

GENERAL TERMS AND CONDITIONS for “Standard Software, Maintenance and Services”

of

RAIFFEISEN INFORMATIK CONSULTING GMBH

Lilienbrunnngasse 7-9, 1020 Vienna

Version of January 2017

1 Applicability of these GTC

1.1 These General Terms and Conditions for Standard Software, Maintenance and Services (“GTC SSW”) of Raiffeisen Informatik Consulting GmbH (hereinafter referred to as “RI-C”) regulate the business relationships and legal transactions between RI-C and its customers (hereinafter referred to as “Customer(s)”) and together referred to as the “Parties”).

1.2 The GTC SSW of RI-C shall constitute an integral part of all offers of RI-C and of all contracts concluded with RI-C. These GTC SSW as amended from time to time shall also apply to all future transactions between RI-C and the Customer. General terms and conditions of the Customer shall not apply, even if RI-C does not expressly object to the same.

1.3 The GTC SSW are accessible online at www.ri-c.at/agb and may be downloaded and printed.

2 Conclusion of contract; Requirement of written form

2.1 The Customer acknowledges that any communication before and during the process of concluding a contract shall be non-binding and contain no promises of RI-C.

2.2 All offers of RI-C shall be non-binding and subject to change. A contract shall be deemed concluded only if and when RI-C acknowledges the Customer’s written purchase order in the form of an acknowledgment of order and has sent the same to the Customer, provided that the Customer has not objected to the acknowledgment of order in writing within ten (10) working days of the date of the acknowledgment of order and included a

statement of the specific reasons for such objection. Furthermore, the Customer will in any case be deemed to have accepted the acknowledgment of order including these General Terms and Conditions of RI-C as the exclusive content of the contract by payment, use or taking delivery of RI-C’s information letter and/or data carrier, keys download link (provision in a retrievable format) or the like.

2.3 Any terms and conditions of the Customer (e.g. in the purchase order or in terms and conditions of purchase) that deviate from the offer, the acknowledgment of order or the GTC SSW of RI-C shall not become part of the contract, unless they are expressly acknowledged by RI-C in writing.

2.4 The contract as well as subsequent modifications of or amendments to the same shall be made in writing to be effective. This shall also apply to a waiver of the requirement of written form. RI-C’s acknowledgment of order and/or any contract that may have been concluded shall exhaustively contain and regulate all agreements between the Parties on the subject matter of the contract. Written or oral side agreements have not been made or will become devoid of purpose by this contract.

2.5 All declarations of intention or statements of the Customer on the exercise of rights to alter a legal relationship, including but not limited to terminations, reminders and the setting of deadlines, shall be made in writing to be effective.

3 Subject matter of contracts between RI-C and the Customer

3.1 RI-C enters into various contracts with

software manufacturers, such as, in particular, licence and maintenance agreements as well as partner agreements. The agreements entered into by RI-C **may differ depending on the manufacturer and the product**. Since those agreements between RI-C and the software manufacturers constitute the basis for the contracts concluded between RI-C and the Customer, the subject matter as well as the rights and duties of the Parties vary accordingly. **The relevant subject matter of the contract between RI-C and the Customer will be defined in the offer**; it may vary depending on the manufacturer and the product.

3.2 RI-C as the contract holder for the Raiffeisen sector

Depending on the manufacturer and the product **the licence agreements, subscription, service and maintenance agreements entered into by and between RI-C and software manufacturers include RI-C's right as the licensee to let entities of the Raiffeisen Group** which are included in the "sector definition" of the relevant software manufacturer **participate in the relevant contract**.

If the Customer is included in the relevant "sector definition", RI-C shall grant the Customer **a licence or subscription** for the standard software products of third-party manufacturers stated in the offer and/or maintenance for that standard software **based on the relevant agreement entered into by and between RI-C and the manufacturer**.

The rights and obligations of the manufacturer (e.g. rights to use the software, audit obligations and licence transfer) under the agreement entered into by and between RI-C and the manufacturer shall in any case be observed by the Customer.

