

# TERMS AND CONDITIONS FOR SOFTWARE SUPPORT SERVICES ANYLINE GMBH

## **1. SCOPE OF APPLICATION; AMENDMENTS AND MODIFICATIONS**

- 1.1 Anyline GmbH, is an Austrian limited liability company having its registered seat in 1020 Vienna, Zirkusgasse 13/2b, Austria, and registered under commercial registry number FN 392187x ("**Anyline**"). Agreements for software support services (the "**Services**") are legally binding only when confirmed, in writing or via email, by an authorized representative of Anyline. Such an agreement to provide the Services will create obligations only to the extent set forth in the corresponding order confirmation or agreement. For the purposes of these terms and conditions (the "**Conditions**") Anyline's contractual partner is referred to as the "**Customer**". Anyline and the Customer together are referred to as the "**Parties**", each being a "**Party**".
- 1.2 These Conditions shall apply to and be binding on all current and – to the extent Anyline has not agreed to other individual terms and conditions – future Services provided by Anyline to the Customer. Anyline hereby expressly rejects any and all of the Customer's terms and conditions, such rejection also extends to any confirmations or communications made by the Customer incorporating or intended to incorporate the Customer's terms and conditions. The Customer acknowledges and agrees that these Conditions (including the documents referenced herein) shall apply for all Services rendered by Anyline.
- 1.3 The Customer's use of standard software provided by Anyline (the "**Anyline SDK**") is subject to the Anyline User License Agreement, which can be accessed here [<https://www.anyline.io/imprint-and-legal/>].
- 1.4 Anyline reserves the right, at any time and for any reason, to modify, amend or supplement these Conditions. Such changes may include, but are not limited to the imposition of new or additional terms or conditions. Such modifications of or amendments to these Conditions shall enter into force and be legally binding upon the Customer upon expiration of one (1) month following notification provided to the Customer (the "**Amendment Notification**"). The Amendment Notification shall contain information regarding the material content of the changes and shall mention that, upon expiration of one (1) month following the Amendment Notification, the Customer shall be deemed to have accepted and agreed to the modification or amendment, unless Anyline has received a written objection from the Customer within such one (1) month period by which the Customer, in case of the Services being continuing obligations between the Parties (e.g. monthly maintenance), may notify Anyline of its termination of the agreement.

## **2. SERVICES**

- 2.1 The Services may include any of the following options:
- 2.1.1 *Customizing and integrating* the Anyline SDK according to the Customer's needs and requirements (the "**Customization**"), whereupon the Customer does not obtain any right to the source code of the Anyline SDK and obtains no ownership in, or right to review, inspect or change the parameter settings developed by Anyline for customizing the Anyline SDK.
- 2.1.2 *Individual software development* provided by Anyline for the individual needs and purposes of the Customer beyond the standard version of the Anyline SDK (the "**Individual Software**"), whereupon the Customer may obtain the rights to the source code of the software individually developed and designed to the Customer's requirements subject to a separate written agreement between Anyline and the Customer.
- 2.1.3 *Support* in case of any questions on or difficulties with using or the functioning of the Anyline SDK.
- 2.1.4 *Consulting* services regarding the Customer's individual use of the Anyline SDK or any software individually developed by Anyline for the individual needs and purposes of the Customer.
- 2.1.5 *Other software support services* subject to an offer provided by Anyline to the Customer.
- 2.2 All Services shall be performed in reliance upon information and documents provided by the Customer to Anyline. If and where necessary, the Customer shall make available to Anyline on a timely basis and at the Customer's expense, test data as well as the opportunity to carry out tests. If the Customer has already been working in real time in an operating system that is being made available for testing, the responsibility for securing the real data lies with the Customer.
- 2.3 In case of Customization and/or Individual Software, the Customer shall timely make available to Anyline, in writing, the relevant specifications in relation to the Customization and/or Individual Software at the Customer's expense. The Customer is responsible for correctness and completeness of the specifications. The documentation and information provided to Anyline by the Customer is subject to Anyline's feedback and, if and where reasonably necessary, changes made by Anyline, in its sole and absolute discretion, in order to secure feasibility of Anyline's provision of the Services. Anyline will provide the

