

# General Terms and Conditions of "inet"-logistics GmbH



## 1. General conditions

**1.1** The General Terms and Conditions ("GTCs") below shall apply to any legal relations between "inet"-logistics GmbH ("inet") and the customer, unless a general agreement between the above contracting parties is in force.

**1.2** inet may amend or supplement these GTCs. Should the customer not oppose the amended terms and conditions in writing within a period of four weeks of receipt of the notification of amendment, the new GTCs shall begin to take effect in accordance with the amendment, even for contractual relations already in place. Should the customer put forward an objection within this period of time, inet is entitled to terminate the contractual relationship with the customer as at the date from which the amendments are supposed to apply.

**1.3** The specific obligations and duties which the parties to the agreement are obliged to perform shall be governed by the individual agreements and appendices concluded on the basis of the present T&Cs, and the latter set out the technical and economic performance features.

**1.4** The technical/economic provisions first mentioned under Clause 1.5 always take precedence over those mentioned further down if there are any inconsistencies. Any legal provisions contained in subordinate documents shall only take precedence over the legal provisions regulated in the present GTCs if the parties to the agreement expressly declare in writing that the parties to the agreement may deviate from the legal provisions contained in the GTCs in subordinate agreements. Any contractual gaps shall be closed by drawing upon the contractual aims established, as well as the inherent purpose of the provisions of the agreement agreed upon between the parties.

**1.5** Contractual hierarchy in regard to technical/economic provisions:

- the technical/economic specifications of services, as well as the other technical/economic appendices to the respective individual agreements.
- the technical/economic provisions of the respective individual agreements.
- the technical/economic provisions of the framework contract and its technical/economic appendices
- the technical/economic inherent purpose of the provisions of the agreement set out as the "objectives of the agreement" and general commercial bases.

## 2. Conclusion and termination of agreements

**2.1** For all services to be provided by inet, exclusively a written agreement based on the present GTCs shall be authoritative. An order placed with inet is always only deemed an offer, which needs to be accepted by inet in writing. Furthermore, an agreement with inet is always only deemed to have been concluded if the latter engages in actions implicitly constituting performance in response to an order.

**2.2** Agreements come into force on the day of signature, and are, as long as the agreement itself does not expressly state anything to the contrary, concluded for an indefinite period of time. Contractual amendments or extensions come into force on the day of their signature.

**2.3** An agreement may be regularly terminated by either party by means of registered mail, giving twelve (12) months' notice to the end of the year. The date of the postmark is deemed to be applicable in respect to the adherence to the deadline. The right to terminate the agreement for cause remains unaffected. An important cause exists, in particular, if - in spite of receiving a written warning - one of the parties culpably breaches material obligations arising from the contractual relationship and the other party cannot be expected to await the expiry of the regular period of notice. In addition, inet shall have the right to terminate for cause in case of a repeated breach of Art. 7.2 and/or 7.3 and/or in case the customer does not meet its payment obligations despite being provided a 14-day grace period.

**2.4** In so far as there are no statutory provisions to the contrary, either party to the agreement is entitled to rescind the contract without notice at any time if insolvency or settlement proceedings are instituted over the assets of one of the two parties or the institution of insolvency proceedings is dismissed due to lack of funds.

**2.5** inet may terminate its obligations to provide particular services under the agreement by giving written notice of the end of life of such service to the customer at least 12 months before the effective date of such termination, provided that inet shall supply, and the customer shall purchase, such service ordered pursuant to this Agreement until the effective date of such termination.

## 3. Impediment to performance

Should inet fall behind schedule with any of the obligations incumbent upon it due to reasons which are not its fault, inet may request a reasonable period of time to fulfill such obligation. Any resulting costs incurred by inet are to be reimbursed by the customer.

## 4. Prices, payment terms and duties

**4.1** One-off charges may be adjusted in line with the respective rate of inflation as at the invoicing date by inet, if, as at the date of the amount of the respective fee being agreed, the rate of inflation has exceeded a threshold of 1%. (Basis for calculation: HICP for the euro-zone; 2015 = 100). Fees which are to be charged periodically (SaaS Transaction Based Fees and Change Request Fees), charges which are charged based on time expenditure (e.g. professional Service Charges) and lump sum charges may be adjusted annually by inet in line with inflation based on "HICP for the euro-zone; 2015 = 100". inet informs the customer through a textual notification. The adjustment is calculated in each case from the change between the index value October of the current year and the index value October of the previous year. The change shall take effect on the effective date mentioned in the notification.

