

# General terms and conditions of GLI Business Solutions GmbH

## A. General terms and conditions

### 1. Scope

**1.1.** The following general terms and conditions are part of the contracts concluded between GLI Business Solutions GmbH and the customer. The version of these terms and conditions in effect at the time the contract was concluded shall apply.

**1.2.** Any different, additional or conflicting terms and conditions of the customer shall only become part of the contract if GLI Business Solutions has expressly agreed to their validity. This shall also apply if GLI Business Solutions renders a service to the customer without reservation while being aware of the customer's conditions.

**1.3.** GLI Business Solutions may amend these terms and conditions by notifying the customer of the changes in detail. The changes will become effective within two months after receipt of the change notification by the customer, provided that the customer does not object to them. Should the customer object, the changes shall become effective as of the date on which the contractual relationship would have been terminated by an ordinary notice of termination issued by GLI Business Solutions at the time of the notification of the change. In this case, the customer may terminate the contractual relationship without notice at the time when the changes would become effective following its objection. The two-month period shall only commence if, in the notification of change, the customer has been informed of the consequences of remaining silent and of its right to object and to terminate the contract.

### 2. Offer, conclusion of the contract

**2.1.** GLI Business Solutions' offers are non-binding, in particular with regard to prices, quantities, delivery times, delivery options and ancillary services.

**2.2.** With the exception of managing directors or authorised signatories, the employees of GLI Business Solutions shall not be entitled to make verbal agreements deviating from these terms and conditions. This shall apply, in particular, to the assumption of guarantees.

**2.3.** The scope of the services to be provided by GLI Business Solutions shall be determined solely by written contracts. Where applicable, the distributor agreement, the individual licence conditions for licensed products of GLI Business Solutions, the individual licence conditions for licensed products of Microsoft Deutschland GmbH or Microsoft Corp. Redmond/USA, the conditions for software maintenance and support services, as well as the present general terms and conditions of business shall apply in the order set out below.

### 3. Terms of delivery

**3.1.** The place of performance shall be the registered office of GLI Business Solutions. Deliveries shall take place ex warehouse.

**3.2.** The delivery dates indicated by GLI Business Solutions are approximate based on GLI Business Solutions' estimates. As such, they shall always be non-binding, unless otherwise expressly agreed in writing.

**3.3.** The customer shall not be entitled to refuse acceptance of the products or services on account of insignificant defects that do not materially impair their use. In the event that the customer breaches its acceptance obligation or any other obligation to cooperate, GLI Business Solutions shall be entitled to claim the resulting damages, including additional expenses, from the customer. In this case, the risk of accidental loss or accidental damage of the delivered items shall pass to the customer at the time of the breach of duty.

**3.4.** The customer shall assume an obligation to inspect and give notice of defects in respect of all deliveries and services provided by GLI Business Solutions in accordance with Section 377 of the German Commercial Code (HGB).

### 4. Prices, terms of payment, assignment

**4.1.** The prices of GLI Business Solutions are net prices. Any delivery and shipping costs, value added tax and all support services, in particular installation planning, installation of the software, training, preparation for use or other forms of advice shall not be included and shall be remunerated separately on a time and material basis.

**4.2.** Where services are remunerated on a time and material basis, the hourly rates, travel expenses and incidental expenses shall be based on the respective rates of GLI Business Solutions.

**4.3.** Payment shall be due immediately upon receipt of the goods or provision of the service and shall be made without deduction immediately upon receipt of the invoice.

**4.4.** Payment shall be made by bank transfer to GLI Business Solutions. GLI Business Solutions shall not be obliged to accept payment by cheque or bill of exchange. In any case, payment by cheque or by bill of exchange shall only be accepted as conditional payment. The submission of a cheque or bill of exchange shall not result in a deferment of the claim. The costs associated with the realisation of a cheque or bill of exchange shall be borne by the customer.

