

General terms and conditions

Version: 11th of May 2012

§ 1. Framework conditions

§ 1.1. Progressive Mindworks GmbH (henceforth PM) is providing services in information technology and the operation of hard- and software components for the principal contracting entity (henceforth CE) under compliance with the accompanying service level agreement (henceforth SLA), which forms an essential part of the agreement between PM and CE.

§ 1.2. The general terms and conditions (henceforth TAC) are valid for all current and future services which PM provides for CE, even if the TAC have not been explicitly mentioned during the signing of a contract. The terms and conditions of CE are only valid if they have been acknowledged in written form by PM.

§ 1.3. In the SLA that was adapted for the services required by CE, further provisions, regulations, conditions, obligations, rights and liabilities may additionally be defined that exceed or deviate from the contents of the TAC. If any contents in the SLA are found to stand in contradiction with the TAC, then the phrasing in the SLA is to be preferred.

§ 2. Scope of services

§ 2.1. The precise scope of the services provided by PM for CE is defined in the respective SLA. PM is obliged to ensure the delivery and availability of the services in accordance with the SLA. Insofar as nothing else was agreed upon, PM performs the services which require the direct involvement of personnel during the regular business hours of PM according to the SLA.

§ 2.2. The basis for the facilities and technologies used for the purpose of the service provision by PM are the qualitative and quantitative requirements of CE, which are derived from the information provided by CE. If new requirements of CE necessitate a change in the services or in the used technologies, PM will, by request of CE, present an appropriate offer.

§ 2.3. PM has the right to change the facilities and technologies used to provide the services in any manner that it deems appropriate so long as it doesn't impair the services themselves.

§ 2.4. Services provided by PM which are made use of by CE and exceed the scope of services described in the SLA are to be compensated according to the actual personal and material cost based on the rates of PM. In particular, this includes services outside of the regular business hours of PM and the analysis and elimination of disruptions and errors which were caused by inappropriate handling or usage by CE or by any other circumstances outside of the control of PM. Any activities beyond the set of training and support services guaranteed in the SLA require a separate agreement.

PROGRESSIVE[®]
MINDWORKS
we solve the difficult problems.

Progressive Mindworks GmbH

Weisselgasse 24 / 10
1210 Wien
AUSTRIA

Tel.: (+43) 699 10 50 44 62

Fax: (+43) 1 271 27 88

E-mail: sales@packviz.com

Skype: progressivemindworks

Office hours:

Monday-Friday 9:00-17:00

Visit us at

en.packviz.com

§ 2.5. If PM intermediates the services of a third party by request of CE, then contracts may only be formed between CE and the third party according to the respective terms and conditions of the third party. PM is only responsible for the services which are provided directly by PM.

§ 2.6. The partial deployment of services by PM is valid if it forms a part of a regular deployment process.

§ 3. Obligation of participation and provision by CE

§ 3.1. The CE is obliged to support all measures that are necessary facilitate the delivery of services by PM. The CE is further obliged to take all the necessary steps to fulfill the contract – even those that are not included in the services of PM.

§ 3.2. If the services by PM are provided on site at CE, then CE is obliged to provide the infrastructure (IT infrastructure in particular) at an appropriate level of quantity and quality that is required to provide the services without additional cost for PM. The CE is responsible for the compliance with the requirements demanded by the respective manufacturers for the operation of the hardware. The CE is also tasked with ensuring the security of the rooms, buildings and facilities, especially against water, fire and access by unauthorized personnel. The CE is wholly responsible for special security measures (such as safety cells) within its own premises. The CE is not allowed to issue instructions (no matter their nature) to personnel of PM and should voice demands as to the service provision solely to the contact person designated by PM.

§ 3.3. The CE is obliged to provide, at its own cost, all information, data and documents to PM that are necessary to complete the contractual assignment at the agreed upon times in a manner that was requested by PM. If asked to do so, the CE is further obliged to support PM in the problem analysis and the elimination of disruptions, the coordination of processing tasks and the agreement of services. Any changes in the workflow at CE which may cause changes in the service provision by PM require the prior agreement of PM in regard to their technical and commercial effects.

§ 3.4. Insofar as it's not specifically included in the scope of services of PM, it is the obligation of CE to ensure the functionality of the infrastructure (such as grid and internet connections) at its own risk and costs.

§ 3.5. The CE is obliged to handle the passwords and log-ins provided by PM carefully and confidentially.

§ 3.6. All data which is handed over to PM by CE is additionally stored by CE, so that it can be reconstructed at any time in the case of loss or damage.

