

## General Terms and Conditions of MdA Business Communications Ltd.

The following agreements shall apply between the contracting partner (referred to as “customer”) and MdA Business Communications AG (referred to as “MdA”) regarding all services and licencings for software programs and applications.

### 1. Generals

1.1. This agreement states the definitions of and liabilities for services provided by MdA, such as analyses, trainings, consulting, project management, conceptualization, layout, design, didactics, and the programming of communication media and/or individual software solutions (e.g. interactive learning systems).

1.2. All services agreed upon between the customer and MdA shall be documented in written form, and shall include a detailed specification of the tasks involved. MdA shall provide its services in compliance with these written specifications and according to the state-of-the-art of technology available at the time when the customer’s order is placed. Larger and more complex projects necessitate a detailed written specification of all requirements, including parameters and a time schedule. MdA commits itself to carry out the customer’s order according to all contents, presentational forms, and technical requirements specified in writing and mutually signed in the profile dossier or project description.

1.3. MdA is authorized to contract subsidiary or partner companies.

### 2. Scope of Agreement

2.1. These General Terms and Conditions (GTCs) shall hold for licensed products and services for which an individual contract has been signed by both parties, or for which a written purchase order was raised based on a written offer.

### 3. Definitions

3.1. These GTCs shall cover the following services provided by MdA:

Pos	Description	CHF / hr
1.	Consulting / Conceptualization / Project Management	192.-
2.	Editing / Authoring	180.-
3.	IT-Engineering / Programming	168.-
4.	Graphic Design / Illustration / Layout	168.-
5.	Content Engineering / Execution Works	156.-
6.	Maintenance / Support	144.-

Night work (from 7 p.m. till 8 a.m.): +30%

Weekend premium (Saturdays/Sundays): +50%

Expense allowances are listed in offers to provide greatest possible transparency.

3.2. A license is understood in these GTCs as the non-exclusive right to run a certain version of a software program (or program package) on the computers or by the persons specified in the individual contract (or in the signed offer).

3.3. A software program, as understood in these GTCs, consists of a sequence of machine-readable instructions and their documentation (e.g. flowcharts, lists, manuals, descriptions, and samples). An individual program (designed for a customer) which MdA does not refer to as 'product' is also subject to the regulations according to these GTCs.

3.4. Software program and documentation together are henceforth referred to as 'license material'. Individual software programs without product character are referred to as 'individual software solutions'.

### 3.5. Copyrights

The customer shall obtain the right to use, adapt and change the ideas and creations developed by MdA (excluding abstract findings) freely and without time limit. Any resale to third parties requires MdA's consent. Exceptions to this rule must be stated in writing in the offer (e.g. license categories). MdA guarantees that for the concepts and materials delivered no third-party rights (copyrights or personality rights) can be claimed against the customer by third parties. This article continues to hold beyond the expiration of the contract.

3.5.1. Unless otherwise stated, licenses shall be treated according to the Swiss Code of Obligations (Schweizerisches Obligationenrecht). Generally, MdA distinguishes three license categories which are defined and referred to as follows:

3.5.2. The "Exclusive License", referred to as License Type A, guarantees the uniqueness of a software product for a particular customer. The fee includes the exclusive rights. MdA retains the right to present the product for referential purposes, and to reuse the technical programming contents for other software products. The exclusive license guarantees the customer that no other company can purchase the exact same software product from MdA or BG.

3.5.3. The "Non-exclusive License", referred to as License Type B, grants the shared use of a software product on an offered fee basis. MdA shall retain the right to sell the product to other customers. This license type usually pertains to process software or applications that can be sold to a group.

3.5.4. The "Share License", referred to as License Type C, grants the right to use a product on a share-contract basis. Usually, it pertains to generic software programs and prohibits copying or reselling of the product (unless otherwise stated). (See also section 7 of these regulations).

#### **4. Requirements and Modalities**

4.1. Based upon the written product descriptions provided by Mda, the customer shall select a software program according to his/her requirements (i.e. desired functions) stated in writing. Mda shall inform the customer about any of the required functions a selected product cannot fulfill.

4.2. The customer shall specify in writing the expected range of functions, the amounts of data, and processing times of the software program. These specifications shall serve as conditions under which a delivered product is finally accepted. In support, Mda shall provide a standard sheet including all important standard positions. To these, further specific requirements can be added after definition in writing.

4.3. Mda shall specify in writing the requirements in terms of hardware, software, technical installations, etc. on the side of the customer, to enable him to use the ordered product in the desired way. Mda shall send the customer written information about how and at which expenses the license material is going to be implemented (installation, adaptation, training, maintenance, basic organization).