**4.5.** If the customer defaults on any payment obligation, or if circumstances arise as a result of which the financial position of the customer deteriorates or its creditworthiness is impaired, all other claims of GLI Business Solutions against the customer shall become due immediately. In this event, GLI Business Solutions shall be entitled to withdraw from the software contracts and to withhold the provision of further services until payment has been made in full.

**4.6.** The customer shall only be entitled to set-offs if its counterclaims have been legally established, are undisputed or have been recognised by GLI Business Solutions. Furthermore, the customer shall only be entitled to exercise a right of retention if its counterclaim is based on the same contractual relationship.

**4.7.** The rights and obligations arising from the contracts concluded with GLI Business Solutions may not be transferred by the customer to a third party without the consent of GLI Business Solutions.

**4.8.** If an assignment made without the consent of GLI Business Solutions is nevertheless effective pursuant to Section 354a of the German Commercial Code (HGB), this shall not affect the right of GLI Business Solutions to set off any counterclaims, including against the customer as an existing creditor.

## **5. Cooperation of the customer**

**5.1.** The implementation and use of the software requires the cooperation of both parties. Therefore, the customer shall support GLI Business Solutions in the performance of its contractual obligations to the extent that this is necessary from the point of view of GLI Business Solutions. In particular, the customer shall, at GLI Business Solutions' request, provide GLI Business Solutions with the information required for this purpose at any time and grant access to the software, documentation and other materials as well as to all places where the software installed by GLI Business Solutions is located.

**5.2.** Both parties shall appoint a contact person who shall be responsible for all relevant questions and decisions.

**5.3.** The establishment of a functional hardware and software environment of sufficient capacity shall be the sole responsibility of the customer, also taking into account the additional requirements due to the software.

## **6. Liability of GLI Business Solution**

**6.1.** GLI Business Solutions shall be liable for negligent conduct in accordance with the public liability insurance it has taken out. GLI Business Solutions shall provide the customer with a copy of the terms and conditions of the insurance policy upon request.

**6.2.** The aforementioned liability provisions shall also apply to the employees and other vicarious agents of GLI Business Solutions. Should the customer require an extension of liability beyond the scope of that specified in Clause 6.1, the customer shall bear the costs incurred to cover this additional risk. For this purpose, the customer shall inform GLI Business Solutions of the extent of the additional insurance cover required. GLI Business Solutions shall then obtain a quotation for the additional insurance cover from its public liability insurer and inform the customer of the costs to be incurred. If the customer agrees to these additional costs, GLI Business Solutions shall immediately arrange for the additional insurance cover. The extension of liability under Clause 6.1 shall become effective at the time when the additional insurance cover commences. Accordingly, the extension of liability shall end when the additional insurance cover ceases to apply.

## **7. Liability for defects in quality and title**

**7.1.** Unless otherwise provided below, the liability for material defects for services provided by GLI Business Solutions shall be governed by the relevant statutory provisions.

**7.2.** Warranty claims shall not apply in the event of an insignificant deviation from the agreed or expected quality or an insignificant impairment of usability.

**7.3.** The customer is aware that the functioning of software depends on a large number of factors, given the complexity of the product. GLI Business Solution therefore only guarantees the technical usability of the software in accordance with the service description provided to the customer. In particular, GLI Business Solutions does not warrant that the software complies with the specific operational requirements of the customer, unless this is expressly agreed in the contract. It shall be the customer's sole responsibility to ascertain the suitability of the requested service for the intended purpose.

**7.4.** In the event that the customer itself or a third party has made any changes to the software, the customer may not claim that the software is defective unless the customer proves that the defect was not caused by these changes.

**7.5.** The customer shall be obliged to thoroughly test the software immediately after delivery and before use to ensure that it is free of defects and, in particular, that it can be used in the existing hardware and software configuration. The customer shall notify GLI Business Solutions in writing without delay of any defects detected during the inspection, as well as of any other defects once they have been detected, in each case specifying the defect and the time of detection. Should the customer fail to comply with this duty of notification in a proper and timely manner, the service shall be deemed to have been approved by the customer.

