

# GENERAL TERMS AND CONDITIONS

## of RAIFFEISEN INFORMATIK CONSULTING GMBH

as of 1<sup>st</sup> March 2019

### 1. **Applicability of the General Terms and Conditions**

- 1.1 The General Terms and Conditions (GTC) of Raiffeisen Informatik Consulting GmbH (RI-C) apply to all legal transactions concluded with Customers (jointly referred to as Contractual Parties).
- 1.2 All offers, deliveries and services are provided solely on the basis of the GTC of RI-C; any conflicting general terms and conditions of the Customer are not applicable unless RI-C expressly consents to such in writing. These GTC, as amended, remain applicable to all future business between RI-C and the Customer.
- 1.3 The GTC are available for download and printing online under [www.ri-c.at/agb](http://www.ri-c.at/agb).

### 2. **Ordering Process**

- 2.1 All RI-C offers are non-binding. An agreement is deemed concluded when RI-C confirms the order of the Customer in writing. Furthermore, an agreement is deemed to come into effect upon payment or acceptance of the delivery and/or deliverables, or through a download by the Customer.
- 2.2 Agreements and amendments of such may only be entered in a legally valid form when such are concluded in writing. The offer and the order confirmation by RI-C are the complete agreement between the Contractual Parties regarding the respective subject matter of the agreement. No subsidiary agreements hereto have been concluded.
- 2.3 RI-C is entitled to employ third parties in the

context of contractual performance.

### 3. **RI-C as Contract Holder for the Raiffeisen Group respectively as Partner of Technology Vendors**

- 3.1 RI-C concludes various procurement and/or partnership contracts with technology vendors. Since such contracts form the foundation for agreements concluded by and between the Contractual Parties the contractual provisions of these agreements (such as terms of use, audit obligations, affiliate definition) may correspondingly vary depending on the product and/or service.
- 3.2 RI-C as Contract Holder and Licensee for the Raiffeisen Group: Procurement contracts concluded by RI-C grant the companies of the Raiffeisen Group fulfilling the respective affiliate definition the right to participate in the procurement contract and/or RI-C the right to transfer rights of use to the companies pursuant to the affiliate definition.
- 3.3 RI-C as Partner of Technology Vendors: RI-C enters into partnership contracts with technology vendors and acts as an intermediary with the technology vendor for the purchase of products and/or services by the Customer. The Customer becomes the direct licensee with the technology vendor.
- 3.4 The prerequisite for the Customer to participate in the procurement contracts of RI-C is that the Customer and/or any companies affiliated with them have the appropriate affiliate status. The Customer undertakes (i) to verify prior to contract conclusion whether they and/or any

companies affiliated with them are covered by the respective affiliate definition, and (ii) to notify RI-C immediately in writing by email directed to info@ri-c.at of any changes in the ownership structure. The Customer bears the sole risk related to the loss of their affiliate status and/or affiliate status of any companies affiliated to them, and is to indemnify and hold RI-C harmless in relation thereto.

- 3.5 The Customer acknowledges that termination of a procurement contract between RI-C and the technology vendor may result in termination of a respective agreement concluded by and between the Contractual Parties. RI-C assumes no liability in this context.

#### 4. Intellectual Property

- 4.1 The Customer agrees and acknowledges that all rights directed at the protection of intellectual property, and in particular copyrights, related property rights and industrial property rights are held by the technology vendors and their licensors. The Customer only acquires the right of use as set forth in item 4.2.
- 4.2 Unless otherwise expressly agreed, the Customer is granted a non-exclusive and non-transferable right of use to products and/or services for their internal business purposes (except in the context of a transfer to their affiliated companies as set forth in the affiliate definition for their respective internal business purpose).

#### 5. Terms and Conditions of the Technology Vendor

- 5.1 The respective terms and conditions of the technology vendor for the products and/or services form an integral part of the agreement concluded by and between the

Contractual Parties. The Customer undertakes to comply with the terms and conditions of the technology vendor, in particular with license conditions and terms of use. Should the technology vendor raise any claims against RI-C the Customer is to indemnify and hold RI-C harmless in this context.

