

## GENERAL TERMS & CONDITIONS OF OSTHUS INC.

(as per May 2016)

1. **SCOPE OF SERVICES.** These General Terms and Conditions apply to all contracts (hereinafter “contract” or “Agreement”) of OSTHUS INC. (hereinafter “Osthus”) with the client (hereinafter “Client”) relating to the creation, licensing, and/or maintenance of software and any related consultancy services as well as other IT services. Osthus shall not accept any terms and conditions of the Client that are inconsistent or deviate from these Terms and Conditions unless Osthus expressly agrees in writing to be bound by inconsistent or different terms.

2. **SERVICES DESCRIPTION & AMENDMENTS.** A contract shall materialize only once confirmed in writing by Osthus or upon the first act of performance. The service description agreed and defined in the individual contract is authoritative for the nature and scope of the service to be provided by Osthus. Insofar as the requirements of the Client are not yet apparent from the task specified in the contract, Osthus shall define the details thereof with the support of the Client and shall issue appropriate specifications (referred to as “Specifications” or “Software Design Specification”). The Specifications approved by the Client are binding for all further work. The Specifications can be refined or amended in the course of conversion into software in coordination with the Client. If Osthus recognizes that the task set contains errors, is not clear or cannot be executed with reasonable efforts, Osthus shall immediately notify the Client. Client shall then immediately decide how to proceed. The written approval of Osthus is required if the Client wishes to change or expand the tasks set as a whole or in parts. Osthus shall refuse to give such approval only if the changes/expansions requested are unreasonable, particularly in terms of the effort involved and the scheduling. Osthus is entitled to make its approval contingent on a suitable adjustment to the terms of contract, particularly on an increase in the remuneration and/or a postponement of the deadlines. If the change request of the Client requires an extensive examination and details as to whether, how and on what terms the change can be implemented, Osthus may demand separate remuneration for this. Agreements on changes to the Specifications/service description must be in writing. If the Client requests a change verbally, Osthus may confirm this in writing. The change request is considered agreed if the Client does not immediately object to the written confirmation. Minutes about such discussions or reports on the project status shall also be sufficient provided they are signed or approved by both parties. Delivery periods or delivery dates are always non-binding unless expressly otherwise agreed. If Osthus exceeds the non-binding delivery period stated by more than 6 weeks, the Client may demand delivery from Osthus. Osthus shall not be liable if Client's damages would have occurred even if Osthus had effected delivery in due time. Unless otherwise agreed, Osthus is entitled to effect partial deliveries at any time, if this can be reasonably expected of the Client.

3. **CLIENT'S DUTY TO COOPERATE.** If the Client has not created the operating conditions specified in the contract, then Osthus shall be released from its obligations under the contract, including but not limited to, Osthus warranty obligation if any. Client is obliged to support Osthus to a reasonable extent and to create all the prerequisites in its sphere of operations that are required to properly execute the order. In particular, the Client shall provide system capacity for the development and testing of the software to a reasonable extent free of charge. The Client shall provide the necessary documents and information to Osthus completely and in a timely manner. If the Client fails to perform a duty to cooperate for which it is responsible despite receiving a reminder to do so and being set a deadline for this, Osthus shall be entitled to instantly terminate the contract. Irrespective of the assertion of this right of termination Osthus shall be entitled to receive compensation for the damage or for the additional expenses incurred as a result of the Client's failure to cooperate. Client undertakes to check whether the software including the documentation and the installation work (if agreed) are in conformity with the contract and to declare acceptance thereof in writing if in conformity. The checking period shall amount to two weeks, unless otherwise agreed, and shall commence upon handover / installation of the software. Minor defects shall not entitle the Client to refuse acceptance. The software and any installation work shall be considered accepted two weeks after the expiry of the

checking period if the Client has not given notice in writing of any significant faults in the software or in the installation by this time. The software shall also be considered accepted if the Client uses the software productively. The Client is responsible for proper data back-up. Osthus shall not be liable for the recovery of data if the Client did not ensure within the scope of its respective obligations under this contract that these data can be reconstructed with reasonable efforts out of data material that is held available in machine-readable form.

