

## General Terms and Conditions ("GTC") of Cargo-Partner Holdings GmbH

### 1. General

- 1.1 The following General Terms and Conditions ("**GTC**") apply to all business transactions and proposals in particular with regard to professional services, consulting, training and any deliverables ("**Services**") of Cargo-Partner Holdings GmbH (FN603202m), Airportstraße 9, 2401 Fischamend, Austria ("**Cargo-Partner HD**" or the "**Company**") with or towards a contractual partner or customer ("**Customer**"), unless otherwise agreed in writing. In the case of permanent business relations, the GTC of Cargo-Partner HD shall also apply without express reference.
- 1.2 The GTC (including any referenced appendices) form an integrated part of any proposal, order form or other mutually agreed transaction document between the Customer and Cargo-Partner HD (the "**Order Form**"). The GTC and the Order Form, including any documents referenced therein, together form the agreement (the "**Agreement**"). In the event of any conflict between the terms of the Order Form and these GTC, the terms the Order Form shall prevail.
- 1.3 Cargo-Partner HD reserves the right to amend or supplement the GTC at any time. The updated GTC shall apply to any Agreement or renewal of Agreement becoming effective after the date of such update.
- 1.4 Any terms of the Customer that may appear or are referenced on a Customer purchase order or any other document shall not become part of the Agreement unless explicitly agreed in writing in the Order Form.
- 1.5 The version of the GTC valid at the time of conclusion of the Agreement shall be decisive in each case. Cargo-Partner HD only enters into Agreements subject to these GTC unless explicitly agreed in writing otherwise.

### 2. Scope of Services

- 2.1 The individual services engagements are offered on basis of time and material ("T&M") or fixed price ("FP"). The fees, type and scope of the Services are set forth

in the Order Form which may be supplemented with functional requirements specification (“**FRS**”) describing the scope of Services in more detail.

- 2.2 The scope of the Services as defined in the Order Form and the FRS is exhaustive and unless agreed otherwise in the Order Form and/or FRS does not include any software changes/adaptations, software development or engineering, individual software extensions or adaptations and non standard configuration beyond the generally available standard functionalities of software.
- 2.3 Any software required for the performance or use of the Services lies within the responsibility of Customer and shall be licensed and purchased independently by Customer. Upon Customer’s request Cargo-Partner HD will, however, support the Customer with procurement and installation of such software against a separate fee.
- 2.4 The Customer is not entitled to receive, use or check the machine or source code or development documentation for the Software.
- 2.5 Cargo-Partner HD is entitled to engage subcontractors for the provision of Services.
- 2.6 Services will be rendered during regular business hours from Monday through Friday from 08:00 am until 05:00 pm local time of place of performance of the Services excluding public holidays.
- 2.7 Proposals shall be valid and binding for 30 days from date of submission unless indicated differently in the proposal. Any fees stated in a proposal shall exclusively apply to the specific Services offered in such proposal and do not include any cost and expenses which will be invoiced separately.

### **3. Right to use**

- 3.1 Cargo-Partner HD and its licensors own all right, title and interest in the Services and Deliverables including all intellectual property rights embodied therein.
- 3.2 Subject to the payment of the fees and Customer’s compliance with the terms of the Agreement Cargo-Partner HD grants the Customer a perpetual, nonexclusive, non-transferable, non-sublicensable license to use and modify all programming,

documentation, reports and other deliverables delivered to Customer as a result of the Services provided under an Order Form and FRS (“**Deliverables**”) for internal purposes only. Unless explicitly agreed otherwise and to the extent necessary for Customer’s business purposes Customer may not allow any third party access to the Services or sell, lease, rent, outsource or sublicense the Services or any Deliverable embodied in the Services to any third party.

3.3 Any other rights not explicitly granted herunder shall remain with Cargo-Partner HD and its licensors. Nothing in the Agreement shall preclude from or limit in any way Cargo-Partner HD rights using any ideas, concepts, know-how, development tools or software developed or used in course of providing the Services in any present or future manner and prevent or limit Cargo-Partner HD to provide or offer such or similar Services to other customers irrespective whether such customers are being charged for the Services.

#### 4. Use of the Services

4.1 Customer or any contractual partner of Customer (“Contractual Partner”) who acts on the basis of the Services shall do so at its own risk. It is therefore the sole responsibility of the Customer/Contractual Partner to evaluate the effects of the Services and the information and data made available through the Services on the services and business relationships of the Contractual Partner/Customer's company.

