

## General Terms and Conditions

### 1. Scope of Application

APLIKO GmbH shall provide its services on the basis of these General Terms and Conditions (hereinafter referred to as GTC) and the respective individual contract. Conflicting general terms and conditions of the customer shall not apply even if the customer refers to them in a standard order form or otherwise in connection with an order and/or APLIKO GmbH does not explicitly object to them. In so far, confirmations to the contrary by customers with reference to their general terms and conditions are herewith objected to.

In case of contradictions between these GTC and the individual contract, the provisions of the individual contract shall have priority. If several documents exist, they shall apply in the following order: Individual Contract, APLIKO GmbH's GTC, customer's call for tenders.

Besides the individual contract, these GTC represent the complete agreement between the customer and APLIKO GmbH with regard to the content of the services. Any different former agreements as well as verbal arrangements shall not apply. They shall be replaced by these GTC and the individual contract.

Modifications and amendments shall only be effective if agreed upon in writing. The establishment of obligations at the expense of APLIKO GmbH requires the signature of an authorised representative of APLIKO GmbH. Statements provided in offers, acceptances, letters of confirmation or other correspondence shall only be binding for APLIKO GmbH if explicitly agreed upon in the individual contract. The waiver of this written form requirement must also be in writing.

### 2. Scope and performance of services

APLIKO GmbH undertakes to perform services within the scope of appropriate efforts. The scope of the services is defined in the respective project contract.

The customer orders services from APLIKO GmbH based on time and efforts if not explicitly agreed otherwise between the parties. If the calculation is done according to person days (...), one person day shall have eight hours including travel time which can be performed between 8:00 and 17:00h from Monday to Friday. There is no obligation to render services on the valid statutory holidays in North Rhine-Westphalia, irrespective of the place where the services are performed

The customer may submit to APLIKO GmbH in writing any requests for modifications and amendments to the services agreed upon in the contract. APLIKO GmbH will review these requests for changes for (...) feasibility, time requirements and costs (...) and inform the customer of the result. The costs of the review may be charged to the customer by effort. Any deadlines agreed upon between the customer and APLIKO GmbH shall be extended by a reasonable period of time.

APLIKO GmbH will take into account such modifications of the services for the performance of services, as far as this is acceptable with regard to the time and effort involved and a written agreement was concluded with regard to the scope, remuneration and further deviating provisions.

The remuneration for the additional time and effort involved shall first be based on the potential contractual agreements or – if not existent – on the respective current price list of APLIKO GmbH. Service dates and deadlines shall only be binding if designated binding in the individual contract.

### 3. Cooperation obligations

The business relationship entered into and the services to be performed by APLIKO GmbH in particular require as an essential contractual obligation the close cooperation of the customer, who shall support APLIKO GmbH in the performance of services in the best possible way.

Thus, the customer shall provide all required means without charge and in a timely manner that APLIKO GmbH needs to perform the services. This includes office space at the customers' premises with the related infrastructure such as a fully functional EDP with software input options, printer etc. as well as all necessary information and documents, naming the relevant contact persons.

The customer shall provide access to all information to APLIKO GmbH required for its services at any time, in particular provide documents, and instruct staff to provide information as well as inform APLIKO GmbH of any circumstances that are relevant for an effective performance of services without being requested to do so.

Upon request of APLIKO GmbH, the customer shall confirm in writing the correctness and completeness of the submitted documents and provided information.

As far as an introduction or training of staff proves to be necessary, their organisation shall essentially be the customer's responsibility. If requested by the customer, APLIKO GmbH is essentially prepared to submit a respective quotation to the customer for the introduction and training of his staff.

In case the customer does not fulfil one of his cooperation obligations as agreed or if he does not comply with the organisational guidelines as agreed, the consequences thereof such as additional services and delays shall be borne by the customer. APLIKO GmbH may charge the customer for the additional efforts. All cooperation obligations listed here are essential responsibilities of the customer and agreed upon as such.

### 4. Organisational guidelines

Both parties shall name a contact partner responsible for the project that can make and receive binding statements for the respective party. The contact person shall only be replaced by another person for important reasons. At the same time, a deputy with the same authority shall be appointed.