- 5.2 The terms and conditions of the technology vendor are decisive for the functionality and nature of the products and/or services. Regarding the term and the termination of continuing obligations (such as maintenance services, subscriptions) the respective terms and conditions of the technology vendors are also deemed applicable in such context, unless otherwise expressly agreed by the Contractual Parties.

#### 6. Customer's Obligations

- 6.1 The Customer confirms to have thoroughly acquainted themselves with the products and/or services prior to contract conclusion, and in particular regarding functionality, nature, compatibility, licensing model and audit obligations. The Customer bears the sole risk for the products and/or services having the desired functionalities and compatibility.
- 6.2 The Customer undertakes to duly document the purchase and use of the products and/or services in compliance with the respective requirements of the technology vendor and to store such documentation for a minimum period of three (3) years. The Customer entitles RI-C, the technology vendor and any third parties appointed by such to inspect whether the use of the products and/or services by the Customer is compliant with the terms and conditions of the technology vendor.

## 7. Pricing and Terms of Payment

- 7.1 The agreed prices are in Euros plus any possible delivery costs, legally prescribed value added taxes as well as any other taxes, fees and duties.
- 7.2 Should the authorities stipulate additional taxes, fees or duties at a later point, such are to be borne by the Customer.
- 7.3 Unless otherwise regulated by the terms and conditions of the technology vendor, the following indexation clause applies to the continuing obligations (such as maintenance, subscription): Starting with the second contractual year the prices will be adjusted in accordance with the Consumer Price Index 2005 or any other index substituting such which is announced by the Statistics Austria, Federal Institution under Public Law, compared with the index value announced for the month of conclusion of contract. The new prices are deemed applicable from the first day of the month following the announcement of index change. RI-C reserves the right to retroactively assert the index-linked adjustment. Acceptance of payments is not deemed a waiver to claiming of the entitlement to price increase.
- 7.4 Billing is normally performed on delivery and/or provision of deliverables, in the case of continuing obligations (such as maintenance, subscription) however pursuant to the terms and conditions of the technology vendor and/or before the commencement of performance.
- 7.5 Invoices are deemed due within twenty (20) days of receipt with no deductions and free of charges. Should the Customer be in default with their payment, then default interest will be charged pursuant to section 456 of the Business Enterprise Code starting with the day such became overdue.
- 7.6 RI-C issues the invoices on paper or

electronically, at their own discretion. The Customer consents to receiving electronic invoices.

- 7.7 The Customer is not entitled to set off any claims they may have against RI-C against any claims of RI-C, nor to transfer such to third parties and/or pledge such (ban on offsetting and transfer).
- 7.8 The Customer has no right of retention regarding any receivables or claims RI-C is deemed eligible to.
- 7.9 RI-C is entitled to render deliveries and/or deliverables only against prepayment or sufficient collateral when reasons apply which make satisfaction of a RI-C payment claim by the Customer appear at risk.
- 7.10 The products and/or services remain property of RI-C until payment in full has been effected by the Customer.
- 7.11 RI-C may cease to perform under an agreement, and/or multiple agreements interlinked regarding the timeframe and subject matter, provided that and as long as the Customer is in default with a payment or there are concrete indications of impending insolvency. In such case RI-C may demand payment concurrent with the delivery and/or provision of deliverables.

## 8. Article 6, Section 1, Item 28 of the Value Added Tax Act (§ 6 Abs 1 Z 28 UstG)

- 8.1 Provided the Contractual Parties assume applicability of the VAT exemption pursuant to art 6, section 1, Item 28 of the Value Added Tax Act, the Contractual Parties confirm their awareness that the applicability of this provision is subject to certain prerequisites to be satisfied both by RI-C and the Customer.
- 8.2 The Customer declares with the respective conclusion of contract to satisfy the prerequisites for tax exemption regarding

any other deliverables provided to them by RI-C under the legal regulations (and their interpretation) valid at the time of conclusion of contract. Should the declaration made by the Customer prove to be incorrect then RI-C is deemed entitled to charge the legally applicable value added taxes in addition to the agreed remuneration.

