



Globalpark AG

# General Business Terms and Conditions



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## 1. Definitions, scope of applicability, conclusion of Contract

(1) The following terms are defined as follows within the context of these General Business Terms and Conditions:

- "Globalpark" refers to Globalpark AG with its registered office in Hürth, Germany, or its fully owned subsidiaries or Globalpark Inc. US with its registered office in New York.
- "Contract" is an overall term referring to subscription, hire, purchase, work, maintenance, support or other similar types of contract including any agreements between the Customer and Globalpark.
- "Contract Software" stands for all programs for which the Customer has obtained rights of use by agreeing a Contract between itself and Globalpark.
- "Customer" is the party or its fully owned subsidiary which, by signing the Contract, the order form or by issuing another order, obtains the rights to use the Contract Software or other items or services offered by Globalpark and/or accepts the conditions of the Contract in another way.
- "Order form" refers to Globalpark's standard order form, which is used to order the rights of use, transfers, documents and services and/or for the acceptance on the part of Globalpark of an order formulated in another way by the Customer.
- "Documentation" refers to instructions, user manuals and other handbooks provided by Globalpark to the Customer and which are designed for use with the Contract Software.

(2) These General Business Terms and Conditions apply for all business relationships between Globalpark and the Customer unless otherwise agreed in writing by Globalpark and the Customer for specific cases. Conflicting conditions on the part of the Customer are not applicable unless specifically recognized by Globalpark in writing. The respective contract conditions agreed in writing have priority.

(3) These General Business Terms and Conditions supersede all previous arrangements or agreements and are recognized by the issue of the order or the acceptance of the services on the part of the Customer. They are also binding – without being referred to specifically – for future business correspondence with Globalpark.

(4) The offers of Globalpark are subject to change at any time. The Contract between Globalpark and the Customer including these General Business Terms and Conditions is not valid until Globalpark has declared its acceptance thereof.

(5) Withdrawal from the Contract on the part of the Customer is permitted only as subject to provisions of the

law and/or express individual agreement. Declarations of withdrawal must be in writing.

## 2. Performance

### 2.1 Software

(1) Globalpark shall provide the Contract Software specified in the respective individual contract to the Customer such that the Customer can access the Contract Software via the Internet and use it to the extent defined by the Contract. The software itself shall remain on the Globalpark server unless otherwise agreed in writing by Globalpark and the Customer. Globalpark shall ensure that the Contract Software is accessible to the Customer throughout the world over the Internet according to the terms of the Contract.

(2) If Globalpark registers a domain for the Customer, Globalpark is not obliged to carry out or commission an examination of the legality of the registration, particularly in relation to name, trademark or company rights. The Customer shall ensure that the domain proposed by the Customer has a sound legal basis. The Customer shall indemnify Globalpark against any corresponding third party claims. If Globalpark registers or administers a domain or SSL certificate for the Customer, a contract duration of one year shall be agreed in principle which shall automatically extend by one more year unless the Customer gives written notice to Globalpark to terminate the corresponding domain contract within a period of 90 days before the end of the contract.

### 2.2 Hosting

The Contract shall be performed at the respective head office of Globalpark or a hosting partner contractually bound to Globalpark (hosting service) unless otherwise agreed in the Contract.

### 2.3 Consultancy services

(1) Globalpark shall perform consultancy, advisory, support, collaborative, and training services for the Customer.

Globalpark shall observe the Customer's specifications in fulfilling its duties and shall perform these in accordance with the rules of project management and data processing to the best of its knowledge and in good faith.

(2) Both parties shall appoint a project manager who is responsible for all project activities and takes all decisions that are necessary for preventing unreasonable delays to the project or ensures these are taken.

(3) Minutes shall be kept of discussions on specifying contractual details, particularly the subject of the Contract. These minutes shall become binding on both parties if an

authorized person or project manager, subproject manager or person appointed as his representative agrees to them. This agreement may also be given by e-mail.

Globalpark shall use its own discretion to decide which employees it deploys and is entitled to change these at any time.

## 2.4 Subcontractors

Globalpark is entitled to employ subcontractors to fulfill its performance obligations.

## 3. Prices / payment terms

(1) The current prices and payment terms of Globalpark shall apply. All prices are subject to VAT at the prevailing statutory rate.

(2) If an escalation clause is agreed in the Contract, the resulting annual price adjustment is not considered a price increase within the terms of the Contract.