**4. PAYMENT.** Unless otherwise specified in the contract, receivables shall become due upon being invoiced and shall be payable net (without deduction) within 14 days from the date of the invoice. The timeliness of payment is determined by the date on which the payment is received by Osthus. Value-added tax is not included in prices. It shall be added to prices and shall be stated separately in the invoice. If a fixed price is agreed, support services (particularly installation, instruction / training, consultancy) shall be remunerated separately, unless these are expressly included in the fixed price. The contractually agreed daily rate relates to a working time of eight hours of work per day (Monday to Friday). Any personnel required on Saturdays, Sundays and public holidays must be requested separately and in a timely manner by the Client. Unless expressly otherwise agreed, traveling expenses and traveling times are not included in the agreed price and shall therefore be paid separately. Except where expressly otherwise agreed, traveling times shall be treated as working time and shall be invoiced based on the contractually agreed daily rate. Proof shall be furnished – as far as possible – of traveling expenses and other ancillary expenses based on verifiable receipts and documents each month and invoiced to the Client. The statutory value-added tax shall be stated separately. Osthus reserves the right to demand advance payment or security at the amount of the invoice value of a delivery if circumstances subsequently occur or become known which make the collection of the receivables of Osthus appear to be at risk. If the Client does not furnish security or make an advance payment within a reasonable period after such demand, Osthus is entitled to withdraw from the contract. The Client has a right to set off counterclaims only if these have been declared legally valid by a court of law, are uncontested or have been accepted by Osthus. The Client shall have a right of retention only if the claims asserted are based on the same contractual relationship. Notwithstanding other rights of Osthus, Osthus shall be entitled to retain any and all outstanding deliveries based on the contract or based on other similar contracts in the business relationship with the Client in the event of a delay in payment by the Client until payment in full of the invoice amount. The acceptance of check or bills and the assignment of payment obligations of the Client to third parties require a separate contractual agreement. Even where appropriately agreed, checks and bills shall be accepted only as conditional payment and not as actual payment and shall not signify any deferment of the original receivable.

**5. RETENTION OF TITLE.** Osthus retains title to the delivery items until satisfaction of all liabilities under the current business relationship with the Client. If the value of the security existing in favor of Osthus exceeds its total claim by more than 10%, Osthus is obliged, upon demand by the Client, to release items of security in excess of 10% at the option of Osthus. In case of conduct contrary to contract on the part of the Client, particularly in the event of a delay in payment, Osthus shall be entitled to take back the purchased item after setting a reasonable period – unless this is unnecessary in a particular case. The taking back of the purchased item by Osthus shall be considered withdrawal from the contract.

**6. WARRANTY & LIMITATION PERIODS.** Osthus warrants that when used according to contract, the software including the documentation, meet the requirements of the intended task and do not have any defects that make it unsuitable for use or considerably reduce its suitability for use. Special agreements regarding the features of the software shall not constitute any guarantees of quality or durability. Osthus does not warrant that the software is suitable for the purposes of the Client. The warranty claims of the Client shall not include software that the Client does not use according to contract, i.e. particularly software that the Client modifies or does not use in the system environment agreed in the contract, unless the Client furnishes proof that such use is not the cause of the defect notified. The prerequisite for warranty claims is the ability to reproduce or detect the defects. The Client shall notify defects without delay, stating the information that it has on such defects and which is useful for the detection thereof and

giving an exact description of the fault in text form (e-mail, fax). The Client shall take all reasonable measures to facilitate a detection of the defects and their causes, particularly send an appropriate data extract and make machine time and test times available upon request by Osthus. A remote diagnosis and corrections can be carried out if the Client has the facilities required for this. The warranty period is 12 months from acceptance in accordance with this section. Osthus may demand compensation for its efforts insofar as Osthus has carried out work as a result of a defect being notified without any defect existing. Compensation shall be paid particularly also for the additional efforts entailed for Osthus to rectify defects as a result of the Client failing to properly perform its duties to cooperate or having operated the software improperly.

**7. RIGHT OF USE & IP PROTECTION.** Unless expressly otherwise agreed, Osthus shall grant the Client a simple, non-exclusive, non-transferable right for an indefinite period of time to use the software including the documentation on the conditions defined in the contract for the intended purpose. The source code shall be provided only if this has been expressly agreed. The Client is entitled to produce a copy of the software for back-up purposes. Copies of the software serving to ensure a proper data back-up are part of the intended use. The Client is not entitled to carry out any modifications or otherwise edit and transform the software or to reverse engineer, reverse compile or disassemble the software. Written material belonging to the software is protected by copyright. It may not be reproduced or circulated. The software is protected by copyright. Insofar as Osthus itself does not hold the property rights to the software or parts thereof, Osthus has the rights that allow this software to be passed on to and used by third parties. The Client undertakes to retain the proprietary notices, such as copyright notices and other legal reservations, contained in the software and the related written material without change and to adopt such notices without change into any and all copies of machine-readable or printed copies of the licensed material made in whole or in part by the Client. The Client undertakes to ensure use of the licensed material (software + documentation) according to contract through reasonable technical and organizational measures. The Client undertakes not to make the software and related written material accessible to third parties either in the original or as complete or partial copies without the express written approval of Osthus and to store it in a place protected against unauthorized access by third parties. The employees of the Client are not considered to be third parties. Insofar as licensed or what is known as "open source" software of third-party suppliers is integrated into the services of Osthus, particularly during the creation of individual software for the Client, any licenses or terms of use of these third-party suppliers enclosed with the respective products which are applicable for these products also apply to the Client. The Client is responsible for the legitimate use of the software in conformity with the contract, particularly for the observance of any existing licenses and terms of use.

