

# **General Terms and Conditions of Business of Advancis Software & Services GmbH (Advancis)**

(Date: 05/2010)

## **I. General provisions**

### **§ 1 Subject matter**

- (1) These General Terms and Conditions of Business shall regulate software licensing, the provision of services and the performance of work and counter-performance and cooperation on the part of the customer.
- (2) The general provisions stipulated in I. above shall apply to all services which Advancis shall be required to provide (software licensing, services and the provision of work) insofar as nothing to the contrary arises from a relevant regulation. In addition, the provisions stipulated in II. 1.-3. shall primarily apply to software licensing (II. 1.), services (II. 2.) and the performance of work (II. 3.). Details pertaining to scope of performance and specifications shall be consequent upon the relevant quotation.
- (3) The customer's General Terms and Conditions of Business shall not constitute the subject matter of an agreement. This shall also apply in the event that Advancis should not expressly object to the customer's General Terms and Conditions of Business.

### **§ 2 General**

- (1) In each case, the services which Advancis shall be required to provide shall be consequent upon the quotation which Advancis shall have submitted in writing. The customer shall subject such quotation to careful examination.

- (2) Insofar as a quotation contains gaps or areas of uncertainty, Advancis shall, at its reasonable discretion, be able to concretize the same along appropriate lines.
- (3) Advancis shall only be required to observe technical or any other norms insofar as they are expressly cited in the quotation which is valid upon the conclusion of an agreement.
- (4) Advancis shall also be entitled to arrange for services to be provided by third parties (subcontractors).

### **§ 3 Cooperation between the Contracting Parties**

The Contracting Parties shall each name a responsible contact for the purpose of the mutual agreement and clarification of all the issues which arise during the course of performance.

### **§ 4 Cooperation and the provision of assistance by the customer**

- (1) The provision of the agreed services by Advancis shall require close collaboration between the Contracting Parties and the cooperation of the customer.
- (2) The customer shall afford assistance to Advancis and its subcontractors during the provision of the services. The customer shall, free of charge, in full and in good time, particularly furnish Advancis with the information, documents, premises, technical environment and consultants necessary for the purpose of the provision of services.

## **General Terms and Conditions of Business of Advancis Software & Services GmbH (Advancis)**

(Date: 05/2010)

- (3) Cooperation and assistance which the customer shall particularly be required to furnish shall be consequent upon the relevant quotation.
- (4) The customer shall deploy adequately qualified employees for the purpose of fulfilling its obligation to cooperate.
- (5) The customer shall regularly apprise Advancis of all the circumstances arising from its sphere of influence which may have a bearing on the contractual obligations of Advancis, particularly the operational results, time schedules and prices.
- (6) In the event that the customer should not duly furnish such cooperation and assistance, Advancis may – any more far-reaching statutory rights which may obtain notwithstanding – request changes to the time schedule and the remuneration. In particular, Advancis shall then be exempt from meeting the contractually agreed deadlines. Advancis may, applying the man-day rates which are in force at any given time, additionally invoice to the customer any down or waiting periods which are occasioned by cooperation and assistance which are not duly furnished by the same.
- (7) The customer shall be responsible for the provision, correctness and completeness of all the information, working documents and equipment which it is obliged to furnish. Advancis shall not be obliged to examine the correctness or completeness of the information which is furnished by the customer.

- (8) The customer shall bear the responsibility for due data security.

### **§ 5 Changes to services**

- (1) Each Contracting Party may request in writing from the other Contracting Party changes to the agreed scope of performance. Subsequent to the receipt of a request for changes, the recipient shall examine whether or not and, if so, on which terms and conditions, such changes can be implemented, advise the requesting party of its approval or refusal of the request in writing without delay and, if necessary, furnish reasons. Neither Contracting Party shall unreasonably refuse a request for changes from the other Contracting Party.
- (2) In the event that a request for change from the customer should necessitate a large-scale review, Advancis shall be entitled to invoice the customer for such review separately. Advancis shall apprise the customer accordingly in advance.
- (3) The contractual amendments which are necessary for a review of and/or a change (e.g. amendments to the remuneration and the time schedule) to the contractual terms and conditions and services shall be stipulated in writing.
- (4) For as long as the Contracting Parties fail to agree on a request for changes, Advancis shall continue performing its tasks in accordance with the existing agreement without the appropriate changes.

