

§ 1

Application of Contractual Terms, Contractual Object and Contract Conclusion

1. FIS-ASP distributes software products, predominantly for commercial application areas. Delivery and licensing to the Ordering Parties are exclusively based on the following agreements in the specified order:

the respective software licensing and software maintenance contract;

the General Terms and Conditions of FIS-ASP GmbH for Software Licensing and Consulting Services;

the rules of the generally valid FIS-ASP List of Prices and Conditions.

Other terms - particularly the General Terms and Conditions of the Ordering Party - shall not become contents of the contract, even if FIS-ASP does not expressly contradict.

Generally, software is licensed according to contract type "Purchase" and against one-off payment. Data carrier and documentation shall become the property of the Ordering Party. Other contract types (e.g. lease contracts) have to be agreed upon in individual contracts in each case.

2. In part, non-SAP software is delivered in combination with the FIS-ASP software products. For this software, FIS-ASP only imparts the rights required for using the programs in combination with the FIS-ASP software. The copyright for non-SAP software is not held by FIS-ASP. In part, other licensing and contract rules than those for FIS-ASP software shall apply. Generally, these rules do not include a right to alter this software or pass it on. The provisions for the licensing of non-SAP software arise from the contract concluded for this software.

3. For FIS-ASP or third parties, the software consisting of programs and written documents is legally protected by copyright, the protection of trade and business secrets, partially by the patent law and, furthermore, by the competition law as well as by trademarks and trade dress rights.

A breach of these rights involves claims for damages, claims for injunctive relief and claims to information and may be subject to prosecution. The protection shall apply without any special agreement, worldwide and to anyone. If the Ordering Party breaches property rights to the software products, FIS-ASP shall be authorized to revoke the Ordering Party's right of use.

4. Changes and enhancements to the software shall be made by the Ordering Party at its own risk and only if it is technically able to do this without unauthorized decompiling. Herewith, FIS-ASP explicitly points out risks and disadvantages in terms of operational safety, warranty (see sect. 5 para. 8, 2nd subparagraph) and software maintenance to the Ordering Party. FIS-ASP does not have the authority to permit the Ordering Party to change or enhance non-SAP software.

FIS-ASP shall not be prevented by developments of the Ordering Party from particularly merchandising, completing or changing the product, not even if the Ordering Party was involved in the development.

5. FIS-ASP may demand written contract declarations of the Ordering Party. In case of doubt, the FIS-ASP quotation and order confirmation or the contract concluded shall apply.

6. Contractual objects, documents, proposals, test programs etc. are the intellectual property of FIS-ASP (see sect. 4) and must not be copied and made available to third parties. If no contract is concluded, they must be returned and deleted and must not be used.

§ 2

Selection of Products and Services

The essential functional characteristics of the software are known to the Ordering Party; it shall bear the risk whether the software corresponds to its wishes and requirements. In questions of doubt, the Ordering Party must seek the advice of FIS-ASP employees or competent third parties before the contract is concluded. Specifications of the Ordering Party are to be made in writing. For a possible liability of FIS-ASP, sect. 13 shall apply.

§ 3

Delivery Item

1. FIS-ASP shall deliver the software according to the product description or the manual. FIS-ASP does not owe any further functionality of the programs. The descriptions in the manuals, in test programs, in product and project descriptions etc. do not guarantee any specific characteristics.

Commitments of whatever kind that entail further warranty obligations of FIS-ASP than those specified in these Terms and Conditions shall require the express and written confirmation of FIS-ASP. Guarantees such as the agreement of specific characteristics shall require the express and written confirmation of the FIS-ASP Executive Board.

In the absence of any other agreement, the software will be delivered in the current version at the date of delivery. In this respect, deviations from the product description or the manual may arise.

2. The technical applications and conditions of the programs (e.g. concerning database, operating system, hardware and data carrier) shall be communicated on request.

§ 4

Copyright

1. All rights to the software, particularly the comprehensive copyright with all rights concerning all programs, documents and information licensed within the scope of contract initiation and implementation including warranty, support and maintenance shall be the exclusive property of FIS-ASP in its relationship to the Ordering Party even if these objects have arisen from specifications or cooperation of the Ordering Party. The Ordering Party shall only have the non-exclusive entitlements to these objects mentioned in sect. 5 to 7.

