

# LOBSTER PRO GMBH'S GENERAL TERMS AND CONDITIONS FOR LOBSTER\_PRO

The following General Terms and Conditions (hereinafter "Lobster\_pro Ts & Cs") shall apply to the relationship between Lobster Pro GmbH, Bräuhausstrasse 1, 82327 Tutzing (hereinafter referred to as "Lobster" or "Lobster PRO GmbH") and its Customers (hereinafter referred to as "Customer") – together referred to as the "Parties".

## A GENERAL PROVISIONS

### I General definitions

Term	Description
Lobster_pro Ts & Cs	The General Terms and Conditions of Lobster contained in this document for services rendered in connection with the Lobster_pro product.
Service Order	Order relating to the performance of specific services by Lobster.
Lobster	Lobster PRO GmbH, Bräuhausstrasse 1, D-82327 Tutzing and its affiliated companies.
Lobster_pro	Standardised software developed and distributed by Lobster for the digitalisation and automation of business processes (application development)
Customer	Contractual partner of Lobster, which makes use of services relating to Lobster_pro.
Confidential Inform.	All information, whether transmitted in writing or verbally, (i) which by its nature is considered confidential or sensitive, or (ii) which the Party receiving the information must identify as being confidential or sensitive due to the external circumstances of the transmission. Confidential information includes, in particular, product descriptions, specifications, prices, reports.
Affiliates	Companies, which are connected to Lobster or the Customer within the meaning of art. 15 AktG (Stock Corporation Act).

### II Service Orders

**1. Service Orders** The Parties agree on the specific services to be rendered via Service Orders. Service Orders define the details of the services to be rendered. They comprise a specific service description, as well as the time frame and the deadlines for the transfer of the deliverables. Service Orders are comprised of Lobster's offer and the Customer's order. Offers and orders are generally exchanged via email.

All Service Orders must at least be submitted in writing to be effective and also refer to these Ts & Cs, unless a framework agreement has been concluded between the Parties that takes precedence over these Ts & Cs. A Customer order, which contains additional provisions, limitations or other amendments to Lobster's offer, shall only become legally binding after Lobster's order confirmation has been received by the Customer.

**2. Possible service scope of Service Orders** Service Orders may include the following services:

- Permanent or temporary provision of Lobster\_pro (see also sections B and C);
- Support Services relating to the deployment of Lobster\_pro within a production environment (see section D);
- Installation of Lobster\_pro on the Customer's systems (see more section D);
- Customer training for the use and deployment of Lobster\_pro (see also section D);
- Delivery of project planning and configuration services (see also section D).

**3. Order of Precedence** The provisions of a Service Order shall prevail over the provisions of these Lobster\_pro Ts & Cs.

### III The Customer's duties and obligations to cooperate

The Customer shall be obligated to ensure that all data processed with Lobster\_pro are reasonably protected and backed up, that adequate data backup systems and data processing systems are established and that the Lobster\_pro output is managed and monitored.

Further cooperation obligations and duties on the part of the Customer are set out in the respective Service Order (in particular in Lobster's offers) and, where applicable, in further provisions as specified in these Lobster\_pro Ts & Cs. The Customer's duty to cooperate shall constitute a material, contractually binding obligation of the Customer.

### IV General provisions relating to terms of compensation and payment

**1. Payment, taxes** Lobster shall receive the payment specified in the Service Order for the services rendered within the context of the respective Service Order. The payment agreed upon in a Service Order does not include any transactional taxes (such as VAT, or similar transaction-based taxes) which may be imposed in accordance with applicable laws.

**2. Currency** All prices stated in Service Orders are exclusively stated in euro.

**3. Payment terms** The terms of payment shall be agreed upon by the Parties in the respective Service Order. The Parties may agree on reasonable instalments in instances where a fixed price has been agreed. Unless stipulated otherwise in a Service Order, invoices issued by Lobster shall be due and payable within 30 calendar days after the issuance of the invoice.

**4. Default** The statutory provisions shall apply in the event of default.

## **V Infringement of third-party rights (defects of title)**

**1. Notification of defects** The Customer shall notify Lobster immediately of any alleged defects of title or infringement of industrial property rights relating to the rendering of services within the context of a Service Order. The Customer shall moreover provide appropriate support in the defence of such claims.

**2. Indemnification** Lobster indemnifies the Customer against all legitimate third-party claims which constitute a culpable patent or copyright infringement or a culpable infringement of other intellectual property rights and which are based on the contracted deployment of the service rendered under a Service Order (in particular the provision of Lobster\_pro).

The indemnification covers all legitimate claims of third parties that are the result of the utilisation of a service and are asserted against the Customer. The indemnification presupposes:

- that Lobster is promptly notified of the asserted claim;
- Lobster is given, to the extent permissible and possible, full control of the defence or any settlement negotiations, and
- the Customer makes all appropriate support and information available to Lobster.

