

General Terms and Conditions

RA Consulting GmbH, Zeiloch 6a, 76646 Bruchsal, Germany

§1 Scope of Application

- §1.1 RA Consulting GmbH (RA Consulting) will enter into individual contracts with Client on the provision of software and evaluation licenses, contracts for work and services, consulting, and on software maintenance (collectively referred to as the “supplies and/or services”).
- §1.2 RA Consulting shall provide the supplies and/or services exclusively in accordance with the following terms and conditions:
- a) individual contract (including exhibits);
 - b) Specific Terms and Conditions governing the respective supply and/or service;
 - c) the present General Terms and Conditions (GTC).

The individual contract shall prevail over the Specific Terms and Conditions and the latter shall prevail over the present General Terms and Conditions.

- §1.3 The GTC and the Specific Terms and Conditions, as amended, shall apply to any future business, including all cases, in which no express reference is made to them.
- §1.4 Client’s Terms and Conditions shall not apply, including all cases in which RA Consulting does not expressly object to them. Modifications and amendments to this Agreement, collateral agreements, or guarantees and representations must be in writing to be effective.

§2 Conclusion of Contract; Scope of Services

- §2.1 Offers submitted by RA Consulting are subject to change without notice and without obligation, unless they are expressly referred to as binding, or if an expiration date is given. The contract by and between Client and RA Consulting is concluded by signing an individual contract or by a written order confirmation from RA Consulting.
- §2.2 The functionality, properties, and quality of the software and services are only subject to the terms and conditions of the individual contract or the contract documents and records (offer/quotation or order confirmation from RA Consulting) and the product description. Representations or illustrations in evaluation programs, product and project descriptions, and in any documentation, etc., shall not be deemed to be guarantees.
- §2.3 Client is familiar with the material features of the software and the services to be provided by RA Consulting. Client has verified that the specifications of the subject matter of the Agreement meet its intentions and requirements. Client’s requirements (e.g., adaptations) regarding the supplies and/or services to be provided by RA Consulting must be in writing and require the written consent of RA Consulting. RA Consulting may prepare minutes of discussions regarding the fine-tuning or modification of the software. The minutes shall become binding on both parties when RA Consulting makes them available to Client and Client does not object to them in writing within one week, giving a reason for its objection.



- §2.4 Whenever RA Consulting makes developments based on Client's specifications and requirements, in particular, in the event that third party components are incorporated into the products of RA Consulting in compliance with Client's requests, RA Consulting does not assume any responsibility for the technical and legal consequences of its compliance with such requirements and requests. Clients shall indemnify and hold RA Consulting harmless from and against any claims for damages that third parties may assert against RA Consulting due to any infringement on third party patents, copyrights, trademarks, or other proprietary rights due to its compliance with requests or requirements. However, RA Consulting shall promptly draw Client's attention to any problems regarding its compliance with such requirements and requests after RA Consulting has become aware of the same.
- §2.5 RA Consulting may retain subcontractors for the provision of services.

§3 Client's Duty to Co-Operate

- §3.1 Client shall provide RA Consulting with any information required for the performance of the Agreement in a timely manner. To the extent that this is helpful for the performance of the Agreement, Client shall assist RA Consulting free of charge by making available - to the extent required -, e.g., staff, rooms, hardware, operating systems and basic software, data compatible with the RA Consulting software, and telecommunication facilities in a timely manner. Client shall ensure that the up-to-date system program versions and any network, database, and other system or application-related software is available, if required in the provision of supplies and/or services.
- §3.2 Client shall take reasonable precautions for the event of a failure in the provision of the supplies and/or services, or if the software fails to operate properly in whole or in part, e.g., by failure diagnosis, regular verification of results, backups, etc. Client shall make state-of-the-art backups of its data. It shall ensure that up-to-date data can be reproduced from machine-readable data stores at a reasonable cost.
- §3.3 RA Consulting may perform subsequent improvements under its warranty obligations, any adaptations or provide other supplies and/or services via remote data transmission. In this case, Client shall provide the necessary technical pre-requisites at its expense and grant RA Consulting access to its IT systems upon advance notice by telephone from RA Consulting.
- §3.4 The Client and RA Consulting are aware of the fact that based on the state-of-the-art it is not possible to program software that is absolutely free from error. The parties agree to monitor the software on an on-going basis and report any errors immediately to the other party.
- §3.5 If Client fails to comply with its duty to co-operate, RA Consulting may withhold its supplies or services. If RA Consulting opts to continue to perform the Agreement, any additional expenses incurred shall be invoiced based on the then-valid price list if and when Client fails to co-operate notwithstanding a request from RA Consulting to do so. The same applies to additional expenses incurred by RA Consulting due to the fact that work must be repeated as a result of inaccurate, incomplete, or subsequently rectified information if Client fails to promptly supply accurate and full information after requested by RA Consulting.



