

1 Range of Services

- 1.1 ASERVO Interactive GmbH (hereinafter "ASERVO") provides services to assist the customer, advice, training, analyses, as well as customized adjustments of systems and platforms and the like pursuant to the following Terms and Conditions. Type, place, time and range of services are set forth in the relevant specific contract.
- 1.2 ASERVO provides the services pursuant to the contract and in accordance with the state of art as applicable at the time of signing the contract.

2 Rights to the Embodied Services

- 2.1 Unless agreed otherwise, ASERVO grants to the Customer a non-exclusive, permanent, irrevocable and non-assignable right to use the services provided under the contract to the extent it results from the purpose of the contract. Such rights include interim results as far as contractually due.
- 2.2 The granting of the rights of use is subject to the condition precedent of full payment of the agreed fee.

3 The Customer's Duty to Cooperate and Purchase Orders

- 3.1 The success of this contract is essentially depending on the Customer's cooperation. The Customer shall provide the cooperation services and supplies duly and in a timely manner as set forth in the specific contracts and such as otherwise required or convenient. Where ASERVO considers that required or convenient cooperation services and supplies are additionally needed, ASERVO shall request the Customer in each case to provide them.

- 3.2 The cooperation services include, but are not limited to:

All the documentation and information required or convenient and/or requested, as well as data for processing in digital form.

The Customer shall make sure that competent contact persons will be available to ASERVO at short notice and provide ASERVO with the complete required or convenient information.

Decisions shall be made by the Customer in a timely manner and as required to meet the demands.

Where ASERVO delivers drafts, test versions or the like to the Customer, the Customer shall scrutinize them. Change requests shall be communicated to ASERVO without undue delay to the extent and as soon as they become evident to the Customer.

If the contract requires the installation of software on the Customer's systems, the Customer shall make available the required hardware and – on ASERVO's request – discontinue other work using such hardware for the necessary period of time.

The Customer shall allow ASERVO the access to the required software and systems via telecommunications (e.g.: remote access). The connections required for this purpose shall be established by the Customer on ASERVO's instructions.

- 3.3 Cooperation services and supplies of the Customer shall be provided free of costs for ASERVO. If ASERVO is unable to provide services at all or just at a higher expense due to the absence of cooperation services or supplies, then ASERVO will be entitled to claim downtimes and additional expense from the Customer.
- 3.4 Where the Customer provides cooperation services and/or carries out supplies and such cooperation services or supplies and/or their use infringe third-party rights, the Customer shall indemnify ASERVO upon first request for any and all third-party claims based on such circumstances. In addition, the Customer shall reimburse all costs and expenses incurred in connection with such third party's claim.

4 Fees

- 4.1 The fees for the services consist in the payment for the time spent for the provision of the contractually agreed service. Material costs shall be compensated separately.
- 4.2 Idle times of ASERVO employees the Customer is to be held responsible for shall be compensated equivalent to working hours.
- 4.3 Traveling costs and expenses ASERVO has to pay under the relevant traveling costs policy of ASERVO to employees assigned to perform such services shall be charged on to the Customer to the extent as contractually agreed.
- 4.4 Unless expressly agreed otherwise, total prices and total periods specified in the offers are non-binding estimates of the amount of costs and time to be expected based on professional calculation. The fees for the performance of training and consulting days shall be subject to the agreed fixed price.
- 4.5 A man-day comprises 8 hours, including breaks.
- 4.6 In the event of continuing obligations, ASERVO will be entitled to increase the fee rates reasonably, however by a maximum of 8%, for the first time after the lapse of one contract year. ASERVO shall notify the increase at least thirty (30) calendar days prior to the effective date. If the Customer does not agree to the new fee rates, the Customer will be entitled to terminate the contractual relationship by the effective date for the new fee rates.

5 Terms of Payment

- 5.1 The prices are strictly net prices exclusive of the statutory value added tax as applicable from time to time.
- 5.2 Unless expressly agreed otherwise, all the fees and ancillary costs shall be paid without any deduction by transfer into the bank account indicated in the invoice within fourteen (14) days (receipt in ASERVO's bank account) after the invoice date.
- 5.3 If the Customer gets into arrears with a payment, as a whole or in part, ASERVO will be entitled to charge the statutory default interest at a rate of 8% p. a. above the base rate. In addition, ASERVO will be entitled to withhold its services as well as to perform outstanding services for payment in advance or provision of security, only.
- 5.4 Set-off against counterclaims will only be admissible if they are undisputed or recognized by declaratory judgment. Furthermore, the Customer may set off against a counterclaim which superseded a right of retention of the Customer under this contract.

