



General Terms and Conditions

1. Preface

- 1.1 The supplier provides all performances exclusively on the basis of the present terms and conditions (AGB). The client's general terms and conditions do not apply, even if not expressly excluded by the supplier.
- 1.2 These general terms and conditions also apply if the supplier provides performance without reservation to the client with prior knowledge of contradictory or diverging conditions of the client. In these cases, client's acceptance of performances is deemed recognition of these terms and conditions with concurrent and herewith advance renunciation of application of his own terms and conditions.
- 1.3 Offers are always without engagement. The contract only comes into force through written confirmation on the supplier's part. If the supplier performs without prior contractual confirmation on the client's part, the contract comes into force at delivery, or upon the start of performance, as the case requires.

2. Object of the contract

- 2.1 Object of the present contract is provision of the software applications defined in the specifications--available at www.bookatonce.com (hereinafter designated - even in the plural - as "application") for use of their functionalities, technical facilitation for application use and concession or procurement of rights of use for the applications by supplier to client, against payment of the compensation agreed and defined in the specifications.
- 2.2 The supplier undertakes to make available the application agreed in the specifications in the corresponding current version on one central or several data-processing facilities (hereinafter designated - even in the plural - as "application") from that point in time agreed in the specifications according to the following provisions.
- 2.3 The supplier shall make available storage space for data created through use of the application and/or necessary to use of the application (hereinafter designated - even in the plural - as "application") from the time point of the operational provision and to the extent agreed in the specifications. Additional details regarding storage space and application data are defined as required in the specifications.
- 2.4 The application and application data are regularly backed up on the server, at least once per calendar day - data back-up -. The client is responsible for compliance with record retention periods under commercial and fiscal law.
- 2.5 Point of transfer for the application and application data is the router exit of the supplier's computing centre. Details are defined in the specifications.
- 2.6 The client is responsible for adherence to the client-side system requirements defined in the specifications. The supplier is not responsible for the condition of necessary client-side hardware and software, nor for the telecommunication link between the client and the supplier up to the point of transfer.



3. Technical availability of the application and of access to application data, response and recovery times.

- 3.1 The supplier is obligated to provide availability of application and application data as defined in the specifications at the point of transfer. Availability is defined as technical usability of the application and application data at the point of transfer for use by the client.
- 3.2 All details on availability are provided in the specifications. In particular, the specifications define:
- the period of use,
 - the time span within which availability is provided,
 - the degree of availability in % within the period of use,
- 3.3 In addition, the specifications define response times which apply in case of unavailability and/or failures of the application and/or application data.

4. Fault report/non-fulfilment of principal obligations to perform

- 4.1 If the supplier does not fulfil, or only partly fulfils, the obligations stipulated under number 2 and 3 after operational provision of an application and/or application data, the following regulations apply:
- 4.1.1 The supplier shall record the client's fault reports in due form within the agreed times while providing an identification code, shall assign these to the specification's fault categories and take appropriate measures for analysis and elimination of faults on the basis of this classification. Upon client request, the supplier shall confirm receipt of the fault code to the client, providing the assigned identification code.
- 4.1.2 Insofar as necessary, the client shall immediately undertake all measures for circumvention or resolution of faults and report any remaining faults to the supplier.
- 4.1.3 If the supplier does not, or only partly fulfils, the stipulated obligations, the monthly usage fee shall be proportionately reduced for the period during which the application and/or application data were unavailable in the agreed volume, or storage was unavailable at the agreed volume, to the client. Ongoing usage fees according to number 9.3 and 9.4 only apply for transactions actually executed using the application despite restriction or cessation of performances. If the supplier bears responsibility for this non-fulfilment, the client can make a claim for compensation according to number 12.
- 4.1.4 There is no claim for insignificant divergence of supplier's performance from contractual conditions. Nor are there grounds for any claim in case of application failure in non-approved system or operational environments, or on the grounds of non-approved conditions of use, or in case of faults resulting from exceptional external factors unforeseen by the contract. This also applies to subsequent modification by the client or third parties, unless it does not complicate analysis and resolution of the defect.
- 4.2 Liability regardless of negligence or fault according to Sec 536a Par 1 Civil Code (BGB), because of defects already present at contract conclusion, is excluded.
- 4.3 Claims based on a defect expire within a year from the legal statute of limitations. Statutory terms remain unaffected to the extent that the law foresees longer terms as stated in Sec 438, Par 1 no. 2 Civil Code (Buildings and Building Materials), as well as in case of premeditated or