§4 Time of Performance; Delays

- §4.1 The place of performance is the registered office of RA Consulting. Any information on time periods for supplies and services is not binding, unless RA Consulting refers to such dates and periods as binding in a written document. Compliance with delivery periods and/or the time for performance is subject to proper and timely delivery to RA Consulting, unless RA Consulting is responsible for non- or mal-performance on the part of its supplier(s). Partial deliveries or partial services are permissible to the extent that the parts supplied may be used independently in a reasonable manner. Any partial delivery or partial service may be invoiced separately.
- §4.2 Periods for delivery and performance shall be extended by the amount of time during which RA Consulting may prove that it was unable to procure, produce, or deliver goods or to provide services due to labor unrest, force majeure, or other contingencies beyond its control, plus a reasonable period to resume the supplies and/or services. Periods for delivery and performance shall also be extended by such a period during which Client fails to perform its duty to cooperate, as required for the performance of this Agreement.
- §4.3 RA Consulting is not deemed to be in default unless written notice has been issued. Client shall notify RA Consulting in writing of all defects, contract breaches, and grace periods. Grace periods shall be reasonable and typically exceed 10 working days.

§5 Compensation, Terms of Payment, Right to Offset

- §5.1 The compensation payable for the software and other supplies and/or services is subject to the underlying individual contract, the offer/quotation submitted by RA Consulting, the rates and charges indicated in the then-current price list, or to any other agreements made with Client and confirmed by RA Consulting in the order confirmation. Compensation on a time and materials basis will be charged as daily rates plus material cost, if any, in accordance with the then-current price list.
- §5.2 As a rule, 50% of any fixed prices agreed between the parties (e.g., software licenses) for software and other supplies and/or services will be invoiced and due upon conclusion of the contract and the remaining 50% following the shipment to Client or completion of the service. Contractual services and any other services that are charged on a time and materials basis will be invoiced and due at monthly intervals. Payments shall be made promptly upon receipt of the invoice without any deduction. All monetary amounts indicated are net amounts. The statutory value added tax shall be added to these net amounts.
- §5.3 In the event that RA Consulting provides any services outside its registered office, there will be an extra charge for travel, per diems of RA Consulting staff, and, if applicable, their lodging. Car travel will be invoiced based on the then published price list, public transport and lodging based on actual expenses, and board based on the then-valid maximum lump-sum rates permissible under the tax law. RA Consulting has the right to charge 50% of the pro-rated daily rate for travel time.



- §5.4 The payment terms shall be deemed to have been fulfilled on the date from which RA Consulting may dispose of the funds. In case of a default on the part of Client, RA Consulting may request immediate payment of all outstanding amounts and immediate settlement of any other claims that will become due before or by the date until full payment has been received.
- §5.5 Client may only offset claims against claims acknowledged by RA Consulting or claims finally adjudicated by a court. Client may not withhold payments or raise the defense of non-performance of the contract, unless only claims arising under this Agreement are affected, and only in the case that RA Consulting itself has grossly violated the contract or RA Consulting has already received a portion of the compensation for non-compliant supplies and/or services, where the portion received matches the value of the supplies and/or services.

§6 Duty to Inspect and to Notify RA Consulting of Defects

- §6.1 Client shall immediately inspect all supplies and services provided by RA Consulting in accordance with § 377 German Commercial Code (HGB) and shall notify RA Consulting of any defects in writing, giving a detailed description of the defect.
- §6.2 A notice of defect shall include information on the type of defect, the module in which the defect occurred, and the tasks that were being performed on the computer at the time the defect occurred. The defect shall be described in such a manner that it may be reproduced.

§7 Defects as to Quality and Defects of Title

- §7.1 RA Consulting warrants that the supplies and/or services, in particular, the software made available, comply with their description in the contract documents, in the product and service description, and in the user documentation, and that the contractually agreed use of the software by Client does not infringe on any third party rights. Defects within the meaning of this warranty clause shall be only such defects that are reproducible and are caused by quality deficiencies of the software. Any impairment of a function resulting from hardware defects, environmental conditions, operator errors, data corruption, or any other reasons for which Client is responsible, shall not be deemed a defect.
- §7.2 In the event that Client shows that a defect as to quality exists, RA Consulting may initially discharge its warranty obligations by subsequent performance. Subsequent performance regarding the software shall be performed, in the discretion of RA Consulting, by removing the defect, by making a new program release available, or by providing a workaround in order to avoid the effects of the defect. Client is willing to use workarounds or install new program releases, except in cases where Client may not be reasonably expected to do so due to the effort and cost involved. If defects in title are shown to exist, RA Consulting shall discharge its warranty obligations by subsequent improvement, i.e., at its discretion, it will either obtain the full legal right for Client to use the software supplied or a software replacement of equal value. RA Consulting shall bear the expenses incurred in connection with subsequent improvement. For each defect of which it is notified, RA Consulting has at least two (2) attempts at subsequent



improvement. In exceptional cases, Client may be reasonably expected to accept a larger number of attempts at subsequent improvement.