The licence or subscription the Customer is granted by RI-C **depends on the valid status of inclusion of the Customer and its affiliates in the relevant "sector definition" and on compliance by the Customer and its affiliates with the provisions of the contract**

with RI-C as well as with the provisions of the licence agreement entered into by and between RI-C and the manufacturer.

The Customer acknowledges and agrees that termination, cancellation or dissolution of a licence or subscription of the Customer by the manufacturer vis-à-vis RI-C will also be effective vis-à-vis the Customer itself.

3.3 The Customer agrees to immediately notify RI-C in writing of any significant change in control regarding its own business entity and every business entity that participates in the contract between the Customer and RI-C (to check whether a change in control might have an effect on that entity's inclusion in the Raiffeisen sector).

3.4 RI-C as a partner of the technology manufacturers

Furthermore, RI-C concludes partner agreements with technology manufacturers, which entitle RI-C to negotiate licences or subscriptions, maintenance and services for business entities.

The subject matter of a contract between the Customer and RI-C that is based on such a partner agreement shall be **negotiation of licences, subscriptions and/or maintenance or services for the technology manufacturer's standard software products described in the offer**.

Upon conclusion of the contract with RI-C the Customer acquires a **right to be provided with the relevant standard software licence, subscription and/or maintenance or services** by the manufacturer as per RI-C's acknowledgment of order and the specifications contained in the subsequent information letter from RI-C.

The parties to the standard software licence and maintenance agreement, which regulates in particular the licence definitions and the type and scope of the rights to use the software that are being granted and that are protected by copyright, **shall be the Customer as the licensee and the manufacturer as the licensor or provider of maintenance or**

services.

3.5 Independence of RI-C's capacity as the contract holder for the sector or partner of the technology provider

Therefore, in relation to the Customer the relevant manufacturer shall be exclusively entitled to all rights to the software, including but not limited to copyright, rights to inventions and technical property rights.

Licences or subscriptions shall generally not be used for hosting purposes. In the case that the Customer or its affiliates provide IT services, other services or the like to customers outside the Raiffeisen sector definition, the Customer agrees to notify RI-C thereof and to obtain the required licences from the manufacturer.

Functionality and quality of the software product and the rights to use the standard software and their duration are regulated by the standard software licence terms of the relevant manufacturer for the relevant software product, applicability of which is expressly agreed between the Customer and RI-C.

As a matter of principle, the terms and conditions of the relevant manufacturer are relevant to the content and the subject matter of maintenance, duration, (automatic) renewal and the options to terminate the maintenance agreement, applicability of which is expressly agreed between the Customer and RI-C.

Unless otherwise regulated in the manufacturer's terms and conditions, the maintenance agreement may be terminated by giving 90 days' written notice as of the end of the relevant maintenance period; otherwise the agreement shall be renewed automatically. Renewal of the contract will automatically trigger invoicing for the next maintenance period.

3.6 RI-C shall be entitled to use third parties for performance of the contract.

4 Duties of the Customer

4.1 The Customer expressly confirms that it has thoroughly informed itself about the standard software products that are the subject matter of the contract prior to conclusion of the contract

with RI-C. The Customer in particular confirms that it has informed itself about the licence and maintenance terms, including type and duration of the standard software licence, the major functions and features of the relevant software product and the required compatibility, if any, of those standard software products with other software products of the Customer. The Customer alone shall bear the risk that the software products that are the subject matter of the contract meet its requirements in terms of features and compatibility and type and duration of the standard software licence, and are in compliance with the manufacturer's licensing regulations with respect to use in terms of the type and the number of the licences.

4.2 The Customer acknowledges that RI-C will use the data and information which the Customer provides in connection with the enquiry in its offer and that RI-C will not check the data and information received.

4.3 The Customer agrees that it shall be exclusively responsible for binding its affiliates to the terms of the contract with RI-C and to the software, licence and maintenance terms and conditions of the relevant manufacturer and shall ensure compliance with the same, in particular proper licensing of the software products which are the subject matter of the contract for all systems, including by its affiliates.

