General Terms and Conditions of Business

mammut soft computing ag (Version May 2019)

1. Scope and validity

1.1 The General Terms and Conditions of Business (the "GTCB") apply to all offers and services provided by mammut soft computing ag ("msc"), without special reference being made to them.

1.2 All ancillary agreements, alterations of, supplements to and legally relevant declarations, in particular maintenance and service agreements deviating from these GTCB, as well as the customer's terms and conditions of business are legally binding and effective only if they have been acknowledged by msc in writing. Upon the termination of such supplemental agreements, these GTCB apply automatically.

1.3 If any provision of the agreements between msc and the customer, including these GTCB, is or becomes invalid or unenforceable, the other provisions shall remain in full force and effect. In such a case, the invalid provision is to be reinterpreted or supplemented in such a way that the intended purpose is achieved as closely as possible.

2. Licence agreement

2.1 msc grants the customer, on full settlement of the invoice, the non-transferable, non-exclusive right of use for the acquired software against payment.

2.2 The customer is not entitled to reverse-engineer, decompile or disassemble the software, unless this is (and only to the extent) permitted by applicable law, irrespective of this restriction. The customer has no claim to receipt and disclosure of the source code.

2.3 The customer agrees not to transfer, to cede or otherwise grant access to the software, in whole or in part, to third parties without the prior written consent of msc.

2.4 The customer is not entitled to rent out msc's software products. Without the prior written consent of msc, the customer may not make copies of the software, except for back-up copies. The customer has the right to adapt the software at its own risk to the extent foreseen to its own special needs (parameterisation). Any alteration beyond this constitutes an infringement of msc's intellectual property rights and requires a written agreement in advance.

3. Maintenance charge

2.5 The customer agrees to pay on products with automatic Liveupdate, an annual maintenance charge of 15% of the list price for the overall licence costs of the standard software, valid at the date of purchase of the software. This maintenance charge is due for the first time on the first day of the month following the delivery of the software. It is charged together with the software invoice, pro rata temporis, for the remainder of the calendar year. Thereafter, the charge is payable annually in advance.

2.6 The services covered by this maintenance charge comprise all updates and patches for the product purchased. These include supplements, improvements and alterations of the software. Only the most recent version of the software is maintained. Upgrades, support, installations and further services are not included in the maintenance charge and are invoiced separately by msc.

4. Support

msc provides support by phone against payment during the normal business hours. This support is not included in the maintenance charge. The charges are listed and available on the web site of msc.

5. Offer, order and delivery

5.1 Cost estimates and offers made by msc are - in particular in respect of prices, quantity, delivery date, delivery possibility and ancillary services - subject to change and not binding. Cost estimates and offers made by msc must always be made in writing. Cost estimates that are not based on a detailed list of services are to be understood as a pricing framework. msc reserves the right to make alterations that are mandatory caused by statutory or technical standards from the offer documentation or from the order confirmation.

5.2 Orders can be placed in writing, by e-mail or by phone. The contract commences only with the return in writing of the signed order confirmation by the customer or, for standard software orders, with the acceptance of the products by the customer. msc reserves the right to make the conclusion of contract dependent on a prepayment, on-account payment or security.

5.3 The firm delivery date will be notified after receipt of the order signed by the customer. Changes of an order result in cancellation of agreed deadlines and dates, unless agreed otherwise.

5.4 msc is entitled to continuous improvement of its products . Differences in the product delivered compared with the product ordered are permissible, provided that they are reasonable for the customer.

6. Examination and acceptance

6.1 After delivery of the software, it shall be accepted by the customer, i.e. the software is to be examined for its functionality. The customer has to notify in writing to msc all obvious defects within seven days from delivery. The notification shall include, in particular, any details about the timing and circumstances of the occurrence of the defect, its appearance and the effect of the defective function. If msc performed the installation, the customer is obliged to test the installation and the software together with the msc employee without delay. If the software performs essentially in line with the contract, the customer has to confirm acceptance and functionality of the software in writing by signing the report.

