

General Terms and Conditions for Goods and Services of Materna IPS GmbH

1 Scope and hierarchy

- 1.1** These General Terms and Conditions (hereinafter: "GTC") and the Supplementary Terms and Conditions applicable to individual performances (hereinafter: "STC") are applicable to legal relations between Materna IPS GmbH (hereinafter called: "Materna") and Customers that are not consumers in respect of all goods and services of Materna.
- 1.2** Insofar as special or supplementary provisions are required for individual goods and services, these shall be governed by the respective STC. The STC have precedence over these GTC.
- 1.3** The GTC and any STC shall also be applicable to future goods and services of Materna for the Customer, unless expressly agreed otherwise. Deviating terms and conditions of business of the Customer shall not constitute integral parts of the Agreement, even if Materna does not expressly object to them. In addition, the provisions of the GTC and any STC shall also be applicable to the pre-contractual relationship.
- 1.4** If, in addition to signing a legal agreement, the Customer's internal organisational guidelines also require the Customer to generate its own order used to order the goods and services from Materna, the Customer shall ensure that the content of the order does not deviate from the signed Agreement.

2 Object of the Agreement

- 2.1** The content and scope of the performance shall be governed exclusively by the provisions of the Agreement, in particular by the performance description of Materna. Unless otherwise agreed in the Agreement, the Customer shall be responsible for the project and for the overall result.
- 2.2** Unless otherwise agreed between the contracting Parties in the Agreement, the place of the rendering of the performance shall be the place of business of the respective employee of Materna.
- 2.3** At the request of the Customer, Materna shall render the agreed performances at the premises of the Customer. In this event, Materna's employees shall nevertheless not be integrated into the business operations of the Customer. Solely Materna shall be entitled to issue instructions to its employees.
- 2.4** Materna shall decide which employees it shall deploy to render services and shall be entitled at any time, after notifying the Customer, to replace an employee with another employee who is at least equally qualified.
- 2.5** Both Parties are entitled to propose subsequent amendments and supplements to the agreed performance (change request). Materna shall assess the Customer amendments within a reasonable period of time and shall submit a written offer concerning the change in performance, its remuneration and any necessary adjustment of the time schedule or other agreements. Materna shall be entitled to reject a requested performance amendment if such a change is not technically feasible for Materna or is associated with disproportionate expense. It may invoice the cost of assessing amendments at the agreed hourly rates or, alternatively, at its usual hourly rates. As long as the Customer has not issued its Consent, Materna shall continue to render the performance in accordance with the existing Agreement.

3 Rights of use to work results

- 3.1** Unless otherwise stipulated in the Agreement, the Customer shall have the irrevocable right, unlimited in time and space and non-exclusive, to use the work results created for the Customer and handed over to it in accordance with the contractual provisions for the purposes intended by the Agreement.
- 3.2** Insofar as the Customer acquires an exclusive right to use work results on the basis of an express contractual agreement, Materna shall be entitled to use its own knowledge or the knowledge of its deployed employees to produce the work results as well as tools and processes used that are intended for reuse in other performance relationships or are suitable for the purposes of its business operations. This does not apply to knowledge that is deemed to constitute company or business secrets of the Customer. Even in the event that exclusive rights of use are granted to the Customer, Materna shall remain entitled to retain and use a copy of the software (source code) and documentation for the purposes of subsequent performance within the context of its liability for material defects and defects of title.
- 3.3** The granting of the rights pursuant to Subsections 3.1 and 3.2 is conditional upon the complete payment of the agreed remuneration, and in the case of work performances this shall also apply to the acceptance of the work results that are to be rendered.
- 3.4** The Customer shall be entitled to demand the surrender of the source code to computer programs that have been individually created for it, to which it has acquired an exclusive right of use from Materna, if and to the extent that this source code is in the possession of Materna and is under its power of disposal. The Customer may only use this source code within the context of the rights of use that have been assigned to it. The Customer may surrender the source code to third parties or make this accessible in any other way only to the extent that this is necessary under the circumstances of the individual case to safeguard its legitimate interests, e.g. to ensure the future use of the respective computer programs for the aforementioned purposes independently of Materna through maintenance, further development or other processing. Apart from the above, the Customer shall be obligated to treat the source code confidentially and must commit any third parties to whom it intends to disclose the source code to the same level of confidentiality.

