

General Terms and Conditions of apollon GmbH+Co. KG

As of 06/2015

Contents

- I. General provisions
- II. Online catalogues and presentation software
- III. Hosting services
- IV. Services (process consulting, system configuration, software customising, data migration, training)
- V. Individual software programming / development
- VI. Software provision
- VII. App development
- VIII. Support / maintenance
- IX. Final provisions

I. General provisions

1. Scope

1.1 These Terms and Conditions apply exclusively to all contractual relationships in which apollon GmbH+Co. KG, Maximilianstr. 104, 75172 Pforzheim, Germany (hereinafter referred to as "APOLLON"), provides services for other companies, legal entities under public law or special trusts under public law (hereinafter referred to as "Customer"). The legal provisions apply in all other cases.

1.2 Unless approved in writing by APOLLON, contradictory as well as supplementary terms and conditions of the Customer shall not form part of the Agreement, even if APOLLON performs an agreement and/or provides a service without explicitly objecting to such terms and conditions.

1.3 The pre-contractual debt relationship shall also be subject to these contractual and licensing terms and conditions, particularly with regard to liability limits and non-disclosure obligations.

1.4 When providing, maintaining and servicing third-party software, the manufacturer's respective licensing terms and conditions shall take precedence with regard to user rights and/or the respective maintenance and servicing terms and conditions with regard to the content and scope of the services.

2. Conclusion of agreement

2.1 APOLLON's offers are non-binding, unless explicitly specified as binding.

2.2 APOLLON may accept customer orders within a period of four weeks. If in doubt, the content of APOLLON's offer and/or order confirmation shall prevail as the basis for the agreement, if the Customer places an order and/or fails to object to the content of the order confirmation without delay upon receipt.

2.3 Additional IT services, such as workflow automation or data migration consultations, shall only form part of the agreement if explicitly agreed or approved by APOLLON.

2.4 If APOLLON cannot provide the contractually agreed services through no fault of its own, such as due to a supplier or service provider failing to provide its services to APOLLON, APOLLON shall notify the Customer immediately and propose a similar replacement service, if necessary. If no similar service can be provided or the Customer does not wish to receive another service, APOLLON may withdraw from the agreement and shall repay any consideration already paid by the Customer.

3. Written form requirement

3.1 Contractual guarantees and approvals, particularly those exceeding the scope of these Terms and Conditions, shall require explicit and written confirmation by APOLLON.

3.2 Any amendments and addendums to the agreements between APOLLON and the Customer as well as all declarations on the assertion of rights to alter legal relationships that are relevant to the agreements, particularly terminations, reminders or deadlines, shall be placed in writing to become effective. The written form requirement stated here and in other places in these General terms and Conditions can also be maintained by using fax or an exchange of letters. Section 127 paragraphs 2 and 3 of the German Civil code (Bürgerliches Gesetzbuch – BGB) shall not apply as for the rest.

4. Pre-contractual stage

4.1 The pre-contractual debt relationship shall also be subject to these General terms and Conditions, particularly with regard to liability limits and non-disclosure obligations. Items and documents provided prior to the performance of an agreement (such as software, physical and non-physical presentations and proposals) are the intellectual property of APOLLON. They shall not be copied or transferred.

4.2 If software is handed to the Customer for testing purposes, the right of use in this software is limited to non-operational test use only and expires after a reasonable or specifically agreed testing period of no more than four weeks. Particularly if no agreement is ultimately concluded, all data carriers, files, data and document shall be returned or proof of their deletion provided to APOLLON.

5. Time of performance, employees, subcontractors

5.1 Deadlines and fulfilment dates shall not be fixed, unless APOLLON has explicitly declared them to be fixed in writing.

5.2 APOLLON shall decide on how many and which employees to engage – including freelancers and subcontractors, at its discretion – and which services may also be outsourced to third parties.

5.3 The Customer shall not be authorised to issue instructions to APOLLON employees. APOLLON's contacts shall always be the persons stated within the scope of the cooperation, such as project managers, customer care employees or members of management.

6. Periods of grace

6.1 Any deadlines or periods of grace for subsequent fulfilment and/or the rectification of a deficiency stated by the Customer shall be reasonable and grant APOLLON at least two attempts at subsequent rectification. Depending on the scope and technical difficulty, the deadline should generally be at least 10 working days.

6.2 Any deadlines set by the Customer in accordance with the law or agreement shall be at least 10 working days, except in urgent cases. In the event of the non-fulfilment of obligations within a deadline set by the Customer resulting in the right to rescind the agreement (such as withdrawal, termination or compensation instead of service) or reduce the remuneration, the customer shall send written warning of the consequences of failure to fulfil obligations within said deadline

together with the notification of deadline. Once a deadline set in accordance with Sentence 2 has expired, APOLLON may request for the Customer to execute its rights arising from the expiry of the deadline within two weeks from receipt of such request.