Any disagreements between the parties should, in principle, first be dealt with internally with the objective of finding an agreeable solution. In the case of a disagreement in technical or legal terms, the parties will first try to come to an agreement. For this, a deadline can be set reciprocally, depending on the circumstances and taking into account any schedule agreed upon.

In case of a disagreement in technical terms which both parties cannot resolve themselves, a mandatory arbitration procedure is agreed upon.

Both parties agree not to initiate legal proceedings for the duration of the arbitration. The customer and APLIKO GmbH shall do their utmost to follow the recommendations of the arbitration. The costs incurred in the arbitration proceedings shall be borne/proportionally borne by the parties in relation to the success/failure of the parties.

The result of the arbitration procedure shall be documented in writing and signed by both parties. An agreement reached in the arbitration proceedings shall be binding for both parties.

APLIKO GmbH shall be entitled to involve third parties as subcontractors to fulfil its responsibilities. In this case, APLIKO GmbH shall also be responsible for the fulfilment of the contractual obligations agreed upon, and shall have the responsibility for the deployment of sufficiently qualified staff to perform the services in the relation with the customer.

The employees of APLIKO GmbH performing the services are exclusively subject to APLIKO GmbH's direction rights and supervision. APLIKO GmbH itself or the named contact person is the sole contact person for the customer with regard to all questions and claims.

## 5. Software licences

APLIKO shall provide the customer for use with standard software and/or, upon separate request by the customer, individual software specially developed for the customer including the associated documentation (collectively "Software"). In return, the customer agrees to pay a one-time or recurring periodical licence fee. Associated services such as installing, training, consulting, software maintenance, etc. are to be arranged for in separate contracts.

APLIKO provides the customer with a non-exclusive and non-transferable right to use the software for the system platforms and number of users specified in the software licence agreements or authorised in writing by APLIKO. The regulations shall also apply to modifications, alterations and new deliveries of software, which are provided by APLIKO in accordance with the software maintenance conditions. Within the framework of the software provision, APLIKO does not owe the improvement and further development of the software. These are subject to a separate software maintenance agreement.

In connection with the contractual use, the customer is entitled to create a backup copy of the software provided that the respective data medium carries an APLIKO copyright notice. Apart from this, the customer is not entitled to modify, decompile or otherwise modify the software itself or have it modified by third parties without the prior written consent of APLIKO. It is not permitted, either, to transfer, give or otherwise make the software available to third parties wholly or partially.

With the exception of the right of usage described above, all rights to the software along with the documentations shall stay with APLIKO or (as far as "third party products" are concerned) the licensors of APLIKO. The customer is particularly aware that the software is subject to the protection of the copyright law as well as international copyright agreements.

The right of use commences after payment of the licence fees to APLIKO. APLIKO shall be entitled to withdraw the right of use from the customer after prior written warning and to cancel the contracts if the customer does not comply with the restrictions on use in accordance with the above provisions. There will be no refund of any licence fees already paid.

Upon termination of the software licence agreement, the customer is obliged to delete all computer programmes and to destroy or delete the user documentation. The customer must confirm the deletion of all copies in writing to the licence provider APLIKO. This also applies to third-party products.

APLIKO provides the software on common data carriers or via download. The scope of delivery also includes a manual in electronic form. The delivery shall be deemed to have been fulfilled upon receipt at the customer's premises. An introduction to the software beyond this is only conducted upon conclusion of a respective service contract. An inspection of the software will only be done if it is individual software and the inspection has been agreed upon by contract.

The customer himself is responsible for the deployment of the software, in particular for providing the hardware, application of the software and data backup.

If APLIKO fails to meet a delivery date that was confirmed binding in writing, the customer shall be entitled to withdraw from the contract after setting a reasonable grace period in writing. The customer is not entitled to any other legal remedies in the event of delay.

The customer undertakes to pay a one-off licence fee in accordance with the licence contract. The amount for the software licences is determined by the valid APLIKO list price or list price of a third party, effective at the date of the order placement, unless specifically agreed upon. The invoice will be issued by APLIKO immediately after delivery.