Lobster shall reimburse the cost arising from this reasonable assistance. Lobster's obligation to indemnify is subject to the liability provisions in accordance with section A.VI.

**3. The Customer's rights** If Lobster's services within the context of a Service Order become the subject of a property right infringement action or sanction, Lobster will, at its discretion and taking into account the interests of the Customer,

- procure at no cost to the Customer, the right to continue using the service, or
- replace or modify the service so that the property right infringement or defect of title is remedied.

If none of the above alternatives are economically reasonable, the Customer is entitled to withdraw from the affected Service Order. Lobster will refund the payment made under the affected Service Order, if necessary, on a pro rata basis. If the Service Order concerns a subscription, the right to termination for cause replaces the right to withdraw. In addition, the Customer shall be entitled to assert its statutory rights for defects of title, provided the

requirements are met.

## **VI General limitation of liability**

No matter the legal grounds (delay, defects and defects of title, infringement of property rights, poor performance), Lobster shall be exclusively liable as follows:

**1. Unlimited liability** In the following cases, Lobster shall bear unlimited liability:

- Intent and gross negligence;
- Damages resulting from injury to life, body or health, irrespective of the form of fault;
- Acceptance of guarantees;
- Fraudulent intent.

**2. Limitation of liability in the event of slight negligence**

Provided none of the cases of section A.VI.1 applies, yet Lobster violates an essential contractual obligation due to slight negligence, Lobster is obligated to compensate for the contractually foreseeable damage. An essential contractual obligation is defined as an obligation which makes the execution of a Service Order possible in the first place and on which the Customer regularly relies.

**3. Product Liability Act** Lobster's liability in accordance with the provisions of the Product Liability Act remains unaffected by the above conditions.

**4. Contributory negligence** If damages are attributable to both Parties, the contributory negligence of the Customer must be taken into account (section 254 BGB, German Civil Code).

**5. Loss of data and data back-ups** In particular, the Customer shall be responsible for regular data backups, the appropriateness of which is determined by the Customer's individual risks, see also section A. III. Where Lobster is liable for data loss, then liability is limited to the costs incurred from the duplication of data backups, as well as the costs for data restoration, which would have been incurred even if there had been adequate data backups.

## **VII Subcontractors**

Lobster is only entitled to use subcontractors if the Customer has been expressly informed in advance in text form. The subcontractors used by Lobster for the provision of services are listed in the customer portal. The customer has the right to object pursuant to art. 28 (2) EU GDPR. Lobster remains responsible for the provision of Services even if subcontractors are used for its own Services.

## VIII Non-disclosure and confidentiality

**1. Non-disclosure** Neither Party shall be entitled to transfer confidential information of the other Party to third parties without written consent. Both Parties undertake to use confidential information only as provided for in the provisions of these Lobster\_pro Ts & Cs or the Service Orders. Both Parties shall undertake to observe no less than the same precautionary measures as they take with regard to their own confidential information. Such precautionary measures must at least be appropriate to prevent disclosure to unauthorised third parties. In addition, both Parties are obliged to prohibit the unauthorised disclosure or use of confidential information by their customers, employees, subcontractors and legal representatives. The Parties shall inform each other in writing in the event of misuse of confidential information.

### **2. Exceptions**

Confidential information shall not include information that

- fulfils an exceptional circumstance in acc. with art. 5 Trade Secrets Act;
- was already known to the other Party before transmission for a Service Order and without an existing confidentiality agreement;
- is transmitted by a third party not subject to a comparable confidentiality agreement;
- is otherwise publicly known;
- has been developed independently and without use of the confidential information;
- has been released for publication in writing; or
- must be transmitted pursuant to a court order, provided that the Party affected by the transmission is informed in good time, allowing legal action to still be taken.

## IX Personal data/data protection

- 1. Fundamental principle** Both Parties shall comply with the provisions of data protection law, in particular the Federal Data Protection Act (BDSG) and GDPR. A Party shall only collect, store, process and use personal data of the other Party if, to the extent that or as long as this is necessary for the establishment, implementation or termination of an assignment. Any further collection, processing and use of personal data of the other Party shall only take place if a legal provision requires or permits this or the other Party has expressly consented.
- 2. Data secrecy** Lobster undertakes to maintain data secrecy in accordance with art. 53 BDSG and further undertakes to maintain data secrecy even after completion of a Service Order. Lobster further undertakes to only deploy such employees for the processing of personal data who have been committed to data secrecy in accordance with art. 53 BDSG.
- 3. Order processing agreement** If necessary, the Parties will conclude a supplementary agreement on order processing in

accordance with art. 28 GDPR in addition to the Service Order.

## X Use of non-personal data

**1. Fundamental principle** Non-personal data can also be created during the deployment of Lobster\_data by the Customer during business operations. This non-personal data can include, in particular, statistical and analytical data on function calls and reference data.

