

# GENERAL TERMS AND CONDITIONS YAVEON AG FOR LEGAL TRANSACTIONS WITH MERCHANTS

VERSION AS OF: NOVEMBER 2019

## 1. GENERAL PROVISIONS

1. These general terms and business apply to all supply relationships of YAVEON AG as contractor and supplier (hereinafter referred to as "YAVEON") and the client/buyer of software as well as customized adjustments (hereinafter referred to as "client").
2. The general terms and conditions apply exclusively to the commercial sector. YAVEON does not offer its services to consumers or business partners for whom the underlying transactions is not carried out in execution of their commercial or self-employed professional activity. The conclusion of the contract is exclusively effected based on the general terms and conditions of YAVEON AG. Deviating or supplementary conditions of the contractual partner/client shall not become the subject matter of the contract even if they are not expressly contradicted by YAVEON.
3. To the extent that no regulation has been stipulated in these terms and conditions, the statutory regulations shall apply instead of the general terms and conditions of the client.
4. Provisions of an individually agreed contract between the parties and its annexes shall have priority over these general terms and conditions. However, these general terms and conditions shall apply additionally.

## 2. OFFER/ORDER CONFIRMATION

1. All offers of YAVEON are without engagement and subject to change and error.
2. The conclusion of the contract only comes into effect with the written order confirmation by YAVEON, the signing of the order, however at the latest with the acceptance of the delivery and/or installation by the client.
3. Purchase orders without previous offer pursuant to clause 2 no. 1 shall only become binding for YAVEON if YAVEON confirms the order. This shall apply correspondingly if the client modifies an offer submitted by YAVEON.

## 3. EMPLOYEES OF YAVEON/SUBCONTRACTORS

1. All works will be performed on-site at the client's only in case of necessity.
2. Services not performed by employees of YAVEON at the place of business of YAVEON will be charged separately on a time and material basis according to travel times, travel costs, out-of-pocket expenses and accommodation costs, if applicable.
3. If employees of YAVEON or a vicarious agent are deployed at the operating sites of the client, the sole right of instruction and direction shall remain completely with YAVEON.
4. The start and end of the normal working time depends on the respectively valid working time regulation of YAVEON. YAVEON shall be entitled to make use of third parties when performing its contractual obligations.
5. For the duration of this contract as well as for a period of one year after termination of this contract, the parties undertake not to offer any direct or indirect employment in their business to employees or contractors of the respective other party or to entice them away in any other way, also with the aid of third persons., who were directly or indirectly entrusted with the performance of the contractual services.
6. The client undertakes to support YAVEON in the realization of the business success in the required scope and to create the prerequisites required for the proper execution of the order in its sphere of business. Insofar, the client will make available to YAVEON workplaces and work equipment free of charge upon request of YAVEON. The client undertakes to oblige its employees to co-operate with YAVEON.
7. Upon written request of YAVEON, the client has to confirm the completeness and correctness of the documentation and information presented to it both in written and oral form.

## 4. PRICES/TERMS OF PAYMENT

1. All services will on principle be charged on a time and material basis. The type and duration of the activity of the employee will be noted in a list which will be presented to the client upon handover of the invoices.
2. Effort estimations presented by YAVEON are non-binding effort estimations. If the actual efforts/costs deviate from the expense estimate made by more than 10%, YAVEON will inform the client about this situation immediately.
3. The remuneration of YAVEON depends on the attached price list governing the hourly rate as well as the ancillary project costs. The service price list ceases to be valid upon completion of the respective order.
4. To the extent that a fixed price is agreed for individual services or the total order and it turns out subsequently that upon determination of the price underlying estimates of YAVEON came out to low due to wrong assumptions beyond the control of YAVEON, YAVEON may demand a reasonable adjustment of the remuneration pursuant to the principles of interference with the basis of the transaction (§ 313 BGB [German

Civil Code]).

