

Smart *We*

**General Terms and  
Conditions of Contract of  
SmartWe World SE**

## General Terms and Conditions of Contract (GTCCs) of SmartWe World SE

### § 1 Contents of the Contract

1. Exclusively the Terms and Conditions of Contract of SmartWe World SE apply. No other terms and conditions shall become an integral part of the contract, even if SmartWe World SE does not expressly contradict them.
2. Supplements and amendments to the contract need in all cases to be made in written form.
3. Even if, upon the conclusion of further contracts, no reference is made hereto once more, the GTCCs of SmartWe World SE apply in their respectively valid version for all commercial dealings.
4. Presentations in test programs, product and project descriptions do not constitute a guarantee or an assumption of any other risk.
5. The Client has checked that the specifications of the objects of contract comply with its wishes and requirements.

### § 2 Objects of contract

1. The object of the contract of purchase for standard products is the provision of standard software and/or databases (hereinafter: Objects of Contract).
2. The object of the maintenance contract is the provision of software updates and updated databases as well as the related services.
3. The object of the contract for work and services is the realization of individual concepts.

### § 3 Copyright and intellectual property

1. In the relationship of the contract partners vis-à-vis each other, exclusively SmartWe World SE shall be entitled to all rights in the software (program and manual, where appropriate, in electronic form) and the databases.
2. The Client receives the non-exclusive right to use the Objects of Contract in its operations for its own purposes, as described in the manuals supplied with the software and in paras. 3 - 7.
3. The Client may load the programs and data onto the working memories and the hard disks of the computers in the number and type specified in the license conditions. It may only create a copy of the programs and databases for back-up purposes, which are to be labeled with the copyright notice of the original data carrier.
4. All other types and possibilities of use of the Object of Contract, in particular duplication, translation, editing, arrangement and other modifications are prohibited.
5. Upon the installation of a new program version or of an updated database, the authority to use the previous program and database versions lapses.
6. De-compilation of the software is permitted within the scope of the provisions of the Urheberrechtsgesetz [Copyright Act] if, notwithstanding a written request by the Client, SmartWe World SE fails within a reasonable time to provide the information and/or documents necessary to create the interoperability of the software with other programs.
7. The Client may only pass on the Object of Contract to its branch offices or to other third parties where it entirely relinquishes its own legal position; prior to passing on the Object of Contract, the Client shall impose a written obligation on the recipient to comply with the contractual terms and conditions of SmartWe World SE. The Client shall notify SmartWe World SE in writing and give an assurance to SmartWe World SE that it is no longer in possession of the Object of Contract or of any copies thereof.
8. The Client shall have no claim to be provided with source programs.

9. Where the Object of Contract is a test version, the Client shall, in accordance with the specifications of the license terms conditions, simply receive a limited right of use. The limitations may relate to the geographical area of use, the duration and also the contents.

### § 4 Co-operation by the customer

1. The Client shall support SmartWe World SE in the performance of the contract; it shall provide hardware, the operating system and basic software, and shall make telecommunications facilities and the necessary number of staff available. The Client shall provide SmartWe World SE in good time with all information necessary for the performance of the contract. The Client shall grant SmartWe World SE access to its business premises during normal business hours.
2. Before any interventions are made in the EDP system, the Client shall create data back-ups; SmartWe World SE will notify the Client in good time before making any such interventions.

### § 5 Delivery and delay

1. Details of the date of delivery are non-binding. Binding delivery dates require a written commitment from SmartWe World SE. Part deliveries are permissible.
2. Periods for delivery and performance shall be extended by any period during which SmartWe World SE, without any fault of its own, is prevented from making the delivery or performance by reason of industrial disputes, force majeure, non-delivery by its own suppliers, sickness of employees or any other unforeseen events, plus a reasonable lead time to restart following the end of the interruption. The same shall apply if SmartWe World SE has to wait for information or acts of co-operation from the Client.
3. In order to be effective, all formal warnings and the setting of any deadlines by the Client need to be made in written form. Should SmartWe World SE fall into default in respect of a delivery, any claims, irrespective of which kind, shall only arise after the fruitless expiration of an additional period of grace set, which must amount to at least 12 working days.