**2. Usage rights for non-personal data** The Customer grants Lobster an irrevocable, free, non-exclusive, transferable, sub-licensable, spatially and temporally unlimited right to us all non-personal data for the purpose of further development of Lobster\_pro, the optimisation of support processes as well as for the purpose of conception and development of applications in the field of data management, data integration and process optimisation. The aforementioned right of use entitles Lobster to reproduce the non-personal data and to use it for development and training purposes (including in the field of machine learning). Lobster is entitled to merge the non-personal data with its own data and data of third parties and to create new, independent data sets from it. The obligation to keep confidential information secret in accordance with clause A.VIII.1 remains unaffected. Lobster is not entitled to grant third parties access to the Customer's non-personal data or to transfer the non-personal data to third parties.

**3. Data quality** The Customer is not responsible for the non-personal data being of a certain quality.

**4. Database protection** The Customer is aware and accepts that all rights to the database created by Lobster relating to the use of the non-personal data in accordance with clause A.X.2 are exclusively granted to Lobster within the context of the relationship between the Parties. Lobster shall be deemed to be the producer within the meaning of art. 87 a UrhG (German Copyright Act). Any commercial or intellectual property rights to the non-personal data remain unaffected.

## XI Applicable law

These Lobster\_pro Ts & Cs and all Service Orders are subject to German law. The provisions of the UN Convention on the International Sale of Goods (CISG) shall not apply.

## XII Conciliation proceedings and jurisdiction

**1. Conciliation** All disputes arising out of or in conjunction with these Lobster\_pro Ts & Cs and/or an agreed Service Order shall be brought before the Conciliation Office of the German Association of Law and Informatics e.V. (Deutsche Gesellschaft für Recht und Informatik e.V., hereinafter DGRI), prior to filing any suit before ordinary courts. This also applies in the event of disputes regarding the legal invalidity of these Lobster\_pro Ts & Cs and/or Service Orders and/or individual provisions of these Lobster\_pro Ts & Cs and/or Service Orders. The conciliation shall be conducted in accordance with the DGRI's conciliation rules in force at the time. Conciliation is not a condition of admissibility for proceedings before the ordinary courts.

**2. Jurisdiction.** The place of jurisdiction is Munich (Landgericht München I).

### **XIII Miscellaneous**

**1. Naming as a reference customer** Lobster is entitled to name the Customer as a reference customer on its website and in its marketing materials.

**2. Assignment** The Customer may not assign rights and obligations arising from Service Orders pursuant to these Lobster\_pro Ts & Cs to a third party, except if Lobster approves such an assignment. Such approval shall be at Lobster's sole and exclusive discretion. Any assignment without approval shall be ineffective.

## B PROVISIONS FOR SUBSCRIPTION (TEMPORARY TRANSFER OF LOBSTER\_PRO)

### I Specific definitions of this section B

Term	Description
Accounts	End users (i.e. employees of the Customer), who can also access Lobster_pro.
Customising	Configuration of the licence software in accordance with the specifications.
Documentation	User manual for the licence software in English and in digital, printable format as well as installation instructions. The documentation is not adapted to the Customer.
Dongle	A mechanism for licence verification which serves to protect Lobster_pro from unauthorised duplication.
Embedded system	Every installation of Lobster_pro contains Lobster_data as an embedded system.
Object code	Lobster_pro in its binary form, i.e. programming language which is not human-readable and therefore is not intended to aid understanding the program logic, but which is suitable for execution on a computer.
Profile	Workflow which is executed technically within the integrated Lobster_data solution and includes all settings, descriptions and parameters for data transmission, data manipulation and/or data transformation.
Defect	Reproducible program error(s) or malfunction which result in Lobster_pro not being configured as agreed and stipulated in the respective documentation .

### II Lobster's licensing models

Licence models set forth in the respective Service Order. A Service Order shall always stipulate the maximum number of accounts, profiles in the embedded Lobster\_data system and business objects in the Lobster\_pro database, which the Customer can use Lobster\_pro with. Every licence for Lobster\_pro contains a licence for Lobster\_data as an embedded system.

### III Lobster\_pro's functional description

Lobster\_pro's functionalities are described in the documentation provided to the Customer. The functional description contained therein shall form an integral part of the respective Service Order. Technical data, specifications and performance information in public statements, in particular in advertising material, shall not be deemed to be an assurance as to included features.

### IV Scope and form of delivery

**1. Scope of delivery** Lobster shall deliver Lobster\_pro in object code form together with the accompanying documentation formatted according to the respective Service Order. Lobster\_pro contains a mechanism for licence verification, which is either provided by Lobster as a Dongle or is implemented via the cloud solution of a third-party provider.

Where technically necessary, Lobster shall provide the Customer with the required Dongle once the test phase as set forth in the Service Order has expired.

**2. Form of delivery** Lobster\_pro may be delivered on a data carrier or via download. Where Lobster\_pro is made available via download, Lobster will provide the Customer with the information necessary to download and use Lobster\_pro, such as a password or a licence key.