4 Third-party work results

- 4.1** The Customer may – insofar as provision has been made for this in the scope of performance – hand third-party work results over to Materna for processing or for other modifications.
- 4.2** The Customer shall ensure that the terms of use for the work results of third parties do not conflict with any processing or modification or with the use or publication of the processing by Materna or its vicarious agents.
- 4.3** The Customer shall indemnify Materna and its vicarious agents against any liability for claims brought by third parties arising out of an unauthorised transfer for processing or

transformation, unless intent or gross negligence exists on the part of Materna or its vicarious agents.

5 Freeware, shareware and open source software

5.1 Insofar as the work results contain freeware, shareware or open source software (hereinafter called "OSS"), Materna shall not charge the Customer any fee or royalty for the use of this OSS. Materna shall be liable for OSS defects only in the event of malicious concealment. Any further liability shall be limited to wilful intent and gross negligence, with the exception of damages resulting from injury to life, limb or health. In these cases, Materna shall also be liable in the case of a simple negligent breach of obligation. In cases of product liability, Materna shall be liable in accordance with the German Product Liability Act ("Produkthaftungsgesetz"). The specific utilisation terms and conditions that are either part of the documentation or have been presented to the Customer by Materna are applicable to the OSS. At the request of the Customer, Materna shall present a copy of the source codes of the open source software to the Customer. If and to the extent that the provisions of this Agreement and the OSS terms and conditions are contradictory, the OSS terms and conditions shall have precedence over all other contractual terms and conditions in respect of the OSS.

6 Remuneration

6.1 Unless otherwise agreed, the performances of Materna shall be invoiced on a time and materials basis in accordance with the hourly rates offered, or alternatively at the standard hourly rates of Materna, plus the expenses and overheads necessary for the rendering of the performances, in particular travel expenses (travel time, travel costs, cost of overnight accommodation, etc.) and other expenses. The same applies to performances outside the agreed scope of performances and to additional expenses due to incorrect/incomplete information provided by the Customer or unjustified notices of defects, improper use of the system or breaches of duty by the Customer.

6.2 In the event of settlement on a time and materials basis, Materna shall report the hours worked and the travel time, costs and expenses at the respective valid hourly or daily rates as well as the materials consumed at the prices valid at the time of the performance together with a brief description of the activity in the activity records (appendix) at the end of each month – insofar as the working period is shorter, at the end of this period. If Materna does not receive a written complaint from the Customer about a proper proof of activity within five working days, the proof of activity shall be deemed approved if Materna has informed the Customer of this consequence when presenting the proof of activity. A full hourly rate shall be settled for each hour commenced. The Customer is not entitled to call up contingents that fall short of eight person hours per day, unless this has been expressly agreed or a contractual provision of the performance requires lower daily contingents. One person day encompasses eight working hours.

6.3 Prices specified for performances that are remunerated on a time and materials basis are estimates. The quantities on which an estimate is based derive from an evaluation of the scope of performances rendered to the best of our knowledge at the time the Agreement was concluded. These may change in accordance with the actual circumstances. If Materna ascertains during the course of the rendering of the performance that the

estimate will be exceeded, it shall inform the Customer of this without delay.

6.4 If a fixed price is agreed, Materna shall invoice the remuneration in accordance with the payment plan in the Agreement or, if no such plan has been agreed, after the performance has been rendered in full. In the case of expense-related remuneration, the invoice shall be issued at the beginning of the month following the rendering of the performance or, in the case of a shorter performance period, after the complete rendering of the performance, unless otherwise agreed.