**8. THIRD PARTY RIGHTS.** If claims have been asserted against the Client or such claims are expected, Osthus may modify or replace the licensed material at its expense to an extent which can be reasonably expected of the Client. If this or obtaining a right of use is not possible with a reasonable effort, each contractual partner may instantly terminate the license. In the event of termination the Client is obliged, at the option of Osthus, to either delete the software including the documentation and all copies or to return them to Osthus. Osthus shall reimburse the license fee paid by the Client less an amount which takes account of the period of use of the software.

**9. CONFIDENTIALITY & REFERENCES.** The parties undertake to treat all the confidential information obtained in the course of contractual negotiations and during performance of the contract as confidential for an indefinite period and to use it only for the purpose of contractual performance. With regard to the confidential information of the other party each party shall take all reasonable steps to treat all such information as confidential and each party shall grant access to the confidential information of the other party only to such persons who require access for the performance of the contract. For the purposes of this Agreement, "reasonable steps" are defined as steps that the recipient takes to protect similar confidential information of its own and which at least reflect reasonable care; this includes the Client ensuring the careful safekeeping and protection of the confidential information against misuse. Osthus is entitled to include the Customer in its list of references.

**10. LIMITATION OF LIABILITY.** It is understood and agreed that OSTHUS HEREBY DISCLAIMS ANY AND ALL LIABILITY AND CLIENT SHALL ASSUME ALL RESPONSIBILITY FOR OBTAINING INSURANCE TO COVER LOSSES OF ALL TYPES. OSTHUS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, EXCEPT AS SPECIFICALLY STATED HEREIN. SUCH WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED. OSTHUS SHALL IN NO EVENT BE LIABLE FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE, EVEN IF OSTHUS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL OSTHUS' TOTAL LIABILITY TO CLIENT FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT, OR OTHERWISE) EXCEED THE AMOUNT PAID BY CLIENT, IF ANY, FOR THE VALUE OF THE SERVICES PROVIDED HEREUNDER. CLIENT SHALL ASSUME ANY AND ALL RISK OF LOSS DUE TO ANY CAUSE IN CLIENT'S BUSINESS VENTURES WITHIN THE UNITED STATES OF AMERICA OR ABROAD. OSTHUS SHALL ONLY PROVIDE CONSULTING AND OTHER RELATED SERVICES AND SHALL NOT BE LIABLE FOR ANY AND ALL ACTIONS TAKEN BY CLIENT AND OR ITS AGENTS IN RELIEANCE ON CONSULTATION AND OTHER RELATED SERVICES PROVIDED BY OSTHUS. **NO GUARANTEE.** Nothing in this Agreement shall be construed as a guarantee regarding Client's sales prospects to third parties or other outcomes upon performance of the services described hereunder. Osthus makes no such promises or guarantees. Osthus' comments regarding the business and future prospects of Client, if any, are expressions of opinion only. Only the Client shall be liable for the rightfulness of the use of documents the Client provides to Osthus. Osthus shall not be obliged to check whether use is rightful. If a claim is filed against Osthus by third parties to cease and desist or for damages as a result of the use of such documents, the Client shall indemnify Osthus from all claims upon first demand.

**11. EXPENSES.** If expenses are stated in days in the offer, one day shall be equivalent to 8 hours of work.

**12. PERSONAL GUARANTEE.** The undersigned individual signing on behalf of Client(s) personally guarantee the payment of any and all future obligations which may be owing to the Company upon demand, whether or not a lawsuit is filed. The Client agrees that upon the dishonor of any check for whatever reason, the undersigned Client shall be jointly and severally responsible for the payment. This is a continuing personal guarantee and may be revoked only in writing by delivery to the Company of the revocation by certified mail return receipt requested.

**13. INDEMNIFICATION.** Client shall indemnify and hold harmless Osthus against all claims, obligations or liabilities including court costs and attorneys' fees, arising out of Client's tortious or unauthorized acts, misrepresentations, omissions, failure to perform its obligations hereunder, or any acts not expressly authorized in writing, related to or beyond the scope of this Agreement.

