anexia

GENERAL TERMS AND CONDITIONS
INDIVIDUAL SOFTWARE DEVELOPMENT
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1. General Information and Validity of the General Terms and Conditions

1.1   Anexia Digital Engineering GmbH (hereinafter: "Anexia") provides IT services in its own name and on its own account.

1.2.   The following General Terms and Conditions apply to all paid and unpaid business relationships with Anexia in the field of individual software development. By the conclusion of the transaction, these General Terms and Conditions are unconditionally accepted and the business partner of Anexia simultaneously waives the applicability of any of their potentially differing General Terms and Conditions. Deviating, conflicting or supplementary terms and conditions will not become part of the contract, even if known, unless their validity is expressly agreed in writing. The implied agreement to terms and conditions contrary to these General Terms and Conditions is mutually excluded, even in the case of an ongoing business relationship.

1.3.   These General Terms and Conditions also apply to the entire cooperation with the business partner without requiring further agreement for their inclusion, unless otherwise agreed in writing.

1.4.   Even in the event of termination, the agreements on data protection, confidentiality and the prohibition of exploitation will continue to apply.

2. Services

2.1.   The subject of an order may in particular be:
- Development of requirement concepts, global and detailed analyses
- Creation of individual programmes and programme components
- Acquisition of use rights permissions
- Involvement in commissioning (conversion support)
- Telephone consultation
- Programme maintenance
- Other services

3. Conclusion of Contract

3.1.   Unless more specific agreements have been made in the individual contract, the contracts with Anexia are concluded as follows: If the Client wishes to provide Anexia with a **single order** commission, he will be required – possibly in collaboration with Anexia – to create an **order description** in accordance with § 2 of the framework agreement and to send it to Anexia. The order description or the respective individual orders from the Client must be sent to Anexia in writing, by email or through the ticket system.

3.2.   Anexia will send an offer to the Client on this basis – possibly after prior correspondence or a cost estimate – in the form of an individual order, which the Client must then confirm in writing.

3.3.   Anexia will execute the order according to the respective specifications after the individual order has been signed by the Client and Anexia. Anexia is professionally bound exclusively by any instructions given by the Client (not by third parties).

3.4.   Anexia reserves the right not to accept orders, with such a declaration to be made within 14 days of receipt of the written order confirmation.

3.5. The Client and Anexia have agreed in advance on the methods and standards to be applied within the framework of individual contracts.

3.6. The execution of the order by Anexia employees will be carried out exclusively at Anexia company locations. Excepted from this are coordination meetings or workshops.

3.7. The preparation of individual requirement concepts, global and detailed analyses or programmes is carried out according to the nature and scope of the binding information, documents and tools provided in full by the Client. This also includes practical test data and testing opportunities in a sufficient extent, which the Client provides in a timely manner, during normal working hours and at their own expense.

3.8. The Client must provide Anexia with all documents required for the fulfilment of the contract before the conclusion of the contract.

3.9. Any cost estimates previously transmitted by Anexia are non-binding until the conclusion of the contract.

4. Change and Feature Requests

The parties may, after acceptance of the individual order, agree in writing to changes or extensions of the agreed scope and content of services in accordance with the following provisions:

4.1. A separate individual order is required for change or feature requests. The implementation effort is estimated by Anexia and must be confirmed in writing by the Client. Commissioned change or feature requests and/or the necessary effort estimates for these have a corresponding impact on the project schedule, which must be revised.

4.2. Anexia will then, within a period to be agreed between the parties, submit to the Client a change or extension offer based on the Client's information in the form of an individual contract for free decision within the validity period specified in the offer. Anexia reserves the right to refuse to submit an offer in individual cases.

4.3. The work on the programme parts affected by the change request will be suspended until a decision on the individual order (for change or feature requests) is made, unless otherwise agreed in writing.

4.4. If the Client does not accept the changed individual order within the respective offer binding period, the previously agreed scope of services and conditions will continue to apply without change.

4.5. Anexia reserves the right to charge for expenses related to assessments and any associated conceptual work.

5. Delivery dates

5.1. Anexia will endeavour, but is not required, to adhere as closely as possible to the agreed completion dates.

5.2. The target completion dates can only be met if the Client provides all necessary work and documents in full, particularly the order description accepted by it, by the deadlines specified by Anexia and discharges their obligation to cooperate to the required extent.