- §7.3 Client may not assert any other claims under this warranty clause, unless the subsequent improvement finally fails or RA Consulting refuses to repeat and improve supplies and/or services. Claims for damages or the reimbursement of wasted expenditures are governed by § 8.
- §7.4 If subsequent improvement has not finally failed, or if RA Consulting does not finally and genuinely refuse subsequent improvement, or if, for other reasons, Client can reasonably be expected to accept subsequent improvement, Client may claim the rescission of the contract, reduction of compensation in lieu of performance, or damages only subject to the following additional conditions: Prior to any intended termination of the contractual relationship, RA Consulting shall be informed of the reason for complaint, there shall be a specific notice of defect with regard to the contract breach, and except in urgent cases, Client shall demand the breach to be cured within a reasonable grace period of no less than fourteen (14) days. To the extent that subsequent improvement has not or has only partially occurred when the grace period granted by Client expires, RA Consulting may request Client in writing for notification of whether it expects RA Consulting to continue the subsequent improvement. If Client fails to respond to this request within seven (7) days from receipt of such request, further subsequent improvement is precluded; this shall not affect any other warranty claims that Client may have. All notices and declarations in connection therewith must be in writing to be effective.
- §7.5 To the extent that Client can be reasonably expected to do so, Client shall take all necessary measures to determine, delimit, and document defects. This includes the preparation of an error report, system logs, dumps, provisioning of the input/output data affected, interim and test results, and any other records that may serve to illustrate the defect. Whenever a warranty claim arises, Client shall provide RA Consulting with any information available and support the removal of the defect in accordance with § 3. To the extent that RA Consulting is liable for expenses incurred in subsequent improvement, § 3 par. 5 applies accordingly. If subsequent improvement is rendered substantially more difficult as a consequence of a breach of the foregoing obligations, RA Consulting is released from its obligation to perform.
- §7.6 Warranty obligations require a notice of defect in accordance with § 8 par. 2 in any instance. Delayed, insufficient, or unfounded notices of defect (e.g., RA Consulting is not responsible for the defect) shall release RA Consulting from its warranty obligations. To the extent that RA Consulting opts to engage in the removal of the defect, it may charge the additional expenses incurred to Client.
- §7.7 Furthermore, RA Consulting shall be released from its warranty obligations if Client has modified the software or if the software has been used in violation of the Agreement, unless Client is able to show that the defect is not related to these circumstances.
- §7.8 Defects shall come under the statute of limitations:
- after one (1) year regarding defects as to quality,



- after one (1) year regarding defects of title, unless the defect exists in the form of an in rem right of a third party, based upon which such third party may claim the surrender of the software,
- with regard to all other issues, the statutory provisions shall apply,

unless otherwise agreed by and between the parties. In case of intentional wrongdoing (in particular, when defects are fraudulently concealed) and of gross negligence on the part of RA Consulting, the statutory limitations period shall also apply.

§7.9 In the event that third parties raise claims in connection with the supplies and/or services, Client shall promptly notify RA Consulting of the same in writing. RA Consulting shall at its option defend against the claim or replace the supplies and/or services concerned with a supply or service of equal value that complies with the contractual agreements by and between the parties. In the event that RA Consulting defends against the claims in its discretion, Client shall not acknowledge any third party claims without the prior written consent of RA Consulting. RA Consulting shall defend against the claims at its own expense. In this case, RA Consulting shall indemnify and hold Client harmless from and against any costs and damages incurred in connection with the defense, unless the same are caused by a violation of Client's duties. The duty to give notice pursuant to sentence 1 shall apply irrespective of whether claims have come under the statute of limitations pursuant to § 7 par. 8.

§7.10 In the event that RA Consulting has provided or re-distributed Oracle products to Client as part of its supplies and services, Client shall, in the event of a defect that only concerns the Oracle product, but not the supplies and/or services provided by RA Consulting (including integration, adaptation, and customizing of the Oracle product) initially assert its claims against Oracle (including in court). To this end, RA Consulting hereby assigns any warranty claims that it may have against Oracle to Client at the date hereof. RA Consulting shall be liable for warranty obligations only to the extent that Client is unable to obtain indemnification from Oracle by asserting the assigned claims. To the extent that RA Consulting satisfies Client's claims, any claims based on defects that may exist vis-à-vis a third-party supplier shall revert to RA Consulting (return-assignment). This shall also apply to supplies and/or services from other third parties that may have been re-sold by RA Consulting.