2. In particular, any kind of software copying that is not expressly permitted, any instance of software distribution that is not explicitly allowed and the development of similar software by using the FIS-ASP software as a template shall be prohibited by law and by contract.

§ 5

Rights of Use

The Ordering Party is obliged to observe the following rules:

1. For software products to be delivered, FIS-ASP assigns a unique license number in each case. Software products with an identical license number must only be used in one installation, in one live computer system and at one specific installation location (main installation) at the same time. Settlement is also based on the license number. The Ordering Party has to specify the license number to obtain a warranty and maintenance services.

2. For each live installation with its programs, the Ordering Party establishes four other installations at the most for continuous testing and for internal training sessions ("test installations"). An installation is the sum of all components accessing a set of databases indirectly or directly or interoperating with a set of databases. A set of databases is determined by the fact that each database table is not contained more than once.

3. In a live system, the software is only used for handling your own business transactions and those of such enterprises affiliated to the Ordering Party according to sect. 15 of the Stock Corporation Act (group companies). This shall also apply to test installations. An operation in data centers is not allowed.

4. All data processing equipments (e.g. hard disks and central processing units), where the programs are copied to in whole or in part, temporarily or permanently, shall be found on the Ordering Party's premises and is directly owned by it. The user databases belonging to a specific installation are saved on data storage devices that can be only be found at one location in the country where the contract has been concluded.

5. The Ordering Party is authorized to backup its data according to the generally accepted rules of technology and to create backup copies for the intended use of the software products to the necessary extent. Each backup copy on a removable medium has to be labeled as such and needs to be provided with the copyright notice of the original data carrier. The Ordering Party must not remove or change FIS-ASP copyright notices.

6. In the absence of express written instructions, FIS-ASP employees can always assume that all data they might get in contact with has been saved.

7. In the event that the software does not work properly as a whole or in part, the Ordering Party shall take adequate measures (e.g. by means of data backups, fault diagnoses, regular checks of the results). It is the responsibility of the Ordering Party to ensure the proper operation of the required work environment of the software by concluding maintenance contracts with third parties if necessary.

8. According to sect. 69 c no. 2 UrhG ("German Copyright Act"), the Ordering Party is authorized to alter the programs for its own purposes and to change and enhance the software.

FIS-ASP does not grant any warranty for a software product changed by the Ordering Party unless the Ordering Party proves that the changes are in no way causally linked with the error occurred.

9. Before a decompilation of the programs, the Ordering Party shall request FIS-ASP in writing and with a reasonable deadline to make the information and documents available that are required to achieve interoperability. Only if this request has remained unsuccessful in spite of setting a deadline in writing, the Ordering Party will be authorized to decompile the programs within the bounds of sect. 69 e UrhG ("German Copyright Act"). Prior to the involvement of third parties (e.g. according to sect. 69 e para. 1 no. 1, para. 2 no. 2 UrhG), the Ordering Party shall provide FIS-ASP with a written declaration of the third party concerned saying that it undertakes to comply with the rules defined in sect. 4 to 7.

10. Upon delivery of the software due to the purchase order of the Ordering Party or due to the software licensing contract signed by the OP, the entitlements of the Ordering Party shall commence upon receipt of the software. For software that the Ordering Party does not obtain due to its first purchase order but, for instance, within the scope of rectification or maintenance, these entitlements shall commence as soon as the programs are saved on a hard disk or processed in a CPU. As soon as the new programs are used in a live system, the Ordering Party's entitlements concerning the programs that have been licensed before and have now been replaced shall expire according to sect. 5 to 7. However, the Ordering Party is authorized to use the new programs as a test system for three months. For returns, sect. 15 shall apply.

11. Any use of the programs beyond the rules stipulated in these Terms and Conditions or in the generally valid FIS-ASP List of Prices and Conditions requires the prior written consent of FIS-ASP. If the programs are used without this consent, FIS-ASP will invoice the amount incurred for further use as a compensation according to the generally valid FIS-ASP List of Prices and Conditions. The right to assert claims for higher compensation remains reserved.

