General Terms and Conditions of CP Corporate Planning GmbH

I. Scope of these Terms and Conditions

1. These Terms and Conditions shall apply for all agreements concluded by CP Corporate Planning GmbH (hereinafter referred to as "CP GmbH"), in particular for software licence contracts and service contracts (such as training, consultancy and software maintenance contracts).
2. Other arrangements and subsidiary agreements shall only be effective if they have been confirmed in writing by CP GmbH.
3. General Terms and Conditions of the other contracting party (hereinafter referred to as "Customer") shall not apply.

II. Conclusion of the Contract

1. All CP GmbH proposals are subject to confirmation. A binding contract shall come into effect when an order placed by the customer (offer) is accepted by CP GmbH.
2. Software maintenance contracts shall apply to the software licences (main licence, add-on licences and/or purchased add-on modules) specified in this Contract, details are provided under VII. Add-on licences and/or add-on modules and/or licence extensions of any kind purchased subsequently shall be included automatically in the existing maintenance contract for the main licence as from delivery; no explicit amendment to the software maintenance contract shall be required to achieve this. It is not possible to take out separate software maintenance contracts for add-on licences and/or purchased add-on modules. Furthermore, it is not possible to exclude individual add-on licences and/or purchased add-on modules from the software maintenance contract. Unless otherwise specified in the maintenance contract, the contract shall come into effect on delivery of the software. Remuneration for the maintenance of subsequently purchased add-on licences and/or add-on modules shall be payable from the date of their delivery (cf. No. III.9).
3. In the case of public training courses, the invoice shall be sent together with confirmation of registration. The right to attend is given only by payment having been received in advance of the commencement of the training course. Particulars relating to training courses are provided under VI.

III. Prices, Shipment, Terms of Payment

1. All prices of CP GmbH are quoted ex works Hamburg and exclusive of VAT applicable on the date of delivery.
2. Shipment shall be at the risk of and on account of the Customer. The same applies to returns.
3. Delivery and performance dates or deadlines shall be binding for CP GmbH only if they have been expressly designated as such in writing by CP GmbH. Observance of agreed delivery dates of goods and services shall be subject to the customer effecting payments or fulfilling other obligations in due time. Should this not happen, the delivery dates of CP GmbH shall be extended accordingly. If delivery dates are not complied with for other reasons, the customer shall be entitled to set a reasonable extended term in writing, stating intention to cancel the order regarding the late goods and services on expiration of the deadline if delivery has not been made within the specified term. CP GmbH is entitled to deliver prior to the agreed delivery date. CP GmbH may withdraw from the contract if a supplier delivers improperly or fails to deliver on time and this is beyond the control of CP GmbH.
4. Invoices are due for payment net 7 days after receipt. In case of doubt, invoices shall be deemed to have been received 3 working days after invoice date. If the customer defaults on acceptance, payment shall fall due on delivery attempt. The customer shall be entitled only to set off claims that are undisputed or finally recognised against receivables of CP GmbH. If the customer defaults on a payment, CP GmbH shall be entitled, irrespective of other rights, to withhold all further deliveries of goods and services and to charge default interest on arrears at the rate of eight percentage points per annum above the base rate. The rights to use the software delivered shall not be granted until all payments outstanding at the time of delivery have been made in full unless CP GmbH agrees in writing to the earlier use of the software. The customer shall not be entitled to pledge the software or to transfer its ownership as security.
5. If the service cannot be rendered in full or in part for reasons attribu-table to the customer, the customer shall nevertheless remain obliged to pay the full amount less any expenses effectively saved.
6. Unless specified in the contract, incidental costs such as travel and accommodation costs are always to be paid separately. The total incidental costs are determined in each case according to the price list of CP GmbH as amended or from the costs actually incurred.
7. VAT and any other duties shall be invoiced separately at the current statutory rate. This also applies to duties which apply in respect to services rendered abroad.
8. CP GmbH shall be entitled to withhold performance as long as a due obligation remains outstanding after the issue of a reminder.
9. In relation to Software Maintenance Contracts, the remuneration for maintenance shall be payable in advance at the start of the year for each calendar year. If the Software Maintenance Contract commences during the course of a current calendar year, the remuneration shall be payable in proportion to the remainder of the year. Extra services, travel costs and other expenses shall be charged at the rates set by CP GmbH as amended. Where software maintenance contracts exist, the remuneration for the maintenance of subsequently purchased add-on licences and/or add-on modules shall be due immediately upon their delivery (cf. No. II.2). In the first year, these shall be charged in proportion to the remainder of the year; from the second year they shall be added to the maintenance remuneration for the main licence.
10. Services of personnel (staff, training and consultancy services) shall be invoiced at the fixed price stated in the contract or on a time and materials basis after completion or acceptance of the services unless a different method of invoicing has been agreed in the contract. Details are provided under VI. If the customer avails himself of further services of CP GmbH – irrespective of whether agreed in writing or on the basis of other enquiry – subject to other provisions – the price list of CP GmbH as amended at the time of execution of such additional services shall apply. In the case of services on a time and materials basis, the man hours incurred plus travelling time shall be invoiced at the hourly or daily rates respectively as amended, and the materials used at the prices applicable on the date of the service. One man day consists of 8 hours. Services in excess of this shall be invoiced at the corresponding hourly rate for each additional half-hour or part thereof. Estimated prices for services on a time and materials basis stated in the contract shall not be binding. The quantities underlying the estimation shall be based on an assessment of the scope of the services according to best available knowledge. In the event of CP GmbH discovering during the provision of service that the stated quantities underlying the estimation are to be exceeded, CP GmbH shall advise the customer to that effect without delay.

