

## General Terms and Conditions

### I. General Provisions

#### § 1 Subject Matter of the Agreement

- 1.1. These general terms and conditions (hereinafter referred to as "**GTC**") shall apply exclusively to any and all contractual agreements (hereinafter each contractual agreement referred to as "**Agreement**") between PTV Planung Transport Verkehr AG (hereinafter referred to as "**PTV AG**") or any affiliated company of PTV AG the Agreement is made with (PTV AG or the contracting affiliate hereinafter referred to as "**PTV**") and a customer or other contracting party (hereinafter referred to as "**Client**", PTV and the Client hereinafter collectively referred to as the "**Contracting Parties**") on supplies and services (hereinafter referred to in summary as "**Deliveries**") of PTV except for Online Services as described in clause 1.2. Deliveries may particularly, but not limited to, comprise:
  - delivery of standard software and data;
  - customizing, installation and adaption of standard software;
  - consulting services;
  - software maintenance and support.
  - development of individual software;
- 1.2. The GTC shall not apply to online services such as the provision of websites and internet portals, application service providing and/or software as a service (collectively "**Online Services**"). For Online Services, the terms of use agreed upon registration of the Client for such Online Services shall apply.
- 1.3. Furthermore, the GTC shall not apply to any contractual agreements where PTV AG is the purchaser of goods or services. To such agreements only the General Procurement Terms and Conditions of PTV AG or other individual contractual arrangements between PTV AG and the respective contractual party shall apply.
- 1.4. Contract variations, modifications and amendments shall always be made in writing and signed by an authorised representative of each party.
- 1.5. Unless explicitly referred to in the GTC, any other terms and conditions, including without limitation any terms that the Customer may purport to impose or incorporate and all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.
- 1.6. Even if upon renewal of the Agreement(s) reference is not made to such at the time of conclusion of further Agreements within the scope of 1.1, the GTC, as amended from time to time, shall apply unless agreed otherwise in writing.
- 1.7. These GTC shall not be applicable if the Client is a consumer, namely acting other than in the course of a business, trade or profession. Particular clauses of these GTC expressly refer to and only apply to Clients that are not consumers ("**Merchants**").
- 1.8. Statements and/or representations in test programs, product and project descriptions are published for the sole purpose of giving an approximate idea of the products and services described in them and shall not be part of the Agreement or have any contractual force.

#### § 2 Copyright

- 2.1. All intellectual property rights in or arising out of or in connection with any software, documentation, data and other items delivered to the Client (collectively "**Protected Items**") shall be owned by PTV AG.
- 2.2. The Client shall be granted a personal, revocable non-exclusive licence to use the Protected Items in accordance with the applicable End User License Agreement ("**EULA**").

#### § 3 General Client Cooperation, Project Meetings and Minutes

- 3.1. The Client shall provide PTV with assistance, cooperation and support to enable PTV to perform the Deliveries. The Client shall provide for the hardware, operating system and basic software and make telecommunications facilities and the required number of staff available. The Client shall provide PTV with any and all information required for the performance of the Deliveries in a timely fashion. Insofar as it is useful for performance of the respective Deliveries the Client shall grant PTV access to the Client's business premises during normal business hours.
- 3.2. The Client shall establish and provide to PTV AG remote access to any of its IT Systems where PTV Deliveries are operated or installed.
- 3.3. The Client shall take appropriate precautions if Deliveries fail to properly operate in part or as a whole by making regular data backups, conducting constant failure diagnosis and inspection, etc. The Client shall make a full backup of its data stock before installing any Delivery on his IT Systems.
- 3.4. In case of project meetings PTV AG is entitled to take minutes, the content of which shall become legally binding, if the Client does not contradict in writing within ten working days after the receipt of such minutes.

#### § 4 Deliveries and Delay

- 4.1. Any information provided by PTV AG with regard to delivery times shall be estimates only. Time shall not be of the essence. Binding dates of delivery shall require written approval by PTV AG. Partial deliveries shall be permissible if the Client is able to make reasonable use of such.
- 4.2. Periods of delivery shall be extended by the period in which PTV AG is prevented, without itself being responsible, from providing the contractually agreed services particularly, but not limited to, through labor disputes, acts of god or any other events beyond its reasonable control (collectively "**Force Majeure Event**") as well as an appropriate period for restarting after the end of the disturbance. If a Force Majeure Event lasts for more than three (3) months, each Contracting Party shall have the right to terminate the Agreement. In such case, any prepaid remuneration shall be repaid as soon as is reasonably practicable.
- 4.3. Periods of delivery shall be extended by the period PTV AG is forced to wait for information or cooperation on the part of the Client as well as an appropriate period for restarting after the end of the disturbance.