4.2 The Contractual Partner/Customer shall be responsible for all activities carried out by its employees or third parties commissioned by it through the use of the Services or as a result of the access by the Contractual Partner/Customer or an employee or a third party commissioned by it to information and data made available in the course of the provision of the Services and undertakes to inform Cargo-Partner HD immediately of any unauthorized use.

4.3 If the scope of Services includes the creation of interfaces the Contractual Partner/Customer undertakes to take all reasonable measures to prevent unauthorized third parties from accessing the interfaces.

- 4.4 Cargo-Partner HD is not responsible for damages caused by unauthorized access or use of the interfaces, and in particular access to information and data made available via Services by unauthorized third parties.
- 4.5 Cargo-Partner HD shall provide the Contractual Partner/Customer with the information and data available in accordance with the scope of the Services to be rendered. However, Cargo-Partner HD only passes on this information and data and therefore accepts no liability for the completeness, correctness and up-to-dateness of this information. The respective author or data owner assumes sole responsibility for the content of the information and data.

## **5. Cooperation and change requests**

- 5.1 The parties acknowledge that the success of the Services requires the cooperation of the parties. Each party will, where appropriate, assign a project coordinator that is authorized to decide day-to-day questions that may arise in relation of the Services defined in the Order Form or FRS and who will also be the first point of contact in case of any disputes arising in course of the performance of the Services. Should the project coordinators not be able to solve any dispute amicably within 14 days upon the date one party has formally escalated a dispute to the other party, the parties will further escalate to their executive management.
- 5.2 Upon request by Customer or Cargo-Partner HD, the scope of the Services may be adjusted by way of a mutually agreed amendment to the respective Order Form or FRS outlining the changes including the adaption of the fees as applicable. Cargo-Partner HD shall not be obligated to agree to any change request of Customer which materially changes the initial scope or nature of the Services.

## **6. Customer responsibilities**

- 6.1 In addition to any specific responsibilities of the Customer set forth in the Order Form or FRS the Customer in particular agrees to timely comply with and arrange for the following:

- 6.1.1 The Customer shall provide Cargo-Partner HD with all necessary information and materials and meet reasonable requirements (in accordance with Cargo-Partners HD's specifications) which are necessary for the timely performance of the respective Services. This may include the provision of a functioning test environment.
- 6.1.2 The Services may also require information about third-party hardware, access to third-party systems or depend in any way on the actions or resources of third parties, insofar as the Service relate to establishing an interface/connection to the Customer's systems or such of its contractual partners. The Customer shall ensure that sufficient qualified personnel of the Customer as well as of the contractual partners of the Customer participate in the implementation, grant access, provide information or make declarations which are necessary for the Services to be provided.
- 6.1.3 If the Services include the configuration of software Customer agrees to adapt its network security as needed to make it compatible with the software configuration.
- 6.1.4 Customer is responsible to perform regular data back-ups.
- 6.1.5 The Customer shall also provide the Cargo-Partner HD project team with the necessary access to its premises and/or the relevant systems which if needed for Cargo-Partner HD's timely performance of the Services shall also be made available outside regular business hours.
- 6.1.6 For Services provided by Cargo-Partner HD to the Customer or to any other third party nominated by the Customer on site, the Customer shall also ensure the appropriate provision of work and storage facilities as well as Internet access, computers, telephone and other technical equipment as needed and free of charge.
- 6.2 As long as the Customer does not agree with the fulfillment of its responsibilities or is in default, Cargo-Partner HD is not obliged to perform or continue to perform the Services and Customer has no claim to use the Services or Deliverable delivered so far.
- 6.3 Cargo-Partner HD shall not be liable for any delays or damages caused by Customer's or its contractual parties' non compliance with the Customer responsibilities set forth above and in the Order Form or FRS. Cargo-Partner HD may postpone any agreed deadlines accordingly without Cargo-Partner HD being

in default as a result. Damages or other disadvantages resulting therefrom shall therefore solely be borne by the Customer.

## 7. Acceptance

7.1 For any FP engagements having the character of contract for work (Werkvertrag) Cargo-Partner HD shall notify the Customer of the completion of a project phase as defined in the Order Form or FRS and shall hand the result of work over to the Customer for testing and acceptance. If Customer does not notify Cargo-Partner HD in writing within 14 days from such notice of completion of any material defects hindering the use of the result of the Services the phase in question shall be deemed to have been contractually performed and accepted.

7.2 In the event acceptance of a project phase has not occurred due to Customers' notification of defects, Cargo-Partner HD will re-perform the noncompliant Services within reasonable period of time and again hand the result of work over to Customer for testing and acceptance until Customer confirms acceptance.

7.3 Immaterial defects may not hinder acceptance. Any project phase accepted prior to Customer's final acceptance may not prevent Customer's final acceptance.