7. Payment terms
- 7.1 Applicable statutory VAT shall be added to all prices stated, except in the event of the sale being exempt from VAT.
- 7.2 Unless otherwise agreed, services shall be invoiced based on time expended (person days and/or hours) plus expenses incurred. If the Customer is provided with a price list, the prices agreed therein shall primarily be regarded as agreed remuneration.
- 7.3 APOLLON may invoice partial services prior to completion of the overall project.
- 7.4 Invoices are due in full within 10 days from date of invoice.
- 7.5 Any discounts agreed shall not pertain to freight, postage, insurance or other third-party costs.
- 7.6 APOLLON may request pre-payment in full for deliveries abroad or if the Customer's head office is located in a foreign country.
- 7.7 If remuneration is based on time expended, the figures stated in an offer and/or order confirmation sent by APOLLON shall be merely regarded as calculation or estimate, unless a fixed fee is explicitly agreed. In the event of the Parties agreeing on invoicing based on time and expenses, APOLLON may request for the Customer to sign proof of work submitted by either APOLLON or one of its employees. The time and expenses incurred shall be listed in the invoice or in a separate attachment to the invoice. Failure of the Customer to object to the list in writing within two weeks shall result in the Customer carrying the burden of proof regarding its inaccuracy.
- 7.8 Travel times and costs are calculated on the basis of expenses and depending on the head office of APOLLON at the amount recognised by the fiscal body and the law, unless it is explicitly agreed with the Customer that the expenses are included as a flat fee in the hourly or daily rate.
- 7.9 Indexing: APOLLON may amend the fixed fees for hosting, SaaS, maintenance and support by giving two months' written notice with effect from the first of the month following this notice period to the Customer at the discretion of APOLLON and in compliance with the following regulations: APOLLON may, at a maximum, amend the remuneration by the amount to which the index of the average gross monthly salaries of full-time employees in Germany within the industrial sector for the provision of information technology services (currently published as quarterly figures by the Federal Statistical office (Statistisches Bundesamt) in Series 16 Line 2.4 Group J 62) has changed. For the first remuneration adjustment, the index development between the index status published on the date the agreement was concluded and the last index status published on the date of the adjustment declaration shall prevail. If the remuneration has already been adjusted at an earlier date, it may be adjusted based on the further index development since the last adjustment. The earliest date for the first remuneration adjustment is at the end of a 24-month period. In the event of the above-

mentioned index no longer being published, the index published by the Federal Statistical Office which most closely depicts the development of the average gross monthly salary in the above industrial sector shall form the basis for determining the adjustment amount. Failure of the Customer to terminate the agreement with regard to which APOLLON plans to adjust the remuneration within two weeks from receipt of the adjustment declaration by giving six months' notice (right to termination for good cause) shall result in the new remuneration being deemed as agreed as long as APOLLON points out the right to termination for good cause in the adjustment declaration.

8. Offsetting
- 8.1 The Customer may only offset undisputed or legally binding claims. This shall not affect claims on the grounds of material or legal defects.
- 8.2 The Customer may only retain payment or appeal against an unfulfilled agreement within the respective contractual relationship.
9. Retention of title, rescission
- 9.1 APOLLON reserves the title and rights to the contractually agreed services until full payment of its receivables arising from the agreement. The Customer may sell or transfer titles only after giving written notice to APOLLON and only within the proper course of business. The Customer shall assign its receivables from the sale or transfer to APOLLON. APOLLON herewith accepts such assignment. If the value of the securities held by APOLLON exceeds its receivables by more than 20%, APOLLON shall release securities upon request of the Customer or other third party disadvantaged by the over-securitisation. If several securities have been provided, APOLLON may decide which of them to release.
- 9.2 In the event of the services provided by APOLLON to which it retains the title being processed, APOLLON is to be regarded as the manufacturer in accordance with Section 950 of the German Civil Code (Bürgerliches Gesetzbuch – BGB) and retains the title to the products at all times during the course of processing. In the event of third parties being involved in the processing activities, APOLLON shall be limited to co-ownership in the amount of the mathematical value of the goods subject to retention of title. The goods thus acquired shall be classed as goods subject to retention of title.
- 9.3 APOLLON shall revocably grant the Customer the right of use in transferred software only until full payment has been made. Failure to pay the agreed remuneration and/or license fee even after the expiry of a reasonable period of grace shall result in APOLLON being entitled to revoke the granted right of use.
10. Material and legal defects
- 10.1 Unless the Parties agree on the specific properties of services and/or partial services, liability for defects shall be limited to the services and/or partial services being suitable for the contractually agreed, and also common, use and being common for services of this kind. In the event of material defects, APOLLON initially may, at its discretion, provide the Customer with a new,