12. The Ordering Party is obliged to notify FIS-ASP in advance and in writing of any change affecting its right of use or payment and, if necessary, to obtain the written consent of FIS-ASP.

13. In case of contract type "Purchase", the Ordering Party generally obtains the rights for an unlimited period.

§ 6

Configuration, Obligation to Notify

1. From a technical and legal point of view, the Ordering Party is free to enlarge its installation at any time. If the installation is enlarged, FIS-ASP will not grant any warranty for the software product unless the Ordering Party proves that the enlargement of the installation is in no way causally linked with the failure or defect.

2. The Ordering Party shall permit FIS-ASP to check each installation once a year, i.e. to ascertain the compliance with the present purchase order and the contractual agreements, calculate the value according to the generally valid FIS-ASP List of Prices and Conditions and claim a possible value difference. By request of FIS-ASP, the check is replaced by the written notice of the Ordering Party concerning the current installation data.

3. It is not possible to return the usage authorization or change it in case of a lower actual use. However, the Ordering Party is authorized to reduce the maintenance services.

§ 7

Resale

1. The Ordering Party may only pass on the software it has acquired under contract type "Purchase" to third parties by reselling it (i.e. not by leasing it for instance) and only by discontinuing its use. A prerequisite for resale is the prior written consent of FIS-ASP that FIS-ASP will not refuse unreasonably. With its request for consent, the Ordering Party shall submit a written declaration of its purchaser with the purchaser binding itself to the currently valid FIS-ASP rules for usage and resale.

2. The third party concerned is not authorized to exercise the contractual rights of use before the Ordering Party has assured FIS-ASP in writing that it has passed all original program copies on to the third party and has deleted all copies created by itself. Sect. 15 shall apply accordingly.

§ 8

Cooperation of the Ordering Party

1. To ensure an on-time delivery, the Ordering Party is obliged to make the data required for delivery available to FIS-ASP in good time (installation type, computer type).

2. The Ordering Party shall provide for the work environment of the software. In doing so, the specifications of FIS-ASP and the specifications in the manual have to be observed comprehensively and in particular.

Especially the dimensioning of hardware components is the responsibility of the Ordering Party.

3. The Ordering Party shall support FIS-ASP with fulfilling the order to the required extent and free of charge by providing, for instance, employees, work spaces, hard- and software, data and telecommunication equipment and by contributing to specifications, tests, acceptances etc.. It grants FIS-ASP access to hard- and software directly and via remote data transmission and shall bear the costs incurred. The Ordering Party's essential interests have to be preserved here; FIS-ASP shall pay particular attention to data protection. If easy technical access by means of telecommunication equipment is not possible or not granted, the Ordering Party shall bear all adverse consequences (e.g. additional costs incurred by FIS-ASP).

4. The Ordering Party shall name a contact person who acts as a dialog partner for FIS-ASP, makes the necessary decisions or immediately brings them about. The contact person provides for good cooperation with the FIS-ASP account manager. The availability of the contact person must be ensured.

5. The Ordering Party shall test each program thoroughly for freedom from defects and for usability in the respective situation before it starts the operational use of the program. This shall also apply to programs the Ordering Party obtains within the scope of warranty and maintenance.

6. In the event that the software does not work properly as a whole or in part, the Ordering Party shall take adequate measures, e.g. by means of data backups, fault diagnosis, regular checks of the results etc..

§ 9

Delivery, Delivery and Performance Period

1. The software is delivered by providing the program that can be run on a computer and the manual to the Ordering Party by handing over data carriers, by import into the computer or by means of remote data transmission. The Ordering Party shall be responsible for the installation and start-up of the software; the Ordering Party can assign this task to FIS-ASP.

2. FIS-ASP shall deliver software in the current program release within one month, software in an older program release within two months from contract conclusion or on demand. Earlier delivery dates require the explicit written consent of FIS-ASP. FIS-ASP shall not be held responsible for disturbances caused by strikes, lockouts, official interventions, fires and other unindebted circumstances.

3. If FIS-ASP has to wait for participation or information of the Ordering Party or is otherwise involuntarily impeded in the execution of the order, delivery and service deadlines shall be considered as extended by the duration of the impediment and by a reasonable start-up period after the end of the impediment. FIS-ASP shall inform the Ordering Party of the impediment.