APLIKO guarantees that the contractual software essentially corresponds to the functions described in the service description and is free of faults that eliminate or significantly reduce the value or usability of the programme for the contractually assumed or usual purpose. Insignificant deviations or reductions (such as are present if the customer uses the software productively) shall not be taken into account.

In the event of justified notices of defect, the customer shall initially only have the right to demand that the defect be remedied. The warranty is fulfilled by the delivery of fault-free software that complies with the performance specification agreed upon between the parties and the purpose of the contract. At its own discretion, APLIKO shall also be entitled to rework instead of replacement delivery.

In the event that a defect cannot be remedied by the warranty or if the measures taken are not acceptable, the customer shall be entitled to request a reduction (reduction of remuneration) or to withdraw from the contract after having set a reasonable deadline. No other rights of warranty exist.

The warranty period is 12 months and begins upon delivery.

Any defects that may occur are to be claimed promptly and in a plausible manner after their detection by the customer. The warranty does not apply to any defects that occur as a result to modifications of the software and/or the hardware requirements agreed upon being made by the customer or the use of system platforms other than the contractually agreed or approved by APLIKO in writing. Neither shall APLIKO be responsible for any defects that are due to errors in the handling and operation of the software by the customer, in particular if the instructions in the accompanying documents or other advice from APLIKO are not observed. The same applies to attempted modifications or reworks concerning the provided software by persons who are not authorised by APLIKO.

The customer shall be obliged to take measures, within a reasonable scope, to facilitate the identification of notified defects and their causes. He shall execute test programmes provided by APLIKO, report diagnosed errors, make potentially necessary modifications to software on the instructions of APLIKO or allow APLIKO to determine or eliminate errors by remote maintenance.

APLIKO provides no warranty for external products designated as "Third Party Products" in the licence agreement. In so far, APLIKO shall be entitled, for the purpose of warranty, to assign to the customer all its warranty claims against the suppliers of third party products. If necessary, APLIKO shall support the customer in making these claims and assist the customer in their enforcement.

## 6. Maintenance

APLIKO will provide the software maintenance and hotline services described below in connection with the software provided to the customer under the software licence agreement. In return, the customer shall be obliged to bear a continuous periodic maintenance and service fee. The use of the current software version approved by APLIKO is a requirement for the fulfilment of the services agreed upon. Additional services may be specified in a hotline and support contract.

Telephone support is available on workdays (Monday to Thursday except "General Holidays") during regular working hours from 08:00 to 17:00h (= "Response time"), on Fridays from 08:00 to 14:00h. Outside the response time, our email address [emergency@apliko.de](mailto:emergency@apliko.de) is available to customers in case of emergencies.

Within the scope of software maintenance APLIKO will provide patches or updates to the customer in non-regular intervals. APLIKO shall analyse any replicable software errors that become known and eliminate them depending on their priority by supplying patches (bug fixes), updates, workarounds or other modifications to the customer's operating procedures that are acceptable to the customer. The elimination of errors by APLIKO is generally effected by accessing the customer's system via remote access. In exceptional cases APLIKO shall be entitled to eliminate the errors onsite. For the delivery and launch of patches and updates within the scope of the maintenance services, section 5 Software Licenses shall apply accordingly.

For new purchases, the Software Maintenance Agreement shall become effective on the delivery date of the software and/or third-party products or, for the takeover of an existing system, on the takeover date for an indefinite period.

The contract and the services of APLIKO commence with the signature of both parties. The minimum term is the end of the calendar year and 1 period (calendar year), calculated from the first day of the following month. The agreement shall be silently renewed for another 12 months, respectively, unless terminated by either party in writing with a notice period of 3 months to the end of the period. The notice of termination must be in writing.

The software maintenance fees (maintenance rate 20% p.A. of the license sum) are invoiced in advance as follows after delivery of the software:

Maintenance fees < 5,000.00 Euro p.A. = Annual Payment  
Maintenance fees < 5,000.00 Euro p.A. = Quarterly Payment

Deviating payment intervals are to be agreed on in writing between the contractual partners, taking into account the payment modalities of any third parties.