- non-defective service or subsequently rectify the defect.
- 10.2 Legal defects are subsequently fulfilled by granting a legally valid opportunity to use the service provided or by granting a right of use in a modified but similar service, at the discretion of APOLLON. The Customer shall notify APOLLON immediately and in writing of a third party asserting claims against the Customer on the grounds of a violation of the law with regard to the contractual services. The Customer shall herewith already authorise APOLLON to independently conduct court proceedings or out-of-court settlements with the third party. In the event of APOLLON using such authorisation, to which it is entitled, the Customer shall not accept the third party's claims without APOLLON's consent. However, APOLLON then shall be obliged to defend such claims at its own cost and hold the Customer harmless of any costs and damages that are the exclusive result of APOLLON's defence of the claim. This shall not affect the statutes of limitation of the claims for legal defects.
- 10.3 In the event of the subsequent fulfilment ultimately failing at the end of a reasonable period of grace to be set by the Customer, with two attempts at subsequent fulfilment being permissible, the Customer may reduce the remuneration, declare its withdrawal from the agreement or give notice of termination (in the case of a permanent debt). APOLLON shall be liable to pay damages or reimburse unnecessary expenses in accordance with Section 1.12. Any further claims on the grounds of material or legal defects shall be excluded.
- 10.4 In the event of an unjustified notification of defect, APOLLON may invoice the expenses incurred for the troubleshooting based on time expended, particularly also if a reported material defect cannot be proven or reproduced or does not fall within APOLLON's scope of responsibility.
- 10.5 The claim for the reimbursement of expenses in accordance with Section 10.4 shall not apply if the defect was reported within the warranty period for material defects applicable to the services provided by APOLLON.
11. Risk transfer, approval, acceptance of goods and services
- 11.1 If no acceptance of goods and services has been agreed or the contractually agreed service does not require any approval in accordance with the law, the risk shall be transferred to the Customer at the latest upon dispatch of the services and/or partial services ex works APOLLON, even if APOLLON pays the dispatch costs or the consignment is initially sent to another service provider or contracting partner of the Customer. In the event of dispatch being delayed for reasons outside APOLLON's scope of responsibility, the risk shall be transferred to the Customer upon notification that the goods and services are ready for dispatch.
- 11.2 The customer shall check the work result at user level within four weeks and notify APOLLON in writing about any defects, including details. After this period, or in the event of unqualified use within a period of four weeks, the service shall be deemed to have been contractually approved, acknowledged and accepted.
- 11.3 Following all contractually agreed services or partial services, particularly in the event of individual software services being provided, APOLLON may request a written declaration of acceptance from the Customer or the preparation of a joint acceptance protocol. In particular, APOLLON may base the continuation of a project on the approval of the functional specifications, milestone plan or other service description, if the following service steps depend on it.
- 11.4 In the event of immaterial defects, the Customer may not reject acceptance but may declare acceptance with reservations.
12. Liability
- 12.1 APOLLON shall assume unlimited liability
- for acts of malicious intent or gross negligence,
 - for fraudulently concealed defects,
 - for injury to life, limb and health,
 - in accordance with product liability laws, and
 - within the scope of any warranty assumed by APOLLON.
- 12.2 In the event of an obligation that is material to the fulfilment of the agreement being violated, APOLLON shall assume liability for acts of slight negligence, if the damage is discernible and typical in view of the type of transaction in question, with liability being limited to a maximum of EUR 50,000 for each individual damage event and EUR 100,000 for the entire contractual relationship.
- 12.3 APOLLON shall not assume any further-reaching liability.
- 12.4 The above limitation of liability shall also apply to the personal liability of the employees, vicarious agents, representatives and bodies of APOLLON.
- 12.5 APOLLON remains free to issue the argument of the Customer's contributory negligence (such as the Customer approving a service despite having noticed defects, missing or insufficient testing of a work result, insufficient or irregular data backups, insufficient IT security).
- 12.6 The Customer shall assume liability for the content of its order and/or the data and content transferred and hold APOLLON harmless of all legal, third party claims, particularly those based on violations of competition law, copyright, trademark law, design patents, data protection law and personality rights, unless such violations of the law fall within APOLLON's scope of responsibility. The Customer shall be solely responsible for clarifying the legal conformity and legally relevant questions regarding the affected intellectual property prior to issuing an order.
- 12.7 Compensation for the Customer for loss or damage of data or system breakdowns shall be excluded if a security concept has been agreed with the Customer and APOLLON complies with such specifications. This shall not affect APOLLON's liability in accordance with Section 12.1.
- 12.8 The above provisions shall apply accordingly to APOLLON's liability for material and legal defects, damages caused by delays and with regard to the reimbursement of unnecessary expenses.
13. Customer's obligations to cooperate
- 13.1 The Customer shall provide the documents and information required for the performance of the services, and for IT services the required IT

- environment (sufficient CPU and memory capacities, Internet connection, operating systems, software and trained employees) and shall be exclusively responsible for their operation and maintenance. Instructions issued by APOLLON shall be complied with.
- 13.2 When negotiating an agreement, the Customer shall name its responsible contact person who coordinates the Customer's cooperation and makes the required decisions or is in the position to initiate them without delay.
- 13.3 The Customer shall check the work results (including functional specifications and milestone plan) immediately for completeness and non-defectiveness, particularly prior to the work results being used in its operating business.
- 13.4 The Customer shall perform regular data backups and implement EDP protective measures in accordance with the latest state of technology. APOLLON may expect that all data that APOLLON employees come into contact with have previously been secured otherwise by the Customer.
- 13.5 The Customer shall secure the contractual software against unauthorised third-party access by implementing suitable measures (anti-virus, firewall, etc.) and, in particular, store all copies of the software in a secured place.
- 13.6 Additional obligations to cooperate of the Customer are stated in the individual agreement and also result from the general obligations to maintain safety and apply care. The Customer shall carry the risk of damages in the event of obligations to cooperate being violated. APOLLON shall not be responsible for checking the Customer's compliance with its obligations to cooperate. The Customer shall bear the disadvantages and additional costs arising from a violation of its obligations to cooperate.
- II. Online catalogues and presentation software
1. Content of services
- 1.1 APOLLON provides various online catalogues (such as OnlineKAT) that are used for displaying an online catalogue with turning pages. APOLLON's OnlineFIGURATOR makes it possible to virtually try on clothes on a standardised model.
- 1.2 The online catalogues and presentation software can either be operated by way of hosting (see Section III.) or on the Customer's server, which is the more common model.
- 1.3 A superzoom function can also be added to OnlineKAT.
2. Operation on the Customer's server
- 2.1 The Customer is provided with the software via electronic channels for integration on its website. The technical system requirements are separately agreed with the Customer.
- 2.2 The provisions of Section VI. apply with regard to the terms and conditions of use and scope of services. The provisions of Section V. apply for individual adjustments.
- 2.3 The Flash online catalogues can be played with all agreed browsers with Flash plugin (the latest version at the time the agreement is concluded). The HTML5 online catalogues can be played with all agreed browsers that support the HTML5 web standard.

