well as special guarantees, must be in writing.

### **9.2**

Should individual provisions be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. In this case, the parties shall endeavour to replace the invalid provision with a valid provision that comes as close as possible to the economic purpose of the invalid provision.

## **10. Applicable law, place of jurisdiction**

### 10.1

The law of the Federal Republic of Germany shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods. Place of performance and jurisdiction for deliveries and payments as well as all disputes arising between the parties shall be the head office of fiwa in Burghausen. However, fiwa is also entitled to sue the Client at the Client's registered office.

### 10.2

Otherwise, the General Terms and Conditions of Business and Delivery (contract for work and services) shall apply depending on the software specification.

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