
TERMS OF USE FOR ASP (APPLICATION SERVICE PROVIDING) SOLUTIONS

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SCOPE

1. These general terms and conditions of the MHP Solution Group govern the assignment and use of license programs and MHP software by MHP or one of the companies of the MHP Solution Group (referred to in the following as MHP). These terms and conditions apply exclusively. Deviating or contrary terms and conditions will not be recognised to the extent that MHP does not expressly agree to them in writing.
2. These general terms and conditions apply only to companies, legal persons under public law or special estates under public law in the sense of § 310 Para. 1 BGB.
3. These general terms and conditions also apply for all future transactions between the parties as well as when MHP performs services in awareness of deviating or contrary terms and conditions.
4. These terms and conditions of use are valid for the contract period in the framework of the ordered monthly or annual fee, to the extent that these are not rules that continue to be in effect after the contract. In the case of ASP-products without the basic ASP monthly or annual fee (ToGo-solutions), the validity of these terms and conditions is determined by the validity of the last transaction packet that was ordered, whose period strictly extends to a maximum of 36 months. Continued effect subsequent to the contract remain unaffected.

CONCLUSION OF CONTRACT

1. A contract takes effect with the signing of an "order" or "order form" by the customer and the confirmation of the order by MHP. The date of the order confirmation is deemed the date on which the contract takes effect.
2. The customer's order constitutes a binding offer that MHP can accept within two weeks by sending an order confirmation.
3. Solely definitive for the legal relationship between MHP and the customer are the provisions of the order confirmation including the general terms and conditions, as well as any special contracts/applicable GTCs/other contract conditions concluded that go beyond these.
4. The customer will receive on making the first order the GTCs for performing work and services which will be in force for all subsequent orders.
5. Oral side-agreements to the order are only binding if they are confirmed in writing. This also applies to subsequent changes and amendments. Each contracting partner can request in written form changes to the agreed-upon scope of performance from the other contracting partner.
6. If a change request from the customer requires extensive review, this will be agreed upon separately. The time and cost required for this review can be billed by MHP. The modifications of the agreed upon terms of contract required for a review and/or amendment will be set down in writing in an additional change agreement or an additional order form and will take effect in accord with the contract.
7. To the extent necessary and relevant, additional responsibilities of the contracting partners will be listed in the order form.
8. The general terms and conditions in the order form will be acknowledged mutually by the confirmation from the partners and do not need to be signed separately.
9. MHP can transfer contracts to any other company in the MHP Group. Additionally, any assignment of rights or transfer of obligations from a contract requires the prior written consent of the customer and MHP. Consent may not be refused arbitrarily.
10. Before a contracting party initiates legal action for failure to fulfil a condition of contract, the other party must be granted a reasonable grace period to fulfil that obligation.

OBJECT OF CONTRACT

1. MHP will provide the customer with software under the contractually agreed upon conditions via transmission over the internet for paid use. For this purpose MHP will save the software on a server that is accessible via internet.
2. MHP commits to maintain the software and the data net connection in the scope agreed upon.
3. MHP commits to the following points:
 - The customer will receive 1 free copy of the user handbook either in electronic form inside the help menu of the application or in a print version (MHP will choose, depending on the software)
 - MHP will install the standard handling system leased by the customer with all of the modules order by the customer on an application server in the MHP computer centre.
 - All data storage as well as all communication will also be carried out by the MHP computing centre.
4. The customer must make sure that the URL provided by MHP can be reached using the client server. Additionally, the current Java Runtime Version must be installed by the client. If use of FTP is desired, the matching ports must be unlocked by the customer. This will and cannot be installed by the customer to the extent not otherwise specified.
5. The customer will receive appropriate access to a specific application environment in the computer centre by means of an ID, user identification and password.
6. MHP is obligated to save the customer's data in the agreed-upon scope (Data-Hosting).
7. The customer's customs data will be backed up daily, weekly and monthly by the MHP computer centre.
8. Use of the software is intended for Germany under German law.
9. MHP is not responsible for applying for and timely approval for participation in the ATLAS-procedure; (the customs' authority responsible for the customers internal network and the availability of their computing centre) will be responsible for communication routes outside of the range of MHP's influence as well as for system failures along these communication routes.