**4.2** Professional Services Charges, such as project management, implementation services, software engineering, consultancy or training, will be invoiced on a monthly basis. In case of an agreed fixed price for Professional Services Charges a payment plan applies as follows: 40% is due upon the order being placed, 30% at the end of conception (and before the system setup on the test system), 20% at start of User Acceptance Test and 10% at Go-Live of the production system. In case details given by the customer and relevant to inet's pricing are incorrect or incomplete, or should the latter change substantially retrospectively, inet is entitled to make an appropriate price adjustment.

**4.3** One-off and lump sum charges will be charged in advance. Non-transaction based charges (base fees, flat fees and change request fees) will be charged yearly upfront. SaaS Transaction Based Fees will be charged to the customer by inet monthly, at the beginning of the respective following month.

**4.4** The payment term for paying any costs and fees is ten (10) days. Any costs and fees are understood to be exclusive of the statutory VAT. Amounts invoiced are to be free of any deductions and may not be paid in cash. The customer is required to check the invoices regularly and raise any objections to them vis-à-vis inet in writing without delay, however no later than within four (4) weeks of receipt of them. Should the customer default with payment, default interest of 8% above the reference rate stipulated by the European Central Bank (main financing rate) shall apply.

**4.5** Customer shall have no right of set-off or retention right unless its counterclaims have been found to be valid by a court of law (in a final and non-appealable decision) or are uncontested or have been acknowledged by inet.

**4.6** Any obligation to pay duties or excise fees arising from the contractual relationship or any associated activity of inet, with the exception of income tax, shall be borne by the customer. Should a claim be made against inet for such duties, the customer is to indemnify inet and hold it harmless.

**4.7** By signing the agreement with inet, customer confirms that a Purchase Order (PO) and/or PO number is not required, or if a PO is required, customer shall issue a PO within two weeks upon signing of the agreement. In case of a PO with limited duration (e.g. PO annually to be renewed) customer shall issue a new PO in time. In case the issuance of a PO is delayed by the customer for whatever reason, inet shall have the right, following a grace period of one week, to stop providing any services until the required PO is issued.

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## 5 Physical logistics

Any matters concerning the physical logistics are to be directly negotiated, decided upon and invoiced between the consignor and the freight forwarder in accordance with the provisions agreed between these.

## 6 Principal contractual obligations

6.1 The customer shall:

- a) not to provide any political extremist, religious fanatical or pornographic content on the inet platform, or any content not in line with the free democratic basic order;
- b) to adhere to the penal and supplementary penal provisions, as well as any copyright, trademark and competition law provisions, and any regulations under private law;
- c) to always treat the access data, consisting of user ID and password, as confidential;
- d) in the case of contractual items which are subject to a limitation in regard to data transfer and storage volumes (archival), to pay the corresponding excess costs, upon their being invoiced, in the event of the volume being exceeded.

6.2 Should the customer violate any of the obligations specified in Art. 6.1, the customer is obliged to cease and desist from continuing to violate such obligations, to compensate inet for any damage incurred, and to indemnify inet against any damages and reimbursement of expenses of third parties based on violation of obligations. This also includes the costs of any necessary prosecution. Any other rights of inet, in particular to block content and the customer's access to the inet Transportation Management System (TMS), as well as extraordinary termination, remain unaffected.

## 7 inet Transportation Management System (TMS)

7.1 Should inet grant the customer rights of use in regard to the inet TMS system in a written agreement, and should the latter not be described in further detail there, they shall have the following scope (Art. 7.2 and 7.3).

7.2 inet shall, as a software-as-a-service provider, make available the functionally non-exclusive, non-transferable/sub-licensable, subject to payment of the agreed prices, irrevocable, for the term of the service agreement, within the scope of the agreed service agreement right of use in the inet TMS. The right to operate the inet TMS is independent of the latter, and belongs exclusively to inet.