6.5 Invoices are payable without deduction within 14 days following the invoice date. Prices specified in the offer/agreement are net plus the statutory value added tax.

6.6 If the Customer is in default of payment, the outstanding amount shall bear interest at 9 percentage points above the base interest rate applicable at the time. The assertion of further claims for damages remains reserved. Materna is entitled to prohibit the Customer from continuing to use the performances for the duration of any payment default by the Customer. Materna may assert this entitlement only for a reasonable period of time, as a rule up to a maximum of 6 months. This shall not constitute a withdrawal from the Agreement. § 449 Para. 2 of the German Civil Code ("BGB") remains unaffected.

6.7 If the Customer returns the performances, the receipt of the performances shall not constitute a withdrawal on the part of Materna, unless Materna has expressly declared the withdrawal. The same applies to the attachment of the reserved goods or of rights to the reserved goods by Materna.

7 Cooperation between the Parties

7.1 The Customer shall be obligated to provide the cooperation and declarations required for the contractual rendering of the performance in a qualified and timely manner. Each contracting Party shall designate a competent member of staff to provide information necessary for the performance of the Agreement and to take or cause decisions to be taken.

7.2 If the Customer fails to perform the actions for which it is responsible, the performance obligation of Materna shall be suspended for the duration of the default, which cannot be performed without this action or can only be performed with disproportionate additional expense. The Customer shall reimburse Materna for any additional costs incurred in addition to the agreed remuneration on the basis of the applicable daily or hourly rates. § 643 BGB remains unaffected. If a timetable has been agreed, the deadlines shall be rescheduled in accordance with the duration of the delay.

7.3 If Materna is impeded in rendering its services in any other way, it shall notify the Customer accordingly. The notification shall contain information about the likely duration of the hindrances. The deadlines for performance shall be extended by a reasonable period of time, insofar as the obstacles have not been caused by Materna or its vicarious agents.

8 Acceptance

8.1 The following shall apply to all goods and services available for acceptance:

The Customer must declare acceptance to Materna within 14 calendar days of receipt of the written request for acceptance, unless another period has been agreed. During this assessment period, the

Customer can satisfy himself that the services have been performed in accordance with the Agreement.

8.2 Unless otherwise agreed, a notified defect shall be assigned to one of the following categories:

- Category 1 The performance is affected by a defect that makes utilisation impossible or facilitates this only with serious restrictions.
- Category 2 The performance is affected by a defect that restricts utilisation, without this constituting a Category 1 defect.
- Category 3 The performance is affected by a defect that only impairs utilisation only to an insignificant extent.

8.3 In the event of a Category 1 defect, the Customer may refuse to issue the acceptance declaration. This also applies if several Category 2 defects collectively cause effects that constitute a Category 1 defect. Materna shall remedy duly reported defects with Category 1 effects within a reasonable period of time in such a way that Category 1 effects are no longer present. If the defect, its effects or its elimination means the assessment cannot be continued properly, the assessment period for the performances in question shall be extended appropriately.

8.4 Already declared partial acceptances remain unaffected by subsequent acceptance assessments for other performances. The same applies to assessments that have already been carried out, except insofar as these are affected by a defect or its elimination.

8.5 If there are no Category 1 defects, the performance shall be deemed to be acceptable. The Customer shall then declare acceptance immediately after completion of the tests, at the latest after expiry of the testing period.

8.6 The performances shall be deemed to have been accepted – even without the express declaration of the Customer and without Materna’s request for acceptance,

- a) if the Customer uses the performance for purposes other than for testing, or
- b) upon payment, unless the Customer has legitimately refused to issue acceptance, or
- c) if the Customer does not give notice of defects that prevent acceptance within the inspection period, or
- d) if the Customer does not give notice of defects within a reasonable period set by Materna that prevent acceptance and Materna has pointed out these consequences when setting the deadline.

8.7 Unless otherwise agreed, definable partial performances shall also be accepted individually in accordance with these provisions.