- III. Hosting services
1. Content of services
- 1.1 APOLLON operates software solutions, including the storage of Customer data / assets by way of hosting and SaaS (software as a service) for a separate fee. When hosting its own software solutions (such as OMN software), APOLLON provides additional support and maintenance services. Any such services that may be agreed shall be subject to the provisions in Section VIII.
- 1.2 For this purpose, the data and software is stored and/or operated on APOLLON servers or in external computer centres in agreement with the Customer.
- 1.3 The Customer shall provide APOLLON with the files to be hosted online in the form of uploads through a browser, FTP, etc. or on standard data carriers in an agreed format.
- 1.4 APOLLON may file and name the data according to a system agreed with the Customer and set up browser-supported access for the Customer. The criteria for such access can be adjusted for each customer.
- 1.5 An authorisation and role concept can also be developed and installed in collaboration with the Customer in which the users and their access authorisations, user names and passwords are determined (for file uploads, downloads and processing).
2. SaaS (software as a service)
- 2.1 In the event of the Contracting Parties agreeing to implement a SaaS solution, APOLLON shall install the latest version of its own software that has been agreed as well as the agreed third-party software version that has been updated at APOLLON's discretion.
- 2.2 APOLLON may, upon prior notification, use a new software standard as long as the contractually agreed functional scope remains intact and the new software standard does not significantly disadvantage the Customer.
3. Liability and warranty
- 3.1 In addition to Section I., the following provisions shall apply for hosting and SaaS services:
- 3.2 The Customer shall be exclusively responsible for the setup, maintenance, non-defectiveness, speed and costs of the Internet connection and access software of the Customer up to the router output of the hosting provider (service transfer point).
- 3.3 The Customer shall maintain secrecy about all identification and authentication security measures and protect them against third-party access by implementing suitable and reasonable measures. The Customer shall notify APOLLON immediately of any suspicion that a third party has obtained knowledge of these security measures or that unauthorised third parties have access to the hosted data and/or SaaS system.
- 3.4 The Customer shall notify APOLLON immediately of potential defects to the contractually agreed services. The Customer shall not be able to claim for defects in the event of APOLLON not being able to remedy the situation due to receiving no, or late, notification of defect. Late notification of defect shall, in fact, be deemed as contributory negligence and/or co-responsibility of the Customer in the case of a defence having to be raised. The Customer shall therefore prove that it

- is not responsible for failure to send notification of defect, or for sending such notification too late.
- 3.5 Liability regardless of culpability in accordance with Section 536a paragraph 1.1. alternative of the German Civil Code (BGB) on the grounds of defects that were in existence at the time the agreement was concluded shall be excluded.
- 3.6 In the event of APOLLON agreeing a security concept and/or hosting package or any other specific combination or specific properties of the hosting system with the Customer and complying with and meeting obligations arising therefrom, liability for loss or damage of data and system breakdown shall be excluded. This shall not affect liability in accordance with Section I.12.1.
4. Availability
- 4.1 Any specific availability agreed by APOLLON shall be the average annual availability.
- 4.2 Unless otherwise agreed, APOLLON shall owe an annual average availability of 98.5%. Unavailability of 1.5% shall not incur any penalties.
- 4.3 Regular and/or schedules maintenance (data backups, tests and inspections, repairs, software updates) shall be excluded from the availability owed if the Customer is notified in good time of such work. Good time usually is three days in advance for maintenance work up to four hours. 48 hours' notice is sufficient if the maintenance is carried out at off-peak times (6 pm to 8 am).
- 4.4 Breakdowns caused by force majeure are also excluded from the availability owed. This includes, in particular, power cuts, fire, labour disputes lasting more than six weeks and technical issues with the Internet that fall outside APOLLON's scope of responsibility or malfunctions in, or due to, parts of the technical infrastructure required for the execution of the system provided that are not to be provided by APOLLON or one of its vicarious agents.
- 4.5 APOLLON shall further not assume any responsibility for malfunctions not caused by (contributory) negligence of APOLLON or one of its vicarious agents, such as the exceedance of an agreed and permissible use of the system provided.
- 4.6 The Customer shall not be entitled to claim for damages on the grounds of an immaterial reduction of usability of the service for the contractually agreed purpose.
5. Contractual term
- 5.1 Unless the Parties have agreed a specific term or termination period, the contractual term for hosting services starts with the setup of the hosting services for the Customer and can be terminated by giving six months' notice at the end of a month, at the earliest after 36 months.
- 5.2 In the event of notice of termination not being given, or being given late, the contractual relationship shall be extended automatically by one year at a time without the Contracting Parties having to issue any separate declaration. Even during such extended term, the contractual relationship can only be terminated by giving three months' notice at the end of the term.
- 5.3 This shall not affect the right to termination for good cause. Good cause shall be, in particular, if the Customer considerably violates the agreed terms and conditions of use.

6. Expiry of agreement
- 6.1 APOLLON shall delete all images and text files once the agreement has expired. The Customer shall notify APOLLON in writing of any request for the hosted data to be released on a data carrier or by way of remote data transfer, and declare that it shall carry the costs for such activities. APOLLON may invoice the expenses thus incurred on the basis of standard hourly / daily fees and/or evidenced costs of materials.
- 6.2 Section IX.1.4 applies as for the rest.
- IV. Services (process consulting, system configuration, software customising, data migration, training)
1. Content of services
- 1.1 APOLLON provides services (process consulting, system configuration, software customising, data migration, training). Services within the meaning of this Section (IV.) are generally provided at workshops and training events in return for compensation only, unlike customer acquisition consulting services.
- 1.2 The services are provided on the basis of the tasks requested and information provided by the Customer. APOLLON's IT services takes the form of customer support with the Customer being responsible for both system and project.
- 1.3 The detailed content and scope is based on the service ordered by the Customer and confirmed by APOLLON.
- 1.4 The Customer shall provide the required information and equipment (hardware and software, network capacities, telecommunications equipment, Internet connection) as well as remote access in accordance with Section VIII.4, in accordance with information provided by APOLLON.
- 1.5 If work results (such as specifications, software) can be protected in accordance with the German Copyright Act (Urhebergesetz – UrhG), APOLLON shall grant the Customer a simple and indefinite right of use in the work results that APOLLON provides to the Customer within the scope of the services and develops for and/or together with the Customer upon their transfer and full payment. If the work results are software, the content and region of the right of use shall be limited to the contractual purpose, exactly like the original licenses for the standard software. The Customer may use the software for its own purposes within its own operations. As for the rest, all rights in the work results with regard to the Customer shall be held exclusively by APOLLON, even if those work results have been created on the basis of the Customer's specifications or cooperation.
- 1.6 Within the scope of the services, APOLLON shall only owe the electronic transfer of the work results and, in the case of software, only in the form of the machine-readable object code which the Customer may modify in terms of parameters and configuration but otherwise only in legally permissible cases. In the event of the Customer concluding a hosting agreement with APOLLON, APOLLON shall transfer the work results, insofar as they are software, to the Customer only once the hosting agreement has expired. APOLLON shall not owe the provision of physical data carriers nor installation at the Customer's premises.

