

## GENERAL CONTRACTUAL CONDITIONS

of the

**FireStart GmbH**

(„**FIRESTART**“)

### I. Introduction

I.1 These General Contractual Conditions („GCC“) shall govern all supplies and services of the FireStart GmbH („FIRESTART“) as detailed in section 1.2. The detailed provisions concerning such supplies and services as well as all regulations in connection therewith shall be agreed in individual agreements („Individual Agreements“).

I.2 **Section A** of these GCC concerns the supply and use of Standard Software (license). **Section B** concerns the Maintenance of Software. **Section C** concerns consultation- and assistance services, as well as services and works contracts outside of Maintenance. **Section D** of these GCC concerns general provisions, which apply to the supply and use of Standard Software (Section A), for Maintenance (Section B) as well as for other services and works contracts (Section C). **Section E** contains definitions of certain terms used in these GCC.

### SECTION A LICENSE CONDITIONS (Standard Software)

#### A.1 Subject Matter

A.1.1 This section A governs the supply of Standard Software by FIRESTART to the Customer for use by the Customer. The producer, designation, , description and scope

of the license use environment and use conditions of the Software as well as all other special conditions shall be provided in the respective Individual Agreement.

A.1.2 These GCC apply both to Software, of which FIRESTART is the producer or copyright owner as well as to Third-Party Software. If FIRESTART is not the producer of Standard Software (Third-Party Software), FIRESTART, but shall acquire a simple right of use (as specified in more detail in the Individual Agreement) for the Customer from the producer or from the Third-Party Licensor as set forth in the Individual Agreement. FIRESTART Such right of use can only be acquired for the Customer on the condition that the Customer submits to the respective license conditions of the producer or Third-Party Licensor, also directly vis-à-vis the producer or the Third-Party Licensor. Such license conditions shall be provided for in the respective Individual Agreement and shall be made available to the Customer or shall be accessible to the Customer in such a manner that the Customer is in the position to inform itself of their contents.

A.1.3 Unless agreed differently in an Individual Agreement, the Software shall be supplied in machine code in the version current at the time of the conclusion of the agreement together with the documentation generally made available by FIRESTART; the Customer shall not receive the source code.

A.1.4 The Customer is informed about the material functions of the Software to be supplied by FIRESTART. The Customer shall be responsible for the selection of the Software and for the technical conditions of use, e.g. concerning hardware, operating system, database, etc. The Customer shall

also be responsible to ensure that the Software fulfills its needs and requirements. In case of doubt, it is the responsibility of the Customer to obtain professional advice. FIRESTART offers appropriate consultation services against separate remuneration.

A.1.5 FIRESTART shall supply the Software to the place of delivery agreed in the Individual Agreement or makes it available by download. The installation of Software is not included in the supply of Software, such can be agreed separately in an Individual Agreement. The supply shall be undertaken up to the date agreed in the Individual Agreement. Force majeure, strikes, delays falling within the sphere of the supplier or of a Third-Party Licensor and similar circumstances shall extend the term for delivery by the term of the hindrance, plus a reasonable start-up period after the end of the hindrance.

## **A.2 Copyright/Scope of Use**

A.2.1 The Customer acknowledges that all rights to the Software, in particular the encompassing copyrights and other intellectual property rights together with all ancillary rights to all programs, documentation and information made available to the Customer pursuant to these GCC shall be accorded to FIRESTART, to the producer of the Software or to the Third-Party Licensor; the Customer shall only have the right to the simple use the Software as provided in the Individual Agreement, these GCC and in the respective license conditions of the producer or of the Third-Party Licensor in the case of Third-Party Software.

A.2.2 FIRESTART grants to the Customer a non-exclusive, non-transferable right to use the Software in the contractually agreed scope against a one-time payment for an unlimited term (= License Purchase) or for

an limited term with the possibility of termination (= Rental License). It shall be agreed in the Individual Agreement whether the license is acquired on a purchase or on a rental basis. Any further use by the Customer is prohibited and entitles FIRESTART – notwithstanding any further rights and claims – to termination of the license. The right to use shall begin with the day provided in the Individual Agreement. Use shall be defined as the carrying-out of the instructions contained in the programs as well as the required use of the documentation. The right to use shall begin with the day provided in the Individual Agreement.

A.2.3 The manner and scope of use shall – in the following hierarchy – be determined by the applicable third-party license agreements, the Individual Agreement and these GCC.

A.2.4 The right to use Standard Software, which the Customer receives in the context of remedy or Maintenance, shall commence at such time, in which the Customer stores the respective program components on a hard disk or processes them on a CPU. As soon as it puts the new program components into productive use, the rights of use for program components provided earlier and now replaced, shall end.

A.2.5 The Customer shall use the programs only in the agreed use environment (e.g. CPU, place of installation, etc.) and only within the scope of agreed use conditions (e.g. Named Users, number of Concurrent Users). The use environment and scope of use shall be provided in the respective Individual Agreement. The Software may only be used by the Customer for its own purposes. The Customer is not allowed to use the Software for the operation of a data center. Whenever the Customer allows the

use of the programs (irrespective of the technical means) by third parties or itself uses such Software for third parties and therefore not for the processing of its own business matters, such shall be considered as a data center operation. However, the use of the Software in an external data center for the Customer by a third-party host-provider is permissible.

