

# General Terms and Conditions of Business and Delivery

APIIDA AG

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— hereinafter known as “APIIDA” —

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## Definition of terms

These General Terms and Conditions of Business and Delivery are abbreviated hereinafter as “GTC” or “business terms”; moreover, the following terms as used in these GTC are defined below.

APIIDA	APIIDA AG Marktstrasse 47–49 DE-64401 Gross-Bieberau
Download	Acquisition of the software by remote data transmission; as a rule, via the internet.
Third parties	Any natural person or legal entity who is not involved in a legal relationship of the parties and who is not an employee of the parties or an affiliated company; does not include vicarious agents.
Vicarious agent	Freelance employees, engaged freelance professionals, cooperating affiliated companies or processors of the parties as well as persons who are authorised in the immediate responsibility of the parties to process information.
Information	Any and all data, data inventories and other information, regardless of the media or transmission form, that refer to a person (personal data) or to the company of the parties or to affiliated companies.
Customer	Any natural person or legal entity acting in a commercial or non-commercial capacity who is involved in a legal transaction with APIIDA.
Performance	Any and all deliveries and services/products provided by APIIDA. This term includes goods (software, servers, telephone systems) and services (provision of computer networks, network storage, support and help services and technical consultation). The above examples do not constitute an exhaustive list.
Delivery	Provision of the software on a data carrier or by making it accessible for download.
Intellectual property right	Any and all industrial property rights, including in particular, but not limited to, copyrights, trademark rights or patents.
Software	Any and all computer programs created or customised by APIIDA for operation on the customer’s computers (e.g. personal computer, work station, server) or which can be executed by remote data transmission.
Affiliated companies	This term shall be understood to mean any and all affiliated companies of the parties (i.e. in which a party holds majority interest or which a party controls or which are dependent on a party in the sense of Sections 15 et seqq. AktG [Company Law]) — synonym: “group companies”. Such companies shall be deemed affiliates as long as a party holds the shares or voting rights.
Parties	The aforementioned parties: APIIDA and customer.

## 1. Scope of application

- 1.1. These Terms and Conditions of Business govern any and all performances of APIIDA which it performs for the customer; they are abbreviated as GTC below. They are a component of any and all contracts which APIIDA concludes with its customers. They govern any and all future performances regardless of whether they are explicitly and separately agreed.
- 1.2. These Terms and Conditions of Business do not govern relationships with consumers in the sense of Section 13 BGB [Civil Code]. Contractual agreements between APIIDA and the customer that do not have content coherence with the pertinent provisions of these business terms take priority; this provision does not apply if and when the provision has not been mutually agreed by the parties.
- 1.3. Contract component and update  

The GTC as most recently revised at the time of the conclusion of the contract become a component of the contract; provisions regarding entry into force and application can be found in Section 15. The updating of these Terms and Conditions of Business and Delivery is permissible. The GTC are made available to the customer on the APIIDA website. Upon request, APIIDA will send to the customer the most recently revised version of the GTC in electronic form (e.g. by email).
- 1.4. Contrary terms and conditions of business of the customer do not become a component of the contract unless APIIDA has expressly acknowledged their application in writing. The performance of services by APIIDA without objecting to any such application does not constitute acknowledgement.

## 2. Offer, conclusion of contract, performance and retention of title

- 2.1. The agreed performance is defined by the pertinent contract (or by an order, offer confirmation or a signed order form “transaction document”) between APIIDA and the customer.
- 2.2. APIIDA performs deliveries and services solely for performances that APIIDA itself has undertaken. They include development, concept, configuration and adaptation services. Performances undertaken by third parties are precluded unless APIIDA is also responsible for the performances. Regulations deviating from the above provisions may be determined in a legal contract to this effect concluded between the parties.
- 2.3. APIIDA is entitled to engage qualified companies (e.g. vicarious agents) to execute single or all components of the performance, in particular shipping and delivery services. The above provision applies also to subsequent improvement and warranty measures. Performance by vicarious agents is equivalent to our own performance.
- 2.4. Offer and award of contract  

Unless otherwise expressly stated, offers issued by APIIDA are non-binding. A performance liability does not arise until a contractual agreement has been concluded, a written confirmation has been issued or execution of the order has commenced. Written form is required for offers, awarding of contracts or similar actions.
- 2.5. APIIDA owes performance as usual in the trade. Performances of APIIDA shall be suitable for the usual use and demonstrate the quality usual for performances of the same nature. An agreed or warranted quality of

the performance exists solely if APIIDA has assured such quality; any such assurance shall not be binding unless in writing.