4. FIS-ASP shall only be in default due to a reminder. All reminders and deadlines of the Ordering Party require the written form to be effective. When fixing the deadlines, the significance and the scope of the order must be considered. However, periods of grace must be at least twelve working days.

§. 10

Price, Payment, Proviso

1. The price valid at the time of conclusion of the contract shall apply; price changes until delivery shall not be considered. In addition, increases and reductions of the generally valid FIS-ASP List of Prices and Conditions shall apply. All prices do not include the currently valid V.A.T.

2. Each individual delivery or service shall be invoiced separately. Payments shall be due after issuing of the invoice. A discount shall not be granted. From 14 days after the due date, FIS-ASP - without prejudice to further rights - shall charge interest in the amount of the currently valid statutory default interest rate, i.e. currently in the amount of 8 percentage points above the base interest rate of the European Central Bank

3. FIS-ASP shall be authorized to demand down payments or full payments in advance if there is no business relation with the Ordering Party yet, if a delivery is to be made abroad or the Ordering Party is located abroad or if there are reasons to doubt the punctual payment by the Ordering Party. If doubts as to the Ordering Party's ability to pay arise after contract conclusion, FIS-ASP shall be entitled to revoke payment terms granted and to declare all claims due for immediate payment.

4. The Ordering Party may offset payment only against uncontested or legally established receivables. It is not authorized to assign its claims to third parties - without prejudice to the provision of sect. 354 a HGB ("German Commercial Code").

5. FIS-ASP shall retain ownership to the contractual objects (e.g. data carrier and manual) until all its claims under the contract have been completely settled. In the event of access to the reserved property by third parties, the Ordering Party shall be obliged to notify FIS-ASP immediately and in writing and to inform the third party concerned about the rights of FIS-ASP.

§ 11

Obligation to Examine and Give Notice of Defects

1. The Ordering Party shall assume an obligation to examine and give notice of defects concerning all deliveries and services of FIS-ASP according to sect. 377, 378 HGB (German Commercial Code).

2. To the Ordering Party, "give notice of defects" means giving an exact description of the problem, also in written form at the request of FIS-ASP. Only the contact person named by the Ordering Party (sect. 8 para. 4) shall be authorized to give notice of defects.

§ 12

Defects of Quality and Title

1. For information, data, programs etc. made available by the Ordering Party for service provision, FIS-ASP assumes no liability.

2. FIS-ASP guarantees that the contractual object has the specific characteristics explicitly agreed upon or, if no specific characteristics have been agreed upon, is suitable for the contractually stipulated use or, otherwise, for normal use and has characteristics that are customary for deliveries and services of this kind and that the customer can expect for deliveries and services of this kind and that the transfer of the entitlements agreed upon to the Ordering Party shall not conflict with the rights of third parties.

The Ordering Party shall bear the risk that the contractual object meets its wishes and needs. In questions of doubt, the Ordering Party must seek the advice of FIS-ASP employees or competent third parties in good time.

Commitments of whatever kind that justify further obligations of FIS-ASP than those specified in these Terms and Conditions require the express and written confirmation of FIS-ASP. Guarantees such as the agreement of specific characteristics shall require the express and written confirmation of the FIS-ASP Executive Board.

3. The Ordering Party shall immediately report any defects occurring to FIS-ASP in writing including an exact description of the problem and the information required for troubleshooting (see sect 11). Only the contact person named by the Ordering Party (sect. 8 para. 4) shall be authorized to give notice of defects. The Ordering Party's obligation to co-operate shall also apply for rework according to sect. 8.

4. In the event of defects, FIS-ASP shall initially be given the opportunity to remedy the defect within a reasonable period. When fixing the deadlines, the significance and the scope of the order must be considered. However, deadlines must be at least 12 working days. Defects shall be remedied by troubleshooting, by providing a new program release or by FIS-ASP showing reasonable possibilities to avoid the effects of the error. The Ordering Party is obliged to accept a new program release unless this leads to inappropriate adjustment and reorganization problems. In this context, FIS-ASP may also offer alternative solutions.

If the rework finally fails or FIS-ASP does not remedy the defect within a reasonable period set by the Ordering Party, the Ordering Party shall be authorized to reduce payment or withdraw from the contract.