**7.6.** The customer shall report obvious defects without delay, at the latest within two weeks after delivery. Other defects shall be reported immediately after discovery. The notification of defects must be made in writing and shall be accompanied by a clear description of the defect. The notice of defect should make it possible to reproduce the defect. No liability shall apply for defects not notified in due time. Any statutory obligations to inspect and give notice of defects shall remain unaffected.

**7.7.** The foregoing shall also apply if GLI Business Solutions makes products available for download in non-physical form. The notification period for obvious defects shall end no later than 12 weeks after GLI Business Solution has made the respective product available for download via the internet.

**7.8.** Any defects in the software supplied (defects in quality and title), including in the manuals and other documents, shall be remedied by GLI Business Solution after notification by the customer within the warranty period of one year commencing with the delivery. This shall be done, at the discretion of GLI Business Solution, by eliminating the defect (rectification) or by delivering defect-free software (replacement). Defects may also be remedied by supplying or installing a new version of the program or a workaround. Should the defect not impair the functionality or only impair it insignificantly, GLI Business Solutions shall be entitled to remedy the defect by supplying a new version or an update within the scope of its version, update and upgrade planning. The customer shall support GLI Business Solution in remedying the defect and shall, in particular, provide all information and documents necessary for remedying the defect.

**7.9.** In the event of a replacement, GLI Business Solutions shall also be entitled to deliver a new program version with at least the same scope of functions, unless this is unreasonable for the user, for example because it would require a different operating system or more powerful hardware. Any further training on the part of the customer to become acquainted with a possibly modified program structure or user guidance shall not be deemed unreasonable in principle.

**7.10.** If the software is to be returned to GLI Business Solutions for the purpose of repair or replacement, the customer shall bear the transport costs incurred.

**7.11.** If the defect cannot be remedied within a reasonable period of time, or if the repair or replacement is deemed to have failed for other reasons, the user may, at its discretion, reduce the purchase price (abatement), withdraw from the contract, claim damages or compensation for futile expenses. The latter two claims shall be governed by Clause 6 of these terms and conditions. Withdrawal from the contract shall not exclude the right to claim damages.

**7.12.** The rectification or replacement shall only be deemed to have failed if GLI Business Solutions has been given sufficient opportunity to rectify or replace the defective product without the desired result being achieved; if such rectification or replacement is impossible; if such rectification or replacement is refused or unreasonably delayed by GLI Business Solutions; if there are reasonable doubts as to the prospects of success; or if such rectification or replacement is unreasonable for other reasons.

**7.13.** If it becomes apparent that any services requested by the user and provided by GLI Business Solutions were not actually required as a result of a breach of duty by GLI Business Solutions, the customer shall pay for these services and reimburse the costs incurred by GLI Business Solutions.

**7.14.** Except in the case of claims for damages, the limitation period for claims arising from material defects shall be 12 months. This period shall commence upon delivery of the hotfix, service pack or new program version.

## **8. Industrial property rights and copyrights**

**8.1.** If and to the extent that a third party asserts justified claims against the customer for infringement of an industrial property right or copyright ("property rights") by a service developed and/or provided by GLI Business Solutions, GLI Business Solutions shall be liable as follows, unless otherwise provided by law:

**a)** GLI Business Solutions shall, at its own discretion and at its own expense, either obtain a right of use for the service developed and/or provided, modify the service in such a way that the property rights are no longer infringed or replace the service, provided that this does not impair the use of the service as provided for in the contract. If and to the extent that GLI Business Solutions cannot definitively grant the customer the contractual right of use by taking the measures referred to under Point 1, the customer shall be entitled to withdraw from the contract after setting a reasonable deadline.

