

General Terms and Conditions for Supplies and Services

Section 1 Definitions

1. Customer means the recipient of supplies and/or services and – if these supplies/services are subject to payment – the party responsible for payment according to the offer underlying these General Terms and Conditions.
2. Supplier, hereinafter referred to also as “VISUS”, means VISUS in its function as supplier or service provider according to the offer underlying these General Terms and Conditions.

Section 2 Scope

1. The present „General Terms and Conditions for Supplies and Services“ cover
 - a. the sale, supply and licensed provision of JiveX software alone,
 - b. JiveX projects either comprising a combination of sale and supply of software and hardware on the one hand as well as pertinent services to be provided in the field of consultation, project management, installation, startup, training and maintenance on the other hand,
 - c. the right of using the software in conjunction with operator services and service guarantees/SLAs as well as continuing contractual obligations.
2. Furthermore, the provisions shall also apply to all other services provided by VISUS, unless such services are covered by Section 2, Subsection 1, b and c, i.e. including project implementation with VISUS acting as general contractor, as well as sale and/or supply of hardware and including services in the form of own software or in the form of third-party products. In the event VISUS due to its sub-suppliers' general terms and conditions of sale has accepted legal obligations such sub-suppliers' general terms and conditions of sale will be handed over to the Customer and shall be observed by Customer.
3. The relevant contractual conditions agreed with the Customer with regard to the specified scope of service shall always take priority over these General Terms and Conditions which in this respect shall have lower priority and be applied subordinately (Example: To the JiveX software license agreement the JiveX Software License Conditions shall apply primarily, followed by these General Terms and Conditions).

Section 3 Provision of Services

1. The scope of the services owed shall be as defined by the relevant conditions specified in the accepted offer and the technical specification as well as other applicable arrangements agreed between Customer and Supplier.
2. Customer and Supplier shall be obliged to lay down in writing and as agreed between the parties any and all amendments to the scope of supplies and services to summarize the relevant technical service particulars in a manner easily comprehensible and traceable for both parties so that that it can be ensured the complete specification of products and services is always readily available to both the Customer and Supplier.
3. The provisions laid down in these General Terms and Conditions for Supplies and Services including all stipulations made with regard to remuneration shall also apply to all supplementary orders.

4. Customer and Supplier shall each nominate a project appointee as their person to be contacted who will furnish information on all matters touching on the implementation of these provisions and be entitled themselves to make or initiate any decisions needed. In case the Customer has not nominated persons to contact VISUS in this respect will refer to members of the Customer's board of management as contacts. The same applies vice versa.
5. The cooperation between Customer and Supplier shall not go beyond the obligations stipulated in or originating from the accepted offer and these General Terms and Conditions. Customer and Supplier shall thus undertake not to interfere with each other's organizational structures and employment contracts and conditions. Therefore, a right of managerial authority over each other's employees shall not be established and be excluded in any case. Consultation necessary in connection with work to be performed must solely be effected via the respective project appointees (see Subsection 4 above).
6. Customer and Supplier may nominate new project appointees by giving three days' prior notice to each other. The respective contractual party must be expressly notified in writing of such a change which shall be sent in advance via facsimile.

Section 4 Term of Agreements

1. Any separately established covenants about the duration of agreements shall take priority over the following conditions.
2. Agreements between VISUS and the Customer shall always take effect when executed by both contractual parties unless otherwise stipulated.
3. The term of a concluded agreement shall be as laid down in the accepted offer. Should this not be the case, service contracts in the field of long-term archiving shall, due to the special requirements of the work, have an initial duration of five years. Unless otherwise provided, all other service contracts shall have a term of 24 months and can be terminated by giving at the latest 3 months' prior notice. The term of a service contract shall extend by one year each unless one of the parties to the contract has terminated the contract at the expiry date envisaged by giving 3 months' prior notice.
4. Each notice of termination shall be effected in writing.
5. The right of Customer and Supplier to terminate an agreement extraordinarily for good cause shall be reserved. As established herein between Customer and Supplier good cause shall always be deemed to exist if, inter alia, the following circumstances arise:
 - a. An insolvency application has been filed against Customer or Supplier or insolvency proceedings have been instigated and such a filed insolvency application will not be withdrawn within the period of one month or in the case of ongoing insolvency proceedings the Customer or Supplier respectively encumbered in this manner is incapable of making sure the contractual performance is fulfilled at any time, or
 - b. the Customer is in default of payment amounting to two rates as specified in the monthly payment schedule or is in default of paying a sum equivalent to this amount or is in arrears for a period exceeding two months after invoice due date of paying an amount not specified in the payable installments schedule.
6. Additional obligations of the Customer and Supplier that go beyond what has been stipulated in this agreement as well as any additional covenants concluded shall take effect only if expressly agreed in appropriate form, and shall otherwise not apply.