#### § 5 Payment, Setoff and Assignment, Retention of Title and Rights

- 5.1. Payments shall be due without withholding, set-off or deduction within the agreed periods for payment. If there is no agreed period, payments shall be due immediately.
- 5.2. The Client shall only be entitled to set-off claims that are undisputed or recognized by the final judgment of a court of competent jurisdiction.
- 5.3. The Client may not assign, transfer or otherwise deal in its rights and obligations under the Agreement, without the prior written consent of PTV AG.

- 5.4. In case of late payment and without prejudice to its other rights and remedies, PTV AG may charge default interest at the rate of 8% above the Bank of England's base lending rate from time to time, such interest accruing on a daily basis both before and after judgment.
- 5.5. If the Client defaults on payment, PTV AG may, without prejudice to its other rights and remedies, (a) suspend performance of its obligations under the Agreement until the Client has made the outstanding payment, or (b) if amounts remain outstanding for more than 30 days, terminate the Agreement by notice in writing with immediate effect.

#### **§ 6 Claims in Case of Intellectual Property Rights Infringements**

- 6.1. Insofar as intellectual property rights of third parties have been infringed by a Delivery for reasons directly attributable to PTV AG, PTV AG may choose to rectify the situation. In this respect PTV AG has the following options:
  - a) PTV AG may obtain a licence sufficient for the purposes of this Agreement from the third party that holds the infringed intellectual property right, in favour of the Client.
  - b) PTV AG may modify the Delivery that infringes intellectual property rights such that the modifications have no impact on the functionality of the relevant Delivery, or an impact that is acceptable for the Client.
  - c) PTV AG may replace the infringing Delivery with software the use of which does not infringe intellectual property rights and which does not have any impact on the functionality of the Delivery, or which has an impact that is acceptable for the Client.
  - d) PTV AG may deliver a new version of the Delivery the use of which does not infringe third-party intellectual property rights.
- 6.2. The Client may require a different form of rectification in each case if it cannot be reasonably expected to accept the form of rectification selected by PTV AG.

#### **§ 7 Defense against Alleged Infringement of Third-Party Rights**

- 7.1. If a third party claims the infringement of intellectual property rights against the Client in respect of the use of a Delivery, the Client shall (a) notify PTV AG promptly in writing, (b) not do anything or make any admission or statement that may prejudice PTV AG's position, and (c) be deemed to have given PTV AG sole authority to avoid, dispute, compromise or defend the claim.
- 7.2. The Client shall provide all reasonable assistance to PTV AG in the defense of any claim falling within the scope of clause 7.1 above. In particular, the Client shall provide all requisite information in writing to PTV AG about the deployment and possible adaptation of the Delivery in question, shall provide the relevant documents and answer questions.
- 7.3. The Client shall not negotiate or conclude a settlement with the third party in or out of court without the prior written consent of PTV AG.

#### **§ 8 Liability**

- 8.1. Nothing in these GTC excludes the liability of PTV AG:
  - a) for death or personal injury caused by PTV AG's negligence;
  - b) for fraud or fraudulent misrepresentation; or
  - c) for any other matter in respect of which it is unlawful to exclude or limit liability.
- 8.2. PTV AG shall not in any circumstances be liable whether in tort (including for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
  - a) loss of profits; or
  - b) loss of business; or
  - c) depletion of goodwill or similar losses; or
  - d) loss of anticipated savings; or
  - e) loss of goods; or
  - f) loss of use; or
  - g) loss or corruption of data or information; or
  - h) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 8.3. PTV AG's total aggregate liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, and pursuant to any indemnity, arising under or in connection with the Agreement shall in all circumstances be limited to the amount actually paid by the Client to PTV AG under the Agreement in the 12 months preceding the date on which the claim arose.

