

**GENERAL TERMS AND CONDITIONS
FOR THE LICENSING, UTILISATION AND MAINTENANCE
OF STANDARD SOFTWARE**

**from Internet Invest Unternehmensberatungs- und Beteiligungs GmbH
(hereinafter referred to as "INTERNET INVEST")
Sensengasse 7/7, A-1090 Vienna**

1. Subject of the Contract

1.1 INTERNET INVEST markets standard software programs and standard software tools for configuration purposes (hereinafter referred to as "standard software programs" or "software"). The software manufacturer has granted INTERNET INVEST the right to market the software and grant the customers appropriate utilisation licences.

1.2 These General Terms and Conditions from INTERNET INVEST regulate the completion, provisions and handling of individual contracts for the licensing, utilisation and maintenance of INTERNET INVEST's standard software programs. Utilisation rights for a standard software program including its relevant user documentation and the right to maintenance of the standard software are granted when both sides sign an individual contract ("product order sheet"). In the event of discrepancies between the product order sheet and these General Terms and Conditions the provisions of the product order sheet will apply.

1.3 Other services such as selection of software, creation, licensing and utilisation of bespoke / individual software and additional software, adaptation of the standard software, software installation, set-up, customising, start-up of the software, and other deliverables and services are not subject to these General Terms and Conditions ("GTC"). Such deliverables and services are the subject of separate legal agreements and other conditions apply to them.

1.4 Documents, proposals, test programs etc. are the intellectual property of INTERNET INVEST or of third parties and the customer may not duplicate them or make them available to other parties. If the contract is not completed, INTERNET INVEST may choose to have this material returned or deleted, and it must not be used or distributed in any way.

1.5 Unless anything is specified to the contrary in the product order sheet, the software is delivered in the version current at the time of the completion of the contract; software source code is provided to the customer only if this is explicitly specified in the product order sheet.



1.6 The customer has sole responsibility for the selection of the software and the technical deployment environment (e.g. with respect to database, operating system, hardware), for the installation and configuration of the software, for program execution and the contents and other data set up by the customer with the help of the software. Any licences required in connection with this (operating system, database software, etc.) must be purchased independently by the customer.

1.7 Unless anything to the contrary is specified explicitly and in writing, these GTC apply equally to all additions, extensions and other modifications, including new program versions (e.g. updates) of the software under contract provided by INTERNET INVEST within the scope of the contract governed by these GTC.

1.8 INTERNET INVEST owes only such principal and secondary services that are agreed explicitly and in writing. General terms and conditions, basic conditions and other conditions of the customer do not constitute part of the contract, unless the parties to the contract agree something different explicitly and in writing for each individual case.

2. Definitions

2.1 “**Software**” denotes the INTERNET INVEST standard software programs listed in the product order sheet together with the relevant user documentation. The user documentation is provided in electronic format.

2.2 “**Designated system**” denotes the server system (hardware, operating system, database) on which the contractual use of the software is permitted.

2.3 “**End users**” are those persons that are allowed by the customer to access the software installed on the customer’s designated system.

3. Copyright/Scope of Utilisation

3.1 The customer acknowledges that all rights to the software, in particular the exclusive, worldwide exploitation rights to all programs, documentation and information made available within the scope of the contract negotiations and completion, lie with INTERNET INVEST and other third parties, the customer’s rights to the subject of the agreement are limited to the non-exclusive rights defined in the product order sheet and in this section. Insofar as the copyright and the utilisation rights respectively lie with other third parties (and not with INTERNET INVEST), it is explicitly stated that INTERNET



INVEST is authorised to grant the customer contractual utilisation rights to the software in accordance with these GTC.

3.2 The customer may make the software available to its end users via the Internet or Intranet exclusively on the designated system. It is legally and contractually forbidden to duplicate or distribute the software in any way without explicit permission or to develop similar software using the contractual software as a template.

3.3 INTERNET INVEST grants the customer a non-exclusive, strictly non-transferable right to use the software within the agreed scope, either in return for one single payment for an unlimited period of time (= purchase) or in return for periodic payments for an agreed period of time or for an unlimited period of time with the option of termination (= rental). The product order sheet shows whether the software was made available on the basis of purchase or rental. Utilisation rights begin with the contract start date specified in the product order sheet. Utilisation rights for software not delivered by virtue of the customer's first order, but instead e.g. within the scope of an upgrade or maintenance operation, begin as soon as the customer stores the programs on hard disk or executes them in the CPU. The utilisation rights in respect of the previously provided and now replaced programs lapse as soon as the new programs are used in production.