5.5 The Customer is under no restriction to exercise a right of retention due to the Customer applying to undisputed claims or such recognized by declaratory judgment. The Customer may exercise a right of retention against claims of ASERVO only by way of claims and rights under the same contractual relationship. Moreover, in case of defects, the Customer may only exercise a right of retention in the threefold amount of the expenses required to remove the defects.

6 Performance Periods, Due Dates

6.1 ASERVO shall not be responsible for delays of performance due to circumstances under the control of the Customer and force majeure (e.g. strike, lock-out, general malfunction of telecommunications). As a result thereof, ASERVO will be entitled to defer the performance of the relevant services for the time the obstruction persists plus a reasonable start-up period. ASERVO shall notify delays of performance to the Customer in writing without undue delay.

6.2 If the assertion of rights of the Customer requires the setting of a reasonable period of grace, such period shall be no less than three (3) weeks.

7 Liability

ASERVO's liability for all the rights and claims resulting under and in connection with the conclusion and the performance of this contract shall be limited as follows irrespective of the factual or legal ground:

7.1 In the event of gross negligence, ASERVO's liability shall be limited to the typical damages as foreseeable to ASERVO at the time of entering into the contract. Such limitation of liability shall not apply in case of gross negligence committed by a legal representative or senior officer of ASERVO.

7.2 In the event of slight negligence, ASERVO shall only be liable to the extent in which the damages were caused by a breach of material contractual duties, such liability being limited to the typical damages foreseeable to ASERVO at the time of entering into the contract.

7.3 Any liability of ASERVO for the loss of data shall be additionally subject to the condition that the Customer has made a back-up of its data with the reasonable frequency and care, however not less than once every day, and that such data back-up can be used to recover the data. ASERVO's liability shall always be limited to the amount of the expenses incurred for the recovery of the unavailable data from a duly performed, especially machine-readable data back-up.

7.4 In the event of willful misconduct, fraudulent intent, claims under the German Product Liability Act, as well as the injury of life, limb or health, ASERVO shall be liable pursuant to the legal regulations. The above limitations of liability will then not apply.

7.5 The above regulations shall be applicable *mutatis mutandis* to claims for reimbursement of expenses and other liability claims of ASERVO.

7.6 Prevailing over the above limitations of liability, a limitation of liability of a maximum of 100,000 euros per damage event shall apply.

8 Rights in Case of Failure to Provide the Contractually Agreed Performance

8.1 The Customer shall be subject to the obligation to inspect and notify defects pursuant to section 377 of the HGB (*German Commercial Code*) in relation to all deliveries and services provided by ASERVO in performing this contract, unless acceptance has been agreed or is required by operation of law.

8.2 The Customer shall immediately notify defects in writing to ASERVO giving the exact details open to scrutiny of the circumstances in which they showed up. Alleged or suspected defects in title shall also be notified in writing to ASERVO, and notices of default or claims of third parties, if any, in connection with an alleged defect in title shall be proved to ASERVO's satisfaction.

8.3 If services are defective, ASERVO will first be entitled to opt for either repeating the service or remove the condition non-complying with the contractually due quality.

8.4 If in case of other services ASERVO is obligated to subsequent performance due to defects, ASERVO may opt to provide such subsequent performance either by way of removing the defects or by new delivery or new provision, respectively, of a work free of defects. If subsequent performance is performed by way of removal of defects, it may – at ASERVO's complete discretion and if available – as well be performed by delivering a new version, an update, upgrades, patches of or to the relevant service. Where the foregoing is not yet available but will prospectively be available within a reasonable period of time, ASERVO may refer the Customer to a by-pass solution for the relevant period of time, unless the Customer cannot be reasonably expected to accept such a by-pass solution.

8.5 The Customer shall enable ASERVO to investigate and analyze the cause of the defect and reasonably assist ASERVO in doing so, and allow ASERVO to view the documentation which might show any further particulars of an occurred or alleged defect.

8.6 If the analysis of a notification of defect shows that there is no claim based on defects, and if the Customer should have recognized this in applying sufficient care, then ASERVO may claim reimbursement of the costs and expenses incurred for the analysis and services in accordance with the agreed hourly rates.