# **General Terms and Conditions of Business of Advancis Software & Services GmbH (Advancis)**

(Date: 05/2010)

## **§ 6 Remuneration**

- (1) The nature and amount of the remuneration shall be consequent upon the relevant quotation.
- (2) Given remuneration on a time and material basis, the working and travelling times which are incurred shall be invoiced in line with the service types and daily rates in force at any given time and the used parts shall be invoiced in line with the prices in force on the performance date.
- (3) Advancis shall be entitled to invoice surcharges of up to 25% for night work (08:00 p.m. - 07:00 a.m.). For Saturday working Advancis may invoice surcharges of up to 50 % and for Sunday and bank holiday working Advancis may invoice surcharges of up to 100 %.
- (4) A man-day shall encompass eight (8) hours' working time. Incomplete man-days shall be invoiced pro rata on the basis of half hours.
- (5) Insofar as nothing to the contrary is stipulated in the relevant quotation, travelling costs and expenses shall be invoiced separately to the amount which they are incurred in each case.
- (6) The prices shall be understood to be net plus the statutory sales tax which is in force at any given time.
- (7) The payment schedule shall be consequent upon the relevant quotation.
- (8) Invoices shall be payable net upon receipt. In the event of a payment failing to materialize the customer shall, at the latest, be in default fourteen days subsequent to the due

date of the request for payment and the receipt of the invoice.

## **§ 7 Material defects**

- (1) This § 7 shall apply exclusively to material defects pertaining to software licensing and the performance of work. This § 7 shall not apply to services; II. § 2 below shall apply to services.
- (2) Advancis shall guarantee the agreed quality. Such agreed quality shall be consequent upon the relevant quotation. Insofar as Advancis employees furnish guarantees, such guarantees shall only be valid in the event of their being confirmed in writing by the Executive Management of Advancis.
- (3) The customer shall, in a comprehensible fashion and in writing, document for Advancis any defects which may materialize and accordingly notify Advancis immediately subsequent to their discovery. A defect shall, in as much detail as possible, be notified in conjunction with particulars of the information and accompanying circumstances of which the customer is cognizant and which is relevant for the purpose of detecting and rectifying such defect. The customer shall, within reason, initiate those measures which facilitate the detection of a defect and its causes. The customer shall render a reasonable level of assistance to Advancis during the detection and rectification of a defect and, without delay, permit the same to examine

## **General Terms and Conditions of Business of Advancis Software & Services GmbH (Advancis)**

(Date: 05/2010)

- those documents which reveal further details of the circumstances surrounding the materialization of such defect.
- (4) In the case of a material defect Advancis may, as it sees fit, supply a new item or rectify such defect in the installed version; defect rectification shall also be deemed to constitute Advancis demonstrating to the customer reasonable possibilities of avoiding the effects of a defect. This shall also encompass telephone or written instructions to the customer.
- (5) In the event that it should transpire that a defect notified by the customer does not actually obtain or is not attributable to the software supplied or work performed by Advancis, Advancis shall be entitled to invoice to the customer the costs to which the analysis and miscellaneous processing tasks gave rise in line with the Advancis price list for the service in question which is in force at any given time.
- (6) Should Advancis fail to rectify a material defect within a reasonable period of time, which shall facilitate at least two rectification attempts, the customer shall be entitled to set Advancis a reasonable final additional period of time, which shall facilitate at least two rectification attempts. Should Advancis also be unsuccessful within this final additional period of time or should rectification or the replacement item be considered a failure on other grounds, the customer shall, as it sees fit, be entitled to reduce the remuneration or withdraw from the agreement.
- (7) Rectification shall not be deemed to constitute a definitive failure upon the second rectification attempt. It shall rather be the case that, during the additional period of time, the number of rectification attempts which are undertaken shall be at the discretion of Advancis.
- (8) The right of withdrawal and the entitlement to compensation in lieu of receiving the overall service shall only obtain in the case of major defects.
- (9) In the event of fraud and the assumption of a guarantee by Advancis, the prevailing statutory provisions governing material defects shall remain unaffected.
- (10) The guarantee period for all claims on the part of the customer arising from defects shall be one year and commence upon delivery or, in the case of acceptance, upon acceptance.
- § 8 Infringement of third-party proprietary rights**
- (1) In the event that a third party should assert an infringement of proprietary rights against the customer in consequence of the services provided by Advancis in connection with the relevant quotation, the customer shall apprise Advancis accordingly in writing without delay and, as far as possible, leave all contestation and settlement negotiations to Advancis or conduct the defence in accordance with instructions which are issued by Advancis. The customer shall grant Advancis all the authority which is