Claims shall expire within one year after the beginning of the statutory warranty period.

For damages, sect. 13 shall apply. Other claims shall be excluded, e.g. claims for reimbursement of expenses if defects have been remedied by third parties.

5. The Ordering Party shall bear the burden of proof that limitations to use or deficiencies are not (partially) caused by improper operation, by an intervention of the Ordering Party or by the system environment. Services that FIS-ASP renders without being obliged to, have to be paid as follows:

Unless otherwise agreed upon in writing in individual cases, FIS-ASP will invoice the services rendered according to working, traveling and waiting time and, if necessary, according to material (e.g. documentation) and computer usage time in accordance with the FIS-ASP List of Prices and Conditions generally valid at the time of service provision.

Furthermore, the Ordering Party shall pay for additional costs such as accommodation and traveling costs according to expenses and charges based on the rates of the generally valid FIS-ASP List of Prices and Conditions.

Generally, traveling and additional costs are charged as of the consultant's location.

All prices do not include the respective statutory V.A.T.

6. FIS-ASP declares that it is not aware of any third-party rights concerning the services rendered.

If a third party claims towards the Ordering Party that an FIS-ASP service infringes its rights, the Ordering Party will inform FIS-ASP immediately, comprehensively and in writing.

The Ordering Party shall immediately authorize FIS-ASP to reject the claims asserted at its own expense as far as it is permissible. The Ordering Party must not admit such claims on its own responsibility. FIS-ASP is authorized to conduct extra-judicial or judicial disputes at its own discretion with the third party concerned, fulfill the third party's claims or replace the questioned objects by other contractual objects.

This provision shall not apply if the infringement of property rights of third parties is based on a use of the software products by the Ordering Party that is contrary to the contract.

In all other respects, the statutory provisions concerning defects of title with a warranty period of one year shall apply.

§ 13

Liability

1. In all cases of contractual and extra-contractual liability, FIS-ASP shall only pay damages or compensation for futile expenses

a) in full in the case of intent; in case of gross negligence and in the absence of a specific characteristic that FIS-ASP has assumed a guarantee for, damages shall only be paid in the amount of predictable losses that were to be prevented by the breached obligation or guarantee;

b) in other cases, only due to the breach of an essential obligation if the purpose of the contract is thus impaired, due to default and due to impossibility, always limited to 0.5 % of the order value for each work day of the delay, all in all however, to a maximum of 5 % of the order value in all cases up to a maximum amount of EUR 25,000,- of the individual contract.

c) Furthermore, as far as FIS-ASP is insured against the damages occurred, in the amount of insurance coverage and subject to a condition precedent due to the insurance payment.

The objection of contributory negligence (e.g. under sect. 5 and 8) shall remain open. The statutory liability for personal injury and under the German Product Liability Act shall remain unaffected.

2. If the Ordering Party wishes a more comprehensive insurance against cases of damage, the parties shall make individual arrangements.

3. For all claims for damages of the Ordering Party against FIS-ASP or compensation for futile expenses in case of contractual and non-contractual liability, a limitation period of one year shall apply, except for in cases of intent or personal injuries. The limitation period shall begin with the date defined in sect. 199 para. 1 BGB (German Civil Code). It shall take effect at the latest upon expiry of the maximum periods specified in sect. 199 para. 3 and 4 BGB (German Civil Code). The deviating limitation period for claims for defects of quality and title (sect. 12) shall remain unaffected by the provisions of this paragraph.

§ 14

Secrecy and Safekeeping

1. FIS-ASP undertakes to treat all information received by the Ordering Party as confidential. FIS-ASP will observe the data protection law. FIS-ASP shall be allowed to machine the Ordering Party's data.

2. The Ordering Party commits to keeping all contractual objects secret from third parties. Employees and third parties who have access to contractual objects have to be informed in writing about the FIS-ASP copyright and their obligation to maintain secrecy, which they must undertake to observe.

3. The Ordering Party shall keep the contractual objects - particularly source programs and documentations provided - carefully in a safe place to preclude misuse.

