

## § 1

### Applicability

These General Terms and Conditions and the provisions of the FIS-ASP Lists of Prices and Conditions valid from time to time apply exclusively to every contract by which FIS-ASP provides services for a customer as far as no divergent individual contractual agreements have been made.

Services of FIS-ASP are in particular:

- Organizational and business consulting in the areas accounting, logistics, and human resources and time management;
- Technical services like installation of software and upgrade support for software programs;
- Modification and enhancement of software, or support for such activities;
- Consulting for the application areas EDI (Electronic Data Interchange) and Electronic Commerce (Internet);
- Consulting in the areas workflow, Office applications, and communication technologies for the connection of application systems.

It is not important whether the services are provided on site or via remote communications, or by means of any other communication media.

No conflicting or other conditions, notably the customer's general terms and conditions, form any part of the contract, even where FIS-ASP has performed a contract without expressly rejecting such conditions. Neither the fact to make no comment on the sending of conditions nor the execution of an order without a murmur are considered as acceptance.

## § 2

### Provision of services

1. FIS-ASP provides the services agreed in written form with the customer; changes and completions of the scope of services need the written agreement between the customer and FIS-ASP.

The customer submits the tasks in form of individual orders.

2. When fulfilling a task FIS-ASP shall pay attention to the requirements of the customer and shall provide the services in accordance with the rules valid from time to time of the data processing.

FIS-ASP shall try to produce the best possible result by using its experience and knowledge.

3. FIS-ASP may make records of any discussions detailing or amending contractual provisions, in particular the subject matter of the contract. These ones shall become binding for both sides if FIS-ASP passes them on to the customer and he does not suggest alternatives in writing within 2 weeks.

4. FIS-ASP may refuse the realization if it seems impracticable to meet the requirements or if there are not enough capacities.

## § 3

### Cooperation

1. The customer and FIS-ASP nominate a competent employee as contact person who is able to give the information necessary for contract performance, and to make necessary decisions or ensure that they are made without delay. It must

be ensured that the contact person is reachable.

2. FIS-ASP is dependent on the support free of charge of the customer for the provision of services. Therefore, the customer shall support FIS-ASP to the best of his ability in connection with service provision, he shall especially provide FIS-ASP without delay all information and data necessary for the provision of services, fix requirements exactly and in writing, answer immediately to questions as well as execute the intermediate examination of the work results and the necessary tests.

3. The customer provides, as far as nothing different has been agreed, the necessary infrastructure including the necessary authorities free of charge for the provision of services according to the contract. These are in particular:

DP installations and peripheral devices, software programs, communication facilities etc.

FIS-ASP shall be informed in time about obligations to certain usage times.

4. The customer is himself responsible for securing his data using state-of-the-art technology. Except where otherwise expressly indicated in writing by the customer, FIS-ASP is always entitled to act on the assumption that all data that it encounters is backed up.

5. The customer shall take appropriate precautions against the possibility that the software or any part thereof does not function properly (e.g. by data backups, error diagnosis, and regular results monitoring). It is the responsibility of the customer to secure proper operation of the software in the appropriate working environment, by entering into maintenance contracts with third parties if necessary.

6. If the customer violates his cooperation or provision duties, he shall be obliged to pay damages. The additional expense on employees arising due to this at FIS-ASP shall be invoiced according to the rates in accordance with the prices agreed between the customer and FIS-ASP, and in lack of such agreements on the basis of the FIS-ASP List of Prices and Conditions valid from time to time.

7. If the customer provides software programs, information and/or data in connection with the contract, the customer shall be responsible for having all necessary permissions and authorizations so that the transmission and usage by FIS-ASP shall not violate third-party rights.

## § 4

### Employees

1. FIS-ASP alone is responsible for the use of its employees.

2. After informing the customer in advance FIS-ASP can replace any employee at any time by a different employee of the own company who meets the professional requirements, by a self-employed person or by an employee of another company charged by FIS-ASP. As far as an "employee of FIS-ASP" or an "FIS-ASP employee" is mentioned in these General Terms and Conditions, a self-employed person or an employee of a different company charged by FIS-ASP are meant by this, too.