## 8. Indemnification

8.1 Insofar as third parties assert claims against the Customer within the limitation period stated in section 10.3. on account of an infringement of copyrights, patents or other intellectual property rights ("infringement of property rights") related to the Deliverable used by the Customer in accordance with the Agreement, Cargo-Partner HD will defend the Customer against all asserted claims on account of such infringement of property rights and indemnify the Customer against all legally established claims on account of infringement of property rights by the Deliverable in accordance with the limitations of liability in item 10. These obligations of Cargo-Partner HD shall lapse if (i) Cargo-Partner HD is not immediately informed in writing of all details of these claims arising from infringements of property rights, (ii) the Customer does not adequately support Cargo-Partner HD in the event of third-party intervention by Cargo-Partner HD, or (iii) the claims arising from the

infringement of property rights are caused by the fact that the Deliverable is used together with other products that were not provided by Cargo-Partner HD.

8.2 If the use of the Deliverable is prohibited by a court, Cargo-Partner HD may in its own discretion optionally proceed as follows: (i) modify the Deliverable so that is no longer infringing; (ii) acquire a license for Customer to enable further use, in which case an additional fee may also be charged to the Customer, or (iii) withdraw from the relevant Order Form and, at the discretion of Cargo-Partner HD, reimburse or grant a credit in excess of the fee already paid by the Customer for Services to be performed beyond the time of withdrawal.

8.3 Items 8.1 and 8.2. shall not apply if the Services and Deliverable have been provided free of charge.

## **9. Warranty**

9.1 Cargo-Partner HD warrants that i) it will perform the Services in a professional and workmanlike manner and ii) the Services will conform in all material aspects in accordance with the services documentation or as specified in the Order Form and FRS for a period of ninety days from the date of the completion of the Services.

9.2 Within the warranty period Customer must notify Cargo-Partner HD of any breach of that warranty in writing describing the defect in detail. Any claimed defect must be reproducible.

9.3 In the event of a breach of the warranty under this section Customer's exclusive remedy and Cargo-Partner HD entire responsibility under this warranty shall be upon for Cargo-Partner HD's discretion i) to re-perform any nonconforming portion of the Services within a reasonable period of time, or ii) if Cargo-Partner HD cannot remedy the breach in a substantially commercially reasonable manner during such period of time to terminate the Agreement with regard to the non-conforming part of the Services or in whole and to refund the fees attributable such Services.

9.4 Any modifications or adaptations of the Services and Deliverables through Customer or its contractors or agents shall render void any warranty and liability of Cargo-Partner HD.



9.5 In cases the Services and Deliverables have been free of charge any warranty is excluded.

9.6 The scope of warranty set forth herein is exclusive. Cargo-Partner HD does not give any warranties beyond the warranties in this section whether express or implied, and any statutory warranties beyond this are expressly excluded, in particular, but not limited to, the warranty for freedom from defects or hidden defects after expiry of the warranty period, for a certain usability, for continuous operation, for certain results, for the suitability or qualification of the Services for a particular purpose.

## **10. Limitation of Liability**

10.1 Cargo-Partner HD liability is limited exclusively to damages caused by willful intent or gross negligence, damages causing death or personal injury and damages subject to the product liability. All other liability is excluded and Cargo-Partner HD is not liable for any damages caused by slight negligence, any indirect damages including loss of profits or goodwill or damages caused in the event the Services have been free of charge.

10.2 To the extent permitted under the applicable law, Cargo-Partner HD total liability is limited with the maximum amount due or paid by Customer under the Order Form giving raise to the claim.

10.3 Claims according to this section are time barred within one year from the date of arising such claim and possible knowledge of the claim arising by the Customer.

## **11. Audit**

11.1 Cargo-Partner HD shall be entitled at any time to audit Customer's compliance with the provisions of the Agreement and to generate reports in order to monitor the proper use of the Services and the associated software as applicable. Cargo-Partner HD or a third party commissioned by Cargo-Partner HD ("authorized inspectors") have the right to enter the Customer's business premises at any time during the respective business and operating hours in order to ensure compliance with the Agreement.



11.2 For the purpose of conducting the audit Customer grants the authorized inspectors the necessary unhindered access, information and inspection rights. Required information and documents are to be provided immediately and without restriction by the Customer. In particular, the authorized inspectors shall be granted access to the applications and systems insofar as this is necessary for the performance of their inspection activities. The authorized inspectors are also entitled to make copies of data and documents insofar as these relate to the Agreement and the use of the Services and the associated software or are related to it.

