General terms and conditions
Move IT Software GmbH

1. General

1.1. These "General Terms and Conditions" are valid for all deliveries and services of our company without exception.

1.2. The complete name of our company is: moveIT Software GmbH, hereafter shortly "moveIT".

1.3. All orders and agreements are only legally binding if they are signed by moveIT or authorized representatives in writing and in accordance with the company. They only obligate in the scope which is indicated in the order confirmation.

1.4. The customer's purchasing conditions are hereby excluded for the legal transaction and the entire business relationship. Offers are always non-binding.

1.5. Should individual clauses of these "General Terms and Conditions" be ineffective due to mandatory statutory clauses, the "General Terms and Conditions" remain legally binding with the exception of the ineffective clauses.

2. Performance and examination – Permissions concerning organization, programming performances and use of work

2.1. The subject of an order may be:
- Development of organizational concepts
- Global and detailed analyses
- Creation of individual programs
- Delivery of standard programs
- Acquisition of use permits
- Training of the operating staff
- Participation in commissioning (conversion support)
- Telephonic consultancy
- Program maintenance
  - Provision of software for online use (application service)
  - other services

2.2. The development of individual organizational concepts and programs is based on the type and scope of the binding information, documents and resources provided by the client. This includes practical test data as well as sufficient testing facilities that the client provides on time, in normal working hours and at his own expense. If the customer is already working in real operation on the equipment provided for the test, the responsibility for doing the real data backup lies with the customer.

2.3. The basis for the creation of individual programs is exclusively the written description of services, which Move IT prepares for value and on the basis of the documents and information received, or those documents which the customer makes available in this regard. Unless explicitly stated in the written service description, neither existing software solutions, nor other documents or existing work processes are considered as basis for creating the individual program. The client has to check the written description of services for correctness and completeness and he has to accept it. Later requests for changes may lead to special deadline and price agreements.

2.4. Individually created software or program adaptations require a program acceptance for the affected program package at the latest 4 weeks after delivery by the client. The client confirms this in a protocol. If the period passes without the client's program acceptance, the delivered software is considered as accepted. When used in real operation, the software is considered as accepted.

2.5. In case of ordering standard programs for purchase or transfer of use, the client confirms with the order the knowledge of the scope of services of the ordered programs.

Mailing address: Headquarter: Wels   Tel.: +43 (0) 7242 / 78122
moveIT Software GmbH   Data Processing Register: 0956023   Fax: +43 (0) 7242 / 7812215   Version 01.2018 / 1
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2.6. If it turns out during the work that the execution of the order according to the terms of reference is actually or legally impossible, moveIT is obliged to inform the client immediately. If the client does not change the service description or creates the prerequisite in order to make the execution possible, moveIT can reject the execution. If the impossibility of the execution is the consequence of a failure of the client or of a subsequent change of the service description by the client, moveIT is entitled to resign from the order. The costs and expenses incurred to that point as well as any dismantling costs have to be reimbursed by the client.

3. Warranty

3.1. Under the condition that the client has applied the delivered products/ services according to the effective installation requirements and instructions of the agent and has used the delivered products/services in the context of the effective conditions of use, moveIT guarantees in the measure of the dispositions of this General terms and conditions that the delivered products/ services have the agreed functionalities and are without any lack of title.

3.2. The warranty period is six months from delivery.

3.3. The term defect means every disturbance and error. There is only a defect, if a dysfunctional deviation from the valid specifications is concerned.

There is no guarantee for minor and/or insignificant defects or reductions; in particular, this applies to those defects which do not affect the agreed or usually assumed usability as well as for non-reproducible defects. Furthermore, moveIT does not guarantee that the programs work together in the selection made by the client, that the programs run continuously or completely error-free or that all defects can be eliminated.

Furthermore, moveIT is not responsible if a defect is based on the task provided by the client or the client's insufficient or faulty execution of his cooperation duty or if the functions do not meet the requirements of the client; the warranty also lapses if the client makes or has made changes to the software without authorization. moveIT does not assume liability regarding the legal conformity of functions, in particular in foreign countries. The client is responsible to ensure that he complies with the legal regulations which apply to him, of whatever kind and content they may be; he will indemnify moveIT and will abstain from any plaint against moveIT in this context.

