

General Terms and Conditions of Ocilion IPTV Technologies GmbH (02/2014)

Commercial register Ried/I, reg. no. 255031 x, Schärddinger Straße 35, 4910 Ried/Innkreis

1. Validity

(1.1) Our General Terms and Conditions shall apply to any business relations between Customers and our Company with its registered seat in Ried/Innkreis (now, referred to as "Ocilion"). These General Terms and Conditions shall not apply to any business relations with consumers, as defined by § 1 KSchG.

(1.2.) The customer's conditions of purchase or any other terms and conditions of business shall not be applicable and are hereby expressly rejected, unless previously confirmed in writing by our Company. The unreserved delivery of goods and services or acceptance of payments shall not imply our acknowledgement and accordance of any divergent provisions.

(1.3.) No ancillary verbal agreements have been made. No modification or amendment of this Agreement, including this clause, shall be effective unless made in writing and at least signed by the contracting party against whom the modification or amendment shall be enforced.

(1.4.) Modifications to the General Terms and Conditions can be made by Ocilion at any time. The current version is available at the www.ocilion.com website.

(1.5.) These concrete General Terms and Conditions are applicable for all future business relationships, even if not explicitly agreed upon.

(1.6.) Our offerings are subject to confirmation. A contract shall be closed and legally effective with receipt by Ocilion of an appropriate signed order or an agreement or if Ocilion has sent a written order confirmation or a delivery to the Customers address last indicated or if Ocilion initialized the actual performance.

(1.7) Unless otherwise agreed, any changes and modifications of orders or additional orders can be charged to adequate prices.

2. Scope of Performance

(2.1.) Subject of an order/agreement can be separate services, like the achievement of the right of use, sale of goods, performance of installation and participation in the start-up of operation, but also the delivery of standard programs as well as the creation of custom-designed programs.

(2.2.) The mutual rights and obligations are defined exclusively by the stipulations in the order/agreement received by Ocilion and the General Terms and Conditions of Ocilion. The performance data mentioned in catalogues, folders, etc, are only binding, if expressly referred to in the order/agreement.

ENTIRE ORDER

(2.3.) "Entire order" does mean, Ocilion offers to the Customer the realization of a complete Ocilion IPTV solution from different IT components and supporting services.

(2.4.) The Customer is aware of substantial functions of the components. It is on the Customers risk, if the components suffice and comply with the expectations and needs of the Customer. The Customer is responsible for choice and use of other software, hardware and services, referring to the substantial components. In case of doubt the Customer shall consult a staff member of Ocilion or a competent third person. All requirements of the Customer shall only be effective, if made in writing.

SERVICES

(2.5.) Trainings and explanations, desired by the Customer, shall be charged separately, if not agreed expressly different.

(2.6.) The performance of all Services by Ocilion shall be carried out on site of the Customer or on the business premises of Ocilion, if not expressly agreed different, and within usual working times.

STANDARDPROGRAMS

(2.7.) If standard programs have been ordered, the Customer confirms by virtue of the order his knowledge of the scope of performance.

CUSTOM-DESIGNED PROGRAMS

(2.8.) Custom-designed programs shall be created on basis of a written performance specification provided by the Customer. If Ocilion writes up a performance specification on basis of documentation and information provided by the Customer to Ocilion, Ocilion is entitled to charge this service separately. This performance specification is to be inspected by the Customer for correctness and completeness and is to be initialised as a sign of his assent. Requests for modifications, which are made thereafter can result in separate deadline and price agreements.

(2.9.) Individual organizational plans and programs shall be elaborated in line with the type and scope of information, documents and accessory aids which have been made available in toto by the Customer.

(2.10.) Included are customary test data as well as the opportunity to test to the necessary extent, which the Customer shall make available on a timely basis, during normal business hours, and at his expense. If the Customer has already been working in real time in an operating system that is being made available for testing, the responsibility for securing the real data lies with the Customer.

3. Performance

(3.1.) In the case of orders that encompass a number of units or programs, Ocilion is entitled to make partial deliveries and to submit partial invoices.