9 Claims for defects

9.1 The quality of the performance owed is definitively described in the specifications as well as in the offers and legal agreements of Materna and their appendices. These performance specifications do not constitute guarantees within the meaning of §§ 443, 444, 639 BGB. Other performance characteristics, specifications or other qualities of the performances of Materna, apart from those that have

been expressly agreed, are not owed by Materna and shall be subject to the conclusion of a separate agreement.

9.2 Insofar as Materna renders purchase or works performances, the warranty period for performance defects amounts to 12 months. The statutory warranty period pursuant to § 634a Para. 1 No. 2 BGB remains unaffected by this. After the sale of the hardware and standard software the warranty period commences upon delivery, otherwise upon acceptance of the performance. § 377 of the German Commercial Code (“HGB”) is applicable. Recourse claims pursuant to §§ 478, 479 BGB remain unaffected.

9.3 If the performances of Materna do not have the agreed quality, Materna shall provide warranty by subsequent performance within a reasonable period of time, taking the complexity of the contractually owed performance and the impact of the defect into account. If the defect is not remedied within a reasonable period for subsequent performance, if subsequent performance is unreasonable for the Customer, if subsequent performance is refused by Materna pursuant to § 439 Para. 4 or § 635 Para. 3 BGB, or if it is deemed to have definitively failed for any other reason, the Customer may, at its own choice, either rescind the Agreement in question, reduce the remuneration or, subject to the additional requirements of §§ 280, 281 BGB, claim damages instead of performance or terminate the Agreement in the case of continuing obligations. Insofar as Materna is obligated to pay damages or reimbursement of futile expenses in accordance with the present Subsection 9.2, the limitations of liability agreed in Subsection 11 shall be applicable. For software, subsequent performance may also take the form of the transfer or installation of a new program version or a workaround solution. The Customer shall only be entitled to carry out the work itself for a fee if a defect has not been remedied despite the expiry of a reasonable period for subsequent performance and the cause of this lies within the sphere of Materna.

9.4 Defects must be reported in writing by means of a full description of the error symptoms and by written records, hard copies or similar suitable for proof, enabling the error to be reproduced. Statutory obligations to examine and give notice of defects remain unaffected.

9.5 If the defect is based on the defectiveness of products of a supplier who does not act as a vicarious agent of Materna but whose product was delivered to the Customer without modification, Materna’s warranty shall initially be limited to the assignment of its warranty claims against the supplier. This shall not be applicable if the defect is due to improper handling of the supplier’s product for which Materna is responsible. If the Customer is unable to assert its warranty claims against the supplier out of court, the subsidiary warranty of Materna shall remain unaffected. Claims of the Customer arising out of liability for defects shall be reported to Materna without delay, even in the event of a claim being brought against the supplier.

9.6 Modifications or extensions of the work performance initiated by the Customer exclude the warranty of Materna, unless the modification or extension is demonstrably not the cause of the defect. The same applies to defects that are attributable to improper operation or unsuitable operating conditions or operating resources of the Customer.

9.7 Materna shall be entitled to charge the Customer for the expenditure incurred in examining unjustified

notifications of defects in accordance with its valid hourly rates.

- 9.8** If the Customer is entitled to withdraw from the Agreement on the account of a default in performance, it shall declare its withdrawal within a deadline of fourteen days following establishment of the reasons justifying the withdrawal. In the event of minor defects, the withdrawal as well as the claim for damages shall be excluded in place of the entire performance, unless the defects were maliciously concealed.

10 Defects of title

- 10.1** Materna warrants that the goods and services provided by it are free of rights of third parties that conflict with the contractual use.

- 10.2** If third parties assert such rights, Materna shall defend the goods and services against the asserted rights of third parties at its own expense, provided that the Customer informs Materna immediately in writing of the assertion of such rights by third parties, grants Materna the necessary powers and authorities and provides reasonable support. The Customer shall not be entitled to recognise claims of third parties and shall either leave any disputes, including any out-of-court settlements, to Materna or shall conduct these only in agreement with Materna.