§ 3.7. The CE is obliged to perform all above described participations in a timely manner, so that PM is not obstructed in the provision of the services. The CE ensures that PM and/or third parties contracted by PM have appropriate access to the infrastructure of CE for the purpose of the provision of the necessary services. The CE further ensures that the personnel tasked by CE with

assistance in the realization of the contractual obligations attend to their respective responsibilities at an appropriate level of quantity and quality.

§ 3.8. Should CE fail to perform its participative duties at the arranged times or to the arranged degree, then the achievements by PM are nevertheless to be considered as fulfilling the contract, possible limitations notwithstanding. The timetables of the further necessary tasks by PM are to be postponed accordingly. The CE is obliged to reimburse PM for the resulting additional expenses at the rates of PM.

§ 3.9. The CE is responsible for ensuring that its employees and any attributable third parties use the services, facilities and assets provided by PM (including in particular services in the SLA) with care and according to the instructions, training and manuals provided by PM; the CE is liable towards PM for any damage that is demonstrably caused due to violation of this paragraph.

§ 3.10. PM is obliged to inform CE about any critical software updates for any service components in the SLA through prior defined channels of communication. By contrast, the CE is obliged to ensure that the software updates deemed critical by PM are applied in a reasonable amount of time (either automatically by the software installation or through trained personnel or through fee-based on-site visits by PM). Any costs for the time exposure of the software updates are to be absorbed by CE.

§ 3.11. If no agreement exists to the contrary, then the participation and contribution of CE in manners concerning the fulfillment of this contract is free of charge for PM.

§ 4. Personnel

§ 4.1. For any cases where employees of CE are taken over by PM, there needs to be a separate written agreement to that effect.

§ 5. Change requests

§ 5.1. Both contractual partners can at any time request changes to the scope of services ("change request"). Any desired change must include its detailed description, the reasons for the change as well as the effects it would have on time management and costs. It should enable an appropriate assessment for the recipient of the change request. A change request is only legally binding after the signature of both contractual partners.

§ 6. Impairment of performance

§ 6.1. PM provides the services defined in the SLA with the utmost care, reliability and availability. Due to some of the offered services being conducted through the internet, PM cannot be held liable in cases when services outside of the control of PM fail to be available without interruption, the connections fail to be established at all times and data fails to be saved in all circumstances.

§ 6.2. Should services be unavailable for more than 3 business days due to the provable fault of PM, then (in cases of advance payment) the period of service provision is extended by the timespan that

exceeds these 3 business days. In case of other forms of billing, this exceeding period remains free of charge.

§ 6.3. PM is obliged to provide the services for CE according to the SLA. Should PM not provide the services at the designated times, or should PM provide the services insufficiently e.g. with essential diversions or deficiencies in relation to the agreed upon quality standard, then PM is obliged to immediately start with the removal of the deficiencies in order to sufficiently provide the services or to enable CE to use the services in the SLA in a sufficient manner within an appropriate time period.

§ 6.4. A deficiency in a software component is defined as such, that the newest software version provided by CE for PM differs from the documented behavior insofar that resulting work productivity of CE is diminished to an economically relevant degree when compared to the reasonably expected normal behavior.

§ 6.5. If a deficiency occurs due to the involvement of CE in a manner that violates § 3.9, then any gratuitous removal of deficiencies is ruled out. In such cases, the services of PM are, despite possible limitations, nevertheless to be considered as fully and contractually provided. At the request of CE, PM is to undertake a fee-based training of the personnel or the removal of the deficiencies.

§ 6.6. The CE is obliged to support PM during the reproduction of the deficiency (such as a program error, a network error, etc.). If a deficiency cannot be reproduced by PM (either at the PM headquarters or on-site at the CE), then PM is not obliged to remove it. Any costs that were produced during the reproduction of the deficiency are to be absorbed by CE.

§ 6.7. The CE is obliged to support PM during the removal of deficiencies and to provide all necessary information including, if the situation demands it, access to or availability of facilities and infrastructure. Any occurring deficiencies are to be communicated by CE to PM over one of the currently available channels of communication (in written form, by E-mail, by fax, by Skype, through the web site, by phone during business hours, etc.). Additional expenses that were caused due to delayed communication during removal of deficiencies are to be absorbed by CE.

§ 6.8. The regulations of this paragraph are valid for any supply of hard- or software products of PM to CE. The period of warranty for such supply is defined as 6 months. § 924 ABGB (Austrian law) "Assumption of deficiency" is mutually ruled out. For any hard- or software products by third parties provided for CE by PM, the terms, conditions and warranties of the respective manufacturers take precedence over this paragraph. Up to the moment of full payment, PM retains the ownership of all hard- and software products.