IV. Intellectual Property Rights

1. CP GmbH holds copyright and exploitation rights to the protected works it delivers, particularly to software, course notes and the documents and files supplied to the customer, for which the following provisions apply. The customer is prohibited in particular from granting sublicences and from making the works available, in whole or in part, or the associated documentation, to a third party or making them otherwise accessible in any way, shape or form, unless this serves to realise the rights in respect to the software set forth under Sections 69d and 69e of the German Copyright Act (UrhG) in accordance with the following provisions.
2. The customer shall pay the agreed fee for the right to use the works, in particular the software and the course notes, in accordance with these Terms and Conditions. Subject to payment in full of the respective remuneration, CP GmbH shall grant the customer the right to use the software delivered. This right is neither exclusive nor transferable. The scope of use shall be agreed as follows: The customer may make such copies of the software as are necessary for its normal use. These necessary copies shall include in particular the installation of the software from the original data carrier onto the mass storage system of the hardware in use, as well as loading the software to RAM. Furthermore, the customer may make a copy for backup purposes. However, pursuant to Section 69d (2) of the German Copyright Act (UrhG) only one backup copy may be made and kept. The backup copy is to be marked as such and provided with a copyright notice ("© CP Corporate Planning GmbH"). The customer may not make any further copies, which

shall include any printout of the program code and photocopies of the manual as a whole, or substantial parts thereof.

3. Products delivered for purposes of evaluation (e.g. hardware, software, data carriers, documentation, etc.) are provided free of charge for a limited period and remain the property of CP GmbH. CP GmbH reserves the right to equip these products in such a way that they are no longer fully functional after the agreed period of use has expired; from whence the customer shall not be able to derive any claims whatsoever.

4. The customer may use the software on the hardware at his disposal. However, if the customer changes the hardware, he must first delete the software from the hardware used up to that point. The provision, storage or use of the same licence on more than one single machine (computer, hardware) at any one time is not permitted. Should the customer wish to implement the contract software on more than one machine at the same time, a corresponding number of licences must be purchased. The number of users shall depend on the agreements reached with CP GmbH. Making the software available in an ASP (Application Service Provider) or in a SaaS (Software as a Service) operation is not permitted on any account.

V. Services and Scope of Service

1. CP GmbH is entitled to transfer the fulfilment of its contractual obligation in whole or in part to third parties.

2. Installation, implementation and maintenance services shall only constitute a part of the contract if they have been expressly agreed in writing.

3. In the execution of the contract, no interference with the authority of the employer with respect to the other contracting party shall be permitted. Employees of CP GmbH are bound solely to the instruction of CP GmbH.

VI. Special Provisions for Training and Consulting Contracts

1. CP GmbH reserves the right to make minor changes to the content of training courses and to carry out postponements and relocations as necessary, for instance, in the event of low enrolment.

2. If the participant does not attend the whole training course, the full attendance fee shall be payable nonetheless.

3. The cancellation and/or transfer of a registration for a training course must be made in writing.

4. If the registered participant does not attend the training course without having cancelled or transferred the registration in due time, the invoice total shall remain due for payment in full. A voucher cannot be issued in such a case.

5. Should the participant be unable to attend training on the agreed date for good reason, he shall always be entitled to name a substitute to attend in his place. No additional costs shall be incurred.

6. For cancellations and transfers of registration
   • 2 weeks or more in advance of the agreed commencement of performance, no costs shall be incurred except for any travel costs which may already have arisen,
   • less than 2 weeks in advance of the agreed commencement of performance, the full price of the training course plus any travel costs which may already have arisen shall be payable; in this case, once the price of the training course has been fully paid, the registered participant shall receive a voucher to the amount of 50 % of the price of the training course valid for one year; this voucher is to be submitted for redemption together with a new registration,
   • at short notice (up to 1 week in advance of commencement of performance), 100 % of the agreed costs plus any travel costs which may already have arisen shall be charged.