Customer with an offer for the agreed specifications, price and timing for provision of the Customization and/or Individual Software (the "**Offer**") and, following the Customer's confirmation of the Offer (the "**Confirmed Specification**"), Anyline shall perform the Services on the basis of the Confirmed Specification. Requests for modification of or changes to the Confirmed Specification on the part of the Customer made following the acceptance of the Offer, if possible and agreed to by Anyline, may result in changes to the Offer, including to deadlines and pricing arrangements. Customer acknowledges and agrees that Anyline is not obliged to accommodate any requests for modification of or changes to the Confirmed Specification unless and until Anyline has received written confirmation from the Customer to any resulting changes to the Offer, including, but not limited to, timing and pricing.

- 2.4 Following provision of the Services/delivery by Anyline of the Customization and/or Individual Software according to the Confirmed Specification, as applicable, Anyline will invoice the Customer for the performed Services. Payment of such invoice is deemed as acceptance by the Customer that – after having concluded its inspection for correctness and completeness of the Customization and/or Individual Software – the Customization and/or Individual Software conforms with the Confirmed Specification and that the Services have been provided by Anyline as agreed to by and between the Parties.
- 2.5 Should the Customer, acting reasonably, in the course of the Customer's inspection for correctness and completeness of the Customization and/or Individual Software take the view that the Customization and/or Individual Software, when delivered to the Customer by Anyline, has any material defects or have detected any other material deviations from the Confirmed Specification (i.e., if the Customer's real-time operations cannot commence solely due to such defect and deviation), the Customer shall communicate such material defect or deviation to Anyline as soon as detected by the Customer and in no case later than seven (7) days following delivery of the Customization and/or Individual Software by Anyline to the Customer, including sufficient supporting documentation regarding the material defect or deviation. Such notification shall be sent to [hello@anyline.io](mailto:hello@anyline.io). Anyline shall undertake reasonable endeavours to correct such defect or deviation as soon as reasonably possible. Following the delivery by Anyline of such adapted Customization and/or Individual Software, the Customer shall pay in full the invoice issued by Anyline for the delivery of the agreed Services, according to Section 0. For the avoidance of doubt, the Customer does not have the right to refuse or withhold payment of the invoice due to minor defects or deviations from the Confirmed Specification.
- 2.6 In case the Customer has ordered the standard Anyline SDK, the Customer accepts, by virtue of having placed the order, that it has full and complete knowledge of the scope of performance of the Anyline SDK.
- 2.7 Should it prove in the course of Anyline's work to be factually or legally impossible for Anyline to complete the Services in line with the Confirmed Specification, Anyline shall inform the Customer thereof as soon as reasonably possible. If the Customer does not

adapt the performance specifications accordingly, Anyline may reject performance of the Services. In case the impossibility of carrying out the Services is due to an omission on the part of the Customer, Anyline is entitled to withdraw from the agreement. In both cases described in this Section 0, the Customer is obliged to reimburse Anyline for costs and fees that have accrued for the work as well as any dismantling costs.

### **3. TERMS OF PAYMENT**

- 3.1 An overview of the currently valid prices for standard Services offered by Anyline are available in Anyline's price list [<https://www.anyline.io/pricing/>]. All other Services will be charged at the rates set forth in the respective order or other individual agreement between the Parties. Deviations from the amount of time calculated as being required for Anyline's performance of the Services (which serves as the basis for the price calculation) for which Anyline is not responsible, shall be charged according to actual time spent based on the applicable hourly rates.
- 3.2 Unless agreed otherwise between the Parties, all prices are "ex works", in Euros and exclusive of any taxes, duties and levies, such as VAT and import charges, costs or fees for packaging, costs of program carriers, costs for transportation and travel expenses (including travel time spent by employees of Anyline), each if and as applicable.
- 3.3 Invoices submitted by Anyline to the Customer are payable within fourteen (14) days from receipt of the invoice at the latest without any deductions or offsets and free of charges. Anyline may issue invoices also for parts of the Services performed.
- 3.4 Payment on the agreed-upon dates is a material condition for delivery and for delivery of the Services by Anyline. The Customer's failure to comply with the agreed payment schedule entitles Anyline to discontinue current work and to withdraw from the contract. The Customer shall reimburse Anyline for all costs and loss of profits of Anyline connected with the Customer's delayed payment. The Customer shall pay to Anyline default interest on due but outstanding payment in accordance with applicable Austrian law. If the Parties have agreed on payment in installments and the Customer fails to pay an instalment by the time it becomes due, Anyline shall be entitled to accelerate the remainder due and owing to claim from the Customer all outstanding installments with immediate effect.
- 3.5 The Customer is not entitled to set-off claims for any reason whatsoever.