3.4. The client has to sue in writing and with a detailed description of the problem. The warranty in case of justified notice of defects includes the defect diagnosis and the removal of defects. Any malfunctions must be reported by the client immediately and in detail. moveIT supports the client in the search of defects and causes of defects; if the client cannot prove that the defect is assigned to moveIT, moveIT is entitled to charge the customer for the rendered services.

The client has to provide the use of investigation measures and measures in order to remove defects to moveIT.

3.5. The application of §§ 924 and 933 b Civil Law Code is excluded.

3.6. The elimination of defects is carried out primarily through improvement. The improvement will be made at the option of moveIT through removal of defects, through appropriate modification of the software, by providing a new program version, by the delivery of new software or by measures which moveIT has shown in order to reduce the effects of the defect. The client has to support moveIT in an appropriate way; particularly, the removal of defects requires that moveIT gets all necessary documents and information from the client and that moveIT has full access to the client's hardware and software during the normal hours of work of the client. The client has to take over a new program version at any rate, unless this leads to inappropriate and unreasonable adjustment and conversion problems for the client.

3.7. The client can only demand the rescission of the contract or the reduction of the fee insofar and if the multiple correction of the defect finally fails despite a written, reasonable, at least 90-day period of grace. Defects in individual programs do not entitle the client to terminate the contract with regard to the other programs.

3.8. Any compensation for a (tried or successful) correction of defects by the client himself or by a third party (substitute action) is excluded.

3.9. All costs for assistance, fault diagnosis as well as the correction of defects and disturbances which are represented by the client, as well as other corrections, changes and additions are

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carried out by moveIT exclusively for money. This applies also for the correction of defects, if program changes, complements and other interventions have been made by the client himself or a third party.

3.10. Furthermore, moveIT assumes no responsibility for errors, malfunctions or damage due to improper operation, changed operating system components, interfaces and parameters, use of unsuitable organizational means and data carriers, insofar as these are prescribed, abnormal operating conditions and transport damage.

3.11. If the object of the order is the modification or addition to existing programs, the warranty also applies to the amendment or supplement. The warranty for the original program does not come back to life.

4. Scope of service: Software-support services - maintenance

4.1. The execution of the contractual services by moveIT takes place within the normal working hours of moveIT. If exceptionally and at the request of the client, a service is provided outside the normal working hours, the additional cost will be invoiced separately. The selection of the employee providing the contractual services is at the responsibility of moveIT, which is entitled to charge third parties for this purpose.

4.2. moveIT undertakes to realise the contractual software programs in the scope of services of the hereafter mentioned respective maintenance group, insofar as the client does not use an older program version as the penultimate:

Maintenance group A:

* Update Service: moveIT provides the program updates which are provided by the manufacturer to the client at a date of moveIT's choice. These updates include the correction of errors, of possible program problems which have not occurred neither during the test nor during the operation in the period of guarantee, improvements of the scope of service and modifications of the software programs due to legal changes.

Legal changes which lead to a new program logic, that is to say changes of already existing functions which lead to new programs and program modules, as well as possibly necessary amplifications of the hardware are not included in the services of this contract. These programs besides the necessary data carriers and documents will be offered separately to the customer.

Master data updates which are available to the client through contracts with third parties he made in the context of the contractual software are not under the responsibility of the supplier.

* Storage and provision of contractual software programs: moveIT undertakes the storage of the developed software programs in a for the computer legible form as well as the documentation in a scope in accordance with the fulfilment of the contractual obligations and moveIT will provide these to the client, if demanded, in accordance with the dispositions of the contract which is the basis of the acquisition.

* Analysis of reported errors

* Renewal of online help according to the program enhancements

Maintenance group B:
* Scope of service of the maintenance group A
* Hotline-Service: moveIT is at the client's disposal for counselling in the context of the use of the contractual software program during the agreed hotline office hours in case of possible problems. moveIT is authorized to depend a further counselling concerning similar problems of contractual objects on training measures for an additional fee.

* Remote-Support: If the hotline support is insufficient or if the use of a remote tool defined by moveIT makes sense, the problem will be corrected on the client's computer - if this tool is available. The acquisition and the installation of this tool is not part of the scope of service.

* Treatment of problems on site: If the problem handling in the context of the contractual scope of service cannot be realised by the hotline service or remote support, etc. – moveIT decides on this -, moveIT will realise the problem handling on site of the computer system. The incurred travel expenses and overnight stay costs will be separately invoiced.