8.7 Where ASERVO has released the Customer in the event of claims against the Customer for defects in title of the contracted services, the Customer shall assign to ASERVO Interactive all the negotiations of defense and settlement. The Customer shall issue to ASERVO all the required powers of attorney for actions in and out of court. The Customer shall not acknowledge the third party's claim without the written consent of ASERVO, or interfere with the defense of the claims by ASERVO in any other manner by actions not agreed with ASERVO.

- 8.8 The period of limitations for damage claims shall be one (1) year. The legal regulations shall apply to the date of commencement of the period of limitations. In any other respect, claims for compensation of damages and/or reimbursement of expenses for defects shall be limited as set forth in section 7 above.
- 8.9 In case of fraudulent concealment of a defect by ASERVO, or a defect caused by ASERVO's gross negligence, or in case of injuries to life, limb or health caused by defect, or in case of the acceptance of the quality guarantee or any other guarantee, the legal provisions shall not be affected by the foregoing. In such cases the statutory periods of limitations shall apply in particular.
- 9 Acceptance**
- 9.1 The Customer is obligated to accept provisions of work performed as specified in the contract if ASERVO notified the Customer of the performance of the services in line with the contract and requested the Customer to conduct the acceptance. The acceptance shall be declared in writing. Acceptance shall not be denied for irrelevant defects. If any defects of such type are detected they shall be recorded in the Customer's statement of acceptance.
- 9.2 If after the acceptance defects should show up which could not be detected as obvious defects at the time of the jointly conducted acceptance, then such defects shall be notified to ASERVO within ten (10) working days after their detection. Otherwise the Customer shall not be entitled to any claims against ASERVO regarding such defects. Sub-section 8.9 above shall be applicable *mutatis mutandis*.
- 9.3 ASERVO may set a reasonable period of a minimum of ten (10) working days for the submission of the relevant statement of acceptance, whereupon the service shall be deemed accepted. In the communication setting such period ASERVO shall inform the Customer that upon the expiration of such period the acceptance shall be deemed effected, unless the Customer has notified any existing defects impeding acceptance in writing within the said period.
- 10 Data Protection**
- 10.1 ASERVO will collect, process and use personal data of the Customer, its employees, agents and contract partners only to the extent in which they are required for the initiation, structuring, execution, performance and amendment of the contractual relationship entered into with the Customer, or as otherwise allowed by law or contract.
- 10.2 In the context of its right to contract subcontractors, ASERVO is entitled to have data processed by way of contracting or forward data in the context of its right to assign rights and obligations.
- 10.3 The Customer shall ensure that ASERVO will be disclosed all the relevant information which ASERVO needs to know for reasons of data protection and confidentiality.
- 10.4 Where the provision of the due services requires the consent of third parties with relations to the Customer (contract partners, employees, agents of the Customer or the like) to the collection, processing or forwarding of personal data, the Customer shall make sure that such consent is obtained. If in such cases it is sufficient to inform the affected persons, such information will be provided by the Customer.
- 11 Confidentiality**
- 11.1 The parties shall keep confidential all information of the other party which they are disclosed in performing this contract. This is particularly applicable to information on methods and procedures used by ASERVO or its contractors, as well as the documentation, materials and other items concerning the system.
- 11.2 In addition, the parties shall ensure that their employees will also observe confidentiality vis-à-vis third parties.
- 12 Competition**
- ASERVO is free – also during the term of this contract – to engage in business with other companies of any sector. This is particularly applicable to business entities working in the same sector as the Customer. The provisions of this contract relating to confidentiality shall not be affected by the foregoing.
- 13 Final Provisions**
- 13.1 ASERVO is entitled to assign individual rights and obligations under this contract to third parties, to contract subcontractors, as well as to assign the complete contract as such to a company affiliated with ASERVO as defined in sections 15 et seq. of the AktG (*German Stock Corporation Act*) without the Customer's previous consent.
- 13.2 The termination of the contract must be made in writing.
- 13.3 Further terms and conditions of business shall be barred, unless agreed otherwise.
- 13.4 This contract shall be governed exclusively by German law for domestic transactions.
- 13.5 Exclusive venue for all disputes under this contract shall be Munich, Germany (Munich Regional Court I). Mandatory places of jurisdiction provided by German law shall not be affected by the foregoing. Notwithstanding the preceding provision, each party is entitled to apply for temporary or interim relief for the violation of any of its proprietary rights before any other competent court.
- 13.6 This contract represents the entire agreement between the parties concerning the subject matter of this contract and supersedes all previous arrangements.
- 13.7 If any of the provisions of this contract should be or become invalid or require amendments, as a whole or in part, the validity of the remaining provisions shall not be affected thereby.