5.3. For orders that include multiple units or programmes, Anexia is entitled to make partial deliveries or issue partial invoices.

5.4. Force majeure, labour disputes, natural disasters and transportation bans, as well as other circumstances beyond the contractor's control, will release Anexia from the delivery obligation.

5.5. If the delivery of software for test operation is agreed, the Client will diligently test the software and report all identifiable defects to Anexia. If the Client is already working in live operation on the system provided for testing, the responsibility for securing the live data rests with the Client.

6. Acceptance

6.1 For the development of requirement concepts, global and detailed analyses, involvement in commissioning (conversion support), telephone consultation, programme maintenance or other services are considered accepted on the undisputed declaration of completion by Anexia.
In any case, acceptance will be deemed to have occurred through payment by the Client or undisputed use of the service or its results.

For individual software, the following also applies:

6.2. **Acceptance** means a successfully passed **functional test** on the points defined in the order description and/or in all individual orders.

6.3. The functional test is considered successfully passed if the software objectively discharges the contractually agreed functional scope in all essential or critical points.

6.4. A mutually defined period is to be agreed for the functional test. The Client otherwise has the opportunity to test the developed software and provide complete feedback to Anexia during a period of 14 calendar days (test and feedback phase) at the end of the project or on completion of the development work (this point in time is defined by a declaration of completion from Anexia in case of doubt). Should the functional testing or the Client's feedback result in rework, this must also be completed within a mutually agreed time frame, otherwise within a period appropriate to the scope. If no agreement can be reached regarding the testing period or no response is received from the Client, the functional test will be deemed successfully completed after a maximum of 4 weeks.

6.5. After successfully completing the functional test of the overall or partial results, the Client must immediately declare the acceptance of the software created by Anexia in writing.

6.6. Defects that occur in existing service components which have therefore not been revised or developed under the individual order including the service description (e.g. existing software or programme components, etc.) will not affect the acceptance of the service components provided under the individual order including the service description, provided that the latter are themselves free of defects and thus do not preclude acceptance.

6.7. If only production deployment remains to be performed after the completion of the commissioned software, this also does not constitute an impediment to acceptance. The timing of the production deployment must be agreed between the Client and Anexia. Should the Client delay or cancel the production deployment, a functional test and thus an acceptance must still be carried out on the development or staging system.

6.8. Defects that do not impede the proper use or functionality of the software or do not have economically significant consequences relative to the contract sum (minor or non-critical defects) will not prevent acceptance but are attached to the acceptance protocol and resolved at an appropriate time in consultation with the Client. Material or critical defects are present if the real operation cannot be started or continued for technical or economic reasons or not with economically reasonable means.

6.9. If a defect is attributable to information provided by the Client or to the Client's demands for the execution of contractual services, even though Anexia has notified the Client in writing that processing or using this information or fulfilling the demand will lead to a defect, Anexia is exempt from warranty for these defects. The expenditure incurred for analysis and other processing, if applicable, will be charged by Anexia according to the agreed hourly rates.

6.10. If the declaration of acceptance does not occur, despite no defects preventing acceptance being disclosed at the latest after the test and feedback phase or after the completion of the rework or if unconditional payment of the invoice is made, the work will be deemed accepted 14 calendar days after the expiry of the periods mentioned under § 6 para 4.

6.11. A declaration of acceptance or the implied acceptance through the absence of such within the stated period, as well as the settlement of all due invoices, is the precondition for a subsequent production deployment.

7. Prices, expenses, taxes and fees

7.1. Individual orders for projects as well as any change and feature requests, to the extent that these involve additional effort will be implemented based on a time estimate previously prepared for the Client (if possible), unless a fixed price – this must also be explicitly designated as such – has been agreed. Detailed terms of settlement (e.g. hourly rate, payment schedule, fixed price or time & material, payment terms) are also regulated in the individual contract

7.2. If no expense/cost calculation is requested by the Client or if the preparation of such is not possible, Anexia will invoice directly based on expense. The hourly rate for expenses is determined per individual order.