#### **§ 9 Inspection and Reporting Obligation**

- 9.1. Merchants shall be obliged to immediately and thoroughly inspect Deliveries and immediately report defects in writing. Any defects shall be described in detail to the extent that is reasonable.
- 9.2. Other Clients shall report visible defects in writing within a period of three weeks following Delivery.
- 9.3. Any defects shall be described in detail to the extent that is reasonable and understandable. Error report shall include the following information:
  - Detailed error description
  - Error message as shown, if any
  - Screenshot of error state
  - Steps for reproduction of error state, if available
  - Application logs, if available
  - System environment data (including O/S version, browser used, application server, database, etc.)
- 9.4. Upon the request of PTV, the Client shall provide the following additional information for the analysis, delimitation and removal of the error in writing. In particular, such information may include:
  - Program traces and journals
  - Database dumps
  - Document repository images
 (collectively "**Additional Information for Error Analysis**")  
 Upon request by PTV, the Client shall make changes in the Deliveries for the purpose of obtaining Additional Information for Error Analysis and install additional software (e.g., diagnosis tools) on its systems in accordance with the instructions issued by PTV or enable PTV to make such an installation.
- 9.5. Delayed reporting shall relieve PTV from any warranty or other obligations for the respective defect.
- 9.6. PTV AG may invoice any expenditure caused by delayed, improper, incorrect or incomplete error reports.

#### § 10 Rectification of Defects

- 10.1. PTV AG shall perform its obligations under the Agreement with reasonable skill and care. PTV AG warrants that on delivery software deliverables shall conform materially with the specification or description provided or published by PTV AG in relation to the same. PTV AG shall (at its option) rectify defects through subsequent improvements or through delivery of a replacement within a reasonable period of time.
- 10.2. The rectification of defects may comprise the making available of a workaround solution.
- 10.3. If PTV AG does not successfully rectify defects within a reasonable period of time, the Client shall grant two reasonable extensions to PTV AG (each of at least 2 weeks) in order to successfully rectify the defects.
- 10.4. If PTV AG does not successfully rectify the defects during the extension periods, the Client may terminate the relevant Agreement, except where the defect is only of a minor nature. Claims for damages and compensation for expenditure arise solely within the limits provided in Clause 8 hereof. The Client shall not have the right to rectify a defect itself and claim compensation for costs accrued for such rectification.

#### § 11 Limitation of Claims Concerning Defects

- 11.1. Claims concerning defects in quality and defects in title must be brought within 12 months after acceptance if the Delivery in question is subject to acceptance, otherwise 12 months after commissioning of the Delivery.
- 11.2. The limitation periods provided in clause 11.1 do not apply:
  - a) to claims for damages, to the extent that such claims are subject to the limitations provided in clause 8.2;
  - b) in case of a written guarantee issued by the management of PTV AG;
  - c) in case of fraudulent failure to mention defects and in the cases provided in clause 8.1 a) and b).
 In these cases the statutory provisions on the limitation of claims apply.

#### § 12 Unjustified Notification of Defects

- 12.1. No claims accrue to the Client based on defects if the defect was caused by improper use of a Delivery or use contrary to the applicable Agreement, or was caused by modification, integration, parameterization or script processing performed by the Client itself unless the Client is able to prove that the defect was not caused by this circumstance.
- 12.2. If the analysis of a defect notified by the Client reveals that the defect does not exist, then PTV AG is entitled to invoice the Client for the expenditure incurred for the analysis and processing of the defect notified, unless the Client was unable to recognize that there was no defect attributable to PTV AG.

#### § 13 Acceptance of Delivery

- 13.1. If a Delivery of PTV AG is subject to acceptance, PTV AG may require a written declaration of acceptance within two weeks following Delivery. Such declaration may only be refused if the Delivery has a material defect.
- 13.2. Acceptance shall be considered as having been effected if
  - a) the Client is in possession of the Delivery for more than two weeks,
  - b) the Delivery is in use other than for test purposes, or
  - c) the Client pays the agreed remuneration in full unless the Client has reported material defects in writing before.

#### § 14 ADR

If a dispute arising under or in connection with the Agreement cannot be settled promptly through negotiation, the parties agree to attempt in good faith to settle the dispute by mediation in accordance with the Centre for Effective Dispute Resolution (“CEDR”) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. The commencement of mediation shall not prevent the parties commencing or continuing court proceedings..