### V Granting of rights

**1. Scope of granted usage rights** Lobster grants the Customer the non-exclusive and perpetual right to use Lobster\_pro in the time period set forth in the Service Order for its own internal business purposes in accordance with the licence model (see section B.II) as agreed upon in the respective Service Order. The Customer is not authorised to use Lobster\_pro for the provision of services (such as data centre services, application service providing, business process outsourcing) to third parties.

**2. Back-up copies** The Customer is authorised to create a reasonable number of back-up copies of Lobster\_pro.

**3. Sublicensing and leasing** Sub-licensing and leasing of Lobster\_pro is not permitted.

**4. Decompilation** Decompiling the source code and editing the software is prohibited, unless carried out for a purpose and to an extent that is explicitly legally permitted.

**5. Licence verification** The Customer is not authorised to remove or circumvent the licence verification process contained in Lobster\_pro. If Lobster provides a Dongle, the Customer shall use such Dongle with the necessary care and shall safeguard against loss.

**6. Breach of licence** If the Customer infringes any of the above provisions, all rights of use granted within the scope of an assignment shall immediately be terminated and automatically reverted to Lobster. In this case, the Customer must immediately and completely discontinue the use of Lobster\_pro, delete all copies of Lobster\_pro installed on his

systems, and delete or hand over to Lobster any backup copies that may have been made.

## VI Defects of Lobster\_pro

**1. Notification of Defects** During the term of the Service Order, the Customer is obligated to describe any defects that may occur in a comprehensible manner and shall ideally give Lobster written notice immediately upon discovery.

**2. Remedies** If the Customer notifies Lobster of a defect in accordance with section B.VI.1, Lobster shall remedy it free of charge. Lobster shall consider the gravity of the defect as well as its consequences for the Customer when remedying. Lobster may at its own discretion choose how to remedy the defect; as a rule, the defect is remedied by delivering an update (in particular updates or service packs).

**3. Instructions and workarounds** As far as can be reasonably expected from the Customer, defects may also be remedied by Lobster giving the Customer instructions to enable the Customer to remedy the respective defect independently. Such instructions to remedy a defect are, in particular, possible in the event that the Customer can remedy the defect with a minimum of effort or if the tangible fallout of the defect can be avoided by the Customer taking immediate action as instructed. A temporary workaround shall be deemed to constitute a remedy provided the functioning of Lobster\_pro is not substantially impaired thereby and the workaround is reasonable to the Customer.

**4. Grace period** In the event that the remedies set forth in sections B.VI.2 and B.VI.3 do not succeed within a reasonable period of time, the Customer shall set Lobster a reasonable grace period.

This shall not apply, if

- such grace period is not reasonable for the Customer or
- Lobster has definitively and sincerely refused to carry out remedies.

**5. Additional rights of the Customer** If the remedy of the defect also fails within the grace period (set in accordance with section B.VI.4), the Customer is entitled to terminate the respective Service Order for good cause (art. 543 para. 2 line 1 no. 1 BGB).

In addition to termination for cause, the Customer is entitled to claim damages in lieu of performance or reimbursement of expenses if Lobster has breached its contractual obligations. The limitations in section A.VI shall apply to the Customer's claims for damages or reimbursement of expenses.

Notwithstanding the foregoing, Lobster's liability pursuant to art. 536 para. 1, 1st alternative of the German Civil Code (BGB) is excluded, if defects were already present when concluding the contract.

## VII Provisions concerning term and termination

**1. Term** The term of the Lobster\_pro subscription is specified in the respective Service Order.

**2. Termination for convenience** Termination of a Service Order for convenience is regulated by the respective Service Order.

**3. Termination for good cause** Both Parties reserve the right to terminate for good cause in accordance with art. 314 BGB. As a rule, termination for good cause may only be effected, if the respective Party has been given a reasonable grace period prior to termination and this period of time has elapsed unsuccessfully.

The grace period must be set as soon as the good cause has become known.

A grace period is not required if

- the Party seriously and finally refuses the service owed;
- special circumstances apply which, after weighing the interests of both parties, justify immediate termination.

Insofar as the grace period expires unsuccessfully and a Party is entitled to termination for good cause, termination may only be declared within a period of 1 month after expiry of the grace period. Insofar as a grace period is not required, the termination must be expressed no later than three months after becoming aware of the circumstances justifying the termination. Any claims for damages shall remain unaffected by the right to terminate for good cause. The limitations in section A.VI. of these Ts & Cs apply.

**4. Effect of termination** After the subscription has been terminated, the Customer must stop using Lobster\_pro and return Lobster\_pro and program copies (including any backup copies) and all documentation, materials and other documents provided to Lobster. They shall be returned at the Customer's own expense. If Lobster has made the Lobster\_pro available to the Customer via download, Lobster is free to waive the return and instead demand that the Customer delete Lobster\_pro as well as other program copies and destroy the documentation, materials and other documents provided. In addition, the Customer is obliged to completely and permanently delete all installed program copies and any stored documentation from all its servers. Deploying Lobster\_pro once the subscription has been terminated is not permitted.