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4.3. An error will only be treated if the contractual software program shows an abnormal performance regarding the adequate service description/ documentation even in the latest valid version and if the client can reproduce the error.

All errors and notifications of defects must be reported immediately (in writing) to moveIT. For the purpose of detailed investigation of possible errors, the client is obliged to provide his own computer system (if the system is part of an online network with other computers, the client also has to provide the access to the connection), software programs, protocols, diagnosis papers and data in an adequate scope for testing purposes during the normal working hours of moveIT without any additional costs. Furthermore, the client has to support moveIT. All detected defect has to be corrected within an adequate period of time by moveIT, if moveIT is responsible for it.

moveIT is disengaged from this obligation if deficits in the client's area hinder the intervention and the client does not eliminate these deficits.

The defect will be corrected by a software update or by an appropriate alternative solution.

5. Services which are not covered by this contract

5.1. Unless explicitly stated otherwise in this contract, all travel and stay expenses for the employees of moveIT who are charged with the execution of the service.

5.2. In case of unjustified use of services, moveIT is entitled to charge the client for the costs incurred with the respectively applicable cost rates.

5.3. Services in the context of operating system changes, hardware changes and/ or changes of non-contractual mutually program-dependent software programs and interfaces.

5.4. Individual program adaptations and reprogramming.

5.5. Program changes due to legal changes if they require a program logic change.

5.6. moveIT is disengaged from all obligations of the present contract, if the client's employees or third parties make program changes in the contractual software programs without the former permission by moveIT or if the software programs are not correctly used.

5.7. The elimination of effects which were caused by the client or third parties, in particular the expense of notifications that arise due to incorrect training, disregard of the online help and operation errors.

5.8. Loss or damage caused directly or indirectly by actions or omissions during the use by the client or a user.

5.9. Data conversions. Restoration of databases and interface customizations.

6. Prices

6.1. All prices are in Euro and without VAT. They apply only to the present order. Costs for training and course fees, unless otherwise stated, refer to the location Wels.

6.2. The list prices valid on the day of delivery apply for standard programs. All other services will be charged at the rates valid on the day the service is rendered. Deviations of the contractual time expenditure which is not in the responsibility of moveIT, will be charged depending on the actual extent.

6.3. Transportations costs and daily allowances as well as actual overnight stay cost will be invoiced in accordance with the valid price list and passed on to the client. Travel times are considered as working times.

6.4. All-inclusive contributions have to be paid in advance and for the calendar year/part year by the client.

6.5. If the client wants services - which could be executed in the premises of moveIT - to be exceptionally executed at the client's premises, the client has to pay the expenses for travelling, stay and transportation for all moveIT employees who are charged with the execution of the service.

6.6. There is an agree on the stable value of the maintenance and hotline rates. The Index of Consumer Prices 2005, as it is published monthly by the Austrian Central Bureau of Statistics, or an index which replaces it, serves as measure for the calculation of the stable value. The starting point of the calculation is the index figure at the time the contract was concluded. Prices increase with the increase of the index.

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6.7. All fees and taxes (in particular the VAT) are calculated on the basis of the applicable laws. In addition, if the tax authority subsequently imposes taxes or duties, these have to be paid by the client.

7. Payment conditions

7.1. Unless otherwise agreed, our invoices have to be paid immediately without deductions and free of charge. Regardless of the client's other dedication declarations, moveIT is authorized to refer incoming funds initially to cover accrued costs, expenses, cash outlays, default interest and at last for the payment of the outstanding invoice amount. Checks are exclusively accepted in order to realise payments. This also applies in the case of assignment of claims. Collection interests, discount interests and expenses are charged to the client.

7.2. The day the invoice amount is effectively on our account which is stated on the invoice, is expressly agreed to be the debt-discharging date. The risk for the duration of the transfer and the transfer procedure until the amount is effectively on our account shall be borne by the client.

7.3. The compliance with the agreed payment dates is an essential condition for the execution of the delivery or the contract by moveIT: If the agreed deadlines for payments are not met, moveIT is authorized to quit works in process and to demand payment in advance or security deposits for outstanding services. If the client is in arrears with at least one outstanding payment of a bill despite reminder and a period of grace of two weeks, all claims arising from the business relationship with the client have to be paid immediately, regardless of payment terms or incoming checks. In the event of default, moveIT is also entitled to withdraw from the contract, this applies in particular if the client does not pay any advance payments or security payments for outstanding services. All costs and damages resulting from the delay or cancellation of the contract – this includes also the loss of profit -, have to be paid by the client.

