

# General Terms and Conditions of the KINAMU Business Solutions AG

## § 1

### Scope and Applicability

- (1) In all contractual relationships in which the KINAMU Business Solutions AG, Am Concorde Park 2 / F12, 2320 Schwechat (hereinafter referred to as "KINAMU") performs services for companies these General Terms and Conditions (hereinafter referred to as „GTC“) shall apply exclusively and shall be an integral part of any agreement submitted by KINAMU.
- (2) These GTC of KINAMU shall apply to the exclusion of all other terms and conditions of the individual buyer (hereinafter referred to as "Customer").
- (3) Terms and conditions of the customer that contradict or deviate from these GTC shall apply only after KINAMU has given its express written consent.
- (4) Our GTC shall apply only to contractual relationships pursuant to § 1 of the Austrian Commercial Code (UGB).
- (5) These GTC shall apply to services of any kind performed by KINAMU regardless of the supply of hardware or software components either on rental, lease or purchase basis.
- (6) These GTC shall apply to all existing and future agreements between KINAMU and the Customer and shall remain valid until KINAMU informs the Customer of any changes to the GTC. If the Customer does not object to the changed GTC in writing within two weeks after notification, the GTC shall become effective.

## § 2

### Software Product Information (SPI)

- (1) Regarding the software provided by KINAMU the provisions of the software product information (SPI) as well as the software user contract „SAP Solution Manager“ of the individual holder of rights shall be applicable. KINAMU is entitled to replace these SPI by the current SPI of the software provider.

## § 3

### Additional Services

- (1) Any services that go beyond the scope of the contractual services are subject to change and without obligation on KINAMU's part.
- (2) Only the terms which KINAMU has explicitly confirmed in an order confirmation shall be applicable.
- (3) Any quotes submitted by KINAMU are without obligation if not agreed otherwise.

- (4) For remuneration KINAMU's prevailing rates shall apply.
- (5) By submitting an order the Customer enters into a binding contract.
- (6) The contract for additional services comes into effect when KINAMU either accepts the submitted order in writing, via fax or e-mail, or when the additional services have already been completed by KINAMU.

## § 4

### Customer's cooperation

- (1) In the course of the co-operation the Customer shall actively contribute to the performance of the order at his own risk and expense to enable KINAMU to fulfill its contractual obligations.
- (2) The Customer shall grant employees from KINAMU access to the Customer's premises and to systems and information to the extent required for the performance of the Contract. KINAMU shall be obliged to make sure that those employees who have been granted access to the Customer's premises observe the prevailing safety instructions.
- (3) The Customer shall provide an appropriate place according to state-of-the-art technology for installation of the hardware supplied by KINAMU. The Customer is entitled to carry out maintenance and repair work only after prior consultation with KINAMU.
- (4) The Customer ensures the availability of state-of-the-art IT connections and data links on the Customer's premises.
- (5) The Customer is obliged to carry out all necessary alterations to the cable network. Further, the Customer is obliged to provide for all technical requirements necessary for KINAMU to fulfill the order; especially ensuring permanent access to the systems hosted by KINAMU via an IPSEC tunnel.
- (6) The Customer ensures the availability of a state-of-the-art internet connection with a minimum upload and download speed of 500kbit/s for the hardware supplied by KINAMU.
- (7) The Customer makes sure that each workplace is equipped with the necessary hardware and software. This also includes the installation of required client software which is made available by KINAMU.
- (8) The Customer and his employees are not entitled to copy or rework the software made available by KINAMU.
- (9) The Customer is obliged to immediately inform KINAMU about any measures that affect the performance of this Contract, e.g. interruption of the power supply etc.

- (10) The Customer shall be obliged to make sure that the hardware supplied by KINAMU has sufficient insurance coverage. The Customer agrees to hold KINAMU harmless against all claims arising from criminal acts against KINAMU property.
- (12) The Customer shall be obliged to grant KINAMU and its business partners, in particular SAP Austria, remote-access to the system specified in the Contract over the contract period.
- (12) The Customer shall support KINAMU in the detection and elimination of failures.