A.2.6 The Customer may modify the Software and undertake changes and enhancements within the context of §40 d (2) Austrian Copyright Act to the extent this is permitted by law and is mandatory. The Customer has the right to achieve interoperability, only however, if the Customer has first requested FIRESTART in writing and under granting of a reasonable term to make the necessary information and documentation available to create interoperability. Only if such request has remained fruitless despite granting a written deadline, is the Customer entitled to decompilation within the limits of §40 e Austrian Copyright Act. Prior to use of any third-party (e.g. §40 e para 1 no. 1 or para 2 no. 2 Austrian Copyright Act), the Customer shall provide FIRESTART with a written declaration of the third-party that such third-party obliges itself directly vis-à-vis FIRESTART to compliance with the use and transfer provisions under the Individual Agreement and these GCC.

A.2.7 The Customer may transfer the Software, which it has acquired by means of License Purchase (including any additional later additional purchases or Software acquired in the context of Maintenance) to a third party in full and under complete and final termination of its own use of the Software; any temporary transfer of use to third parties or the transfer of use to several third parties is prohibited. A prerequisite for any such transfer is a written declaration of the

recipient pursuant to which it submits vis-à-vis FIRESTART to the use and transfer provisions pursuant to the Individual Agreement and the GCC. The third-party shall not be entitled to exercise the rights of use until the Customer has ensured to FIRESTART in writing that it has transferred all original program copies to the third-party and has deleted any copies it has created. Section A. 2. 8. shall apply by analogy. Any other transfer of the rights of use or the granting of sublicenses to the Software is not permissible without express consent from FIRESTART. It is not permissible to transfer Software acquired by rental.

A.2.8 Irrespective of the reason for the termination of an agreement, upon the ending of the contractual relationship, the Customer must return the originals of the software including any modifications, amendments etc. to FIRESTART without delay, or must destroy such upon request of FIRESTART; the same shall apply to all documentation. In such case, the Customer is obliged without delay to cease all use of the Software including modifications and amendments of all kinds. Excluded from the obligation to destroy/delete is the retention of an archive copy to be retained according to legal provisions for the legally required term, which, however, may no longer be put into productive use by the Customer. The Customer shall confirm to FIRESTART that the above measures have been undertaken.

A.2.9 FIRESTART has the right, at the discretion of FIRESTART, to have the contractual use of the Software checked either at the premises of the Customer and/or at the premises of the Final User or to have such checked by experts (e.g. by chartered accountants). The Customer shall cooperate reasonably in any such verifications. The Customer shall bear the reasonable costs of any such license review, if the result of the

review shows use contrary to the contractual provisions. In case of use not in conformity with the contractual provisions, FIRESTART can charge reasonable fees for the license deficit in the amount provided in the list of prices in force at the time. Any other contractual or legal rights or claims shall not be affected thereby. The provisions of this section A. 2. 9 shall be imposed by the Customer on its Final Users.

### **A.3 License Fees/Payment Conditions**

A.3.1 The license fee is the remuneration for the agreed use of the Software. The amount of the remuneration shall be agreed in the respective Individual Agreement.

A.3.2 In case of a License Purchase, the license fee does not include the maintenance fee, in case of a Rental License, the license fee includes both the remuneration for the use as well as the maintenance fee (= rental fee).

A.3.3 In case of a License Purchase, the license fee shall be due for payment in full within 30 days of the conclusion of the Individual Agreement. The rental fee is due for payment annually in advance, for the first year within 30 days after the conclusion of the Individual Agreement. FIRESTART can adjust the rental fee annually in accordance with the Austrian Consumer Price Index (VPI), the basic year for the first adjustment shall be the first contractual year (beginning with the conclusion of the Individual Agreement).

### **A.4 Term**

A.4.1 In case of a License Purchase, the right of usage is granted for an unlimited term.

A. 4.2 In case of a Rental License, the term of the rental (license term) is agreed in the

Individual Agreement. Termination for material reason without observation of a notice period remains possible.

## **SECTION B MAINTENANCE OF STANDARD SOFTWARE**

### **B.1 Subject Matter**

This section B governs the Maintenance of Standard Software. Unless expressly agreed differently in a License Purchase, the Maintenance of standard software shall be offered to the Customer separately and independent from the granting of rights to use of the Standard Software, it shall not be part of the supply of Software/grant of rights to use. In the case of a Rental License, the Software Maintenance is an integral part of the software license.