7.3. In the event of an impending exceedance of the expense/cost calculation in the case of a fixed price agreement by more than 15%, Anexia will immediately notify the Client in writing of the discrepancy.

7.4. Anexia is entitled to adjust the price according to the actual increase in expenditure if
   a. the expenditure on the part of Anexia has significantly increased compared to the original calculation due to circumstances not within Anexia's sphere (e.g. wage cost increases, increase in material costs, changes in legal or tax framework conditions, etc.);
   b. relevant information or data is not provided or incompletely transmitted by the Client;
   c. the cause of the misjudgement was caused by both or neither of the parties (e.g. change in legal requirements, cost increase from third-party companies, other external reasons).

7.5. Exceptionally complex expense assessments are considered as individual orders, i.e., if an expense assessment is, in itself, exceptionally complex, the time required for it will be invoiced.

7.6. If third-party software is used (plugins, modules, libraries, etc.), the Client will provide the necessary third-party licences at their own expense.

7.7. The workload will be charged at the rates applicable on the day the service is rendered. Deviations from the time expenditure underlying the contract price, which are not attributable to Anexia, will be calculated based on the actual occurrence.

7.8. Works outside regular business hours (Monday to Friday from 09:00 to 17:00), on weekends or public holidays will only be executed at the explicit request of the Client and after consultation with the responsible project manager from Anexia. Expressly commissioned activities outside regular business hours will be charged with a 100% surcharge on the hourly rate agreed in the individual contract. Particular attention must be paid to the observance of employment law provisions here.

7.9. Invoices will be calculated per commenced quarter-hour, unless a fixed price agreement is arranged.

7.10. Additional expenses such as accommodation costs, travel expenses, additional data carriers and fees will be invoiced separately. Travel time is considered as working time and is charged at the agreed hourly rate.

7.11. The payment term is set at 14 calendar days, unless a different agreement exists in the individual contract. For orders that include multiple units (e.g. programmes and/or training sessions, implementation in stages), the contractor is entitled to issue an invoice after the delivery of each individual unit or service. In the event of payment default, default interest will be charged in accordance with the UGB.

7.12. Anexia is entitled to refuse performance if an invoice that is due and has not been contested within the specified period is not settled even after a written reminder by the Client.

7.13. The Client is not entitled to withhold their own payments due to incomplete overall delivery, warranty or guarantee claims or complaints, nor to offset them against due claims of Anexia.

7.14. All contractually agreed prices are index linked. Anexia will adjust the agreed prices once a year at the end of the year with the last index value published at the end of the year, but not before the expiry of at least twelve months of the contract term. As a basis for comparison, the month and year of the CPI 2020 from STATISTICS AUSTRIA, which is published on the website www.statistik.at, is taken as the commencement of effectiveness of the respective contract or, after an adjustment, the month following the adjustment. In the case of fixed or flat-rate agreements, the above-agreed indexation applies proportionally to the services of Anexia still outstanding at the turn of the year. This means that the prorated performance portion for the previous year will not be adjusted, only

that for the coming year will be adjusted accordingly. If a price adjustment is omitted, this does not constitute a waiver by Anexia to make such an adjustment at a later date. Anexia reserves the right to make only a partial adjustment.

8. Liability

8.1. Unless otherwise stipulated in an individual contract, the liability of Anexia for any damages and expenses incurred (hereinafter jointly damages), regardless of the legal grounds, particularly due to breach of obligations from the contractual relationship and from tort, will be regulated as follows, unless mandatory statutory provisions stipulate otherwise:

8.2. Anexia is in principle only liable for damages caused by intentional or grossly negligent conduct of its employees, including legal representatives or vicarious agents/subcontractors. The burden of proof for negligence is to be borne by the Client.

8.3. Anexia is liable for direct property damage caused by at least grossly negligent behaviour of its employees, including the legal representatives and senior executives as well as other vicarious agents/subcontractors attributable to it, with liability per damage event being limited to 75% of the annual remuneration of the first contract year of the individual order. In the event of damages within the first contract year, the average monthly remuneration already paid will be extrapolated to 12 months. Anexia's liability for all damages under an individual order per contract year is in any case limited to a maximum of EUR 10,000.00.