Section 5 Remuneration

A General

1. All price indications in the accepted offer or otherwise in price lists or prices otherwise indicated shall be understood net plus value added tax in the amount currently required by law at the time the invoice is issued. In case of a value added tax increase the currently applicable legal provisions governing the value added tax rate shall apply and be used for invoicing.
2. The remuneration for the services provided by VISUS in each case shall be paid at the due dates laid down in an applicable payment schedule or at due dates specified otherwise. In the event agreements to this effect are lacking, payment shall immediately be effected as stipulated in Section 271 BGB (German Commercial Code).
3. If the Customer is in default of payment the relevant sum in arrears shall be paid with interest in the amount of 5% in excess of the respective base lending rate charged by the German Federal Bank/European Central Bank payable as of the applicable due date. Further damages and, where applicable, a legally provided higher rate of interest on arrears for VISUS shall remain unaffected by this.
4. The Customer may only offset any claims it has against the claims raised by VISUS if such claims made by the Customer are uncontested or established by way of a legally binding decision. The same applies analogously with regard to Customer's right to withhold performance according to Section 320 BGB (German Commercial Code) (Defense of Non-Performance of Contract) or exercising a right of retention.
5. Irrespective of other ways to exercise rights VISUS shall always be entitled to exercise a right of retention if a due invoice has not been paid by the Customer even after a reminder (14 days minimum period of grace) unless Customer is entitled to an effective and due opposing right. In case the invoice is not paid after two reminders and as stipulated in the preceding sentence VISUS shall be entitled to terminate all other services out of the entire contractual relationship with the Customer. Other rights of VISUS shall be reserved.
6. Ancillary costs pertinent to the order, such as travel expenses and board and lodging costs will be invoiced separately. This shall be based on VISUS's currently applicable price list covering travel expenses or on the basis of a separate written agreement. Travel activities shall only take place in consultation with the Customer or to meet its presumed requirements.
7. Unless otherwise provided in other price agreements reached between Customer and Supplier to cover additional services, VISUS list prices applicable at the date of invoicing and quoted for such additional services shall apply, said list prices will be brought to the Customer's attention upon request. Alternatively, reasonable prices customarily charged locally shall apply, with locally referring to VISUS's registered office.
8. In case the order cannot be fulfilled in whole or part for reasons attributable to the Customer, Customer shall owe the respective pro-rata and agreed remuneration for the services rendered. As regards the services not rendered the agreed remuneration less actually saved expenses shall be paid. The term „pro-rata“ shall be understood to define the services rendered in relation to the services not rendered.
9. If the incapability to fulfill the order in whole or part is attributable to none of the contractual parties the above provisions shall apply as appropriate with the proviso that the respective pro-rata and agreed remuneration shall be paid for the services rendered while for the services not rendered the agreed remuneration less actually saved expenses shall be due in half.
10. To the extent that both parties are to be blamed for the incapability to perform, the services already rendered shall initially be paid on the basis of the respective, pro-rata and agreed remuneration. With respect to the services not rendered the pro-rata remuneration shall be due to the extent the Customer is to be held responsible for such an incapability to perform. Moreover, the stipulations made in Subsection 8 shall also apply as appropriate.
11. The provisions including payment obligations stipulated hereinbefore shall apply as appropriate in the event the Customer withdraws from or terminates the agreement.

12. If the labor and material costs of VISUS increase VISUS shall be entitled to adjust the price as is reasonable and customary locally. At the latest four weeks in advance the Customer shall individually be notified in writing of any change in price. Alternatively, a publication to this effect will be issued on the website of VISUS. VISUS covenants that such a price increase will at the earliest be effected 12 months after the agreement has been concluded and, thereafter, not more often than once a year.
13. In case VISUS in accordance with the contract procures from a third party and for the Customer hardware needed for the implementation of an order and/or project Customer shall pay to VISUS in advance the separately invoiced expenses thus incurred.