5. Payments for services performed by YAVEON for the client are due for payment immediately after invoicing, this shall also apply if the services performed by YAVEON extends to several months.
6. The client shall not be entitled to retain payments. The right of the client to refuse to make payments due to missing or defective counter performance remains unaffected. The client only may offset payments against claims that are legally ascertained or acknowledged by YAVEON. The client may assign to third parties claims under this contract only with the previous written consent of YAVEON.
7. After expiry of 30 days after receipt of an invoice or an equivalent request for payment, the client shall be in default if it does not settle the due payments. YAVEON may cause the default even prior to sending a warning served after maturity.
8. YAVEON is authorized without restriction to claim compensation for damage occurred caused by default (especially interests) from the client.
9. All prices are net prices and will be invoiced plus the statutory valid VAT (currently 19%).

## 5. RESERVATION OF TITLE AND LICENSE

1. All deliveries of goods and software as well as other work results are subject to a reservation of title. The parties agree that the client only completely acquires the title in the deliveries and work results supplied when the client has settled all claims relating to the respective delivery. The right of use regarding the software only becomes irrevocable upon complete payment of the underlying license fee by the client (license reservation). If the client is in default with more than 10% of the total license costs, YAVEON may revoke the right of use granted.
2. YAVEON is entitled to secure the reservation of title with safety measures such as retention of passwords or blocking of certain contents.
3. The pledging of the supplied software shall not be admissible unless YAVEON gave its previous consent in writing.

## 6. PASSING AND ACCEPTANCE OF THE RISK

1. Upon the surrender of the total service or independent parts of the total service, the risk of accidental loss shall pass to the client. Prior to the time of passing of the risk, the client shall ensure the securing of the total service handed over or parts thereof by technical and organizational means.
2. After each delivery, YAVEON may request a written declaration that the delivery/service is complete, correct and free from defects. This declaration is to be made within 7 days after delivery.
3. The declaration also shall be deemed as made if the client has used the subject matters of the contract for more than 6 weeks since handover without notification of defects or expresses its approval in another way. The duties pursuant to § 377 HGB [German Commercial Code] remain unaffected from that.

## 7. ACCEPTANCE

1. To the extent that the services of YAVEON are accessible for acceptance, they are to be accepted by the client. Within the framework of the acceptance, the services are examined by both contractual parties jointly for compliance with the contract. A service is in accordance with the contract if it is free from material defects and defects of title.
2. The acceptance is to be declared in writing.
3. The client is entitled to refuse the acceptance or discontinue the acceptance if critical and/or material defects in performance are given. YAVEON will remove the critical and/or material defects in performance within a reasonable period of time and will provide those services not free from defects again for acceptance.
4. Defects of class a. are critical defects in performance and impede the acceptance. These are errors excluding the use of the contractual services or parts thereof.
5. Errors of class b. are material defects in performance which do, however, not necessarily impede the acceptance of the service as being in accordance with the contract. The errors of class b. significantly restrict the use of the contractual service so that the service can be used only with significant restriction or workarounds. In this case, YAVEON will define a workaround that is valid until removal of the defect. If a functioning workaround is provided successfully, the client shall not be entitled to refuse the acceptance of the service as being in accordance with the contract if the defect will be removed by YAVEON within 10 working days.
6. Errors of class c. do not prevent the acceptance of the service as being in accordance with the contract. Errors of class c. are defects that impair the contractual service at the client only insignificantly.
7. The errors occurred will be allocated to the error classes a. – c. jointly by the Parties. After declaration of the readiness for acceptance in the sense that the errors of class a. and b. have been removed, the acceptance procedure is to be repeated.
8. The client shall not be entitled to refuse acceptance of the services performed by YAVEON due to defects in the development work carried out by the client's staff independently.
9. YAVEON shall be entitled also to notify the readiness for acceptance of partial services and to hand them over. If all partial services relating to the acceptance have been accepted, the total service shall be deemed as accepted.