USE AND MAINTENANCE OF SOFTWARE

1. MHP grants the customers the simple use rights to the software required to use the services that are the object of this contract.
2. To the extent that MHP provides the customer with external software, that is, software created by third parties, the use rights granted to the customer are restricted in the scope to the use rights that a third party has granted MHP. In this case MHP is obligated to disclose to the customer the scope of the use rights granted to it by the third party.
3. MHP is obligated to take all technical precautions that are necessary to assure an availability level of at least 99,7% during the primary working hours with respect to the hours falling during the primary working hours every month. A corresponding availability outside of the primary working hours is not agreed upon in the framework of these terms of use.
4. The hours deemed primary working hours are: Monday through Friday from 7:00 to 18:00 (CET).
5. MHP will constantly monitor the functionality of the software and will immediately clear any software faults that become known. A fault specifically exists if the software does not fulfil the functions stated in the description of performance, gives incorrect results independent of the customer, uncontrollably stops running or does not work correctly in some other way, so that the use of the software is either impossible or restricted.
6. MHP will constantly monitor the functional capability of the data network connections to the server on which the software that is the object of this contract taking into account the levels of availability named under Number 3. MHP will inform the customer of any disruptions to its function immediately. To the extent that disruptions to the function of the software derive from malfunctions in the area of MHP, MHP pledges to immediately clear them.

UPDATING SOFTWARE

1. If there are changes to legal regulations or norms that are of not insignificant importance for the functionality of the software that is the object of this contract with respect to the purposes the customer usually pursues in using the software, MHP will immediately initiate corresponding updates of the software, i.e. as soon as the changes have been made known to MHP in the exercise of regular due diligence. The selection of the manner of updating the software is left to MHP.
2. As soon as MHP modifies or amends the software that is the object of this contract through new or improved functions or other performance characteristics, MHP is obligated to immediately replace the software that is the object of this contract with the modified or amended software. This applies however only then and when the test phase for the modifications and amendments is concluded and MHP is offering the modified or amended version of the software on the market.
3. In the event that it develops newer versions of the software, MHP is obligated to immediately replace the old versions immediately in conformity with Number 2. Updates, modifications and amendments to the software do not alter these obligations on the part of MHP.
4. Numbers 1 to 3 do not apply if this is software created by third parties. In this case MHP is still obligated to replace the software that is the object of this contract immediately with software that has been modified or amended as soon as the third party has supplied MHP with the modified and/or amended software.
5. Numbers 1 to 3 do not apply if these are new, additional procedural techniques from the legislator that were not yet included in the software supplied.

DATA-HOSTING

1. To the extent that MHP is obligated to provide data-hosting, the customer is entitled to demand from MHP proof of data back-up that is in adequate quantity and in compliance with the contract at any time. In every case, the customer remains the only party entitled to the data and can therefore demand from MHP at anytime, and especially on termination of the contract, the surrender of specific or all data in return for a processing fee and without MHP having any right of retention.
2. The data will be surrendered by handing over the data storage devices or by transmission over a data network. The customer is not entitled to receive software suitable for the use of the data. The fixed rates for the effort are determined based on the currently valid price list.
3. MHP is obligated to take effective precautionary measures against data loss in the event of a computer crash and to prevent unauthorised access by third parties to this data. To this end MHP will make regular back-ups, check the customer's data for viruses and install firewalls, among other things.
4. Access data (user name and passwords) that provide protected access to the data by the customer may not be made accessible to unauthorised third parties. Employees of MHP may only learn the access data or gain access to data stored by the customer if this is absolutely necessary for the execution of this contract.
5. Data transfer and/or communication with the customs authorities: MHP is strictly responsible for smooth and proper transfer of the data for those parts of the communication and/or data transfer with the customs authorities which lie in the unrestricted area of MHP's influence. For all areas that do not lie in MHP's area of unrestricted influence, MHP cannot accept responsibility and cannot be held liable for any damages arising from them.