- 2.6. Deviations usual in the trade or deviations that must be implemented because of legal requirements are permissible and do not constitute a negative deviation from the usual possibility to use the performance; this provision also applies if the possibility to use the performance is no longer the use that was presumed at the time of the conclusion of the contract.
- 2.7. If the customer declares rescission from the agreed legal transaction before performance, it is obligated to reimburse APIIDA for any and all costs that have been incurred as of the point in time of the rescission. Such costs include creation, processing and planning costs. Any costs that have been asserted notwithstanding, APIIDA may also request conclusion of a contract.
- 2.8. Periods and deadlines for performances by APIIDA are binding solely if they have been agreed as fixed periods or dates. In the event that the shipping of goods has been agreed, delivery periods and delivery dates refer to the point in time of the handover to the shipping agent, package courier or other third parties who are engaged to make the delivery. If a change is made in the order, APIIDA is no longer bound by any previously agreed periods and deadlines; the parties are in this case required to determine new periods for the performance.

2.9. Extended retention of title

APIIDA reserves title of ownership to the performances until any and all agreed claims have been satisfied. The above provision applies even if the performance has been resold or processed further. If the performance has been reprocessed in such a manner that it cannot be returned, the customer is obligated to compensate APIIDA for the value of the performance. The compensation shall as a minimum cover the loss or damage suffered by APIIDA.

APIIDA is furthermore entitled to assert its claims in court and to terminate the legal contract without notice. In consequence, APIIDA cannot reasonably be expected to fulfil any further contracts with the customer.

### 3. Obligations of the customer

- 3.1. The customer will designate qualified personnel as appropriate contacts for APIIDA. In particular, the personnel must be capable of describing circumstances in understandable fashion on the phone and of carrying out any instructions that are given.
- 3.2. In the event of complaint of defects, written information appropriate for recognising the defect as well as report of the defect shall be provided to APIIDA. The customer will, upon request, report any malfunctions of the performance (defects) reported by telephone retroactively in writing (by email or fax). The report must describe:
  - a. The malfunction in a reproducible manner, in particular including information about ambient conditions under which the malfunction occurs;
  - b. The possible causes; and
  - c. The impact of the malfunction.

- 3.3. Upon request, the customer will support the search for the cause of the defect or malfunction to the best of its ability. Upon request from APIIDA, entrepreneurs (in the sense of Section 14 (1) BGB) are required to make the defective software accessible by remote data transfer for remedy of the defect.
- 3.4. The customer will ensure that the technical means for downloads as required by APIIDA are available. The requirements in each specific case shall be coordinated between the parties.
- 3.5. The customer is obligated to observe and comply with the non-disclosure agreements contained in Section 11. The customer shall back up its data before any further partial performances, subsequent performance attempts or update measures. APIIDA will prepare a data backup in advance solely if this has been mutually agreed.
- 3.6. Compliance with periods and deadlines for delivery or performance presumes that the customer has fulfilled its obligations in accordance with these GTC and the pertinent legal contract in good time and completely.

#### **4. Prices, price changes and payment methods**

- 4.1. The amount of the consideration is set forth in the concluded contract or the agreed transaction document. Any licence fees for copyrights that may be required shall be deemed paid with the agreed consideration unless otherwise agreed between the parties in observance of the requirement of written form.
- 4.2. The consideration is due and payable without deduction upon issue of the invoice in accordance with the contractually agreed regulations.
- 4.3. If services are performed at the customer's request on its premises or on the premises of an end user, travel expenses and allowances will be billed in accordance with presented records.
- 4.4. Any and all prices and consideration, including those incurred for the renewals of the legal contract, plus statutory value-added tax applicable on the day of the issue of the invoice, are due and payable free of charges to the account within 14 days of the issue of the invoice, unless otherwise agreed with the customer.
- 4.5. Reimbursement obligation for additional expenditures  

The customer shall pay additional consideration for performances in excess of the scope of the performance set forth in the legal contract that has been concluded. Any deviating regulations agreed in contract form have priority.
- 4.6. APIIDA is entitled to adjust prices and consideration annually at its reasonable discretion in the sense of Section 315 BGB. There is no limitation on the amount of the increase or reduction of the adjustment.
- 4.7. Offer prices

Offers for performances submitted by APIIDA are valid for 14 days; unless otherwise agreed, they do not remain effective for longer periods. Deviating agreements are not binding on the parties unless in written form as defined in Section 14.1.