§8 Liability

§8.1 RA Consulting shall pay damages or reimburse wasted expenditures, irrespective of their legal cause (e.g., fiduciary relation that resembles a contract with the party involved, violation of a contractual duty, tort), only to the following extent:

- In case of willful intent in the full amount, and if a guarantee has been issued, or the risk of procurement has been assumed in the amount of protection intended by the guarantee or risk of procurement assumed;
- In case of gross negligence, in the amount of the typical and foreseeable damages that would have been avoided by the exercise of due care;
- in other cases of negligence, only for violation of a contractual duty that is of such material importance that the attainment of the purpose of the Agreement is jeopardized, for



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impossibility of performance, for liability for defects, and for default. RA Consulting shall be liable for the typical and foreseeable damages, limited to

- the value of compensation for standardized software products regarding all damage incidents related to their provision,
- the maintenance fee payable for any one calendar year for any damage incidents occurring in the relevant calendar year in connection with maintenance obligations, or
- the contract amount for all other supplies and/or services (in particular, with regard to contracts for services and consultancy) for all damages occurring in connection with their provision,
- at a minimum, however, EUR 10,000.00.

§8.2 RA Consulting may use the defense of comparative negligence. RA Consulting shall be liable only for the restoration of data, if Customer has ensured through sufficient backups that they can be reproduced from machine-readable data stores at a reasonable cost. The limitation of liability made in the foregoing sentence shall not apply in case of intentional wrongdoing or gross negligence on the part of RA Consulting.

§8.3 Except in case of intentional wrongdoing and gross negligence, liability claims against RA Consulting pursuant to par. 1 come under the Statute of Limitations after one (1) year. Such periods commence on the date on which Client becomes aware of the facts resulting in the claim or could have become aware thereof in the absence of gross negligence. The claims shall fall under the Statute of Limitations no later than upon the expiration of the maximum periods set forth in § 199 of the German Civil Code. The periods for defects as to quality and defects of title that are otherwise provided for (§ 7 par. 8) remain unaffected.

§8.4 RA Consulting advises Client that the software has not been designed for use in safety-critical fields (e.g., aviation, medical engineering, power plants, defense technology).

§8.5 The statutory liability for death, injury to body and health, or under the Product Liability Act remains unaffected.

§8.6 RA Consulting shall be liable for damages that may only be attributed to Oracle products or supplies and/or services of any other third parties – and not to the supplies and/or services of RA Consulting (including integration and adaptation/customization of these third-party products) only in accordance with § 7 par. 10 and in accordance with the preceding paragraphs only in the case that the claims for damages against Oracle or any other third party that were assigned to Client do not suffice to fully indemnify Client.

§8.7 In addition, there are the following limitations of liability regarding damage incidents occurring due to the provision of Open Source software from third-party suppliers as part of the supplies and/or services:

a) RA Consulting shall only be liable for defects of title and defects as to quality in accordance with the first two bullet points of par. 1 and paragraphs 2 through 6.



b) In all other regards, RA Consulting shall, irrespective of the legal cause, only be liable for damages in accordance with paragraphs 2 through 6:

- in the full amount in case of intentional wrongdoing, and if a guarantee was issued regarding a certain guaranteed quality, and
- in case of gross and ordinary or medium negligence, for reimbursement of the foreseeable and typical damages.

c) Consequently there will be no liability for slight negligence, except for personal injury and under the Product Liability Act.

§9 Confidentiality

§9.1 1. The parties agree to treat all trade or business secrets or information marked or referred to as confidential that the other party discloses or of which they become aware during the performance of this Agreement as strictly confidential. The information and the relevant records shall not be disclosed to third parties unless they are involved in the performance of the Agreement. The parties shall store and secure the subject matters of the Agreement based on the state-of-the-art and using the same degree of care they customarily exercise for their own items of this nature to ensure that misuse by third parties is unlikely. This duty shall survive the termination of this Agreement.

§9.2 The duty of confidentiality shall not apply to information that can be shown to have been in the public domain, or of which the receiving party was aware at the time of disclosure, or that was disclosed by third parties not bound to a duty of confidentiality, or that has been independently developed by the receiving party without using any of the proprietary information.

§10 Final Provisions

§10.1 Modifications and amendments to this Agreement must be in writing to be effective. Compliance with the written form requirement shall also be deemed to have occurred if documents are transmitted by facsimile. The Exhibits form an integral part of this Agreement.

§10.2 The substantive laws of the Federal Republic of Germany without reference to its conflicts of laws provisions shall exclusively govern all legal relationships arising under and from this Agreement, and the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

§10.3 The place of performance and jurisdiction is Bruchsal, Germany, if Client is a merchant or is treated as such under the German Commercial Code, or if it has its registered office or residence outside Germany. RA Consulting may bring an action against Client at the place of jurisdiction of Client or at any other competent place of jurisdiction under national or international law.



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