

Service Terms of znt Zentren für Neue Technologien GmbH

1 Scope

- (1) The following service terms ("Service Terms") shall apply to all Services (defined in section 3 (3)) of znt Zentren für Neue Technologien GmbH, Lena-Christ-Str. 2, 82031 Grünwald, Germany ("Supplier"), which Supplier shall perform in accordance with a Statement of Work with reference to these Service Terms entered into between Supplier and its customers or partners (each a "Customer"). Supplier then provides Services to Customer under the terms of such Statement of Work and these Service Terms. The most recent version of the Service Terms available at the time of entering into the Statement of Work shall apply.
- (2) Customer may not incorporate any general terms and conditions or purchase terms and may also not incorporate any other deviating terms. Any incorporation of general terms and conditions or purchase terms or any incorporation of other deviating terms shall be deemed invalid, and any such incorporation is hereby explicitly objected to.
- (3) Provided that Customer does not accept the Service Terms or wishes to agree on different terms of service, no contract is concluded, unless Supplier and Customer agree in writing on deviating terms and conditions.

2 Definitions

Affiliate in relation to a Party means any corporation, company, partnership or other entity, which (i) is controlled by such Party; (ii) controls such Party; or (iii) is under common control with such Party. Controlled and/or control means: (a) more than fifty percent (50%) of the controlled entity's outstanding shares or ownership interest representing the right to make decisions for such entity are owned or controlled, directly or indirectly, by the controlling entity, and/or (b) the controlling entity possesses, directly or indirectly, the power to influence the decision-making process, the direction of management, and the policies of the controlled entity.

Customer Company means Customer and any Affiliate of Customer.

Deliverables means all items including but not limited to software, code, manuals, specifications, design documents, or other materials, delivered to Customer pursuant to a Statement of Work. ZNT Software itself is not considered a Deliverable.

Documentation means manuals, instructions for installation and operation and/or other information on the ZNT Software containing a description of the ZNT Software, its possible applications, the required hardware and/or instructions for the use of the ZNT Software as made available under a License Agreement irrespective of the storage medium or provided via online access. Marketing and advertisement documentation as well as oral statements are not included.

Implementation means the configuration of the ZNT Software applying the means specified in the Documentation so as to be able to operate the ZNT Software in the expected operating environment.

License Agreement means a license agreement between a licensee and a ZNT Company together with the order notes including the relevant appendices or a license agreement between a licensee and an authorized third party granting a license to the ZNT Software. Such license agreement may also contain a sublicense for third-party software.

Party means Supplier and Customer.

Statement of Work means (i) an individual contract entered into between the Parties by Supplier providing a quote and Customer accepting the quote through a purchase order, or (ii) an executed individual contract between Supplier and Customer, into each of which the Service Terms are incorporated by reference. The respective quote or the respective individual contract typically contains specific terms including but not limited to the agreed Services by type, scope and duration as well as the expected Deliverables and the fees. The specific terms shall take precedence over the Service Terms.

ZNT Company means Supplier and any Affiliate of Supplier.

ZNT Software means computer programs of any ZNT Company, licensed within the scope of a License Agreement, including all related configuration files.

ZNT Technology means the know-how and computer programs of any ZNT Company, including but not limited to ZNT Software, Documentation, configuration files, manuals, instructions for installation and operation, developer tools, products, processes, designs, algorithms, user interfaces and other information, incorporated or not incorporated.

3 Scope of this Master Services Agreement

- (1) Subject matter of these Service Terms are services of Supplier for Customer (i) in connection with the evaluation of ZNT Software, or (ii) in connection with the Implementation of the ZNT Software already licensed to Customer in accordance with a License Agreement. Such services can include among other things consulting, product education, coaching, project management, modeling, installation, and development of configuration, script or program files and are defined with a detailed description in the Statement of Work.
- (2) Subject matter of these Service Terms can also be services of Supplier for Customer as described in section 3 (1) performed in connection with the evaluation or Implementation of third-party software licensed to Customer. In that case the terms in this Master Services Agreement related to ZNT Software, ZNT Technology and License Agreement shall apply accordingly to third-party software, third-party technology and the license agreement under which such third-party software shall be or is already licensed to Customer.
- (3) Services in section 3 (1) to 3 (2) ("Services") will be performed as Services for assisting Customer ("Assistance Services").
- (4) The right to use the ZNT Software and support and maintenance services in connection with the ZNT Software are not subject matter of the Service Terms but governed by a License Agreement.
- (5) There may be several Statements of Work incorporating the Service Terms.