### § 6 Payment, set-off and assignment

1. Payments shall be due without any deduction within 14 days following receipt of the invoice and delivery. The interest rate payable after the due date for payment and the default interest rate amount to 3 percentage points above the respective base rate of the ECB. The Client shall be entitled to prove that the damage suffered by SmartWe World SE is less; SmartWe World SE shall be entitled to prove that it has suffered a higher amount of damage.
2. The Client may only set off claims with claims of its own which are undisputed or which have been judicially decided and are final and legally binding. It may not assign any claims directed against SmartWe World SE; SmartWe World SE may in each case fulfill its obligations through performance to the Client (§ 354a HGB - Handelsgesetzbuch - German Commercial Code). The exercise of any right of retention may only rest on claims under this contract.

### § 7 Reservation of title and reservation of the right of revocation

1. All deliveries by SmartWe World SE are made subject to the condition precedent of payment of the purchase price in full. SmartWe World SE transfers the rights of use pursuant to § 3 in combination with the license conditions specified in the contract, subject to the resolutive condition of the claim of SmartWe World SE not being settled in full, where this is conclusive. The Client shall notify SmartWe World SE without delay in writing if any third parties seek to seize the software of

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SmartWe World SE or its databases; it shall draw the attention of third parties to the fact that the right of use is only conditional and limited.

2. SmartWe World SE may furthermore revoke the rights of use if the Client fails to comply with the limitations of use specified in the license conditions attached to the contract and in § 3, or if it breaches its duty of secrecy under § 12 and also fails to desist from this conduct forthwith after having received a written warning combined with the threat of revocation.

3. Upon revocation of the right of use, the Client shall surrender all items supplied, together with copies, and erase all programs and databases stored. It shall give a written assurance to SmartWe World SE in respect of the surrender and erasure.

### **§ 8 Acceptance of the delivery or performance**

1. Following delivery of the Object of Contract, SmartWe World SE may demand that the Client provides it with a written declaration to the intent that the delivery or performance has been made properly, in full and free from faults. The declaration is to be provided within two weeks following delivery, and may only be refused if the software or databases contain faults that prevent or significantly impede operations. The acceptance shall be deemed to have been declared if the Client has been in possession of the software or databases for more than four weeks since delivery without notifying any faults pursuant to § 9 (1) which would prevent acceptance, or if it has made payment without reservation.

2. Where SmartWe World SE installs the programs at the request of the Client, SmartWe World SE shall give written notice to the Client of their operational readiness. Following the declaration of their operational readiness, the Client may test the software or databases for four weeks (trial operation). The Client shall notify SmartWe World SE without delay in writing of any faults occurring. At the end of the trial operation, the Client shall declare its acceptance of the software or databases to SmartWe World SE in writing so long as no faults have occurred that prevent or significantly impede operations and significantly impair the functioning of the software or the databases. Any other faults are likewise to be notified to SmartWe World SE in writing and are to be eliminated within the scope of the warranty. Acceptance shall also be deemed to have been declared unless the Client, within two weeks following the expiration of the trial operation, notifies SmartWe World SE in writing of its refusal of acceptance.

### **§ 9 Warranty**

1. Without prejudice to any other statutory requirements, the Client shall notify any obvious defects in writing within a reasonable period, together with a precise description of the fault. Any late, inadequate or unsubstantiated complaints shall release SmartWe World SE from its obligations of performance. Should SmartWe World SE nevertheless make performance, SmartWe World SE will invoice the expense incurred.

2. SmartWe World SE warrants that the program functions will be free from material defects. This is the case where they are suitable for the use intended according to the contract or for normal use, or contain the features which are customary for products of the same kind and which the customer is entitled to expect according to the type of the product.

3. SmartWe World SE may also fulfill its warranty obligations through rectification where standard products are provided. At the option of SmartWe World SE, rectification may take the form of elimination of the fault, provision of a new program or database or of SmartWe World SE demonstrating possible ways by which the effects of the faults may be avoided. The Client shall also accept a new program or database if doing so will result in acceptable expenditure for adaptation or modification.