(3.2) The Customer is obliged to tolerate objective justifiable and adequate changes of our contractual obligation.

(3.3.) Should it prove within the course of performance, that the completion of the order in line with the performance specifications is actually or legally impossible, it is the responsibility of Ocilion to inform the Customer immediately hereof. If the Customer does not change the performance specification accordingly or does not create the conditions to make completion of the order possible, Ocilion is entitled to reject performance of the order. If the impossibility of carrying out the order is due to an omission on part of the Customer or to a later change by the Customer in the performance specifications, Ocilion is entitled to withdraw from the order. The Customer is to reimburse the Ocilion's costs and fees, that have come due for the work as well as any dismantling costs.

(3.4.) Ocilion is authorized to instruct third persons with the performance.

(3.5.) The Customer shall cooperate and provide an internet connection with an adequate rate of data transfer, and assure that hardware provision is performed on time, in case that necessary hardware is provided by Customer. Any delayed provision represents an action of delay by the Customer. In this case the payment plan shall not be changed. Ocilion reserves the right to invoice all expenditures, caused by the Customer at Ocilion due to the non-compliance with the obligations, mentioned above, but without precluding any further claims. Ocilion is only able to comply with the time table as agreed on, if the Customer keeps with the requirements of this Section.

(3.6.) The Customer shall be obliged, a) if required by local laws, regulations and stipulations - to secure in the adequate way the certification, localisation of the substantial products (Software, Hardware) and the delivery of locally required accessories, manuals and software in the relevant languages on its own behalf and costs. Ocilion shall assist the Customer within the range of Ocilion's possibilities, if support by Ocilion is necessary by providing information; b) to comply with all laws, regulations and stipulations which are relevant for the performance of the rights and the obligations of the Customer, according to this Agreement.

4. Test

(4.1) For entire orders it is required, that they have to be formally accepted after the agreed test period of the latest of four weeks after finalized installation. This acceptance shall be confirmed in acceptance protocol.

(4.2.) The performance of separate orders shall be accepted separately. No togetherness of performances under this Contract/Agreement and performances under other Agreements of the Customer shall exist.

(4.3.) For custom-designed Software or program adaptations, the acceptance of each program by the Customer at the latest four weeks after delivery is required. This acceptance shall be confirmed in an „acceptance protocol“ by the Customer. Should the Customer allow four weeks to pass without accepting the program, the delivered Software shall be deemed to have been accepted as at the last day of the stated time period. If the Customer operates the Software in real-time, the Software is thereby deemed to have been accepted by the Customer.

(4.4) Possible defects – deviations from the written performance specification – are to be reported to Ocilion with sufficient supporting documentation. Ocilion shall make efforts to correct the defects as quickly as possible.

(4.5.) The Customer does not have the right to refuse the „acceptance of delivery“ due to immaterial defects. If there are material defects, that have been reported in writing (i.e., if real-time operations have not commenced or cannot be continued), a renewed acceptance of the performance following correction of the deficiency is required.

5. Delivery Date

(5.1.) Ocilion shall endeavor to keep as closely as possible to the agreed dates for completion the order. The Customer shall accept immaterial exceedance of delivery/performance time, without being entitled to claim any damages or to withdraw the Contract/Agreement.

(5.2.) Delays in delivery and cost increases which result from incorrect, incomplete, or subsequently changed data and information or supporting documentation provided to Ocilion, are not the responsibility of Ocilion and cannot result in Ocilion`s being in default of delivery. Additional costs so arising are to be borne by the Customer.

(5.3) Circumstances out of the sphere and influence of Ocilion, which deter Ocilion from the contractual performance, prolongate the time of delivery/performance for their duration.