**b)** GLI Business Solutions shall only be obliged to take the aforementioned measures if the customer immediately notifies GLI Business Solutions in writing of the claims asserted by the third party while specifying the infringement; if the customer does not acknowledge that an infringement has taken place; and if the customer grants GLI Business Solutions all decision-making powers regarding the legal defence and the conduct of settlement negotiations without restriction. If the customer discontinues the use of the service for reasons of mitigation of damages or other important reasons, it shall be obliged to point out to the third party that the discontinuation of use does not constitute an acknowledgement of an infringement of property rights.

**8.2.** Claims of the customer according to Clause 8.1 shall be excluded if and to the extent that the customer is responsible for the infringement of property rights. Claims of the customer shall also be excluded if and to the extent that the infringement of property rights was caused by any special instructions of the customer, by an application not foreseeable by GLI Business Solutions or by the fact that the service was modified by the customer or used together with services not provided by GLI Business Solutions.

**8.3.** The customer shall be obliged to support GLI Business Solutions to the best of its ability in defending itself against the infringement of property rights. The customer shall notify GLI Business Solutions without delay of any infringement of third-party property rights with regard to the software supplied by GLI Business Solutions and shall leave the legal defence to GLI Business Solutions at the latter's expense.

**8.4.** Conversely, the customer shall indemnify GLI Business Solutions against all claims made by third parties against GLI Business Solutions for infringement of an industrial property right or copyright if the infringement results from an explicit instruction given by the customer to GLI Business Solutions, or if the customer has modified the service or integrated it into a third-party system.

## **9. Confidentiality**

**9.1.** The parties undertake to keep secret from third parties all confidential information mutually obtained in the course of the pre-contractual or contractual relations and to use it only for the purposes and within the scope of their contractual relations, and in particular not to exploit it commercially or non-commercially themselves.

**9.2.** The parties undertake to maintain secrecy with regard to any confidential information they have obtained even after termination of the contractual relationship. The disclosure of confidential information shall not grant the customer any rights to use this information. Any warranty and liability for contractual information shall be excluded.

**9.3.** The parties are aware that a breach of this confidentiality agreement may result in damage to the party disclosing the information. The right to assert claims for damages shall be expressly reserved for any breach of this confidentiality agreement.

## **10. Data protection**

**10.1.** GLI Business Solutions shall comply with the statutory data protection requirements.

**10.2.** Where GLI Business Solutions places orders with subcontractors, it shall be incumbent upon GLI Business Solutions to assign its obligations under this contract to these subcontractors. Point 1 shall apply, in particular, to the provisions regarding confidentiality, data protection and data security.

## **11. Set-off, retention, assignment**

**11.1.** The customer shall only be entitled to set-offs if its counterclaims have been legally established, are undisputed or have been recognised by GLI Business Solutions. Furthermore, the customer shall only be entitled to exercise a right of retention if its counterclaim is based on the same contractual relationship.

**11.2.** The rights and obligations arising from the contracts concluded with GLI Business Solutions may not be transferred by the customer to a third party without the consent of GLI Business Solutions.

**11.3.** If an assignment made without the consent of GLI Business Solutions is nevertheless effective pursuant to Section 354a of the German Commercial Code (HGB), this shall not affect the right of GLI Business Solutions to set off any counterclaims, including against the customer as an existing creditor.

## **12. Place of jurisdiction**

**12.1.** If the customer is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising from the contractual relationship shall be the registered office of GLI Business Solutions GmbH (25524 Itzehoe).

## **B. Special conditions for the provision of software**

### **13. Provision of standard software**

**13.1.** The customer acquires the standard software ("software"), which is specified in more detail in the software contracts, from GLI Business Solutions, including the associated user documentation in electronic or printed form ("user documentation"), subject to the agreed terms of use.

**13.2.** The source code of the software shall only be part of the subject matter of the contract if and to the extent that this has been expressly agreed.

**13.3.** The service description of GLI Business Solutions shall be the definitive reference for the quality of the software. GLI Business Solutions shall not be obliged to provide any software with properties deviating from this description. In particular, the customer may not derive such an obligation from other representations of the software in public statements or in advertising by GLI Business Solutions or its employees or sales partners, unless GLI Business Solutions has expressly confirmed the divergent properties in writing.