7.3 All rights in the inet TMS, as well as in project-related extensions, such as interfaces and compilers, in the database design, in graphic designs or in any other software developments, are solely owned in full by inet. The customer shall in particular be obliged:

- a) not to either itself access programs, software components or data or permit third parties not authorised by inet to do so, or to pass on or duplicate such;
- b) in the case of a rescission or termination of the agreement, to hand over any software provided, including any copies, the associated programs and documentation, the user handbook, the data carriers and any other documentation, to inet without delay or, if the copies are on a hard disk, to remove them. The customer shall confirm to inet in writing that no more copies exist.

7.4 All documents of inet contain know-how, ideas and development endeavors of inet and its subcontractors. No documentation and information may be evaluated, duplicated or made available to third parties in any way, either in whole or in part, without inet' permission.

## 8 Acceptance

### 8.1 Execution

Once the agreed services have been fully provided, inet shall notify the customer in writing that they are ready for acceptance. The customer shall be required to check the functioning and completeness of the services provided directly following delivery. The customer shall be required to accept the services or notify any defects existing within 20 working days of such date. The acceptance shall be documented by inet and the customer in an acceptance report, which is to be signed by both parties to the agreement. Otherwise, acceptance shall be deemed to have occurred once the period specified has expired if no defects which prevent acceptance exist (see 8.2).

### 8.2 Defects discovered upon acceptance

Any defects discovered upon acceptance are to be remedied by inet as soon as possible. Defects which only impair the services delivered marginally (insignificant defects as per Art. 8.3), shall, regardless of inet' obligation to remedy the defect, not prevent acceptance. Once any significant defects notified have been remedied, the acceptance is to be carried out again.

8.3 A defect shall be deemed insignificant if no significant impairment of the functioning and/or fitness for purpose is to be feared in regard to the use of the service agreed between the parties to the agreement. Insignificant defects may be remedied by inet within the scope of one of the next regular releases.

## 9 Change requests

The customer may request changes in the agreed services, either functionally or from a technical perspective, through the use of further functions or adjustment of existing functions (e.g. languages, interfaces or documentation) (change requests). Unless clearly defined by the provisions of the respective individual agreement, inet shall notify the customer in writing, after examining such change requests, whether the change is possible and on what conditions it can be implemented (dates, compensation, cooperation, any direct or indirect expenses [such as an increase in the maintenance costs]).

Should not insignificant effort be required to examine the change request, inet will invoice the expenditure for reviewing such requests separately, as long as inet has informed the customer thereof and pointed out the scope of the effort involved and the customer, after receiving such information, continues to wish such change requests to be reviewed. This provision shall likewise apply if the total expenditure for a large number of change requests results in not insignificant efforts being required.

## 10 Warranties

10.1 inet warrants, in the case of work performed, that the agreed performance features are fulfilled and comply with the scope of services agreed in writing. inet shall remedy any defects notified to it by the customer. Should a defect not be remedied within a reasonable period of time, customer's exclusive remedy shall be to reduce the portion of the fee attributable to the deficient performance. Other warranty claims, including but not limited to rescission (*Wandlung*) shall be excluded. Defects may not be remedied by third parties. Insignificant defects (Art. 8.3) may be remedied by inet within the scope of one of the next regular releases.

10.2 The customer shall inform inet of any defect within four weeks of discovering it or within four weeks as from the date on which the customer must have been aware of the defect or otherwise lose its right to raise warranty or damage claims. The warranty period for any claims on the part of the customer shall amount to six (6) months as from the day on which the delivery was made or the service provided.

10.3 inet is not an operator of IP or telecommunications infrastructures and thus does not assume any warranty and/or liability in regard to any failures, interruptions, omissions, faulty data transfers, or other disruptions or impairments of the channels of communication caused by technical difficulties (including necessary maintenance time) and for the successful transmission of IP packets (packet loss) or specific latencies. In this regard, the customer shall be responsible for any connection or data transmission risks in public networks or in the customer's own network.

10.4 inet shall not assume any warranty that the services to be provided by it (especially the inet TMS) are compatible with any software and interfaces used by the customer. The nature and scope of the compatibility is to be defined in writing in each case by the parties to the agreement for the individual case at hand.