- 10.3** Insofar as defects in title exist, Materna shall be entitled, at its own choice, to defend/assert the contractual use of the goods and services by appropriate measures against the assertion of the rights of third parties or to modify or replace these in such a way that the rights of third parties are not infringed or third parties do not assert an infringement. The agreed functionality of the goods and services may not be unreasonably impaired by the defensive actions. Materna is moreover obligated to reimburse the Customer for the necessary reimbursable costs incurred in pursuing the legal claim.

- 10.4** If defect rectification pursuant to Subsection 10.3 fails within a reasonable grace period granted by the Customer, the Customer may at its own choice, subject to the statutory preconditions, withdraw from the Agreement or demand a reduction in price and compensation, within the context of the liability limits set out under Subsection 11.

- 10.5** In other respects Figs. 9.5 to 9.8 are correspondingly applicable.

11 Liability

- 11.1** Materna shall at all times be liable vis-à-vis the Customer without restriction

- a) for damages caused intentionally or through gross negligence by it or its legal representatives or vicarious agents,
- b) in accordance with the German Product Liability Act ("Produkthaftungsgesetz")
- c) in the event of the express acceptance of a guarantee, and
- d) for damages resulting from injury to life, body or health for which Materna, its legal representatives or vicarious agents are responsible.

- 11.2** Materna shall not be liable for minor negligence unless it has breached a material contractual obligation, the fulfilment of which is essential for the proper performance of the Agreement or the breach of which jeopardises the achievement of the purpose of the Agreement and on the observance of which the Customer may regularly rely:

- 11.3** In the event of material damage and pecuniary loss, this liability is limited to typical contractual foreseeable damage. This also applies to loss of earnings and forfeited savings. Liability for other remote consequential damages is excluded. For an individual case of damage, liability shall be limited to the contract value, for current remuneration to the amount of remuneration per contract year, but not to less than EUR 100,000.00. The Parties may agree on further liability against separate remuneration upon conclusion of the Agreement. In addition and primarily, the liability of Materna for minor negligence arising out of the respective agreement and its execution for damages and reimbursement of expenses – irrespective of the legal basis – shall be limited in overall terms to the percentage of the remuneration agreed in this Agreement at the time of the conclusion of the Agreement. Liability pursuant to Subsection 11.1 b – c) remains unaffected by this.

- 11.4** In the event of loss of data, Materna shall be liable only for the expenditure that is necessary to restore of the data based on a proper data backup by the Customer. In the event of minor negligence on the part of Materna, this liability shall arise only if the Customer has carried out a proper data backup immediately prior to the measure that led to the loss of data.

- 11.5** In the case of claims for the reimbursement of expenses and other liability claims brought by the Customer against Materna, Subsection 11.1 to Subsection 11.4 shall be correspondingly applicable.

12 Confidentiality, data protection

- 12.1** The Parties undertake to treat as confidential all confidential information that becomes known to them during the execution of this Agreement, and to use this only for contractually agreed purposes. Confidential information within the meaning of this provision means information, documents, facts and data that are designated as such or should inherently be considered confidential. Excluded is merely confidential information that was already in the public domain at the time of disclosure or subsequently became publicly available, was disclosed by a third party to the receiving contractual Party without this entailing a confidentiality obligation, was already in the possession of or known to the receiving contractual Party at the time of disclosure, or was developed by the receiving contractual Party independently of the confidential information. The confidentiality obligation shall also remain in force for two years following the ending of the contractual relationship. This does not apply to personal data that the Parties will treat confidentially for an indefinite period of time.

- 12.2** The Parties are aware that electronic and unencrypted communications (e.g. using e-mail) are exposed to security risks. In the case of this type of communication, you will therefore not assert any claims on the grounds of the absence of encryption, unless encryption has been agreed.