**14. NON-CIRCUMVENTION.** Client agrees that the terms and conditions of this Agreement are fully applicable and binding to itself, its officers, directors, shareholders, affiliates, subsidiaries, clients, representatives, employees, associates, assigns, trustees, heirs and/or assigns or executors, and Client irrevocably binds itself not to deal independently with any person, business, corporations, partnership, buyer, sellers, borrowers, lenders, agents, brokers, institutions, including their affiliates, subsidiaries, contractees, clients, representatives, employees, associates, assigns, trustees, heirs and/or assigns, or executors or other entities introduced or known to Client, without the knowledge of Osthus, subject to all of the terms and conditions in this Agreement. Client agrees not to attempt to circumvent, avoid or bypass Osthus in any manner, regarding any agreements or disclosures made between the parties hereto.

**15. COVENANT NOT TO COMPETE.** The Client covenants that for a period of one year from the date of execution of this Agreement except as otherwise approved in writing by Company, either directly or indirectly, with or without compensation, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation or other entity, Client shall not employ or engage, or seek to employ or engage, any person who is at that time employed or

engaged by Company or otherwise directly or indirectly attempt to induce such person to leave its employment or engagement.

**16. TERMINATION.** This Agreement may be terminated by Osthus and Osthus may, at its option, declare any unpaid balance and other sums payable by Client hereunder immediately due and payable for any one or more of the following reasons: (a) if Client fails to make payment when due; or (b) the Client substantially breaches any other obligation of this Agreement.

**17. MEDIATION AND ARBITRATION.** Any disputes between the parties hereto, whether arising under this Agreement or otherwise, which the parties cannot resolve between themselves using good faith shall be referred to a court certified mediator of the Circuit Court in the County of the principal office of Osthus, and any mediation shall be held in the County of the principal office of Osthus. The Client shall bear the cost of said mediation. In the event that said dispute is not resolved in mediation, the parties shall submit the dispute to a neutral arbitrator residing in the County of the principal address of Osthus. The arbitration shall be held in the County of the principal office of Osthus and the Client shall bear the cost of said arbitration. In the event that the parties are unable to agree upon an arbitrator within 15 days of the date on which either party requests arbitration of a matter, the arbitrator shall be provided by the American Arbitration Association. The parties further agree that full discovery shall be allowed to each party to the arbitration and a written award shall be entered forthwith. Any and all types of relief that would otherwise be available in Court shall be available to both parties in the arbitration. The decision of the arbitrator shall be final and binding. Arbitration shall be the exclusive legal remedy of the parties. Judgment upon the award may be entered in any court of competent jurisdiction pursuant to Florida Statutes Chapter 682, as amended, The Arbitration Code. If either party refuses to comply with a ruling or decision of the arbitrator and a lawsuit is brought to enforce said ruling or decision, it is agreed that the party not complying with the ruling or decision of the arbitrator shall pay all the court costs and reasonable attorney's fees (including Trial and Appellate attorney's fees) incurred in enforcing the ruling or decision of the arbitrator. Any rights of injunctive relief shall be in addition to and not in derogation or limitation of any other legal rights.

**18. ENTIRE AGREEMENT.** This Agreement constitutes the entire understanding of the parties and supersedes all prior discussions, negotiations, agreements and understandings, whether oral or written, with respect to its subject matter.

**19. MODIFICATION.** No change or modification of this Agreement shall be valid unless it is IN WRITING AND SIGNED BY Osthus.

**20. ASSIGNABILITY.** Rights based on the contractual relationship with Osthus may be assigned only after obtaining the prior written approval from Osthus.

**21. SEVERABILITY.** If any provision of this Agreement is held invalid, unenforceable, or void by a court of competent jurisdiction, this Agreement shall be considered divisible as to such provision, and the remainder of the Agreement shall be valid and binding as though such provision were not included in this Agreement.

**22. VENUE AND JURISDICTION.** Should a lawsuit be necessary to enforce this Agreement the parties agree that jurisdiction and venue are waived and suit shall be brought in the county of the principal office of Osthus.

**23. NO-WAIVERS.** The waiver by any party of any other party's breach of any provision of this Agreement shall not operate nor be construed as a waiver of any subsequent breach, and the waiver by any party to exercise any right or remedy shall not operate nor be construed as a waiver or bar to the exercise of such right or remedy upon the occurrence of any subsequent breach. No action on



the part of either party to this Agreement shall be interpreted as waiver unless such action shall be in writing.

24. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Florida (without regard to the laws that might be applicable under principles of conflicts of law) as to all matters, including, but not limited to, matters of validity, construction, effect and performance.