8.4. Liability for indirect damages and other consequential damages, such as loss of profit and missed savings, etc., as well as for the loss of recorded data, is in any case excluded.

8.5. Anexia will not be liable beyond this extent; in particular, Anexia will not be liable for any advice not covered in the order description or individual orders and/or given free of charge or for any information provided without remuneration, even if such information within the business relationship is provided not "altruistically", unless any information is knowingly or grossly negligently provided incorrectly.

8.6. For the restoration of all damages, the conclusive proof of the damage is exclusively required as the standard of evidence. In the event of a dispute, prima facie evidence is in any case excluded.

8.7. To the extent that the liability of Anexia is excluded or limited according to the above paragraphs, this also applies in favour of the employees and agents/subcontractors of Anexia in the event of direct claims made against them by the Client of Anexia.

8.8. Anexia accepts no liability for the content, functionality and freedom from errors of third-party software.

8.9. Unless otherwise mandatorily prescribed by law, claims for damages and reimbursement of expenses by the Client will be subject to limitation 12 months after the claim arises.

9. Loyalty – Non-Solicitation Clause

The parties undertake to interact in good faith. They will refrain from any solicitation and employment, including through third parties, of employees who have worked on the execution of the orders of the other contracting party during the term of the contract and for 12 months after the termination of the contract. The contract partner in breach of this obligation is required to pay compensation in the amount of one year's salary of the employee.

10. Obligations of the Client to Cooperate

10.1. The parties agree that the achievement of the project objectives significantly depends on efficient and successful collaboration in every phase of the project. The Client is therefore required to cooperate to the extent necessary for the proper execution of the order. Essential factors for achieving the project objectives fall within the personnel organisational and professional responsibility of the Client, in particular

a) to specify in writing the requirements imposed on the subject matter of the contract in sufficient detail or, if necessary, to develop and record them in writing together with Anexia;

b) to provide the necessary documents and information required for service provision, particularly regarding existing hardware, interfaces, programmes and programme components that are to interact with the service to be provided;

c) to document errors identified in the course of the test or production operation of services rendered in a comprehensible manner and to notify Anexia without delay;

d) To provide hardware and information and professionally suitable personnel for cooperation, as far as necessary for the performance of services, at own expense.

10.2. To the extent that Anexia requires information and data from the Client to prepare the service description, the Client will make these available on request within a time frame to be set by the parties. Any delays will result in a revision of the project schedule.

10.3. When the Client specifies the use of certain components within the scope of the contractual use of the software subject to the contract, the Client will ensure that the necessary usage rights are available.

11. Data Protection

11.1. Anexia processes the Client's personal data solely in connection with the provision and management of the products or services as well as the invoicing in accordance with the (pre-)contracts and offers and in compliance with the applicable statutory provisions. In order to regulate the data protection relationships between the parties, a separate "Data Processing Agreement pursuant to Art 28 GDPR" will be concluded. This agreement supersedes any existing data protection agreements.

11.2. In the case of commissioned data processing in accordance with the GDPR by Anexia as the processor and the Client as the controller, the currently valid "General Data Protection Terms" published on the Anexia company website, or a separately concluded individual "Data Processing Agreement", form an integral contractual component of all products and services used by the Client in the course of service provision by Anexia, as well as of existing and future contracts between the Client and Anexia, and thus constitute a binding written legal instrument in accordance with Article 28 (2) and (9) GDPR. This ensures GDPR-compliant cooperation in data processing for both parties.

11.3. Anexia complies with the provisions of the EU General Data Protection Regulation (GDPR), the Data Protection Act (DSG) and the Telecommunications Act (TKG) when handling personal data and implements the necessary technical and organisational measures for data protection within Anexia's area of responsibility.

11.4. Consent for the use or disclosure of the information or results from the exploitation of this information must, in any case, be in writing. The consent may be linked to compensation, for example, in the form of a know-how licence fee.

12. Confidentiality

12.1. The parties are required to treat confidential information, trade secrets and knowledge of internal matters – such as technical, commercial or organisational aspects – of the respective other contracting party, which are made accessible to them on the basis of this contract and/or on the basis of individual orders by the respective other party, with confidentiality. They are required, during the term and after the termination of this contract and/or the relevant individual order under which the disclosure takes place, not to exploit these confidential information or make them accessible to others. Use of this information is restricted solely to use within the scope of this collaboration.