## C PROVISIONS FOR PERPETUAL TRANSFER OF LOBSTER\_PRO

### I Specific definitions of this section C

Term	Description
Accounts	Users authorised to access the licence software and company accounts set up in the licence software.
Customising	Configuration of the licence software in accordance with specifications.
Documentation	User manual for the licence software in English and in digital, printable format as well as installation instructions. The documentation is not adapted to the Customer.
Dongle	A mechanism for licence verification which serves to protect Lobster_pro from unauthorised duplication.
Embedded System	Every installation of Lobster_pro contains Lobster_data as an embedded system.
Object code	Lobster_pro in its binary form, i.e. programming language which is not human-readable and therefore is not intended to aid understanding the program logic, but which is suitable for execution on a computer.
Profile	Workflow which is executed technically within the embedded Lobster_data solution and includes all settings, descriptions and parameters for data transmission, data manipulation and/ or data transformation.
Defect	Reproducible program error(s) or malfunction which result in Lobster_pro not having the agreed configuration as described in the respective documentation.

### II Lobster's licensing models

Licence models set forth in the respective Service Order. A Service Order shall always stipulate the maximum number of accounts, profiles in the embedded Lobster\_data system and business objects in the Lobster\_pro database, which the Customer can use Lobster\_pro with. Every licence for Lobster\_pro contains a licence for Lobster\_data as an embedded system.

### III Lobster\_pro's functional description

Lobster\_pro's functionalities are set forth in the Documentation provided to the Customer. The functional description contained therein shall form an integral part of the respective Service Order. Technical data, specifications and performance information in public statements, in particular in advertising material, shall not be deemed to be an assurance as to included features.

### IV Scope and form of delivery

**1. Scope of delivery** Lobster shall deliver Lobster\_pro in object code form together with the accompanying documentation formatted according to the respective Service Order. Lobster\_pro contains a mechanism for licence verification, which is either provided as a Dongle or is implemented via the cloud solution of a third-party provider.

Where technically necessary, Lobster shall provide the Customer with the required Dongle after the test phase set forth in the Service Order has expired and after Lobster has received the payment for Lobster\_pro as stipulated in the Service Order.

**2. Form of Delivery** Lobster\_pro may be delivered on a data carrier or via download. Where Lobster\_pro is made available via download, Lobster will provide the Customer with the information necessary to download and use Lobster\_pro, such as a password or a licence key.

### V Granting of rights

**1. Scope of granted usage rights** Lobster grants the Customer the non-exclusive and perpetual right to use Lobster\_pro for its own internal business purposes in accordance with the licence model (see section C.II.) as agreed upon in the respective Service Order. The Customer is not authorised to use Lobster\_pro for the provision of services (such as data centre services, application service providing, business process outsourcing) to third parties.

**2. Back-up copies** The Customer is authorised to create a reasonable number of back-up copies of Lobster\_pro.

**3. Resale** Sub-licensing and leasing of Lobster\_pro is not permitted. The Customer is entitled to resell the acquired copies of Lobster\_pro once to a third party, provided that the Customer agrees with the third party with respect to Lobster\_pro that these Ts & Cs for the granting of rights also apply to the third party and that the third party takes the place of the customer. The one-off resale to a third party requires the explicit prior consent in writing by Lobster. Lobster will only deny its consent with good cause. In case of a resale, the Customer is obligated to hand over all copies of Lobster\_pro and all corresponding material to the purchaser and to delete the existing copies on its systems.

**4. Decompilation** Decompiling the source code and editing the software is prohibited, unless carried out for a purpose and to an extent that is explicitly legally permitted.

**5. Licence verification** The Customer is not authorised to remove or circumvent the licence verification process contained in Lobster\_pro. If Lobster provides a Dongle, the Customer shall use such a Dongle with the necessary care and shall safeguard against loss.

## **VI Defects of Lobster\_pro**

**1. Statute of limitations** Claims due to defects of Lobster\_pro shall become statute-barred twelve (12) months after Lobster\_pro is delivered (see section C.IV.2). The statutory provisions shall apply in case of malice or wilful intent or claims for damages.

**2. Obligation to examine and give notice of defects** The Customer shall be obliged to examine Lobster\_pro immediately after delivery for potential defects. Should the Customer fail to notify Lobster of occurred defects within a reasonable time, Lobster\_pro shall be deemed accepted in accordance with art. 377 para. 2 HGB (German Commercial Code).

**3. Notification of defects** The Customer is obligated to describe any defects that may occur in a comprehensible manner and shall ideally give Lobster written notice immediately upon discovery.