2. Training
 - 2.1 The Customer shall provide suitable premises and technical equipment for training events in agreement with APOLLON.
 - 2.2 The Customer may only terminate an agreed training event for good cause.
 - 2.3 In the event of the customer being justly dissatisfied, APOLLON shall have the opportunity to remedy the situations through repeat training.
 - 2.4 The change request regulation in accordance with Section V.2 shall apply accordingly.
3. Remuneration
 - 3.1 The services shall be invoiced at the end of each month based on time expended, unless a fixed fee has been agreed.
 - 3.2 An offer and/or order confirmation submitted by APOLLON shall only be classed as a calculation, unless a fixed fee is explicitly agreed.
 - 3.3 The Customer shall confirm the provision of the respective service by signing proof of work submitted by request of APOLLON or its employees.
- V. Individual software programming / development
 1. Content of services
 - 1.1 APOLLON provides the individual programming / development of software solutions (including extensions and plugins), also within the scope of OMN.
 - 1.2 The regulations of this section supplement the software provision regulations in Section VI. for individual software programming / development activities.
 - 1.3 The Customer shall determine the tasks, with both Parties being able to jointly develop the solution and detailed contentual and technical implementation of complex projects (such as at workshops). The details are stated in the individual agreement and its appendices (such as functional specifications, milestone plan). The Customer shall assume responsibility for the ordered services, as specified in the individual agreement or other documents, meeting its ideas and requirements.
 - 1.4 The Customer's cooperation regarding the wording of the requirements is a major contractual obligation.
 - 1.5 APOLLON shall own all rights, particularly copyright, in the work results provided to the Customer by APOLLON (except third-party software) within the scope of its relationship with the Customer, even if the work results have been created on the basis of the Customer's specifications or cooperation.
 - 1.6 APOLLON shall only owe the provision of user documentation if explicitly agreed. The same shall apply to process descriptions and interface documentation. APOLLON shall provide any documentation that has been agreed with standard contents and formats of which the Customer may be given examples in advance. It is sufficient to provide the documentation in electronic form.
 - 1.7 In addition to the provision of the software and the granting of the right of use, further services (start-up, old data assumption, training, etc.) shall only be owed if explicitly agreed.
 - 1.8 In the event of standard APOLLON software being modified through the individual

programming / development activities, APOLLON shall not guarantee that future software updates can be used within the scope of maintenance without having to make further changes.

2. Change requests
 - 2.1 In the event of the customer placing a change request during an ongoing project, APOLLON shall check and announce if the change is possible and how it will affect the contractual content, timetable and agreed remuneration within a reasonable period of time.
 - 2.2 The Customer shall then decide and announce in writing if the change is to be implemented within a period of 10 working days. APOLLON may separately charge for testing the change request.
 - 2.3 In the event of APOLLON proposing a change, the Customer shall also declare in writing if it accepts the change within 10 working days from receipt of notification. An objection may only be raised if the Customer has a legitimate reason for rejecting the change.
3. Customer's obligation to accept and test goods and services
 - 3.1 In addition to Sections I.11. and VI.5., the following acceptance and test obligations of the Customer shall apply to individual programming / development activities.
 - 3.2 Within the scope of the final inspection and approval, the software shall be jointly tested for one day on test systems in a non-operational environment and error reports prepared. If the software is to be operated in an operational environment on a system to be provided by the Customer, the Customer shall also provide the system for the test. Failure to do so shall result in APOLLON providing the system for the test, insofar as reasonable and technically feasible.
 - 3.3 The software shall, in any case, be deemed suitable for acceptance if a functioning software with the agreed properties is handed over that can be used by the Customer for two weeks without major errors. Only errors that impair or prevent operations shall be classed as material in this respect. The Customer shall not refuse to accept the software on the grounds of immaterial errors or the lack of immaterial functions.
 - 3.4 Regardless of acceptance of the product as being as contractually agreed, the Customer shall also check the work results provided and interim results (including functional specifications) without delay at user level during an ongoing project within a reasonable, technically possible scope, for completeness and non-defectiveness, particularly prior to using the work results in its operations.
4. Project management
 - 4.1 The Customer shall cooperate in the project management upon APOLLON's request. For this purpose, the Customer shall also provide a project manager plus deputy who are authorised to receive all declarations in connection with the contentual, technical and contractual questions and are able to make, or quickly initiate, binding decisions in this respect.
 - 4.2 The projects managers and deputies shall meet in person and at regular intervals, if necessary, upon either Contracting Party's request. If a dispute cannot be solved during a project meeting, either Contracting Party may request a