12.2. Confidential information within the meaning of this section includes, in particular:

- All non-publicly available information, data and materials disclosed orally, in writing or by inspection, directly or indirectly, for the execution of the contract or which have become known in the course of the contract;
- the commissioned services themselves and any work results as well as other information from the order.

A separate designation as "confidential" or "secret" is not required.

12.3. The Client will ensure, in particular, that an offer provided to them and contracts with their respective annexes are not disclosed to third parties, in whole or in part, without the prior consent of Anexia, even in an edited version.

12.4. This confidentiality obligation does not apply to information that the Client demonstrably:
    a) has lawfully received or receives from third parties or which
    b) was already publicly known at the time of contract conclusion or subsequently became publicly known without violation of the obligations contained in this framework agreement and/or in the individual orders or which
    c) has been independently developed by the party bound to confidentiality or
    d) to techniques, ideas, know-how and concepts of a third party (third-party know-how), which this third party has lawfully disclosed to the other contracting party, also insofar as this third-party know-how coincidentally coincides with confidential information within the meaning of this section.

12.5. If mandatory statutory provisions require this or it is imperative to comply with official orders, confidential information may be disclosed by the respective recipient. The disclosing party is, however, required to inform the provider of information without delay, so that the latter can take appropriate actions to uphold their rights. If a party is required to disclose confidential information otherwise, such as in the context of its audit obligations, the parties will enter into a separate agreement (NDA) that corresponds at least to the level of protection of this clause.

12.6. These confidentiality obligations will remain in effect for both parties for an additional ten (10) years following the termination of this contract and/or the individual orders, beyond the end of the term of this contract and/or the individual order.

12.7. In the event of a breach of this confidentiality obligation, the parties agree, without prejudice to further claims for damages, to pay a contractual penalty not subject to judicial mitigation in the amount of EUR 30,000.00 per breach, which becomes due 14 days after a demand is made, to which proof of the fact of a breach must be attached.

12.8. This agreement or the mutual exchange of information, regardless of whether protective rights (patents, trademarks, utility models, design patents, copyrights) exist or not, does not grant any ownership, licence, reproduction, usage or other rights. For the acquisition of corresponding rights, a separate agreement may be required. The parties will also oblige their employees, who may acquire exploitable knowledge within the meaning of this agreement due to their activity, to maintain confidentiality in writing. The confidentiality obligation for employees is to be imposed on them even after the termination of their service or employment relationship.

13. Arbitration Agreement

13.1. All disagreements, disputes and claims that could arise – now or in the future – from or relating to this contract, including any amendments (including its breach, dissolution or nullity), with the exception of those under Section 13 (3), will be finally resolved under exclusion of the ordinary legal process by the "Permanent Arbitral Tribunal of the Vienna Chamber of Commerce" in accordance with its applicable rules of arbitration. For the procedure before the arbitration court, the parties agree to the following:
    a) The procedural language is German.
    b) The number of arbitrators is in all cases three (3).
    c) The place of arbitration and negotiation is Vienna.

13.2. Furthermore, the Arbitration Rules of the Permanent Arbitral Tribunal of the Vienna Chamber of Commerce and the provisions of the Austrian Code of Civil Procedure (CPC) will apply.

13.3. All disagreements, disputes and claims whose disputed amount does not exceed the sum of EUR 2,000,000 (Euro two million) exclusive of VAT at the time of assertion are to be handled before the ordinary courts. The exclusive place of jurisdiction for all disputes arising from this contract in all types of proceedings is, in this case, the court with substantive jurisdiction at the registered office of Anexia. The arbitration agreement does not apply in this case.

14. Final Provisions

Unless otherwise agreed, the statutory provisions applicable between entrepreneurs will apply exclusively under Austrian law, excluding the UN Convention on Contracts for the International Sale of Goods, even if the order is executed abroad. For sales to consumers within the meaning of the Consumer Protection Act, the aforementioned provisions only apply to the extent that the Consumer Protection Act does not mandatorily provide for other provisions.