gross negligent breach of duty on the part of the supplier, particularly by his legal representatives or agents, in the case of fraudulent concealment of a defect, as well as in cases of injuries to life, limb or health.

5. Other supplier performances

- 5.1 The supplier shall provide the client with an electronic, printable user documentation in English/German, to be downloaded at www.bookatonce.com.

Insofar as the supplier provides third-party software as an application and does not receive any documentation in German/English from this third party, the supplier is authorised to provide only the documentation available to him.

The client is authorised to save, print and duplicate the provided documentation in volumes appropriate to the purposes of this contract while complying with existing copyrights. For the rest, the restrictions of usage for the application stipulated under number 7 correspondingly apply to the documentation.

- 5.2 Additional supplier performances may be agreed at any time in writing. Such additional performances are produced against reimbursement of proven expense at the time of the assignment, at the generally applicable supplier prices.

6. Exclusion of performances

This contract does not have as its object:

- fault management of faults related to use of the application in non-approved environments, or to modifications of the application by the client, or by third parties;
- fault management of technical problems with the Internet not subject to control by any one party; this does not apply if, and to the extent that, the supplier is also providing telecommunication services;
- application upgrades i.e., new versions with important functional upgrading;
- transfer of other new software;
- clearing of faults or failures arising because the hardware and software used by the client is not capable of correctly running programs, or of correctly processing data sets due to deficient technical capacity, in particular to fully and correctly recognise, compute or execute these;
- elimination of faults which arise due to improper or incorrect operation of the application by the client. The same applies to faults arising from the client assigning unqualified personnel to run the application;
- additionally agreed on-site deployments with client, consulting and support for modified software, clearing of interfaces to external systems, interface as well as configuration support, particularly in the case of add-on software or hardware.

7. Rights of use and utilisation of the application, supplier rights in case rights of use are exceeded

- 7.1 Rights of use for the application

- 7.1.1 The client receives simple rights of use, not subject to sub-licencing and transfer, limited to the life of the present contract or of the corresponding application, according to the following regulations.



- 7.1.2 There is no cession of the application to the client. The client may only use the application for his own business activity and as operated by his own personnel.
- 7.1.3 The client shall only run the application with the simultaneous number of persons stated in the specifications. In case of simultaneous use by a number of persons exceeding that stated therein, the client pays a flat-rate supplemental usage fee per person and access as defined in the specifications; other supplier claims remain unaffected.
- 7.1.4 The client is not entitled to rights not expressly granted in the foregoing. In particular, the client is not authorised to use the application, or allow its use by third parties, beyond the agreed use, or to provide access to the application to third parties. Prohibited in particular are duplication, sale or temporary transfer, especially rental or lending, of the application.
- 7.2 Client responsibilities for secure use
 - 7.2.1 The client shall take all necessary measures to prevent application use by unauthorised parties.
 - 7.2.2 The client is responsible for insuring that the application is not used for purposes deemed racist, discriminatory, pornographic, endangering the protection of minors, politically extreme, or otherwise illegal or breaching administrative regulations or guidelines, and that corresponding data, particularly application data, are not generated and/or stored on the server.
- 7.3 Breach of provisions under number 7.1 and 7.2 by the client
 - 7.3.1 The supplier may revoke the client's right of use if the latter violates the rules on limitations of use or any regulations on protection against unauthorised use under number 7.1 or 7.2. The supplier must first allow the client a grace period to take corrective action. In the event of recurrence and in the presence of special circumstances which, under consideration of mutual interests, justify immediate revocation, the supplier may pronounce revocation even without grace period. Following revocation, the client must confirm cessation of use to the supplier in writing.
 - 7.3.2 If the client violates the provisions of number 7.1 or 7.2 for reasons engaging his own responsibility, the supplier may block access to the application or the application data following the revocation if the violation can thus be demonstrably stopped.
 - 7.3.3 If the client illegally breaches number 7.2.2, the supplier is further entitled to delete the affected data or application data. In case of a legal violation by a user, the client must upon request immediately provide the supplier all information for assertion of claims against the user, in particular his/her name and address.
 - 7.3.4 For each instance in which the client culpably allows use of the application by third parties or users not designated by the client, the client shall pay an immediately due contractual penalty amounting to the basic monthly payment according to 9.2. Assertion of other claims to which he is entitled, particularly to damages, remain reserved to the supplier; in case of assertion of compensation for damages, the contractual penalty is charged to the claim for damages.
- 7.4 Client rights to ensuing data banks
 - if, and to the extent that, there ensue a data bank or data banks during the life of the present contract, especially through compilation of application data, through activities of the client authorised under this contract on the supplier's server, all rights thereto pertain to the client. The client remains the owner of the data banks even after contract expiry.