### **B.2 Scope of Maintenance**

B.2.1 If the Standard Software has not been created by FIRESTART, but is acquired from a third-party (producer or Third-Party Licensor), Maintenance service shall be governed by the respective offers of maintenance of the producer or of the Third-Party Licensor. The exact scope of Maintenance and the Service Levels shall be included in the respective description of Maintenance or in the Individual Agreement, Maintenance can include the following services:

B.2.1.1 First Level Support: Within the agreed service times, FIRESTART shall in the context of first-level support be available to the Key Users of the Customer by telephone or remote for consultation in case of problems arising from time-to-time in connection with the use of the contractual FIRESTART-software programs. The respective details (e.g. the defined Key Users, the technical or organizational prerequisites to be

created by the Customer as well as the reaction times, i.e. the time periods within which FIRESTART accepts a problem inquiry), shall be set forth in the respective description of Maintenance and/or in the Individual Agreement. The completion of the training for the defined Key Users provided by FIRESTART by such Key Users is a prerequisite for the use of First Level Support.

If such service is used repeatedly for similar problems, FIRESTART has the right to make further assistance dependent on additional training measures, for which remuneration shall be payable, or to invoice such services additionally pursuant to the agreed remuneration rates (if such do not exist, then according to the remuneration rates generally used).

**B.2.1.2 Second Level Support:** In case of technical error messages and system errors in connection with the use of the contractual FIRESTART-software, FIRESTART shall be available to the defined persons of the Customer within the agreed service times in the context of Second Support Level by telephone or remotely. The trained employees of the Customer, which shall be the contact persons for FIRESTART in the context of Second Level Support, the reaction times and other specifics (e.g. the technical or organizational prerequisites to be created by the Customer) shall be set forth in the description of Maintenance and/or in the Individual Agreement. The completion of training for the contact persons provided by FIRESTART by such persons is a prerequisite for the use of Second Level Support.

**B.2.1.3 Update Service:** The making available of general new program levels with general remedy of defects as well as minor modifications of the contractual Software

which are generally made available to its customers during the term of Maintenance; this shall not cover new program versions, which contain material enhancements of functionality. Such upgrades or program versions shall be offered to the Customer by FIRESTART separately from time to time. FIRESTART

**B.2.1.4 Troubleshooting on Location:** If the problem cannot be solved by telephone or remotely, then FIRESTART – if such service is agreed in the Individual Agreement – shall render services at the agreed location of the computer system against separate invoicing in agreement with the agreed rates of remuneration, if such are not agreed, then in accordance with the then-current remuneration rates.

**B.2.2** Which of the above Maintenance services is available to the Customer is provided in the respective Individual Agreement. Maintenance services shall be performed during the normal working hours (C.7.4) of FIRESTART. If the remedy of a problem is – in exceptional cases and upon the request of the Customer – undertaken outside of normal working hours, the remuneration rate shall be increased by 50 %. The Customer shall grant FIRESTART access to the system for purposes of Maintenance at any time, either remotely or on-site and shall create the respective prerequisites.

**B.2.3** FIRESTART shall be relieved from the obligation to render Maintenance services to the Customer without any impact on the obligation of the Customer for payment of the agreed Maintenance fee, if the Customer fails to install the then-current or the previous version of the offered/supplied program versions.

B.2.4 The putting into operation of or any increased efforts/expenditures for the Maintenance of Standard Software shall be excluded from Maintenance – and shall be paid additionally in accordance with the usual FIRESTART rates of remunerations and expenses – if it has become necessary due to use beyond the contractually-agreed scope or manner, by a use environment different than contractually agreed, incorrect usage, external influences, force majeure or for other reasons not falling within the scope of responsibility of FIRESTART, further for work on Software, which the Customer has itself altered or which has been maintained by persons other than FIRESTART-technicians without prior written agreement of FIRESTART. In case of unjustified use of services offered by FIRESTART, FIRESTART shall have the right to invoice the costs to the Customer at the then-current rates of remuneration and expenses.

### **B.3 Maintenance Fees**

B.3.1 The amount of the Maintenance fees for the respective services (B.2.1.1. through B.2.1.5) service shall equal a certain percentage of the respective license fees to be set forth in the Individual Agreement. FIRESTART

B.3.2 The fixed Maintenance fees pursuant to section B.3.1, agreed as a percentage, shall be due for payment at the beginning of each Maintenance year, for the first time with the conclusion of the respective Individual Agreement, in the case of a License Purchase independent of the license fees, in case of a Rental License together with the license fees (see A. 3.2 and A. 3.3, above).

B.3.3 Service fees to be paid in accordance with time and materials shall be invoiced

monthly after the rendering of the respective service and shall be payable 30 days thereafter.

### **B.4 Maintenance Term**

B.4.1 The Maintenance agreement – in case of a License Purchase independent of the Software license, in case of a Rental License together with the Software license - is concluded for an indefinite term; however, in an Individual Agreement also a fixed term can be agreed. To the extent no fixed term is agreed, the Maintenance relationship can be terminated by either of the contractual parties in writing under observation of a notice period of 6 months as of the end of any calendar year, at the earliest, however, after the end of the thirty-sixth contractual month. In case of a Rental License, this shall also apply to the license grant, which shall be inseparable from Maintenance.

B.4.2 A Maintenance agreement can be terminated with immediate effect by either contractual party for material reasons within the sphere of responsibility of the other party in the case of a Rental License together with the right of use. In particular, a delay in payment by the Customer despite the granting of an additional term of 20 days, any violation of material contractual provisions despite reminder and failure to cure within ten days, as well as any conduct of the Customer, which makes the continuation of the Maintenance relationship unreasonable for FIRESTART shall be considered as material reasons, which entitle FIRESTART to contract termination with immediate effect.