- 12.3** The Parties undertake to observe the relevant data protection provisions. Insofar as Materna receives access to the hardware and software of the Customer, this is not in order to process or use personal data for business purposes. Instead, a transfer of personal data shall take place only in exceptional cases and as an incidental consequence of the contractual performances of Materna.

- 12.4** Materna shall in particular impose data confidentiality obligations upon all employees deployed to process the data. The Customer affirms that it has established all legally necessary

prerequisites (e.g. by obtaining declarations of consent) to enable Materna to render its performances in accordance with data protection regulations. Insofar as Materna collects, processes or uses personal data on behalf of the Customer, the Parties shall conclude a separate contract processing agreement for this purpose. The contract processing shall be performed in accordance with the instructions of the Customer. The Customer shall to this extent be solely responsible for the lawful nature of the forwarding and processing of the data.

13 Data processing for own purposes

13.1 Materna points out that in the context of the business relationship with Materna personal data, in particular names, business addresses, telephone numbers and e-mail addresses may be processed and used by employees and subcontractors in internal systems for the purpose of exercising the business relationship between Materna and its subcontractors, and may be transmitted to companies affiliated to Materna.

14 References

14.1 Materna is entitled to use the Customer's name, brand and information about the project as a reference or for marketing purposes until further notice, subject to the aforementioned confidentiality obligation. This constitutes in particular use thereof in marketing brochures, websites, project applications as well as internal and external presentations, within the meaning of a list of the relevant customers of Materna. The Customer may revoke this consent at any time.

15 Reservation, export permit

15.1 The contractual fulfilment of Materna is subject to the reservation that there are no obstacles to performance due to national or international regulations of foreign trade law or embargoes or other sanctions.

15.2 On account of their nature or their intended use, the export of the contractual objects and the documents may inter alia be subject to the obligation to obtain a permit.

16 Assignment, offsetting and rights of retention

16.1 The Customer may only offset or retain payments due to defects insofar as it is actually entitled to payment claims due to material defects or defects of title in the performance. The Customer may retain payments only to a proportionate extent, taking into account the defect, on the grounds of other claims in respect of defects. The Customer shall not have a right of retention if its claim in respect of defects is statute barred. In all other respects, the Customer may offset or exercise a retention only in respect of undisputed or legally established claims.

16.2 An assignment by the Customer shall be subject to the prior written consent of Materna.

17 Force majeure

17.1 Insofar as Materna has failed to fulfil its contractual obligations as a result of circumstances beyond its control, in particular force majeure, e.g. in the case of natural disasters of any kind, in particular storms, earthquakes, floods, volcanic eruptions, moreover fire, traffic accidents, hostage-taking, war, unrest, civil war, revolution, terrorism, sabotage, strikes, insofar as these take place at a third party, nuclear/reactor accidents, machine damage/production disruptions of an industrial nature or other events that Materna cannot avoid that make the fulfilment of the order wholly or partly,

permanently or temporarily impossible, impossible to fulfil or cannot be possible to fulfil in a timely manner, the performance obligations shall be postponed and must be stipulated anew by mutual agreement between the Parties. The resulting rescheduled deadlines shall not bring about a default or poor performance on the part of Materna, meaning that these may not give rise to either compensation claims or contractual penalties.

18 Comprehensiveness, applicable law, place of jurisdiction

18.1 The Agreement, the above GTC for goods and services, any STC and the contractual documents comprise the entire content of the agreements that have been reached. No oral collateral agreements have been made. Any changes or supplements to this Agreement must be made in writing in order to be valid.

18.2 The place of jurisdiction vis-à-vis merchants, legal entities under public law or special assets under public law is Dortmund. Materna may also choose to sue the Customer at the court that has local and material competence pursuant to the law of the country in which the Customer has its registered office.

18.3 All legal agreements concluded between the Parties under the scope of these GTC are governed by the law of the Federal Republic of Germany, with the exception of the UN Sales Convention (CISG United Nations Convention on Contracts for International Sale of Goods of 11 April 1980). A rejection of foreign law pursuant to the principles of international private law (IPR) is excluded.