In addition to the escalation clause, which can be agreed within the context of the Contract, Globalpark also has the right to increase prices unilaterally, providing written notification is given. In the event of such a price increase, the Customer is entitled to withdraw from the relevant Contract subject to notice. Any price increase shall not become effective until 28 days following the date of such notice. To be effective, notice from the Customer to withdraw from the Contract must be submitted in writing to Globalpark no later than 28 days after the date of notification by Globalpark of the price change. The Contract will terminate in this case at the end of the month following the receipt of the notice to withdraw.

(3) Periodically recurring payment obligations (of whatever type) are always payable in advance. When arranging a registration and/or registering a domain, the arrangement and/or registration fee shall be paid to Globalpark for one year in advance. No part of the fee is returnable in the event of premature termination of the Contract. Globalpark invoices are payable immediately on receipt of the invoice.

(4) After 14 days from receipt of the invoice, payments are deemed to be in arrears. No reminder is required for payments to become in arrears. In the case of payment arrears or deferment, interest shall be charged at 8% (5% if the Customer is the user) above the applicable Deutsche Bundesbank base interest rate in accordance with the BGB (German civil code). This does not affect the enforcement of further claims.

(5) In the case of payment arrears of more than one month, Globalpark also has the right to fully or partly block the Customer's access to the respective service, particularly to

Contract Software, for the period of the arrears. No prior warning to the Customer is necessary in this case.

(6) The Parties are entitled only to offset undisputed and legal claims.

## 4. Warranty

(1) Globalpark shall exercise the care of a careful and professional supplier in performing its services.

However the Customer is aware that the state of the art does not permit the production of totally error-free programs. Globalpark guarantees that the Contract Software and the corresponding documentation are free from any defects which would jeopardize their suitability for the normal and/or contractually agreed purpose. An insignificant reduction in value or suitability shall be disregarded.

(2) Globalpark guarantees for a period of one year from delivery that the Contract Software shall work materially in accordance with the contractual specifications. In the event of defects arising, the Customer's rights initially extend to making good the fault. The Customer shall notify Globalpark immediately in writing and in reproducible form of any defect arising, sending all documents and data in the possession of the Customer to support the diagnosis of the fault.

(3) Globalpark shall not be held liable for a) correct functioning of the Contract Software in a different hardware and software environment to that authorized by Globalpark, b) the Contract Software corresponding to all the requirements of the Customer, c) the Contract Software functioning free of faults or interruptions or d) all program errors having been corrected in the Contract Software. Globalpark cannot be held responsible for any loss of data. Globalpark accepts no responsibility if prevented from carrying out its contractual duties due to force majeure such as natural events of particular intensity, war, terrorism, strikes, unforeseen official restrictions etc.

All warranty claims and repairs are limited by the conditions expressly agreed within the Contract.

## 5. Liability

(1) Claims by the parties for damages are excluded, irrespective of the legal grounds, unless one of the parties acts willfully or is grossly negligent or the claim for damages results from the material breach of the Contract. For each claim, claims for damages are limited to half the annual hire charge in the case of ongoing use of the software, and half the project price or half the project section price for an individual project or an individual project section defined on the order form. However, they may not exceed €25,000. No party is liable for indirect damage, consequential damage,

loss of profit or business interruption. Liability under the German Product Liability Act is excluded.

(2) Any infringement of duties by the legal representatives or agents of Globalpark shall be equivalent to an infringement of duties by Globalpark itself. All exemptions from liability also apply to employees, representatives and agents of Globalpark.

(3) Globalpark is not liable for damage suffered by the Customer due to misuse or incorrect use of the Contract Software or modification of its code.

Globalpark is not liable for delays in the provision of the agreed service, in particular Contract Software, consulting services or support services caused by circumstances beyond the reasonable control of Globalpark.

(4) Both parties warrant and undertake that they have all licences, permissions and concessions needed to operate the Contract Software as required by the prevailing regulations and legal conditions.

## 6. Customer data and content

(1) In general texts, graphics, audio or video documentation or other data or content, including personal data, provided by the Customer during the creation and maintenance of the Contract Software or when using the Globalpark Contract Software or other services are incorporated by the Customer or at its instigation into the software and/or the survey platform or are used in the context of other services. The Customer bears sole responsibility for the legal consequences of the use and publication of all this data or information.

(2) The Customer shall ensure that the corresponding data or content is neither illegal nor subject to the rights of third parties, such as copyrights, and that the rights of third parties are not infringed. Globalpark is not obliged to legally check the data and content provided by the Customer or provided at the instigation of the Customer.

(3) Globalpark is entitled to process personal data in accordance with the purpose of the Contract.