- 8.3 Should the declaration made by the Customer prove to be incorrect for any another reason than fiscal law amendments (not only amendments of legal stipulations but also changes in applicability and interpretation) during the term of the contracts, then RI-C is to entitled to charge any applicable value added taxes in addition to the agreed remuneration.
- 8.4 Should any fiscal law amendments take place during the term of the contracts (not only amendments of legal stipulations but also changes with retroactive effect in applicability and interpretation), then RI-C is entitled to charge any applicable value added taxes in addition to the agreed remuneration.
- 8.5 The Contractual Parties however reciprocally assert herewith that they will make every legally permissible effort to restore a situation in which the tax exemption regulations of art 6, section 1, item 28 of the Value Added Tax (or any succeeding stipulations) remain applicable.

## 9. Warranty and Liability

- 9.1 RI-C warrants and is deemed liable for damages only to the extent of their warranty and indemnification claims against the technology vendor and/or distribution partner enforceable on the basis of their Delivery and Licensing Terms and Conditions as well as pursuant to the following provisions.
- 9.2 RI-C assigns all existing warranty and

indemnification claims except for any potential conversion claims they may have against the technology vendor to the Customer. The Customer is to – at their own expense and on their own behalf – raise such claims against the technology vendor and/or distribution partner, and is deemed liable to RI-C in case of their culpable failure to do so. RI-C will reasonably and within their capabilities assist the Customer during raising of their claims against the technology vendor and/or distribution partner.

- 9.3 The Customer is deemed obliged to immediately inspect the delivery and/or deliverables. These are deemed approved if no immediate notice of defects is presented to RI-C. It is incumbent on the Customer to prove existence of a defect.
- 9.4 Should the examination of a notice of defect deliver findings that no warranty case is applicable, the costs of such inspection will be charged to the Customer.
- 9.5 The Customer acknowledges that communication between the Contractual Parties before and during the conclusion of the contract contains no binding commitments as set forth in the warranty rights.
- 9.6 RI-C is not liable for compatibility of the newly purchased products and/or services with the existing software and/or hardware of the Customer.
- 9.7 Unless otherwise regulated in the terms and conditions of the technology vendor, the warranty period is deemed six (6) months from handover and/or provision of the delivery and/or deliverables, and/or download.
- 9.8 Should defects be attributable to circumstances within the sphere of control of the Customer, warranty obligations are deemed inapplicable. This is for instance

applicable to faults due to use of unsuitable operating materials or non-observance of installation requirements. Furthermore warranty is deemed inapplicable when the Customer has made changes or manipulations to the subject matter of the contract, unless the Customer can furnish evidence proving that such manipulations are not the cause of the defect.

9.9 If the Customer obtains updates or upgrades for products from a third party, then RI-C is not liable for any resulting defects or damages; it is incumbent on the Customer to furnish evidence proving that such defect does not originate from an update and/or upgrade obtained from a third party.

9.10 In case of defects the Customer may initially only demand a correction of such defect. Should a defect not be remedied within a reasonable period (a minimum of two remedy attempts) or such remedy would incur an unreasonably high outlay in the opinion of RI-C, then the Customer is entitled to price reduction and if the defect is not a minor defect also to conversion of the contract. If the defect affects a divisible deliverable, the conversion may only be demanded with respect to the defective partial deliverable.

9.11 RI-C is only liable for gross negligent or intentional violation of obligations and claims of the Customer pursuant to the Product Liability Act or claims due to bodily injury, or harm to life or health.

9.12 As far as liability for negligent violation of obligations may not be excluded, such liability is deemed capped by the net amount paid by the Customer to RI-C specified in the respective individual agreement up to occurrence of the damage, however not exceeding one (1) million Euros.

9.13 RI-C is not liable for loss of profit,

consequential damages, loss of earnings, frustrated expenditures, intangible damages, consequential damages of defects, damages attributable to claims of third parties and data loss as well as damages resulting from force majeure or strike.

9.14 Delivery and performance times are deemed reasonably extended in cases of delay attributable to force majeure or any other circumstances outside the sphere of control of RI-C and any unexpected events such as interruption of operations, strike, failure of a supplier, any sovereign measures.

## 10. Data Protection, Confidentiality

10.1 The Customer have potential access to confidential information of the other party. The Contractual Parties undertake to maintain secrecy over confidential information, to neither make such accessible to any third party nor to publish such, and only to use such data within the scope of the contractual purpose.