The amount on which maintenance is calculated is:  
List price minus volume discount = license sum

APLIKO reserves the right to cancel the software maintenance at the respective manufacturer in case the payment of the maintenance fee is overdue by more than two weeks. Special or additional agreements may be made in a separate hotline and support contract.

Fees and additional costs are exclusive of value added tax. The client is not entitled to a set-off or retention right.

APLIKO warrants the error-free performance of the contracted services. For the delivery of patches and updates, point 5 software licenses shall apply accordingly.

## 7. Products of third parties

The sourcing of third-party products and services is basically the responsibility of the customer, unless explicitly agreed otherwise. As far as the service to be provided by APLIKO GmbH requires the availability or the acquisition of hardware or software, the customer shall basically be responsible for providing these components.

Should APLIKO assume the provisioning of such components on the basis of a separate agreement, this service will be invoiced separately to the customer.

As for standard software of third parties, APLIKO GmbH will in principle only act as an intermediary. A respective separate written agreement has to be set up. A separate written agreement must be made in this respect. A software license agreement is established exclusively between the third party company and the customer according to an agreement to be concluded separately.

A potential introduction or training of the staff of the customer requires a separate written agreement, too.

## 8. Remuneration

Unless otherwise agreed, the remuneration shall be based on the time and material provided by APLIKO GmbH on the basis of the remuneration rates as per the current APLIKO price list. The remuneration is invoiced monthly. A corresponding proof of the services rendered explains the invoice.

Travel costs such as expenses, overnight stays, travel expenses and travel times will be invoiced separately to the customer according to the current APLIKO price list.

All prices are exclusive of the applicable statutory value added tax and all other applicable taxes and public charges.

The customer may only set off against claims that have been legally established or are not contested. APLIKO GmbH shall retain ownership of all deliveries and services until they have been fully settled. Several customers are liable jointly and severally.

## 9. Commercial property rights and copyright

All materials, in particular software and documentations that have been developed by APLIKO GmbH in the framework of the performance of services are created by the assigned staff of APLIKO GmbH in the pursuit of their tasks and according to the instructions by APLIKO GmbH for APLIKO. In as far as work results are eligible for copyright, APLIKO GmbH remains the originator. In such cases, the customer is provided an only hereby restricted, otherwise irrevocable, non-exclusive and non-transferable right without constraints in terms of time and place to use these work results.

APLIKO GmbH grants the customer a non-exclusive right to use the copyrightable software and its documentation that APLIKO GmbH creates for the customer during the performance of the services under this agreement, if and as soon as the customer has paid all invoices submitted to him by APLIKO GmbH under this agreement.

The customer may duplicate software in so far as necessary for loading, displaying, running, transferring or saving the software simultaneously on one computer at a time. The software, as well as reports, organisation charts, drafts, drawings, invoices, etc., may only be used for the purposes agreed upon in the contract and may not be published without the explicit consent of APLIKO GmbH in the individual case (hereinafter "intended use"). The customer shall only use the software in accordance with the intended use and shall in particular not translate, edit, change it or make other modifications, including error corrections

The use of services of APLIKO GmbH for companies associated with the customer also requires an explicit written agreement.

In as far as the customer copies or edits the materials supplied by APLIKO GmbH in a permitted manner, he is obligated to ensure that the copyright, labelling or other copyright notes on the materials remain intact and/or are also copied.

## 10. Property rights of third parties

APLIKO GmbH shall defend the customer at its own expense against all claims that are derived against the customer from an alleged infringement of German commercial property rights or copyrights by the results of the services rendered by APLIKO GmbH. It shall reimburse the customer for all legally imposed costs and claims for damages, provided that the customer immediately informs APLIKO GmbH in writing of the filing of such claims, provides APLIKO GmbH with all necessary information and other appropriate support and that APLIKO GmbH has the exclusive right to decide whether the claim is to be rejected or settled.