6.2 In the event of hidden defects, the customer must notify them in writing immediately after identification thereof and with clear documentation. The notification shall include, in particular, any details about the timing and circumstances of the occurrence of the defect, its appearance and the effect of the defective function.

7. Benefit and risk

7.1 Benefit and risk passes to the customer on forwarding the goods to an installation location designated by the customer. If goods are forwarded, msc will conclude transport insurance only on written instructions from the customer, whereby the customer has to bear the costs.

7.2 In the event of installation by msc, benefit and risk shall pass to the customer on acceptance of the installation.

8. Prices and terms of payment

8.1 The prices quoted in the order confirmation apply. In the absence of such information, the rates valid on receipt of the order apply. Unless otherwise agreed, the prices are net prices plus statutory VAT.

8.2 Payments are due and payable without any deductions within 30 days from receipt of the invoice. All prices are in Swiss Francs. WIR, cheques and bills of exchange are not accepted. If payment is not received by msc within 30 days of the receipt of the invoice, the customer is in default.

8.3 In the event of late payment, msc is entitled to charge the customer a reminder fee and default interests on arrears of 6% per annum.

9. Defects of quality

9.1 As a defect under the terms of these GTCB qualifies only a defect which (i) can be documented and reproduced and (ii) causes a deviation in function and performance when the software is used as foreseen, which prevents or significantly interferes with use of the software. Deviations that do not prevent or significantly interfere with use of the software therefore do not qualify as defects under the terms of the GTCB.

9.2 The customer is responsible for the correct selection, proper use, monitoring and consequences of using the software. This also includes the storage of transactions as well as the definition and performance of recovery routines in the event of a malfunction of the software and security measures against loss of data.

9.3 If the customer is late in notifying a defect or does not do so in accordance with the provisions of these GTCB, the rights in respect of the defect are forfeited. Rights in respect of defects expire six months after delivery of the software or rectification of a defect or performance of modification as a result of maintenance. The performance of a modification as a result of maintenance does not prevent the time limitation for the previously existent software.

10. Warranties

10.1 If a defect exists and was notified by the customer in due time, the customer has a claim against msc for rectification within a reasonable period. msc must carry out the rectification within a reasonable period. Substitute performance by third parties is excluded. The costs of substitute performance will not be borne by msc. After completion of the rectification or performance of a modification as a result of maintenance, a new acceptance in the sense of the above provisions must be carried out. In the case of a modification as a result of maintenance, however, the acceptance only relates to the modified part of the software.

10.2 msc guarantees that the software is free from rights of third parties, which may object to the contractual use. If third parties claim rights to the software, the customer informs msc without delay. msc agrees to assist the customer to defend itself against such claims.

11. Liability

Any liability of msc for damages - as legally permissible- is hereby excluded. msc is not liable, in particular for the faulty transmission of data from the customer to the financial institution, for operational readiness of the communication paths to the financial institutions involved, for improper use of the software by customers, for faulty hardware, for the compatibility of the software with the customer's hardware or other software and for damages upon installation, if performed by the customer.

12. Confidentiality

During and after termination of this agreement, both parties shall treat as confidential any information that is not manifest or generally accessible and of which they become aware in providing or receiving services under this agreement. This is subject to statutory duties of disclosure.

13. Duration of the agreement

13.1 Both parties may terminate the contract with a period of notice of six months to the end of a calendar year by registered mail. If not otherwise stated in the notice, the termination covers all program elements.

13.2 By terminating the agreement, the customer (irrespective of the duration of the use of the program) has no claim to refund of licence and maintenance fees. After termination of the contract, the customer is not entitled to receive support or any updates. In this case, the customer must re-purchase the software.

14. Applicable law and place of jurisdiction

This agreement is governed by Swiss law. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (GISG) dated 11 April 1980 are hereby excluded. The court of competent jurisdiction is at msc's domicile.