§ 7. Contractual penalty

§ 7.1. PM is obliged to keep the degrees of fulfillment and the recovery times described in SLA according to priorities, insofar as the deficiencies or outages were caused by PM. Should PM exceed the time limits for recovery described in the SLA (insofar as such time limits exist), then CE has the right to terminate the contract without notice.

§ 7.2. In such cases, PM is obliged to pay punitive damages to CE according to the SLA since the beginning hour of the overrun up until the moment of recovery. The aforementioned punitive damages are limited by year to 25% of the entire yearly fee. The enforcement of any other damage claim, except for cases of severe negligence, is ruled out. Should overruns of time limits occur that result in punitive damages, then PM is to be immediately informed in written form by CE.

§ 7.3. CE has no right to enforce damage claims or the cancellation of the contract in the case of exceeded time limits that were not defined in § 7.1.

§ 8. Liability

§ 8.1. In cases where the CE claims damages caused by PM, the CE must prove the culpability of PM. Without clear proof of at least severe negligence on part of PM, the compensation of consequential loss, financial loss, loss of savings, loss of profit, loss of interest and damages from the claims of third parties is ruled out. In particular, any compensation by the outage of IT infrastructure of PM is ruled out, if this outage is not at least ascribable to several negligence of PM.

§ 8.2. The liability of PM towards CE is limited to € 10.000,00, and on the whole to € 50.000,00 as regards the sum of all claims of multiple injured parties from a single damage event.

§ 8.3. If the backup of data is part of the service as defined in the SLA, then liability for the loss of data is not ruled out, but nevertheless limited to € 10.000 per damage event. Any claims of warranty or damage compensation that are not defined in the TAC or the SLA (regardless of their legal basis) are ruled out, unless the liability is mandatory by reason of provable intent of malice or severe negligence.

§ 8.4. In case of violation by CE or by third parties designated by CE of any conditions or instructions for installation, usage and maintenance (such as are, for instance, included in the user manuals) or of governmental admission requirements, any damage compensation is ruled out.

§ 9. Payment

§ 9.1. The prices defined in the SLA are accepted as valid unless an arrangement exists to the contrary. Should labour or material costs or the charges paid by PM change up to the moment of delivery, then PM has the right to adjust the prices accordingly and to charge them to the CE from the beginning of the next month. Increases in prices are considered to be accepted upfront by CE if they do not exceed 10% a year.

§ 9.2. The costs of data carriers, documentation and any contractual costs will be charged separately.

§ 9.3. Unless an arrangement exists to the contrary, the travel times of personnel of PM are to be considered as working hours. Travel times outside of the services described in the SLA will be charged according to the arranged hourly rates. These rates may change according to the price adjustment clause. In addition, any travel and accommodation expenses by PM will be compensated after the fact by CE. This compensation requires the submission of receipts (copies).

§ 9.4. PM reserves the right to make the provision of services dependent on the accomplishment of payments or the supplying of appropriate securities by CE.

§ 9.5. Unless otherwise agreed upon, one-time fees are charged immediately after service provision and running fees are charged in a quarterly manner in advance. The bills submitted by PM including VAT are to be paid no later than 14 days after receipt without deduction or expense. For partial bills, the payment terms for the entire order are to be applied. A payment is only considered as realized from the day that PM can dispose with it. If CE delays its payments, then PM has the right to charge the lawful default interest as well as all necessary costs in order to collect the payment. If payment by CE is delayed by 14 days, PM has the right to cease all services. In such cases, PM has the further right to immediately charge the fees for all accomplished tasks regardless of possible payment deadlines.

§ 9.6. Running fees concerning personnel of PM are based on the wage agreement of employees in the field of “services of automatic data processing and information technology at the experience level of special activities (ST2)”.

§ 9.7. The offsetting by CE is only allowed following a legally formulated counterclaim recognized by PM. A right of retention on behalf of CE is ruled out.

§ 9.8. All charge obligations that result from this contract such as costs of legal transactions or withholding tax are to be absorbed by CE. Should PM be employed for such charges, then CE is obliged to keep PM free of harm and complaint.

§ 10. Force majeure

§ 10.1. Insofar as any obligations cannot be fully or partially kept due to force majeure such as war, terrorism, natural catastrophes, fire, strike, lockout, embargo, higher intervention, outage of power supply, outage of means of transportation, outage of networks of telecommunication, outage of data lines, changes in law after the signing of contract or any other unavailability of necessary means, it does not represent a violation of contract.

