



Project Management and Software Development Agreement (Version 05/2010)

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All future deliverables and performances from metaio are carried out exclusively based on the following General Terms and Conditions of Project Management and Software Development. We herewith formally do not accept Conditions of Purchase from the customer unless they are in accordance of the following Terms and Conditions for Project Management and Development.

1. Description of the Project

metaio GmbH (hereinafter called "**Contractor**") shall write, coordinate and realize development(s) in relation to Contractor's software "Projects" for Customer based on standard software which is to be provided by Customer. Contractor shall assume in particular the functions of project coordination, project management and the adaption of existing standard software.

All specific details of a project, particularly the respective works to be rendered by Contractor, shall be mutually developed in accordance with the specifications and specified on the basis of the Performance Specifications pursuant to quotations submitted. In the event of any doubt, the following hierarchy shall apply (whereby (a), for instance, shall have priority over (b)):

- (a) Mutual agreements by the Project Managers (Clause 2.4);
- (b) Mutually agreed Project Changes (Clause 3);
- (c) Approved concepts (Clause 2.2);
- (d) This Agreement with the Performance Specifications.

2. Project Realization

2.1 The Performance Specifications should break down the overall Project - to the extent reasonable - into self-contained, logically functional project parts ("Partial Projects") or developmental stages ("Milestones") of the Project. The parties to this Agreement may agree on further Partial Projects or Milestones at any time.

The Partial Projects and Milestones are determined by Contractor's concept (pursuant to Clause 2.2).

2.2 On the basis of the Performance Specifications Contractor shall develop the concept for executing the Project, which may include the following - to the extent reasonable - :

- (a) Division of the Project into Partial Projects;
- (b) Specification of the work rendered in the Partial Projects in the form of technical specifications;
- (c) Milestones for breaking down the Partial Projects;
- (d) Description of the functions, interfaces, data structures and hardware requirements;
- (e) Special input on the part of the Customer;
- (f) A quality control plan or installation plan or test plan.

Contractor shall submit the concept to Customer for his review and approval without undue delay. Customer shall comment on the concept in writing within 5 working days. During this period Contractor shall answer all pertinent questions without undue delay; otherwise, the review and approval period shall be extended. If no negative comments have been given within this period the concept shall be deemed to be approved.

2.3 Contractor shall be responsible for the accuracy, completeness and clearness of technical information in the Performance Specifications and shall be available to Customer at all times for reliable information in this regard. The responsibility for the technical realization of the Performance Specifications shall be borne by Contractor. He shall render such performance himself or by way of a sub-Contractor. The project responsibility shall remain hereby unaffected. Contractor shall ensure compliance with the obligations of the sub-Contractor arising under this Agreement.

2.4 Contractor and Customer shall each appoint one Project Manager who shall give the required information and can make and arrange for the making of decisions. The Project Managers are listed in quotations submitted.

3. Project Changes

If changes or improvements to the substance or scope of performance appear necessary or expedient upon the execution of the Project,

Contractor shall inform Customer hereof in writing without undue delay. The parties to this Agreement shall agree to the changes of performance in writing. Additional or modifying work without Customer's consent shall not justify a claim to compensation. Customer may request changes or additional work in writing.

Contractor shall undertake such work in accordance with the provisions of this Agreement if and to the extent that it can be realized within the scope of Contractor's organizational capacity. Changes to compensation or the agreed deadlines due to a change of the scope of performance should be agreed to in writing prior to the realization of the change.

4. Customer's Performance

4.1 Customer knows that the Project can only be realized if Customer provides his input comprehensively, expertly and on time. Customer shall use his best efforts at all times to support Contractor upon request.

4.2 Customer shall deliver to Contractor a complete and clear Performance Specification, from which the technical requirements Customer requests from the Project can be derived, in good time prior to the start of the planning and realization of a Project. Customer shall use his best efforts to support Contractor in connection with the development and concretization of the Specifications and shall review and give binding approval of the Milestones without undue delay. The approval should be in writing.

4.3 In particular, Customer shall provide the standard software and furthermore project support listed in quotations submitted, and shall deliver all of the further assistance as specified over the course of the realization of the Project, and as specified in the concept. Additional effort required due to the lack of Customer input shall be charged separately upon prior consultation with Customer. Any postponement of a deadline caused merely by such additional work shall extend the contractually agreed completion date by the time period caused by such delay.

5. Performance Deadlines

Performance deadlines for the individual Project Phases are listed in quotations submitted. However, the compliance with performance deadlines requires that Customer performs all of his contractual obligations fully and on time. If Contractor is not responsible for a delay, the performance deadlines shall be extended by the length of the delay plus a reasonable lead time.

6. Compensation and Expenses

6.1 Contractor shall receive compensation for each (Partial-) Project or (Partial-) Project Phase and the deliverables to be rendered thereunder, as set down in quotations submitted.

If compensation for a deliverable or a (Partial) Project is not specifically determined, Contractor's prices applicable on the date of delivery shall apply.

6.2 Project expenses and travel costs, if agreed, shall be in accordance with quotations submitted.

6.3 The parties to this Agreement may only set off claims of the other party under this Agreement with uncontested and finally adjudicated claims.

7. Granting of Rights

Contractor Technology means all work provided by Contractor within the scope of the Project which is not Content within the meaning of this Agreement, including, but not limited to any source code, machine code, development routines, and particularly:

- (a) all of the parts of the Project listed in quotations submitted;



- (b) development tools;
- (c) programming language;
- (d) marks of the Contractor
- (e) non-Content specific source and machine codes as well as works and developments by Contractor developed prior to this Agreement;
- (f) all individual elements of the animation, graphics, texts and other components which are objects themselves, but are lacking Customer's individual style, such as trees, buildings, furniture, animals, etc.