B Payments on Regular Basis

1. Remuneration to be effected on a regular basis or other payments of similar nature, e.g. monthly or quarterly remuneration, shall be due in advance on the first day of the scheduled remuneration period, and the Customer's account shall be debited accordingly, unless a different agreement has been reached in this respect (for example in the event of quarterly payments on the first day of the respective quarter).
2. For this purpose the Customer shall provide VISUS with a direct debit authorization. In case only insufficient funds are available in the indicated bank account to settle such regular payment obligations VISUS shall be entitled to refuse performance to which it is obliged until the relevant consideration has been effected.
3. The direct debit authorization granted by the Customer shall be revocable; if authorization is revoked the payments due shall be made immediately by money transfer. For this purpose, VISUS will - at its own discretion, alternatively as requested by Customer - issue permanent or individual invoices.

C Payments Covering Additional Services

1. If the Customer orders VISUS to perform additional services the price will be calculated as per the currently applicable price list on the basis of working hours to be spent, travel and waiting times and any additional expenses and costs that may arise unless a separate, more special agreement has been concluded in writing. In the event no other covenants have been concluded between Customer and Supplier the reasonable price customarily charged locally - with locally referring to VISUS's registered office - shall always apply alternatively.
2. In the settlement of services rendered invoicing shall take into account each commenced half hour, with preparation and postprocessing times being payable as well.
3. If VISUS is prevented from providing its services and should this be attributable to the Customer any waiting times arising shall be paid for at the agreed hourly rates, alternatively the hourly rates quoted in the price list or, again alternatively, in the amount reasonably and customarily charged locally, i.e. at the place where VISUS resides.
4. The Customer undertakes to sign at the end of each working week the relevant performance records (also showing hours worked). Should a work period be shorter the signing of such records shall be made when such period has expired.
5. Overtime hours, i.e. hours to be performed outside time periods usually worked at VISUS, shall be charged at overtime premium as quoted in the price list even in the event lumpsum prices have been agreed.
6. Installation, introduction and maintenance costs shall only be part of the agreed price if this has been expressly agreed in writing between Customer and Supplier.

Section 6 General Liability

VISUS shall be liable to the Customer only as stipulated hereinafter.

1. **Personal injury:** In case of damage resulting from bodily injury or impairment of health the liability shall be unlimited in amount even in the event of a slightly negligent violation of obligations by VISUS or a legal representative or assistant/vicarious agent of the company.
2. **Organizational culpability and guarantee:** The liability shall also be unlimited in amount in case of damage attributable to serious organizational culpability on the part of VISUS as well as damage caused by lack of characteristics or properties warranted by VISUS.
3. **Violation of material contractual obligations:** In case of a violation of material contractual obligations VISUS, regardless of other liability provisions and limitations, shall be liable in an amount limited to typically foreseeable contract-specific damage which is unavoidable for the Customer.
4. **Intention, gross negligence and perceptibility:** Regarding damage or disadvantages to property or objects caused by the contractual software, VISUS shall exclusively be held liable if said damage or disadvantages have been caused willfully or as a result of gross negligence. Liability in this case shall be limited to foreseeable damage.
5. **Liability disclaimer:** Any further liability for damages shall be excluded unless absolutely prescribed by law; therefore, any liability without fault shall also be excluded, for example.
6. **Medical Devices Act and Product Liability Act:** Coercive liability as a result of statutory provisions according to the Product Liability Act or coercive liability according to the Medical Devices Act shall not be affected by the stipulations hereinbefore.
7. In case of damage causing contributory fault on the part of the Customer the liability quota will be determined in relation to the relevant share of fault attributable to each party. Moreover, the Customer shall be obliged to mitigation of the damage.

Section 7 Liability for Defects/Faults in Services Provided by Other Manufacturers/Presuppliers

In case of defects/faults in services provided by other manufacturers or presuppliers which due to license provisions or de facto reasons VISUS cannot eliminate VISUS at its own discretion will raise relevant warranty claims against the relevant manufacturer/supplier/presupplier for the account of the Customer or will assign them to the Customer. Warranty claims against VISUS in connection with faults of this nature can only be raised when all other prerequisites stipulated in these General Terms and Conditions for Supplies and Services have been met if the enforcement of the above mentioned claims against the manufacturer/supplier/presupplier in court was necessary or futile, for example as a result of an insolvency. For the duration of legal proceedings taken by the Customer against such a company the statute of limitation applicable to warranty claims the Customer is entitled to against VISUS shall be suspended.