## 12. Confidentiality

12.1 The parties agree that i) any Confidential Information that is exchanged will only be used for purposes relating to the Agreement, and that ii) it will be protected in the same manner that each party would protect its own and iii) may only be disclosed to employees including such of a party's affiliates and independent contractors on as needed basis provided such parties are bound by confidentiality obligations at least equivalent to the ones outlined in this section. In any event, the standard of care of such information will not be less than reasonable.

12.2 The parties agree that confidential information shall in particular include financial information, business and marketing strategy, fees and prices, data related to customers employees and products as well as any proprietary information including without limitation software code, specifications, the Services and Deliverables and any other information, in written or oral form, that a reasonable person would deem to be confidential ("**Confidential Information**").

12.3 Except where prohibited by law, the following is not considered Confidential Information: (i) information which has been authorized in writing to use without restriction; (ii) information which is rightfully in a party's possession or becomes known to a party through proper means; and (iii) information which is independently developed without use or reference to the Confidential Information of the other Party.

12.4 The obligations under these provisions shall remain in effect for five years after completion of the Services or the termination of the Agreement for whatever legal reason except for Cargo-Partner HD intellectual property rights embedded in the Services or Deliverables for which the obligation for confidentiality shall be perpetual..

### **13. Publications and references**

13.1 Cargo-Partner HD is entitled, subject to written objection by the Customer, which may be made at any time, to use the name, brand and company logo of the Customer in all advertising media, in particular its own electronic and nonelectronic advertising media (e.g. company and product brochures), print media (e.g. newspapers, magazines), electronic media, online media and in particular on its own website, social media pages and via news services, and outdoor advertising, as well as at all advertising events, in particular trade fairs and product demonstrations, and to refer to the existing or former and therefore already terminated business relationship with the Customer.

### **14. Fees and payments**

14.1 The applicable fees shall be agreed in the Order Form and shall depend in particular on the scope and type of the Services ordered. Cargo-Partner HD will invoice Customer and Customer will pay either upon completion of the Services or subject to the payment schedule agreed in the Order Form excluding any rights to withhold payments.

14.2 All payments shall be made without deduction or set off and are due within thirty (30) days from date of invoice.

14.3 In the event of default in payment, interest shall be charged on fees due from the first day of default until the day of payment at the statutory interest rate of 9.2 percentage points above the base rate.

### **15. Term and termination**

15.1 The Agreement shall continue in effect until either (i) completion of the Services or (ii) the agreed term of the Agreement has expired or (iii) termination for convenience by either party upon 30 days' prior written notice or (v) termination for breach of the Agreement provided the non-breaching party has notified the breaching party in writing of such breach and the breaching party has failed to

cure the breach within 30 days or any reasonable time agreed upon receipt of the notice.

15.2 Irrespective the foregoing each party may terminate the Agreement immediately upon written notice for good cause.

15.3 Upon termination, Customer shall promptly pay Cargo-Partner HD for the Services performed and the Deliverables delivered including expenses through the date of termination.

## **16. Applicable law and venue**

16.1 The GTC are subject to Austrian Law to the exclusion of the rules of international private law and the UN Convention on Contracts for the International Sale of Goods. The application of the Austrian IPRG and other conflict rules is expressly excluded.

16.2 For all disputes arising out of or in connection with these GTC or the Order Form, in particular also with regard to the question of the conclusion and validity, the Commercial Court Vienna shall have the exclusive jurisdiction.

## **17. Final provision**

17.1 The relationship between Cargo-Partner HD and Customer is strictly that of independent contractors. No failure by either party in exercising any right hereunder shall be deemed a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of a right.

17.2 Should any provision of the Agreement be or become invalid or unenforceable in whole or in part, this shall not affect the validity or enforceability of the remaining provisions. The invalid or unenforceable provision shall be replaced by a valid or enforceable provision which comes as close as possible in its economic content to the invalid or unenforceable provision; the same shall apply mutatis mutandis to any loopholes in this contract.

17.3 Any amendments and supplements to the Agreement must be made in writing. The Agreement constitutes the entire agreement between the parties and

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replaces and supersedes entirely any written or oral prior proposal and agreements relating to the subject matter.

17.4 The Agreement shall bind each of the parties and their successors in title. The Customer shall neither be entitled to assign the Agreement or the any rights and obligations arising from the Agreement to any third party without the prior written consent of Cargo-Partner HD nor be allowed to transfer them in any other way, including by way of universal succession. Subject to written notice Cargo-Partner HD may transfer the Agreement and/or any rights and obligations arising therefrom to other companies affiliated with Cargo-Partner HD pursuant to § 189a para. 1 no. 8 Austrian Commercial Code.