3. Even where works and services are provided at the customer's facility, FIS-ASP shall have sole managerial authority over its employees. Employees shall not be included in the

customer's business operations. They shall not be employed by the customer. The employees of FIS-ASP are alone responsible for the planning of the working hours in accordance with the requirements. The customer shall issue wishes/instructions regarding the services, which have to be provided, only to the contact person named by FIS-ASP. The customer is not authorized to issue directives vis-à-vis FIS-ASP employees.

## **§ 5** **Time and date**

1. Dates and times are nonbinding except where something different has been agreed in the individual case.
2. FIS-ASP shall try its best possible to provide the services and works agreed within the delivery time and time for the provision of services agreed.  
FIS-ASP shall inform the customer immediately about foreseeable delays.
3. If FIS-ASP gets behind, the customer can rescind the contract entirely or in part after two notices fixing the time limit for performance. The customer's reminder notice and notice fixing the time limit for performance must be in writing. The importance and the size of the order have to be considered for the calculation of the time limit. The time limit for performance however shall be not less than 12 working days. Works and services already performed shall be subject to charge and invoiced in accordance with article 6.
4. If FIS-ASP has to wait for necessary cooperation or information from the customer or is otherwise hindered in the performance of its contractual duties, times for delivery and provision of services shall be extended by a period equaling the duration of the hindrance and by a reasonable start-up period after the end of the hindrance.

## **§ 6** **Price and payment**

1. Unless otherwise agreed in writing, FIS-ASP invoices the services and works performed according to the actual time spent working, traveling and waiting as well as material (e.g. documentation) and computer usage time, if necessary, in accordance with the FIS-ASP List of Prices and Conditions valid at that time.  
Furthermore, the customer shall pay the additional costs like travel and accommodation expenses according to the expense as well as expenses in accordance with the rates of the FIS-ASP List of Prices and Conditions valid from time to time. Time spent traveling, and travel and accommodation expenses are invoiced according to the FIS-ASP' employee's normal place of work.
2. All prices are subject to statutory sales tax/VAT except where exempt.
3. Invoicing rates (according to the FIS-ASP List of Prices and Conditions) for services which shall be provided within three months after conclusion of the contract shall be unaffected by a change of the FIS-ASP List of Prices and Conditions meanwhile.
4. Accounts shall be made monthly on the basis of the activity reports of the FIS-ASP employees signed by the customer.

5. Payments shall be due upon submission of invoice. No cash discount is granted. FIS-ASP shall charge –irrespective of further rights- interest at the statutory rate of penal interest beginning 14 days after the due date for payment, at the rate of 8 per cent over the basis interest rate of the ECB at the moment.

6. FIS-ASP is entitled to require full or part payment in advance if there is no prior business relationship with the customer, if delivery is to be made outside Germany, if the customer's registered office is outside Germany, or if FIS-ASP has any reason to doubt that the customer will render payment punctually. If after conclusion of contract grounds to doubt the solvency of the customer become apparent, FIS-ASP is entitled to withdraw from the originally agreed payment schedule and instead require immediate payment.

7. The customer is entitled to offset only claims that are uncontested or ordered by a court of law. Without prejudice to the provisions of the German Commercial Code, section 354 a, he shall not assign his claims to a third party.

8. If services cannot be provided for reasons that are outside FIS-ASP' control the agreed times shall nonetheless be invoiced unless the customer can show that it was possible to use the FIS-ASP employee concerned elsewhere or the customer cancels a service agreed in writing in time, i.e. not later than 14 days before the agreed time for the provision of services.

## **§ 7** **Confidentiality and data protection**

1. The customer and FIS-ASP undertake to maintain strict silence on all confidential information and business secrets of the other acquired in connection with contract performance, also after the completion of the order. These information must neither be made accessible to third parties nor be used for other purposes outside the contract without the written agreement of the other party to the contract.

This is not valid for information which are or become known in general between the customer and FIS-ASP without the breach of contractual agreements, or which the receiving party to a contract has already known on receipt without such a breach, or which become known afterwards from third side without such a breach.