**§ 5**

**Customer's obligations**

- (1) The Customer shall use the system supplied by KINAMU only in compliance with this Contract. The Customer ensures to meet and maintain all necessary requirements for installation and use of the system in due time and throughout the contractual period.
- (2) The customer is not entitled to alter, modify or rework the system in any way.
- (3) The Customer shall give KINAMU immediate written notice should the provided hardware be seized in the course of distraint.
- (4) Customer support shall be provided via remote maintenance. The Customer makes sure that all technical requirements are met to enable KINAMU to fulfill its contractual obligations. Further, KINAMU shall be permitted access to the Customer's hardware.
- (5) All incoming inquiries, calls and requests at the KINAMU helpdesk will be documented by KINAMU. The Customer consents to this.

**§ 6**

**Partial Use**

- (1) If contractual partners of KINAMU terminate some of their contracts with KINAMU, KINAMU shall be entitled to submit a proposal either offering the further partial use of the system's functionalities or the use of alternative hardware and software.

**§ 7**

**Rental Fee, Payments**

- (1) The rental fee shall be invoiced annually in advance. Payments shall be payable 14 (fourteen) days upon receipt of invoice without any deductions and free of charges.
- (2) Failure on the part of the Customer to comply with the agreed payment schedule entitles KINAMU – without prejudice to other rights of this Contract - after granting an extension of the payment period of another ten days in writing to suspend current services until full payment is received.

- (3) KINAMU shall be entitled to increase the rental fee 24 months after contract award at a rate of max. 5% p.a. for adjustment and indexation purposes.
- (4) In addition to a permissible increase of the rental fee as mentioned in Section 3 above, KINAMU shall also be entitled to pass on increases in supplier's prices above 5% to its customers one year after contract award.
- (5) Equipment, updates and upgrades of the software and the supply of hardware shall be included in the rental fee if agreed as such.

**§ 8**

**User Rights for Software**

- (1) The Customer obtains the right to use the software as specified in this Contract explicitly for his own purpose. For the agreed period of time KINAMU grants the Customer a non-exclusive user right to use the system software for which KINAMU holds a license. All user rights for software are bound to the effectiveness of this Contract and to KINAMU's own user rights and shall end at the latest with the termination of this Contract.
- (2) The operation, rental or lease of the server environment by a third party is prohibited. The software or the granted user rights must not be passed on to third parties without explicit consent by KINAMU and its contractual partners.

**§ 9**

**User Rights for Hardware**

If the Customer does not wish to purchase the system hardware provided by KINAMU the following shall apply:

- (1) The system hardware shall remain property of KINAMU. The Customer shall only be permitted to use the hardware strictly for his own purposes. The Customer shall not be entitled to pass on the granted user right to a third party.
- (2) The Customer must not modify the hardware provided by KINAMU; this particularly applies to the extension or replacement of components, the connection to other components and servers (or network) or modifications to or replacement of the system software.
- (3) After termination of the rental period the Customer shall return the provided hardware including all components to KINAMU.

**§ 10**

**Place of performance, time of performance and default in delivery**

- (1) Place of performance shall be at Customer's head office within Austria.
- (2) The confirmed delivery and completion dates can only be met if the Customer fulfills his obligation to contribute to the performance of this Contract

according to the provisions stipulated in § 4 and § 5. In case these requirements are not fulfilled or not fulfilled in due time, the above mentioned dates will extend by a reasonable period.

- (3) If KINAMU cannot meet a date or time of performance as confirmed in writing due to acts of force majeure, KINAMU shall be released from the obligation to deliver for the duration of the interruption and shall be entitled to a reasonable extension of its obligations.
- (4) For claims against KINAMU arising from defaults in delivery the provisions as stipulated under Liability in § 17 shall be applicable.
- (5) Insofar as KINAMU relies on hardware, software, licenses or other services from third parties to fulfill this Contract, KINAMU's liability in case of defaults shall only comply with the obligations against the individual contractual partners of KINAMU. On providing written notice the Customer shall receive insight into these contracts to the extent legally permissible.