## 8. CLAIMS DUE TO DEFECTS

1. What is deemed as contractually agreed condition is the description of services pursuant to the functional specification or certificate of performance. The supplied services shall be free from material defects if complying with the contractually agreed condition as of the time of transfer. An insignificant reduction of the value or the suitability of the services shall not constitute a defect. Thus, only errors of class a. and b. are considered as defects according to the mutual understanding of both parties.
2. Defects of individual services only entitle the client to assert claims due to defects regarding the individual service to be complained about specifically and do not affect the rest of the contractual relationship. The claims due to defects shall not apply if the client itself changes the software or parts thereof or has it changed by third parties without consent of YAVEON. This shall not apply if the client furnishes proof that the defects in question were not caused by a change of the service carried out by itself or a third party.
3. A defect at fault of YAVEON shall also not be given if a functioning part of the service does not meet the expectations of the client due to the reason that the functionalities documented in the specification were stated imprecisely, incompletely or not at all.
4. Within the framework of what is reasonable, the client shall take all measures required for the determination and localization as well as the documentation of the defect. Insofar, the client shall provide any and all information available in this respect to YAVEON and support YAVEON in the removal of the defect. The client is responsible that the documents and information made available are consistent with the actual situations. Incorrect or incomplete statements entitle YAVEON to demand from the client the additional expense caused by the client.
5. Defects are to be notified by the client to YAVEON immediately after the defect becomes known in form of a detailed written description of the defect. In case of a failure or delay in issuing a notification of defects, the claims for removal of the defect of the client shall be restricted to the actual removal of the defect itself. YAVEON shall not be at fault for any damage incurred due to the delayed notification of defects.
6. To the extent that a defect is present, YAVEON shall render supplementary performance by removing the defect or by delivering a new item at its discretion. The rectification of defects of software services is affected at choice of YAVEON by letting a new program version or by YAVEON showing workarounds that neutralize the effects of the defect. To the extent that a final removal of the defect is not possible, YAVEON will make available to the client an equivalent interim solution in order to work around the defect if possible.
7. If the removal of the defect only can be achieved by a new program version, this version is to be taken over by the client even if this results in a reasonable adjustment expense for the client. If the rectification of defects by YAVEON finally fails after 3 attempts despite a reasonable period of grace set in writing by the client, the client shall be entitled to reduce the remuneration reasonably. In the above-mentioned case, the client only shall be entitled to a right of withdrawal if the system shows defects of class a. or b. within the meaning of this contract and the defects cannot be removed neither by YAVEON nor by third parties and the client cannot reasonably be expected to continue to abide by the contract, also considering a weighing-up of interests and especially also taking into account the significance of the defect. Claims for damages are subject to clause 9. Other claims for defects are excluded (e.g. reimbursement of expenditure for removal of defects by third parties, new delivery, contractual costs).
8. If it is determined that a defect is not given despite notification by the client, YAVEON shall be entitled to charge its expenses in connection with that to the client at the agreed hourly rates.
9. The claims of the client due to defects shall become time-barred in 12 months after acceptance to the extent that the service can be accessed for acceptance. Otherwise, the period of time starts upon delivery.

## 9. LIABILITY/FORCE MAJEURE/DATA LOSS

1. YAVEON shall be liable without restriction for damage caused by YAVEON in intentional or grossly negligent manner.
2. The liability of YAVEON in case of guarantee of quality pursuant to the product liability law as well as for damage to persons, i.e. injury of life, body or health or freedom shall be unlimited. This covers also an unlimited liability for fraudulently concealed defects.
3. In case of slightly negligent violation of material contractual obligations (cardinal duties), the liability for damages of YAVEON shall be unlimited. Material contractual obligation are duties the fulfilment whereof is subject to the due execution of a contract and the observance of which the client may rely on regularly. In all other respects, the liability of YAVEON for damage caused in slightly negligent manner shall be restricted to a total amount of EUR 1 million. Clause 9 no. 2 of this contract shall not be affected by that.
4. The liability for consequential and indirect damage such as lost profit, damage due to downtime or lost savings shall be excluded.
5. For the punctual and correct supply of data and products of third parties, YAVEON depends on its sub-suppliers. Insofar, YAVEON only is responsible for the safeguarding of own duties in order to procure data or products of third parties.
6. YAVEON shall only be liable for the recovery of data if the client has ensured that the data are held ready in machine-readable form and can be recovered at reasonable expense. The liability of YAVEON is restricted to the recovery expense unless the data losses were caused by YAVEON intentionally or in grossly negligent manner.
7. The above regulations apply correspondingly to the personal liability of the legal representatives or persons made use of by YAVEON in performance of its liabilities.
8. A shifting of the statutory regulation regarding the burden of proof shall not be linked with the above regulations.
9. All claims of the client resulting from the present contractual relationship, especially claims for damages or reimbursement of expenses, shall become time-barred in 12 months after the claim arising. In case of damage to life, body, health or freedom of a person, in case of intentional actions or if YAVEON fraudulently concealed defects as well as in case of claims under the product liability law, the statutory