## General Terms and Conditions of Business of Advancis Software & Services GmbH (Advancis)

(Date: 05/2010)

- necessary for the purpose of initiating judicial or extra-judicial measures. The customer may not acknowledge the claims of the third party at issue without the written consent of Advancis or exercise any influence upon the contestation of such claims by Advancis in any other manner by means of actions which have not been agreed with Advancis.
- (2) The customer shall, to a reasonable extent, render assistance to Advancis during the contestation of the claims which have been asserted. In particular, the customer shall forward to Advancis all the requisite information pertaining to the deployment of the software and/or the documentation or the relevant operating results ("licence material").
  - (3) Insofar as third-party rights have been infringed Advancis may, as it sees fit, effect rectification by means of either (a) procuring for the customer a legally flawless possibility of utilizing the licence material, or (b) modifying the licence material which is in breach of third-party rights without or only with implications which are acceptable to the customer with the effect that third-party rights are no longer breached, or (c) replacing the licence material which is in breach of third-party rights without implications or only with implications which are acceptable to the customer with licence material whose contractual utilization does not infringe any third party rights.
  - (4) Provided that the customer has fulfilled its obligations pursuant to this

§ 8, Advancis shall indemnify the customer against all claims which have been established on a legally binding basis or claims arising from a settlement which has been concluded with the consent of Advancis.

- (5) Insofar as the customer modifies the licence material itself or arranges for such licence material to be modified by third parties, the claims pursuant to this § 8 shall not apply unless the customer evidences that any defects which may materialize are not attributable to this circumstance and that, in addition, this shall not impair analysis and rectification by Advancis.
- (6) § 7, Paragraph 10 shall apply *mutatis mutandis*.
- (7) More far-reaching claims on the part of the customer in consequence of a breach of third-party proprietary rights shall be precluded.

### § 9 Granting of rights

- (1) With regard to the operating results which are produced in connection with the quotation, Advancis shall grant the customer a non-exclusive, permanent right to utilize such operating results insofar as this arises from the purpose of the relevant quotation. Such utilization right shall not be transferable; with regard to software licensing, II. § 7 shall apply.
- (2) The customer shall only be entitled to duplicate the operating results which are produced in connection with the relevant quotation to the extent that this is necessary for the purpose of contractual utilization in connection with such quotation. Otherwise the

## **General Terms and Conditions of Business of Advancis Software & Services GmbH (Advancis)**

(Date: 05/2010)

- customer shall not be entitled to duplicate the operating results.
- (3) Advancis shall be free to dispose over its ideas, procedures, concepts, the expertise that it has acquired during the course of the project, its experiences and any other techniques which may materialize during the provision of the services.
- (4) These rights shall, on a conditional basis, be granted on the date upon which payment is rendered in full.

### **§ 10 Liability**

- (1) In all cases of contractual and non-contractual liability, Advancis shall render compensation solely in accordance with the following provisions.
- (2) The amount of liability for incidences of prejudice which, on a wilful or a grossly negligent basis, are occasioned by Advancis or one of its vicarious agents or statutory representatives shall be unlimited.
- (3) In all other cases, Advancis shall only be liable given a breach of a major contractual obligation in the event of such breach jeopardizing the contractual object, though invariably only to the amount of the typical, foreseeable prejudice.
- (4) The Contracting Parties shall assume that, in each individual case, the typical, foreseeable prejudice shall amount to a maximum of 40 % and, in total, not 100 % of the remuneration which is required to be rendered pursuant to the relevant quotation.