8. Liability for third-party rights

- 8.1 The supplier is liable to the client for a violation of third-party rights resulting from supplier's performance only to the extent that said performance is brought by the client as per contract, particularly in the contractually stipulated utilisation environment. Liability for violation of third-party rights is further restricted to third-party rights within the European Union and the European Economic Area as well as the location of contractual use of performance. Number 4.1.4 sentence 1 applies in consequence.
- 8.2 If a third party asserts to the client that a performance by the supplier violates his rights, the client is obligated to immediately notify the supplier. The supplier is entitled, but not obligated, to contest the asserted claims at his own expense insofar as admissible.
- 8.3 If third-party rights are violated through a supplier performance, the supplier shall at his own discretion and expense:
- provide the client the right to use of the performance, or
 - configure the performance to full legality, or
 - recall the performance whilst providing reimbursement of payment made by the client (minus appropriate compensation for use), if the supplier is unable to provide any other remedy at reasonable expense.

This will occur with due consideration to the client's interest.

- 8.4 Client claims for deficiencies in title fall under the statute of limitations according to number 4.3. For damage and expense compensation claims, number 12 applies in complement.

9. Compensation

- 9.1 Compensation for agreed use concession performances, i.e., in particular, provision of the application, availability of storage including back-up, is stated in the specifications. Depending on the type, it may consist of a fixed monthly usage fee and/or of variable, complexity-dependent charges.
No special fee is charged for ongoing use of the basic application.
- 9.2 Fixed monthly usage fees accrue for each running calendar month from operational provision. They are subsequently calculated on a quarterly basis and are due on the first business day of the following quarter. In case of pro rata use during a month, the calculation correspondingly occurs on the basis of 1/30 per day.
- 9.3 Variable complexity-dependent charges are subsequently calculated on a quarterly basis. These, as well as every separate compensation, are each due on the first business day of the corresponding following quarter.
- 9.4 The supplier provides the client the invoice per e-mail and/or as a download in his reserved area of the web portal.
- 9.5 The supplier is entitled to charge interest at 5 % past the due date.
In case of default, the supplier is entitled to demand interest of 8 percent above the base rate. The right of the supplier to assert a claim for higher damages remains unaffected.

If the client is in default of payment for over 30 days, the supplier is entitled to block access to the application. An application block by the supplier does not constitute a notice of cancellation.



- 9.6 The supplier reserves the right to increase compensation, at the earliest after 12 months and at most once a year, with a 3-month notice to the end of the month, in order to compensate for increased internal costs due to rising material or personnel expenses or occasioned by third parties. As soon as yearly compensation increases by more than 5%, the client is entitled to cancel the contract extraordinarily at the time of the entry into force of the increase, with a notice period of six weeks following the increase request.