2. Customer shall inform in writing all persons who he instructed to provide services and works of FIS-ASP' rights in the subject matter of the contract and of their duty to observe confidentiality and procure that they undertake to observe their duty of confidentiality.

3. The parties to the contract are authorized to process personal data they have been entrusted with in order to carry out the contract in compliance with the provisions of the data protection or having processed them by third parties.

4. The customer shall carefully safeguard the subject matter of the contract, in particular without limitation any source code and documentation that has been made available to the customer, to prevent its misuse.

## § 8

### Usage of works

1. Between the customer and FIS-ASP all title to and rights in the works vest in FIS-ASP exclusively, notably copyright and rights of authorship, and including without limitation works created to the specification of or in cooperation with the customer. The customer shall however have the nonexclusive and non-transferable right to use the works and the documents and programs made by FIS-ASP in order to provide services for contractual purposes.
2. The customer is only permitted to copy the passed on documents and software programs in order to back up data, to eliminate defects in software programs and to produce interoperability of the programs (temporarily or permanently). Copies shall bear the same copyright and authorship notices, registration numbers and other identifications.
3. FIS-ASP is authorized to give a report on the provision of services for the customer with a view to references.

## § 9

### Force majeure

1. If FIS-ASP is hindered in the performance of its contractual duties by disruptions due to force majeure, FIS-ASP shall be relieved from statutory or contractual sanctions. Times for meeting the contractual duties shall be extended by a reasonable period. Article 6 (8) is valid correspondingly for disruptions due to force majeure on the part of the customer.
2. Disruptions due to force majeure are disruptions justly unforeseeable by and unusual for the parties to the contract and independent of their will like e.g. floods, earthquakes, explosions, strikes or lockouts at FIS-ASP, at the customer or at sub-suppliers which have an essential and non-avoidable -on the basis of reasonable standards- influence on meeting of the contractual duties.
3. The party to the contract who refers to the existence of disruptions due to force major shall be obliged to inform the other party to the contract in writing without delay, within ten days at the latest after having known the situation, about the beginning and the ending of the disruptions due to force majeure and shall submit as soon as possible a confirmation of the local Chamber of Commerce. The exoneration reason shall take efficiency as soon as the disruptions shall occur, or, if information is not made in time, with information.
4. If the disruptions due to force majeure cover a period of more than six months, the parties to the contract shall try within further four months to find a solution acceptable for both sides. If this does not turn out well, each party to the contract shall be authorized to terminate the contract without keeping to a period of notice.

## § 10

### Material defects and defects of title

1. FIS-ASP does not undertake any liability for information, data, programs etc. provided by the customer in connection with service performance.
2. FIS-ASP warrants that the works and service have the expressly agreed qualities, or, where no qualities have been agreed, that the service is suitable for the use set out in the

contract or otherwise for ordinary use, and that it has qualities that are ordinary for deliveries and services of this type and the ordering party can expect from deliveries and services of this kind, and that no third-party rights are infringed by the grant of authorizations to the customer.

The customer shall bear the risk that the works and services provided under the order do not meet the customer's wishes and requirements. In case of doubt, the customer should obtain advice from employees of FIS-ASP or third-party experts in time.

Undertakings of any kind that require FIS-ASP to act beyond the provisions of these General Terms and Conditions require express written confirmation from FIS-ASP. Warranties, like e.g. the agreement of qualities, are validly given only with the express written confirmation of FIS-ASP' management.

3. The customer shall notify FIS-ASP in writing without delay if he identifies defects and shall include a precise description of the problem and useful information for eliminating the defect (duty to give notice of defects pursuant to the German Commercial Code, section 377, 378). Only the contact person (article 3, (1)) is authorized to give notice of defects. The customer's duty to cooperation according to article 3 is also valid for remedy.

4. In case of defects FIS-ASP shall first have the possibility to remedy the defect within a reasonable period of time. The importance and the size of the order have to be taken into consideration for the calculation of the time limit. The time limit for performance however shall be not less than 12 working days. In this context FIS-ASP can also offer alternative solutions.