4 Grant of Rights

The Parties agree that Supplier remains owner of all use rights, intellectual property rights and similar property rights of all Deliverables and written, machine-readable and other works for Customer within the scope of the respective Statement of Work. In such case Supplier grants Customer and each Customer Company intending the use thereof a non-exclusive, worldwide, unlimited and unrestricted license to use and modify the Deliverables, provided that (i) each Customer Company intending to use or modify such Deliverables confirms in writing to Supplier that it is bound by the terms of the respective Statement of Work pursuant to which the Deliverables were provided; and (ii) Customer and each Customer Company intending to use or modify such Deliverables is and remains authorized to use the relevant ZNT Software in accordance with a License Agreement.

5 Acceptance

- (1) Supplier will provide to Customer proof of performance for the Assistance Services. Acceptance of the work is not required, providing the Services is sufficient.

- (2) Even if Deliverables are defined in a Statement of Work, acceptance is not required, but only providing the Services is sufficient.

6 Fees

- (1) Fees for Assistance Services are typically charged for work performed at the agreed upon hourly rates as listed in a Statement of Work. In specific cases the Parties may also agree on fixed fees in a Statement of Work. In case the Services are charged by the hour, Supplier may issue monthly invoices based on corresponding time sheets. For fixed fees the agreed upon payment plan in the Statement of Work shall apply.
- (2) All the fees are net values only. Statutory value-added tax and/or withholding tax, if any, as well as other statutory charges shall be paid additionally.
- (3) Invoices shall be payable within thirty (30) calendar days from date of invoice. All payments to Supplier shall be made in the currency specified in the Statement of Work into the bank account with such currency shown in the invoice.
- (4) If Customer defaults on its obligations, especially its payment obligations, as a whole or in part, then Supplier may withhold the performance of all contractual duties until Customer satisfies all its payment obligations, including default interest, if applicable.
- (5) In case the Parties of a Statement of Work agreed upon reimbursement of Supplier's travel costs and other disbursements, any such costs are payable in addition to any fees. Travel costs are due immediately upon issuance of an invoice. Provided that travel costs are extensive Supplier may request advance payment of such costs immediately due upon issuance of an invoice.

7 Cooperation

- (1) Both Parties shall assign a contact person for the performance of each Statement of Work. They may replace such contact person with a suitable replacement upon timely notice to the other Party.
- (2) Customer shall immediately provide to Supplier all necessary information to perform its obligations as well as promptly provide all cooperation requested by Supplier.
- (3) In case Customer fails to properly meet its obligations to cooperate despite request and upon reasonable notice, Supplier may terminate the respective Statement of Work immediately upon lapse of the notice period and charge all accrued fees as well as a reasonable compensation for the forfeited Services.

8 Defects / Warranty

- (1) Supplier provides Assistance Services, and as such Customer shall have no right to pursue any warranty claims against Supplier.

9 Limitation of Liability

- (1) Each Party shall be liable irrespective of the legal grounds, for damages caused by a negligent or willful material breach of a contractual duty in a manner jeopardizing the achievement of the purpose of the respective agreement. Liability is limited to the damage amount typical for the type of contract and reasonably expected by each Party upon entering into the respective agreement due to the circumstances known at the time. Supplier shall not be liable for Customer's lack of commercial success. Based on the circumstances known to the Parties upon entering into a Statement of Work, the Parties will define in the respective Statement of Work the damage amount as typical for the type of contract. Supplier will arrange for third-party insurance with at least such coverage.

- (2) Supplier may not be held liable for the loss of data and their recovery as set forth in section 9 (1) unless such a loss could not have been prevented by way of reasonable data backup measures of Customer.
- (3) The liability of the Parties shall not be affected by the foregoing in case of (i) violation of life, body or health, caused by a breach of duty of a Party, its legal representatives or agents with vicarious liability, (ii) damages caused by a breach of duty of confidentiality of a Party, its legal representatives or agents with vicarious liability, (iii) any other damages caused by the grossly negligent or willful breach of duty of a Party, its legal representatives or agents with vicarious liability, (iv) damages of Customer in the form of third-party claims successfully asserted against Customer and based on the infringement of copyrights or other third-party intellectual property rights due to the use of the Deliverables as intended or (v) claims based on the German Product Liability Act (Produkthaftungsgesetz).