	personal meeting at management level by giving reasonable notice of such request.		
VI.	Software provision		
1.	Scope of the right of use		
1.1	The Customer shall receive a simple, non-exclusive right of use only in the software provided or produced by APOLLON, unless explicitly and otherwise agreed in writing by APOLLON.	2.3	The Customer may back up the work results as required and within a reasonable scope as long as no copyright notices are changed, omitted or suppressed during such backups.
1.2	The content and region of the right of use shall be limited to the contractual purpose. The Customer may use the software for its own purposes within its own operations.	2.4	Software updates shall only be provided on the basis of special agreements, except for the rectification of defects.
1.3	In addition, the right of use for permanent debt relationships (such as SaaS, ASP) shall be limited to the contractual term and cannot be transferred to third parties.	3.	Software modification
1.4	All servers on which the software is operated, in whole or part thereof, shall be located at the Customer's premises and be owned directly by the Customer. Exceptions to this rule (such as outsourcing, hosting at an external computer centre) shall require written approval from APOLLON.	3.1	The Customer may decompile the contractually agreed software and parts thereof (such as interface information) only within the limits of Section 69e UrhG and only if no action was taken within a reasonable period granted by the Customer to APOLLON and APOLLON was notified in writing of the Customer's plans to decompile the software and requested the provision of the required information.
1.5	If the Customer receives updated software versions from APOLLON (such as within the scope of software maintenance or warranty), the right of use granted to the Customer shall refer exclusively to the updated software version. The right of use for the previously provided version shall expire three months after the updated software being installed on the productive system for use.	3.2	Information on the source code shall be subject to strictest confidentiality, regardless of APOLLON or a third party transferring it in the past or it becoming known during the decompiling process.
1.6	If the right of use is granted in the form of named user licenses, the number of users shall be limited to the number of named users and only the named users stored in the OMN customer solution may make use of it. Stored named users who leave the Customer's company or whose scope of responsibilities changes so significantly that they no longer work with Online Media Net at all can be replaced with other persons.	3.3	Modifications and revisions of the contractually agreed software within the meaning of Section 69c no. 2 UrhG (modification, revision, decryption, decoding, translation, etc.) shall also require prior written consent from APOLLON.
1.7	The Customer shall notify APOLLON in advance of any exceedance of the licensed number of users. APOLLON may audit the number of users of the contractual software provided at least once a year and the Customer shall cooperate to a reasonable extent in such audits. The Customer shall carry the costs of an audit to a reasonable extent if it uncovers non-contractual use. If the number of users has been exceeded, an agreement for the purchase of an additional license shall also be concluded. APOLLON reserves the right to claim further damages.	4.	Transfer of software
2.	Scope of services	4.1	If the Customer has purchased the contractually agreed software from APOLLON, the customer may sell and/or gift the software to third parties in accordance with the following provisions. Exploitation and/or assignment of the right of use, regardless of it being for consideration or free of charge, such as leasing, lending, wired or wireless public performance or publication, use of the contractually agreed software by and for third parties (such as outsourcing, computer centre activities, application server providing) or other sublicensing activities are prohibited without prior written consent from APOLLON.
2.1	APOLLON shall only owe the electronic transfer of the contractually agreed software and only in the form of the machine-readable object code. APOLLON shall not owe the provision of physical data carriers nor installation at the Customer's premises. The transfer of source code, documentation or user manuals shall only be owed if explicitly agreed in writing and only if the software has been individually developed for the Customer.	4.2	If the Customer was provided with the software with a temporary right of use only, any transfer or assignment of use of the contractually agreed software by the Customer to third parties shall be prohibited.
2.2	If the provided software is third-party software by another manufacturer, the Customer shall undertake to APOLLON as well to comply with the respective manufacturer's license conditions.	4.3	As for the rest, the transfer of the contractually agreed software shall require at least prior written notification to APOLLON as well as a written declaration of consent of the purchaser to the agreed terms and conditions of use and transfer. APOLLON may further object if the use of the contractually agreed software by the new user infringes APOLLON's legitimate interests.
		4.4	The transfer by the Customer shall further be performed in a unified manner and result in the Customer forfeiting its own full use of the software.
		5.	Testing the software
		5.1	Prior to using the software provided on the operational system, it shall be adequately tested by the Customer. The contractually agreed software and any documentation provided shall be inspected immediately upon receipt and any defects found recorded in detail and reported. Section 377 of the German Commercial Code (Handelsgesetzbuch - HGB) shall apply accordingly.

- 5.2 This obligation shall also include software that the Customer is given within the scope of warranty or maintenance.
- 5.3 Failure to report any defects immediately shall result in the service being deemed to have been approved, except in the case of hidden defects. Should a hidden defect come to light at a later date, it shall be reported as soon as it is found. Failure to do so shall result in the service having been deemed to be approved even in view of such defect. If APOLLON has fraudulently concealed the defect, it shall not be able to appeal on the grounds of the Customer being delayed in its complaint.
- 6. Special warranty provisions
 - 6.1 In addition to the provisions in Section I., the following provisions shall apply to liability for material and legal defects of the software provided.
 - 6.2 The Customer shall grant APOLLON or a third party engaged by APOLLON access to the software for the purpose of troubleshooting and rectification of defects, either directly and/or via remote access, at the discretion of the Customer.
 - 6.3 APOLLON may also check if the software provided is being used in compliance with the terms and conditions of use.
 - 6.3 If APOLLON provides the Customer with a new software version after providing the service for the rectification of material or legal defects, the Customer shall accept this new software as long as the contractually agreed functional scope remains the same and the acceptance does not lead to significant disadvantages.
- 7. Expiry of the right of use
 - 7.1 In all events of termination of the terms and conditions of use (such as expiry of the contractual term, withdrawal, rescission), the Customer shall return all software deliveries and delete all software files and copies, unless the customer is obliged by law to store this data for longer periods.
 - 7.2 The Customer shall provide APOLLON with a written guarantee that all actions specified in Section 7.1 have been completed.
- VII. App development
 - 1. Content of services
 - 1.1 APOLLON engages in development activities in the New Media Apps sector, particularly for iPhones and iPads (user devices).
 - 1.2 The provisions in Sections V. (Individual software programming / development) and VI. (Software provision) shall also apply unless they contradict the (overriding) provisions of this section (VII.).
 - 2. Placing an order and project schedule
 - 2.1 Apps are developed in two steps. The customer initially provides its requirements for the look and feel of the requested functions. Prior to placing the order, the Customer shall decide on which smartphone, tablet and PC operating system the app to be developed is to be used and in which app stores and through which other sales channels (such as social networks) it is to be offered.
 - 2.2 APOLLON shall check the feasibility of the project and prepare a global concept with suggestions on content and implementation as well as a cost

