

## Outline agreement for Aproda AG services and products

### 1. Area of validity

#### 1.1 Aproda AG services

This outline agreement for services and products (hereinafter referred to as "the outline agreement") applies to all offers, supplies of products (e.g. software and hardware), and services supplied by Aproda AG (hereinafter referred to as "Aproda"), and governs notably the conclusion, content, and execution of all contractual relations between Aproda and its contractual partners (hereinafter referred to individually as "the client"). Such services comprise **advisory services** ("Brief"; articles 394ff. OR [*Obligationenrecht*, Switzerland's Code of Obligations]) such as planning, advice, consulting, support, or training or in **realisation services** ("work performance"; articles 363ff. OR) such as providing client-specific project realisations under the management of Aproda. The outline agreement also applies to follow-up business and ongoing support services without Aproda needing to mention these expressly in connection with each new delivery of product or each new provision of service. The agreement of concrete services as appendix to the outline agreement remains reserved.

#### 1.2 Distribution of products

With regard to such products as hardware, bought-in software, etc. that Aproda co-distributes, different or additional terms sometimes apply, notably with regard to software rights, client powers, and manufacturer's guarantee rights. Content and scope of terms for surrender of software products arise directly out of manufacturer's licence provisions, which are attached to the relevant software product in electronic form. Configuration and guarantee provisions relating to hardware arise out of manufacturer's agreement documents.

#### 1.3 Exclusion of conflicting provisions

Conflicting or supplementary provisions – notably the client's General Terms of Trade – are expressly excluded.

### 2. Structure of agreement

#### 2.1 Performance agreement

Agreements covering supply of products or provision of services by Aproda consist of this outline agreement plus an individual service agreement for planning and support, a project agreement, or a support and maintenance agreement (jointly referred to as "performance agreement") appended. Further documents or confirmations of order containing a description of performance, as described in the individual agreement as components thereof (and hereinafter collectively referred to as "agreement documents") may be included.

#### 2.2 Appendix

The appendix attached to this agreement as an integral component thereof contains more precise details of the services to be provided.

As regards **advisory services** these are notably:

- type
- duration and timetabling
- cost / hourly supplements
- responsibilities
- payment plan
- any operational outcomes
- special provisions

As regards **realisation services** these are notably:

- operational result (work)
- requirements
- place of delivery
- project plan
- payment plan
- acceptance of delivery procedure
- special provisions

Each appendix is an agreement in its own right binding upon both contracting parties, regardless of any other agreements. However, the provisions of this agreement are invariably a constituent of the appendix.

### 3. Conclusion of agreement

#### 3.1 Client's duty of acquaintance

The client has acquainted itself with the essential functional characteristics of the software to be supplied and/or the services to be provided. Where in doubt, the client shall take expert advice prior to concluding an agreement.

#### 3.2 Signing of agreement

Concrete performance agreements between Alpha Solutions and the client are concluded either by both parties signing or giving electronic acceptance to an agreement, or by the client signing the confirmation of order issued by Alpha Solutions, or by Aproda issuing a confirmation of order, or by acceptance of delivery of the performance furnished by Alpha Solutions. The agreement documents are communicated to the client by Aproda post, fax, e-mail, or through its website.

### 4. Terms of execution

#### 4.1 Fulfilment

Provision of services by Alpha Solutions is effected either by employees or, where not otherwise agreed in the individual agreement, by subcontractors of Aproda, for the careful choice and instruction of which Aproda assumes responsibility.

#### 4.2 Suitable selection

As regards assigning its employees, Aproda shall at its own discretion decide which employees and/or subcontractors shall be used.

#### 4.3 Place of fulfilment

Fulfilment may, where not otherwise agreed in the individual agreement, be effected at the client's or, if such appears appropriate, on the business premises of Alpha Solutions.

#### 4.4 Client's instructions

Aproda staff will avoid interfering with the client's in-house arrangements and habits where these have been brought to their attention and in so far as this does not get in the way of expert, prompt execution of the services to be provided by Aproda. Matters pertaining to safety (risks, alarm systems, etc.) must be communicated by the client in writing in advance.

#### 4.5 Responsibility

Advisory services (tasks) are managed and controlled by the client. Realisation services (work performance) are executed under the management of Aproda, which is responsible for the attainment of results in accordance with the performance description in the agreement documents.