3.4 "Utilisation" denotes the execution of the instructions contained in the programs. Utilisation rights also cover the necessary use of the user documentation.

3.5 The customer may use the software and make the software available to its end users only on the agreed designated system and within the scope of the agreed deployment environment (e.g. maximum number of end users). The designated system and the deployment conditions are specified in the respective product order sheet.

3.6 The customer may configure and adapt the software individually within the possibilities offered by the software itself. Beyond this the customer is not authorised to compile, edit or otherwise modify the software. Exceptionally, the activities mentioned above do not require consent from INTERNET INVEST, if they are permitted on the basis of § 40e Abs. 2 UrhG (Urheberrechtsgesetz, copyright law section 40e paragraph 2). INTERNET INVEST points out that even minor changes can cause considerable disruption to the contractual software and to other software. The customer is therefore explicitly warned against such modifications to the software; he carries the full risk resulting from such modifications. The same copyright authorisation applies both to the original software and to modified programs. The customer is also prohibited from developing similar software using the INTERNET INVEST software as a template.



3.7 The customer is not authorised to transform the software either wholly or in part from the object code into other formats. In exceptional circumstances, § 40e UrhG allows decompilation of the software, if a written request from the customer to INTERNET INVEST to provide information and documentation necessary to ensure interoperability is not fulfilled within a reasonable period of time. Before employing any third parties, e.g. in accordance with § 40e (1) no. 1 or (2) no. 2 UrhG, the customer must provide INTERNET INVEST with a written declaration from the third party, in which the third party undertakes to comply with the provisions stipulated for the customer with respect to INTERNET INVEST in section 3 of this contract. On request by INTERNET INVEST, the third party must also undertake to comply with the provisions stipulated for the customer with respect to other licensing parties.

3.8 The customer is authorised to allow its end users access to the software on the designated system within the scope of these GTC; beyond this the customer is prohibited from passing this software on to other parties, transferring the granted utilisation rights or granting sub-licences for the software.

3.9 Any use of the programs beyond the agreed utilisation scope requires written agreement from INTERNET INVEST. If the utilisation occurs without this agreement, then INTERNET INVEST is entitled to revoke the customer's utilisation rights. In addition – and notwithstanding the revocation of the utilisation rights – INTERNET INVEST will, in these cases, issue an invoice for the sum due for the utilisation outside the agreed scope calculated on the basis of INTERNET INVEST's generally valid prices at that time plus interest on arrears as specified by law; the right to demand further compensation for damages is reserved.

3.10 The customer is obliged to leave unchanged any protective notes, e.g. copyright notices, issued in conjunction with the software, the customer is prohibited from changing or decrypting any keys delivered with the software.

3.11 The customer will contractually impose the agreed usage limitations on its end users and certify this to INTERNET INVEST on request.

3.12 INTERNET INVEST will not enter any kind of contractual agreement whatsoever with the end users, therefore INTERNET INVEST does not accept any kind of liability whatsoever with respect to the end users.

4. Delivery



4.1 INTERNET INVEST delivers the software to the delivery address specified in the product order sheet or transfers it to the customer in electronic format. The software installation is not part of the contract, although it may be agreed separately. The delivery includes the user documentation, which is provided at INTERNET INVEST's choice in written form, on a data storage medium or in electronic format.

4.2 In the absence of other written agreements, the delivery will be made by the date specified in the product order sheet. Force majeure, strikes, the inability on the part of INTERNET INVEST to deliver on time through no fault of its own and other similar circumstances will increase the delivery time by the duration of the delay plus a reasonable start-up time once the reason for the delay no longer exists.

4.3 Delivery dates and deadlines are binding, only if they are specified as explicitly binding and in writing by both INTERNET INVEST and the customer in each individual case, failing which delivery dates and deadlines will be considered as not binding.

5. Software Maintenance

5.1 In the case of software purchase (cf. item 3.3) INTERNET INVEST can provide the customer separately with maintenance for the contractual software, maintenance is not included in the software delivery. In the case of software rental (again cf. item 3.3) maintenance is an indivisible part of the software delivery, in this case maintenance can also only be terminated together with the licence contract.