- estimate. The Customer shall approve this global concept in an interim inspection and approval. If the project does not get approved despite potential changes, APOLLON shall invoice the work up to that point in accordance with Section I.7.
- 2.3 After the interim inspection and approval, APOLLON shall realise the global concept and develop it into a detailed concept. APOLLON may, at its discretion, provide the Customer with interim results and test statuses for interim inspection and approval at any time to ensure that it meets the Customer's requirements regarding app content, style and functions as closely as possible.
- 2.4 The Customer shall receive a test version of the app, which the Customer can install and test on its user device, for final inspection and approval. Once approved, APOLLON shall transfer the app electronically as an encapsulated file in the form of a compiled file (such as IPA file for Apple apps).
- 2.5 If APOLLON or the Customer request changes to an approved concept / interim result, these shall be implemented within a change request process.
- 2.6 Unless otherwise agreed, an app development period of at least four weeks shall apply.
- 2.7 The development activities shall meet the status of technology at the time the order was placed. The Customer shall carry any additional costs incurred by APOLLON due to the user devices being changed / updated during the development period.
- 3. Placement in an app store / network
 - 3.1 The Customer shall place the app in a store or with other providers. APOLLON shall support the Customer in these activities.
 - 3.2 Except in the case of a legitimate complaint about a technical deficiency, APOLLON shall not assume any liability for the app being accepted by a store or social network.
 - 3.3 In addition to the terms and conditions of liability in these General Terms and Conditions, the Customer shall also assume liability, in particular, for the legal conformity of the content and ordered app functions with regard to data protection and the German Teleservices Act (Telemediengesetz – TMG).
- VIII. Support / maintenance
 - 1. Content of services
 - 1.1 APOLLON provides support and maintenance services for the software solution provided. These services may also be provided by support partners of APOLLON.
 - 1.2 The Contracting Parties shall conclude a service level agreement (and/or support and/or maintenance agreement) for this purpose.
 - 1.3 The maintenance services comprise the provision of software updates (excluding installation) for the APOLLON standard software (excluding customising and customer-specific developments). Support services include supporting the Customer with the rectification of defects. Unless otherwise agreed, the support times shall include all working days (Mon-Fri, excluding public holidays in Baden-Württemberg plus 24 and 31 December), between 8:00 am and 6:00 pm (CET). The Customer has access to a helpdesk with hotline during these times.

- 1.4 The Customer can report malfunctions and errors via e-mail or phone. When making a report, example data of the error that has occurred shall be provided from which the error can be traced. The report shall further contain accurate details of the error symptoms that enable APOLLON to meet its obligation to provide support for the targeted rectification of the defect.
- 1.5 The Customer shall report serious errors in text form. If the error also affects this system, the report may initially be placed verbally, but shall be reported in text form as well as soon as access to the helpdesk system has been restored.
- 1.6 Section VI. shall apply accordingly to the rights of use in software updates as well as software that is provided for the rectification of defects.
- 1.7 The updates may contain additional functionalities. However, the Customer shall not have the right to the realisation of certain functionalities within the scope of the updates.
- 1.8 In the event of the Customer's software solutions containing additional customer-specific developments or changes (in excess of configurations and parameterisation of the APOLLON standard software), APOLLON shall not give any warranty that standard software updates can be used and/or run correctly. If necessary, the Customer shall engage APOLLON with the individual modification of the update and/or individual maintenance for a separate fee.
2. Service levels
- 2.1 The support services shall solely relate to the software listed in the service level agreement and, if no such list exists, solely to the software provided by APOLLON.
- 2.2 The support comprises advice and support for software errors and also application questions, if the Customer has ordered a certain amount of hours from APOLLON.
- 2.3 Unless otherwise agreed, the Customer shall perform its own first level support, meaning that only more complex technical issues from the second and third levels are forwarded to the APOLLON support team. Only the first level support may forward such matters. The Customer's employees tasked with this shall have sufficient IT knowledge and training and shall be announced to APOLLON in advance. APOLLON shall not be obliged to communicate with other employees of the Customer regarding support cases.
- 2.4 In the event of specific response times or service levels having been agreed, the start of the troubleshooting, rather than the restoration of the functioning system, shall be mandatory within such times. If the response times have been complied with, only the times within the agreed support times shall be taken into consideration.
- 2.5 If the service levels have not been complied with, the Customer may reduce the agreed monthly support fee. The reduction shall be reasonable, depending on the severity, number and frequency, but only related to the affected period, calculated in full months. In the event of a dispute, the implemented reduction can also be checked for its reasonableness by a court. In extreme circumstances, the reduction can be up to 100%. In this case, however, any further-reaching claims on the grounds of non-compliance with the service levels shall be excluded, except in the case of unlimited liability in accordance with Section I.12.1.
- 2.6 In addition to the support fee, APOLLON may invoice the additional services based on expenses if the reported error is caused by the Customer's incorrect operation rather than by a software error covered by the maintenance scope and/or if the reported error was caused by the Customer's faulty or insufficient IT infrastructure and APOLLON incurs additional expenses for the provision of the contractually agreed support and maintenance services.
- 2.7 The claim for the reimbursement of expenses in accordance with Section 2.6 shall not apply if the defect was reported within the warranty period for material defects applicable to the software provided by APOLLON.
3. Contractual term
- 3.1 The maintenance agreement shall start upon the provision of the software to be maintained, unless the parties have agreed a separate term or termination period. The support agreement shall start with the GoLive. The maintenance and support agreements can each be terminated by giving six months' notice at the end of a month, but no earlier than at the end of 36 months. If APOLLON hosts the Customer's software solution, maintenance and support cannot be terminated as long as the hosting agreement is still in effect (except if the Customer no longer uses the hosting services provided by APOLLON).
- 3.2 This shall not affect the right to termination for good cause.
4. Remote access
- 4.1 The Customer shall grant APOLLON remote access via VPN to the system to be supported for the purpose of troubleshooting and rectification of defect and cooperate in the remote diagnosis to a reasonable extent, particularly to procure and install its own required remote maintenance software (RDP, VNC or SSH, depending on the system).
- 4.2 APOLLON's support shall not comprise any on-site services at the Customer's premises.
- 4.3 The Customer shall carry all costs in connection with procurement, installation and communication in order to be able to take advantage of APOLLON's support services.
5. Support limitations
- 5.1 If the contractually agreed software to be supported communicates with third-party software and/or hardware and/or requires such communication, APOLLON may notify the Customer of the minimum software standards and/or minimum hardware requirements ("system requirements"). If the Customer's infrastructure does not meet these requirements and/or the Customer has only older software versions, APOLLON shall not be responsible for compliance with the agreed service levels.
- 5.2 Failure of the Customer to implement an update provided by APOLLON for the contractually agreed software within a reasonable period (usually two months) shall result in APOLLON having the right to refuse to provide support services for the outdated software version.
- 5.3 The Customer shall notify APOLLON of any modifications made to the software to be