§ 15

Expiration of the Right of Use

1. Upon expiration of the right of use, the Ordering Party shall return all deliveries and copies and delete stored programs unless it is legally obligated to a longer retention period. The Ordering Party shall assure FIS-ASP in writing of the fulfillment of these obligations.

2. The secondary obligations under this contract (e.g. under sect. 5 and sect. 14) shall persist in the long run.

§ 16

Software Maintenance

1. Within the scope of software maintenance to be agreed upon, FIS-ASP shall render the services specified in the generally valid FIS-ASP List of Prices and Conditions. The services shall only be rendered in relation to the software version delivered last and the penultimate version. The Ordering Party is obliged to have all its installations maintained completely or has to terminate the maintenance as a whole.

2. For performance impairments within the scope of software maintenance, the same provisions as for software purchases shall apply under this contract. Rescission of the contract (sect. 12 para. 4) shall be replaced by extraordinary termination.

3. The software maintenance agreement can be terminated by giving three months notice to the end of a calendar year, however, upon expiration of two full calendar years at the earliest. Any termination shall require the written form to become effective. In particular, FIS-ASP reserves the right to extraordinarily terminate the agreement if the Ordering Party repeatedly or grossly breaches its contractual obligations according to sect. 5 to 7 or sect.14 or if it is in arrears with the payment of maintenance fees.

4. The services of FIS-ASP within the scope of software maintenance have to be paid separately. Basically, payment shall be made according to the generally valid FIS-ASP List of Prices and Conditions.

If the payment of software maintenance has been stipulated as a percentage of the purchase price of the software, FIS-ASP is authorized to change the percentage with a two months written notice to the end of the calendar year. If the Ordering Party does not terminate the maintenance agreement to the end of the calendar year within two weeks from receipt of the notification, the new payment specification shall be considered as agreed upon. FIS-ASP will advise the Ordering Party of this provision in the notification.

5. If the Ordering Party does not immediately order software maintenance as of the date of its delivery, but at a later date, it is obliged to pay the software maintenance fees it would have had to pay for software maintenance agreed upon as of the date of its delivery in order to achieve the current software status.

The same will apply if the Ordering Party intends to acquire the current software version of a specific product that it does not want to conclude a software maintenance contract for from FIS-ASP.

§ 17

Services

Support services and other services that are not covered by the explicit service descriptions of the purchase and maintenance contracts have to be separately agreed upon (see also sect. 12, para. 5) and shall be paid according to the generally valid FIS-ASP List of Prices and Conditions. As to these services, the "General Terms and Conditions of FIS-ASP GmbH for Consulting Services" shall apply.

§ 18

Export Licenses

The export of contractual objects and documents might be - due to their nature or their intended purpose for instance - subject to an approval requirement. The Ordering Party undertakes to adhere to all relevant statutory provisions. On demand of FIS-ASP, the Ordering Party commits in writing to leaving the software products in the country of installation.

§ 19

Miscellaneous

1. The contractual relationships between the Ordering Party and FIS-ASP shall be subject to German law. The applicability of laws concerning the International Sale of Goods or the CISG (United Nations Convention on Contracts for the International Sale of Goods) shall be excluded.
2. The exclusive place of jurisdiction for all disputes arising from and in the context of this contract between the Contracting Parties shall be Schweinfurt, as far as it is permissible. Prior to any legal proceedings, the Contracting Parties hereto shall be obliged to attempt to settle the dispute out of court, employing the services of competent third parties if necessary, unless such an attempt is likely to be unsuccessful.
3. Rights and obligations arising from contractual relationships between the Ordering Party and FIS-ASP may only be conferred after the prior written consent of the other Contracting Party.
4. Changes and amendments of contractual agreements between the Ordering Party and FIS-ASP are to be made in writing. This shall also apply to the cancellation/modification of the requirement of written form.
5. If one Contracting Party refrains or renounces from exercising or asserting a specific right, this shall not be considered as a waiver of any other right.
6. If individual contractual provisions between the Ordering Party and FIS-ASP are or become ineffective in full or in part, the validity of the remaining provisions shall remain unaffected. The Contracting Parties undertake to immediately replace the invalid provisions by valid provisions in such a way that the intended economic purpose of the ineffective provision is achieved as far as possible. This shall also apply in case of a contract gap, as far as no respective statutory provisions are applicable.

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