5.2 Maintenance may include the following deliverables:

- Delivery of generic new program versions with generic fault corrections and modifications (e.g. updates) of the contractual software, which are offered during the lifetime of the contract as part of maintenance, but usually not including new program versions that provide considerable functional enhancements. Program extensions, which are marketed by INTERNET INVEST for purchase as standalone modules, are also excluded.
- Telephone or electronic support for fault and error correction and workarounds during official INTERNET INVEST office hours. (from 9 to 12 am and 1 to 5 pm CET)
- Provision of product information via website.



5.3 The customer will report errors to INTERNET INVEST without delay in the format specified by INTERNET INVEST and including details of the manifestation and effects of the error and the conditions under which it occurs. INTERNET INVEST will evaluate this report at its discretion according to the following criteria and categorise it in one of the following levels of priority:

High: Errors that cause the licensed software to cease working or that cause data to be destroyed.

Medium: Errors that significantly affect the performance of the licensed software or that significantly curtail the use of the software by the customer.

Low: Errors that cause only a minor disruption in the utilisation of the licensed software.

INTERNET INVEST will then begin to analyse and eliminate the reproducible error or provide a workaround to bypass the error; the maximum reaction times that must be met by INTERNET INVEST, that is the time span within which error resolution must begin after the error has been reported to INTERNET INVEST, are defined as follows:

Priority	Hours
High	3
Medium	6
Low	48

Only those times that fall within INTERNET INVEST's official office hours (cf. item 5.2) are taken into account in calculating the reaction times.

5.4 The customer will nominate a contact person for INTERNET INVEST, and this will be the only person authorised to claim the services listed in item 5.2 The customer will ensure that this contact person is suitably qualified to act as the contact with INTERNET INVEST with respect to the support for eventual problems affecting the licensed software.

5.5 INTERNET INVEST is relieved of the obligation to provide maintenance services to the customer, without this in any way affecting the customer's obligation to pay the agreed fee, if the customer refrains from taking delivery and installing the current or previous versions of the error resolutions for the



software delivered to the customer, unless the delivered versions of the error resolutions themselves exhibit considerable faults.

5.6 The following are not part of the standard maintenance deliverables and must be paid separately at INTERNET INVEST's usual fees and expense rates: reconstruction of the software or any increased effort required to repair the software following utilisation of the software contrary to the provisions in the contract, utilisation in an environment other than the agreed environment, improper use, external factors, force majeure or reasons for which INTERNET INVEST cannot be made responsible, as well as work on software modified by the customer contrary to the contract or maintained by technicians other than INTERNET INVEST personnel, without prior written permission from INTERNET INVEST.

6. Fees/Terms of Payment

6.1 The following applies to software purchase (cf. item 3.3):

The payment is the fee for the agreed utilisation ("licence fee"). This licence fee is specified in the relevant product order sheet.

In the case of a software purchase the customer is free to complete a maintenance contract. Maintenance fees may be paid annually, quarterly or monthly, and this must be specified in the product order sheet. Payment of maintenance fees is due in advance for each payment period.

In the event of an extraordinary early termination of the maintenance agreement the customer's obligation to pay the maintenance fees is waived only if INTERNET INVEST is responsible for the early termination of the contract either wholly or for the greater part. The termination of the maintenance contract has no effect on the validity and content of the licence agreement.

Payment of licence fees is due within fourteen days of the invoice date, however not before delivery of the software.

6.2 The following applies to software rental (cf. item 3.3):

The agreed fee is paid in return for delivery, agreed utilisation and maintenance of the software. The fee depends on the utilisation scope and is specified in the relevant product order sheet.



Unless anything is specified to the contrary in the product order sheet, the fees are equal payments to be made regularly (periodically).

Unless anything is specified to the contrary in the product order sheet, the fees must be paid in advance of the period (i.e. year, month) to which they apply .

In the event of an extraordinary early termination of the contract the customer's obligation to pay the periodic fees is waived only if INTERNET INVEST is responsible for the early termination of the contract either wholly or for the greater part.

6.3 Irrespective of item 10.3 it is agreed that the value of maintenance fees (item 6.1) and rental fees (item 6.2) will remain stable. The calculation of this value stability is based on the 2000 index of consumer prices published by the Austrian Central Statistics Office (Verbraucherpreisindex 2000 des Österreichischen Statistischen Zentralamtes) or another index that may replace it. The initial reference and basic value for this contract is the index figure published for the month in which the contract was completed.