10 Property Rights, Third-Party Claims

- (1) Supplier will defend Customer against all claims derived from any violation of intellectual property rights or copyrights that are deduced from the contractual use of the Deliverables created by Supplier. Supplier will pay to Customer (i) the inevitable expenses of defending counsel according to the legal regulations in the respective country or if such legal regulations don't exist a reasonable amount for the legal defense and (ii) damage compensation amounts pursuant to section 9, provided that Customer informed Supplier of such claims in writing without delay and all remedies and settlement negotiations remain with Supplier.
- (2) If claims have been asserted or are to be expected against Customer pursuant to section 10 (1), Supplier may at its own expense modify or exchange the affected Deliverable to an extent Customer can be reasonably expected to accept. If this or obtaining a right to use is not possible with reasonable effort, then either Party may terminate the respective Statement of Work with immediate effect. If terminated, Supplier will only be liable to Customer for damages caused by the termination pursuant to section 9 (1).
- (3) Supplier has no obligations if the claims pursuant to section 10 (1) are based on programs or data not within the scope of the respective Statement of Work and made available by Customer or based on the fact that the Deliverable and/or the data pool it contains are not used in an unchanged original version as delivered by Supplier or used in an operating environment other than specified in the Documentation.

11 Termination

- (1) Customer may terminate a Statement of Work upon thirty (30) calendar day written notice to Supplier.
- (2) Notwithstanding the above, the right of both Parties of a Statement of Work to terminate the respective Statement of Work for good cause shall remain unaffected. Any material breach of contract or Customer's failure to make timely payment with payment overdue for fourteen (14) calendar days despite notice shall be deemed good cause to terminate.
- (3) Supplier is also entitled to terminate any Statement of Work with immediate effect without any liability if a competitor of any ZNT Company, directly or indirectly, gains control over the business shares and/or the executive management of Customer giving rise to concern that the competitor might get knowledge of Confidential Information or trade secrets of any ZNT Company.
- (4) Upon termination of a Statement of Work irrespective of the reason for such termination, Customer shall owe all fees in accordance with section 6 for work performed until termination takes effect. In case of a fixed fee and in case the next milestone agreed upon in the payment plan triggering a payment obligation cannot be finalized until termination takes effect, all work performed by Supplier from the last milestone triggering a payment obligation until termination takes effect shall be compensated by Customer on an hourly fee basis. The hourly fee shall be the same as the hourly fee agreed upon for change orders as listed in the respective Statement of Work. In case no hourly fees

for change orders are set forth in the respective Statement of Work, Supplier shall be compensated by Customer with the pro-rated amount of the next milestone payment based on the pro-rated effort already performed since the last milestone in comparison to the estimated effort for reaching the next milestone.

12 Confidentiality / Data Protection

- (1) A Party and its Affiliates may make available to the other Party or its Affiliates trade secrets or other information designated as confidential by the disclosing party (hereinafter referred to as "Confidential Information"). The Parties agree that the ZNT Technology is Confidential Information as defined herein.
- (2) Information is not considered Confidential Information as defined herein that was generally available to the public without violation of any obligation of confidentiality, or that either of the Parties can prove to have known prior to the disclosure by the other Party. Each Party shall within a reasonable time of receipt inform the other Party of any information designated as confidential that is not considered Confidential Information hereunder, so as to allow the latter to take the required action to safeguard confidentiality and/or to reasonably satisfy the information requirement by other means.
- (3) The Parties undertake during the term and even upon termination of the respective Statement of Work to keep confidential the Confidential Information, to protect the Confidential Information at least in the same manner as they do with their own confidential information and to use the Confidential Information only and exclusively to perform the respective agreements and to meet their duties thereunder.
- (4) To enable protected disclosure of Confidential Information directly to the other Party's Affiliates, each Party of this Master Services Agreement shall ensure that its Affiliates are bound to non-disclosure of the Confidential Information at least to such an extent as equivalent to the confidentiality agreed to in these Service Terms.
- (5) The Parties shall make available Confidential Information only to its employees, Affiliates, legal, financial and tax advisors, subcontractors of any ZNT Company performing Services in accordance with section 13 (6) and those third parties performing maintenance work or inspection with access to the ZNT Technology, who each need to know the Confidential Information for the performance of their tasks and who each have been bound to non-disclosure at least to such an extent as equivalent to the confidentiality agreed in these Service Terms. Competitors of any ZNT Company shall by no means be allowed to get access to the ZNT Technology.
- (6) Any disclosure of Confidential Information by an Affiliate of a Party will be deemed to be a disclosure by such Party for the purposes of these Service Terms.
- (7) In order to facilitate the performance of a Statement of Work, the Parties will exchange and use certain personal data of their respective employees acting as a contact person for the other Party. The type of personal data includes personal master data, communication data, and time sheet data to render an account for the Services performed. The Parties shall comply with all applicable rules and regulations regarding data protection in connection with such use of personal data, i.e. in Europe the General Data Protection Regulation (EU) 2016/679 (the "GDPR"). Any processing of personal data beyond the purpose stated herein requires a separate written agreement between the Parties whenever required according to applicable rules and regulations, i.e. in Europe the GDPR.
- (8) The confidentiality terms in this section 12 supersede the terms of any conflicting confidentiality agreement between the Parties.

