

Terms and Conditions

Inway Systems



Date: 18.12.2018

§ 1 General

The following terms and conditions apply for the duration of business relations between

Inway Systems GmbH, Edisonallee 3, 89231 Neu-Ulm

Inway Systems Chemnitz GmbH, Reichsstraße 48, 09112 Chemnitz

Inway Systems Hamburg GmbH, Millerntorplatz 1, 20359 Hamburg

Inway Systems Köln GmbH, Picassoplatz 1c, 50679 Köln

(“Inway”) and its customers.

The validity of any deviating or additional terms of the customer are explicitly rejected, unless in the case of a written consent from Inway.

§ 2 Subject Matter

The subject of these terms and conditions is the sale of services, software and hardware by Inway.

“Software” is classified as computer programs created by Inway or on behalf of Inway by freelance employees, independent or commissioned companies created software (“proprietary software”) or software that originates from third-party manufactures (“third-party software”).

§ 3 Conclusion of Contract, Amendments and Price Adjustments

In the case that the duration of a project increases due to the fault of the customer, Inway reserves the right to increase the agreed price by the amount that salaries, purchase prices or other similar procurement costs have risen.

In principle, verbal contracts are to be confirmed in textual form (e.g. in the appendix of the project contract, the minutes of a meeting or change request). This applies to the modification of contractual objects in particular. Services for which up to 2 hours of effort is expected can also be agreed on verbally.

Minutes of meeting transmitted by Inway are legally binding if the client does not challenge it within three business days of its reception.

§ 4 Scope of Services and Types of Service Supplying

Inway is obliged to install software and create system and individual program documentation only, if it was explicitly agreed on.

At the time of software delivery, the costs for support and further services by Inway as well as future software extensions and additional software functions, which are created by the manufacturer during the operating life and are not a part of the specifications at time of delivery, are not part of the licensing fee and are thereby compensated separately.

Inway has the right to supply services personally or to have them rendered by a third party.

Inway reserves the right to change the subject matter of a contract without previous announcement during the delivery period, provided that two main conditions are met. Firstly, the implementation of the contractual object must be deemed impracticable or only possible with unreasonable amounts of effort and secondly, that the subject matter of contract, his functions and design receive an unreasonable change for the client.

In principle, all services are carried out in one delivery. Should this not be possible, particularly because of the extensive scope of delivery or delivery period or because of the change of the contractual task, then Inway is entitled to deliver partial deliveries.

The manner of the contract implementation as well as the work place and time are determined by Inway unless otherwise agreed upon.

§ 5 Delivery Periods and Deadlines

Deadlines are generally non-binding unless they are explicitly determined in individual cases. The client may only invoke delivery dates when they have properly met any obligations of cooperation (e.g. procurement of information, documents and acceptances).

In the case of client change requests that require significantly more effort, Inway is able to postpone delivery dates by appropriate durations. The client is informed of the postponement before the implementation of the change request. The client may withdraw from the change order without replacement within 10 days of receiving the notification. Otherwise, the postponement counts as being valid.

If circumstances arise which have not been caused by Inway and that prevent the adherence to delivery date, then the date is moved to 21 days after the elimination of the problematic circumstance.

The client may withdraw from the contract if they set a reasonable grace period after the expiration of the postponed delivery date, which is not stuck to by Inway. The withdrawal is required to be in written form. The resignation is not possible if the client has not fulfilled all obligations to cooperate.

§ 6 Acceptance in the Case of a Service Contract

In the case of a service contract, the client is obligated to declare its acceptance within 10 days of the completion of the service.

Individual partial deliveries can be reviewed and approved separately.

Only significant defects warrant the client to refuse acceptance. Not every programming error constitutes such a significant defect, due to the fact that the complexity of ERP solutions and other enterprise software hindering flawless software, even with involvement of elaborate test methods. A significant error exists only if program sequence is completely impaired or if significant functions are faulty.

Provided that significant faults are present, for which the clients are justified to refuse acceptance, the client must provide Inway immediately with relevant reports of the defects and useful information regarding these defects.

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The client must declare the acceptance of a delivery in written form, once Inway has resolved the issue.

Provided that the client is obliged to accept a delivery and they do not produce a written acceptance in spite of written requests and deadlines on Inway's behalf or use the contractual object without accepting the service despite having received a written notification of completion and an appointed deadline for the acceptance of the delivery, then the acceptance will take place one week after the notification of completion without any further action from Inway.

The functional testing that is to be performed on the client's system is classified as being complete once the performance of all essential items have reached the requirements defined in the contract. Any discrepancies to the contractually defined requirements are to be defined in a jointly created protocol. These discrepancies are then to be resolved by Inway. Thereafter, either the delivery should be accepted in written form or another functional test should be performed.

In the case of non-essential deviations, no further testing is to be performed.