limitation period shall apply without restriction.

## 10. SECURITY AND CUSTODY

1. The parties undertake to treat confidentially any and all information and documents becoming known upon execution of the contract by the respective other contractual partner unless such information and documents are generally known. This duty also continues to exist after execution of this contract. The parties keep in custody and protect such information and documents in such manner so that access and misuse by third parties can be excluded.
2. The parties comply with the stipulations under the data protection law, in particular, they will only deploy such persons in performance of its obligations who are obliged to maintain secrecy of the data pursuant to § 5 sentence 2 BDSG [Federal Data Protection Act]. To the extent that YAVEON processes personal data when executing this contract, YAVEON will become active on behalf of the client within the meaning of § 11 BDSG.
3. For the employees of the client, this shall also apply in regard to the legal relations regarding the software and the authorizations of the client pursuant to no. 11 of these general terms and conditions.
4. The client agrees that YAVEON processes the data of the client required for contract fulfilment, taking into account the stipulations under the data protection law.

## 11. COPYRIGHT AND RIGHT OF USE

1. The services performed and software supplied by YAVEON is protected by copyright. YAVEON is entitled to all rights derived from the copyright. To the extent that third parties are entitled to rights, YAVEON shall have the corresponding exploitation rights.
2. To the extent that YAVEON licenses software of Microsoft or other software manufacturers or software adjustments this shall take place exclusively based on the respective licensing terms of the rights-holders attached to these general terms and conditions.
3. The client undertakes to safeguard the business secrets and materials protected under copyright contained in the software. The copyright in the software of YAVEON especially covers logos, organization and structure of the program files, appearance, documentation and especially the program code. The client is forbidden any copying, use, forwarding or reproduction of the content of the software supplied not expressly approved.
4. Without previous written consent of YAVEON, the client shall not be allowed to decompile, reassemble or in any other way transform the software into a generally readable form or to change, adjust, translate, rent out, bestow, lease the software or parts thereof. Upon complete payment of the claims of YAVEON, the client acquires the single, non- exclusive, timely unlimited right to use the contractual software in the contractually agreed scope for own purposes. In addition, the regulations of §§ 69 et seq. UrhG [Copyright Act] to the effect of acquisition of a permanent one-off license without time limit shall apply.
5. Any commercial exploitation of the software by the client in excess thereof shall be excluded.
6. For the purpose of preparation of required back-up copies, the client may copy the software. The client shall be entitled to load and use the software in the main memory and the hard drives of the computer workplaces in the type and number stipulated in the contract.
7. The client is not allowed to use the software within the framework of an Application Service Providing (ASP) or for operation of a computing center unless the previous written consent of YAVEON.
8. In case of revocation of the rights of use, the client must hand over the original software as well as all copies and to delete possibly stored parts of the software. For the period of time between revocation of the right of use and the complete removal from the systems of the client, YAVEON shall be entitled to the usually owed remuneration for the period of use.