4.4 The Customer shall be liable for breaches of its duties, in particular in connection with correct use and/or licensing of the standard software by the Customer, and shall indemnify and hold harmless RI-C from and against any claims of the manufacturer in this regard.

4.5 Documentation duties of the Customer and audit right of the manufacturer:

The Customer agrees to carefully document procurement, application and use of the standard software products and to retain those records. The Customer shall grant RI-C or the manufacturer or third parties appointed by the same the right to verify whether application and use of the standard software by the Customer is in compliance with the applicable licence

definitions and the licence terms and terms of use. In the case of such an audit the Customer agrees to comply with the relevant manufacturer's regulations regarding such audits.

4.6 With respect to the standard software products the Customer assumes a duty to inspect the same and to notify defects as defined in Section 377 of the Austrian Business Code [*Unternehmensgesetzbuch/UGB*].

5 Prices; Payment terms; Entitlement to rights subject to full payment

5.1 The prices stated in RI-C's offer and/or acknowledgment of order are stated in euros net of statutory VAT and other taxes, fees and charges, if any.

5.2 All charges, fees and taxes (including but not limited to VAT) shall be invoiced on the statutory basis applicable from time to time. If the tax authorities subsequently impose additional taxes or charges, they shall be borne by the Customer.

5.3 In the case of deliveries the prices shall be ex works RI-C (EXW).

5.4 The cost of services that are not expressly included in RI-C's offer or acknowledgment of order will be charged separately.

5.5 In the case of continuous obligations, such as maintenance agreements, the terms and conditions of the relevant manufacturer for the relevant software product shall apply, applicability of which is expressly agreed between the Customer and RI-C. Unless otherwise agreed in the manufacturer's terms and conditions the agreed prices shall remain unchanged during the first contract year; thereafter they shall be subject to indexation adjustments according to the 2005 Consumer Price Index published by the government agency "Statistics Austria" or the index replacing the same compared to the index figure published for the month in which the contract was concluded. Changes shall not be taken into account until they exceed 5% of that index figure or subsequently 5% of the index figure that triggered the increase. The new prices shall apply from the first day of the month

following publication of the index adjustment. The contractor reserves the right to claim indexation adjustments with retroactive effect.

5.6 If payments arising due to the manufacturer's terms and conditions or this stable-value clause are not effected or claimed for a prolonged period of time, this shall not be deemed a waiver on the part of RI-C of the claims resulting from the stable-value clause. No acceptance of payments of the Customer shall be deemed a waiver of the claim to the increase nor an approval of calculation of the increase.

5.7 Any delivery or service periods shall be reasonably extended for RI-C in the case of delays caused by force majeure or other circumstances for which the contractor is not responsible or unexpected events, such as business disruptions, strike, non-performance by a supplier, sovereign acts, amendments to and/or modifications of contracts or default of the Customer.

5.8 RI-C shall issue invoices for granting the right to use the software or acting as agent of software licences, maintenance and services of the relevant manufacturer.

In the case RI-C acts as agent it will pass on the relevant licence and maintenance fees to the manufacturer upon receipt from the Customer.

5.9 Invoices will, in principle, be issued after RI-C has sent the acknowledgment of order. Additional invoicing, e.g. in the case of cloud models or continuous obligations such as maintenance shall be subject to the manufacturer's terms and conditions applicable from time to time and to the specifications in RI-C's acknowledgment of order.

5.10 Invoices shall be due for payment upon receipt without deductions and free of charges. In the case of late payment by the Customer late payment interest will be charged from the due date as defined in Section 456 *UGB* as amended from time to time.

5.11 RI-C may issue hard-copy or electronic invoices at its choice. The Customer expressly agrees to be sent electronic invoices. Invoices will be sent to the Customer's invoice or email address stated in the acknowledgment of order.