4.4. Multimedia projects in a magnitude of CHF 80'000 and above are roughly budgeted, at first, and then offered. The offer shall represent the cost cap for the defined services. The customer's order is split into production steps that are scheduled in a project flowchart. If deadlines for any production step are exceeded, the subsequent production steps shall be postponed by that amount of time. This procedure helps to discover unforeseen delays early on, so that possible additional works and costs can be discussed beforehand. Mda and the customer shall stick to deadlines set for interim production steps, in order to ensure a completion of the order within the agreed time and cost frame.

4.5. If any specific pre-contractual services demanded by the customer go beyond the usual competitive scope, they shall be negotiated and agreed upon in writing, following the regulations of these GTCs.

4.6. Regulations for linear communication and the tasks of authors and didacts: Project planning and the state of accomplishment shall be kept transparent. The customer shall receive information about the project's current state on a periodic basis. The substantial contents that are supposed to appear in the communication media shall be specified and provided by the customer (on paper or on other data storage devices). They are then edited by the Mda person in charge of conceptualization (writing) to guarantee a homogeneous communication style.

4.7. Project management: The order is commissioned to Mda as a whole. Mda shall be responsible for watching over the production and time schedule.

#### **5. Individual contract**

5.1. In general, individual contracts shall follow these GTCs. Individual contracts may contain particular specifications regarding costs, general terms, deadlines, operating and service conditions, etc. Offers which the customer has signed and notated with date and place shall be considered individual contracts in the sense of these GTCs.

## **6. Conclusion of Contract**

6.1. Only the agreements stated in writing in an individual contract shall be binding for both parties. Up until the conclusion of the contract, both parties shall have the right to back out without financial consequences, unless otherwise stated in writing.

## **7. Rights to Software programs**

7.1. MdA guarantees that for the concepts and materials delivered no third-party rights (copyrights or personality rights) can be claimed against the customer by third parties. This article continues to hold beyond the expiration of all contracts with MdA.

7.2. Unless otherwise stated in writing in the individual contract, MdA does not grant the customer exclusive licensing rights to the software programs.

7.3. Patents and copyrights shall remain with MdA in all cases.

7.4. If the customer needs to copy a software program for operational reasons, MdA shall have the same rights to the copy as to the original.

7.5. The customer shall be authorized to make changes to the software program for his/her private use and on his/her own responsibility, as far as they are possible. MdA shall have no rights to the changes. MdA shall not be responsible for failures that occur due to such changes.

7.6. The customer shall not be entitled to pass on the license material to third parties, or to use the material beyond the scope agreed upon in the contract. In case of contravention, the customer shall owe MdA at least thrice the amount of one single license fee. Moreover, he/she shall have to restore the original legal situation at his/her own expenses.

7.7. In case of damage or deletion of the program, MdA shall aim to provide the best possible replacement if desired and reasonable. The customer shall bear the effective costs for the replacement and/or any possible additional costs for an extended or updated version.

7.8. Only in case of a failure of the original computer designated in the individual contract, shall the customer be allowed to run the program on another computer (fallback computer). This regulation shall not apply to programs designed for proliferation on CD-ROM. For web-based solutions, other regulations apply which are stated in the individual contract.

### **7.9. Transfer of Copyrights**

Based on written agreement with the customer, copyrights (esp. rights of use, adaption and change) to the ideas and creations by MdA (excluding abstract findings) can be transferred (sold) to the customer for his/her free and untimed use (conditions see section 7.5.).

7.10. Unsaleable software: The technological source codes of all standard developments – such as TrainOnlineTM, Webory TM, SmallWalker-Labyrinth TM, Net-Cards TM, Inter Cyborg WebBots TM (in general, certain Java or Flash swf-files) shall remain unsaleable and excluded from 7.9. in any case. The unrestricted copyrights to this software can only be obtained by purchasing the company.

Regarding runtime licenses, the right-of-use agreements of the respective companies (like Microsoft Corp., Adobe Corp., and Macromedia Corp.) shall apply.

## **8. Scope of Delivery**

8.1. The delivery comprises the complete license material as described in the individual contract. The contract must specify the type of data (source code, version, etc.), storage medium (tape, disk, etc.), and the form of documentation (installation, manual, etc.) to be delivered.

## **9. Delivery, Acceptance, Delay**

9.1. The delivery will be made to the place of fulfillment.

9.2. If MdA fails to meet an agreed delivery date (whether with or without installation through MdA), the customer shall set MdA a reasonable grace period in writing. If MdA does not deliver by the end of the period, the customer shall have the right to back out of the contract. If no delivery date was set in writing, the customer shall be able to demand it retroactively by written notification to MdA allowing for a reasonable completion time.

9.3. Any penalties must be agreed upon in writing in the individual contract. They shall only be considered for cases in which even minor delays or changes to the contract (or parts of the contract) will lead to significant disadvantages on the part of the customer.