4. The Client shall support SmartWe World SE in eliminating any defects (provision of fault descriptions and test data, information from staff, access to the installation etc.). The Client shall take suitable precautions for the event that the software, either in whole or in part, fails to work properly, in particular through the creation of data back-ups, fault diagnosis, continuous checks etc.

5. If the rectification measures ultimately fail, the Client shall have the right to reduce the payment due or to rescind the contract. In respect of claims for damages, § 10 shall apply. SmartWe World SE shall in no case be liable for the costs of any rectification measures performed by third parties or for contract costs. All other warranty claims are excluded.

6. SmartWe World SE will support the Client in the location and elimination of faults, even if it is not established that the fault relates to the deliveries and performances made by SmartWe World SE. Should the deliveries and performances by SmartWe World SE prove not to be defective, SmartWe World SE will invoice the expense incurred.

7. The warranty claims shall lapse if the Objects of Contract have been altered and the Client fails to prove that the defect is not related hereto. Furthermore, SmartWe World SE will not perform any work under warranty where the Client uses the Object of Contract contrary to the limitations on use specified in the license conditions and in § 3 of the GTCCs.

8. The warranty period shall begin with acceptance and shall apply for 1 year unless otherwise agreed in the license conditions.

### **§ 10 Liability**

1. SmartWe World SE shall only pay damages, irrespective on which legal ground (e.g. non-performance, impossibility, delay, warranty, culpa in contrahendo (culpable breach of duties arising from a pre-contractual relationship), breach of ancillary duties or tort)

- in the case of deliberate intent or gross negligence, in the full amount;  
- in the case of ordinary negligence arising from delay, impossibility and in the case where a fundamental duty has been breached and the achievement of the purpose of the contract is thereby jeopardized, to cover reimbursement of the damage that was typical and foreseeable, but limited to the volume of the contract, unless otherwise agreed in writing in the individual case.

2. SmartWe World SE shall only be liable for the restoration of data if the Client has ensured that this data can be reconstructed at reasonable expense from databases stored in machine-readable form.

3. The statutory liability in the case of personal injury and under the Produkthaftungsgesetz [Product Liability Act] remains unaffected.

4. Irrespective thereof, SmartWe World SE shall be liable insofar as the damage is covered by insurance taken out by SmartWe World SE. At the request of the Client, corresponding insurance in a wider scope may be agreed in return for an additional charge.

5. SmartWe World SE may raise the objection that the Client is jointly responsible for any damage suffered.

### **§ 11 Rights of third parties**

1. SmartWe World SE gives an assurance that no rights of third parties preclude the transfer of rights in accordance with the foregoing contracts. Should any third parties assert conflicting industrial property rights against the Client, the Client shall notify SmartWe World SE herewith without delay in writing. SmartWe World SE may defend or satisfy such claims on behalf of the Client or reimburse the Client for its expense in defending the claims of third parties. SmartWe World SE may instead exchange the deliveries and performances concerned for equivalent deliveries and performances within a reasonable time frame.

### **§ 12 Secrecy and safe storage**

1. The contract parties undertake to maintain secrecy in relation to all information, documents and data coming to their knowledge in the

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performance of the contractual services and not to make them accessible to third parties or to use the same in any other manner. The contract parties will give written notice of this duty of secrecy to those members of their staff who have official access to the Object of Contract.

The Client shall store and secure the Objects of Contract in such manner that any misuse by third parties is precluded. SmartWe World SE

will, upon request, erase the data provided to it by the Client and either return or destroy any documents provided.

### § 13 Final provisions

1. The court venue for all disputes in connection with this contractual relationship shall be Karlsruhe where the Client is a Vollkaufmann [businessman with full legal capacity] or equivalent.
2. Requirements of the written form stipulated in this Contract are prerequisites for the effectiveness of the matters concerned.
3. This contract shall be governed exclusively by the law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

**Status: February 2021**

**SmartWe World SE, Karlsruhe**

**SmartWe**

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