10.5 Provided that Open Source Software (OSS) are part of inet services, any and all warranty and liability for such OSS shall be excluded.

10.6 Moreover, inet does not assume any warranty that all software bugs can be eliminated or remedied.

10.7 In any case, in regard to the inet TMS software the warranty is only limited to reproducible defects.

10.8 The warranty shall lapse if any changes are made to the subject of services (in particular the software and interfaces) by the customer or a third party without inet' consent.

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**10.9** Any support, error diagnosis and remedying of bugs and flaws which are the customer's fault, as well as any corrections, modifications and additions, shall be carried out by inet in return for a fee.

**10.10** inet does not guarantee the availability of the services with regards to cyber-attacks or the prevention from loss of, alteration of, or improper access to, customer's account information or data.

## 11 Liability

**11.1** inet is not liable for slight negligence. In the case of grossly negligent breach of duty, inet' liability shall be limited to foreseeable, contractually typical and direct losses, due to violations of material contractual obligations and shall be limited to the amount of the average annual total order value (contract for the fulfillment of a continuing obligation) or the fee (work performed) per contract. In the case of willful breach of significant contractual obligations, inet' liability shall be limited to foreseeable, contractually typical and direct losses, to the amount of twice the average annual total order value (contract for the fulfillment of a continuing obligation) or twice the fee (work performed) per contract. Special agreements are to be concluded regarding increased risks.

**11.2** The foregoing contractual obligations shall not apply in the case of injury to life, the body or the health, payments pursuant to Art. 11.8) or in so far as the Product Liability Act applies.

**11.3** Compensation for (direct or indirect) consequential damages and pecuniary losses, savings or profits not achieved, losses in interest, lost expenditures made data losses or corruption (see 11.6 below) and losses arising from claims of third parties (also arising under the title held under product liability) are, in so far as statutorily admissible, excluded.

**11.4** Any liability for misuse resulting from unauthorized use of the customer's user ID and password shall be excluded, in so far as the latter are attributable to the customer.

**11.5** No liability can be assumed by inet in the field of physical logistics.

**11.6** inet regularly backs up data of the customer in line with the provisions of the service level agreement (SLA). Should data of the customer be lost or corrupted, in particular in case of cyber-attacks, inet shall only be liable for the work expenditure necessary to restore such data to the latest available back-ups of such data.

**11.7** inet shall only be liable for any losses caused by its assistants or employees, under Sec. 1313a Austrian Civil Code (ABGB) in so far as the damage has been caused by an act of gross negligence or intentionally, which was inevitably required in order to fulfill the contractual obligations.

**11.8** Subject to Art. 10.5, if a third party asserts a claim against the customer that an inet service acquired under the agreement infringes a patent or copyright, inet will defend the customer against that claim and pay amounts finally awarded by a court against the customer or included in a settlement approved by inet, provided that the customer promptly a) notifies inet in writing of the claim, b) supplies information requested by inet, and c) allows inet to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts. inet has no responsibility for claims based on non-inet products and services, items not provided by inet, or any violation of law or third party rights caused by customer's content, materials, designs, or specifications.

## 12 Force Majeure

Force majeure, war, natural disasters, terrorism, or any other events outside the sphere of care and influence of inet shall not be attributable to inet.

## 13 Assignment of claims

**13.1** Should an activity be carried out using the services of a third party, e.g. a data processing company, and should the customer be informed of the latter, any claims against third parties in regard to warranty and liability under the law and terms and conditions of the third party shall be deemed to have been assigned to the customer.

**13.2** Customer shall not have the right to assign any claims arising out of this Agreement he has towards inet. inet shall have the right to assign this Agreement and all rights and obligations that may be derived from it to a

third party. Customer hereby gives its irrevocable consent to this assignment in advance.

## 14 Confidentiality and data privacy

**14.1** During the procurement and execution of agreements, as well as beyond the existence of the latter, confidentiality is agreed to be required between the parties to the agreement.

**14.2** The parties to the agreement are not obliged to confidentiality in regard to any information which:

- was public at the time of being obtained;
- has been made public without any culpable involvement by the other party to the agreement;
- was already known as of the date of being received by the other party to the agreement;
- was received by a third party who was under no obligation to keep such information confidential.