#### 4.8. Default

The customer is in default of payment upon expiration of the payment deadline (cf. Section 4.4). Default interest is set at 9% p.a. above the basic interest rate; if the latter is below 0, a basic interest rate of 0 will be assumed. The above provision applies insofar as the customer does not prove that the loss or damage from the default is lower or that it is not accountable for the default. The above provision is without prejudice to APIIDA's possibility to assert more extensive legal claims as a consequence of the default.

4.9. If and when after conclusion of the contract APIIDA becomes aware of circumstances concerning the customer that significantly impair its creditworthiness or may have this effect, APIIDA is entitled to execute any outstanding performances solely against advance payment or the provision of securities.

4.10. APIIDA is entitled to assign its claims against the customer to third parties for financing purposes.

### 5. Delivery, shipment and passing of risk

5.1. The risk of the worsening or loss of the performance passes to the customer at the latest upon the handover to a third party engaged for delivery. The above provision also applies if partial performances are carried out and delivered. The risk passes to the customer at the latest as soon as it has received the performance.

5.2. The customer is in default of acceptance if and when it does not accept the goods in good time or with respect to contents at the place of performance — as agreed in the contract for the pertinent legal transaction — or postpones the agreed delivery date owing to reasons for which it is accountable.

5.3. In the event of default of acceptance, the risk described in Section 5.1 passes to the customer at the latest on the day of the agreed acceptance or on the day of the agreed delivery date.

5.4. Storage costs incurred by APIIDA after the passing of the risk amount to a maximum of 0.25% of the value of the performance for each full calendar week; APIIDA may, at its reasonable discretion in accordance with Section 315 (1) BGB, determine lower storage costs. APIIDA reserves the right to assert additional rights.

#### 5.5. Insured shipment

Shipment of the performance including insurance for theft, breakage or damage from transport, fire or water will be carried out solely if separately and expressly requested by the customer. Costs for the service are not included in the offer prices; they shall be itemised in invoices for the performances and shall be billed to the customer as costs. The customer bears the onus of proof for requesting insured delivery.

5.6. The customer shall bear the costs for returns that are not carried out owing to legal or material defects; otherwise, APIIDA shall bear the costs. The same provision applies in the case of an insured return. The insuring of a return is subject to a mutual agreement between the customer and APIIDA.

## 6. Rights of use and infringements on intellectual property rights

6.1. APIIDA retains title of ownership and industrial property rights to any and all performances and documents it has provided. APIIDA grants to the customer the rights to the performances provided in accordance with the legal contract as necessary in each case for the use of the performance. The type of transmission is irrelevant.

6.2. In the event of performances for which the company itself is not the legal originator, APIIDA will ensure that it possesses any and all rights of use necessary for its authorisation of the customer to use the performance.

6.3. Third-party rights

APIIDA will indemnify and hold harmless the customer from and against any and all claims asserted by third parties based on an infringement of industrial property rights in the performance provided by APIIDA. APIIDA is accountable for the liability and lawfulness of the performances it provides. In the event that the customer is the subject of third-party claims, APIIDA is liable to the customer as follows:

- a. APIIDA will at its expense obtain from the third party a right to use of the software in accordance with the contract on behalf of the customer; should this not be possible at economically reasonable terms and conditions,
- b. APIIDA will at its option modify the performance or documents in such a fashion that the infringement on the intellectual property right is remedied or will provide a workaround solution that does not infringe on the intellectual property right. Alternatively:
- c. Accept return of the performance and refund the consideration paid to it by the customer.