9.4. If the customer declines acceptance of the delivery for no reasons, MdA shall be able to claim legal rights.

9.5. After delivery has occurred, the customer can test the license material during an agreed period of time (usually 30 days). After this period, the delivered material shall be considered accepted if no written complaints about functions or services have been lodged by the customer. Alterations to these testing or acceptance conditions must be specified in writing in the individual contract. Any productive use of the product after expiration of the testing period shall be regarded as acceptance of the product.

9.6. The regulations for material warranty (cf. section 10) shall apply to all unknowable deficiencies or faults which are discovered after acceptance has occurred (unless expressly stated otherwise in the individual contract).

9.7. If the customer delays acceptance, MdA can set them a period of grace. MdA shall be allowed to back out of the contract after expiration of this grace period.

9.8. At the time of delivery to the place of fulfillment, all benefits and risks shall transfer to the customer.

9.9. These regulations shall apply to computer software and individual software solutions created by MdA.

## **10. Material Warranty**

10.1. The functions of the programs are professionally tested and checked before delivery occurs. They must correspond to the specifications agreed upon in writing or – if no such have been defined – to the standard specifications of Mda.

10.2. Unless otherwise stated in writing, Mda offers free correction of faults with the delivered product during six months after acceptance. To grant this support, the product must not have undergone any changes through the customer. Additionally, the customer must make a written note to Mda (according to the agreed guidelines) immediately after the initial occurrence of the problem.

10.3. The services of Mda shall include the provision of a correction code, or of a corrected version, or of any other alternative solution useful to the customer.

10.4. If the faults cannot be corrected within an acceptable time, the customer shall be allowed to back out of the contract. If a fault does not occur anymore in an updated version of the program, the fault shall be considered remedied. No warranty can be provided for program versions whose maintenance has been announced in writing to finish within six months.

10.5. Faults and deficiencies in the above sense are recognized if the license material does not correspond to the written specifications or the function descriptions agreed upon, and therefore falls short of the written usage expectations specified by the customer.

10.6. Mda shall be absolved from responsibility if they can prove that a reported fault is due to circumstances that are beyond their control and liability, such as:

- changes to the operating and running conditions
- unauthorized interference with the software program
- operating errors on the part of the customer or third parties
- use of external products (third-party software)

10.7. Mda shall be able to claim financial compensation for their efforts if they have been busied with an error report from the customer without any evidence of an actual error being detectable.

## **11. Warranty of Title**

11.1. Mda declares that they are authorized to grant licenses for the software program, and that it does not violate any third-party trademark rights. In this respect, Mda will indemnify their customers from and against any claims.

## **12. Liability**

12.1. In case of unlawful intent or gross negligence, Mda shall accept liability for any damage resulting thereof.

12.2. For all other damage, liability shall be excluded. Liability according to product liability law (PrHG) or for personal injuries remains unaffected.

### **13. Invoicing, Payment, and Compensation for Services**

13.1. Licenses are a one-time fee payment. Possible additional charges must be regulated in the individual contract. Taxes, valuations, and other fees associated with the license are charged to the customer.

13.2. License fees are fixed agreements.

13.3. MdA offers their services at prices in line with the market. Usually, we charge at day rates for the works performed by our staff within the agreed scope of services. To perform any works or services that are not listed in the individual contract, the explicit commissioning from the customer is required. Generally, partial offers are made.

13.4. Unless otherwise stated in writing, the following regulations shall be adhered to regarding the budget of an order:

13.4.1. Orders with a “cost cap” (in German “Kostendach”, a term which must be mentioned in offers and confirmations written in German) do not have any financial scope beyond the budget set, unless a written supplementary agreement extends the potential service range of the order. The supplementary agreement has to be dated and signed, and shall be attached to the original order.

13.4.2. In case of any additional or omitted services, all other orders (also those with a predefined budget) shall, at the time of invoicing, not vary by more than  $\pm 10\%$  of the budget sum stated in the offer (provided the difference in sum is justified by the additional or omitted services). For any such services exceeding the  $\pm 10\%$  threshold, an estimate shall at first be communicated to the customer. The latter has to confirm the new services with a written and signed supplement to the original order (cf. section 15 “Changes in services”).

13.5. A day rate covers the working time of eight hours per day. Working times that fall above or below this limit shall be remunerated in percentage. Day rates refer to work performed from Monday to Friday between 8 a.m. and 7 p.m.

13.6. In the case of invoicing at cost, MdA’s employees shall keep a record of their time spent on performing a specific work of the contract. Upon request, the customer shall be able to access these records. Invoicing shall occur at the end of every month.

13.7. For works that are not performed on MdA’s premises, driving times and costs, allowances, and (if necessary) accommodation costs shall be invoiced separately, if invoicing occurs at cost. Price details shall be specified in the individual contract.