## **4. PLACE OF DELIVERY**

- 4.1 The place of delivery of Services by Anyline is the seat of Anyline at 1020 Vienna, Zirkusgasse 13/2b, Austria.
- 4.2 The Customer shall bear the risk of transportation. The risk for the transportation of programs in digital form from Anyline to the Customer as well as the risk of any alteration of programs from the form initially submitted by Anyline shall be borne by the Customer as of the time of Anyline making available a download or submitting data to the Customer in electronic format.

## **5. DELIVERY DATES**

- 5.1 Unless agreed to in writing between the Parties, dates or deadlines for delivery or completion of Services are non-binding and estimates only, subject to change by Anyline in its sole and absolute discretion. Timelines for delivery or completion shall be calculated from the date of acceptance of the Offer.
- 5.2 Anyline will endeavor to follow the targeted timelines for delivery or completion of the Services as nearly as possible. However, the Customer acknowledges and agrees that the targeted delivery or completion dates can only be met if the Customer (i) makes available to Anyline in full, on the dates communicated to the Customer by Anyline, all necessary information, documentation and preliminary work reasonably requested by Anyline, in particular submission of the Confirmed Specification, and (ii) cooperates with Anyline to the extent required.
- 5.3 Anyline is not responsible for and cannot be in default of delivery or completion of the Services due to delays in delivery and cost increases that result from incorrect, incomplete, or subsequently changed data and information or supporting documentation provided to Anyline or other actions or omissions by the Customer. Additional costs arising in connection therewith are to be borne solely by the Customer. In case of a delay in delivery caused by the Customer, Anyline may – at its sole discretion – after setting a new timeline for delivery or completion of the Services of at least two (2) weeks, withdraw from the contract. In such case the Customer must reimburse Anyline for any and all costs and expenditures that arose before Anyline's withdrawal from the contract.
- 5.4 In case the provision of Services by Anyline encompasses numerous parts or units (e.g., programs and/or support sessions, completion in stages), Anyline is entitled to make

partial deliveries to the Customer and to submit partial invoices after the delivery of each unit or part of the Service to the Customer.

## **6. INTELLECTUAL PROPERTY AND USE**

- 6.1 Unless agreed otherwise between Anyline and the Customer (and subject, in particular, to any arrangement relating to the ownership of the source code of Individual Software), all rights, title and ownership, including without limitation, all intellectual property rights, including but not limited to source-codes and other software codes, technology and proprietary rights in any software, parts thereof, software updates or modifications, patents, rights to inventions, copyright and related rights, trademarks and service marks, business names and domain names, goodwill, rights in designs, database rights, know-how and trade secrets, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world, including the right to sue for and recover damages for past infringements as well as any other works, results, creations or products (the "**Intellectual Property Rights**") developed or created by Anyline and/or any of its employees as part of or in connection with the performance and delivery by Anyline of the Services or otherwise resulting from the agreed Services, including, in particular, the Customization and/or Individual Software, (the "**Anyline IPR**") shall accrue exclusively to Anyline.
- 6.2 Subject to Section 0 above and unless agreed otherwise between Anyline and the Customer (and subject, in particular, to any arrangement relating to the ownership of the source code of Individual Software), Anyline grants to the Customer only a personal, revocable, non-exclusive, non-assignable, non-transferable and non-licensable right to use Anyline IPR against payment of the agreed remuneration under these Conditions. Distribution of Anyline IPR by the Customer is not permitted, unless agreed to in writing between Anyline and the Customer. The Customer does not, by virtue of participating in the creation of Anyline IPR or performance of the Services, acquire any rights, title or interest in the Anyline IPR beyond the right to use the Anyline IPR as described in the first sentence of this Section 0. Any infringement of Anyline's Intellectual Property Rights will result in Anyline bringing forward claims for damages against the Customer.
- 6.3 Unless agreed otherwise (and subject, in particular, to any arrangement relating to the ownership of the source code of Individual Software), any and all Intellectual Property Rights owned by Anyline remain in the sole ownership of Anyline and are not transferred to the Customer by means of Anyline providing or delivering the Services.