In case of a reduction of the corresponding costs, the client can also request a corresponding reduction in compensation, at the earliest after 12 months.

- 9.7 The client may only offset with undisputed or legally-approved claims; the same applies to the exercise of a right of retention. The client may only retain payments for defects in a proportion taking into account the defect, and this only if the existence of the defect is beyond doubt. Number 4.1.4, sentence 1 applies in consequence. The exercise of a right of retention by the client, with reciprocity not based on a right listed in the present contract, is excluded.

- 9.8 The supplier may demand compensation above that defined under number 9.1-9.6 for services provided, insofar as

- a reported fault is related to use of the application in a non-approved environment, or to modifications of the application by the client, or by third parties.
- additional service arises because of irregular execution of client's duties (see especially number 10).

Insofar as the supplier is entitled to demand compensation above that defined under number 9.1-9.6 for services rendered, this is calculated-- in the absence of any previous written agreement between the parties--on the basis of the corresponding valid supplier list prices for hourly, daily and expense rates and statement sections at the time of performance.

10. Client duties and obligations

The client shall fulfil all duties and obligations required for execution of the contract. In particular, he shall:

1. keep secret, shield from third-party access and refrain from transferring to unauthorised users the use and access authorisations assigned him or the users, as well as the agreed identification and authentication safeguards described under number 2.3 iVm. of the specifications. These data are to be protected through appropriate and standard measures. The client shall immediately inform the supplier if it is suspected that non-authorised persons may have obtained knowledge of access data and/or passwords;
2. create the access conditions stipulated in number 2. 6 iVm. of the specifications;
3. comply with restrictions/obligations concerning the rights of use under number 7, in particular
 - a. declare all projected users for use of the application according to number 7, and corresponding modifications;
 - b. neither retrieve nor allow retrieval of any information or data without authorisation, not tamper or allow tampering with programs run by the supplier, nor gain unauthorised access to the supplier's data network or promote such access ;



c. not misuse the exchange of electronic messages possible within the framework of the contractual relation and/or through use of the application for the unsolicited sending of messages and information to third parties for advertising purposes;

d. release the supplier from third-party claims based on unlawful use of the application by him, or resulting from legal disputes caused by the client and involving data protection, copyright infringement or other issues related to use of the application ;

e. commit the users to comply for their part with the provisions of the present contract applying to them;

4. to see to it that the rights of all third parties in materials used by him are respected (e.g., in transmission of third-party texts/data on the supplier's server);

5. to obtain the required consent of each concerned party according to number 11.2, insofar as he collects, processes or uses personal data in the course of using the application and no legal authorisation scheme applies;

6. to check data and information for viruses before sending to the supplier, and to utilise a state-of-the-art anti-virus program ;

7. to immediately report to the supplier failures of contractual performances, in particular defects to performances under number 2 and 3.

To this end, the client shall provide a written report of any failures in comprehensible form, listing all information necessary to fault identification and analysis. This must indicate, in particular, the operations leading to appearance of the fault, the manifestation and effects of the fault To this end, he shall employ the corresponding forms and processes of the supplier, in particular the form provided in the supplier web portal's support area.

Should the client fail to promptly provide a report for reasons of his own making, it is deemed as sharing in causation or in responsibility. Insofar as the provider could not provide a remedy as the consequence of a lacking or delayed report, the client is not entitled to partially or entirely reduce the fee according to number 9.2 of the present contract, to demand compensation for damages resulting from the defect, or to extraordinarily cancel the contract without notice because of the defect. The client must set forth that he bears no responsibility for failing to report;

In addition, the customer must also provide all necessary support to the supplier in eliminating faults,

8. document modifications of the operational environment, and immediately inform the supplier of modifications in this respect.

Further, the client shall inform the supplier of failures originating in his area of responsibility with a potential to restrict application use, as well as inform of their anticipated duration.