supported and specify the modifications in writing. APOLLON shall no longer be responsible for compliance with the service levels for the modified software and may terminate the support agreement for good cause if the software code has been significantly changed.

IX. Final provisions

1. Confidentiality, data protection, references

1.1 The Customer shall not disclose any information obtained, or sent by APOLLON, during the performance of the Agreement (such as software, documents, information), which contains business or operating secrets or is marked as confidential, even after the Agreement has expired.

1.2 The Customer shall process the data required for the processing of the transaction in accordance with data protection regulations. The Customer shall guarantee to have created the conditions required for APOLLON to be able to provide the agreed services in a manner that does not violate any data protection regulations.

1.3 APOLLON may use the Customer as a reference once the services have been successfully provided.

1.4 Items provided by the Customer, such as templates, data carriers, copyfilm or colour separations, shall only be stored and archived by APOLLON after the provision of services has stopped upon explicit prior arrangement and for a special fee. If the items to be archived are to be insured, the Customer shall organise this or come to a separate agreement with APOLLON.

2. Statutes of limitation

2.1 The statutory statutes of limitation shall always apply to claims for damages and compensation on the grounds of malicious intent, gross negligence, warranty, fraud as well as personal injury and claims under product liability law.

2.2 In all other cases, the following statutes of limitation shall apply:

2.2.1 one year from delivery of the contractually agreed software for purchase price repayment claims arising from withdrawal or reduction, but no less than three months from issuance of an effective notification of withdrawal or reduction for defects that have been properly reported;

2.2.2 one year for other claims based on material defects;

2.2.3 two years for claims based on legal defects, unless the legal defect is based in the right in rem of a third party, due to which such third party may request the handover of the items provided as part of the Agreement (contractually agreed software, documentation);

2.2.4 two years for other claims for damages or the reimbursement of unnecessary expenses, starting from the date on which the Customer obtained knowledge of the circumstances giving cause for the claim, or should have obtained knowledge of such if acted without gross negligence.

2.3 The statutes of limitation shall become effective no later than at the end of the maximum period in accordance with Section 199 BGB.

2.4 The statutes of limitation shall stop temporarily whilst a material or legal defect is being assessed and/or during periods of subsequent fulfilment until such subsequent fulfilment has been

completed or ultimately rejected or ultimately failed. The statutes of limitation shall take effect at the earliest three months after the expiry of such temporary stop.

3. Governing law, place of jurisdiction

3.1 The Agreement shall be governed by the laws of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and conflict of laws.

3.2 If the Customer is a business person, legal entity under public law or special trust under public law, or if the Customer's registered office is located abroad, Pforzheim, Germany, shall be the sole place of jurisdiction for all disputes arising from and in connection with the contractually agreed services. APOLLON may also choose to initiate proceedings at the Customer's general place of jurisdiction.

3.3 The place of fulfilment shall be Pforzheim, Germany.

4. Amendments to these General Terms and Conditions

4.1 APOLLON may amend these General terms and Conditions at any time in the future. The new version of the General Terms and Conditions shall become effective for future agreements.

4.2 The new version shall apply to current agreements if APOLLON provides it to the Customer. The new version may be sent or notification of an Internet path for online access to it may be given. Failure of the Customer to object to the new version of the General Terms and Conditions within four weeks from receipt of the document or online access thereto shall result in the new version having been deemed as accepted as the new applicable version. This shall only apply if APOLLON points out the objection period and legal consequences of failure to object to the Customer when providing the new General Terms and Conditions.

5. Severability clause

5.1 Should a provision of these General terms and Conditions be ineffective or impracticable, this shall not affect the effectiveness of the remaining provisions.

5.2 The Contracting Parties shall endeavour to replace the ineffective provision with an effective provision that comes closest in economic meaning to the ineffective provision.

– End of the General Terms and Conditions –