The aforementioned obligations exist solely on the condition that the customer notifies APIIDA without delay of the existence of third-party rights; this provision does not apply if the customer was not aware of this circumstance previously.

6.4. A claim by the customer based on the infringement of intellectual property rights is precluded if and when the infringement on the intellectual property rights results from customer's special instructions or from a modification of the performance or its use in combination with performances that have not been provided by APIIDA.

6.5. The statements of obligations of APIIDA relating to infringements on intellectual property rights regulated in the above provisions are exhaustive. Subject to the provisions in Section 8, any more extensive liability is precluded. The above provision is without prejudice to the customer's right to rescind the contract.

## 7. Warranty

7.1. APIIDA warrants that the performances are in compliance with the specifications set forth in the offer. APIIDA owes performance as usual in the trade. Acceptance cannot be refused because of minor defects.

7.2. APIIDA shall provide, at its option, subsequent improvement, new delivery or new performance for defective performances; this provision also applies in the case of Section 6.3. Minor deviations or impairments as well as software errors that cannot be reproduced do not constitute defects.

- 7.3. The customer shall review any and all performances, partial and interim results and subsequent improvements performed for correction in the sense of Section 377 HGB. Complaints of obvious defects shall be submitted without delay; otherwise, the defect shall be deemed approved. In the event of hidden defects, the complaint of defects must be received at APIIDA no later than 12 months (1 year) after acceptance.
- 7.4. Warranty claims are subject to a limitation period of 12 months (1 year) after conclusion of the performance or passing of risk (Section 5.1). Claims based on intentional, fraudulent or grossly negligent breaches of obligation on the part of APIIDA or its vicarious agents are excepted from the above provisions.
- 7.5. The customer shall grant the opportunity to carry out defect remedy measures (subsequent performance) within a reasonable time period and shall support any such measures to the best of its ability. If the customer does not fulfil these obligations despite a written request, APIIDA is to this extent released from the obligation to carry out defect remedy measures.
- 7.6. APIIDA is entitled to offer to the customer a workaround solution as subsequent improvement. If the workaround solution results in the possibility to use the performance as intended, the workaround solution shall be deemed the equivalent of the remedy of the defect.
- 7.7. If and when subsequent improvement, substitute delivery or substitute performance fails twice within a reasonable period, the customer is entitled to rescind the contract, to remedy the defect itself or to request a reasonable reduction in the agreed consideration.
- 7.8. Further warranty claims of the customer against APIIDA or its vicarious agents are precluded; this provision is without prejudice to regulations regarding liability.
- 7.9. APIIDA is entitled to request reasonable compensation for expenditures, subsequent improvements or substitute deliveries insofar as it is determined that there were no defects in the performance (bogus defect). The above provision also applies in the event that the customer has itself modified the software or caused it to be modified by third parties and the defect is a consequence of the modification. The compensation shall as a minimum cover the costs incurred by APIIDA.

## **8. Maintenance and support services**

Maintenance and support services are offered for the APIIDA products. Customer claims pursuant to warranty law are not components of the maintenance and support services. Response times and the critical levels of malfunctions for maintenance and support services are defined in the maintenance and support agreement of APIIDA. This agreement is provided to the customer on the APIIDA website.

## **9. Liability**

- 9.1. APIIDA is liable to the customer for its own negligence in accordance with the following regulations.
- 9.2. APIIDA is liable for any loss or damage caused by intentional or grossly negligent actions, for warranted properties and for injury to life, body or health. These provisions are without prejudice to the provisions of the Product Liability Act.



- 9.3. APIIDA is liable for slight negligence solely in the event of the breach of a major contractual obligation, i.e. an obligation which must be fulfilled if the orderly performance of the contract is to be possible at all and which the other party may normally expect to be fulfilled, as well as for loss or damage leading to injury to life, body or health. The liability for slight negligence is limited in the aggregate to the amount of the foreseeable loss or damage; as a maximum, however, this liability is limited to €2,500 per incident of damage or loss and to a total of €10,000 per calendar year.

The limitation of liability for slight negligence applies to any and all damage compensation claims, regardless of their legal basis, in particular with respect as well to pre-contract or subsidiary contract obligations.

