

ASAPIO Terms and Conditions for Software and Services



valid from August 1st, 2019

§1 Validity

(1) Scope of terms and conditions. The following conditions shall apply exclusively and finally to the Services to be provided by ASAPIO GmbH & Co. KG (hereinafter: 'ASAPIO') for the customer (hereinafter 'Services'), as well as the sale of Software, except as otherwise expressly provided in writing.

(2) "Services". ASAPIO provides Services in the area of application consulting, implementation consulting, individual development and adaptation of software, software installation, support services, training services, and other services that could be described and agreed in the individual contract.

(3) "Software". Software produced by ASAPIO, which, in terms of intellectual property, source codes and marketing and sales rights, are fully owned by ASAPIO GmbH & Co. KG.

(4) Customer's terms and condition. Opposing terms and conditions of the customer shall not apply.

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§2 Scope

These terms and conditions regulate the general legal bases of the Services to be provided and the sale of Software by ASAPIO. The details arise from the individual contract agreed between the Parties, which, in the event of contradictions to these terms and conditions, shall take precedence over the regulations of these conditions.

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§3 Provision of Services

(1) Services. Except as otherwise expressly provided in writing in any individual case, ASAPIO shall provide the Services as services within the meaning of Secs. 611 et seq. German Civil Code.

(2) Changes in performance. Should one of the Parties, during the course of delivering the Services, determine that a change in the originally determined scope of services is necessary or expedient, it shall notify the other Party immediately, stating the reasons for the change. The Parties shall consult one another regarding the implementation of the proposed change in performance and the possible effects this might have on the period of performance and remuneration. An obligation to accept the proposed change in performance does not exist. ASAPIO shall be obligated to implement a change in performance only if it has approved said change in writing.

(3) Subcontractors. Except as otherwise expressly provided in writing in an individual case, ASAPIO shall be authorized to engage third parties in providing Services.

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§4 Duties to cooperate, customer contact

(1) Duties to cooperate. The customer shall support ASAPIO free of charge during the course of performing its contractual duties. In particular, the customer shall

- provide system access (e.g. log-on URLs, user IDs, passwords, permissions etc.) as required for the services in scope, at project start;
- provide internet-based remote access (e.g. virtual desktop solutions, VPN access etc.) to the required systems at project start;
- provide in due time the information and infrastructure services required for providing the Services;
- instruct its employees to cooperate with employees assigned by ASAPIO;
- in the case of on-site consultation, enable the employees assigned by ASAPIO to access the computers and facilities required in order to provide the services in question;
- keep ready all consulting service data as a backup in machine-readable form to enable a reconstruction of lost data at a reasonable expenditure.

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VAT IDENTIFICATION NUMBER:
DE-235535714

Additional costs, delays and other disadvantages which are due to the customer's breach of duties to cooperate shall be borne by the customer.

(2) Contact. The customer shall name a contact in writing that ASAPIO is able to reach at any time, in an emergency also outside usual working hours, either by e-mail or mobile telephone, and provide the appropriate e-mail address and mobile telephone number. The contact must be in a position and be authorized to make or directly bring about the decisions necessary for providing the services on behalf of the customer.

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§5 Remuneration

(1) Remuneration according to expenditure. Except as otherwise agreed in an individual case, the customer shall remunerate ASAPIO's Services according to expenditure in keeping with the ASAPIO price list applicable at the time of placing the order.

(2) Travel costs and expenses. ASAPIO's travel costs and expenses shall be reimbursed separately.

(3) Due date. Remuneration shall become due at the time of invoicing by ASAPIO. Except as otherwise agreed, ASAPIO will invoice monthly.

(4) VAT. The remuneration is subject to the applicable statutory rate of VAT.

(5) Set-off, right of retention. The customer is authorized to set-offs or to assert rights of retention only if its counter-claim has been recognized by declaratory judgment or acknowledged in writing by ASAPIO.

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§6 Acceptance of services

The following shall apply if, as an exception, the Services to be provided by ASAPIO are performances of work. It shall not apply for Software.

(1) Submission for acceptance, inspection. Upon completion of the performance of work, ASAPIO shall submit the created work to the customer for acceptance. The customer is required to inspect the submitted work for contractual compliance at the latest within 14 days.

(2) Acceptance declaration. Following the successful performance of the acceptance test, the customer shall immediately notify ASAPIO in writing of the acceptance. The acceptance test shall be deemed to have been carried out successfully if the performance of work meets the requirements of the scope of performance in all material respects.

(3) Deviations. If the customer discovers deviations from the agreed-upon scope of performance during the acceptance test, ASAPIO must be notified immediately. The notice must contain a detailed description of the deviations. ASAPIO will remedy major deviations as soon as possible. A new acceptance test will be initiated upon remedying the deviations. Minor deviations do not authorize the customer to refuse to accept the performance of work; they will be recorded by the customer as a defect in the acceptance declaration and will be remedied by ASAPIO within the scope of the warranty.

(4) Notional acceptance in the case of failure to observe the time limit. If the customer does not immediately declare its acceptance in accordance with the above provisions, ASAPIO may set a 14-day time limit in writing for the declaration of acceptance. The acceptance is deemed to have been performed, unless the customer specifies in writing the reasons for the refusal of acceptance within this time limit.

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§7 Warranty

The following shall take effect for Software, or if, in exceptional cases, the Services performed by ASAPIO are provided as performance of work or if, for other reasons, ASAPIO's statutory warranty obligations apply:

(1) No warranty for unavoidable errors. The customer is aware that, according to the current state of the art, it is not possible to develop software completely free from errors.

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(2) Warranty period. The warranty period is one year, in the case of performances of work it starts with the acceptance, otherwise with the delivery of the object of performance or software.