6. Prices, Taxes, Fees and Charges

(6.1.) All prices are in Euro and do not include any possible sales tax. They are valid for the present order. The quoted prices are ramp of business domicile/branch office of Ocilion, Schäringer Straße 35, 4910 Ried im Innkreis (FCA - Incoterms 2010). In case Ocilion organizes transport and insurance, Ocilion delivers CIP (Incoterms 2010) address of the Customer or contractual defined place of installation. In any case place of fulfilment shall be Schäringerstraße 34, 4910 Ried/Innkreis.

(6.2.) For Standard Programs the valid prices are the list prices in effect on the day of delivery.

(6.3.) All other services (organisational consultancy, programming, training, support during change-over, telephone advisory services etc.) shall be charged at the rates in effect on the day the services are performed. Deviations from the amount of time calculated as being required for the work (which serves as the basis for the price calculation) and for which Ocilion is not responsible, shall be charged according to the actual time spent.

(6.4.) In case a service is performed out of regular work time by request of the Customer, the additional costs shall be charged separately.

(6.5) Costs for travel, per diem, and overnight accommodation costs shall be invoiced separately to the Customer according to the valid respective rates. Transit time is to be considered as work time.

(6.6) Any Remuneration charged periodically (e.g. Fees for Software Maintenance and Software Support) and any remuneration charged on an actual time and material basis may be altered by Ocilion after a written notice subject to a term of three month. The alteration comes into effect on the first day of the charging period, beginning with the effective date mentioned in the notice or the day following to that.

7. Payment

(7.1.) In case of setoff, sales tax will be added to the amounts.

(7.2.) Prices mentioned by Ocilion are FCA, ramp, business domicile/branch office of Ocilion, Schärddingerstraße 35, 4910 Ried im Innkreis (Incoterms 2010) and do not include packing and shipping. The Customer shall bear any fees or taxes charged in connection with the delivery. In case of an agreed consignment with delivery, this will be charged separately as well as a possible (if desired by Ocilion) transport insurance.

(7.3.) Invoices submitted by Ocilion, are payable at the latest ten days from invoice date without any deductions and free of charges. Where orders encompass a number of units (e.g. computer programs and/or training sessions, completion in stages), Ocilion is entitled to submit an invoice after the delivery of each unit or service. For partial invoices, the terms of payment for the entire order obtain analogously.

(7.4.) Objections against an invoiced receivable shall be raised by the Customer within 30 days from the date of invoice, otherwise it is deemed as accepted.

(7.5.) In case of default the Customer shall pay defaulting interest, independent of fault. The rate for defaulting interest shall be customary in banking. If in the case of part payments two instalments fail to be kept, the Ocilion shall be entitled to deem all deadlines null and void and all sums exchanged due for immediate payment.

(7.6.) Payment on the agreed-upon dates is an essential condition for delivery and for contractual fulfilment by Ocilion. Failure to comply with the agreed payment schedule on the part of the Customer entitles Ocilion to discontinue current work and to withdraw from the contract. All costs connected therewith as well as loss of profit are to be borne by the Customer.

(7.7) The Customer is not entitled to withhold payment because of incomplete delivery, guarantee or warranty claims, or complaints.

(7.8) The Customer is not entitled to set-off any payments.

(7.9) Distributors or marketing staff as well as technical attendants of Ocilion have no authority, to accept any payments for Ocilion.

8. Intellectual Property and Use

(8.1) Plans, drafts, calculations or other documents like brochures, catalogues, samples, presentations and similar things remain our intellectual property. Any use, transfer, copying, publication und provision including the copying in extracts, requires our explicit agreement.

(8.2.) All documents mentioned above can be reclaimed by Ocilion at any time und have to be unsolicited and immediately returned, in case the Contract/Agreement will not be closed.

(8.3.) Ocilion or its licensors are entitled to all copyrights on the agreed services (programs, documentation, etc.). The Customer obtains only the right to use the Software after payment of the agreed remuneration strictly for his own purposes, solely with the hardware as specified in the Agreement/Contract, and, in accordance with the number of licenses acquired, simultaneously at different workplaces.