6. Accuracy/consistency of data in data received from the customs authorities: MHP accepts no responsibility at all for the accuracy of the data received from the customs authorities and cannot therefore be held liable for incorrect data.
7. The customer's data connection to the MHP computer centre: MHP is only responsible for the parts of the customer's data connection to the computer centre that lie in MHP's unrestricted area of influence.
8. System failure in the MHP computer centre: MHP guarantees a total availability of greater than 99,7 % from 7am to 6pm CET (UTC +1) during the agreed upon daily working hours. Force majeure events are excluded (power failures, forces of nature, war, etc.).
9. Printed data document archiving: The customer is responsible for archiving printed data documents (print-outs required by the customs office). It can print out the corresponding papers and/or require matching saving by MHP in accord with No. 1.
10. For Z-GBS: The customer may attach his own documents (eg confirmations received by the customer in a different way than in the software itself) to the processes in Z-GBS as PDFs. A total storage space of 500 MB (togo version, maximum document size 2 MB) and 3 GB (professional version) for these documents are provided to the customer as part of the use of Z-GBS. Possibilities and costs for use beyond this volume are shown in the current price list.

WARRANTY

1. The provisions of law governing leases and service contracts apply to the customer's warranty claims, depending on the component of the contract.
2. MHP is obligated to immediately remediate defects in the software that is the object of this contract. In the course of remedying these defects MHP must make sure that there is no interruption in the connection between the MHP server and the customer that can have an influence.

LIABILITY

1. MHP is liable according to provisions of law.
2. Liability for breaches of contractual obligations as well as for delinquency is limited to intentional malice and gross negligence. This applies also to intentionally malicious or grossly negligent acts of employees, management personnel and temporary employees.
3. This liability limitation does not apply in the case of loss of life, limb or health as well as in the case of damages arising from delay and claims deriving from the breach of so-called primary (cardinal) obligations from this contract. These are essential contractual duties whose fulfilment per se makes the proper execution of the contract possible in the first instance and on whose fulfilment the customer may regularly rely and depend and whose breach endangers the purpose of the contract itself. In these cases MHP is liable for every degree of culpability. To the extent that these are not damages that result from the loss of the customer's life, limb or health, MHP is only liable for damages of types that typically occur.
4. In the case of liability for simple negligence, MHP's obligation to provide compensation is limited to an amount of EUR 25,000.00 per instance, in total however to EUR 75,000.00 even if it is a case of breach of essential contractual obligations. This limitation however does not apply to liability owing to injuries to life, limb or health.
5. To the extent that typical, foreseeable damages would exceed a liability sum of EUR 25,000.00 per loss event or a total of EUR 75,000.00, the customer must notify MHP of this so that additional insurance against the risk can be arranged.
6. Liability for loss of data is limited to the typical cost of recovery and restoration that would arise with regular creation of back-up copies commensurate with the risk.