§ 11. Copyright and usage

§ 11.1. All rights inferred from copyright law that derive from the services defined in SLA or that derive from any act of service provision by PM for CE are exclusively reserved for PM and its licensors.

§ 11.2. Insofar as CE was provided with software products by PM, or CE was enabled to use software products by PM as part of the services in the SLA, CE is imparted with the non-exclusive, non-transferrable, non-sub-licensable right to use the software products in an unmodified form for the duration of the contract.

§ 11.3. The SLA merely imparts the usufructuary right. The participation of CE in the production, development or the modification of the software does not grant CE any rights that exceed those

defined in the SLA. CE is imparted with usage rights of software and databases only to the degree of the fulfillment of the contractual obligation. If the object of agreement is the creation and/or the usage of databases, then CE is not granted any rights beyond the usage of the databases. Any violation of the rights of PM entails injunctive relief and compensation of damages which are to be performed to full satisfaction by CE.

§ 11.4. For the usage of software on "stand-alone computers", a separate license is required for each computer. For the usage of software in a network, a separate license is required for each separate installation (henceforth defined as the digital availability of the respective software product in a form that is practically usage-ready). This is also true for virtualized environments: The installation of a software product on a virtualized operating system counts as a separate installation. The usage of a single installation by multiple instances of the CE company structure using remote-access-technologies (such as RDC, thin client, etc.) as well as installations on portable media are strictly prohibited, unless allowed by the SLA.

§ 11.5. All other rights are reserved for PM or the licensor; without prior written permission from PM, the CE is therefore particularly prohibited from copying, changing, granting access to third parties or any other usage which exceeds the contractually defined use cases in respect to software, databases, graphical design or any other elements for which rights of PM or third parties exist, unless it has been allowed by PM or is necessary in order to fulfill the contractual obligations.

§ 11.6. For any software product by third parties which was provided for CE by PM, the license conditions of the respective manufacturer override these TAC.

§ 11.7. Insofar as no separate arrangements exist to that effect, the CE is not granted any further rights for the software products.

§ 11.8. The creation of copies for the purpose of archiving and data backup is allowed under the condition that the copies retain unchanged versions of all copyright and ownership notes. The copies must also not exhibit the character of an installation according to § 11.4. The copied data must be kept in a secure and confidential location.

§ 11.9. All data given to CE by PM – documentations of software products in particular – may not be copied or otherwise distributed (save for archiving and data backup purposes in the exclusive case of software).

§ 11.10. Should the disclosure of interfaces be required for the purpose of interoperability, then this may only be done by PM after an explicit commission. PM is not obliged to accept such a commission. The decompilation, reverse engineering or any other change in the software by CE or by third parties without written permission by PM is strictly forbidden in all cases.

§ 12. Duration of contract

§ 12.1. The contract takes effect at the moment of signature by both contracting partners and persists for an unlimited period of time. The contract may be terminated by each contracting partner

by means of a registered letter in adherence to a cancellation period of 6 months, but no sooner than after the minimum duration defined in the SLA.

§ 12.2. Each contracting partner has the right to withdraw from the contract by means of a registered letter regardless of the cancellation period if an important reason exists. This is only the case if, despite a written warning containing a threat of withdrawal, the other contracting partner fails to pursue essential contractual obligations or pursues bankruptcy or insolvency proceedings against the other contracting partner or is rejected for lack of assets or if the services of the other contracting partner are impeded or disrupted due to force majeure for a longer duration than 1 month.

§ 12.3. PM is further entitled to withdraw from the contract prematurely if significant parameters of the service provision change which make it impossible for PM to continue with the services in an economically viable way.

§ 12.4. Following the end of contract, CE is immediately obliged to return to PM all material and documentation which was provided by PM.

§ 12.5. At the request of CE, PM will support CE at the end of contract during the transfer of services to CE or to a third party designated by CE based on the rates of PM.

§ 13. Privacy

§ 13.1. PM is obliged to observe the regulations in the data privacy act and the telecommunications act (Austrian law) in regard to personal data, and to take the appropriate technical and organizational measures in order to ensure data privacy within its area of responsibility. In particular, PM will also oblige its personnel to adhere by the regulations according to § 15 of the data privacy act.

§ 13.2. PM is not obliged to verify the legal admissibility – as regards data privacy regulations – of the data delivered by CE as a part of fulfilling the contractual obligations or making use of the services in the SLA. The legal admissibility of the delivery of the data by CE to PM and processing of the same data by PM is to be ensured by CE.