## 11. Record storage

Until full settlement of its claims APLIKO GmbH shall have a right of retention to the documents made available to it in any form whatsoever, the enforcement of which is, however, in breach of trust, if the retention would cause the customer disproportionately high damage which would not be justified when weighing up the interests of both parties.

After settlement of its claims from the contract, APLIKO GmbH shall, at the request of the customer, return all documents the customer has provided to it related to the performance of the order. This shall not apply to correspondence between the parties and to simple copies of reports, organisation charts, drawings, tables, calculations, etc. made in the course of the order execution. The obligation to return the documents requires that no more claims are to be settled between the parties.

The obligation of APLIKO GmbH to archive the documents shall expire six months after the delivery of the last invoice issued under this contract, otherwise three years for retained documents.

## 12. Warranty

APLIKO GmbH will ensure that its services are performed by appropriately qualified personnel with reasonable diligence and in a proper fashion.

APLIKO GmbH AG shall not be obliged to warranty with regard to services performed, if a deficiency is caused by a modification of the service that was neither performed nor authorised by APLIKO GmbH. If it turns out during work related to the enforcement of warranty claims that there is no warranty claim on the customer's side, APLIKO GmbH shall be entitled to charge the customer for any expenses regarding time and material based on the prices agreed upon.

In case of a shortcoming in the performance under the contract, APLIKO GmbH shall, at its own discretion, either rework the service or re-supply it. A remedy shall be deemed to have failed after the second unsuccessful attempt, unless the nature of the item or the defect in particular indicates otherwise.

Prior to withdrawal, reduction or claiming damages due to a defect, the customer shall specify a reasonable deadline for rectification of the defect with the declaration that he refuses to have the defect rectified after expiry of the deadline. The determination of a deadline is not required for the reasons stated in the law. The customer's claims for defects shall become time-barred after one year if the object of performance is a moveable object.

The same applies to work contracts in which the object of performance is not a tangible object, as well as to service contracts. The time limitation shall commence upon delivery or commissioning of the contractual services.

## 13. Liability

The customer's compensation claims or claims for reimbursement of futile expenses shall be based on the following provisions.

APLIKO shall have full liability for damages resulting from injuries to life, body or health caused by a negligent breach of responsibility by APLIKO or an intentional or negligent breach of responsibility by a legal representative or vicarious agent of APLIKO.

With regard to other liability claims, APLIKO shall only be fully liable in the absence of the guaranteed condition as well as for intent and gross negligence on the part of its legal representatives and executives. APLIKO shall only be liable for the fault of other vicarious agents to the extent of the liability for slight negligence according to paragraph 4.

APLIKO shall only be liable for slight negligence if an obligation is violated, the observance of which is of particular importance for the fulfilment of the contract purpose (cardinal obligation).

The liability of APLIKO for data loss is limited to the typical restoration effort that would have been required if backup copies had been made regularly and in compliance with the risk. The CUSTOMER itself is responsible for the data backup. In case of inappropriate maintenance services by APLIKO itself, he shall be liable for any data loss.

## 14. Enticement of staff

The parties to the contract shall at all times endeavour to maintain mutual loyalty. In particular, the parties undertake to refrain from the active enticement of employees of APLIKO GmbH. In the event of non-compliance, the parties undertake to pay a contractual penalty (regardless of fault) in the amount of six gross monthly salaries of the employee concerned. The contractual penalty shall not be set off against any compensation claims. The parties are free to claim further compensation for damages upon evidence.



The parties undertake to inform the respective other party in case one party considers during the term of this contract to hire or employ an employee of the other party who was engaged in the performance of the services in the framework of this contract. This shall also be applicable should the party have the hiring or employment be carried out by a third party.

## 15. Confidentiality

For the purposes of this agreement, "confidential information" shall refer to such data, information and software that the parties disclose to each other or that the parties otherwise obtain from the other party in the context of the business relationship entered into here. Such confidential information comprises, but is not limited to, data and information of whatever kind and irrespective of whether the data and information has been provided verbally, in writing and/or electronically - in the latter two cases irrespective of the type of medium or data carrier.