- 9.4. If and when APIIDA is liable for failure to comply with agreed periods or deadlines, the customer may — insofar as it can credibly demonstrate that it has suffered loss or damage because of the delay — request lump-sum default compensation for each full week of the delay in the amount of 1% of the consideration (Section 4) for the deliveries or services affected by the delay. The lump-sum default compensation is limited to 5%. In all cases of delayed performances or services, any more extensive compensation claims, including those after the expiration of a subsequent period set for APIIDA, are precluded. The above provision does not apply in cases of wilful intent or gross negligence. The above provisions are without prejudice to the customer's right to rescind the contract after fruitless expiration of a subsequent period set for APIIDA.
- 9.5. Indirect damage or loss representing consequential damage or loss caused by APIIDA can be compensated solely to the extent that any such damage or loss can typically be expected if the performance is used as intended.
- 9.6. Customer's damage compensation claims against APIIDA based on slight negligence are subject to a limitation period of 12 months as of the occurrence of the claim. The above provision does not apply to claims based on actions in tort, wilful intent or gross negligence.
- 9.7. If and when APIIDA advises the customer free of charge or provides to it information that is not a part of the scope of the contractually agreed performance it owes, any and all liability claims based on such actions are precluded.
- 9.8. Insofar as it is discernible that APIIDA could not have avoided a causal occurrence of loss or damage even by exercising the greatest care (force majeure), APIIDA is not obligated to provide damage compensation.
- 9.9. The above provisions also apply in favour of APIIDA's governing bodies, legal representatives, employees and other vicarious agents. The above provisions are without prejudice to the legal regulations concerning the beginning and duration of the limitation period.

## 10. Force majeure

- 10.1. APIIDA is liable to the customer for neither damage nor loss in the case of force majeure; the same provision applies in the event that the performance is impossible.

- 10.2. APIIDA will notify the customer in writing of any delay or non-fulfilment resulting from force majeure without delay when the occurrence of force majeure becomes known and simultaneously state the cause. The fulfilment of the contract will be suspended for the duration and in the scope of the occurrence of force majeure.
- 10.3. Either of the parties may request from the other party an adjustment of the contract, in particular with respect to deliveries, services, prices and periods. If the parties should not reach a mutual agreement with 2 (two) weeks, either of the parties may rescind the contract immediately by submitting notification in text form (fax or letter).
- 10.4. Insofar as the occurrence of force majeure significantly alters the commercial significance or the content of the delivery or service or significantly impacts APIIDA's operation, the contract will be reasonably modified insofar as this can be done in good faith. APIIDA is entitled to rescind the contract if and when the contract is no longer economically justifiable for it. If and when APIIDA wishes to exercise this rescission right, it shall notify the customer without delay upon becoming aware of the scope of the event, even if an extension of the underlying contract was initially agreed with the customer.

## 11. Confidentiality

- 11.1. The parties will treat material affairs of the other party that are not generally known in confidence. Information and other documentation provided to each other by the parties may be used solely for the contractually intended purpose; any more extensive reproduction or the passing to third parties is prohibited. The non-disclosure obligation will survive the termination of the contract for two years.
- 11.2. The parties are obligated to comply with relevant data protection laws, standards and regulations. Insofar as personal data are processed, the parties will conclude a processing agreement that defines the related rights and obligations of the parties.
- 11.3. Upon termination (completion) of the legal transaction, the parties will return to each other any information and other documentation regarding the other party that they have received pursuant to the legal transaction.
- 11.4. APIIDA is entitled to archive information and other documentation insofar as this is required or expedient as evidence of performance of the order in accordance with the contract. Any more extensive retention rights of the parties are precluded.

## 12. Consent to data processing

- 12.1. Customer's data are used for the performance of services (performance of the legal transaction). Such data include any and all personal data required for the legal transaction insofar as the data are required for setting forth the contents of or modifying the legal transaction. Any more extensive use, e.g. for marketing purposes, market research or preparation of offers, will not take place and is subject to the customer's express consent.
- 12.2. APIIDA is entitled to process and use any and all data (name, address, email address, phone number, fax number and bank information or credit card number) about the customer that are required and lawful for the performance of the legal transaction.