7.4. moveIT is also entitled to withdraw from the contract if there are bankruptcy or settlement proceedings applied for the assets of the client.

7.5. In any case, moveIT is entitled not to charge default interest in the customary bank extent for the period for which the client has proved his innocence for the delay of payment.

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

7.7. The client is not entitled to offset any claims against moveIT's claims; this also applies in case of the bankruptcy of moveIT.

8. Delivery, delivery period

8.1. Our delivery obligation is fulfilled by the delivery of the product or the sending of the product to the address specified by the customer. The sending of the merchandise takes place at the client's risk. If the product is picked up, moveIT is entitled but not obligated to check the power of attorney.

8.2. moveIT is entitled to withhold deliveries or services as long as invoices from previous services are not paid. Furthermore, moveIT is entitled to stop the fulfilment of the delivery or of the service if there are bankruptcy or settlement proceedings applied for the assets of the client.

8.3. moveIT will provide its services again as soon as the prerequisites listed above are removed.

8.4. Claims for damages against us after the rescission of the contract, a default or delay in delivery are only valid in the case of gross negligence. Any compensation for consequential damage is excluded.

8.5. In the context of update services, moveIT endeavours to provide information on the client's respective inquiries within the normal working hours of moveIT and a reasonable period of time.

8.6. The client is not entitled to rescind nor to demand compensation for exceeding the promised dates.

8.7. Partial deliveries and advance deliveries are permitted.

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9. Delivery date – Programming services

9.1. moveIT endeavours to meet the agreed fulfilment dates (completion) as accurately as possible.

9.2. The desired fulfilment dates can only be met if the client provides all necessary work and documents completely and to the dates which were specified by moveIT. In particular, he has to provide the accepted description of services, and comply with his cooperation obligation to cooperate to the required extent. Delivery delays and cost increases caused by incorrect, incomplete or subsequently changed indications and information or provided documents are not moveIT's responsibility and cannot cause moveIT to default. Resulting additional costs are borne by the client.

9.3. For orders which cover multiple units or programs, moveIT is entitled to make partial deliveries and to invoice in partial invoices.

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10. Liability

10.1. moveIT will exclusively pay compensation for intent or gross negligence. moveIT declines in any case any liability for slight negligence. The client alone must proof that moveIT acted willingly or grossly negligent. The liability of moveIT for all claims the customer has from or in connection with the contract, regardless of the legal grounds, is limited in total to the amount of the fee which has to be paid by the client due to a contract or another written agreement.

moveIT assumes no responsibility for lost profits, expected but not occurred savings, interest losses, damages from claims of third parties against the customer, cost increases or additional expenses for not realised, lately or poorly concluded legal transactions between the client and third parties resulting from the software use, indirect and consequential damages and for damage to recorded data – regardless of whether this is due to a defect or a malfunction of the software, not possible or limited usability of the software, or a failure to comply with other contractual obligations.

In particular, moveIT is not liable for the recovery of destroyed data.

10.2. A limited period of one year applies for compensation claims of whatever legal reason they might be; this period starts with the moment when the client gains knowledge of the damage.

10.3. moveIT does not assume any protective effect in favour of third parties.

10.4. Neither assumes moveIT liability for the success of a training, a course or any other service or resulting benefits. Therefore, there is no legal right to refuse agreed payments or to withhold them.

10.5. Any liability of moveIT beyond these General terms and conditions – regardless of the legal grounds – shall be excluded.

10.6. In any case, moveIT assumes no liability for the functional and legal compliance, especially in foreign countries. The client has the responsibility to ensure that he complies with the legal regulations which apply to him, of whatever kind and content they might be; the client will completely indemnify moveIT and will abstain from any claim against moveIT.

11. Confidentiality, data protection

11.1. This points describes how moveIT processes the client's data (hereafter: "concerned person")

11.2. moveIT will process the personal data mentioned in point 11.3 in order to accomplish the following purposes: Contract fulfilment, initiation and enforcement of the contractual relationship.

These data will be collected by moveIT. The provision of data is voluntary. However, if the personal information is not provided, the provision of the service associated with persona data is not possible.