9. if he transmits data to the supplier for purposes of creating application data using the application, to back these up regularly in keeping with the data's significance, and to generate own back-up copies in order to permit reconstruction of the data in case of loss of data and information;

10. if, and to the extent that, the technical means thereto are provided by agreement, to regularly back up the application data saved on the server through download; the supplier's obligations to data back-up under number 2.4 iVm. of the specifications remain unaffected.



11. Data security, data protection

- 11.1 The parties shall comply with all applicable statutes on data protection in Germany and commit their employees concerned by the present contract and its execution to data secrecy according to number 5, Federal Law on Data Protection (BDSG), insofar as these are not already already bound by its provisions.
- 11.2 If the client collects, processes or utilises personal data, he vouches for the fact that he is authorised to do so under applicable legal requirements, especially with respect to data protection, and in case of violation releases the supplier from third-party claims. Insofar as the data to be processed are personal data, order data processing is present and the supplier shall comply with the legal requirements of order data processing and client instructions (e.g., concerning compliance with deletion and blocking obligations). Instructions must be provided in writing and in a timely manner.
- 11.3 The supplier shall take technical and organisational security precautions and measures according to the annex to number 9 Federal Law on Data Protection (BDSG). In particular, the supplier shall secure his accessed services and systems, along with the application data of the client, or concerning the client, stored on the server and, as the case applies, any other data, against unauthorised disclosure, recording, modification or any other unauthorised access or attack--whether through technical means, viruses or other harmful programs or data, or through physical access--by employees of the supplier or third parties, in whatever manner these may occur. To this end, he shall take appropriate and standard measures suggested by generally recognised rules of technology, in particular anti-virus protection and protection against similar harmful programs, along with other security measures for his facilities, including protection against break-ins.
- 11.4 The supplier shall collect and utilise personal data only to the extent necessary to execution of this contract. The client agrees to collection and utilisation of such data to that extent.
- 11.5 Obligations under number 11.1 to 11.4 persist as long as application data remain in the supplier's area of influence, even after contract expiration. The obligation under number 11.4 indefinitely persists even after contract expiration.

12. Liability and limits to liability

- 12.1 The supplier is liable for damages:
- for losses caused by himself as well as by his legal representatives or agents, deliberately or through gross negligence,
 - according to the product liability law and
 - for damages resulting from injury to life, limb or health for which the supplier, his legal representatives or agents bear responsibility.
- 12.2 In case of slight negligence, the supplier is liable insofar as he or his legal representatives or agents have violated an important contractual obligation (so-called cardinal obligation), only performance of which permits orderly execution of the contract in the first place, or violation of which jeopardises realisation of the contractual objective, and compliance with which (e.g., in the case of obligation to defect-free performance) can be regularly assumed by the client. Further, liability in case of slight negligence is excluded.



Insofar as the supplier is liable for slight negligence, liability in case of material and financial damage is limited to typical contractual and predictable damages. Liability for other, remote consequential damages is excluded.

For individual cases of damage, liability per case of damage is limited to twelve times the monthly fee, at the least however limited to an amount of 10,000 €.

- 12.3 Number 4.3 correspondingly applies for the statute of limitations.
- 12.4 In cases of loss of data, the supplier is liable only for expenses arising from recovery of the data in the case of proper data back-up by the client. In case of slight negligence by the supplier, this liability does not apply if the customer executed proper data backup immediately preceding the action leading to the loss of data.
- 12.5 For claims for compensation of expenditures and other liability claims of the client against the supplier, number 12.1-12.3 applies correspondingly.

13. Term, cancellation

- 13.1 The contractual relationship begins upon provision of the corresponding application by the supplier. Provision of the application occurs from the point in time selected by the client.
- 13.2 The usage period to which the client is entitled on a paying basis is determined according to the term of the first chargeable application selected by the client. Each additional, chargeable application ordered by the client in the first instance ordered only for the remainder of the term for the first chargeable application.