Fluctuations of the index number by up to 5% up or down with respect to the basic value and subsequently with respect to the value for the first month, in which an adjusted fee takes effect – even retroactively – will in the first instance not be taken into account. If the fluctuation exceeds 5% then the entire increase will be taken into account. INTERNET INVEST is responsible for calculating the fee adjustments. Any net payments already made are not affected by index-linked price increases.

6.4 In all cases the respective legal purchase tax must be added to the fee, if the deliverable is subject to purchase tax.

6.5 In the case of default INTERNET INVEST is due interest on delayed payments of 10% p.a. above the relevant base interest rate of the European Central Bank; INTERNET INVEST reserves the right to pursue further claims.

6.6 The customer has the right to setoff and lien towards INTERNET INVEST only in the event of undisputed or legally binding claims.

6.7 Compliance with the payment deadlines agreed forms an essential prerequisite for the (continued) fulfilment of the contract on the part of INTERNET INVEST. Non-compliance with agreed payments entitles INTERNET INVEST to cease current work, to withdraw from the contract (in the event of pur-



chase, item 3.3) – wholly or in part – or to terminate the contract (in particular in the case of rental, item 3.3) immediately.

7. Liability/Warranty

7.1 With the delivery of the software to the customer all liabilities and risks are transferred to the customer. The customer bears the risk if the software can be used only in a limited way or not at all due to damage, technical or commercial unsuitability, destruction, theft or loss, even if coincidental or through force majeure.

7.2 INTERNET INVEST warrants for a period of one year after delivery that the software did not at the time of delivery contain faults that nullify or affect its suitability for the agreed function. Irrelevant deviations from the agreed function are ignored. Details in catalogues, brochures, product descriptions, advertising material and other written or verbal statements, which are not explicitly included in the contract, cannot be used to derive warranty claims. The customer is responsible for providing proof of the presence of faults.

7.3 INTERNET INVEST warrants for a period of one year after the provision of deliverables that the deliverables provided as part of maintenance do not contain faults that nullify or affect the value and suitability for the agreed functions. Irrelevant deviations are ignored.

7.4 The customer is obliged to report faults in writing to INTERNET INVEST without delay and in a reproduceable form and including any information that may be helpful in determining the fault. The ability to reproduce the error is a necessary prerequisite for fault resolution.

7.5 The priority of the fault resolution is determined by the level of operational disruption. In the event of severe disruption INTERNET INVEST will begin the fault resolution or workaround immediately.

7.6 The customer supports INTERNET INVEST in the search for faults and for the causes of these faults. If the fault does not demonstrably lie with INTERNET INVEST, the customer will be invoiced by INTERNET INVEST for relevant services in accordance with INTERNET INVEST's usual fees and expense rates at that time.

7.7 In the first instance INTERNET INVEST will provide warranty in the form of rectification of defects. This rectification can take the form of fault resolution, provision of a new program version or by INTERNET INVEST showing ways of avoiding the consequences of the fault. Expenses incurred for fault resolution by third parties (substitutive execution) cannot be refunded.



7.8 The customer checks each program to ensure it is free of defects and usable, before beginning to use the software productively. This applies equally to programs delivered to the customer within the scope of warranty or maintenance.

7.9 The customer will take appropriate measures for the eventuality that the software does not work correctly either wholly or in part, e.g. by taking daily backups or checking the data processing results.

7.10 If INTERNET INVEST is unable, notwithstanding repeated attempts, to resolve the fault or provide a workaround that allows the software to be used as agreed, then the customer is entitled to demand a reduction of the agreed fee as determined by law or – in the case of software purchase (item 3.3) – to withdraw from the contract or in the case of maintenance, to terminate the contract without notice or – in the case of software rental (item 3.3) – to terminate the contract without notice. All further warranty or maintenance obligations are excluded.

7.11 The customer carries sole responsibility for the selection of the software. For this reason INTERNET INVEST does not assume any guarantee that the software has all the properties required by the customer, or that it is able to execute all applications, which the customer may intend to run.

8. Compensation

8.1 INTERNET INVEST will provide compensation only in the event of malicious intent or gross negligence. INTERNET INVEST's liability is limited to the fee agreed with the customer for the deliverable directly responsible for the damage, in the case of software rental (item 3.3) to the rental fee for one year. INTERNET INVEST will not assume any liability for loss of profits, expected but not incurred savings, indirect damage or consequential damage or for damage to recorded data.