## **SECTION C (WORK CONTRACTS AND SERVICES)**

### **C.1 Subject Matter**

C.1.1 This section C governs works contracts as well as services, the object of which is not the achievement of specified results, excepting the Maintenance of Software, which is governed by section B; it covers, amongst others, the supply of or assistance with analyses and specifications, the creation of Individual Software, assistance in the installation, implementation and configuration (basic customizing) of software, assistance in process restructuring, the creation and implementation of interfaces as well as training and consulting. The concrete object of the services shall be set forth in the Individual Agreement.

C.1.2 The place for supply or rendering of the services as well as any deadlines and the term of any contract shall be agreed in the Individual Agreement. In an Individual Agreement, the contractual parties can also agree on a timetable and/or project plan for the supply and/or rendering of the agreed services.

C.1.3 Any requirements of the Customer for the services and supplies of FIRESTART shall be provided by the Customer in writing, for example, in the form of specification requirements. The implementation of the requirements must be contractually agreed in writing in the form of a performance specification. The performance specification shall be an integral part of the Individual Agreement, in the hierarchy of agreements it shall prevail over the Individual Agreement and the GCC.

C.1.4 To the extent the specification requirements for the services and supplies of FIRESTART are not undertaken by the Customer itself, FIRESTART shall – against additional remuneration – provide assistance to the Customer, in particular in connection

with the preparation of the Performance Specification. The Performance Specification prepared together by the parties must be approved in writing by the Customer. Any later requests for changes or additions shall be dealt with in connection with change management (C.3) and shall be agreed separately

C.1.5 FIRESTART shall have the right to modify or to improve mutually-defined services/supplies at its own cost to the extent such modification is customary in the business field of the Customer, becomes necessary due to legal requirements or as far as this is reasonable for the Customer.

C.1.6 Should it turn out during the rendering of services or the performance of a works contract that the fulfillment of an Individual Agreement is legally or factually not possible, FIRESTART will inform the Customer in writing. If the Customer does not agree to a modification of the specification requirement and/or it does not create the prerequisites, which allow for a carrying-out of the service/work, FIRESTART may refuse contract fulfillment, in which case the Customer shall have no claim to contract fulfilment; the services rendered and expenses incurred by FIRESTART up to the time of refusal by FIRESTART shall be paid by the Customer.

## **C.2 Project Management**

C.2.1 The rendering of services and the supply of Works, in particular in the context with a project, requires a close cooperative partnership between the contractual parties. In an Individual Agreement or at the beginning of a project, both contractual parties shall nominate one or more contact persons as well as a project manager. The project managers shall be able to make decisions on short notice.

C.2.2 Each project manager is responsible for the steering, management and supervision of its own project team; to the extent necessary, he will be assisted by the project manager of the other project team in this regard.

C.2.3 In case of services and works contracts, under assistance of the Customer's project manager, FIRESTART's project manager shall in regular intervals document the progress of the rendering of services and supplies and shall make appropriate status reports available to the Customer. Such status reports shall inform, in particular, about the then-current status of the Works, about any deviations from project plans and about any change requests.

C.2.4 The contractual parties can institute a project steering committee to steer and supervise contract implementation, which shall be agreed in the Individual Agreement. The steering committee shall be responsible for making decisions on issues submitted by the project managers, furthermore for the supervision of project progress. The steering committee shall meet whenever requested by a project manager, in addition periodic meetings can be provided for in the respective Individual Agreement.

C.2.5 Details concerning project teams, project managers as well as their duties shall be provided for in the respective Individual Agreement; this also shall apply to the implementation of a project steering committee as well as to its composition and detailed responsibilities.

C.2.6 Any decisions made, whether by the project manager or by the project steering committee, shall only become binding if

they have been made or confirmed in writing.

C.2.7 Even if employees of FIRESTART provide services at the location of the Customer, exclusively FIRESTART shall have the authority to give instructions to these employees and FIRESTART shall have the exclusive organizational control.

C.2.8 Exclusively FIRESTART shall have the right to select FIRESTART employees to participate in any particular project. FIRESTART shall also have the right to substitute any employees used with other employees with equivalent qualifications. However, FIRESTART shall use best efforts to only exchange the project manager for important reasons in order to ensure the continuity of project management.

### **C.3 Changes in Scope of Services and Works**

C.3.1 During the term of any Individual Agreement, either party may in writing suggest changes or additions to the scope of services or supplies to the other contractual party. Simultaneously with any suggestion for a change or addition made by FIRESTART, FIRESTART shall inform the Customer under which conditions (costs, impact on content and deadlines etc.) FIRESTART can undertake the suggested change. In case of requests for changes or additions by the Customer, FIRESTART shall inform the Customer quickly after receipt of the change request whether and under which conditions (costs, deadlines, impact on content etc.) FIRESTART will carry out this suggested change or addition.