Unless the chargeable application in question is cancelled by the parties, the usage period to which the client is entitled on a paying basis for all chargeable applications shall automatically be extended when the term of the first chargeable application expires, in each case by the period of time covered by the term for the first chargeable application originally chosen by the customer, but by no longer than 12 months.

Any chargeable application can be cancelled by both parties with one month's notice to the end of the time period covered by the term of the first chargeable application or to the point when the subsequent applicable extension period expires.

The supplier shall be entitled to duly terminate the contractual relationship concerning the non-chargeable usage option by providing the customer with 30 days' notice. This may be carried out 5 months after the commencement of the non-chargeable usage option at the earliest, or after the end of the last chargeable usage option.

- 13.3 Extraordinary cancellation because of, or in relation to, a breach of duty is only possible following previous written warning with appropriate fixing of a time limit not under 14 business days.

If the party entitled to cancel has knowledge of the circumstances justifying extraordinary cancellation for over 14 business days, he may no longer base cancellation on said circumstances.

- 13.4 Notwithstanding the regulation under number 13.3, the supplier may cancel the contract without prior notice if, for two consecutive months, the client falls behind with payment of prices, or a considerable portion thereof, or with payment of the fee in an amount reaching the fee for two months, over a period exceeding two months. In this case, the supplier may also demand



immediate compensation for damages in the form of a lump sum amounting to a quarter of the remaining monthly basic fee to the end of the regular contract term. Proof of lesser damages remain reserved to the client.

14. Obligation at and after contract termination

- 14.1 Within the first month after legal termination of this contract, the supplier is obligated to provide the client upon request with the application data saved by the client and, if applicable, the data saved on the mass storage made available according to number 2.3. This shall occur by way of a standard data carrier, or via remote data transmission in a generally recognised data format.

Further, the supplier is obligated upon client request to provide a third party named by the client with all data stored by the client on a standard data carrier or via remote data transmission.

The client is obligated to compensate the supplier for these services according to work volume and on the basis of the correspondingly applicable supplier price lists for hourly, daily and expense rates as well as statement sections at the time of performance.

- 14.2 Within the first month following legal termination of this contract, the supplier is obligated upon request to collaborate with a third party on client's instruction for the purpose of liquidating this contractual relationship. This collaboration is limited to:

- transfer of application data saved by the client,
- instruction of third-party employees on client conditions.

This collaboration shall be separately compensated according to work volume. Compensation occurs on the basis of the general supplier list prices applicable at the time of contract termination. In addition, the client shall compensate the supplier for all incurred necessary and proven expenses.

15. Miscellaneous

- 15.1 Modifications and additions to all contracts concluded by the parties shall only occur in written form. Oral agreements are only valid if confirmed within 5 days by the supplier; a fax or e-mail satisfy this written form requirement.

- 15.2 The supplier and the client are obligated to maintain the confidentiality of business and operational secrets, as well as of other information deemed confidential that becomes known in the course of their contractual relationship or the resulting contractual connections. Transfer of such information to persons not involved in the conclusion, execution or liquidation of the contractual relationship may only occur with written permission of the partners to the contract. In the absence of any agreement to the contrary, this obligation ends after five years from discovery of the relevant information, however, not before termination of an existing contractual relationship between the supplier and the client.

- 15.3 The supplier and the client are aware that electronic and unencrypted communication (e.g., per e-mail) entails security risks. In the case of this type of communication, neither the supplier nor the client shall thus assert claims based on the lack of encryption, unless encryption has been previously agreed.

- 15.4 All contractual relationships of the parties are exclusively subject to the laws of the Federal Republic of Germany.



16. Place of performance and of jurisdiction

- 16.1 The place of performance for all obligations arising from the contractual relationship is the legal domicile of the supplier.
- 16.2 The place of jurisdiction for all lawsuits arising from the contractual relationship of the parties as well as for disputes relating to origin and effectiveness of these contractual relationships is the legal domicile of the supplier in relation to traders, a legal entity of public law or special assets under public law. However, the supplier is entitled to sue the client at his domicile.