#### 4.6 No exclusivity

Aproda may provide services of the same or similar kind to other clients as well.

## 5. Client's obligations of cooperation

### 5.1 Obligation of active cooperation

The client is obliged, in connection with performing the operations set out in the agreement documents, to cooperate actively and at no charge to the extent required. The client notably has the following cooperation obligations, which may be further specified in the relevant individual agreement:

- allowing unhampered access to work areas on the client's premises;
- making available and guaranteeing access and authorisations for requisite IT infrastructure;
- installing and operating appropriate communications arrangements (e.g. Internet, remote support);
- making available, free of charge, project-related employees who are skilled and have expert qualifications and relieving the same of other duties to the required extent;
- providing adequate training for and giving careful instruction to client's own employees by imparting to them the usual user information and training for key users;
- furnishing a competent contact (including e-mail address), someone authorised to take and make decisions;
- giving written notification of the names of employees of the client who can be used for the project, citing their function;
- purchasing operational outcomes;
- making available suitable test data of the quality required, and unless otherwise agreed inputting of data, accepting and reconstituting data, and taking responsibility for data integrity;
- thoroughly testing software, bought-in software, and hardware for freedom from defects and for usability in the concrete situation prior to operational use of software;
- executing and controlling data security, secure saving of backup;
- suitable procedures in the event of software, bought-in software, or hardware failing wholly or in part to operate as it should (e.g. data security, error diagnosis, regular monitoring of outcomes).

### 5.2 Consequences of infringement of obligation to cooperate

Delay and additional expenditure resulting from defective fulfilment of obligations to cooperate are the responsibility of the client.

## 6. Terms of payment

### 6.1 Settlement of claims

Without the prior written consent of AprodA AG settlements and reserves on the part of the client vis-à-vis AprodA are admissible only if counterclaims by the client are acknowledged in writing by AprodA or are established in law.

### 6.2 Payment obligations

Payments shall be made by the client even if guarantee claims have been lodged by the client in respect of products supplied and/or services performed by AprodA. Differences of opinion between the contracting partners regarding interpretation of product supplies or of fulfilment of a service provided in accordance with the relevant agreement documents do not entitle the client either to postpone payments or to amend terms of payment.

## 7. Reservation of proprietary rights

Until full payment has been made in respect of products supplied and/or in respect of the agreed recompense for the right to use software, there exists with respect to data carriers and user documentation a reservation of proprietary rights under articles 716f. ZGB [*Zivilgesetzbuch* or Swiss Civil Code] in favour of AprodA. The latter is entitled, without the client's consent, to make a corresponding entry in the register reserving proprietary rights.

## 8. Rights to software and work outcomes

### 8.1 Rights of protection and use

Following payment in full of the agreed amount, the client is entitled to make use of services provided for its own ends as

well as for those of companies belonging to the same corporate group. A company is deemed to belong to the same corporate group if the client possesses directly or indirectly a holding therein carrying at least 25% of the voting rights. In special cases, e.g. where a number of companies merge or the company is sold, the rights of use pass to the legal successor.

The relevant manufacturer's software provisions remain reserved. The source code of the services provided is deposited with the client. All rights, notably copyright, to all operational outcomes produced by Alpha Solutions or its subcontractors such as concepts, analyses, computer programs, etc., including source code, documentation, and other program paperwork – of whatsoever form – lie with AprodA.

### 8.2 Know-How

Ideas, concepts, experiences, and methods relating to information-processing that are developed in connection with provision of a service by AprodA alone or working in conjunction with the client may be exploited at will by the client and/or AprodA.

## 9. Delivery and provision time

### 9.1 Making available and installing

Delivery of software and bought-in software is effected by AprodA letting the client have these on data carriers or making them available in a way that allows them to be revoked. AprodA can also make partial deliveries. Subject to written agreement to some other effect, it is for the client to make such software operational.

Hardware is deemed to have been delivered when the relevant appliances have been handed over to the client against a receipt. Subject to written agreement to some other effect, it is for the client to make such hardware operational.

### 9.2 Timetable

AprodA will be at pains to keep to the prescribed timetable. Any divergences from the timetable will be communicated as soon as possible. The corresponding adjustments require the consent of both contracting partners, in which connection consent may be withheld only for cause.