§ 7 Client Obligations

Orderly and swift supply of services on Inway's part generally require extensive obligation to co-operate from the client. The following points are especially important:

- The provision of necessary communication infrastructure free of charge (notably telephone, fax and internet).
- The provision of sufficient conference rooms, workstations and workstation computers in the case of on-site operations.
- Access to the client's infrastructure, services and systems. These services should be accessible during normal business hours whilst on-site and at all times remotely.
- The presence and attention of key users during training sessions as well as preparation and post processing of covered topics.
- The comprehensive testing of the software including the creation of sufficient varying test scenarios which mimic the live operation as accurately as possible.
- The in time procurement and provision of relevant information and test data (e.g. sample articles/ bills of materials) and the release of required documents (e.g. design documentation, analysis documents and FRDs)
- Delivery of services for the elimination of problems and
- carrying out their own maintenance work and diagnostics under the guidance of Inway via telephone.

The client is obliged to fulfil all necessary obligations of cooperation on time and prepare the allocation of necessary resources for the completion of these obligations.

The client has no right of withdrawal if not fulfilled all obligations of cooperation.

In case that a required obligation of cooperation is not carried out, even after a deadline has been imposed, all of Inway's obligations for the installation of software and hardware are nullified. The client is then obliged to replace any costs that have occurred to Inway. The contractual obligations of the client remain the same.

The client is obliged to inform Inway in written form, if he intends to make changes to or change the location of the contractual object or devices/systems which are connected to it. Exceptions to this are minor changes to hardware or location which are not likely to cause detriments.

The changes mentioned above, which would extend the contractual object, remain untouched by the contract unless they are added separately to the contract in explicit agreement.

§ 8 Data Backup

Unless otherwise agreed upon, the client is responsible for data backup. The term data backup covers all possible and reasonable actions and precautions that protect the contents and integrity of the client's data.

The data backup is to take place regularly. Especially important is the complete backup of all data before the start of services by Inway, during anomalies and disruptions.

§ 9 Terms of Payment and Assignment of Claim

In the case of software deliveries, the purchasing price is due as soon as the software and its corresponding licencing key have been delivered.

The following applies to Inway Systems GmbH, Inway Systems Chemnitz GmbH, Inway Systems Köln GmbH, Inway Systems Hamburg GmbH:

Inway will assign all demands and all rights that serve their protection to TecFactor GmbH and has the right to do so. Payments with discharging effect can only be made to TecFactor GmbH.

All invoices of Inway are to be paid within 20 days of the invoice date. The payment date of entry at TecFactor is decisive.

In the case of payment delay, Inway has the right to add interest amounting to 8% on top of the base interest rate.

The legal added value tax is to be paid on all prices.

§ 10 Delay and Inability to Pay of the Client

If the client's payment is behind schedule, then Inway shall be entitled to withhold any further deliveries or services from the same legal relationship.

If the client withdraws from the contract, he must pay a reasonable user fee for the time of use of the software and/or for the installed system up until the time of withdrawal.

In the case of reasonable doubt of payment and creditworthiness, Inway has the right to demand security or advance payment for outstanding deliveries and to claim all requirements defined in the terms and conditions.

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If the client does not pay in spite of due claims, a payment request and threat of termination in the case of no payment, then Inway can terminate the contract immediately. The client is to return any reserved goods without delay.

§ 11 Offsetting Prohibition

The client has the only right to offset with a counterclaim when these are recognised or have been recognised by declaratory judgement.

§ 12 Reservation of Title

Delivered products remain property of Inway until the complete payment of all Inway's receivables that arose at the time of the conclusion of the contract, have been completely met.

If the value of the reserved goods is to surpass 50% of the requirements from the current business relation which are to be secured, then Inway is obliged to release reserved goods in the corresponding value.

§ 13 Limitation of Liability

Inway is completely liable for damages that caused intentionally or by grossly negligent breaches of duty. Therefore, Inway is not liable for the clients own actions. Likewise, Inway is also liable for fraudulent actions, for damages to life, body or health and in the case of legally mandated liability without fault.

Claims by the client for damages due to slightly negligent violations of obligations by Inway are excluded except in the case of significant contractual obligations. If significant contractual objects are damaged, then Inway is only liable for typical contractual and foreseeable damage.

If the liability of Inway is ruled out or limited, then this also valid for Inway's legal representatives, vicarious agents or other third parties whose conduct is to be attributed to Inway in individual cases.

In addition to the items mentioned above:

- It is not possible to receive compensation instead of services in the case of an inadequate delivery if the breach of duty is not significant.
- Inway is not liable for lost profits, lack of savings or indirect/consequential damages.
- Inway is not liable for damages that are due to lacking backup of the client concerning loss of data. This is especially valid if the data is not backup or secured with up-to-date technologies or if the cause loss of data is based on problems which Inway have neither caused deliberately nor by gross negligence. The liability for data loss is limited to the restoration costs provided that Inway is only slightly negligent. If the client fails to fulfil their responsibility of regular and necessary individual backups, then Inway's liability is excluded in the case of slight negligence.

§ 14 Warranty

The client must report to Inway in written form, if any deficiencies that arise during the warranty period. The notice of defects must specify all relevant information needed for the assessment of the damage or defect. Software defects are to be documented with

screenshots and descriptions for transparency and traceability. The client must take all reasonable measures to minimise the damages.

