Terms of Use
for Application Service Providing (ASP)

of Inworks GmbH, Hörvelsinger Weg 39, 89081 Ulm, GERMANY
As at: 21.01.2020

1. Subject

1.1.

Inworks undertakes to provide its contractual partner with the software that forms the subject of the contract, or a part of this software, as per the provisions below for simple, non-exclusive use without a time limit via a data network using a user name and password. To this end, Inworks shall save the software on a server that is accessible to the contractual partner via the internet. The software shall be provided to the contractual partner for the duration of the usage contract for use in accordance with the following provisions.

1.2

A contract of use is concluded by acceptance of a written offer signed by Inworks or by written confirmation of the order by Inworks. The license agreement is composed of:

• the underlying offer
• these Terms of Service for Application Service Providing (ASP)
• the specifications describing the software in the contract
• if applicable, further elements of the contract, if agreed in writing

2. Maintenance of the software and the network connection

2.2.

Inworks shall monitor the functionality of the software and the data network connection between the internet and the server on which the software is stored and inform the contractual partner of any malfunctions immediately. Insofar as malfunctions are due to disruptions on Inworks' side, Inworks undertakes to remedy the situation immediately.

2.3.

Inworks shall take all technical precautions necessary to guarantee monthly availability, in terms of the area of influence of Inworks, of at least 99%. Availability describes the usability of the software and/or of the described software processes as per the agreed service parameters.

3. Debugging

3.1.

Inworks shall remedy errors arising in the error categories described below within the reaction times set out below.

3.2.

The usual office and service hours are on weekdays (Mon-Fri) from 08:00 to 17:00 clock, not on public holidays at the headquarters of Inworks GmbH. There is a distinction between the following three error categories:

Error category	Problem Description	Reaction times
category 1	Proper and/or economically logical use of key parts of the service is not possible or unreasonably limited. The contractual partner is unable to work.	By the next working day at the latest.
category 2	Use of the software is greatly impaired, but is essentially possible. The error can be worked around by organisational and other means.	Within 2 working days.
category 3	Other error; no significant effect on functionality and usability.	Within the scope of the next update or upon consultation with the contractual partner.

3.3.

The reaction time includes the time during which Inworks begins its analytical work. The period shall begin upon receipt of a sufficiently specific error notification from the customer within the service time. Making contact with the customer shall be considered a reaction.

3.4.

An error within the meaning of the above provision shall particularly not exist if malfunctions have been caused by improper handling of the software, e.g. deviation from the installation instructions or the conditions of use set out in the software licence contract. Limitation of or inability to use the software caused by changes to the usage requirements of the licensee shall not represent an error.

4. Data Hosting

4.1.

The contractual partner shall remain the owner of the data hosted by Inworks within the scope of the usage contract, and, during the term of the contract, can demand that Inworks release the data at any time, particularly before termination of the contract. The contractual partner shall not have any claim to the software needed for use of the data. Unless agreed otherwise in writing between the contractual partner and Inworks, Inworks shall delete the hosted data once termination has become effective.

4.2.

The contractual partner himself shall be responsible for entering and maintaining the data required to use the SaaS services. The contractual partner undertakes to check the data for viruses before entry and to use the latest virus protection programs to do so.

4.3.

Inworks undertakes to take suitable precautions to prevent loss of data in the event of system errors and to prevent unauthorised access by third parties. To this end, Inworks will make regular backups, install firewalls or take other appropriate measures.

5. Obligations of the contractual partner

5.1.

When using the software, the contractual partner undertakes to comply with the statutory provisions and to prevent any misuse or endangerment and/or impairment of third parties; in particular, any use that endangers public order or security, violates good morals or the law or entails serious harassment of frightening of third parties is not permitted.

5.2.

The contractual partner undertakes to only use the software on the basis of these terms; in particular this means refraining from circumventing security precautions of the SaaS system, informing Inworks immediately in writing of any identifiable defects or damage and refraining from using the software or acting in such a way that data security is put at risk.

5.3.

The contractual partner undertakes to openly agree on loads on the SaaS system going beyond the normal extent, or uncertainty regarding this, with Inworks. Inworks may demand that the contractual partner comply with set procedures in order to ensure an appropriate level of system availability. In the event of failure to comply, Inworks shall be entitled, regardless of any

possible impairment of the contractual partner, to take technical measures to ensure or restore system availability.

5.4.

