

## General Terms and Conditions

### I. General Provisions

#### §1. Subject Matter of Agreement

- 1.1. These general terms and conditions (hereinafter referred to as “**GTC**”) shall apply exclusively to any and all contractual agreements (hereinafter each contractual agreement referred to as “**Agreement**”) between PTV Planung Transport Verkehr AG (hereinafter referred to as “**PTV AG**”) or any affiliated company of PTV AG the Agreement is made with (PTV AG or the contracting affiliate hereinafter referred to as “**PTV**”) and a customer or other contracting partner (hereinafter referred to as “**Client**”, PTV and the Client hereinafter collectively referred to as the “**Contracting Parties**”) on supplies and services (hereinafter referred to in summary as “**Deliveries**”) of PTV except for Online Services as described in clause 1.2. Deliveries may particularly, but not limited to, comprise:
  - delivery of standard software and data;
  - customizing, installation and adaption of standard software;
  - consulting services;
  - software maintenance and support;
  - development of individual software.
- 1.2. The GTC shall not apply to online services such as the provision of websites and internet portals, application service providing and/or software as a service (collectively “Online Services”). For Online Services, the terms of use agreed upon registration of the Client for such Online Services shall apply.
- 1.3. Furthermore, the GTC shall not apply to any contractual agreements where PTV AG is the purchaser of goods or services. To such agreements only the General Procurement Terms and Conditions of PTV AG or other individual contractual arrangements between PTV AG and the respective contractual partner shall apply.
- 1.4. Contract modifications and amendments shall always be made in writing. This provision shall also apply to any waiver of the requirement for written form.
- 1.5. Any other terms and conditions shall not be part of the agreement even if PTV AG should perform a contract without contradicting the inclusion of such terms and conditions.
- 1.6. Even if renewed reference is not made to such at the time of conclusion of further Agreements within the scope of 1.1, the GTC, as amended from time to time, shall apply unless agreed otherwise in writing.
- 1.7. These GTC shall not be applicable if the Client is a consumer. Particular clauses of these GTC expressly refer to and only apply to merchants.
- 1.8. Statements and/or representations in test programs, product and project descriptions shall not be guarantees with respect to the quality of Deliveries. Any guarantee shall require the express and written confirmation of PTV.

#### §2. Copyright and Intellectual Property

- 2.1. Any software, documentation, data and other items delivered to the Client (collectively “Protected Items”) is subject to copyright protection and may be protected by further intellectual or industrial property rights. As a precaution the Contracting Parties hereby contractually subordinate the Protected Items to the rules of copyright. In the relationship of the Contracting Parties PTV shall be exclusively entitled to any and all of the Protected Items.
- 2.2. The Client shall be provided with non-exclusive license to employ the Protected Items as described in the applicable End User License Agreement (“EULA”).

#### §3. General Client Cooperation, Project Meetings and Minutes

- 3.1. The Client shall provide PTV with support in the performance of the Deliveries. The Client shall provide for the hardware, operating system and basic software and make telecommunications facilities and the required number of staff available. The Client shall provide PTV with any and all information required for the performance of the Deliveries in a timely fashion. Insofar as it is useful for performance of the respective Deliveries the Client shall grant PTV access to the Client’s business premises during normal business hours.
- 3.2. The Client shall establish a remote access on any of its IT Systems where PTV Deliveries are operated or installed on.
- 3.3. The Client shall take appropriate precautions if Deliveries fail to properly operate in part or as a whole by making regular data backups, conducting constant failure diagnosis and inspection, etc.

The Client shall make a full backup of its data stock before installing any Delivery on his IT Systems.

- 3.4. In case of project meetings PTV AG is entitled to take minutes, the content of which shall become legally binding, if the Client does not contradict in writing within ten working days after the reception of such minutes.