## II. Final Provisions

#### § 15 Secrecy and Safekeeping, Non-Solicitation

- 15.1. The Contracting Parties shall be obliged to keep confidential any and all information, documents and data of a confidential nature about which they may have gained knowledge of during initiation and performance of the Agreement and designated as confidential or which contain business or trade secrets or which are legally protected (collectively “**Confidential Information**”) and to neither make such available to third parties nor employ such for purposes other than contractually agreed.
- 15.2. The receiving party will: (a) limit disclosure of any Confidential Information to its directors, officers, employees, agents or representatives (collectively “Representatives”) who have a need to know such Confidential Information in connection with the current or contemplated business relationship between the parties to which this Agreement relates, and only for that purpose; (b) advise its Representatives of the proprietary nature of the Confidential Information and of the obligations set forth in this Agreement and require such Representatives to keep the Confidential Information confidential; (c) shall keep all Confidential Information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any Confidential Information received by it to any third parties (except as otherwise provided for herein).  
If the recipient party fails to meet these requirements, it shall be liable for all damages resulting therefrom and will hold the other party harmless in relation to all claims by third parties. As far as monetary damages will be inadequate to compensate the Disclosing Party for any such breach, and the Disclosing Party may enforce this GTC by seeking injunctive or other equitable remedies in addition to any available legal remedies.
- 15.3. The Receiving Party shall notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information by the Receiving Party or its Representatives, or any other breach of this Agreement by the Receiving Party or its Representatives, and will cooperate with efforts by the Disclosing Party to help the Disclosing Party regain possession of Confidential Information and prevent its further unauthorized use.
- 15.4. The Receiving Party agrees to use the Confidential Information solely in connection with the current or contemplated business relationship between the parties and not for any purpose other than as authorized by this Agreement without the prior written consent of an authorized representative of the Disclosing Party. No other right or license, whether expressed or implied, in the Confidential Information is granted to the Receiving Party hereunder. Title to the Confidential Information will remain solely in the Disclosing Party. All use of Confidential Information by the Receiving Party shall be for the benefit of the Disclosing Party and any modifications and improvements thereof by the Receiving Party shall be the sole property of the Disclosing Party.

Notwithstanding any obligation mentioned hereinabove the Receiving Party:

- a) will copy, reproduce or otherwise retransmit Confidential Information only as it may reasonably be necessary for the purpose approved (in writing) by the Disclosing Party (prominently marking each copy, reproduction or retransmission as confidential) and keep Confidential Information under security conditions no less rigorous than those used for the Receiving Party's own Confidential Information of equivalent sensitivity, but no less than reasonable care under the circumstances, and in any event take reasonable precautions for its safe custody.
  - b) will not reverse engineer, disassemble or decompile any part of the Confidential Information without written consent of the Disclosing Party.  
Further:
  - c) The Parties agree not to disclose any Confidential Information, including the existence of discussions concerning a possible business cooperation between the Parties, to any third Party without the prior written consent of the other Party.
  - d) The terms of this agreement are applicable to each party's subsidiaries, whether partly or wholly owned
- 15.5. The Client shall safeguard and secure Confidential Information in such a way that any abuse by or disclosure to third parties is excluded.
- 15.6. For a period of two (2) years from the conclusion of the Agreement, the Client shall refrain, and shall procure that the Client's affiliates refrain, from:
- a) influencing or attempting to influence any customer, supplier, consultant or other third party maintaining a contractual or other business relationship with PTV or any affiliate of PTV to terminate or discontinue such relationship or to reduce the volume of goods or services provided thereunder; or
  - b) soliciting or attempting to solicit the service or employment of any current or future director, officer or employee of PTV or any affiliate of PTV.

#### **§ 16 No Partnership**

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership between the parties, constitute either party the agent of the other party, nor authorise either party to make or enter into any commitments for or on behalf of the other party.

#### **§ 17 Applicable Law, Venue**

- 17.1. The law of England and Wales applies to the Agreement, its subject matter and formation, and all legal relations between PTV AG and the Client.
- 17.2 The Parties agree for the sole benefit of PTV AG that, subject as provided below, the courts of England have exclusive jurisdiction to settle any disputes or claims arising out of or in connection with this Agreement, its subject matter or its formation (including non-contractual disputes or claims). Nothing in this section 17 shall limit the right of PTV AG to take proceedings against the Client in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

#### **§ 18 Notices**

Any notice under this Agreement must be in writing and must be delivered by commercial courier to the other party at its address set out in this Agreement or such other address as may have been notified by that party for such purposes. A notice shall be deemed to have been duly received on the date and at the time that the courier's delivery receipt is signed. A notice given under this Agreement shall not be validly given if sent by e-mail.

PTV Group, 1 June 2014