- (5) Liability in accordance with the Product Liability Act shall remain unaffected.
- (6) The customer shall be responsible for securing its data on a regular basis. In the event of a loss of data for which Advancis is responsible, Advancis shall only be liable for the expenditure which is necessary for data restoration purposes given due data security on the part of the customer.
- (7) Compensation claims of all kinds against Advancis, its statutory representatives, employees and vicarious agents shall be restricted to grossly negligent or wilful conduct.
- (8) The customer's compensation claims shall, in the event of liability being assumed on the grounds of wilful intent, lapse one year subsequent to the relevant breaches of obligation.

### **§ 11 Confidentiality and data protection**

- (1) The Contracting Parties shall keep secret the confidential information which is disclosed to them and take all adequate precautions to protect such information against unauthorized access unless this is precluded by any legal provisions or official instructions which may obtain. Confidential information shall constitute all information and documents of each of the Contracting Parties which are marked confidential or which shall be considered to be confidential given the prevailing circumstances, particularly information pertaining to operating procedures, business relations and

## **General Terms and Conditions of Business of Advancis Software & Services GmbH (Advancis)**

(Date: 05/2010)

- expertise. Confidential information shall also encompass the software and the operating results which Advancis produces in connection with the relevant quotation.
- (2) Confidential information from Advancis shall only be revealed to the customer's employees to the extent that such employees require such information for the purpose of performing their tasks. The customer's employees shall be apprised of their obligation to observe these General Terms and Conditions of Business and the provisions of the Copyright Act.
  - (3) The customer shall refrain from removing, altering or rendering unrecognizable the markings contained in the confidential information, such as copyright notices, labels and serial numbers, etc. The customer shall include these markings and notices, etc. in unaltered form in all the copies of the confidential information which it produces.
  - (4) The customer shall apprise Advancis in writing without delay of each and every unauthorized publication or utilization of the confidential information of which it becomes cognizant. The customer shall render a reasonable level of assistance to Advancis during the pursuit of any resulting claims.
  - (5) In addition, each Contracting Party shall keep secret and treat as confidential all the confidential information of the other Contracting Party of which it becomes cognizant.
  - (6) Such confidential information shall be exempted from the obligation to maintain secrecy pursuant to paragraphs 1-5 above
    - a) which was demonstrably known to the recipient upon the conclusion of the relevant agreement or subsequently becomes known by a third party without this breaching a confidentiality agreement, a statutory provision or an official instruction,
    - b) which was public knowledge upon the conclusion of the relevant agreement or subsequently becomes public knowledge without a breach of this secrecy agreement obtaining,
    - c) which must be disclosed in consequence of prevailing statutory obligations or at the instruction of a court of law or an authority,
    - d) which was independently elaborated by the other Contracting Party.
  - (7) Both Contracting Parties shall undertake to observe the prevailing statutory provisions governing data protection and oblige their employees to observe data secrecy pursuant to § 5 Federal Data Protection Act.
- ### **§ 12 Concluding provisions**
- (1) The Contracting Parties shall not be entitled to assign their rights and obligations to any third parties without the prior written consent of the other Contracting Party.
  - (2) The customer may only offset against claims on the part of Advancis claims which are undisputed or which have been established on a legally binding basis.

# General Terms and Conditions of Business of Advancis Software & Services GmbH (Advancis)

(Date: 05/2010)

- (3) A right of retention on the part of the customer shall be precluded unless a counterclaim of the customer stems from the same contractual relationship and is undisputed, acknowledged in writing or established on a legally binding basis.
- (4) No verbal ancillary agreements shall obtain. This agreement may only be amended, cancelled or supplemented in writing. This shall also apply to any amendment to this written form requirement.
- (5) The laws of the Federal Republic of Germany shall apply to the exclusion of the UN Convention on the International Sale of Goods (CISG).
- (6) The sole place of jurisdiction for all possible legal disputes in connection with this agreement shall be the place of domicile of Advancis.
- (7) Insofar as the agreement or these General Terms and Conditions of Business should contain loopholes, for the purpose of eliminating such loopholes those legally valid provisions shall be deemed agreed which the Contracting Parties would have agreed pursuant to the economic objective of the agreement and these General Terms and Conditions of Business had they realized that such loopholes obtained.