C.3.2 If requests of the Customer for changes or additions require extensive review by FIRESTART, FIRESTART shall have



the right to invoice its services in connection with the review in accordance with the general remuneration rates applicable at such time.

C.3.3 If the contractual parties cannot reach an agreement on a certain change request, the services/Works shall be implemented in the originally agreed scope.

#### **C.4 Performances of the Customer**

C.4.1 The Customer shall ensure that all necessary and appropriate assistance and supplies, which fall within its scope of responsibility, (e.g. information, documentation, resources, technical prerequisites, system environment, test system, test data, test cases etc.) and any cooperation (e.g. with specifications, tests, Acceptances etc.) of or by the Customer shall be provided timely, in the required scope and free of costs to FIRESTART, furthermore in full and free of defects. FIRESTART shall not be obliged to review the technical or customer-specific input as well as the test data and test cases for their logical content (accuracy, completeness etc.) or for their suitability.

C.4.2 The acquisition, making available and operation of Third-Party Software components (hardware, software), which are relevant for the use of the contractual Software, shall fall exclusively within the scope of responsibility of the Customer, furthermore its suitability for the purposes of the respective Individual Agreement. Upon express and written request of the Customer, FIRESTART will inform the Customer whether certain system components used or to be acquired by the Customer are – in principle – suitable for the contractual Software.

C.4.3 The productive (or live) system, on which the Software (which is the subject matter of an Individual Agreement) is installed and is put into productive use shall be made available by the Customer; in addition, the Customer shall make an appropriate test system available for implementation, configuration, basic customizing, training and for carrying-out test cases and Acceptances. The Customer shall be responsible for the installation on its systems, unless the contractual parties agree differently and expressly in an Individual Agreement.

C.4.4 The Customer shall, as required, assist the employees of FIRESTART and its subcontractors with any work at the location of the Customer, including the making available of necessary personnel and necessary technical prerequisites and shall further make any necessary work space and resources available.

C.4.5 Data carriers and other technical material made available by the Customer must be free of defects, both as concerns content as well as in all technical regards.

C.4.6 The Customer shall take appropriate precautions for the case that its systems do not, in full or in part, work in an orderly manner, e.g. by means of continuous data backup as well as by periodic review of the results produced by the system.

C.4.7 The services and supplies to be provided by the Customer are material obligations of the Customer. Should they not be fulfilled timely or in the agreed manner by the Customer, any consequences following therefrom (such as delay or additional costs) shall be borne by the Customer.

C.4.8 Any further details concerning services and supplies of the Customer shall be provided in the Individual Agreement.

### **C.5 Acceptance**

C.5.1 In case of works contracts, FIRESTART can submit its services or partial services for acceptance (declaration of readiness for acceptance). Partial services, which are capable of acceptance, are self-contained phases of fulfillment of services specified in an Individual Agreement or in other contractual agreements, further self-contained and therefore functional parts, as well as individual analyses and documents such as specifications or concepts. Irrespective thereof, the contractual parties can further specify Acceptances and partial Acceptances of services in an Individual Agreement or in project plans, they can also provide for test and acceptance criteria.

C.5.2 After FIRESTART has declared its readiness for acceptance, the Customer shall undertake the (partial) acceptance of the services of FIRESTART without delay, in case of software on the test system of the Customer; FIRESTART has the right to participate in Acceptances or Partial acceptances.

C.5.3 The Acceptance must be completed within 30 days and shall commence as soon as the respective service is made available by FIRESTART for Acceptance/Partial acceptance. If the Customer does not notify FIRESTART in writing of any Material Defects within the acceptance term, the service shall be considered as accepted; the same shall apply if the service shall only be subject to immaterial defects or is put into productive use. Defects shall be considered as Material Defects, which make impossible the use of the agreed service or only allow such use only with material restrictions. Any

obligation of FIRESTART to remedy a defect pursuant to warranty provisions shall not be affected thereby.

C.5.4 Defects shall be entered into a protocol by the Customer distinguishing between material and immaterial defects (C.5.3). A defect shall be considered as acknowledged by FIRESTART only if such has been expressly confirmed by the project manager of FIRESTART in the acceptance protocol and this Acceptance is signed by him.

C.5.5 If FIRESTART shall not be able – for reasons, which fall within its scope of responsibility – to prove the agreed characteristics or the remedy of Material Defects although two the additional time periods (each of reasonable duration) have expired, then the Customer can, after such terms have passed, cancel the agreement as concerns the affected service parts or can demand a reduction in remuneration, only, however, if the Customer has threatened this consequence of non-fulfillment (cancellation or price reduction) when granting the last additional time period.

### **C.6 Rights to Results**

All copyrights, patent- and other intellectual property rights to/in connection with any interfaces, Individual Software, documentation and other results individually prepared by FIRESTART for the Customer against remuneration in the context of these GCC or of any Individual Agreement shall exclusively and without limitation be accorded to FIRESTART. The Customer shall receive the same rights of use thereto as to the Standard Software acquired from FIRESTART, to which the results belong; if such license does not exist, then the Customer

shall receive a non-exclusive, time unlimited, non-transferable right to use such exclusively for its own purposes.