8.2 In its own area of responsibility the customer will provide the prerequisites for keeping the damage as small as possible, for example through daily data backups or running checks of the processing results.

8.3 It is explicitly specified that the customer is responsible for providing proof that any damage was caused by INTERNET INVEST with malicious intent or through gross negligence.

9. Third Party Property Rights



9.1 INTERNET INVEST will defend the customer against any claims derived from the infringement of a commercial trademark or copyright through utilisation of the software in accordance with the contract. INTERNET INVEST will pay costs charged to the customer by the court and compensation sums, on condition that the customer advises INTERNET INVEST without delay in writing of such stated claims and that all defense measures and settlement negotiations towards the third party are reserved to INTERNET INVEST.

9.2 If claims have been made or are expected against the customer as described in item 9.1, INTERNET INVEST may, at its own expense, change or replace the affected software to an extent acceptable to the customer. If it is not possible or reasonable to achieve this or to obtain utilisation rights with a reasonable effort, then each of the contract parties may terminate the contract for the relevant program without notice. Item 8 applies correspondingly to compensation claims brought by the customer against INTERNET INVEST on the basis of the infringement of the property rights of third parties.

10. Contract Duration

10.1 The following applies to software purchase (item 3.3):

The software is made available for an unspecified period of time for the agreed utilisation.

If a maintenance contract is completed, and in the absence of any other provision in the product order sheet, the maintenance contract will be automatically extended by a period corresponding to the contract duration after the agreed contract duration has elapsed, unless it is terminated by one of the contract parties in writing at least 90 days before the contract period is due to end.

10.2 The following applies to software rental (item 3.3):

The contractual relationship (licensing, utilisation and maintenance rights) begins with the date specified in the product order sheet and is limited to the duration specified in the product order sheet. If the contractual relationship is continued after this period has elapsed, then it is extended for a year at a time. The contractual relationship is deemed to continue if the customer does not provide INTERNET INVEST with the written declaration required in accordance with item 11 before the contract period ends.

10.3 The customer accepts that both for maintenance contracts (in the case of software purchase) and rental (item 3.3) the fees for the respective extension period will be based on INTERNET INVEST's prices for the three months preceding each extension. At the customer's request INTERNET INVEST



will provide the customer with the applicable prices for the contractual software (resp. deliverables). A contract termination before the end of the respective contract period can occur only on the basis of an extraordinary termination reason. Extraordinary termination reasons may be, in particular, if the customer violates essential provisions in this contract, if insolvency proceedings are initiated on the assets of one of the contract parties or if such proceedings are rejected due to insufficient assets to cover costs, or in equivalent circumstances.

11. Consequences of Contract Termination

Irrespective of the reason for the contract termination the customer is obliged to hand over to INTERNET INVEST or at INTERNET INVEST's request to destroy without delay the original copies of the software including any modifications, extensions etc. as well as the entire documentation. The customer is obliged to cease immediately any use of the software and of any modifications and additions whatsoever and to destroy all copies of the software including any modifications and additions. The obligation to delete the software does not include an archive copy made in accordance with legal regulations and held for the prescribed storage period, however this copy must no longer be used in production. The customer will confirm to INTERNET INVEST in writing that the measures mentioned above have been put into effect.

12. Transfer of Rights

All rights or individual rights resulting from this contract, as well as the contract as a whole, can be transferred by INTERNET INVEST in particular to companies affiliated with INTERNET INVEST. The customer is not allowed to transfer the contract, surrender claims resulting from it or grant sub-licences without explicit written consent from INTERNET INVEST.

13. Final Provisions

13.1 INTERNET INVEST is entitled to use third parties to fulfil its contractual obligations.

13.2 It is agreed that all disputes resulting from a contract subject to these GTC including any disputes about its legal existence or non-existence will be referred exclusively to the objectively appropriate court in Vienna. Contracts subject to these GTC, including the issue of their validity, are subject to substantive Austrian law, with the exception of the UNCITRAL purchase law.

13.3 Modifications and additions to the GTC and the product order sheet must be made in writing, this also applies to the revocation of the written form.



13.4 The invalidity of individual provisions in these GTC or in a product order sheet does not lead to the invalidity of the contract as a whole. Instead the contract parties will replace the affected provision with one that corresponds as closely as possible to the intention of the agreement.

13.5 The customer is liable for any taxes or fees due in connection with drawing up this contract or a product order sheet.