5.12 The Customer is neither entitled to offset any claim it may have vis-à-vis RI-C against a claim of RI-C nor to assign a claim to third parties or otherwise pledge the same (no setoff and no assignment).

5.13 The Customer shall have no right to withhold payments because of claims it may have vis-à-vis RI-C.

5.14 RI-C is entitled to perform contracts exclusively against advance payment or provision of sufficient collateral if there are reasons that suggest that fulfilment of a payment claim of RI-C vis-à-vis the Customer is at risk.

5.15 Granting of the right to use the licence and the Customer's right to be provided with the relevant standard software licence and maintenance by the manufacturer in accordance with the information contained in RI-C's acknowledgment of order shall be subject to full payment of the price. Until full payment of the agreed price (plus interest and costs) RI-C may revoke the right granted to the Customer to use the software and/or the right to be provided with the relevant standard software licence, maintenance and services by the manufacturer at any time and with immediate effect.

5.16 Regulation regarding Section 6(1) of the Austrian Value-Added Tax Act [Umsatzsteuergesetz/USStG]

In the case that the Parties assume that VAT exemption as defined in Section 6(1) No. 28 USStG applies, they confirm that they know that application of the tax exemption provision of Section 6(1) No. 28 USStG depends on certain prerequisites to be fulfilled by both the contractor and the Customer and agree as follows:

The Customer hereby represents that according to the legal regime applicable at the time of conclusion of the contract (including interpretation of the same) it fulfils the prerequisites for application of the tax exemption provision with respect to the other services provided to it by the contractor.

If the representation made by the Customer turns out to be untrue, then the contractor shall

be entitled to charge statutory VAT in addition to the agreed prices.

If the representation made by the Customer ceases to be true during the term of the contracts for a reason other than a change in tax law (not only statutory changes but also changes in application and interpretation), then the contractor shall be entitled to charge statutory VAT in addition to the agreed prices.

If during the term of the contracts a change in tax law occurs (not only statutory changes but also changes in application and interpretation, including those with retroactive effect), the contractor shall be entitled to charge statutory VAT in addition to the agreed prices. However, in such a case the Customer shall be entitled to terminate the contractual relationship early (termination for cause).

However, the Parties represent to each other that they will endeavour within the legal framework to establish a condition that will allow continued application of the tax exemption provision of Section 6(1) No. 28 USStG (or a successor provision, if any).

6 Claiming the Customer's rights to standard software, maintenance and services of the manufacturer

The Customer expressly agrees that it will assert rights or claims it may have in connection with the standard software, maintenance or services, including but not limited to warranty and/or liability (e.g. for a violation of third-party intellectual property rights) exclusively vis-à-vis the manufacturer concerned.

The Parties expressly exclude by mutual consent that the Customer will be granted any rights beyond those promised by the relevant manufacturer of the software product concerned or by the provider of maintenance or services in their standard software licence and maintenance terms.

7 Duties of RI-C

7.1 RI-C shall support the Customer in asserting its claims vis-à-vis the manufacturer as defined in Clause 6 in the best possible way to the extent

possible.

- 7.2** In connection with granting the right to use the software or its acting as agent for the standard software licence, maintenance and/or services RI-C shall provide administrative services (enquiry, preparation of the offer, order process, shipment where necessary, invoicing). RI-C warrants that the administrative services will be provided with due care.
- 7.3** The warranty period is six (6) months and shall commence upon provision of the service.
- 7.4** In the case of a defect that can be repaired the Customer may first demand improvement only. If an error is not eliminated within a period that is reasonable in the given circumstances or if repair were to cause unreasonably high costs and/or efforts, the Customer shall be entitled to a price reduction and, unless the defect is a minor one, to cancellation of the contract. If the defect concerns a service that is severable, cancellation may only be claimed with respect to the defective part of the service.
- 7.5** RI-C's liability shall in any case be limited as follows: RI-C shall be liable if wilful intent or gross negligence on its part can be proved; this does not apply to personal injuries. Any additional liability as well as liability for consequential damage or indirect damage, lost profit, lost earnings, wasted expenditure, intangible damage, consequential damage caused by defects, damage arising from third-party claims, lost data or for damage caused by force majeure or strike shall be excluded in any case.
- 7.6** Any services provided by RI-C in addition to the administrative services described in Clause 7.2 shall be voluntary and free of charge; RI-C shall be under no obligation to provide such services and the Customer shall have no right to be provided with those services by RI-C.