### **14. Granting of a right of use**

**14.1.** GLI Business Solutions grants the customer a simple, non-exclusive right, unlimited in time, to use the software on its computer equipment to the extent specified in the software contracts. Accordingly, the most recent version of the Microsoft licence terms for the use of Microsoft Dynamics NAV shall also apply to licensed products of GLI Business Solution.

**14.2.** Rights of use granted by GLI Business Solutions may only be transferred in their entirety, including all documentation and all existing data carriers. Prior to the transfer, the customer shall delete the software and all copies thereof from all its systems. A transfer shall only be permitted if the new user concludes the mandatory contracts for the use of the software with GLI Business Solution and uses the software exclusively in accordance with said contracts.

**14.3.** If, within the scope of rectification or maintenance, GLI Business Solutions provides the customer with any supplementary software (e.g. patches) or a new edition of the software (e.g. updates/upgrades) that replaces the software that was previously provided, these shall be subject to the present terms and conditions.

**14.4.** If GLI Business Solutions provides a new version of the software, the customer's rights with respect to the previously provided software shall expire as soon as the customer actively uses the new software. However, GLI Business Solutions shall grant the customer a three-month transitional period during which both versions of the software may be used in parallel.

## **15. Retention of title**

**15.1.** GLI Business Solutions retains ownership of the delivered data carriers as well as the right to use the software they contain until the purchase price has been paid in full. If the customer is a merchant, the aforementioned reservations shall apply until full payment of all claims arising from the business relationship. This shall also apply if any or all claims of GLI Business Solutions have been entered into a current account and the balance has been drawn and acknowledged. Upon full acquisition of ownership of the data carriers, the customer shall acquire the rights of use specified in each case.

**15.2.** The customer shall keep the goods subject to retention of title in safe custody on behalf of GLI Business Solutions with all due care and shall insure them adequately against fire, water, theft and other risks of damage at its own expense. The customer shall assign its corresponding claims under the insurance contracts to GLI Business Solutions already upon conclusion of the present agreement. GLI Business Solutions shall accept the assignment.

**15.3.** The customer hereby assigns to GLI Business Solutions all claims arising from the resale of the goods or the re-licensing of the software. The customer shall be entitled to collect these claims subject to revocation. At the request of GLI Business Solutions, the customer shall disclose the assigned claims and the respective debtors. GLI Business Solutions shall be entitled to disclosure of any such assignment to the customer's debtors.

**15.4.** In the event of a breach of contract on the part of the customer, in particular default of payment, or an expected suspension of payments, GLI Business Solutions shall be entitled to recover the goods subject to retention of title at the expense of the customer, or to demand the assignment of any claims of the customer against third parties for their surrender. These rights shall also apply if the secured claims are time-barred. GLI Business Solutions shall be entitled to realise the goods subject to retention of title, if necessary, and to satisfy such claims from the proceeds of the sale, by setting them off against any outstanding claims.

**15.5.** Where GLI Business Solutions has the right to recover the goods subject to retention of title pursuant to the preceding clause, GLI Business Solutions shall be entitled to collect the goods subject to retention of title still in the possession of the customer at the latter's expense. The customer shall allow the employees of GLI Business Solutions who have been authorised to collect the reserved goods access to its business premises during office hours, even without prior notification.

**15.6.** The exercise of the rights arising from the reservation of title or a request to surrender shall not be deemed a withdrawal from the contract.

## **C. Special conditions for adjustments**

### **16. Implementation of adjustments**

**16.1.** Each of the parties shall appoint a project manager for the duration of the project. The realisation of the project shall be coordinated between the project leaders. The appointment of the respective project managers shall be notified in writing to the other party within a period of one week after the conclusion of the contract. The project managers shall jointly review the progress of the project at least once a month.