7. If appointments which become available due to cancellation or transfer of registration are taken up by a third party, only the travel costs which may already have arisen for this date shall be charged.

8. The customer is obliged to make every effort to support the Consultants and to establish in his sphere of operations all the conditions required for the proper execution of the order; he has in particular to make available in due time and in full all persons and relevant work papers and supplies which are necessary for the execution of the order.

9. Insofar as required for the performance of the contract, the customer shall admit the contractor onto his premises and place the necessary equipment at the contractor's disposal.

VII. Special Provisions for Software Maintenance Contracts

1. Services

1. CP GmbH shall provide updates.

2. The scope of maintenance shall include a technical hotline which gives information on functional and application-specific issues. The scope of maintenance shall not include dealing with queries concerning the customer's organisation (such as those relating to the optimisation of business processes or management consultancy).

3. The scope of service shall not include the creation, adaptation, modification or supply of custom software or databases, the maintenance of hardware or the training of users. Modifications or enhancements to the software requested by the customer shall likewise not be regarded as software maintenance, but shall constitute special requests which shall be invoiced separately.

4. The software maintenance contract shall be of unlimited duration. It may be terminated at three months' notice effective from the end of a calendar year. Insofar as the contract commences during the course of a calendar year, termination according to this provision shall not be possible until the end of the year following the commencement of the contract. Notice of termination shall require the statutory written form; text form shall not be sufficient. The right of termination due to good cause (Section 314 of the German Civil Code (BGB)) is not affected.

2. Provision of Maintenance

1. Maintenance shall be carried out during the usual office hours. The location at which the maintenance is carried out shall be at the discretion of CP GmbH.

2. The customer is obliged to report in writing any defects and errors which materialise, in a manner in which these can be reproduced, describing exactly the nature of the defect and its consequences. The duty of maintenance on the part of CP GmbH shall commence on receipt of the full error report in the aforementioned form. Having received the error report, CP shall inform the customer of the expected time required for eliminating the defect.

3. Depending on the nature of the defect, this shall be eliminated by CP GmbH by:
   • verbal instruction of measures to eliminate or avoid the defect or to reduce its impact,
   • forwarding of a written description of procedure and/or function,
   • delivery of amended software or
   • delivery of a new software version,
   as seen fit by CP GmbH.

4. Where the defect does not significantly impair the use of the software, CP GmbH shall be entitled to refer the customer to interim solutions until the release of a new software version in which the component in question is remedied.

5. The new software versions which are delivered as a result of improvements and enhancements by CP GmbH shall be made available to the customer in machine readable form on data carriers or for download. With the delivery of the software, CP GmbH shall grant the customer the same rights to use the improved/enhanced software version as those granted with the original delivery of the software.

3. Conditions of Maintenance and Customer Obligations to Cooperate

1. If the software maintenance contract did not commence on delivery of the software, the customer must ensure that the version of the software most recently released by CP GmbH is in use at the time of commencement of the software maintenance contract.

2. For the software to function successfully, certain conditions regarding the hardware and software environment (in particular concerning the operating system) must be given. These conditions are set forth in the respective software manuals. It is the sole responsibility of the customer to be informed as to the suitability of the hardware and software environment prior to the conclusion of the contract.

3. Until the customer has brought about the conditions of maintenance pursuant to the foregoing Nos. 1 and 2, any and all obligations on the part of CP GmbH arising from the contract shall be suspended.

4. Insofar as maintenance work is carried out on the customer's premises, the customer is obliged, with prior arrangement, to provide access to the equipment on which the software is in use or to a comparable system without delay and free of charge.