The warranty is nullified and void if the client or third party modifies the services performed by Inway, in particular software programmed by Inway, the composition or employment of hardware or planned system architecture unless the client proves that these changes have had no effect on the creation of the defects. The client must carry any additions costs if the elimination of defects is aggravated by the modifications.

The client is obliged to grant Inway the necessary time and the opportunity to execute defect-rectification work. If Inway does not manage to rectify significant defects within 3 weeks of receiving a proper notice of defects, the client must grant Inway a reasonable grace period. The client has the right to withdraw from or reduce the contract, if the defects are not rectified with the given time. Compensation for damages are only conceded in accordance with § 13.

Inway has the right to claim compensation for the efforts if Inway takes action on a notice of defects and it transpires that either there is no defect or the claimed defect is due to circumstances for which they are not obliged to cover in their warranty.

Inway may refuse to remove defects as long as the client fails to completely fulfil its obligations, especially its payment obligation if the client has no justifiable reason to withhold payment.

§ 15 Proprietary Software

Inway ensures that proprietary software is essentially free of material or manufacturing defects within 12 Months of the day of delivery and that it essentially works in accordance with the associated documentation. The guarantee is limited to these services.

In the case of a justified notice of defects, Inway reserves the right to carry out 3 rectifications. It also reserves the right of transformation or reduction in the event of definitive failure to rectify the problem.

Software defects are to be documented with screenshots and descriptions for transparency and traceability.

The client only has the right of transformation or reduction if a bug has a substantial effect on the complete scope of work and the error cannot be solved with other options in the software.

All other damages are excluded from the warranty, especially for software that is purposed for the client and for directly and indirectly cause damages (such as profit losses, interruption of business) as well as loss of data or damages related to the recovery of lost data unless it can be proven that Inway or their employees acted intendedly or with gross negligence.

Inway also retains the right to carry changes on the programs that improve the performance of the program even after delivery as long as these changes have no effect on other software.

Software update deliveries always refer purely to the preparation of software prepared by the respective manufacturer.

If a defects is solely related to a separable part of the service, then the client has the right to withdraw from this respective part of the

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contract. This only applies to situations in which the part of the service free of fault can be used stand-alone.

§ 16 Right of Use

In principle, the client only receives the usage rights for the software but not ownership. The right of use refers only to the company for which the software was bought. Unauthorised circulation or transmission are ruled out.

The source code of proprietary software remains property of Inway unless explicitly agreed in written form. This includes the right to obtain, use, extend, modify, duplicate or sell the source code.

Any rights capable of being protected that may arise during the performance of the services remain with Inway.

The customer gets following rights at the service and the software licence and the existing rights: Inway grants the not exclusive, non-transferable, time period unrestricted right, to use the Inway provided software or service at the relevant plant for which it was built or provided in all kinds of usage.

The use of software on the client's other sites or passing on of software to third parties requires prior written consent from Inway.

§ 17 Priority of the Manufactures Conditions Concerning the Sale of Third-Party Software

Inway acts only as an intermediary party when selling third-party software. The licensing terms of the respective manufacturer have precedence and are recognised when the seal is broken or at the latest with the installation of the software.

§ 18 Third-Party Property Rights

Inway is not aware that the use of its produced services infringes on the property rights of third-parties. Inway does not guarantee the freedom from third-party rights. If use were to damage the rights of third-parties, then Inway can change the service for the client in a reasonable extent at its own discretion. Inway can implement these changes to make the software fall out of the protected domain and allow the client to use it without restrictions or additional costs.

§ 19 Microsoft Licensing Business

All parties agree that Microsoft Ireland Operations Limited (Carmen Hall Road, Sandyford Industrial Estate, Ireland – Dublin 18, Reg. 256769) is a third-party beneficiary and authorised third-party (§ 328 Abs. 1 BGB [German Civil Code]) of contracts with Microsoft licence resellers in the sense that Microsoft has the right to legally enforce the contract, verify the adherence to the contract and importantly to contact the client directly and make demands from them. To this extent, the contracts work in favour of Microsoft in accordance with § 328 Abs. 1 BGB [German Civil Code] with the result that the obligations of the client also directly benefit Microsoft.

§ 20 Confidentiality and the Use of the Client as a Reference

Templates, drafts, presentations, files and other work tools ("project documentation") which are created or provided by Inway during the course of a project remains under Inway's ownership. They are trade secrets and may not be made accessible to the client's third parties. The same applies to offers and cost estimates.

Inway has the right to name the client as a reference and add a general description of services provided for demonstration purposes on its website or other forms of media, unless the client submits objections against the procedure.

§ 21 Final Clause

Should one or more of the provisions above be invalid, then the other provisions will remain unaffected. In such a case, the contractual parties are to replace the invalid arrangement with a valid one which portrays its intended economic purpose most accurately.

With regard to business people, the registered office of the respective Inway GmbH or AG is to be the place of fulfilment and jurisdiction.

German law under exclusion of UN Sales Convention apply exclusively to Inway companies in Germany.