7. The claim to compensation for damages according to § 536a 1. Alt. BGB is excluded. This does not apply to bodily injury, loss of life or loss of health or breaches of essential (cardinal) contractual obligations.
8. Liability on the part of MHP in cases of force majeure, especially strikes or lock-outs, is excluded by mutual agreement. MHP accepts no obligation to assume liability for damages of any kind that arise from a supplemental software used by the customer (especially malfunctions or incorrect data) or a pre-system of this kind.
9. MHP is not liable for the functionality of telephone lines connecting to its server, in the event of power failures and the failure of servers that are not in its sphere of influence.
10. MHP is not responsible for content that is provided to it in the framework of data hosting. Specifically, MHP is not obligated to check content for possible violations of the law.
11. The liability limitations and exclusions stated above apply in the same scope in favour of the organs, legal representatives, salaried employees and other employees of MHP.
12. Claims under the product liability act and warranty claims are not affected.
13. The customer is aware that the licensed software only performs evaluations of already generated lists and does not generate or store on any kind of data storage devices any independent list entries. Consequently any liability by MHP for any incorrect conclusions or subsequent actions by the customer based on the results of the evaluation is excluded by mutual agreement. The licensee is allowed to generate independent, user-controlled list entries. In this respect MHP is not liable for any incorrect use or misuse of this functionality.
14. Irrespective of the liability rules set forth above, liability on the part of MHP based on any defects in the foundational lists such as typographical/syntax errors or currency are excluded by mutual agreement both by dint of reason and in any amount.
15. The licensee is responsible for proving that an error in evaluation does not lie in the lists being evaluated.
16. MHP makes every effort to provide the licensee with an international approach to evaluation. The customer is aware that perfect recognition of nation-specific linguistic characteristics is not possible under the current state of the art.
17. Due to this fact liability on the part of MHP for any missed search hits resulting from orthography that differs from the international standard for the language is excluded both by reason and amount.
18. Irrespective of the rules given about the licensee indemnifies MHP in the event of any claims of direct legal action by a legal or natural person affected by the list screening.
19. MHP is responsible for backing up the customer's data in the framework of supplying the software.
20. The customer is solely responsible for the contents and/or the accuracy of the data to the extent that it cannot be demonstrated that the data were changed or falsified by the processing algorithms of the MHP Solution Group-software systems. Data that were falsified by incorrect handling of the MHP Solution Group-software systems by the customer likewise do not fall in the scope of MHP's responsibility or liability.
21. The use of MHP software proceeds exclusively under German law and it is intended only for use in Germany. MHP accepts no responsibility for the software being suitable or practical for use in other places. Users who access these applications from other locations do so at own risk. MHP provides no assurance or guarantee that the application or the information included on it conforms to laws outside of the Federal Republic of Germany.

COMPENSATION & CONTRACT PERIOD

1. The supply of this software is agreed upon for an indefinite period –but at least for one calendar year. The user fee will be billed starting the month after the issue of the order/installation and continue through the end of the year.

2. The subsequent billing will extend into the following calendar year. This period is deemed the minimum contract period. Cancellation is possible after the minimum contract period has expired with a notification period of three (3) months to the end of each calendar year.
3. All prices stated by MHP are net prices without VAT; the VAT will be added in the legally mandated amount in each case unless the prices are stated expressly as gross prices including the VAT in the legally mandated amount. Costs for special packaging and transport will be borne by the customer to the extent nothing else is agreed upon. The VAT will be billed at the tax rate in force at the time the service is performed. If the tax rate is changed during the contract period, the periods with their individual tax rates will be deemed separately agreed upon.
4. Billing statements are due and payable on receipt. If the amount billed is not received within 30 days of the billing date, MHP is entitled to claim default interest. Default interest is 9%-points over the prime lending rate p.a.. Assertion of additional damages remains reserved.
5. The customer can only offset if its counter-claim is undisputed or has been legally established. A right of retention is excluded.