- 6.4 The Customer shall not remove, efface or obscure any copyright notices or other proprietary notices of Anyline from any software or materials, in particular any Customization and/or Individual Software, provided under these Conditions.
- 6.5 The Customer is permitted to make copies of Anyline IPR for archival and data backup purposes if (i) the respective Anyline IPR do not contain an express prohibition by Anyline or any third party to do so and (ii) provided that all notices and watermarks of copyright and ownership are transferred unchanged with such copies.
- 6.6 The Customer may neither modify, edit, adapt, reverse-engineer, copy, disassemble, decompile or duplicate in any way Anyline IPR nor apply any other technical or logical procedures to Anyline IPR in order to influence or gain information about its structure, processes, functioning or other protectable attributes. In case establishing interoperability of Anyline IPR requires the disclosure of interfaces, the Customer must request such disclosure from Anyline against reimbursement of Anyline's costs occurred in connection therewith.
- 6.7 If Anyline provides to the Customer software licensed by a third party, the licensor of which is a third party (e.g. standard software), the use is subject to the respective licensor's terms. These third party products and the appropriate licenses included may be accessed via <http://anyline.io/acknowledgements/>.

## **7. CONFIDENTIAL INFORMATION**

- 7.1 The Parties acknowledge and agree that, by reason of their business relationship under these Conditions, they may have access to certain information and materials including, but not limited to, the other Party's business, source codes, trade and business secrets, know-how, data and products that are confidential and of substantial value to such Party (the "**Confidential Information**") which value would be impaired if such Confidential Information is disclosed to third parties.
- 7.2 At all times, the Parties are obliged to maintain and protect the confidentiality of the Confidential Information in the same manner that each Party protects its own Confidential Information of a similar nature, but in no circumstances shall any Party fail to meet the standard due diligence and prudence to protect the said Confidential Information. Confidential Information shall not be disclosed to third parties unless otherwise provided for in these Conditions.
- 7.3 The Parties shall disclose Confidential Information to their employees, affiliates and subcontractors strictly on a need-to-know basis and make all necessary efforts to ensure that such employees, affiliates and subcontractors, to whom the Confidential Information

is disclosed, take the necessary precautions to safeguard and preserve the secrecy and the confidentiality of the Confidential Information.

- 7.4 Notwithstanding the other provisions of these Conditions, Confidential Information shall not include information that: (i) is or subsequently becomes public domain through no fault of the disclosing Party; (ii) is already known to the disclosing Party at the time of its disclosure; (iii) is rightfully received by the disclosing Party from a third party without restriction on disclosure; (iv) has demonstrably been developed independently by the disclosing Party.
- 7.5 A Party may disclose the Confidential Information in accordance with a mandatory judicial or other governmental order, provided that the disclosing Party shall give Anyline reasonable notice prior to such disclosure and, if possible, reasonable opportunity to obtain a protective order or the equivalent.
- 7.6 The Parties shall return any and all records, notes, and other written, printed or other tangible materials in their possession pertaining to the Confidential Information or shall destroy such information and copies on the written request of the other Party or upon termination or ending by lapse of time or expiry of a license or other business relationship between the Parties. The returning of materials shall not relieve the Parties from compliance with the other terms of these Conditions.
- 7.7 After the end of the business relationship between the Parties, the Parties' commitment to confidentiality shall remain effective indefinitely.