Section 8 Confidentiality

1. Customer and Supplier shall jointly undertake to keep information and data confidential they gain, obtain from or have access to via the other party to the contract in the framework of the contractual relationship. The same applies to know-how, business secrets, business connections, prices as well as information about patients and the entire know-how which is not in the public domain. Obligations to this effect shall be imposed on the employees.
2. The secrecy obligation shall remain in effect for an additional three-year period after the services to be provided by VISUS have ended.

Section 9 General Obligations to Cooperate

1. The specific cooperation conditions stipulated in the relevant contracts shall take priority; the following provisions shall have lower priority and be applied subordinately.
2. The obligation of the Customer to cooperate includes the on-time completion of preparation work and furnishing of the required documents and information as well as providing further information on the local conditions and making available all necessary tangible objects and means important for the provision of the services by VISUS, unless other conditions agreed between Customer and Supplier apply.
3. The technical equipment and systems including computing times and access to communication systems shall be made available free of charge by the Customer.
4. Accordingly, VISUS shall not be obliged to verify whether the legal obligation stipulated in Subsections 1, 2 and 3 hereinbefore has been met. The Customer shall be responsible for the correctness, completeness, unambiguity and on-time availability of all pertinent information.
5. In the event deviations in VISUS's performance arise due to the delayed or inappropriate cooperation of the Customer any extra cost and resulting disadvantages arising or caused on these grounds shall be borne by the Customer.
6. The Customer shall report all disturbances, faults or damage without delay, completely and correctly. In this context the reporting and defects notification period stipulated in Section 377 HGB (German Commercial Code) shall apply. A relevant report/notification may initially be given verbally/by telephone and must be repeated in writing, per e-mail or per fax on the following work day.
7. The Customer is obliged to visit the VISUS website (<http://www.visus.com>) at least once a month to familiarize itself with relevant information and implement/make use of the information so retrieved.

Section 10 Fault Classes

1. To differentiate between significant and insignificant faults the following categories shall be observed:
 - A. The fault prevents productive operations and/or the proper implementation of individual, important work steps within the productive operations from being carried out.
 - B. The fault interferes with the proper implementation of individual work steps within the productive operation; however, this does not affect the entire productive operations.
 - C. A fault has occurred that in terms of impairment qualifies below fault classes A and B above. The fault does not prevent the productive operations altogether from being carried out.
2. In case the Customer does not provide detailed information fault class C shall apply.

Section 11 Acceptance/Inspection and Obligations

1. Taking part in acceptance/inspection activities is one of the main duties the Customer has to perform.
2. The acceptance of services provided by VISUS shall relate - unless otherwise agreed - to individual parts of the order complete in itself or to (partial) services that can be used independently. The (partial) acceptance/inspection shall be deemed successful if the components prescribed in the relevant sections of the offer specification have been furnished. This causes the acceptance in relation to partial services or performance to be legally effective.
3. In case of partial services functional tests shall only relate to such partial services. In the course of inspecting the last partial service a functional test is carried out involving all partial services to determine whether the contractually agreed interaction of the entire services/performance is achieved.

4. The Customer shall be obliged to accept (partial) services by preparing a written report, unless class A or B faults have been detected. All detected/notified faults/defects shall be included in this report.
5. All defects complained of during the acceptance shall be entered into the report according to their fault classes and shall account for the assumption that no further defects/faults exist.
6. In the event the Customer does not cooperate in the acceptance/inspection announced by VISUS by giving at least one week notice and should an acceptance not take place within an additional period of 14 days the services provided by VISUS shall be deemed as having been flawlessly rendered. Likewise, the services shall also be deemed as having been provided without fault as soon as the Customer has performed the operational functions for which the product has been procured without having issued a notice of defects to VISUS. Operational functions shall be as defined in the contractual documents as well as the intended applications derived therefrom.
7. Integration of the services into the Customer's production processes shall be solely the responsibility of the Customer unless a separate agreement has been reached with VISUS. Any service obligation on the part of VISUS regarding installation shall have been met when acceptance has been completed.
8. Otherwise, the parties to the agreement refer to the defects notification duties stipulated in Sections 377, 378 HGB which also have to be observed and duly performed by the Customer. The legal consequences ensuing from Sections 377, 378 HGB shall apply.

