

# Terms and Conditions

Inway Systems



Date: 27.04.2023

## § 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, Sternstraße 5, 20357 Hamburg

Inway Systems Köln GmbH, Picassoplatz 1c, 50679 Köln

Inway eProcurement Solutions GmbH, Edisonallee 3, 89231 Neu-Ulm

("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 provision of services, the distribution of software and the provision of other services by Inway.

"Software" means computer programs created by Inway ("Proprietary Software") or those originating from third party vendors ("Third Party Software").

## § 3 Conclusion of Contract, Amendments and Price Adjustments

Verbal agreements must always be confirmed in text form (e.g. in the appendix to the project contract, meeting minutes or change requests). This applies to changes to the subject matter of the contract. Services for which only an effort of up to 2 hours can be assumed ("minor activities") are generally valid. These can also be invoiced without prior confirmation by the contractual partner. Usually, these are a maximum of one to two requests per week.

Meeting minutes transmitted by Inway are binding if the customer does not object up to three working days after receipt. Meeting minutes can also be documentation provided on a common project platform.

If the duration of a project is delayed through the fault of the customer, Inway reserves the right to increase agreed-upon prices to the extent that salaries, purchase prices or similar procurement costs have increased in the course of the delay that has occurred.

## § 4 Scope of Services and Types of Service Supplying

In the case of software delivery, the costs for support and further services by Inway, as well as future

software additions, enhancements, and additional software functions

software functions, which are developed by the manufacturer during the period of use and are not part of the specification at the time of delivery, are not part of the license fee and must therefore be paid for separately.

The installation of software and the creation of system and individual documentation are only owed by Inway if this has been expressly agreed upon.

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

Delivery dates are generally non-binding unless they have been expressly agreed as binding in individual cases. The Customer may only invoke delivery dates if it has duly fulfilled any obligations to cooperate (e.g. procurement of information, documents, releases).

In the event of change requests (CRs) by the customer that require additional effort, Inway may postpone delivery dates to a reasonable extent. An order is also valid by approval in the project platform.

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

If the contract is a contract for work and services, the customer is obliged to declare acceptance in writing within one week after completion of the work.

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

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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.

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

If the customer is obligated to accept the goods and does not declare acceptance in writing within one week despite notification of readiness for acceptance by Inway, or if the customer uses the subject matter of the contract without having declared acceptance, acceptance is deemed to have been granted after expiration of the one-week period following notification of readiness for acceptance. Inway will separately point out this circumstance when sending the notice of readiness for acceptance. The functional test to be performed on the customer's system shall be considered as successfully completed if the services meet the contractually stipulated requirements in all essential points. Deviations from the contractually stipulated requirements shall be recorded in a jointly prepared protocol and remedied by Inway. Thereafter, acceptance shall be declared in writing, or a further functional test shall be performed.

In case of non-substantial deviations, no further functional test shall 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 a sufficient number of premises, meeting rooms, workstations and workstation computers for on-site deployments.
- Access to the customer's infrastructure, servers and systems in the cloud or on-site during the customer's normal business hours as well as all day remotely.
- The extensive testing of the software, including the creation of sufficient variants of test scenarios that are as close as possible to live operation.
- the timely procurement and provision of relevant information, documentation and test data (e.g. sample articles, sample bills of material) and the release of required documents (e.g. design documents (FDD), analysis documents (FRD),).
- free access to the service items for Inway employees without waiting time - at Inway's option via remote maintenance (remote access to the necessary systems via RDP or equivalent) or on-site during normal business hours. The necessary remote data transmission/communication equipment is provided by the customer free of charge.
- The provision of the necessary communication infrastructure free of charge, primarily Internet and an online communication platform (preferably Microsoft Teams).

- the customer's own performance of maintenance work and diagnostics under the guidance of Inway by 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 customer undertakes to perform all necessary cooperation in good time and to schedule the necessary resources for this in good time.

The customer does not have the right to withdraw from the contract if he has violated his obligation to cooperate and this violation has at least contributed to the reason for withdrawal. Insofar as a required act of cooperation is not undertaken even after a deadline has been set, Inway's obligation to install the software and hardware shall lapse; in this case, the customer shall be obligated to reimburse Inway for the costs incurred. The contractual obligations of the customer remain unaffected.

The customer is obligated to inform Inway in writing in a timely manner if he intends to make changes to the service items or to devices or systems working in conjunction with them, or to change their location. Excluded from this are minor changes in hardware or location that are not likely to cause disadvantages.

The above-mentioned changes by the customer, which would expand the subject matter of the contract, shall remain unaffected by the contract unless they are included in the contract by separate express 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 claims and all rights serving as security to the factoring institute indicated on the invoice and is also entitled to do so. Payments with debt-discharging effect can only be made to the listed bank account of the respective institute.

All invoices of Inway are to be paid within 14 days of the invoice date without deductions. The date of receipt of payment by TecFactor GmbH is decisive.

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If the customer is in default of payment, Inway is entitled to charge interest at the statutory rate.

All prices are exclusive of the statutory value added tax.

### § 10 Delay and Inability to Pay of the Client

If the customer is in default with his payment obligation, Inway is entitled to withhold further deliveries and services from the same legal relationship. The expenses and damages incurred by Inway as a result thereof shall be borne by the customer.

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.

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 developed 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 warrants for a period of 12 months from the date of delivery that proprietary software is substantially free of defects and will perform substantially in accordance with the accompanying documentation. The warranty is limited to these services.

In the event of a justified notice of defect, Inway reserves the right to perform a total of three rectifications or, in the event of the final failure of the rectification, to grant the right of rescission or reduction at the customer's option.

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Software defects are to be reported in writing (screen print and description) for traceability.

The customer shall only have the right to rescission or reduction if a program error should prove to be significant and essential for the entire performance and the error cannot be solved by other possibilities of 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 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, Sandymount 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.