VIII. Special Provisions for Contracts for Work ("Werkvertrag")

1. The results of services rendered shall not, as a rule, be subject to acceptance. The following provisions shall apply only insofar as the contracting parties have expressly agreed on a Contract for Work.
2. Unless otherwise stipulated in the contract, remuneration for the performance of work shall be due respectively as follows:
   - 1/3 of the total remuneration on conclusion of the contract,
   - 1/3 of the total remuneration on delivery,
   - 1/3 of the total remuneration on acceptance or on the due date of contractual performance.
   Where a part delivery is made, the corresponding proportion of the total constituted by that delivery shall be due for payment.
3. The services and the goods which are designated in the contract shall remain the property of CP GmbH until their full payment. Part payments shall not give rise to a partial acquisition of ownership by the customer. The customer is to insure and protect the work and goods in his possession against loss, fire and damage until transfer of ownership. He is to produce evidence of such arrangements at the request of CP GmbH.
4. Subject to the full payment of the remuneration, the customer shall receive a right to use the services to be rendered by CP GmbH which is neither exclusive nor transferable; an entitlement to the disclosure of the source code shall not be given.
5. Insofar as is stipulated in the Contract for Work, CP GmbH shall demonstrate to the customer the completion of the agreed contractual service in an acceptance test according to specified acceptance criteria and by means of test data and test scenarios to be supplied by the customer.
6. The customer shall accept the services without delay on the acceptance test being successful and/or on delivery. An immaterial deviation from the agreed performance standards and acceptance criteria shall not entitle the customer to refuse acceptance. The obligation of CP GmbH to eliminate defects (i.e. to take remedial measures) remains unaffected.
7. Should the customer, despite receiving a request, fail to bring about the conditions necessary for acceptance pursuant to the contract, acceptance of the services performed shall be deemed to have been given after fourteen (14) calendar days following the request have expired. The services performed shall likewise be deemed to have been accepted when the customer commences with their productive use.
8. Any provision of consultancy and support to the customer upon acceptance of the services rendered by CP GmbH must be agreed expressly in writing.
9. Defects recorded in the acceptance protocol and defects warranting remedial measures for which the customer asserts a claim for remedy before the limitation period for such claims expires shall be remedied by CP GmbH on its own account. Should it transpire on investigation following notification of a defect, that no such defect warranting remedial measures was given, CP GmbH can demand that the expenses incurred for services rendered on the basis of the alleged defect be reimbursed according to the generally applied remuneration rates of CP GmbH.
10. The customer is obliged without delay to inspect the contractual performance for obvious defects. Notification of such obvious defects is to be given in writing within a cut-off period of ten days following acceptance or, in the case of defects which subsequently appear, within a cut-off period of ten days following their appearance. Notification of defects which are not obvious is to be given in writing within a cut off period of one year after their appearance.

IX. Claims based on Defects

1. A warranty period of one year (1 year) shall apply to all goods and services provided by CP in the context of this contract. Excepted from this provision are claims which are based on gross negligence or intent or which arise from injury to life, the body, health or from a material breach of a cardinal obligation.
2. Insofar as the obligation to deliver software is given, the warranty period shall commence upon the delivery of the software to the customer.

3. The customer is advised that errors in software cannot be completely ruled out. A warranty claim on the part of the customer shall not be valid if the customer fails to inform CP GmbH within ten days after delivery or performance in the case of patent defects and within ten days of discovery in the case of latent defects, describing the nature of the defect. A warranty claim on the part of the customer shall furthermore be invalidated if the defect results from inappropriate installation or use, or improper modification or testing. Insofar as the customer modifies the software himself or has it modified by a third party without prior consent of CP GmbH, claims for material defects shall not be valid unless the customer shows that the defects which have arisen are not attributable to this event.
4. The customer's hardware and software environment must comply with prescribed standards (in particular with regard to the operating system) in order for the software to function properly. These standards are set forth in the relevant software manuals. It is the sole responsibility of the customer to be informed as to the suitability of the hardware and software environment before conclusion of the contract.
5. CP GmbH shall be exempt from warranty for defects if they are attributable to the information supplied by the customer.