## 12. CHANGE REQUEST PROCEDURE AND TIMES OF DELIVERY

1. Agreements or information regarding the time of performance and/or delivery shall only be binding for YAVEON if they are made in written form.
2. All reminders and settings of periods of time by the client must be made in writing in order to be effective. Periods of grace must be reasonable and must not be shorter than 5 working days.
3. The delivery is subject to supply to YAVEON itself. Partial deliveries by YAVEON shall be admissible if the supplied service parts can be used isolated and reasonably. Possible time limits for performance or delivery shall be extended correspondingly by the time in which YAVEON waits for information or contribution of the client. The same applies in case that YAVEON is prevented from proper execution of the contract due to circumstances for which neither YAVEON nor any vicarious agent is responsible. Such circumstances shall especially be given in case of strikes or lockouts due to industrial action and the occurrence of further unforeseeable impediments for YAVEON which are beyond the sphere of risk and influence of YAVEON. The start and end as well as the type of the impediment will be notified by YAVEON to the client immediately.
4. YAVEON shall not be responsible for agreed dates if they cannot be adhered to due to change requests of the client that were not part of the original order. Reasonable changes of the requirements of the client are to be implemented by YAVEON if this can reasonably be expected from YAVEON with regard to expense and time schedule. To the extent that the realization of a change request of the client has effects on the contractual terms, YAVEON may claim an adjustment of the contractual terms, especially an increase of the remuneration

and/or also the postponement of deadlines.

5. Agreements or statements regarding the time of performance and delivery shall only be binding if they are effected in writing. All reminders and settings of periods of time of the client also must be made in writing. Periods of grace have to be reasonable.

### 13. ACCESS TO THE SOURCE CODE

1. The business-process-logic of the software Microsoft Dynamics as well as its adjustments and extensions are handed over to the client in the source code. The source code is not the subject of the transfer of rights. Access to the source code is only possible with a separate development license of the manufacturer which the client may purchase separately.
2. A documentation of the source code is not a component of the scope of delivery and is to be ordered separately by the client.

### 14. RIGHTS OF THIRD PARTIES

1. YAVEON provides the services performed by it free from rights of third parties that restrict or exclude the use by the client pursuant to the purpose of the contract.
2. To the extent that third parties assert industrial property rights against the client, the client must inform YAVEON thereof in writing. YAVEON may at its own choice defend against or satisfy any claim or exchange the service in question by an equivalent service complying with the contractual provisions if this is reasonable for the client.

### 15. DISSOLUTION OF THE CONTRACT

1. A termination for good cause must be threatened in writing in advance stating the reason for termination and setting a reasonable period for removing the reason for termination. Important reasons for a termination include among others:  
Default in payment for more than three months; violation of the responsibilities incumbent on the client, especially the contractual duties to co-operate; if bankruptcy proceedings are opened against the client or the opening of such proceedings is rejected due to lack of assets.
2. Each termination must be made in writing in order to be effective. The text form without signature shall not be enough.
3. In case of termination for good cause by the client, YAVEON shall be entitled to a part of the remuneration corresponding to the services performed. If the important reason entitling the client to termination is at YAVEON' fault, YAVEON only shall receive the remuneration if the client can use the service previously performed.
4. Upon termination of the contractual relationship, the client shall be obliged to return all subject matters of the contract as well as the documentation and other documents submitted. The return also includes the complete deletion and destruction of all copies available. YAVEON may renounce the return and claim the deletion of the program as well as the destruction of the documentation.

### 16. FINAL PROVISIONS

1. If a provision of the concluded contract or these general terms and conditions is deemed to be or becomes invalid or contains a gap, this shall not affect the legal effectiveness of the remaining provisions. In this case, the parties undertake to agree on a legally effective provision that is as close as possible to the economic purpose of the invalid clause.
2. Collateral agreements and changes of this contract must be made in writing. This also applies to the waiver of the written form requirement. The written form is complied with by a reconfirmed email.
3. Place of performance is Würzburg.
4. Exclusively the laws of the Federal Republic of Germany apply excluding the German international private law, especially its conflict of law provisions and the UN Sales Convention (CISG). To the legally admissible extent and if the client is a full merchant or equivalent, the exclusive place of jurisdiction for all disputes arising under this agreement shall be Würzburg.
5. All previous general terms and conditions herewith cease to be valid.
6. In cases of doubt, the German text of these terms and conditions shall take precedence over a translation of these terms and conditions in another language.