(4) Globalpark reserves the right to refuse, wholly or partly, orders, or the processing thereof, whose content or related data infringes legal or regulatory provisions, the rights of third parties or good taste. The Customer is in particular not entitled to use, or allow to be used, the e-mail service provided by Globalpark to send spam mails. Globalpark is not obliged to save or forward such e-mails. The same applies to e-mails infected with viruses or similar programs. Globalpark is entitled to read and to delete these spam or virus mails. Globalpark is also entitled to temporarily block access to any service, particularly to the Contract Software or to the mail service, if it has justifiable grounds to suspect

illegal content or on receipt of a not obviously unfounded warning from the intended injured party or information from state authorities. As far as technically possible and feasible, the block shall be confined to the presumed illegal content. The block shall be lifted once the suspicion has been allayed. The Customer shall fully indemnify Globalpark against any or all claims on the part of third parties relating to behavior or neglect on the part of the Customer or caused by the Customer. This does not affect the enforcement of further claims.

## 7. Provisions of the parties

### 7.1 Cooperation by the parties

(1) Each party shall provide the other with the data and information within its sphere of responsibility that are required to carry out the services according to the Contract, particularly the implementation and operation of the Contract Software, and shall do so in a suitable format and in good time.

(2) Each shall provide appropriately qualified personnel for the duration of the project to clarify specialist and organizational issues, so that continuation of the project work is facilitated.

(3) Should these provisions not be made available on schedule, Globalpark's service delivery dates shall be extended accordingly. Should this give rise to additional costs, Globalpark may invoice the Customer for these.

### 7.2 Provisions for installation at the Customer's premises

(1) If the Contract Software or parts thereof are to be installed on the Customer's computer equipment, the Customer shall carry out the installation. At the request of the Customer, Globalpark can support the Customer in the installation of the Contract Software, wherein the Customer shall be invoiced for such a support at the prevailing standard rates. The Customer shall provide a well-functioning environment and hardware which corresponds to the configuration recommended by Globalpark. Unless otherwise agreed in writing, Globalpark shall not be held liable for conversion of Customer files for the use of the Contract Software.

(2) In the event that the Customer does not wish to use Globalpark's hosting service, and the Contract Software or parts thereof are to be installed on the Customer's computer equipment, the Customer shall order application support and maintenance services from Globalpark. The Customer shall take the necessary organizational and technical steps to provide Globalpark with remote access to the Contract Software for the purposes of support and maintenance.

(3) The Customer is responsible for the procurement, installation and maintenance of all items of equipment,

telecommunication lines, communication interfaces and other hardware and software required for running the Contract Software and for provision of the support and maintenance services carried out by Globalpark. Globalpark shall not be liable for delays in the performance of these services if they are outside the sphere of influence of Globalpark.

## 8. Availability

(1) The server system for the respective Contract Software shall be made available to the Globalpark Customer continuously 24 hours a day, 7 days a week at a rate of 99.5% on average throughout the year. Agreed downtimes due to maintenance and software updates and times in which the webserver is out of operation due to technical or other problems beyond the control of Globalpark are excluded from the availability calculation for the system.

100 % availability relates to the minutes in a calendar year (= 365 x 24 x 60). The measurement interval for determining availability in accordance with the Contract is 5 minutes in which for every minute of failure, measurement is carried out again until the service has been resumed. The service is considered as unavailable if there has been no answer from the webserver to a query from the monitoring tool within 60 seconds. The measurement is carried out by the Globalpark monitoring tool.

Globalpark shall notify the Customer about impending maintenance work as far as possible at least three days in advance.

(2) The Customer is obliged to notify Globalpark immediately of any faults arising during the use of the server.

## 9. Rights of use

### 9.1 Transfer of rights, scope of use

(1) With regard to the Contract Software and the associated documents, Globalpark transfers to the Customer simple, non-exclusive, non-transferable rights of use, limited in location and time as defined by the Contract. The intellectual property rights on the Contract Software and the associated documents remain with Globalpark.

(2) The rights conferred on the Customer as described in the Contract are strictly personal rights. They may not be transferred to third parties without the prior written agreement of Globalpark. The Customer shall not make the Contract Software available either wholly or partly to third parties. This Contract may not be transferred to a third party without the prior written agreement of Globalpark.

(3) The Customer may only use this Contract Software internally for processing or distributing its own data or data from third parties provided it has the rights for such processing or distribution. The Customer may not make the Contract Software available to third parties.

The Customer is forbidden to sell, transfer, license or hire out the Contract Software or transfer the rights in it to third parties. The Customer shall not use the Contract Software for commercial time-sharing, commercial service bureaus, rental or training of third parties.

(4) The Customer may not decompile, disassemble, reverse-engineer, transfer or adapt the Contract Software or otherwise identify the source code nor offer third parties the opportunity to do so.