## **8. WARRANTY**

- 8.1 Anyline warrants that the Services are performed according to best industry standards as well as that Customization and/or Individual Software fulfill the functions described in the Confirmed Specification provided that the Customization and/or Individual Software is used on the operating system described in the Confirmed Specification.
- 8.2 SUBJECT TO SECTION 0 ABOVE, ANYLINE EXPRESSLY DISCLAIMS ALL WARRANTIES, ENDORSEMENTS, GUARANTEES, CONDITIONS AND REPRESENTATIONS WHETHER EXPRESS OR IMPLIED INCLUDING WITHOUT LIMITATION ANY CONDITIONS, ENDORSEMENTS, GUARANTEES, REPRESENTATIONS OR WARRANTIES OF DURABILITY, MERCHANTABILITY, MERCHANTABLE QUALITY, SATISFACTORY QUALITY, ACCURACY, TITLE, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE OR USE, OR ARISING FROM A STATUTE OR CUSTOM OR A COURSE OF DEALING OR USAGE OF TRADE IN RELATION TO THE AGREED SERVICES OR ANY ANYLINE IPR, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS AND REGULATIONS.



- 8.3 ANYLINE EXPRESSLY DISCLAIMS ALL WARRANTIES AND LIABILITY FOR DEFECTS, FAILURES OR DAMAGES OF THE CUSTOMIZATION AND/OR INDIVIDUAL SOFTWARE THAT ARE DUE TO IMPROPER USE, ALTERED COMPONENTS IN THE OPERATING SYSTEM, INTERFACES AND PARAMETERS, THE USE OF INAPPROPRIATE ORGANIZATION AND DATA CARRIERS IF THESE ARE REQUIRED, UNUSUAL OPERATING CONDITIONS (PARTICULARLY DEVIATIONS FROM THE INSTALLATION AND STORAGE CONDITIONS) AS WELL AS TRANSPORTATION DAMAGES. IF PROGRAMS ARE SUBSEQUENTLY ALTERED BY THE CUSTOMER, ITS PROGRAMMERS OR ANY THIRD PARTIES, ANY EXISTING WARRANTY OF ANYLINE IS NO LONGER APPLICABLE.
- 8.4 Notwithstanding any corrections performed by Anyline due to initial material defects or deviations from the Confirmed Specification according to Section 0, the preconditions for any correction of defects in the Customization and/or Individual Software within the scope of warranties pursuant to this Section 0 are as follows:
- 8.4.1 the Customer provides Anyline with sufficient description of the defect in the form of a written notice within ten (10) business days sent to [hello@anyline.io](mailto:hello@anyline.io) , so that Anyline may be able to determine the nature of the defect;
- 8.4.2 the Customer makes available to Anyline all documents and information required for the correction of the defect;
- 8.4.3 the Customization and/or Individual Software has not been used by the Customer after becoming aware of the defect;
- 8.4.4 the Customization and/or Individual Software is operated in accordance with the intended operating conditions described in the Confirmed Specification.
- 8.5 If – according to Anyline's sole and absolute discretion – the description set forth in the notice presents a defect, Anyline shall undertake reasonable endeavours to remedy the defect within an appropriate period of time. THE PRESUMPTION OF DEFECTIVENESS PURSUANT TO § 924 OF THE AUSTRIAN CIVIL CODE (*ALLGEMEINES BÜRGERLICHES GESETZBUCH*) IS HEREBY EXPRESSLY EXCLUDED.
- 8.6 Any support, diagnosis of errors, remedy of defects and failures that do not fall within the scope of warranty of the Services, Customization and/or Individual Software pursuant to this Section 0 or are within the responsibility of the Customer, as well as other corrections, revisions and additions may, upon request by the Customer, be carried out by Anyline at the cost of the Customer. This also applies to a remedy of defects when program revisions, additions or other interventions have been carried out by the Customer or by a third party. Such agreement between the Customer and Anyline will be

subject to these Conditions, as applicable for the Services defined in Sections 0 and/or 0 of these Conditions unless agreed to otherwise in writing between the Parties.

- 8.7 The period of any warranty granted pursuant to these Conditions, shall lapse after six (6) months following the performance of the Services or delivery of the Customization and/or Individual Software, as the case may be.