11.3. moveIT processes personal data of the concerned person on the basis of the fulfilment of the contract (art 6 (1) lit b GDPR) in order to accomplish the purposes mentioned in point 11.2.

11.4. For the purposes mentioned in point 11.2., moveIT will transmit personal data to the following recipients: Collection agencies, courts, lawyers in each specific case, manufacturers or suppliers of programs, software (company name and number of licences). moveIT is entitled to list the client as reference in various media (e.g. homepage, press report, product documentation, trade fairs, etc.).

11.5. Some of the recipients mentioned above are located in other countries than the concerned person or they process the personal data there. The level of data protection in other countries may not be the same as that of the European Union. moveIT transmits personal data only to those countries, which are considered by the European Commission as having an appropriate level of data protection or moveIT takes measures in order to ensure that all recipients have an appropriate level of data protection. Therefore, moveIT concludes contractual clauses as for example (2010/87/EC and/or 2004/915/EC).

11.6. The personal data of the concerned person will be saved by moveIT only as long as it is reasonably considered as necessary and in order to accomplish the purposes which are mentioned in point 11.2 and as long as it is legal according to the applicable law. In any case, moveIT saves the personal data of the concerned person as long as the statutory retention requirements demand or as long as limitation periods of potential legal claims have not expired,

unless not defined differently in the respective contracts which include the General terms and conditions.

11.7. Under the conditions of the applicable right, the customer is entitled (i.) to check, if his personal data and which of his personal data is saved by moveIT and to receive a copy of his saved data; (ii.) to demand the correction, completion or the deletion of his personal data if it is incorrect or processed improperly (iii.) to demand the restriction of the processing of his personal data by moveIT (iv.) to object to the processing of his personal data in certain circumstances or to withdraw the prior consent concerning the processing; (v.) to require the possibility of data transfer; (vi.) to require the knowledge about the identity of third parties which receive his personal data; (vii.) to make a complaint at the competent authority.

11.8. In case of questions about the processing, the concerned person can contact: moveIT Software GmbH, Durisolstraße 7, 4600 Wels, datenschutz@moveit.at.

12. Trainings and courses

12.1. moveIT is entitled to cancel courses without indicating reasons up to 10 days before the start of the training. A later eventual cancellation is only possible in case of given reasons (e.g. illness of the training leader).

12.2. The cancellation of course and training participation up to 10 days before the start of the course will not incur costs. For later cancellations, the course fees will be charged.

13. Loyality

13.1. The contracting parties commit themselves to mutual loyalty. They will abstain from enticing or employing the contracting partner's employees who have worked on the realisation of the order, even through third parties, during the contract period and 12 months after the end of the contract. If a contracting party transgresses this provision, this contracting party is obliged to pay flat-rate damages amounting to a one-year-salary of the employee.

14. Final clause

14.1. Even in the case of client-specific program adaptations or program developments, both the right of use and any copyrights remain with moveIT.

14.2. Only Austrian law is applicable for all conflicts which arise from or about this contract. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded by mutual agreement.

14.3. Unless otherwise agreed, the legal provisions applicable between general merchants apply exclusively in accordance with Austrian law, even if the contract is carried out abroad. The competent court of the place of business of moveIT is agreed for all kind of conflicts. In the case of sale to consumers within the meaning of the Consumer Protection Act, the provisions above only apply to the extent that the Consumer Protection Act does not mandate other provisions. A failure to comply with essential elements of the contract entitles the parties to terminate the contract earlier and without notice.

14.4. The place of jurisdiction for all conflicts arising out and in connection with the contract – also in the bill of exchange and check proceedings – is the court of competent jurisdiction in Wels / Upper Austria. Nonetheless, moveIT (the supplier) is entitled to sue the client at its own discretion in any other court which may be competent for national or international law, in particular at the court at the client's place of business. The provisions of the preceding arrangements shall also apply if conflicts arise over the conclusion and/ or validity of the choice of court agreement.

14.5. All legal transactions shall be governed exclusively by Austrian substantive law, with the exception of their reference standards, in particular those of international private law insofar as these refer to the application of foreign laws. If the Austrian law demands the application of special, also in Austrian applicable international substantive norms – like e.g. the accepted UN sales law -, these are not applicable.

14.6. Any fees and charges associated with the delivery of products or services to the client must be paid by the client alone.

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