Section 12 Rights of the Customer

1. The period of limitation shall be one year in case of rights ensuing from material defects in software also with respect to all additional rights resulting therefrom. This limitation period shall also apply to the purchase of pre-owned software; regarding the sale of new software by VISUS a period of two years shall apply. Furthermore, the provisions prescribed by law shall apply with respect to obligatory warranty extension periods.
2. Regarding claims and rights ensuing from material defects the limitation period shall commence on the day the acceptance/inspection is carried out, otherwise on the date the Customer has gained or, in the absence of gross negligence, has been able to gain knowledge about the claim-substantiating reasons.
3. The time limit regarding claims out of material or other defects shall also be suspended when a notification of fault is given and shall be effective until a remedial action has been formally or informally accepted. In case of a class A or B fault as defined by the provisions hereinbefore the suspension shall apply to the entire partial project. Otherwise, Section 203 BGB shall apply. As regards other faults no suspension shall take effect.
4. As regards the time limitation period the maximum time limit set as per Section 199 BGB shall not be exceeded. However, the periods of limitation prescribed by law shall always apply in case of damages due to deliberate acts, warranty, and malice and in case of personal injury.
5. Claims of defects and faults the Customer has correctly raised and noted down in the report during acceptance as well as warranty claims the Customer has rightly raised before the warranty obligation period has expired shall be remedied by VISUS at its own cost. Should the verification of a warranty claim raised by the Customer reveal that the relevant objected fault or defect does not exist VISUS shall be entitled to the remuneration due on the basis of the currently applicable price list or, alternatively, the reasonable remuneration customarily charged locally.

Section 13 Impediment and Suspension

1. If VISUS as a result of labor disputes, riot, power outages or other circumstances beyond its control or due to force majeure is unable to provide or provide within due time the agreed services VISUS shall not be subject to any detrimental legal consequences. This shall not apply if the impediment or suspension is caused by a labor dispute for which VISUS is to be blamed as a result of unlawful acts. The same shall apply if the impediment or suspension occurs at the sub-suppliers of VISUS for reasons stipulated in this Sub-section. After the suspension or impediment has come to an end VISUS shall begin with performing the contractual services within a reasonable time period taking operational capabilities into account. All time periods shall be extended accordingly.
2. If VISUS is of the opinion that it is prevented from rendering the agreed services properly VISUS shall inform the Customer of this without delay. To the extent foreseeable the Customer shall be informed at what time the performance can be continued. The performance periods shall be reasonably extended if the impediment (including cooperation duties not or not timely met by the Customer) is not attributable to VISUS.
3. If such impediment that prevents the services from being provided and is attributable to the Customer continues for one month and if the service apparently cannot be rendered within two further months VISUS having duly notified Customer and set an extension period shall be entitled to refuse the provision of further services. VISUS in this case shall be entitled to the relevant, agreed remuneration as stipulated Section 5 A, Subsection 10 or 11.
4. As soon as the cause of the impediment or suspension is eliminated the Customer shall inform VISUS accordingly.

Section 14 Final Provisions

1. The performance of VISUS's obligations under these conditions may be assigned to authorized third parties in whole or part.
2. The legal relationship established between Customer and Supplier shall exclusively be subject to German law. In the event the provisions of the German international private law may constitute a reference (renvoi au second degré) to foreign law, this shall be excluded herewith. Likewise, the UN Convention on Contracts for the International Sale of Goods shall not apply/be excluded.
3. Should any provisions of this agreement be or become ineffective this shall in no way affect the validity of the remaining provisions. In case a provision is or has become ineffective it shall be replaced by one that, to the extent permissible by law, meets the desired objectives in the best possible way.
4. Bochum shall be the place of jurisdiction with regard to all disputes that may arise out of or in connection with this agreement. The above provision shall exclusively apply to those Customers of VISUS that are merchants or communal special funds. Otherwise, the legal provisions applicable to the place of jurisdiction shall apply.
5. Any modifications and amendments of the legal obligations of Customer and Supplier shall only be effective if made in writing and duly signed by both parties and with reference being made to these conditions. A waiver of the above written form requirement shall also be laid down in writing.
6. The currently applicable text/wording of the documents referred to in these conditions shall apply.

Edition: 2010-05-12

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