The Customer acknowledges that RI-C assumes no warranty or other liability for such services.

8 Data protection; Secrecy

- 8.1** The Parties agree to treat the mutually exchanged information and the contents of the

contract ("Confidential Information") as strictly confidential. The Parties agree to keep Confidential Information secret, not to make it accessible to any third parties (including within the Raiffeisen Group), not to publish the same and to only use it for the purpose of the contract. Any release from the above secrecy agreement shall require express written approval from the Customer and all other parties concerned or in cases where mandatory statutory provisions override compliance with the obligation to maintain secrecy.

- 8.2** The obligation to maintain secrecy shall survive termination of the contract.
- 8.3** Notwithstanding the above provision the Customer expressly agrees that RI-C is entitled to disclose Confidential Information to third parties to the extent this is necessary for performance of the contract (for example transmission of Customer data to the manufacturer).
- 8.4** The Parties undertake to impose an obligation to maintain secrecy on their staff and other agents [*Erfüllungsgehilfen* as defined by Section 1313a of the Austrian Civil Code [*ABGB*]].
- 8.5** The Parties agree to comply with the applicable data protection law as amended from time to time (currently the Austrian Data Protection Act [*Datenschutzgesetz/DSG*] 2000).

RI-C as a service provider as defined in the *DSG 2000* undertakes to sufficiently warrant lawful and secure use of data and to use the data exclusively in connection with the contracts concluded with the Customer and to observe data secrecy as defined in Section 15 *DSG 2000* and to put its staff under an obligation to observe the same.

- 8.6** The Customer as a controller as defined in the *DSG 2000* warrants that the statutory prerequisites for use of personal data of the controller by RI-C for performance of the contract are fulfilled, including transmission of data to the software manufacturer.

The Customer shall indemnify and hold harmless RI-C in this respect.

**9 Use of data for marketing purposes:
Consent to receive advertising emails**

9.1 RI-C assumes that the Customer is interested in up-to-date information on standard software and related services. The Customer agrees to receive a reasonable amount of information on standard software and related services from RI-C via email. In this connection the Customer's data, including its name and email address, shall exclusively remain with RI-C. The Customer may revoke this consent at any time by letter or email. In every information email RI-C will provide the Customer with the possibility to decline receipt of further messages.

10 Choice of law / Place of jurisdiction

10.1 The contract concluded between the Parties shall be subject to Austrian law except for the conflict of laws rules and the provisions of UN Sales Law.

10.2 The court in Vienna, Innere Stadt [First District] having jurisdiction over the subject matter shall have exclusive jurisdiction over disputes arising out of or in connection with contracts concluded between the Parties.

11 Final provisions

11.1 For a period of twelve (12) months from conclusion of the contract the Customer agrees to refrain from enticing away or employing, including via third parties, staff of RI-C who contributed to performance of a contract concluded between the Parties.

11.2 Any assignment of rights or transfer of duties under the contract by the Customer shall be subject to the terms and conditions of the relevant manufacturer and shall require written approval from RI-C and/or the manufacturer.

11.3 If any provisions of these GTC SSW are or become ineffective in whole or in part, the validity of the other provisions shall not be affected. The Parties shall cooperate as partners to find a regulation which comes as close as possible to the ineffective provisions; the same shall apply to gaps in these GTC SSW, if any.

11.4 Modifications of or amendments to provisions of the contract shall be made in writing; this shall

include abolishment of this requirement of written form. No side agreements exist.

11.5 The GTC SSW shall apply as amended on the date of RI-C's acknowledgment of order.