**4. Remedies** Should the Customer notify Lobster of a defect in accordance with section C.VI.3, Lobster shall remedy it free of charge. Lobster shall consider the gravity of the defect as well as its consequences for Customer when remedying.

Lobster may at its own discretion choose how to remedy the defect; as a rule, the defect is remedied by delivering an update (in particular updates or service packs).

**5. Instructions and workarounds** As far as can be reasonably expected from the Customer, defects may also be rectified by Lobster sending the Customer instructions to enable the Customer to remedy the respective defect independently. Such instructions to remedy a defect are, in particular, possible in the event that the Customer can remedy the defect with a minimum of effort or if the tangible fallout of the defect can be avoided by the Customer taking immediate action as instructed. A temporary workaround shall be deemed to constitute remedies provided the functioning of Lobster\_pro is not substantially impaired thereby and the workaround is reasonable to the Customer.

**6. Grace period** In the event that the remedies set forth in sections C.VI.4 and C.VI.5 do not succeed within a reasonable period of time, the Customer shall set Lobster a reasonable grace period. This shall not apply if

- such a grace period is not reasonable for the Customer or
- Lobster has definitively and sincerely refused remedies.

**7. Additional rights of the Customer** In the event that Lobster's remedies also fails within the grace period (see section C.VI.6) the Customer may

- Withdraw from the respective Service Order, unless the defect is negligible, or
- reduce, to an appropriate extent, the compensation agreed for Lobster\_pro.

In addition to withdrawal or reducing the compensation, the Customer is entitled to claim damages in lieu of performance or reimbursement of expenses if Lobster has breached its contractual obligations. The limitations in section A.VI shall apply to claims for damages or reimbursement of expenses by the Customer.



## **D PROVISIONS FOR THE RENDERING OF SERVICES (IN PARTICULAR SUPPORT AND CONFIGURATION)**

### **I Definitions**

<u>Term</u>	<u>Description</u>
Installation Services	Activities necessary for installing Lobster_pro on the Customer's IT systems.
Configuration	The process of creating a solution using Lobster_pro and Lobster_data.
Support Services	Services for Technical support and User support, as described in the Service Order.
Defect	Deviation of the actual specification of a service from the contractually agreed specification.

### **II Scope of services**

A Service Order may cover the following services:

- Installing Lobster\_pro;
- Configuring a Customer-specific solution in Lobster\_pro and Lobster\_data;
- Consulting with respect to independent configurations by the Customer;
- Project management;
- Analysing requirements and creating specifications;
- Providing Support services relating to the use and deployment of Lobster\_pro;
- Training.

The actual services to be provided by Lobster shall be stipulated in the respective Service Order.

### **III Duties and obligations of the Customer**

1. Individual cooperation obligation Subject to additional stipulations in the Service Order, the Customer shall fulfil the following cooperation obligations:

- Designation of a contact person;
- Provision of the data and information necessary for the installation of Lobster\_pro;
- Provision of the infrastructure required for the deployment of Lobster\_pro;
- Notification of defects;
- Performance of tests

The Customer is solely responsible for the full functioning of the infrastructure in which it deploys Lobster\_pro.

The contact person to be designated by the Customer is responsible for the fulfilment of the Customer's cooperation obligations.

2. Consequences of insufficient cooperation Should the Customer not fulfil its agreed cooperation obligations or should it not fulfil them on time, then the deadlines set by Lobster for the provision of the service will be extended accordingly. Lobster will inform the Customer of any changes and extensions in reference to the specific cooperation obligation that has not been fulfilled. In all other respects, the statutory provisions (art. 642, 643 BGB) shall apply.

### **IV Requirements and specifications for customer-specific configurations – price work**

1. Determination of requirements by the customer – customer specifications The customer is required to determine their requirements. If agreed in the contract, Lobster may support the Customer in this process, e.g. by organising the necessary workshops for determining requirements and advising the Customer on analyses and evaluations of its business processes.

2. Creation of the technical specification by Lobster and approval by the Customer If specified in the respective Service Order, Lobster prepares the technical specification on the basis of the requirements defined by the Customer and, if necessary, submits it in several steps to the Customer for review and approval. The Customer reviews the submitted versions of the technical specification within the time periods specified in the project plan and provides Lobster with any feedback. Lobster incorporates the feedback and submits revised versions of the technical specification for final approval. The Customer is obliged to approve the specifications if they fully reflect the requirements identified. By approving the specification, the customer confirms that the technical specification is consistent and correct in terms of content and suitable as a basis for the Customer-specific configuration.

### **V Change requests for Service Orders relating to Customer-specific configurations – price work**

1. Change proposals During the term of a Service Order relating to Customer-specific configurations, both Parties may submit change proposals. In doing so, the Parties shall each follow the procedure laid down in this section V. Prior to the adoption of a change proposal in accordance with the procedure set out in this section V, Lobster will fulfil its obligations on the basis of the previous agreements and the approved specifications.