The contractual partner undertakes to treat all information on the software and the methods and procedures used as confidential and to prevent third parties from gaining unauthorised access to software and documentation provided using suitable precautions. The contractual partner undertakes to inform Inworks immediately of unauthorised access to the software by third parties.

5.5.

The contractual partner undertakes to compensate Inworks for any damage incurred through the violation of obligations incumbent upon the contractual partner as per point 5.4. Further, in the event of such a violation of obligations, Inworks shall be entitled to extraordinary termination of the contractual relationship.

6. Rectification of defects and liability

6.1.

In the event of intent or gross negligence, the contractual partners shall be liable for all damage caused by their and their legal representatives, leading employees or vicarious agents.

6.2.

In the event of slight negligence, the contractual partners shall have unlimited liability where injury to life or limb is concerned.

6.3.

Otherwise, a contractual partner shall only be liable if he has violated a key contractual obligation. Key contractual obligations are obligations that are significant in achieving the aim of the contract, as well as obligations that, in the event of a culpable breach, could cause fulfilment of the contractual purpose to be endangered. In such cases, liability shall be limited to foreseeable damage that is typical for the type of contract. Liability for compensation regardless of culpability as per Section 536 a of the German civil code (BGB) is excluded in the case of defects existing upon conclusion of contract; para. 1 and 2 of the present provision shall not be affected.

6.4.

Liability as per the German product liability act shall remain unaffected.

7. Data secrecy and personal data

7.1.

Inworks shall ensure that, on its part, only persons that are explicitly authorised and obligated to data secrecy are involved in maintenance, support, update or installation.

7.2.

In the event of providing maintenance or support services, Inworks shall only process personal data if this (in rare cases) is necessary for the provision of the service, and in this event only within the scope of the agreements reached and the instructions of the contractual partner.

8. Price adjustment clause for licences with a time limit

8.1.

The contractually agreed remuneration for time limited software licences shall increase by 2% of the previous year's remuneration each year.

9. Term and termination of the contract

9.1.

The contractual relationship shall begin when the contract comes into being and is concluded for an indefinite period of time. We reserve the right to synchronize subsequently commissioned licenses in their contract period and the termination of the transfer of use with the first order. Subsequent contract periods are calculated on a daily basis.

9.2.

The contractual relationship may be terminated ordinarily by either contractual partner with a period of notice of three months to the end of a calendar quarter, but no earlier than the end of the calendar year that follows the calendar year in which the contract is concluded.

9.3.

Extraordinary termination due to or in association with a violation of obligation shall only be possible after having submitted a written warning with an appropriate grace period of no less than 5 working days.

9.4.

Should the contractual partner that is entitled to terminate be aware of the circumstances justifying extraordinary termination for longer than 5 working days, he may no longer base termination on said circumstances.

9.5.

Inworks may terminate the contract without adhering to a notice period if the customer is in default on payment of the price, or a significant part of the price, for two consecutive months, or on payment of the fee in an amount that represents the fee for two months for a period of more than two months. In this event, Inworks may additionally request immediate payment of flat-rate compensation amounting to a quarter of the remaining basic monthly rate due by the end of the regular contract term. The customer reserves the right to provide evidence that lesser damage has been suffered.

10. Force majeure

10.1.

10.1.   Neither of the contractual partners shall be obliged to fulfil the contractual obligations in the event of and for the duration of force majeure. In particular, the following circumstances shall be considered force majeure:

- fire/explosion/flood for which the contractual partner is not responsible,
- war, revolt, block, embargo,
- industrial action lasting over 6 weeks and not culpably caused by the contractual partner,
- technical problems with the internet that are outside of the control of the contractual partner. This shall not apply if and insofar as Inworks also provides the telecommunications service.

10.2.

Each of the contractual partners shall inform the other of occurrence of an event of force majeure immediately in writing.

11. Performance limits of technical systems

11.1.

Performance limits apply to all technical systems, including our software (Inquery Survey Server / Intrafox), as well as browser (client) and network infrastructure.

In unfavorable cases, these performance limits lead to very long reaction times of these systems or to termination.

Each project has its own requirement profile. We are happe to help you to adjust your requirements to your and our systems. Please contact us in time.

12. Final provisions

12.1.

The contractual relationship shall be subject to German law, to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

12.2.

Invalidity of individual provisions shall not affect the validity of the remaining contractual content.

12.3.

Exclusive place of jurisdiction shall be the district court of Ulm (Landgericht Ulm)