X. Liability

1. The customer may claim damages in lieu of performance pursuant to Section 281 of the German Civil Code (BGB) or reimbursement of expenses pursuant to Section 284 BGB only after having given CP GmbH a reasonable period of time to effect performance or to take remedial measures, declaring that he would refuse the performance or remedial measures after expiration of the deadline if the performance or remedial measures have not been effected or taken within the specified period.
2. Statutory liability for damages connected with a guaranteed quality of the services and software is not limited by these General Terms and Conditions subject to No. 1 above. Otherwise, CP GmbH shall be liable exclusively in accordance with Nos. 3 to 15 below.
3. Subject to Nos. 6, 7 and 8 below, CP GmbH shall have unlimited liability only in the following cases:
   a) intent and gross negligence;
   b) culpable breaches of duty which result in injury to life, the body or health.
4. Unless a case pursuant to 3 b) above is given, CP GmbH shall be liable for slight negligence only if a duty is breached, the observance of which is of essential importance to the attainment of the purpose of the contract (cardinal duty). In the case of breach of cardinal duty through slight negligence, liability shall be limited to the amount of the foreseeable damage typical of this Contract.
5. Unless otherwise agreed, the foreseeable damage typical of this Contract shall be deemed to be five times the remuneration due under the terms of the contract.
6. Except in the case of intent or gross negligence, no liability whatsoever shall be incurred by CP GmbH for loss of profit or for other losses of a purely pecuniary nature.
7. Claims for damages against CP GmbH shall not be given if a simple vicarious agent of CP GmbH breaches non-essential contractual obligations through gross negligence.
8. Liability for loss of data shall be limited to the typical recovery expenses which would have been incurred had back-up copies been made regularly and as commensurate with the risk.
9. The exclusions and limitations of liability as provided in Nos. 2 to 8 above shall also apply to extracontractual liability.
10. Liability under the German Product Liability Act (Produkthaftungsgesetz) shall not be affected by the above provisions.
11. In the relationship between the customer and CP GmbH it is solely the responsibility of the customer to monitor the products and work delivered by CP GmbH after their placing on the market (product observation duty) and to react to any risks or endangerments. It is the obligation of the customer to inform CP GmbH without delay of all defects, problems and/or risks in connection with the products and work delivered by CP GmbH. Insofar as damage and injury result from breach of product observation duty, liability shall be incurred exclusively by the customer.
12. CP GmbH does not assume any liability for damages which arise due to other companies commissioned by the customer failing to render services of the customer or rendering them late or improperly.

13. In the case of software not produced by CP GmbH (Third-Party Software), the liability of CP GmbH shall be limited to the proper state of the data carriers and of any manuals. CP GmbH shall not assume liability for content, functionality or absence of errors in respect to Third-Party Software. This warranty rests exclusively with the producer of the software.

14. CP GmbH is to notify the customer without delay of unforeseen events beyond the control of CP GmbH ("events of force majeure" such as strike, illness of the consultant and of other circumstances) which preclude the performance of service as planned and which cannot be encountered with reasonable and adequate means. Such events shall entitle CP GmbH to postpone its contractual obligations accordingly. In this case, the customer shall be invoiced neither with the agreed price nor with any travel costs which may have already arisen. Claims for damages in excess thereof on the part of the customer shall not be accepted.

15. Unless otherwise stipulated in these General Terms and Conditions, all liability claims of the customer against CP GmbH must be brought within the time limit of one year after the claim arises and the circumstances giving rise to the claim come to the customer's knowledge or would have done so but for gross negligence. This does not apply for the claims specified in Nos. 2, 3, 4 and 10.

XI. Secrecy, Data Protection

1. The contracting parties undertake to treat confidentially and use only for contractually agreed purposes all information of a confidential nature which may come to their knowledge. This obligation to secrecy shall not apply with respect to such persons as are authorised to take notice of such information and bound to secrecy by law or by contract, or insofar as it precludes the exercising of a contracting party's own rights or the other party has given consent to its disclosure.

2. The contracting parties are required to place those of their employees who are directly concerned with the services to be rendered under a corresponding obligation to secrecy.

3. The obligation to secrecy and the prohibition on the use of communicated information shall not apply if it can be proved that this information was known prior to its communication, or known or generally accessible to the public or in professional circles prior to its communication, or becomes known or generally accessible to the public or in professional circles subsequent to its communication through no actual involvement or fault on the part of a contracting party, or corresponds essentially to information which is revealed and made accessible to a contracting party at any point by a legitimate third party in a manner permitted by law. Subject to the aforementioned qualifications, this obligation to secrecy shall remain in effect even after expiration of the contract.

4. The contracting parties undertake to comply with the provisions of data protection law as applicable in the execution of this Contract and of the respective individual contracts, and also to impose compliance with these provisions upon their employees.

XII. Non-Solicitation Clause

1. During the period of cooperation and for twelve months after the execution of the final contract concluded between the contracting partners, neither party shall directly or indirectly recruit or attempt to recruit employees of the other party.

XIII. Final Provisions

1. Should individual provisions of this Contract be or become invalid or unenforceable in whole or in part, the validity of the remaining provisions of the contract and that of the contract as a whole shall not be affected thereby. CP GmbH and the customer shall instead agree on a legally effective provision of which the commercial content resembles that of the invalid or unenforceable provision or part thereof as closely as possible.

2. The place of fulfilment for all obligations arising from this Contract shall be the headquarters of CP GmbH.

3. Amendments and supplements to this Contract and the termination of the contractual relationship shall require the statutory written form. This also applies to a waiver of this requirement of writing.

4. The courts of Hamburg shall have exclusive jurisdiction over all disputes arising out of and in connection with this Contract.

5. This Contract shall be governed by the laws of the Federal Republic of Germany with the exception of the CISG (United Nations Convention on Contracts for the International Sale of Goods) of 11 April 1980.