REPRODUCTION, PROTECTED RIGHTS AND COPYRIGHT

1. The customer is obligated to prevent unauthorised access by third parties to the software and the user handbook through suitable preventative measures. To this end the customer will, to the extent possible, instruct its employees on conformity with copyright law. Most specifically the customer will instruct its employees not to make any unauthorised copies of the software or user handbook.
2. The customer is not entitled to make the software that is the object of this contract available for use by third parties. Sub-leasing the software that is the object of this contract is therefore expressly prohibited.
3. MHP Solution Group - partners, who use this software at MHP for the purposes of sharing according to the specific order data are excluded from the provision above. In this case the MHP Solution Group- partners and the customer are obligated to arrange their contractual relationships with third parties in such a way that use of the software that is the object of this contract without compensation is excluded.
4. The customer may copy the software that is the object of this contract to the extent that the specific reproduction is necessary for the use of the software. Necessary reproduction includes loading the software onto the RAM, but not temporary installation or saving of the software on data storage devices (hard drives, etc.) of the hardware used by the customer.
5. The customer may not carry out any additional reproduction which includes also printing out the program code or photocopying the user handbook. The customer's authorisation to reproduce the program code under the preconditions stated in § 69e Para. 1 UrhG remains unaffected.
6. The customer may not modify the software. This does not apply to modifications that are necessary for fault clearance, to the extent that MHP is in default on clearing the fault, refuses to clear the fault or – especially due to application for or initiation of bankruptcy proceedings- is incapable of fault clearance.
7. The software provided may not be de-compiled. Excluded from this are reproductions of the code or translations of the code form that are indispensable for obtaining the required information for establishing interoperability of an independently created computer program using the software provided or with other provided software or other computer programs, to the extent that the preconditions stated in § 69e Para. 1 No. 1-3 UrhG are fulfilled.

CONFIDENTIALITY

1. The contracting partners will treat essential and not generally known matters of the other contracting partner with confidentiality. Any protection of especially confidential information going beyond this and the therewith associated establishment of prerequisites and conditions require in each case the conclusion of a separate written agreement (confidentiality agreement). Confidential information that is given by one partner to the other in the framework of this contract must be clearly labelled as confidential. The legal provisions concerning data protection must be observed. Sharing this information with third parties is prohibited.
2. The customer will make neither the programs nor the documentation accessible to third parties, neither wholly nor in part. The customer is liable for all damages that MHP suffers from the breach of this obligation.
3. Ideas, designs, know-how and techniques that are related to information processing can be used freely by the contracting partners to the extent that no protected rights intervene.
4. The customer agrees that he will be included in the MHP reference list.
5. The customer agrees that MHP will save the customer's personal data, process it and communicate it to companies in the corporate group to the extent that this is required for the fulfilment and settlement of the order/commission.
6. The contracting parties are obligated to treat as confidential all objects (e.g. documents, information) that are sent to them before or during the execution of the contract from the other corresponding contracting partners or of which they become aware and which are legally protected, and any business or commercial secrets that they receive and are designated as confidential, even beyond the end of the contract unless they are publicly disclosed absent a breach of obligations or confidentiality. The customer will instruct employees or other third parties to the extent necessary concerning the need for confidentiality concerning the corresponding objects.

DATA SECURITY/CONFIDENTIALITY

1. The customer gives consent for MHP to collect, save, process, edit and use personal data (contact data) for the purposes of administrating the contractual relationship; MHP will also communicate it within the corporate group to the extent that this is required for the fulfilment and settling the order/commission. MHP will comply with the legal provisions of the Federal Data Protection Act. And the Telemedia Act.
2. MHP is obligated to maintain the strictest confidentiality concerning all processes of which it becomes aware in the course of the preparation, execution and fulfilment of this contract, especially business or operational secrets of the customer and neither to share them nor commercially exploit them in any other way. This applies both to any unauthorised third party, i.e. also to any unauthorised employees of MHP or the customer, to the extent that the sharing of information is not necessary for the proper fulfilment of the contractual obligations of the MHP Solution Group.
3. In cases of doubt, MHP is obligated to ask the customer for consent prior to sharing the data.
4. MHP is obligated to arrange a set of rules like in content to Number 2 above with all employees assigned with the preparation, execution and fulfilment of this contract.

CONCLUDING PROVISION

1. The obligations from the contract are exclusively fulfilled in the Federal Republic of Germany. German law under exclusion of the UN CISG [UN Convention on the International Sale of Goods].
2. Should differences of opinion arise from this business relationship, the business partners will make every effort to resolve them in an amicable fashion. For all disputes arising from the

contractual relationship, the headquarters of MHP in Neustadt am Rübenberge is the sole court of jurisdiction. Moreover, MHP is entitled to bring legal action at the court responsible for the customer's headquarters.