#### **§4. Deliveries and Delay**

- 4.1. Any information provided by PTV AG with regard to delivery times shall be non-binding. Binding dates of delivery shall require written approval by PTV AG. Partial deliveries shall be permissible if the Client is able to make reasonable use of such.
- 4.2. Periods of delivery shall be extended by the period in which PTV AG is prevented, without itself being responsible, from providing the contractually agreed services particularly, but not limited to, through labor disputes, acts of god or any other unusual and unforeseeable events (collectively "**Force Majeure Event**") as well as an appropriate period for restarting after the end of the disturbance. If a Force Majeure Event lasts for more than three (3) months, each Contracting Party shall have the right to rescind from or, if the respective contract constitutes continuing obligations, terminate the contract. In such case, any prepaid remuneration shall be repaid in accordance with the statutory provisions.
- 4.3. Periods of delivery shall be extended by the period PTV AG is forced to wait for information or cooperation on the part of the Client as well as an appropriate period for restarting after the end of the disturbance.
- 4.4. Any reminders or time limits set by the Client shall be made in writing in order to become effective. In the event that PTV AG delays a delivery, the Client shall have the right to terminate or withdraw from the Agreement only after a written respite, which (except in particularly urgent cases) must amount to at least 12 working days, has elapsed without success. No respite has to be granted if the Client cannot be reasonably expected to do so. Clause 8 of the present GTC shall apply to any payment of damages in this context.

#### **§5. Payment, Setoff and Assignment, Retention of Title and Rights**

- 5.1. Payments shall be due without deduction within the agreed periods for payment. If there is no agreed period, payments shall be due immediately.
- 5.2. The Client shall only be entitled to set-off claims that are undisputed or recognized by final judgment. A right of retention may only be based on claims arising out of the same Agreement.
- 5.3. The Client may not assign claims against PTV AG to third parties. If the Client is a merchant, this does not apply to the assignment of claims for money. Merchants within the meaning of these GTC shall be any entity running a commercial business or being qualified as a merchant according to statutory law.
- 5.4. In case of default, PTV AG will charge default interest at the rate of 8% above the relevant basic interest rate valid at the time. More extensive claims of PTV AG based on late payment shall remain unaffected.
- 5.5. If the Client defaults on payment, PTV AG may refuse to perform under this Agreement until the Client has made the outstanding payment.
- 5.6. Title to the Deliveries and the rights under Clause 2 hereof and the EULA shall not pass to the Client before payment in full of the contractually agreed fees. Prior to this the Client only has a provisional right of use based on the law of obligations. PTV reserves the right to withdraw such provisional right any time.
- 5.7. If the rights pursuant to Clause 2 hereof and the EULA do not accrue or if they end, PTV AG may require that the Client returns the Deliveries provided or, if they cannot be returned, that the Deliveries be irreversibly deleted. In that case the Client shall provide a written assurance of complete return or complete deletion to PTV AG.

#### **§6. Claims in Case of Intellectual Property Rights Infringements**

- 6.1. Insofar as intellectual property rights of third parties have been infringed by a Delivery for reasons attributable to PTV AG, PTV AG may choose to rectify the situation. In this respect PTV AG has the following options:
- PTV AG may obtain a license sufficient for the purposes of this Agreement from the third party that holds the infringed intellectual property right, in favor of the Client.
  - PTV AG may modify the Delivery that infringes intellectual property rights such that the modifications have no impact on the functionality of the relevant Delivery, or an impact that is acceptable for the Client.
  - PTV AG may replace the infringing Delivery with software the contractual use of which does not infringe intellectual property rights and which does not have any impact on the functionality of the Delivery, or which has an impact that is acceptable for the Client.