#### **§ 11**

##### **Claim for compensation in case of non-fulfillment of agreed services**

- (1) If a system provided to the customer and operated by KINAMU is not available over a period of 2 (two) days due to failures and malfunctions caused by KINAMU which either lead to system standstill or restricted system availability and as such affect the business performance of the Customer, KINAMU will deduct one monthly user fee per incident from the payable overall annual fee.
- (2) No liability shall exist for claims beyond the above mentioned scope.

#### **§ 12**

##### **Warranty**

- (1) KINAMU guarantees that the system shall be operable over the contract period and that it provides the functions as specified by KINAMU and accepted by the Customer.
- (2) There will be no claim to warranty if the defects are due to the use of connected hardware or software which was provided by other suppliers or licensors.
- (3) KINAMU assumes no warranty for results and data achieved by using the system software.
- (4) The terms under § 10 Section 5 shall also be applicable to Warranty issues analogously.

#### **§ 13**

##### **Data Protection**

- (1) The contractual partners shall comply with the data protection provisions. KINAMU shall bind all persons involved in the fulfillment of the Contract to compliance with the data protection provisions.

- (2) Insofar as KINAMU processes personal data in the course of the fulfillment of this Contract (e.g. test data), KINAMU guarantees that all measures shall be taken according to the data protection laws (DSG 2000). KINAMU, therefore, shall use personal data only within the scope of this Contract or other written orders from the Customer and in compliance with the data protection provisions.
- (3) The Customer entitles KINAMU to pass on data such as number of installations, user volume and user rights to the contractual partners of KINAMU.
- (4) The Customer gives KINAMU his explicit consent to present his company logo, company name and trademarks on KINAMU's website. Further, the Customer agrees that his company details may be used by KINAMU for public relation purposes and that KINAMU possibly adds the Customer to its client list.

#### **§ 14**

##### **Confidentiality**

- (1) The Customer shall be obliged to maintain complete confidentiality concerning source codes, know-how, trade and company secrets of KINAMU or of any of KINAMU's partners.
- (2) The Customer shall be obliged to bind all employees to compliance with the confidentiality.

#### **§ 15**

##### **Third-Party Intellectual Property Rights**

- (1) KINAMU indemnifies the Customer from any costs and expenditures should a third party assert claims alleging that the contractual services or the use of the hardware or software by the Customer infringe intellectual property rights.
- (2) KINAMU is at its own expense entitled to modify the services in such a way that no further third-party intellectual rights are infringed.

#### **§ 16**

##### **Subcontracts**

- (1) KINAMU is entitled to enter into subcontracts in order to fulfill this Contract.

#### **§ 17**

##### **Liability**

- (1) KINAMU is liable for damages insofar as intent or gross negligence can be proven. Liability is excluded in case of slight negligence.
- (2) Liability in the event of intent or gross negligence is restricted to a maximum amount of the triple annual fee as specified under § 7.
- (3) KINAMU and its contractual partners shall not be obliged to submit proof of their innocence in case of slight negligence.

- (4) No liability shall exist for indirect damage or consequential damage.

**§ 18**  
**General Terms**

- (1) The Customer shall neither be entitled to offset a claim against claims by KINAMU nor exercise a right to retention.
- (2) All claims to be asserted by the Customer against KINAMU shall expire over one year.
- (3) All provisions of this Contract, particularly all contractual rights and obligations subrogate to the legal successors of both contractual parties.
- (4) Any costs arising from legal transactions shall be borne by the Customer.

- (5) Modifications of and amendments to this Contract shall be made in writing. This shall also apply to a waiver of this requirement of written form.

- (6) Should any of the provisions of this Contract be or become invalid, the validity of the remaining provisions shall not be affected thereby. The invalid provision shall be replaced by a provision which best corresponds to the intention and economic purpose of the invalid provision.

- (6) Austrian law shall apply to the exclusion of the conflict of laws and the UN Sales Convention. Exclusive place of jurisdiction for any disputes arising from or in connection with this Contract is the District Court for Commercial Matters in Vienna

- (7) This is a translation of the German version. If a dispute arises as to the meaning or translation of any term of this Contract, the interpretation of the German version shall prevail.