(8.4.) By this contract the Customer acquires merely the authorization to use the Software. Any further distribution of the product by the Customer is not permitted. The Customer is not entitled to assign, rent, lease, lend, resale, sublicense, disclose the Software or to transfer and/or distribute it in any other way, neither against payment or gratuitously, directly or indirectly, or to use the Software for the purpose to develop a product in competition to the Software; or to allow any third person access to or the usage of the Software, except as agreed explicitly. Furthermore the Customer may not reconvert or decode the Software nor extract program elements. He may not decompile or disassemble the program, carry out reverse engineering or attempt otherwise deviate the Source Code or the algorithmic nature of the Software. The Customer is not authorized to copy, process, modify, change, remove, adjust or translate the Software or to create derivate operas of the Software of parts thereof;

(8.5.) The Customer does not by virtue of participating in the production of the Software acquire any rights beyond its use as set forth in this contract. Any infringement of the copyrights of the Customer will result in the right to claim damages, in which case the Customer is entitled to full satisfaction.

(8.6.) The creation of copies for archival and data backup purposes is permitted only on condition that the Software does not contain an express prohibition on the part of the licensor or a third party and that all notices of copyright and ownership are transferred unchanged into these copies. For these copies Clause 8.4. shall be applicable analogously.

(8.7.) In case that interoperability of the Software requires disclosure of interfaces, the Customer shall task this to Ocilion on remuneration of costs. If Ocilion does not comply with this stipulation and the decompiling follows in accordance with copyright law, the results are to be used exclusively for the purpose of interoperability. Any misuse shall result in claims for damages.

(8.8.) Open Source Software is used in the products of Ocilion. The most Open Source Packages are used unchanged as performing program. If necessary, Ocilion has changed the Open Source Packages. The Code, generated by Ocilion, is distributed unchanged and solely for purposes of information, without any support or/and guarantee. To see the actual Open Source Packages, which Ocilion uses or changes at the moment an inquiry to Ocilion is required. An inquiry against the replacement of costs to answer such inquiry has to ask for the respective source files and to announce the Ocilion products, the Code is needed for. An adequate working and sending time has to be taken in consideration.

9. Right of Cancellation – Force Majeure

(9.1) Cancellation by the Customer is only possible with the written agreement of Ocilion. If the Ocilion agrees to the cancellation, Ocilion is entitled to charge not only for services rendered and accrued costs, but also a cancellation fee that represents 30% of the value of the total order not yet settled.

(9.2.) Force majeure, work conflicts, natural catastrophes, and transportation stoppages, as well as other circumstances that cannot be influenced by Ocilion relieve Ocilion of the obligation to deliver or permit Ocilion to redetermine the agreed delivery period.

(9.3) Ocilion is not able to guarantee the disposability of energy, services of telecommunication or of components.

(9.4.) The correction of defects, which is necessary caused by cases of force majeure in the sphere of the Customer, are not covered by any flat fees and shall be charged separately.

10. Warranty, Software Maintenance, Alterations

(10.1) A notice of defect is only valid if it concerns a defect, that is reproducible and if it is submitted immediately after delivery or the agreed service (installation) and documented in writing.

(10.2) Warranty period is six month from the date of delivery/acceptance, also for items, which are connected with floor and ground. In fulfilment of the warranty – by choice of Ocilion – rectification of defects takes precedence over price reduction or rescission of the order. If the notice of defects is justified, the defects are to be remedied within an appropriate period of time, and the Customer is to make available to Ocilion all measures required by the latter to investigate the problem and remedy the defects.

(10.3) Presumption of defectiveness in accordance with § 924 of the ABGB is ruled out.

(10.4.) Ocilion does not warrant and guarantee for any program versions explicitly indicated as „demo version“.

(10.5.) Furthermore, Ocilion assumes no warranty for defects, failures or damages that are due to improper operation, altered components in the operating system, interfaces and parameters, the use of inappropriate organizational resources and data carriers, insofar as these are stipulated, unusual operating conditions (particularly deviations from the installation and storage provisions) or damage during shipment.