### 9.3 Delay in supply

AprodA is bound exclusively to delivery deadlines agreed in writing. Changes of order – where not otherwise agreed – result in annulment of previously agreed deadlines and periods. Where a deadline expressly agreed as binding (milestone) cannot be met by AprodA for reasons for which it is responsible, AprodA is deemed to be in delay and the client may claim damages as follows:

x <= 30 days = 0 %

x > 30 days = for each further full week's delay 1 % of service costs as defined in the individual agreement (excluding VAT) but not more than 5 % of the service costs (excluding VAT) budgeted for in the individual agreement as lump-sum compensation.

### 9.4 Freezing of deadlines

In cases of *force majeure*, delay by suppliers, staff absences through no fault of AprodA, or other occurrences for which AprodA is not responsible or where AprodA is awaiting cooperation or information from the client or is otherwise prevented from fulfilling the agreement, during such prevention and for a reasonable restart time thereafter supply and performance deadlines will be frozen.

## 10. Changes of performance

Both the client and Aproda may during fulfilment of the agreement apply in writing to the other contracting partner for a change to be made to the performance requirements laid down in the individual agreement (change request), in which connection such a change request/change requests shall be set out in detail with written reference to the performance description. Amendment of an item of contractual performance is valid only if agreed in writing. Changes of performance that affect deadlines (milestones) and/or costs must, to be valid, be recorded in an appendix to the agreement documents affected by the change that shall accord with the individual agreement. For as long as no written agreement comes about, the present agreement continues unchanged.

## 11. Fulfilment, acceptance of delivery, and guarantee

### 11.1 Advisory services

Advisory services are deemed to have been provided as soon as Aproda has carried out its activity in accordance with the present agreement. Papers and evaluations such as detailed concept, "is"-analysis, specification, etc. are deemed to have been approved if they have been presented to the client and the client has not, within a period of 15 working days, asked for loopholes to be blocked and/or errors removed or is proceeding to a further introductory phase.

### 11.2 Realisation services

#### 11.2.1 Fulfilment

Realisation services are deemed to have been performed after installation and/or successful tests of the relevant function. Following fulfilment, Aproda will ask the client to indicate readiness to accept.

#### 11.2.2 Acceptance of delivery procedure

The client is obliged, following indication of readiness to accept delivery, to subject the outcomes or arrange to have the outcomes subjected to an acceptance of delivery inspection. In the acceptance of delivery inspection the client checks whether the outcomes correspond to the agreements and specifications contained in the relevant appendix. Any divergences are recorded in an acceptance of delivery protocol and communicated to Aproda. Depending on the nature of the divergence, acceptance of delivery will be deemed to have occurred (clause 11.2.4) or there will be a refusal (clauses 11.2.5 and 11.2.6). It is for Aproda to define the acceptance of delivery procedure thus necessitated and for the client to make available the necessary and suitable test data. Acceptance of delivery is a matter for the client; Aproda has an obligation to cooperate.

#### 11.2.3 Acceptance of delivery of whole product/service

Where the description of the product/service (detailed concept) does not prescribe otherwise, the customer is accepting delivery of the whole product/service. Acceptance of delivery of partial products/services may be envisaged. Aproda and the client establish acceptance of delivery deadlines by agreement; acceptance of delivery of realisation services must be effected within a month at most,

after Aproda has asked the client in writing to indicate readiness to accept delivery.

#### 11.2.4 Non-essential defects

Slight faults that do not preclude use of the work-result as prescribed (non-essential defects) present no obstacle to an acceptance of delivery. The outcome is deemed to have been accepted.

#### 11.2.5 Essential defects

A defect is deemed to be essential if because of it a number of key functions are unusable. Where there are essential defects the client may refuse acceptance of delivery.

#### 11.2.6 Refusal

Where in connection with acceptance of delivery there is evidence of essential defects preventing such acceptance of delivery from being successful, the client is entitled to refuse the outcomes within 30 days of such acceptance of delivery being given. Aproda is then obliged and authorised to correct and re-supply the parts rightly objected to. For this purpose the client grants Aproda in writing an extension of not more than 30 days. At the written indication of Aproda a repetition of acceptance of delivery will ensue in respect of the corrected parts. Should acceptance of delivery prove unsuccessful a second time, the client grants Aproda, in writing, a further suitable extension of not less than two months to remove the defects. A repetition of acceptance of delivery follows.