10.2 Confidential information is deemed all data of any type such as materials, products, technologies, computer programs, descriptions, business plans, customer and sales data, financial information, marketing plans. It is deemed irrelevant whether such confidential information is revealed to the data recipient in writing, orally, electronically or through any other medium.

10.3 The obligation to maintain secrecy does not apply to information generally publically known, information which becomes generally publically known without any infringement of the obligation to maintain secrecy, or which is to be disclosed by the data recipient to an authority due to compulsory legal regulations.

- 10.4 Notwithstanding the preceding stipulation RI-C is entitled to pass on confidential data to third parties as far as this is necessary for contractual performance (for instance transfer of error logs, memory and database dumps to technology vendors for the purpose of error analysis) and provided that such confidential data does not contain any personal data.
- 10.5 Should RI-C process personal data of the Customer for their purposes then the Contractual Parties will enter into a Data Processing Agreement. The Customer herewith gives their general consent to assigning of further subcontractors within the Raiffeisen Informatik Group. RI-C however undertakes to always inform the Customer in advance of any intended change regarding involvement or replacement of any additional subcontractors. The Customer has the right to object to such a change.
- 10.6 The Contractual Parties undertake to advise their staff and other vicarious agents of their obligation to observe secrecy pursuant to the valid data protection regulations.
- 10.7 The Contractual Parties agree to immediately return and/or delete any erroneously received data and also to treat such confidentially.
- 10.8 The Austrian Data Protection Act, as amended, and the EU General Data Protection Regulation, as amended, are deemed applicable to all data protection related merits.
- 10.9 The obligation to observe secrecy remain in force also after termination of the agreement.

**11. Use of Data for Marketing Purposes, Consent to Receipt of Email Advertising**

- 11.1 The Customer expresses their consent regarding the following personal data as follows: (i) name of the point of contact named by the Customer, (ii) their phone number and (iii) email addresses will be used for sending information on events and offers. Such may be performed by phone, by mail or electronically (in particular email or text messages). The data will be used by RI-C. Beyond this data will not be passed on to any other third parties.
- 11.2 The consent to data utilization may be revoked at any point without specification of reasons by email (info@ri-c.at) or by mail to RI-C.

**12. Specific Provisions regarding Deliverables Rendered Directly by RI-C**

- 12.1 The subsequent provisions apply complementarily regarding deliverables rendered directly by RI-C.
- 12.2 RI-C renders deliverables during normal working hours (i) in a professional manner and in compliance with recognized industry practice in Austria as well as (ii) at their own discretion taking the interests of the Customer into account either at the company of the Customer, or at an agreed place of deployment, or remotely.
- 12.3 A warranty for any specific characteristics of the deliverables can only be assumed if such has been explicitly agreed in writing.
- 12.4 The Customer ensures that any required performance under their obligation to cooperate and assist will be rendered to RI-C in good time and free of charge. Such performance under the obligation to cooperate and assist includes in particular provision of complete details on all circumstances affecting the accomplishment of the project, as well as onsite provision of test data, working space