**14.3** Any information of which the parties to the agreement become aware (in particular data, source code, technical documentation, programs, etc.) and procedures are to be treated as being strictly confidential. In particular:

- any documentation mutually made available may not be passed on to unauthorized third parties or made accessible to them;
- any information, data and documentation mutually made available or obtained may exclusively be used for the purpose of executing the agreement, and only passed on to employees to the extent necessary for fulfilling the tasks assigned to them in this connection;
- any documents mutually made available are to be handed over to the other party without delay once the agreement is terminated, or - in so far as no justified interests are in conflict with the latter - destroyed. Such an obligation shall in particular also apply to any software, any copies prepared, hardware and accessories, if any, and any other documentation which remains in the possession of the respective party providing such information.

**14.4** inet undertakes to at all times make use of, especially store, use and process, its data - provided to it for the due execution of its contractual obligations - or any data received in this connection in line with the statutory data privacy regulations. Such data may only be used for the purpose of duly executing the agreement. inet shall take appropriate precautions to ensure that such data is protected from accidental or unlawful destruction and loss, and that it is used in an orderly manner.

**14.5** inet shall oblige all its employees who have access to data within the meaning of data privacy regulations in writing to strictly adhere to such regulations.

**14.6** The customer grants inet the right to amalgamate any data collected from the customer and its end-customers and users with data collected from other customers and their users so that inet is able to generate industry-wide analyses, statistics and reports. inet has the right to create and publish such analyses and reports, whether for commercial gain or as a public service, and the customer disclaims any right therein. The inet Privacy Policy available at <https://www.inet-logistics.com/en/data-protection/> applies.

## 15 Statute of limitations

Any claims against inet become statute-barred after twelve (12) months. The statutory period of limitation shall commence upon the customer being made aware of the claim, however no later than upon termination of the contractual relationship or provision of the service owed.

## 16 Final provisions

**16.1** The rescission of the agreement based on error (*Irrtum*) and § 934 of the Austrian Civil Code (*laesio enormis*) shall be excluded.

**16.2** Not exercising or to assert a right belatedly by inet does not waive the future assertion of this right.

**16.3** The laws of the Republic of Austria shall apply, subject to the exclusion of renvoi provisions (International Private Law), as well as the United Nations Convention on Contracts for the International Sale of Goods (*CISG*).§ 915 of the Austrian Civil Code shall not apply.

**16.4** The place of performance shall be Dornbirn, and all disputes, differences of opinion and claims arising under these GTCs or relating to these

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GTCs, their violation, dissolution or invalidity shall exclusively be filed with a court with subject matter jurisdiction at the place where inet has its registered office.

**16.5** Amendments and additions to this GTC need to be made in writing. This shall also apply to any deviation from the written form herby agreed-upon so that there can be no presumption of tacit deviation from this requirement for validity.

**16.6** inet shall be entitled to include the customer's name in the "Customers/References" list. The customer explicitly consents thereto. Upon successful conclusion of the project, the customer shall, following prior consultation, be available for reference calls, visits or any reference activities.

**16.7** These GTC contain the entire agreement between the Parties about its subject matter and any concluded previous understanding, agreement, representation or warranty, verbal or written, relating to that subject matter is replaced by this Agreement and has no further effect.

**16.8** The parties acknowledge that any notification as referred to under the GTC, any warning, order or any other communication in relation to the agreement as sent under electronic form pursuant to the terms of the agreement shall be accepted, in any legal proceedings related to this agreement, with the same legal value as any other document as created and kept under paper form.

**16.9** Should one or more of the provisions of these GTC transpire to be wholly or partially invalid, or should a contractual gap arise, the validity of the remaining provisions of this agreement shall not be affected thereby. The parties to the agreement are obliged to agree upon a provision which comes as close as possible to the intended purpose and economic content of this agreement to replace the invalid provision or in order to fill the contractual gap.

**16.10** Any fees and duties (in particular as per the Austrian Fees and Duties Act (*GebG*), as well as any taxes specific to the agreement (in particular sales tax) are the customer's responsibility.

**"inet"-logistics GmbH  
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