In connection with the removal of a fault properly objected to, should Aproda ascertain that the reason for such fault lies outside the responsibility of Aproda or should removal of the fault be made more difficult by a change made by the client, Aproda is entitled to charge for work done in this connection at the appropriate hourly rates.

#### 11.2.7 Acceptance of delivery through productive use

Except where the agreement states otherwise, productive use of product provision or full service provision is in any event deemed to constitute acceptance of delivery without an acceptance of delivery protocol being required.

#### 11.2.8 Implied acceptance of delivery

If for reasons for which Aproda is neither wholly nor in part responsible the client declines to proceed to acceptance of delivery, Aproda may grant that client a 30-day extension within which period such acceptance of delivery must ensue, otherwise the relevant product or full service provision will on expiry of the set extension be deemed to have been accepted without an acceptance of delivery protocol being required.

## 12. Guarantees

### 12.1 Material guarantee for bought-in software and hardware

#### 12.1.1 Inspection of bought-in software and hardware

To preserve its guarantee rights the client must inspect software products (standard software) and hardware supplied to it immediately following delivery and at once lodge complaints regarding any defects, such complaints to be in writing and to contain a precise description of the relevant problem.

#### 12.1.2 Guarantee period

Where not otherwise agreed in writing, notably in terms differing from those of the manufacturer's conditions included in the agreement, the guarantee period runs for twelve months, starting from date of acceptance of delivery

### 12.1.3 Reservation

All guarantee rights appertaining to the client and relating to the software products (standard software) and hardware products supplied arise out of the manufacturer's conditions. Vis-à-vis Aproda those guarantee rights consist exclusively therein that Aproda calls for the guarantee rights as listed in the manufacturer's conditions vis-à-vis the manufacturer/supplier. Should the manufacturer/supplier decline voluntarily to meet its guarantee obligations, Aproda will cede those guarantee rights to the client for legal enforcement. All other guarantee claims vis-à-vis Aproda are ruled out.

### 12.2 Material guarantee in respect of outcomes

In connection with realisation services Aproda guarantees the client that the operational outcomes attained at the time of handover will match the fulfilment criteria or the specifications set out in the agreement, as defined in the detailed concept. Aproda cannot guarantee that the operational outcomes supplied by it can be used without interruption and without error and in any conditions whatsoever. The client's attention is drawn to the fact that it is not technically possible to make software performance absolutely defect-free. Aproda therefore offers no guarantee regarding the technical usefulness of the program supplied by Aproda for the program purpose alleged.

Where not otherwise agreed in writing, Aproda offers no guarantee that the standard software Microsoft Dynamics NAV matches the client's operational specifics.

Aproda employees are not authorised to issue verbal assurances. Aproda is likewise unable to accept any guarantee in respect of processing times of individual programs, because the capacity of data-processing appliances and how much such appliances are used are critical in this regard.

For the rest, material guarantee rights of realisation services are fully governed in clause 11.2. Other guarantee claims vis-à-vis Aproda are ruled out entirely.

## 12.3. Legal guarantees

### 12.3.1 General

In relation to services and service outcomes provided by Aproda under the relevant service agreement, Aproda guarantees that it is not knowingly infringing any commercial copyrights thereby.

### 12.3.2 Duty of defence

The client undertakes to inform Aproda without delay, in writing, and comprehensively regarding copyright claims by third parties concerning the software products supplied by Aproda or services performed by Aproda. In this connection the words "software products supplied" are deemed to refer to the key provisions of the relevant software manufacturer. Aproda cedes to the client all claims to direct assertion vis-à-vis the manufacturer/supplier. Any other legal guarantee is ruled out.

### 12.3.3 Assurance by client

The client warrants that it will not hand over to Aproda any papers that either directly or in processed or recast form contain legally protected work by third parties or that it is entitled to hand such papers over to Aproda for the performance of the service agreed between them.