- and materials.
- 12.5 The Customer will appoint a project manager as point of contact for RI-C as well as provide appropriately qualified staff in the required numbers over the entire duration of the project.
- 12.6 The Customer assumes sole responsibility for coordination of their own staff and any third parties assigned by them, their deliveries and their performance in the context of the project.
- 12.7 Should the Customer fail to render the performance required under their obligation to cooperate and assist then they are to bear any following resulting disadvantages such as delays to schedules and additional outlays incurred by RI-C. When calculating values for deliverables RI-C assumes correctness and completeness of information provided by the Customer.
- 12.8 Deliverables will be – unless otherwise contractually agreed – billed monthly ex post by RI-C based on outlays incurred using the valid hourly rates as specified in the price list plus any taxes, fees and duties. Travelling expenses and material costs will be separately charged.
- 12.9 Change Requests (CR) regarding scope and/or specification of deliverables are to be presented in writing to the project manager of the respective other Contractual Party. After examination of such, RI-C informs the Customer whether (i) the CR will be carried out within the framework of the agreed performance by RI-C without additional remuneration, or (ii) RI-C will present a written offer on implementation of such CR to the Customer. Such CR offer is to include in particular changes to the deliverables specification and their effects on the time of performance, planned schedule, and remuneration. RI-C reserves the right to remuneration for outlays incurred due to examining the CR submitted by the Customer. Up to reaching an agreement by the Contractual Parties on the submitted CR, the RI-C deliverables will continue to be rendered on the basis of the agreement valid at that time.
- 12.10 A handover report will be drafted for acceptance of deliverables. The Customer confirms that all deliverables have been rendered within the framework of the assignment. The Customer is obliged to perform acceptance as soon as RI-C informs them of completion of works (readiness for acceptance). Deliverables are also deemed accepted without express confirmation by the Customer if the Customer (i) productively uses the deliverables, (ii) makes no complaints that hinder the acceptance within two (2) weeks from readiness for acceptance, or (iii) when tests can be run without any defects preventing acceptance.
- 12.11 Defects are classified as follows: either as (i) category 1 defect – the defect makes use of the deliverables impossible or only possible with significant limitations; (ii) category 2 defect – the defect restricts the use of the deliverables however without being a category 1 defect; or (iii) category 3 defect – the defect limits use of the deliverables only insignificantly. The Customer may refuse declaration of acceptance for category 1 defects. RI-C will remedy a category 1 defect within an appropriate period of time such that there are no longer any effects of a category 1 defect. The acceptance period for deliverables affected thereby is correspondingly extended. If no category 1 defects are present the deliverables are deemed ready for acceptance. The Customer then declares acceptance of deliverables after completion of any tests, however not later than after expiry of the acceptance deadline.
- 12.12 The Customer is to assist RI-C free of

charge as required during any correction. Provision of a workaround is also deemed an appropriate fault remedy.

- 12.13 Should a certain contractually compliant nature or usability be agreed under the deliverables description, then tolerable insignificant deviations therefrom are deemed not to be defects.
- 12.14 RI-C is only liable for infringement of third party rights only to the extent to which the works rendered are deployed in a contractually compliant manner, and in particularly in a contractually stipulated deployment environment.
- 12.15 Should a third-party lodge claims against the Customer that works from RI-C infringe their intellectual property rights (IP claims), the Customer is to notify RI-C thereof immediately. RI-C will – reasonably taking the interests of the Customer into account – at their own discretion (i) either obtain the right of use to such works for the Customer, (ii) modify such works so that no rights are violated, or (iii) if RI-C cannot achieve with reasonable efforts the results of (i) or (ii) then RI-C may recall such works and reimburse the Customer with the remuneration subject to deduction of appropriate fees for use of such.
- 12.16 Furthermore RI-C will at their own discretion and cost defend or settle such IP claim whereby RI-C will pay the Customer an amount of indemnification for damages and outlays specified by a final court decision or a settlement (with written consent by RI-C) provided that the Customer (i) immediately notifies RI-C of any IP claim being lodged, (ii) entrusts RI-C with sole defense and settlement of such a claim, (iii) cooperates with RI-C in this matter and assists RI-C upon request (provided however that RI-C accepts the costs of the Customer).
- 12.17 Items 12.15 and 12.16 conclusively regulate the claims of the Customer against RI-C

and the sole and exclusive liability of RI-C towards the Customer regarding any IP claims, unless such IP claim is attributable to gross negligent or intentional contractual infringement by RI-C.

### **13. Applicable Law and Place of Jurisdiction**

- 13.1 The agreement concluded by and between the Contractual Parties is governed by Austrian law with exception of the rules of the conflicts of laws and stipulations of the UN Convention on Contracts for the International Sales of Goods.
- 13.2 The place of jurisdiction for any disputes arising from and in the context of an agreement concluded by and between the Contractual Parties is deemed exclusively the competent court in Vienna, Inner City.

### **14. Final Provisions**

- 14.1 Any assignment or transfer of contractual rights or obligations by the Customer is subject to the terms and conditions of the technology vendor and requires prior written consent from RI-C and/or the technology vendor.
- 14.2 Should an individual provision herein be or become invalid in full or in part, the validity of the remaining provisions is deemed unaffected thereby. The Contractual Parties shall collaborate in partnership to find a regulation as closely as possible corresponding to the invalid regulations; the same being deemed applicable to any loopholes herein.
- 14.3 These General Terms and Conditions are deemed applicable as amended in the version valid on the day of conclusion of contract.