## II. Special provisions

The special provisions governing software licensing (in 1.), services (in 2.) and the performance of work (in 3.) are regulated in this section. The applicability of the special provisions

1.-3. shall be predicated upon the characteristic feature of the services which are provided in connection with a quotation.

### 1. Software licensing

#### § 1 Area of validity

- (1) The provisions which are contained in this Section II. 1. shall apply to software licensing. The software which Advancis licenses to the customer shall be specified in the relevant quotation ("Software").
- (2) The provisions which are contained in this Section II. 1. shall not apply insofar as, besides licensing software, Advancis provides additional services, such as installation, modification, software installation, introduction support or training. Such services shall constitute the subject matter of the relevant separate provisions.

#### § 2 Supply

- (1) Advancis shall license the software to the customer in object code. The software's source code shall not constitute the subject matter of an agreement.  
The object code shall, as Advancis sees fit, be supplied to the customer on either a data carrier or by means of the transmission of the requisite information for downloading by the customer.
- (2) As documentation Advancis shall, in electronic form, provide a manual, a system description and a description of the interface-specific functional scope (taken together):

# General Terms and Conditions of Business of Advancis Software & Services GmbH (Advancis)

(Date: 05/2010)

“Documentation”). Such documentation shall be provided in German or English.

## § 3 Services on the part of the customer

The system environment which the customer shall be required to furnish shall be consequent upon the relevant quotation.

## § 4 Material defects

- (1) Subsequent to the delivery of the software to the customer, the customer shall examine the same and the documentation in order to ensure that they are complete and check for the existence of any defects and apprise Advancis in writing without delay of any complaints which it may have. The customer shall, immediately subsequent to the discovery of the same, submit written notification of any defects which cannot be detected during such inspection pursuant to this paragraph 1.
- (2) In the event that the customer should breach its inspection and notification obligations stipulated in paragraph 1 above, with regard to such material defects which would have been discernible given a due inspection, the customer shall no longer be entitled to the rights for defects that are regulated in Section I. § 7.

## § 5 Granting of rights

- (1) Advancis shall grant the customer the right to utilize the software for its own internal operational purposes at the

installation location cited in the commission confirmation.

- (2) The customer shall be entitled to produce a reasonable number of backup copies and standard data backups.
- (3) Under no circumstances shall the customer be entitled to rent out the acquired software or sub-license the same in any other manner, publicly reproduce the software or render the same publicly accessible on a wire-bound or a wireless basis or furnish any third parties with the software gratuitously or for a consideration. In addition, the customer shall, in particular, not be entitled to issue any sub-licences.

## § 6 Decompilation/ reverse engineering

- (1) The decompilation of the licensed program code into other code forms and any other forms of reverse engineering of the various software production stages shall only be admissible pursuant to §§ 69 d, e Copyright Act.
- (2) Insofar as the customer requires information which is necessary for the purpose of establishing the inter-operability of the software with programs which have been created independently of the same the customer shall request the relevant information from Advancis in writing in advance. Advancis may request a reasonable remuneration for the disclosure of such information.

# General Terms and Conditions of Business of Advancis Software & Services GmbH (Advancis)

(Date: 05/2010)

## § 7 Surrender to third parties

- (1) The customer shall be entitled to sell the software to a third party on a permanent basis on condition that the third party acquiring the software declares *vis-à-vis* Advancis in writing in advance that it has no objections to these General Terms and Conditions of Business remaining in force. In the event of a sale the customer shall undertake (a) to delete the software installed on its premises entirely, (b) to surrender to the third party acquiring the software all the copies of the material accompanying the software or delete the non-surrendered copies and (c) to apprise Advancis in writing of the name and full address of the third party acquiring the software prior to the sale of the same.
- (2) Upon a sale, the right to utilize the software granted to the customer pursuant to I. § 9 in conjunction with II. 1. § 5 shall expire.