Irrespective deviating provisions in this agreement, such information shall not be considered confidential information for the purposes of this agreement that

1. are or become common knowledge, without this being otherwise attributable to any fault of the contract parties
2. were already known by the parties at the time of their disclosure under this agreement and are not subject to any restrictions regarding their use or disclosure.
3. were already in the possession of the parties prior to the finalisation of this agreement without a breach of any legal obligations and are not subject to any restrictions with regard to their use or disclosure
4. have been developed autonomously by the parties without any violation of this agreement in so far

The parties shall keep confidential information as strictly confidential and shall not disclose it to any third party. They may only disclose confidential information to their employees if they need to have access to confidential information in order to perform their obligations under their employment contracts. The parties shall be responsible that the obligation of confidentiality be also fulfilled by third parties and their staff. They shall prove their obligation to the above-mentioned confidentiality agreement or equivalent obligations upon request of the respective other party. The parties commit themselves to comply with the provisions of the Data Protection Act.

APLIKO GmbH is entitled to pass onto trusted persons under adherence to data protection regulations, to process and/or to have processed by third parties data obtained.

## 16. Marketing measures, advertising

Notwithstanding the remaining provisions of this contract, the customer shall permit APLIKO GmbH to publicly refer to the basic subject of its activities for the customer as a reference as well as to the reasons for the assignment of the respective services to APLIKO GmbH. Provided the customer gives his declaration of consent in writing, APLIKO GmbH may additionally point out the solution chosen for the client and publish a high level profile, showing the reasons for the selection of APLIKO GmbH, the subject of services, e.g. the implemented or to be implemented solution as well as its benefits.

## 17. Miscellaneous

APLIKO GmbH is permitted to also use otherwise findings in an anonymised form that were applied or gained during the performance of services as far as they do not specifically relate to the customer's circumstances.

The customer shall not make accessible to third parties findings gained on the basis of the performance of services by APLIKO GmbH without APLIKO GmbH's prior consent.. The customer commits himself to impose such ban of disclosure on his staff and third parties who may gain access to such findings during the performance of the services.

The transfer of rights and obligations of this contract with discharging effect on one party is only permitted with the consent of the other party.

## 18. Termination of contract

The contract becomes effective upon signature of both parties. Contracts that do not have a determination of the term are concluded for an indefinite period of time. They can be terminated with a notice of six months to the end of the month.

Contracts with a fixed term may only be terminated prematurely if there is an important reason resulting from the sphere of the other party. Precondition is the issuance of a formal warning under setting a deadline unless this is unreasonable due to the severity of the contract violation that occurred.

Each party has the right to extraordinarily terminate the contract in writing with a notice period of 30 days if the other party violates a material provision of this contract and fails to remedy this violation within a deadline which shall in general not fall short of 30 days and to remove the consequences of the violation.

Each party shall be entitled to terminate the contract if insolvency proceedings are filed against the other party, or if insolvency proceedings are declined for lack of assets, or if the other party discontinues its business, engages in a termination of business outside insolvency law or is no longer able to fulfil its payment obligations from this contract.

APLIKO GmbH can terminate this contract if the customer does not meet its cooperation obligations, in particular those described under clause 3 fully or in part after a warning by APLIKO GmbH or if the customer has been in arrears with a payment for fourteen days and has not paid in full after a written reminder, setting a reasonable deadline.

## 19. Severability clause

Should any provision of this contract be or become invalid or should the contract leave a gap, the legal validity of the remaining provisions shall remain unaffected. In place of the invalid or missing provision, a valid provision shall be deemed to have been agreed that comes closest economically to the result intended by the parties.

## 20. Applicable law and place of jurisdiction

The law of the Federal Republic of Germany shall – with the exception of the UN Convention on Contracts for the International *Sale* of Goods - apply to APLIKO GmbH's General Terms and Conditions. If the customer is a merchant, APLIKO GmbH's domicile shall be the place of jurisdiction for all disputes arising from and related to this contract. However, APLIKO GmbH shall be entitled to file suit against the customer at any other legal place of jurisdiction.

Gelsenkirchen, 1st May, 2020