(3) Notice of defect. The customer must notify ASAPIO in writing of any defects immediately after their discovery. The written notice must contain a description of the defect. On request, the customer shall provide ASAPIO with an acceptable number of supporting documents and amount of information, which ASAPIO requires for assessing and remedying the defect.

(4) Remedying defects. Defects which are recorded in the acceptance declaration or reported in writing by the customer prior to expiration of the warranty period shall be remedied by ASAPIO at its own discretion by way of retroactive performance, by remedying said defect or by delivering a replacement. If the defect cannot be remedied within a reasonable time limit or if the retroactive performance is considered to have failed for other reasons, the customer may cancel the contract or reduce the remuneration, should the legal requirements for such an action be met.

(5) Exclusion of the warranty. The warranty shall be void if the customer modifies or changes the object of performance or software without ASAPIO's authorization, unless the customer is able to prove that the defects in question were not caused in whole or in part by such modifications and the remedying of defects is not made more difficult as a result of the modification.

(6) ASAPIO warrants that the Software will, under normal use and service, conform to descriptions and specifications according to the contract and be free from defects in material and workmanship for one year, as measured from the delivery of the Software. ASAPIO's sole obligation under this warranty shall be to repair or replace any defective software and/or to remedy any non-conformance of the Software to enable it to conform to the functional specifications set forth in the contract. This warranty is only effective when the Software is used on or in conjunction with the product(s) to which it relates. Further, the warranty is contingent upon proper use of the Software by the customer, and will not apply if the Software has been modified without the prior written consent of ASAPIO. ASAPIO makes no warranty that use of the Software will be uninterrupted or error-free.

(7) Exclusion of the warranty for free products. If ASAPIO provides software or components free of charge, ASAPIO does it without any warranty or the implied warranty for fitness for a particular purpose.

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§8 Liability

(1) ASAPIO is liable to customer for damages incurred in connection with this contract only in the event of ASAPIO's intent or gross negligence, irrespective of the legal grounds. To the extent permitted by law, ASAPIO excludes liability for indirect and consequential loss such as loss of profit, unachieved savings, interruptions to business, third-party claims, or loss of data. Contributory fault and contributory negligence may be claimed.

(2) To the extent permitted by law, liability is limited to the amount of contract value of the 12 months prior to the occurrence of the damaging event. ASAPIO holds a corporate liability insurance with a maximum coverage amount of EUR 5.000.000,00. The insurance certificate will be provided upon request.

(3) If ASAPIO's liability is excluded or limited, this shall also apply to the liability of ASAPIO's employees, representatives or vicarious agents.

(4) All claims for compensation expire after 1 year.

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§9 Rights of use

(1) If ASAPIO owes the customer the licensing of software, software parts or other work results, ASAPIO shall grant the customer, upon payment for the corresponding service, a non-exclusive right of use for its own purposes, which shall be unrestricted as to space and time. The resale of work results to third parties by the customer is prohibited.

(2) In case of a software subscription contract, ASAPIO shall grant the customer a personal, revocable, limited, non-exclusive, non-transferable license to use the Software or its components only during the contract period and upon payment of the corresponding fees.

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§10 Period of validity, Termination

- (1) Period of validity. The term of an individual order arises from the respective individual order.
- (2) Termination. If Services are agreed to be provided within a fixed time period, a premature termination may only be allowed for significant reasons and requires ASAPIO's acceptance of termination.
- (3) Written form. Every termination and acceptance of termination must be made in writing.

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§11 Confidentiality

- (1) ASAPIO's confidentiality. ASAPIO agrees to treat all of the customer's data, documents and information that are deemed to be 'confidential information' and to which ASAPIO gains access during the term of the contract in connection with providing Services, confidentially without limit, to not make them accessible to third parties, and to use said information only for the purposes of this contract or, in as much as this is required for the fulfilment of legal obligations or for technical reasons, for providing Services. Furthermore, ASAPIO agrees to make the confidential information accessible to employees and subcontractors only after they have been put under the obligation to comply with the corresponding confidentiality obligations.
- (2) Customer's confidentiality. ASAPIO's duty to maintain confidentiality according to subparagraph 1 shall apply correspondingly to the customer.
- (3) Exceptions. The duty to maintain confidentiality in the above paragraphs shall not apply to information
 - which is generally accessible to the public or is made accessible without the other party being at fault,
 - which is already in possession of the other party prior to the disclosure,
 - which is developed independently by a party or
 - which must be disclosed by law or within the scope of official or judicial orders. The burden of proof for the existence of one the above exceptions shall be borne by the party which claims relief by way of such exception.

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§12 Miscellaneous

- (1) Applicable law, jurisdictional venue. The contractual relationship based on the inclusion of these conditions shall be subject to German law, under exclusion of the regulations of international private law. The application of the UN Convention on Contracts for the International Purchase of Goods shall be excluded. The exclusive jurisdictional venue for all disputes in connection with the individual order or these conditions is Munich.
- (2) Entire agreement. These conditions, together with the individual order, represent the entire agreement of the parties with respect to the subject of the contract, and replace all previous written or verbal agreements of the party with respect to the subject of the contract.
- (3) Force majeure. In the case of events of force majeure, such as war, unrest, natural disasters, fire, strikes, shut outs, sabotage by third parties, etc., neither of the parties shall be liable to the other for delays or non-performance of the fulfilment of performance occurring as a result. If an event of force majeure continues in excess of one month, both parties are authorized to cancel the contract for significant reasons. In this case, compensation or damage claims shall not exist.
- (4) Salvation clause. Should a provision of these contract conditions be invalid or unenforceable, this shall not affect the validity of the remaining provisions hereof.