### 12.3. Rights of natural persons (data subjects)

With regard to any personal data relating to natural persons you have disclosed to us, you have the right to obtain information about the data we possess, to have any such data rectified or erased or to request restriction of the processing of these data. For more information, see the rights of data subjects in Articles 7 (3), 12, 15, 16–19, 20, 21, 22 GDPR. Insofar as you wish to exercise your rights, you may do so by providing proof of your identity and sending an electronic text message to the email address [support@apiida.com](mailto:support@apiida.com).

12.4. APIIDA is entitled to transfer data, including personal data, insofar as expedient, to vicarious agents for the satisfaction of contractual obligations. The customer may obtain information from APIIDA regarding what data are transferred to what companies, whereby the purpose of the data transfer shall be stated.

## 13. Termination and rescission

13.1. Unless otherwise agreed between APIIDA and the customer for each specific legal transaction, the following means of terminating the contract shall be used.

### 13.2. Termination of a continuing obligation

Notice period for ordinary termination is 4 weeks. In the event that a definite term has been set for the legal transaction, ordinary termination is not possible during the final three months of the term. In the event that no notice of termination is submitted in good time, the legal transaction will automatically be renewed for an additional 12 months.

13.3. The ordinary termination of a legal transaction that is not a continuing obligation is precluded.

13.4. The above provisions are without prejudice to the right of either party to termination without notice of legal agreements between the customer and APIIDA for good cause in the sense of Section 314 BGB. The following grounds in particular represent good cause for APIIDA:

- a. Section 2.9

The following grounds in particular represent good cause for the customer:

- a. Section 6.5
- b. Section 9.4

13.5. No notice of termination of any kind will be binding on the parties unless in writing in the sense of Section 14.1.

## 14. Written form, venue, place of performance and proper law

14.1. Deviating or supplementary provisions as well as subsidiary agreements or amendments will not be binding on the parties unless in writing in the sense of Section 127 (1), (2) BGB in conjunction with Section 126 (1) BGB. The above provision applies as well to any agreement to waive the requirement of written form. In deviation from the requirement of written form pursuant to the first sentence, electronic form in the sense of Section 126b BGB is sufficient for an offer.

- 14.2. Venue for any and all disputes arising from or in relation to this agreement is Darmstadt. Furthermore, APIIDA is entitled to file suit at the competent court of the customer's venue insofar as this is necessary.
- 14.3. Place of performance for any and all agreed performances is the head office of APIIDA, i.e. Gross-Bieberau, unless otherwise agreed in the contract for the specific legal contract.
- 14.4. Any pertinent regulations relating to conflict of laws notwithstanding, this licence agreement is governed solely and exclusively by German law, precluding application of the "United Nations Convention on the International Sale of Goods" (CISG). Both APIIDA and the customer agree to the application of German law as pertinent for the specific legal contract.

## 15. Entry into force and validity

- 15.1. These GTC enter into effect on 01/01/2019.
- 15.2. A separate signature is not required to establish the validity of the GTC. If and when these GTC are attached to a contract between the customer and APIIDA, they shall be deemed acknowledged and understood in this form and accepted as a component of the legal transaction.

## 16. Severability

The application of Section 139 BGB regarding general invalidity of the contract in the event of partial invalidity of specific contents of the contract is precluded. Should specific contents of the contract be or become ineffective or invalid, the validity of the remaining provisions will not be affected. The parties will agree to permissible or effective contract content in lieu of the illegal or ineffective contract content that comes closest to the intent of the parties concluding the contract. The above provision applies *mutatis mutandis* in the event of an omission in the contract.

## 17. Assignability, offset, retention right and export

- 17.1. The customer may assign the rights and obligations pursuant to this contract solely with the prior written consent of APIIDA.
- 17.2. The customer may offset counterclaims against claims of APIIDA, retain payments or assert any other retention right to documents or similar materials solely if and when the customer's counterclaims are undisputed or have been finally adjudicated.
- 17.3. It is expressly pointed out here that the provided performance may under certain circumstances be subject to approval in accordance with German export laws or to export restrictions of Germany or the European Union or import restrictions of other countries. The relevant legal regulations must be observed for export or import.

17.4. The parties are permitted to agree to provisions that deviate from the terms and conditions of business and delivery manifested here.