§ 13.3. PM is obliged to take all reasonable measures of modern information technology in order to safeguard the data and information at the data storage sites of PM from access by unauthorized parties. However, PM is not to be held responsible, should unauthorized parties nevertheless manage to gain access to the data in an unlawful manner.

§ 13.4. In signing this contract, CE permits the data from this business case to be transmitted to subcontractors which are integrated into the implementation of the service provision.

§ 14. Nondisclosure

§ 14.1. The contracting partners agree that all proprietary data and trade secrets that are divulged as part of fulfilling the contractual obligations are to be treated as strictly confidential and are not to be

made available to third parties, unless the information constitutes common knowledge, was already known to the recipient without obligation of nondisclosure or due to the communication or surrender of information of a third party without obligation of nondisclosure, can be proven to have been independently created by the recipient or have to be disclosed due to governmental or court order.

§ 14.2. The CE is obliged to observe all rights of PM regarding its services (such as intellectual property rights and copyrights including the right for copyright mention) as well as the demands of PM for nondisclosure of trade secrets, not only by CE but also by its personnel, proxies and third parties. This remains true, even if the software has been altered or has been connected to other programs. The obligations in this paragraph hold true even after ending of the contract.

§ 14.3. PM is likewise obliged to preserve trade secrets of CE which were divulged as part of fulfilling contractual obligations.

§ 14.4. Subcontractors of PM are not to be counted as third parties if they themselves are subject to nondisclosure agreements analogous to § 14.

§ 14.5. PM reserves the right for a one-time disclosure of the contract, the SLA and the bills paid by CE to a third party that is entitled to a commission based on the turnover between CE and PM. This one-time disclosure strictly excludes any measures by the third party to copy or to archive the disclosed information. PM is responsible for obliging these third parties to the further nondisclosure of the disclosed information.

§ 15. Additional regulations concerning delivery and resale

§ 15.1. In cases where CE orders licensed software of third parties through PM, it is the duty of CE to be aware of its scope of performance and of its licensing terms. PM may only supply software of third parties to the extent that is permitted by its individual licensing terms; these may be provided to CE – though possibly only in the original language.

§ 15.2. In using software of a third party, CE does not become a contractor of this third party, unless this was explicitly communicated by PM. Unless there exists an arrangement to the contrary, PM only makes such software available as part of its service provision, without any further rights being granted to CE.

§ 15.3. In cases where PM develops individual software for CE, the scope of performance must be given by a feature and use case documentation (system analysis) countersigned by CE. Delivery comprises the program code which is executable on the facilities defined in the system analysis. All further rights regarding software and documentations are reserved for PM.

§ 15.4. Resellers are responsible towards PM for obliging its customers (contractors) to observe the contents of these TAC. Resellers are liable towards PM for any damages that may result from the violation of these TAC by the customers (contractors) of CE.

§ 16. Miscellaneous

§ 16.1. Both contracting partners must define experienced and competent personnel in the contract who are capable of taking or inducing any necessary decisions.

§ 16.2. For the duration of the contract including up to a year after the end of the contract, the CE may not either by itself or by third parties poach personnel which was used by PM at any stage of its service provision. Upon violation of this provision, CE is obliged to pay a contractual penalty of twelve times the gross monthly salary that the poached employee last received, but no less than the wage agreement of employees in the field of “services of automatic data processing and information technology at the experience level of special activities (ST2)”.

§ 16.3. Changes, additions, communications and declarations that concern this contractual relationship require a written form and are otherwise invalid. This is also true for the cancellation of the contract.

§ 16.4. If one or many regulations of this contract turn out to be partially or wholly void or unfeasible, then the validity of the remaining terms and regulations remains unaffected. The void or unfeasible regulations are to be replaced by valid regulations that most closely approximate the economic purpose of the replaced regulations.

§ 16.5. Each disposition of the rights or duties that result from this contract requires the prior written permission of the other contracting partner. However, PM reserves the right to transfer the contract, with or without consent from CE, to a company that from the perspective of corporate law (Austrian law) is associated with PM.

§ 16.6. For the purpose of fulfillment of contractual obligations, PM reserves the right to wholly or partially make use of third parties.

§ 16.7. Unless otherwise stated, the legal regulations agreed upon between the fully-qualified traders (contracting partners) apply exclusively according to Austrian law – even if the services are provided in another country. Any disputes must be settled within the local jurisdiction of the responsible court for the registered office of PM.