(5) Globalpark retains all right, title and interest, including all copyright and intellectual property rights, in and to, the Contract Software and all copies thereof.

The right of ownership is not transferred to the Customer. Globalpark or its licensing agents retain all rights, ownership and other interests in the Contract Software, documentation, changes, improvements and derivatives and/or these rights are transferred to Globalpark or its licensing agents.

(6) The Customer shall not use the Contract Software to attract customers away from Globalpark or to procure commercial advantage over Globalpark or to use it in any other way which is likely to be detrimental to Globalpark or its business.

### 9.2 Access to the software

(1) The customer recognizes that facilitating access to the Contract Software by unauthorized third parties represents an infringement of Globalpark's intellectual property and may cause Globalpark irreparable harm. The customer agrees that liabilities for facilitating unauthorized access will be pursued to the fullest extent permitted by law by Globalpark in order to defend its intellectual property rights.

(2) The Customer shall obtain access to the Contract Software, documentation and other information and data from Globalpark exclusively for its own use. Its content, unless otherwise agreed, can be published neither in whole nor in part, nor passed to third parties, reproduced, printed or saved in information and documentation systems, nor processed or printed out.

The Customer is obliged to undertake and maintain security measures to prevent unauthorized third parties from accessing the Contract Software, documentation and other data from Globalpark.

(3) The Customer declares itself willing to provide Globalpark with all written declarations in a legally binding form that are

necessary to assign or transfer the copyrights or rights of use to changes and enhancements.

### 9.3 Information and checking

(1) At the request of Globalpark the Customer shall: a) state the locations for the authorized use of the Contract Software, b) confirm in writing that the Contract Software and documentation is used in accordance with the conditions of the Contract c) state the number of users using the individual programs of the Contract Software and d) state the number of copies of individual programs of the Contract Software in the possession of the Customer.

(2) The Customer declares that Globalpark, or an authorized independent representative appointed by Globalpark, after prior written notice shall be given access to its company such that Globalpark can check the use of the Contract Software and the associated documentation. If it emerges that the Customer is in possession of illegal copies of the Contract Software and the associated documentation, Globalpark reserves the right to invoice the Customer for the costs of the inspection and payment for the additional Contract Software or parts thereof and the associated documentation in accordance with the current Globalpark pricelist. This does not affect the enforcement of further claims.

(3) The Customer also agrees to electronic monitoring of the Contract Software on the part of Globalpark for the purposes of support and maintenance and to check the configuration and the scope of use of the Contract Software on the part of the Customer provided this does not impair the use of the Contract Software.

(4) The Customer is aware and agrees that the Contract Software may incorporate technical precautions to ensure adherence to the conditions of the license agreement. This can result in the Customer being unable to use the Contract Software outside of the rights of use granted by Globalpark.

### 9.4 Installation at the Customer's premises

If the Contract Software or parts thereof are installed on the Customer's computer equipment, the Customer shall use the Contract Software exclusively as follows:

- a) Loading, operating, saving, transfer and running of the Contract Software and installation of the same on the computer equipment of the Customer in accordance with the license granted by Globalpark;
- b) Copying of the Contract Software for archiving and backup purposes. Use of such copies must be in accordance with the terms of the Contract. All details regarding ownership, title, trademarks, copyright and other

intellectual property rights of Globalpark or its licensing agents must be reproduced unchanged on all copies.

c) Combination of the Contract Software with other software products, provided that the Contract Software or parts of the Contract Software remain/s the property of Globalpark or its licensing agents or ownership is transferred to Globalpark or its licensing agents and is subject to the terms of the Contract.

### 9.5 Source code clause

Globalpark shall agree to the use of the source code by the Customer in the event that Globalpark ceases to develop the software or ceases its business operations. Globalpark has concluded an appropriate agreement with an escrow provider for this situation.

## 10. Support services

### 10.1 Support

The following are not included in the support services:

- a) Remedying of problems caused by misuse, incorrect use or damage to the Contract Software caused by the Customer;
- b) Programming of additional modules and/or expansions to the Contract Software;
- c) Remedying of problems caused by incorrect handling;
- d) Work on the remedying of problems caused by the use of software not supplied by Globalpark or declared by Globalpark as unsuitable;
- e) Remedying of problems caused by changes to the Contract Software which have not been carried out by Globalpark. The Customer shall pay any additional costs of support services which result from such changes to the Contract Software;
- f) Remedying of problems caused by software or equipment other than that provided within the context of the Contract;
- g) Remedying of problems caused by the use of the Contract Software in combination with other software programs or equipment which have not been approved by Globalpark;
- h) Remedying of faults in other than the most recent program versions of the Contract Software, provided that Globalpark continues to support the revised releases for a suitable period - up to a maximum of nine months - so that the Customer is able to implement the latest release;
- i) Work to remedy problems for whose causes the Customer is responsible.