#### 2. Change procedure

2.1 Issuing change proposals If one Party seeks to amend the technical specification determining the Customer-specific configuration, then said Party submits a change proposal in writing to the other party in good time. Any proposal for change shall include a preliminary assessment of the impact of the proposed change.

2.2 Evaluation of a proposed change Lobster will analyse each change proposal in relation to the impact it may have

on functionality, resources, scheduling and cost and will communicate its findings to the Customer. The project managers will jointly discuss each change proposal based on this information and will then have the option (in each case) to reject a change proposal, to accept it or to seek out additional information or carry out a more detailed analysis themselves or to request it from the Customer, depending on the individual scenario. They may also forward the change proposal to the steering committee or the contact partners of the Parties authorised to make commercial decisions for acceptance. All change proposals which may impact the contract or which require the scope of the assignment to be changed must be accepted by the contact partners authorised to make commercial decisions or (if present) by the steering committee. Other change proposals may be decided upon by the project managers during the project meeting. If further information on or additions to a proposed change are required, the Party proposing the change will provide more information as soon as possible or, if it agrees, make the necessary changes.

**2.3 Acceptance of a change proposal** Once a proposed change has been discussed and accepted by the relevant body, the proposed change shall be deemed to have been "approved". Each approved change shall be dated and expressly greenlit by the relevant representatives of the Parties. Approved change proposals shall be implemented by the Parties (if applicable by offer and order) according to the corresponding Service Order.

## **VI Acceptance of customer-specific configurations – price work**

**1. Agreement on partial acceptances** The Parties may agree on the performance of partial acceptances of Customer-specific configurations in the project plan. The following rules for acceptance tests apply accordingly to partial acceptance tests and acceptance tests.

**2. Acceptance tests** Lobster shall make the services that are the subject of the acceptance test or partial acceptance test available as agreed in the project plan for the performance of the acceptance test. An acceptance test consists of tests as agreed between the Parties (usually functional and integration tests). The Customer shall perform the acceptance tests within the time periods specified in the project plan. Lobster shall support the Customer during the acceptance test, if required. During an acceptance test, a log is kept in each case, which is signed by both project managers.

**3. Acceptance certification** If the acceptance test is successful, the Customer will declare the service either partially accepted or accepted. An acceptance test is deemed successful if the Customer-specific configurations that were accepted or partially accepted essentially meet the requirements of the approved technical specifications. Any defect that occurs during the acceptance test will be reported by the Customer to Lobster. This report will contain

all information necessary and appropriate to identify, locate and trace the defect (e.g. the circumstances under which the material defect appeared, error messages, screenshots, log files). If necessary, the Customer will support Lobster in making a defect traceable. As a rule, non-reproducible defects cannot be remedied.

If the acceptance test is not successful in accordance with the above provisions, the Customer is entitled to refuse to certify acceptance. The Customer is furthermore entitled to set Lobster a reasonable grace period to remedy existing material defects. After expiry of this grace period, the acceptance test will be repeated on the basis of the same procedure ("first retest"). If the first repeat test again shows material defects that prevent acceptance, a second retest and, if necessary, a third retest shall be carried out using the same procedure. If the third retest also fails, the Customer is entitled to withdraw from the respective Service Order and to claim damages. The Customer is not entitled to refuse to certify its acceptance if the acceptance test revealed only insignificant material defects or insignificant deviations from the technical specifications. Such insignificant deviations or immaterial defects shall be recorded in the log and remedied by Lobster within the scope of liability for material defects.

## **VII Deadlines**

**1. Deadlines** The Service Order may stipulate deadlines for the provision of the services. Where deadlines are not binding, Lobster will expressly mark them as non-binding.

### **2. Adjustment of deadlines**

**2.1. Delays** Should Lobster become aware of circumstances that could lead to a delay in the provision of the services, Lobster will inform the Customer accordingly. The Parties will immediately negotiate fairly on how this problem can be solved amicably in the interest of both Parties.

**2.2. No default in the event of delayed or non-cooperation** Lobster is not responsible for delays in its own performance resulting from late or non-fulfilment of the Customer's cooperation obligations.

**3. Setting of a grace period** If the services owed by Lobster are delayed, the Customer shall grant Lobster a reasonable grace period, unless the granting of such a grace period is unreasonable for the Customer. Such a grace period shall be deemed to have elapsed if the Customer accepts services within the grace period and/or the Parties agree on further activities and services. If, in exceptional cases, it is unreasonable to expect the Customer to grant a grace period or if a reasonable grace period granted has expired without success, the Customer shall be entitled to termination and to claim damages.

## **VIII Project organisation and project communication**

**1. Project manager and deputies** Each contractual partner shall appoint a project manager for configuration services and a sufficient number of deputies for the respective project manager. The project managers and their deputies are authorised to make and receive declarations.

Furthermore, they shall bring about decisions if necessary.