If remedy finally fails or if FIS-ASP does not remedy within a reasonable time limit fixed by the customer, the customer may reduce remuneration or terminate the contract.

Claims are barred after a period of one year after the begin of the statutory warranty period.

Article 11 is valid for damages. Other claims are excluded, e.g. to expense remuneration in case third parties should have eliminated the defect.

5. It shall be for the customer to prove that any impairments or defects are not brought about by inappropriate operation, by the customer's intervention, or by the system environment. Services that FIS-ASP performs but has not undertaken to perform shall be invoiced in accordance with article 6.

6. FIS-ASP declares that it does not know any rights of third parties concerning the services performed.

If a third party claims that a service of FIS-ASP infringes his rights, the customer shall fully inform FIS-ASP in writing without delay.

The customer now authorizes FIS-ASP to conduct the defense against claims at its own expense. The customer must not recognize the claims of third parties without FIS-ASP' consent. FIS-ASP can conduct the dispute with the third party both in court and out of court, can meet the claims of the third party or replace the affected things by other things to fulfill the contract.

This rule shall not be valid if the infringement on protection rights of third parties is based on the customer having used the software products contrarily to the terms of the contract.

In all other respects, the statutory provisions for defects of title apply with a warranty period of one year.

## § 11

### Liability

1. FIS-ASP shall only be liable in contract or in tort, or otherwise arising out of or in connection with the contract, subject only as follows:

- In cases of intent liability extends to full damages; in cases of gross negligence liability is limited to the amount of foreseeable damage that would have been prevented through the exercise of due care; in cases of absence of a warranted quality liability is limited to the amount of foreseeable damage that would have been prevented by the presence of the warranted quality;
- in other cases: only for breach of a major obligation where the breach jeopardizes the purpose of the contract, for delay and impossibility, - liability in all of these cases is limited to 0.5 % of the order value for each workday of the delay, in all of these cases however limited in total to 5% of the order value at the most up to an amount of EUR 25,000,- at the most for all claims arising out of the contract;
- Furthermore: For damage against which it is insured, FIS-ASP' payment of damages shall be limited to its insurance cover and contingent upon payout by insurer.

FIS-ASP reserves the right to claim contributory negligence (see for example articles 3 and 10). The limits of liability do not apply to liability for personal injury and to liability under German product liability legislation.

2. If the customer desires a larger protection against cases of damages, the parties to the contract shall take care of it by individual agreements.

3. All claims against FIS-ASP for liabilities of FIS-ASP in contract, tort, or otherwise arising out of or in connection with the contract, are barred after a period of one year –except in cases of intent or personal injury. The time bar period shall begin at the point in time specified in the German Civil Code, section 199 (2), It shall begin at the latest on expiry of the maximum period specified in the German Civil Code, section 199 (3) and (4). The expressly provided time bar for claims resulting out of material defects and defects of title (article 10) is unaffected by the provisions of this paragraph.

## § 12

### Miscellaneous provisions

1. German law without UN sales laws and without laws about international commercial transactions shall apply exclusively to contractual relationships between the customer and FIS-ASP.

2. The sole place of jurisdiction for all differences arising out of the contract between the parties to the contract shall be –as far as it is permitted- Schweinfurt, Germany. The parties to the contract are expected before all legal proceedings to try to solve the matter out of court, if necessary by involving third-party experts, unless such an attempt does not seem to be successful.

3. Before passing on rights and duties arising out of the contract between the customer and FIS-ASP, the written consent of the other party to the contract is required.

4. Amendments and additions of contractual agreements between the customer and FIS-ASP shall be made in writing. This is also valid for the annulment/amendment of the need of the written form.

5. If a party to the contract omits or waives to practice or to assert whatever right, this shall not be considered as disclaimer to whatever other right.

6. If some individual contractual rules between the customer and FIS-ASP are or become null and void entirely or in part the validity of the other rules shall not be affected hereby. The parties to the contract undertake to replace the null and void rules by effective rules without delay so that the economic purpose desired with the null and void rule is achieved if possible. This is also valid in case of a possible loophole in the contract as far as no corresponding legal rules are relevant for this.

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