In addition, in the event of installation at the Customer's premises (application support), the support services do not include:

j) Remedying of problems that are outside of the Contract Software ordered on the order form or by placing another order.

## 10.2 Support for earlier releases

Globalpark shall continue to support and maintain releases earlier than the most recent version of the Contract Software for up to nine months after the official release of the latest version.

## 11. Confidentiality

Both parties shall treat in the strictest confidence for an unlimited period all information which is made available by the other party in the context of the Contract and/or the performance of the Contract and which is described as confidential or which according to other circumstances is clearly discernible as business or operational secrets of the other party (also including information about the Contract conditions). This does not apply to data which is otherwise generally accessible or shall become accessible or if one of the Contract parties is legally obliged to make said data public or to disclose it to a third party. This condition continues to apply after the contract relationship has terminated.

Confidential information also includes the Contract Software, its structure, set-up and code, documentation and source materials plus the know-how, technology and concepts of the Contract Software.

## 12. Data protection

Globalpark is obliged to observe the principles of proper data processing, including the German Federal Data Protection Act (BDSG), with respect to the processing of personal data of the Customer in accordance with the Contract. Both parties shall comply with relevant data protection legislation and will ensure that the staff employed in carrying out the work are familiar with the relevant data protection regulations, have been instructed in data and telecommunications secrecy and shall monitor adherence to these regulations. These conditions continue to apply after the Contract has terminated.

## 13. Data backup / deleting of data

(1) The Customer is also obliged to carry out ongoing data backups during the Contract period. Globalpark is liable for data lost within the scope of § 5 provided the data loss could not have been avoided by suitable data backup actions on the part of the Customer.

(2) Globalpark is entitled to delete all remaining project data six months after the end of the project field time, provided

that, at least one month beforehand, an e-mail to this effect is sent to the e-mail address of the team leader appointed for this project.

## 14. Contract cancellation

### 14.1 Period of Contract

All rights of use conferred on the basis of the Contract come into force on the date specified as the start of the Contract period and apply (unless otherwise specified on the order form) for an undetermined period unless the Contract is terminated in accordance with the provisions agreed in the contract.

### 14.2 Return of the Contract Software and documentation at the end of the Contract

If the rights of use of any Contract Software that is provided in accordance with the Contract is terminated in accordance with the terms of the Contract, the Customer shall:

- a) immediately cease using the respective Contract Software and
- b) delete all copies of the Contract Software or parts thereof and all associated documentation and confirm the same to Globalpark in writing.

### 14.3 Deletion of data after the end of the Contract

Globalpark is obliged to delete all Customer data after the end of the Contract. The Customer is therefore obliged to ensure that all data is backed up in good time before the end of the Contract. Globalpark shall not be liable for all or part of the Customer's data after the end of the Contract. Globalpark is not under any obligation to save data either during or after the Contract period.

## 15. Other agreements

### 15.1 Applicable jurisdiction

The place of business of Globalpark is the agreed jurisdiction. Unless otherwise agreed, the place of business of Globalpark is the agreed place of fulfillment.

The laws of the Federal Republic of Germany shall be applicable, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

### 15.2 Severability clause

Should any provision from these business terms and conditions and/or of the Contract be or become unworkable or should the Contract incorporate loopholes which are open to interpretation, this shall not affect the workability of the remaining provisions. The unworkable or absent condition

shall be replaced with a legally workable condition that most closely fulfills the purpose of the Contract.

### 15.3 Export

The Customer is obliged to comply with all relevant export or import laws and regulations of the country in which the individual rights of use are obtained and/or the corresponding services are carried out. In particular the Customer is obliged to follow all valid export laws in the USA in order to ensure that neither the Contract Software nor any of the products indirectly resulting from it are a) exported in violation of the export laws or b) are exported for purposes prohibited by the prevailing export laws in the USA, including the dissemination of nuclear, chemical and biological weapons.

### 15.4 Concluding provisions

These General Business Terms and Conditions, including all written adjuncts and appendices, reflect all the rights and duties of the parties and supersede all previous contracts or agreements, whether verbal or written, in relation to the Contract Software, documentation or services provided by Globalpark.

Additional agreements or other changes to the Contract must be in writing and signed by both parties. The same applies to any changes to the above clause referring to the written form.