- d) PTV AG may deliver a new version of the Delivery the contractual use of which does not infringe third-party intellectual property rights.
- 6.2. The Client may require a different form of rectification in each case if it cannot be reasonably expected to accept the form of rectification selected by PTV AG.
- §7. Defense against Alleged Infringement of Third-Party Rights**
- 7.1. If a third party claims the infringement of intellectual property rights against the Client in respect of the use of a Delivery, the Client shall notify PTV AG promptly in writing and shall leave the defense of such claims to PTV AG insofar as possible.
- 7.2. The Client shall provide all reasonable assistance to PTV AG in the defense. In particular, the Client shall provide all requisite information in writing to PTV AG about the deployment and possible adaptation of the Delivery in question, shall provide the relevant documents and answer questions.
- 7.3. The Client is not entitled to conclude a settlement with the third party in or out of court without the consent of PTV AG.
- §8. Damages and Compensation for Expenditure**
- 8.1. Unless otherwise agreed in writing by the Contracting Parties, PTV AG will pay damages and compensation for futile expenditure, no matter on what legal ground, solely to the following extent:
  - a) Full liability will be assumed in case of intent, fraudulent intent or in case of a written guarantee issued by the management of PTV AG.
  - b) PTV's total aggregate liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, and pursuant to any indemnity, arising under or in connection with the Agreement shall in all circumstances be limited to the amount actually paid by the Client to PTV under the Agreement in the 12 months preceding the date on which the claim arose.
  - c) For all other matters, liability for ordinary negligence is excluded.
  - d) In case of injury to life, limb or health and in case of claims under the German Product Liability Act (Produkthaftungsgesetz), the statutory provisions apply.
  - e) It remains possible to raise the defense of contributory negligence. PTV AG shall only be responsible for the replacement of data if the Client has ensured that such data are reproducible from available data stock in machine-readable form at a justifiable expense.
- 8.2. Claims for damages and the reimbursement of futile expenditure shall become statute-barred in 2 years. In the cases mentioned in 8.1 (a) and (b), the statutory period of limitation applies. Section 199(3) of the German Civil Code (BGB) shall remain unaffected.

## II. Special Provisions for sale contracts and contracts for work and labor

If according to the statutory provisions the Agreement with the Client is

- a sale contract [Kaufvertrag] , particularly if the subject matter of such contractual agreement with the Client is the sale of standard software, or
- a contract for work and labor [Werkvertrag]

The provisions in this Chapter II shall apply in addition to the General Provisions in Chapter I. and the Final Provisions in Chapter IV. of these GTC.

### §9. Inspection and Reporting Obligation

- 9.1. Merchants shall be obliged to immediately and thoroughly inspect Deliveries and immediately report defects in writing. Any defects shall be concretely described to the extent that is reasonable.
- 9.2. Other Clients shall report visible defects in writing within a period of three weeks following Delivery.
- 9.3. Any defects shall be concretely described to the extent that is reasonable and understandable. Error report shall include the following information:
  - Detailed error description
    - Error message as shown, if any
    - Screenshot of error state
    - Steps for reproduction of error state, if available
    - Application logs, if available
    - System environment data (including O/S version, browser used, application server, database, etc.)
- 9.4. Upon the request of PTV, the Client shall provide the following additional information for the analysis, delimitation and removal of the error in writing. In particular, such information may include:
  - Program traces and journals

- Database dumps
- Document repository images

(collectively “Additional Information for Error Analysis”)

Upon request by PTV, the Client shall make changes in the Deliveries for the purpose of obtaining Additional Information for Error Analysis and install additional software (e.g., diagnosis tools) on its systems in accordance with the instructions issued by PTV or enable PTV to make such an installation.

9.5. Delayed reporting shall relieve PTV from any warranty obligations for the respective defect

9.6. PTV AG may invoice any expenditure caused by delayed, improper, incorrect or incomplete error reports. This does not apply if the Client can show that he did not cause such expenditures in a way attributable to the Client.

#### **§10. Rectification of Defects**

10.1. PTV AG shall rectify defects at its choice through subsequent improvements or through delivery of a replacement within a reasonable period of time if and insofar as the selected form of rectification of defects is reasonably acceptable for the Client.

10.2. Insofar as acceptable, such rectification of defects can also lie in the making available of a workaround solution.

10.3. If PTV AG does not successfully rectify defects within a reasonable period of time, the Client shall grant two reasonable extensions to PTV AG (as a rule at least 2 weeks) in order to successfully rectify the defects.