## 2. Services

### § 1 Qualitative performance impairment

- (1) Should a service not be provided on a contractual basis or be provided on a defective basis and should Advancis be responsible for this situation, Advancis shall, without any additional costs arising for the customer, undertake to provide such service on a contractual basis within a reasonable period of time. The prerequisite for this shall constitute written notification from the customer

that shall be submitted without delay, at the latest within five (5) working days subsequent to the customer becoming cognizant of such non-contractual or defective service.

- (2) In the event of the contractual provision of the service being unsuccessful to a large extent for reasons for which Advancis is responsible, including within a reasonable additional period of time to be set by the customer, the customer shall be entitled to terminate the materialized agreement without notice in relation to the service in question. In this case Advancis shall be entitled to the remuneration for the services which are provided until such time as the termination becomes effective.

### § 2 Termination

- (1) In addition to the right to termination on cogent grounds, each Contracting Party may, in each case on a notice of one month to the end of a calendar month, terminate the agreement in relation to the service in question.
- (2) Advancis shall, subsequent to termination pursuant to paragraph 1, cease all operations pertaining to the fulfilment of the affected scope of performance without delay or in accordance with a timescale which shall be agreed with the customer. In the event of the customer serving notice of termination, Advancis shall, given fulfilment of the agreement pursuant to the relevant quotation, be entitled to request the full remuneration; however, Advancis

# General Terms and Conditions of Business of Advancis Software & Services GmbH (Advancis)

(Date: 05/2010)

must permit the offsetting of expenditure that it has saved in consequence of the termination of the agreement underlying the quotation or the earnings which it generates by deploying its employees elsewhere or that which it wilfully refrains from generating.

- (3) Notice of termination must be served in writing.

## 3. Performance of work

### § 1 Acceptance

- (1) Advancis shall apprise the customer of the operational readiness of the work and hand over the same to the customer for acceptance ("provision for acceptance").
- (2) The Contracting Parties shall, by the provision for acceptance date, elaborate acceptance criteria on the basis of which the client shall perform the acceptance inspection.
- (3) The customer shall perform the acceptance inspection subsequent to receiving the notification of operational readiness. Insofar as nothing to the contrary is agreed a period of time of ten (10) working days shall be available to the customer for the purpose of performing the acceptance inspection. Advancis shall be entitled to participate in such acceptance inspection.
- (4) The customer shall declare acceptance in writing within five (5) working days of the acceptance inspection unless defects preventing acceptance obtain. Minor defects

shall not entitle the customer to refuse acceptance. The obligation on the part of Advancis to rectify defects shall remain unaffected.

- (5) In the event of the customer failing to declare acceptance within five (5) working days subsequent to the acceptance inspection and in the event of the customer not having notified Advancis of any defects preventing acceptance, the work shall be deemed accepted upon the expiry of this period of time. Advancis shall apprise the customer of this in its operational readiness notification.
- (6) Utilization of the work over a period of time in excess of two (2) weeks shall also be deemed to constitute acceptance.
- (7) In the event that defects should be established during the performance of the acceptance inspection by the customer, the customer shall apprise Advancis of such defects in writing without delay. The customer shall furnish Advancis with a precise description of the materialized defects and provide Advancis with all the information which is necessary for the purpose of rectifying such defects. Advancis shall rectify the defects within a reasonable period of time.

### § 2 Granting of rights

Insofar as works which can be registered materialize during the performance of services by Advancis, Advancis shall reserve the right to register such works accordingly in its own name and for its own account. In this case the customer shall receive a

## **General Terms and Conditions of Business of Advancis Software & Services GmbH (Advancis)**

(Date: 05/2010)

charge-exempt licence to utilize such works to the extent which is required for the purpose of the contractual utilization of the operating results which Advancis is required to produce.