**2. Exchange of project managers** Both contracting Parties may only replace their project managers and their deputies for good cause and with the consent of the other Contracting Party. If a Contracting Party replaces its project manager or deputies, the agreed deadlines and milestones shall be postponed by one working day per week of project duration, unless the Contracting Parties agree otherwise.

**3. Meetings and minutes** Lobster records every meeting between the Contractual Partners. These minutes will be sent to the Customer within five (5) working days of the respective meeting. If the Customer does not object to the minutes within five working days of receipt, the minutes shall be deemed approved. Each set of minutes shall be deemed to have been received two (2) working days after transmission by fax or e-mail.

#### **4. Committees**

**4.1. Steering Committee** If agreed in an assignment, during the term of the project for the customised configuration of Lobster\_pro, the contractual partners shall set up a steering committee to coordinate strategic issues and clarify any differences of opinion.

**4.2. Project teams** Both Contracting Parties shall set up project teams consisting of the respective project managers and, if necessary, other employees of the Contracting Parties. The tasks of the project teams are set out in the service description of the Service Order and the project plan. The project managers of both Contractual Partners lead the project teams. They work together as partners and coordinate the fulfilment of tasks.

**5. Lobster's employees and resources** Lobster will allocate employees, equipment, technical infrastructure and resources to the required and sufficient extent, insofar as this is necessary for the timely and contractual provision of services.

### **IX Granting of rights**

The customer shall receive non-exclusive, non-transferable rights to all work results of the services created under a Service Order concluded hereunder for use exclusively within the company.

The customer is not authorised to process and distribute work results unless this is expressly stipulated in the Service Order.

### **X Defects**

**1. Statute of limitations** The claims for defects of the services regulated below shall become statute-barred within 12 months after completion of services. The statutory provisions shall apply in case of malice or wilful intent or claims for damages.

**2. Notification of Defects** The Customer is obligated to describe any defects that may occur in a comprehensible manner and shall ideally give Lobster written notice immediately upon discovery.

**3. Rectification through remedial action or subsequent delivery.** If the Customer notifies Lobster of a defect in accordance with section D.X.2, Lobster shall remedy it free of charge. Lobster shall consider the gravity of the defect as well as its consequences for the Customer when

remediating the defect. Lobster reserves the right to choose the form of remedy.

**4. Rectification through instructions and workarounds** As far as can be reasonably expected from the Customer, defects may also be remedied by Lobster sending instructions to the Customer to enable the Customer to remedy the respective defect independently. Such instructions to remedy the defect are, in particular, possible in the event that the Customer can remedy the defect with a minimum of effort or if the tangible fallout of the defect can be avoided by the Customer taking immediate action as instructed. A temporary workaround shall be considered as a remedy provided the functioning of the contractual software is not substantially impaired thereby and the workaround is reasonable to the Customer.

**5. Grace period** In the event that the remedies set forth in sections D.X.3. and D.X.4. do not succeed within a reasonable period of time, the Customer shall set Lobster a reasonable grace period. This shall not apply if

- Such a grace period is not reasonable for the Customer or
- Lobster has definitively and sincerely refused to remedy a defect.

**6. Additional rights of the Customer** In the event that Lobster's remedies fail within the grace period (see section D.X.5) the Customer may

- terminate the respective Service Order for cause, unless the defect is negligible or
- reduce the agreed compensation.

The right to self-performance is excluded. In addition to a termination for cause or reducing the compensation, the Customer is entitled to claim damages if Lobster has culpably breached its contractual obligations. The limitations in section A.VI of the Lobster\_pro Ts & Cs shall apply to claims for damages by the Customer.

### **XI Compensation and terms of payment**

**1. Level of remuneration** The Customer shall remunerate Lobster's services either on a time and material basis or at a set price. The amount and the type of remuneration are set forth in the respective Service Order.

**2. Remuneration on a time and material basis** The hourly or daily rates agreed in the Service Order shall apply for remuneration on a time and material basis. Lobster shall invoice the services rendered according to actual delivery recorded in a performance record. Invoices are due for payment within thirty (30) calendar days of the invoice date.

Unless otherwise agreed in a Service Order, the Customer shall reimburse travel expenses and travel time (from Lobster's registered offices) as follows:

- Flights: Economy
- Train: 2nd class
- Car: € 0.70 per kilometre
- Travel time: € 60 per hour
- Overnight stay: according to receipt

**X Regulations on the term and termination of Support Services**

**1. Term** The term of Lobster\_pro's Support Services is specified in the respective Service Order.

**2. Termination for convenience** Terminating a Service Order for the provision of Support Services for convenience is regulated by the respective Service Order. Art. 648 BGB is not applicable.

**3. Termination for good cause** Both Parties reserve the right to terminate for good cause in accordance with sec. 314 BGB. As a rule, termination for good cause may only be effected if the respective Party has been given a reasonable grace period prior to termination and this period of time has elapsed unsuccessfully. The grace period must be defined immediately after becoming aware of the good cause.