13 Miscellaneous

- (1) Customer upon entering into a Statement of Work agrees to be identified as reference for the performance of any ZNT Company and agree that its corporate logos may be used by any ZNT Company for such purpose on their websites and in other advertising materials.

- (2) Customer may not assign the right and duties under any Statement of Work without Supplier's prior written consent, which may not be unreasonably withheld.
- (3) Supplier has the right to assign the rights and duties under any Statement of Work, to a third party with discharging effect. Supplier must give prompt notice to Customer about any such transfer of rights. Within a period of two (2) months upon receipt of notice about such transfer, Customer may terminate the respective Statement of Work with written notice to Supplier.
- (4) Customer covenants to observe applicable export restrictions of the Federal Republic of Germany, especially the regulations of the German Foreign Trade Act (AWG) and the German Foreign Trade Ordinance (AWV), of the EU, especially the Regulation (EC) No. 428/2009 (so called Dual Use Regulation), of Singapore and of the United States of America as well as those regulations of any other country or jurisdiction which may apply, and not to take any measures which could be considered as an evasion of the export restrictions.
- (5) Customer or any ZNT Company may grant Customer's Affiliates access to Confidential Information, Deliverables or written, machine-readable or other works for Customer within the scope of a Statement of Work in accordance with section 4, 12 (4), and 12 (5) of these Service Terms. In such case, Customer shall ensure its Affiliates' compliance with the terms and conditions of the respective Statement of Work, and Customer shall be liable to Supplier for any of such Affiliates', Affiliates' employees', advisors', or authorized partners' breach of the terms of such Statement of Work, and Affiliates' acts or omissions, as if such breach, act or omission had been Customer's own breach, act or omission. Furthermore, Customer shall ensure that each such Affiliate explicitly confirms in writing to be bound by the terms herein, so that Supplier may hold such Affiliate directly liable, unless prohibited by law, in which case Customer agrees to assign any rights in connection with the claim related to the grant of access to Supplier.
- (6) Supplier may use subcontractors or another ZNT Company to perform the Services.

14 Final Provisions

- (1) The Parties agree on the written form. This also applies to modifications of a Statement of Work, including any modification of this written form clause. No oral collateral agreements have been made. Modification of a Statement of Work can be initiated by each Party by a change order, which shall describe (i) the modification of the Statement of Work, (ii) the reason for the modification, (iii) the consequences for the Statement of Work, and (iv) confirmed by both Parties in writing to be valid. The hourly fee used in change orders to determine the fees may be different from previously agreed upon hourly fees.
- (2) Any Statement of Work shall be governed by the law of the Federal Republic of Germany excluding the U.N. sales law and the private international law. Venue of court for disputes shall be Munich.
- (3) If any of the provisions of these Service Terms or a Statement of Work are invalid and/or if these Service Terms or a Statement of Work are incomplete, then the validity of the remaining part of the respective agreement shall not be affected. The invalid and/or incomplete provision shall be deemed replaced by another provision resembling as closely as possible the invalid or missing provision in terms of its commercial effect.
- (4) Prior to pursuing any legal action, the Parties undertake to conduct mediation proceedings with a trained mediator. The claiming Party shall inform the other Party of its intention to conduct mediation proceedings concurrently nominating a mediator. If the other Party fails to accept the mediation by the nominated mediator within fourteen (14) calendar days, the proceedings shall be deemed failed. If mediation takes place and does not come to an end within no later than three (3) months after the mediation request date, then either Party may declare it failed. Only after the failure of mediation the Parties will be entitled to bring action before a court of law. This shall not apply if a Party intends to obtain interim judicial relief.