10.4. If PTV AG does not successfully rectify the defects during the extension periods, the Client may at its choice reduce the remuneration or cancel the relevant Agreement, except where the defect is only of insignificant nature. Claims for damages and compensation for expenditure arise solely within the limits provided in Clause 8 hereof. The Client shall not have the right to rectify a defect itself and claim compensation for costs accrued for such rectification.

10.5. No period for rectification has to be granted by the Client if this would be unreasonable for the Client. This is the case especially where PTV AG has earnestly and definitively refused to rectify defects.

#### **§11. Limitation of Claims Concerning Defects**

11.1. Claims concerning defects in quality and defects in title shall become statute-barred 12 months after acceptance if the Delivery in question is subject to acceptance, otherwise 12 months after commissioning of the Delivery.

11.2. The limitation periods provided in clause 11.1 do not apply:

- a) to claims for damages, to the extent that such claims are subject to the limitations provided in clause 8.2;
- b) in case of a written guarantee issued by the management of PTV AG;
- c) in case of fraudulent failure to mention defects and in the cases provided in clause 8.1 a) and b).

In these cases the statutory provisions on the limitation of claims apply.

#### **§12. Unjustified Notification of Defects**

12.1. No claims accrue to the Client based on defects if the defect was caused by improper use of a Delivery or use contrary to the applicable Agreement, or was caused by modification, integration, parameterization or script processing performed by the Client itself unless the Client is able to prove that the defect was not caused by this circumstance.

12.2. If the analysis of a defect notified by the Client reveals that the defect does not exist, then PTV AG is entitled to invoice the Client for the expenditure incurred for the analysis and processing of the defect notified, unless the Client was unable to recognize that there was no defect attributable to PTV AG.

### **III. Special Provisions for contracts for work and labor**

If according to the statutory provisions the contractual agreement with the Client is a contract for work and labor in accordance with ss. 631 pp. of the German Civil Code (BGB) the provisions in this Chapter III. shall apply in addition to the General Provisions in Chapter I., the Special Provisions in Chapter II and the Final Provisions in Chapter IV of these GTC.

#### **§13. Acceptance of Delivery**

13.1. If a Delivery of PTV AG is subject to acceptance, PTV AG may require a written declaration of acceptance within two weeks following Delivery. Such declaration may only be refused if the Delivery has a material defect.

- 13.2. Acceptance shall be considered as having been effected if
- a) the Client is in possession of the Delivery for more than two weeks,
  - b) the Delivery is in productive use or
  - c) the Client pays the agreed remuneration in full
- unless the Client has reported material defects in writing before.

#### **§14. Cases of dispute - ADR**

The contracting parties shall agree to appeal to the arbitration board of the Deutsche Gesellschaft für Recht und Informatik e. V. ([www.dgri.de](http://www.dgri.de)) in order to settle any dispute, in part or as a whole, provisionally or finally in accordance with their rules of arbitration in the respectively valid version at the time of institution of arbitration proceedings for any differences in opinion arising out of or in connection with the Agreements, contract extensions or supplements concluded between them related to a project which they are unable to settle among themselves. The period of limitation for any claims arising out of the grounds for arbitration shall be suspended as of the conciliation request until the end of the conciliation procedure. The claim is statute-barred at the earliest three months after the end of the suspension. If no conciliation is reached or if arbitration fails, then the parties shall have recourse to a court of general jurisdiction.