**16.2.** If a decision cannot be taken at the level of the project managers, it shall be taken by a project steering committee. This project steering committee shall include a member of the management of both parties or another employee of each party who is authorised to make decisions within the framework of this process. The project steering committee shall meet whenever either of the project managers requests it. Voting may also take place by telephone. All decisions shall be recorded in writing and signed by the members of the project steering committee.

**16.3.** Prior to acceptance, the customer may request in writing that the agreed requirements for the software be changed. GLI Business Solutions shall implement the service changes, provided that they are not unreasonable and can be performed by GLI Business Solutions within the scope of its operational capacity. Unless GLI Business Solutions rejects the change as unreasonable within 14 calendar days from receipt of the request for change or invokes a review pursuant to the following clause, GLI Business Solutions shall implement the changes.

**16.4.** If the request for change requires GLI Business Solutions to carry out an extensive investigation as to whether and under what conditions the change is feasible, GLI Business Solutions may demand remuneration for such investigation to the extent that it has notified the customer thereof in writing and the customer has subsequently issued a written order for the investigation to be carried out; the deadline by the end of which the customer must have been notified in writing of the result of the investigation shall be determined by mutual agreement.

**16.5.** If the amendment of a service or a request relating to the execution of the contract affects any contractual provisions, such as those pertaining to the price, deadlines for execution or acceptance, GLI Business Solutions shall request an amendment of the latest version of the contract and its annexes within a period of 14 calendar days after the request for amendment has been made. Should GLI Business Solutions fail to do so, it shall be obliged to perform the amended service within the framework of the existing agreements.

**16.6.** Should GLI Business Solutions request an amendment of the contract, the customer shall notify GLI Business Solutions within two weeks whether it accepts the amendment of the contract or not.

**16.7.** Irrespective of the aforementioned procedure, amendments may be mutually agreed between the project managers at any time. Any agreement on such amendments shall be signed off by the project managers. Accordingly, changes may also be agreed by the project steering committee. If, in these cases,

no changes to the prices and to the terms of the contract are agreed, the services shall be performed within the framework of the contractual terms agreed up to that point.

**16.8.** Should the latest service descriptions of the system contain any contradictions which cannot be resolved by the project steering committee, the version that GLI Business Solutions deems to be more favourable shall prevail. In the absence of any service descriptions, that which is necessary to meet the service requirements as agreed in accordance with the aforementioned provisions shall be deemed to have been agreed.

**16.9.** In the event that GLI Business Solutions becomes aware that the service description, any other agreed concepts or any other requirement of the customer relating to the execution of the contract is uneconomical, faulty, incomplete, ambiguous or objectively not executable, it shall, irrespective of the aforementioned provisions, immediately notify the customer in writing of this fact and of any apparent consequences thereof and await the customer's decision before proceeding with the further implementation of that part of the service. GLI Business Solutions shall furthermore inform the customer of any new developments and other circumstances which would make a change in the specifications of services appear to be economically or technically reasonable.

## **17. Acceptance**

**17.1.** Insofar as the acceptance of work has been agreed, the customer shall be obliged to accept work within one week after GLI Business Solutions has notified the customer of its completion. The customer shall also be obliged to accept the work in the event of insignificant defects that do not materially impair its use.

**17.2.** The type, scope and duration of the functional test shall be determined by the project managers prior to implementation.

**17.3.** In the event that the customer does not accept the work for reasons within the customer's control and does not give notice of any material defects within ten days after receipt of the work, the work shall be deemed to have been accepted.

## **D. Special conditions for the provision of other services**

### **18. Installation and training**

**18.1.** With regard to the installation of the software, GLI Business Solutions refers to the installation instructions contained in the user documentation, in particular those relating to the customer's hardware and software environment. At the customer's request, GLI Business Solutions shall install the software on the basis of a separate agreement, subject to the respective price lists.

**18.2.** GLI Business Solutions shall provide instruction and training on the basis of a separate agreement and subject to the respective price lists.

**Status: January 2013**