### **C.7. Remuneration/Payment Conditions**

C.7.1 Unless expressly agreed differently in an Individual Agreement, both in case of Provision of Services and in case of works contracts, remuneration shall be determined on the basis of time and materials. The applicable remuneration rates and rates for out-of-pocket expenses and other details shall be set forth in the Individual Agreement. If remuneration is agreed on the basis of time and materials, FIRESTART shall submit monthly invoices.

C.7.2 If – as at the time of the conclusion of the Individual Agreement – a detailed estimate of time and material has already been made and a lump-sum remuneration is agreed, FIRESTART may demand prepayment or partial payments; the amount and due dates of such payments shall be set forth in the Individual Agreement. In any case, in addition to the agreed fixed price, FIRESTART shall have the right to compensation of expenses (out-of-pocket expenses, travel expenses etc.) in accordance with the agreed rates, if such are not agreed, then according to the then-current rates for the out-of-pocket expenses of FIRESTART.

C.7.3 If the actual time and materials of FIRESTART and/or of its subcontractor exceed the fixed prices, which have been agreed based upon an estimate of time and materials, due to incomplete or incorrect information or failure to provide the required cooperation from or by the Customer, FIRESTART has the right to a reasonable increase of the originally-agreed remunera-

tion. Additional costs and work for modifications or additions to the requested scope shall be compensated according to time and materials in the context of change management, unless the contractual parties agree differently in an individual case.

C.7.4 For services, which FIRESTART renders upon request of the Customer outside of normal business hours (8:00 a.m. through 5:00 p.m. on work days) double of the agreed hourly rate shall be charged.

C.7.5 For services, which are invoiced according to time and materials, FIRESTART shall submit monthly invoices. If lump sum remuneration has been agreed, the payment schedule as provided in the respective Individual Agreement shall apply. All invoices shall be due for payment within 30 days.

## **SECTION D (GENERAL PROVISIONS)**

### **D.1 Application of the Conditions**

D.1.1 For all provisions of services and all works contracts of FIRESTART as well as for any precontractual business contacts exclusively these GCC shall apply. General Business Conditions of the Customer shall not become part of the agreement, even if FIRESTART does not expressly object.

D.1.2 Offers of FIRESTART are non-binding and revocable, unless the offer is expressly and in writing stated to be irrevocable.

D.1.3 In case of contradictions between an Individual Agreement and these GCC, the Individual Agreement shall prevail.

D.1.4 Individual Agreements and other agreements, which are subject to these

GCC, shall only be legally binding and legally effective if they have been properly signed by FIRESTART.

## **D.2 Deadlines and Terms**

Deadlines and terms for the Provision of Services and works contracts shall only be binding if FIRESTART and the Customer have expressly agreed in writing that they shall be binding in any individual case. If FIRESTART needs to wait for the provision of a service or for cooperation from the Customer or if FIRESTART is in any other manner without its fault hindered in rendering performance, then the agreed deadlines and terms shall be extended by the duration of the hindrance together with a reasonable start-up time after the end of the hindrance.

## **D.3 Risk of loss/Warranty**

D.3.1 With the delivery of the service to the Customer, the respective risk of loss passes to the Customer.

D.3.2 FIRESTART warrants that at the time of performance of the contractual obligation or, as the case may be, at the time of Acceptance, the service shall be free of defects, which hinder or reduce its suitability as compared to the product description of FIRESTART or, as the case may be, in the case of Third-Party Software of the producer or of the Third-Party Licensor or as compared to the agreed Performance Specification. No warranty is given that the service is suited for a particular purpose or has any particular suitability. Immaterial deviations from the product- or Performance Specification shall not be taken into consideration. No warranty claims can be based on information contained in catalogues, brochures, advertisement or other written

or oral statements, unless they have expressly been included into the Individual Agreement.

D.3.3 Before productive use, the Customer shall test the supplies and services of FIRESTART to ensure that they are free of defects and that they can be used. The Customer shall notify FIRESTART without delay of any defects in writing, including useful information to enable FIRESTART to recognize the defect. Only defects, which can be reproduced, shall be remedied. The Customer shall bear the burden of proof that a defect was present at the time of the transfer/Acceptance.

D.3.4 For the purpose of investigating possible defects, the Customer shall be obliged to make the computer system used by it (in case of systems with online access to other terminals also the respective connection) software, protocols, diagnosis documentation and data available to FIRESTART during normal working hours free of charge, as is reasonably required for testing purposes. The Customer shall assist FIRESTART in investigating defects and causes for such defects. If it cannot be proven that the defect falls within the scope of responsibility of FIRESTART, FIRESTART shall invoice the Customer for its services in this regard in accordance with the compensation and out-of-pocket rates of FIRESTART.

D.3.5 FIRESTART shall primarily fulfill its warranty obligations by correction of defects. The correction of defects shall be undertaken by remedy of the defects or by FIRESTART showing possibilities to avoid the effects of the defect, in case of software by supplying a new program level. Substitute performance (= remedy of defects by the Customer or by third parties on behalf of the Customer) is excluded.