## 13. Liability

The client may lodge liability and compensation claims for any legal reason whatsoever only if and to the extent to which Aproda staff or third parties working for Aproda are in the course of their work grossly guilty of infringing generally recognised rules and have directly inflicted damage on the client thereby. The liability of Aproda

to pay compensation in this connection shall always be reasonably proportionate to the fee being paid and in no case exceed the amount to which Aproda is laying claim for the work rightly forming the object of its complaint. However, Aproda accepts no liability for indirect or consequential damage such as loss of earnings, savings unrealised, business down-time, the client's own outlay, third-party claims, compensation for delay arising out of or in connection with incorrect or delayed cooperation by the client or losses arising out of mislaid or damaged data. Over and above the afore-mentioned liability, Aproda is not liable for third-party companies cooperating on a project. Aproda is also not liable if for reasons for which it is not responsible it is prevented from fulfilling promptly and properly any performance under this agreement.

## 14. Observing secrecy and data protection

### 14.1 Confidential information

Aproda will arrange to have material relating to the client's sphere of business that is made available to it by the client and labelled accordingly as confidential material ("confidential information") treated as secret and will return this to the client at the client's written request or destroy it in accordance with the client's instructions.

### 14.2 No duty to observe secrecy

The commitment to observe secrecy with regard to confidential information does not obtain if:

- such information is already in the possession of the other contracting partner and is not subject to any declaration of confidentiality;
- such information has been developed independently of the other contracting partner;
- the contracting partner receiving such information has done so without any commitment to observe secrecy;
- such information was publicly available at the time of transfer or subsequently became so;
- such information was disclosed to the contracting partner transferring it by a third party without a declaration of confidentiality;
- such information is to be disclosed in the context of a judicial proceeding.

### 14.3 Outcomes from information-processing

Ideas, concepts, practical experiences, and methods that relate to information-processing and are placed at the disposal of Aproda or that in connection with a service provided have been developed by Aproda alone or in conjunction with the client need not be treated as secret by Aproda.

### 14.4 Consent as reference

Aproda may enter the client in its reference list together with the client's company logo.

### 14.5 Data protection

The contracting partners are aware that concluding and fulfilling an individual agreement may involve processing personal data regarding the contracting partners and their employees, subcontractors, etc. They declare that they give their consent to such data possibly being used to develop and cultivate their business relations and to the same end having to be communicated to suppliers/partners (e.g. for licence registration, clearing licences, furnishing guarantees, etc.).

## 15. Lifetime and cancellation of service agreements

This outline agreement has an indeterminate lifetime. It may be cancelled with effect from the end of a month, observing a six-

month period of notice, through the medium of a registered letter.

On termination of this outline agreement the contents thereof nevertheless remain in force so far as already concluded appendices are concerned, where these have not also been cancelled. However, the outline agreement may by mutual consent be replaced at any time by a fresh outline agreement. the same applies analogously with regard to appendices.

## **16. General provisions**

### **16.1 Written form**

Changes or amendments to this outline agreement or to the individual agreements to which they apply must, to be valid, be made in written form. They must also contain reference to the provision to be altered and be signed by the contracting partners.

### **16.2 Partial invalidity**

Should individual provisions of this outline agreement or provisions of other agreement documents to which this outline agreement applies be or become null or void, the validity of the remaining provisions of the outline agreement or other agreement documents shall not be affected thereby. The null or void provisions shall be replaced by the legally admissible provisions that most closely approximate to the economic object of the inoperative provisions.

### **16.3 Cession and transfer**

Rights and duties arising out of the contractual relationship between the parties may be ceded or transferred to third parties by the client only with the prior written consent of Aproda.

### **16.4 Place of fulfilment**

The place of fulfilment of all obligations of the parties arising out of agreements to which this outline agreement applies is by the choice of Aproda either its own registered office or the place where the client has its premises.

### **16.5 Place of jurisdiction, law applicable, prevailing version**

The contracting parties agree that, where in good faith there are differences of opinion regarding the content of the products/services contractually agreed and/or the interpretation of the agreement documents, an amicable solution shall be sought and all reasonable settlement possibilities tried, if necessary involving an independent arbiter. Should a judicial ruling be unavoidable nonetheless, they appoint **ST. GALLEN AS SOLE PLACE OF JURISDICTION**. Aproda may also sue the client at the place where the client has its registered office. The law applicable is Swiss law to the exclusion of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980.

Where the client has its registered office or residence outside Switzerland, for the obligations arising out of this agreement the parties elect St. Gallen as special place of domicile.

In any case of doubt regarding interpretation of this agreement, the German version shall prevail.

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