### **IV. Final Provisions**

#### **§15. Secrecy and Safekeeping, Non-Solicitation**

- 15.1. The Contracting Parties shall be obliged to maintain secrecy with regard to any and all information, documents and data about which they may have gained knowledge of during initiation and performance of the Agreement and designated as confidential or which contain business or trade secrets or which are legally protected (collectively "Confidential Information") and to neither make such available to third parties nor employ such for purposes other than contractually agreed.
- 15.2. The receiving party will: (a) limit disclosure of any Confidential Information to its directors, officers, employees, agents or representatives (collectively "Representatives") who have a need to know such Confidential Information in connection with the current or contemplated business relationship between the parties to which this Agreement relates, and only for that purpose; (b) advise its Representatives of the proprietary nature of the Confidential Information and of the obligations set forth in this Agreement and require such Representatives to keep the Confidential Information confidential; (c) shall keep all Confidential Information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any Confidential Information received by it to any third parties (except as otherwise provided for herein).
- If the recipient party fails to meet these requirements, it shall be liable for all damages resulting therefrom and will hold the other party harmless in relation to all claims by third parties. As far as monetary damages will be inadequate to compensate the Disclosing Party for any such breach, and the Disclosing Party may enforce this GTC by seeking injunctive or other equitable remedies in addition to any available legal remedies.
- 15.3. The Receiving Party shall notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information by the Receiving Party or its Representatives, or any other breach of this Agreement by the Receiving Party or its Representatives, and will cooperate with efforts by the Disclosing Party to help the Disclosing Party regain possession of Confidential Information and prevent its further unauthorized use.
- 15.4. The Receiving Party agrees to use the Confidential Information solely in connection with the current or contemplated business relationship between the parties and not for any purpose other than as authorized by this Agreement without the prior written consent of an authorized representative of the Disclosing Party. No other right or license, whether expressed or implied, in the Confidential Information is granted to the Receiving Party hereunder. Title to the Confidential Information will remain solely in the Disclosing Party. All use of Confidential Information by the Receiving Party shall be for the benefit of the Disclosing Party and any modifications and improvements thereof by the Receiving Party shall be the sole property of the Disclosing Party. Notwithstanding any obligation mentioned hereinabove the Client:
- a) will copy, reproduce or otherwise retransmit Confidential Information only as it may reasonably be necessary for the purpose approved (in writing) by PTV (prominently marking each copy, reproduction or retransmission as confidential) and keep Confidential Information under security conditions no less rigorous than those used for the Client's own Confidential Information of equivalent sensitivity, but no less than reasonable care under the circumstances, and in any event take reasonable precautions for its safe custody.



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- b) will not reverse engineer, disassemble or decompile any part of the Confidential Information without written consent of PTV.

Further:

- a) The Parties agree not to disclose any Confidential Information, including the existence of discussions concerning a possible business cooperation between the Parties, to any third Party without the prior written consent of the other Party.
- b) The terms of this agreement are applicable to each party's subsidiaries, whether partly or wholly owned

15.5. The Client shall safeguard and secure Confidential Information in such a way that any abuse by or disclosure to third parties is excluded.

15.6. For a period of two (2) years from the conclusion of the Agreement, the Client shall refrain, and shall procure that the Client's affiliates refrain, from:

- a) influencing or attempting to influence any customer, supplier, consultant or other third party maintaining a contractual or other business relationship with PTV or any affiliate of PTV to terminate or discontinue such relationship or to reduce the volume of goods or services provided thereunder; or
- b) soliciting or attempting to solicit the service or employment of any current or future director, officer or employee of PTV or any affiliate of PTV.

#### **§16. Contractual Penalty**

The Client shall pay to PTV for each instance of a culpable breach of the obligations pursuant to these GTC, particularly, but not limited to, the illegitimate use or exploitation of Deliveries and/or a breach of the duties of Secrecy and Safekeeping, a reasonable contractual penalty to be determined by PTV and verified as to its reasonableness by the competent court in case of dispute. PTV reserves the right to claim further damages and to exercise any other rights related to such breach.

#### **§17. Applicable Law, Venue**

17.1. The law of the Federal Republic of Germany to the exclusion of the German rules on conflict of laws and the UN CISG dated 11 April 1980 applies to the Agreement and all legal relations between PTV AG and the Client.

17.2. If the Client is a Merchant, a legal person governed by public law or a legal entity governed by public law, or if the Client has no venue within Germany, the venue for all disputes arising under or in connection with the Agreement is the registered office of PTV AG.

#### **§18. Written Form**

Simple electronic form (email or fax) is sufficient to satisfy any written form requirement stipulated in these GTC; this does not apply to notices of termination or withdrawal which shall always require delivery of an original document signed by the respective Contracting Party.

Karlsruhe, 1.9.2016