D.3.6 FIRESTART shall not provide warranty if the notice of defect has not been submitted without delay and in writing, if the defect is caused by defective or incomplete information or inadequate assistance or cooperation of the Customer or if the supplies or services of FIRESTART have been modified by the Customer or third parties without prior approval of FIRESTART.

D.3.7 If FIRESTART – despite with repeated efforts and at least two additional reasonable time periods granted by the Customer in writing – fails to remedy the defect or cannot circumvent it in such a manner that the supply or service can be used according to agreement, the Customer has the right, in compliance with the legal requirements, to demand the reduction of the agreed remuneration (except in case of immaterial defects), shall have the right to cancel the contract in case of Material Defects or to terminate the agreement without observation of a notice period if the Customer has threatened such consequence of non-fulfillment (e.g. cancellation of contract) in the last granting of an additional time period. Further warranty rights are excluded.

D.3.8 The warranty period shall amount to 12 months, beginning with the delivery, the Acceptance or partial Acceptance or, if there is no Acceptance, with the rendering of the service.

D.3.9 There shall be no warranty for the Provision of Services, the object of which is not the achievement of specified results.

#### **D.4 Damage Claims**

D.4.1 FIRESTART shall be liable for damages only in case of intent or in case of gross negligence; liability for slight negligence is

excluded. The Customer shall bear the burden of proof that any damages have been caused by FIRESTART by intent or by gross negligence. Any liability of FIRESTART is limited in amount to the remuneration agreed with the Customer for the supply or service directly causing the damage. In no case shall FIRESTART be liable for lost profits, for savings expected but not attained, for indirect damages or for consequential damages as well as for damages to stored data.

D.4.2 The Customer shall ensure such conditions within its scope of responsibility to keep the damages as low as possible, e.g. by means of daily data securing or by means of continuous review of results.

D.4.3 Damage claims shall be time-barred within 12 months after the damage and the party responsible for the damages have become known.

D.4.4 The above limitations on liability shall also apply in case of a retroactive cancellation or rescission of a contract or of a part of a contract.

D.4.5 The limitation of liability pursuant to section D.4 has been taken into consideration in calculation of the prices/remuneration rates.

#### **D.5 Payment Conditions**

D.5.1 FIRESTART shall, after conclusion of the respective Individual Agreement, have the right to increase the Maintenance fees as well as the remuneration and cost rates in accordance with the increases of the Consumer Price Index (VPI).

D.5.2 All prices shall be net, exclusive of value-added-tax in the legal amount.

D.5.3 The compliance by the Customer with agreed payment dates shall be a material prerequisite for the (continued) contractual performance by FIRESTART. In case agreed payments are not made timely, FIRESTART shall have the right to choose either to suspend any further works, to cancel or to rescind the contract.

D.5.4 The Customer shall not be entitled to offset any claims if may have against FIRESTART or to withhold any payments on the basis of claims against FIRESTART unless they have been acknowledged by FIRESTART in writing or have been determined as valid by a final court decision, furthermore to withhold any services of the Customer.

#### **D.6 Intellectual Property Rights of Third Parties**

D.6.1 If the intellectual property rights of third parties have been violated by contractually agreed use of the Software or other results ("Results") prepared or made available by FIRESTART, and if the Customer has – in a legally final manner – been prohibited from using in full or in part such Results or if – in the opinion of FIRESTART or its Third-Party Licensors – such is threatened, FIRESTART shall at its own expense and after consultation with the producer of the Software/Third Party Licensors either (a) obtain for the Customer the right of use or (b) create the respective Results free of intellectual property rights of third parties or (c) substitute the respective Results by others which create similar outcomes, but do not violate any third-party intellectual property rights. If such measures should be impossible or economically unfeasible, FIRESTART shall refund the remuneration attributable to the respective Results, less reasonable fees for

the use for the time up until the termination of use; upon request of FIRESTART, the Customer shall without delay cease to use the respective Results.

D.6.2 FIRESTART shall defend the Customer against all claims, which arise out of a violation of an intellectual property right by the contractual use of the Results made available or supplied by FIRESTART to the Customer. FIRESTART shall assume any costs and damages imposed on the Customer by a court (within the limitation of liability provisions of section D.4) to the extent the Customer notifies FIRESTART of such claims raised without delay and in writing and FIRESTART the software producers or the Third-Party Licensors have been accorded all rights of defense and settlement negotiations and if the Customer appropriately assists FIRESTART/the software producer or the Third-Party Licensor and assigns/transfers to them the respective necessary rights and claims to legal enforcement. The Customer may not, on its own accord, acknowledge any claims of third parties.

D.6.3 Section D.4 shall apply by analogy to all damage claims of the Customer vis-à-vis FIRESTART in connection with the violation of intellectual property rights of third parties.

## **D.7 Confidentiality and Data Protection**

D.7.1 The contractual parties shall be obliged to keep all information received concerning software, data, documentation and other information, of which they have obtained knowledge or which has become available to them in the course of the contractual relationship in confidence. Confidential information may exclusively be used for the purposes of the respective Individual Agreement. This obligation shall continue also after the termination of the contractual relationship without time limitation.