Contractor grants Customer a non-exclusive and non-transferable right to use in compiled form limited to the term of this Agreement to the Contractor Technology which is required to provide customers in particular and other interested parties access to the projects (collectively referred to in the following as the "Intended Use"). To the extent required for the Intended Use of the Project, Customer shall particularly acquire the right to copy the Contractor Technology as this is necessary for loading, displaying, running or storing, as well as the right to distribute the Contractor Technology within the scope of the Intended Use or to make wire or wireless transmissions of it or to grant sublicenses on it within such scope. Customer shall only use the Contractor Technology in accordance with its Intended Use and shall not independently translate or adapt it or modify its arrangement or undertake any other modifications, including error corrections.

8. Acceptance

8.1 Contractor shall notify Customer of the readiness of the Project for acceptance by notification via formless e-mail or provision of draft of acceptance protocol. Customer shall conduct a formal acceptance in co-operation with Contractor after having received such notice. The acceptance test criteria are listed in quotations submitted. Customer shall make a written acceptance protocol in which all deviations of the Project as provided from the current Specifications are contained. If no errors are found, or only such errors are found which only insignificantly affect the use of the Project, Customer shall provide his written acceptance of the Project without undue delay. The acceptance shall be deemed as having been given if Customer takes the Project into productive use or if he does not notify Contractor within a period of two weeks after notification by the Contractor of an error which prevents acceptance.

8.2 Should Customer not accept the Project after it has been made ready for acceptance on grounds for which Contractor is not responsible, the Project shall be deemed to be accepted 2 weeks after it has been made ready for acceptance. Should errors in the Project be attributable to causes for which Customer is responsible, Contractor is willing to remove such errors at the request of Customer at prices and on terms to be agreed in each instance.

8.3 Upon the demand of Contractor, Customer shall accept parts of the Project which form a self-contained logically functional unit (Partial Projects) separately as Partial Projects in a real partial acceptance. The integrated functioning of all parts in this case shall be the subject of a final acceptance after the final partial delivery. Otherwise the provisions governing acceptance shall apply for the acceptance of Partial Projects.

9. Warranty

9.1 Descriptions of the Project or the work which are elements of the Project, particularly those contained in the Performance Specifications, are only descriptions of guaranteed qualities if they are expressly denoted as such. Contractor warrants that the work corresponds to the respective most current version of the Specifications and is free of defects which remove or reduce their value or fitness for normal use or the use prescribed under this Agreement.

9.2 The warranty period shall be 6 months from the date of acceptance. Should defects occur, Customer shall notify Contractor and provide him with the documents or information necessary for removing such defect. The notice of defect should contain a generally understandable description of the error and make it possible to reproduce such error (test case).

9.3 Contractor shall begin with the examination of the defect without undue delay. After conducting the work, Contractor shall demonstrate the freedom of the programs from the error(s) described using the test cases provided by Customer.

Contractor is entitled to refuse to remove a defect which does not significantly reduce the value or fitness of the Project for the use prescribed under this Agreement if this would result in unreasonably large expenses. In such case, the parties to this Agreement shall negotiate an agreement for a division of the costs acceptable to both parties.

Until defects have been successfully removed, Contractor shall provide Customer upon request with an interim solution to circumvent the error if

this is possible at a reasonable expense.

10. Reservation of Title

Contractor reserves all rights pertaining to the grant of rights according to this agreement until complete performance of all claims existing or coming into existence against the Customer. In case Customer is responsible for the delay in payment and the grant of rights is either taken back or sized, this act may not be interpreted as a rescission of the agreement.

11. Liability

Contractor shall only be liable for any damage to Customer insofar as such damage has been caused by willful or grossly negligent acts on the part of Contractor or Contractor's agents.

In addition, Contractor shall only be liable up to the amount of typically foreseeable damage which is caused by Contractor or the senior executives of Contractor through the breach of a material contractual obligation.

This limitation of liability shall apply in respect of all damage claims irrespective of the legal grounds therefore and in particular to pre-contractual or auxiliary contract obligations. It does not limit any mandatory liability under the German Product Liability Act or mandatory liability for descriptions of guaranteed qualities to the extent the guarantees given were intended to protect Customer from the damage which has been incurred. Contractor's liability is limited to the maximum extent of compensation paid under this agreement.

12. Term of Contract

This Agreement shall come into effect upon execution by both parties and shall run for an indefinite period. It may be terminated with a notice period of 3 months. The notice of termination must be in writing. The Projects agreed to up to the date on which the termination comes into effect shall remain unaffected thereby.

The right to a termination without notice for cause shall remain hereby unaffected. In the event of a premature termination of this Agreement the parties shall coordinate the settlement of any individual contracts which may be required. Clauses 7, 9 and 10 shall survive the termination of this Agreement.

13. Miscellaneous

13.1 Any amendments or supplements to this Agreement - including this Clause 13.1 - and any side agreements of any kind must be in writing.

13.2 This Agreement constitutes the entire agreement between the parties in respect of the subject matter of this Agreement.

13.3 The entire legal relation between the Customer and the Contractor is subject to German law excluding the United Nations Convention on the International Sales of Goods (CISG).

13.4 Place of performance is Munich unless another place of performance is agreed to in a quotation submitted to this Agreement. Exclusive venue is Munich.

13.5 Should a provision of this Agreement be or become invalid or unenforceable or should this Agreement be incomplete, the remainder of this Agreement shall continue in full force and effect. The provision in question shall be replaced or, as the case may be, the incompleteness shall be remedied by a provision which comes closest to the economic intent of the Agreement.