13.8. Payment of the total contractual amount (specified in individual contract) shall be made as follows (unless otherwise agreed in writing):

- 1) - 1/3 of the sum upon placement of order
- 2) - 1/3 of the sum upon delivery/installation of product (or project part)
- 3) - 1/3 of the sum upon acceptance of product (or project part)

Terms of payment: for 1) 10 days; for 2) + 3) 30 days net.

13.9. The customer shall be able to offset claims or exercise a right of retention against claims from MdA only if his/her claims are undisputed or legally determined.

#### **14. Execution and Customer's Cooperation**

14.1. The customer shall determine a competent contact on his part that is able to provide necessary documents and/or information at short notice, who can name relevant contact persons, and who is entitled to make or bring about decisions. MdA shall be obliged to contact this person whenever appropriate, in order to ensure the correct implementation of the contract. MdA shall determine a contact person on their behalf who is in charge of coordination and of bringing about decisions at short notice.

14.2. To ensure the meeting of deadlines, MdA depends on their customer's cooperation. Therefore, the customer shall commit to use his/her best endeavours to support MdA's performance and working conditions. If MdA needs to perform operations on the customer's premises, he/she shall establish the necessary conditions free of charge and on time. He/she shall ensure the maintenance of these conditions during the whole time of MdA's work on-site.

14.3. If the customer's cooperation does not occur appropriately, not on time, or not at all, and if the customer delays compensation for his/her cooperation failures, MdA shall be allowed to back out of the contract and claim financial redress.

14.4. Within the contractual frame, MdA shall have the right and responsibility to determine how and by whom the contract is fulfilled. The customer shall have no decisional power, but MdA shall aim to accommodate his/her preferences.

14.5. MdA shall have the right to subcontract in whole or in part the works called for by their customer.

14.6. MdA shall inform the customer about foreseeable delays beyond the agreed deadline, indicating reasons for the excess time.

14.7. If circumstances, for which MdA cannot be held responsible, hinder the completion of an order, MdA shall be able to claim an appropriate extension of the completion deadline.

#### **15. Alteration of services**

15.1. Both the customer and MdA can make requests for alterations to any services, to any documents adopted, or to any results specified in the contractual agreements. Any request for alteration shall be communicated in writing to the contact person of the other party.

15.2. If the request for alteration entails for MdA an extensive re-examination of the conditions under which the alterations are possible, MdA shall be allowed to claim appropriate financial compensation for these services.

15.3. Agreements on any alterations to the contractual services shall be added as written and signed supplements to the original contract.

## **16. Rights of Use and Property Rights to Service Results**

16.1. Upon complete payment of the agreed sums, the work results shall become the property of the customer. By accepting the obligation to maintain confidentiality, the customer shall have the right to freely copy, use, and/or change these work results.

16.2. Unless otherwise agreed, both parties shall share the trademark rights to the work results. Accepting the obligation to maintain confidentiality, both parties authorize each other to freely use and analyze these rights.

16.3. When performing similar services for other customers, Mda shall retain the right to use ideas, concepts, and procedures for information processing gained while performing services for their contractual customer (either by themselves or together with the customer's staff).

## **17. Third-Party Work Results**

17.1. Insofar as it is provided for by the contract, the customer can make the results of third-party work available to Mda, to enable them to edit or redesign the work, or to realize their services.

17.2. The customer shall indemnify Mda and their subcontractors against any claims raisable by third parties for using such results of third-party work.

## **18. Duty of Confidentiality, Data Privacy, and Loyalty**

18.1. Both parties shall commit themselves to treat as confidential all information and observations related to the other company's privacy. This includes information, data, ideas, concepts, and procedures concerning the license material. The scope of privacy to be maintained can be further refined by contractual agreements.

18.2. Mda and the customer shall commit to mutual loyalty. Both contractual partners shall particularly refrain from actively enticing away each other's employees. Furthermore, neither Mda nor the customer shall hire (or occupy in any other way) at their own expense or via third parties any of the other party's employees during the duration of the contract, plus another twelve months beyond the expiration of the contract, unless the opposite party provides their written approval.

## **19. Contract Terms**

19.1. Regarding the delivery of software programs, the place of location of the computer specified in the individual contract shall be considered the place of fulfillment.

19.2. The parties agree that the court that should have jurisdiction shall be the court of the Defendant's registered office in Switzerland.

19.3. The individual contract and Swiss law shall be applicable.

19.4. Both parties, the customer and MdA, sign a written agreement (contract) in anticipation of creative and profitable cooperation. The regulations specified in these General Terms and Conditions shall apply to all orders, and shall be recognized by the customer, unless other individual regulations are explicitly agreed upon in writing.

19.5. MdA shall retain the right to update these regulations.

Basel, 06 June 2009. Valid without signature.

This version supersedes all previous versions.