## **9. LIMITATION OF LIABILITY**

- 9.1 ANYLINE SHALL ONLY BE LIABLE FOR DAMAGES CAUSED BY INTENT OR GROSS NEGLIGENCE. LIABILITY FOR DAMAGES CAUSED BY SLIGHT NEGLIGENCE IS EXPRESSLY EXCLUDED. A CLAIM AGAINST ANYLINE MUST BE BROUGHT WITHIN SIX (6) MONTHS OF THE CUSTOMER HAVING KNOWLEDGE OF THE DAMAGE AND THE PARTY RESPONSIBLE FOR SUCH DAMAGE.
- 9.2 TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAWS, ANYLINE EXPRESSLY EXCLUDES ANY LIABILITY FOR LACK OF ECONOMIC SUCCESS, CONSEQUENTIAL DAMAGES, NOT REALIZED OR MISSED SAVINGS, COSTS CAUSED BY AN INTERRUPTION OF OPERATIONS, ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, INTEREST, GOODWILL, USE OR OTHER INTANGIBLE LOSSES (EVEN IF ANYLINE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), DAMAGES RESULTING FROM THIRD PARTY CLAIMS OR DAMAGES RESULTING IN THE LOSS OF DATA OR FROM THEIR RECOVERY AS WELL AS DAMAGES TO THE CUSTOMER'S SYSTEMS RESULTING FROM THE CUSTOMER'S INSTALLATION OR USE OF THE CUSTOMIZATION AND/OR INDIVIDUAL SOFTWARE. FURTHER, ANYLINE SHALL HAVE NO LIABILITY WITH RESPECT TO ANY DATA THAT IS READ, ACCESSED, STORED OR PROCESSED IN RELATION TO THE SERVICES, INCLUDING, IN PARTICULAR THE CUSTOMIZATION AND/OR INDIVIDUAL SOFTWARE OR ANYLINE IPR, OR FOR THE COSTS OF RECOVERING SUCH DATA. POTENTIAL CLAIMS PURSUANT TO APPLICABLE PRODUCT LIABILITY LAWS REMAIN UNAFFECTED.
- 9.3 THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS AND REGULATIONS.
- 9.4 ANYLINE'S MAXIMUM AGGREGATE LIABILITY – IRRESPECTIVE OF THE LEGAL GROUND (INCLUDING LIABILITY PURSUANT TO SECTIONS 0 AND 0 OF THESE CONDITIONS) – IN CASES ARISING OUT OF DEFECTS OF THE CUSTOMIZATION AND/OR INDIVIDUAL SOFTWARE OR ANYLINE IPR OR ANY ACTION OR OMISSION BY ANYLINE SHALL – TO THE EXTENT LEGALLY POSSIBLE – SHALL NOT EXCEED THE REMUNERATION ANYLINE RECEIVED FOR THE PERFORMANCE OF THE SERVICES.

9.5 Any claims shall be directed solely against Anyline, excluding the personal liability of all of Anyline's officers, representatives, employees and subcontractors.

## **10. DATA PRIVACY**

10.1 The Parties agree to observe any applicable provisions of the Austrian Data Protection Act (*Datenschutzgesetz 2000*) and to ensure that their employees observe the provisions of § 15 of the Austrian Data Privacy Act.

10.2 Our Privacy Policy [<https://www.anyline.io/imprint-and-legal/>], as amended from time to time, forms an integral part of these Conditions.

## **11. MISCELLANEOUS**

11.1 Individual written contractual agreements between the Parties deviating from these Conditions override these Conditions.

11.2 The English version of these Conditions will be the version used when interpreting or construing these Conditions.

11.3 If any term hereof is invalid or ineffective, its invalidity shall not affect the validity of the remaining terms hereof. The invalid or ineffective term shall be replaced by a term which reflects the original intent of the invalid term and these Conditions. This shall also apply to any legal loopholes and the interpretation of these Conditions.

11.4 The Conditions are governed by and construed in accordance with Austrian law, without reference to or application of any conflict of law rules and the United Nation's Convention on Contracts for the International Sale of Goods (CISG). All disputes arising from or in connection with these Conditions shall be referred to the competent court in Vienna.