(10.6.) For programs that are subsequently altered by programmers of the Customer or by third parties, any existing warranty of Ocilion's` is no longer applicable. Ocilion assumes no guarantee and is not liable for defects, failures or damages that are due to improper use, altered components in the operating system, interfaces and parameters, the use of inappropriate organizational resources and data carriers, insofar as these are stipulated, unusual operating conditions (particularly deviations from the installation and storage provisions) or damage during shipment.

(10.7.) Insofar as the subject of the order is the revision or supplementation of existing programs, the warranty covers the revision or supplementation. The warranty for the original program does not thereby again come into effect.

(10.8.) For any warranty operations on site of the Customer, the Customer has to make, free of charge, the necessary back staff available.

(10.9.) The costs for support provided, diagnosis of errors, remedying defects and failures that are the responsibility of the Customer, as well as other corrections, revisions and additions are to be carried out by Ocilion and the costs charged to the Customer. This is also the case for the remedying of errors when program revisions, additions or other interventions have been carried out by the Customer himself or by a third party.

11. Liability

(11.1) Ocilion is liable for damages insofar as intent or gross negligence can be proven within the framework of statutory regulations. Liability is excluded in case of slight negligence.

(11.2.) Concerning contracts of sale and work any claims for damages of the Customer are limited in any case to the contract value. The contract value is the remuneration for delivery of the agreed subject of Contract/Agreement. Claims for damages of the Customer arising from Software Maintenance Agreements or Software Support Agreements are limited in any case to the amount of the paid year's fee.

(11.3) Compensation for consequential damages and financial loss, not realized savings, loss of interest and damages arising from third-party claims against the Customer is in every case, to the extent legally permissible, ruled out.

(11.4.) Possible recourses receivables, the Customer or any third person may arise from the title „product liability“ in the sense of the Austrian Product Liability Act, are excluded, except gross negligence and the causation in the sphere of Ocilion is proven by the legitimate claimant

(11.5) Ocilion acts firewalls, which are installed, run or tested by Ocilion, with great care and actual state of the art. Ocilion points out, that – following the actual state of the art - there exists no absolute security (100%). Therefore Ocilion is not liable for any damages or disadvantages, which may arise, that firewalls installed, operated and tested at the Customer have been circumvent or set out of function.

(11.6.) Claims arising from the liability will be forfeited after 12 months after knowledge of the damage and tortfeasor, but in any case after three years after delivery or finalized performance.

12. Miscellaneous

(12.1) The Customer has to maintain in full force and effect, to the extent possible its present rights to use the trade names, trademarks, copyrights and pending and licensed patents associated with the Ocilion Solution and similar technology. The Customer has to assure, that he is entitled to distribute or prehold all contents with the help of the solutions, delivered by Ocilion. The purchase of a solution shall not be interpreted as an acquisition of any adequate right of use of any content.

(12.2) Ocilion reserves the right of ownership for the delivered products until all claims arising from the business relationship with the Customer are settled. As long as title to Products is reserved, the Customer shall be prohibited from either alienating, processing, mortgaging or assigning the goods. In case of assertion the reserved right of ownership, the Customer is obliged to the restitution of the object of purchase and has to compensate a possible depreciation in value regardless of negligence or fault.

13. Final provisions

(13.1.) Should individual terms of this contract be or become inoperative, this will not affect the remaining terms of this contract. The parties to the contract will work in a spirit of partnership to find an arrangement that approximates as nearly as possible the inoperative terms.

(13.2.) Insofar as not otherwise agreed, the statutory regulations applicable to registered merchants are exclusively those in force under Austrian law. The application of the UN Convention on Contracts for the International Sale of Goods is excluded. The contractual language is German.

(13.3.) In case of conflict, it is agreed that only the responsible local court in Ocilion`s place of business has jurisdiction. Ocilion reserves the right to sue the Customer at the general jurisdiction of the Customer.

(13.4.) For sales to consumers within the meaning of the consumer protection law, the above terms are valid only insofar as the consumer protection law does not insist on other conditions.

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