D.7.2 The obligation of confidentiality pursuant to section D.7.1 shall not apply to information which (a) is publically available or was already known to the contractual parties earlier; (b) has been developed by one of the contractual parties independently without knowledge of the equivalent information of the other party or without use thereof; (c) has been made public by a third party, which is not subject of the confidentiality obligation or (d) must be disclosed based on legal provisions or the requirements of public authorities, however in the last case, such fact must be notified to the other party in advance and in writing.

D.7.3 The contractual parties shall be obliged to impose this confidentiality obligation on all employees and subcontractors.

D.7.4 Both parties shall comply with the applicable data protection provisions.

## **D.8 Duty of Information**

D.8.1 Both parties shall keep each other informed without delay concerning circum-

stances of any kind, which could substantially hinder the rendering of performance or the project progress irrespective of whether such lies within its own scope of responsibility, within the scope of the other contractual party or of a third party. Circumstances are excluded from this obligation of information, which are known to the other contractual party.

D.8.2 Shipments and services (the fulfilment of contract) shall be under the proviso that fulfilment is not being restricted by any national or international regulations, particularly export control regulations and embargoes or any other restrictions. The contract parties shall obligate themselves to provide all information and documentation needed for the export/domestic shipment/import. Delays caused by export checks or licensing procedures shall override any lead times or deadlines stipulated. If any required licenses for certain items cannot be obtained, the contract shall be considered as not concluded regarding the items in question; because of this and of above mentioned transgression of deadlines, any claims for damages shall be excluded.

## **D.9 Obligation to Refrain from Solicitation**

D.9.1 The contractual parties shall be obliged to neither directly nor indirectly solicit or employ persons working for other contractual party (whether there employed or not) during the term of the contract and for a term of 12 months thereafter.

D.9.2 In case of a violation against the obligation of section D.9.1, the violating party shall pay to its contractual partner a contractual penalty in the amount of the latest gross yearly salary of the respective person

employed by it. The right to claim any further actual damages beyond such penalty and other rights shall not be affected thereby.

#### **D.10 Jurisdiction, Governing Law**

All disputes arising out of an agreement, which is subject to these GCC, including any disputes concerning its existence or non-existence, shall be exclusively decided by the court with subject-matter jurisdiction in Linz, Austria. All agreements subject to these GCC, including the issue of their enforceability, shall be governed by substantive Austrian law under exclusion of its conflicts-of-law provisions and under exclusion of the United Nation Convention on Contracts for the International Sale of Goods.

#### **D.11 Final provisions**

D.11.1 FIRESTART shall have the right to use sub-contractors to fulfill its contractual obligations.

D.11.2 Any assignment of rights or any transfer of obligations arising out of an Individual Agreement by the Customer requires prior written approval of FIRESTART.

D.11.3 The invalidity of any individual contractual provision shall not lead to the invalidity of the entire agreement. The invalid provision shall be replaced by a valid and enforceable provision, which approximates the invalid provision as closely as possible.

D.11.4 Any modifications or amendments to these GCC or to any Individual Agreement must be in the written form, this also applies to any waiver of the written form.

D.11.5 FIRESTART hereby informs the Customer that employees of FIRESTART are not

authorized to make any oral agreements, ancillary agreements or warranties, which exceed the content, scope or other conditions of an Individual Agreement.

#### **20. SECTION E (Definitions)**

**Acceptance** shall be such procedures as described in more detail in section C.5 of the GCC.

**Concurrent Users:** designates a (maximum) number of users, which may simultaneously – and without registration by name – access the Software.

**GCC:** shall be these General Business Conditions.

**Individual Agreement:** Each agreement, which is concluded between the contractual parties on the basis of these GCC.

**Individual Software:** Software (modifications of code or additional code), which is created by FIRESTART based on the agreed specific requirements of the Customer.

**Intellectual Property Rights:** all patent, copyright and other protective rights.

**License Purchase:** The purchase of a software license for an unlimited term against one time payment.

**Maintenance:** The services described in more details in sections B and C.8.

**Material Defect:** A defect, which hinders or substantially make more difficult the orderly use of the respective supply or service.

**Named Users:** designates persons authorized to use, which have been nominated by name and may access the software by



means of a registered access entered by name.

**Performance Specification:** Requirements and any description of services, to which the contractual parties agree and which become an integral part of the respective Individual Agreement.

**Provision of Services:** Such services of FIRESTART, the object of which is not the achievement of specified results.

**Rental License:** The purchase of software without time limitation or subject to time limitation with the possibility of termination, generally against periodic remuneration.

**Services:** Such services of FIRESTART, the object of which is not the achievement of specified results.

**Service Level:** Service and quality criteria, detailed in the Individual Agreement

**Software:** Software, which is subject to this agreement.

**Standard Software:** Software, which is made available to substantial number of Customers.

**Third-Party Licensor:** Producers or third parties which supply Standard Software to the Customer or to FIRESTART for the Customer for use.

**Third-Party Software:** Software, which has not been produced by FIRESTART or of which FIRESTART is not the copyright owner.

**Works:** Performances of FIRESTART, the object of which is the achievement of specified results.

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