	<b>Qualitätsmanagement Formular</b>	QMV Nr.:	3_01_QMV_001
	Dok.Nr.: <b>3_01_QMF_001_Teil6_AGB_ISE_Softwarezukauf_Typ_D_englisch_03</b>	Version:	3.00

ISE GmbH, Mühlwasserstraße 34, A . 1220 Wien, Austria

# QMF

**3\_01\_QMF\_001\_Teil6\_AGB\_ISE\_Softwarezukauf\_Typ\_D\_englisch\_03**

## **AGB Ë Softwarezukauf (englisch)**

	Erstellt :	Geprüft :	Freigegeben :	Freigegeben :
<b>Firma:</b>	ISE	ISE	ISE	ISE
<b>Datum:</b>	06.01.2014			
<b>Name:</b>	A. KUBISCH			
<b>Zeichen:</b>				
<b>Archiv Nr.:</b>	I:\QM-ISO2000-aktuell\3-UnterstützendeProzesse\3_01_Einkauf\3_01_QMF\3_01_QMF_001_Teil6b_AGB_ISE_Softwarezukauf_Typ_D_englisch_01.doc			Seite 1 von 6

**General Terms and conditions  
Software****Preamble**

1. ISE - Industrie Software Entwicklung GmbH (herein referred to as ~~s~~ISE%) will accomplish complete automation solutions for its customers. Based on the software design and functional specifications, compiled by ISE for its customers, the development of the according project-related software shall be assigned to the contractor as a subcontractor according to the separate order/purchase agreement and based on the regulations below. ISE itself can be customer for the purpose of these regulations.

**I. Scope of Applicability**

1. These General Terms and Conditions in accordance with the most recent version shall apply exclusively for all contracts concluded by ISE and their contractors within the scope ~~%Software+~~.
2. Any conflicting terms and conditions of business issued by the contractor shall not be deemed accepted nor shall they form a constituent part of contract, even if ISE is aware thereof, unless ISE expressly agrees with their validity in writing. This shall also apply even if ISE does not separately protest them.
3. These terms and conditions of purchase shall also apply if ISE accepts or pays for deliveries of products and services of the contractor in the knowledge of conflicting supplier terms and conditions or supplier terms and conditions differing from these terms and conditions of purchase.
4. Any dissenting regulations, verbal side arrangements, changes or additions to these terms and conditions as well as its attachments resp. enclosures shall require a written agreement between the two contracting parties. This shall also apply for changes of this formal requirement.
5. In the context of and for the duration of the entire business relationship these terms and conditions shall also apply to all subsequent transactions according to article I.1. without any need of express reference thereto or agreement thereon at the conclusion of such transaction.

**II. Professional Qualification**

1. The contractor states that he has long experience and professional expertise in software development, especially regarding ISE's scope of business. The according proof shall be supplied by presentation of adequate written project references.
2. When performing services within the scope of ~~%Pharma Projects+~~, the contractor states that he has according sectoral knowledge. When in doubt, the contractor shall immediately confer with ISE.

**III. Object of Agreement**

1. The contractor shall develop a software according to the separate order/purchase agreement, meeting the requirements in the functional specifications, handed over by ISE.
  - 1.1. The structure of the software and the associated documentation developed by the contractor shall meet ISE's requirements (functional specifications, software design specification), that shall be an integral part of the agreement.
  - 1.2. The contractor shall bear all costs for correction occurring by disregarding these requirements.
  - 1.3. ISE's right to assert any further compensation remains unaffected.
2. The contractor shall give ISE written notice about the acceptability of the software and shall call on ISE for acceptance.
  - 2.1. The acceptance test shall be done in a mutual inspection of the software or within the final acceptance test of the complete solution by ISE's end customer at ISE's own choice.
    - 2.1.1. Within the scope of ~~%Pharma projects+~~ the completion of the project shall be defined by validation (OQ).
    - 2.1.2. Deficiencies in validation of the software and the associated documentation shall be corrected immediately after receipt of the validation report (OQ) and shall be documented and retested.
  - 2.2. The contracting parties shall record in writing which requirements of the specification are not met.
  - 2.3. At the end of the documentation ISE shall give written notice if the software satisfies the general acceptance criteria.
  - 2.4. The contractor shall only be eligible for an acceptance certificate if the software meets all the essential requirements of the functional specifications.
  - 2.5. In order to maintain the proper completion of the contractor's work, the contractor shall perform his services completely and documented and shall deliver the fully documented object- and source code of the software and the associated documentation.
  - 2.6. The associated complete documentation of the software shall be a main obligation for the contractor.
  - 2.7. The completion of the contractor's work shall be expressively documented by ISE's project management.
3. If the contractor is not able to start or complete the ordered work, the contractor shall give according written notice in due time (from experience 8 weeks) before suspension of work.
  - 3.1. In case the contractor fails to comply with this regulation, ISE shall be freed of its financial obligation resp. shall the contractor bear all consequential costs.
  - 3.2. ISE shall have the right to demand the delivery of all provisional and final results developed within the fulfilment of the separate order/purchase agreement.




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4. The contractor shall provide information and support services according to the agreed hourly rates, for the reasonable time-frame of one year after documented completion of the ordered work. The contractor shall inform ISE immediately about any changes in his contact details in writing, otherwise the contractor shall bear all costs for the necessary execution by substitution. In case that support services on-site should be imperative, the contractor shall suggest possible dates for execution within 24 hours of notice for the following week.

**IV. Rights and Obligations**

1. All the contractor's work within the scope of the objective software development shall be disclosed to ISE.
  - 1.1. For these purposes the contractor shall deliver the object- and source code version of the software and the associated documentation at first notice. The contractor shall deliver the object- and source code, the associated documentation and all included know-how on a data carrier of ISE's own choice. Know-how shall be defined as the whole technical acknowledgement, all knowledge and associated documentation and all further technical and economical information, necessary for the objective software development.
  - 1.2. In case the contractor fails to comply with this clause, the contractor shall bear all costs for subsequent work. ISE's right to assert any further compensation remains unaffected at all events.
2. All the services within the scope of the project shall be performed solely by the contractor himself or by the contractor's professional qualified personnel according to Article II.
  - 2.1. The contractor shall notify ISE about any prevention of such personnel in due time.
  - 2.2. ISE shall be entitled to dismiss replacement personnel without further ado.
3. The delegation of this order to third parties shall be prohibited without the prior written approval of ISE.
  - 3.1. The contractor shall bind the subcontractor by contract in the same way as the contractor himself is bound according to the regulations of this contract resp. the separate order/purchase agreement.
  - 3.2. The contractor shall take full liability for the subcontractor and shall indemnify and hold ISE harmless in any way.
4. The contractor shall check the software development design and functional specifications provided by ISE, regarding correctness, feasibility and completeness. The contractor shall inform ISE immediately about design or requirement defects, occurring in the context of the project execution, in written form.
  - 4.1. If the contractor should carry out an apparent defect, the contractor shall bear all costs for elimination of this defect. ISE's right to assert any further compensation remains unaffected.
  - 4.2. The contractor shall inform ISE immediately about any work jeopardising the agreed deadlines or the project itself as well as about any infeasible work.
5. Within the term of the objective order/purchase agreement the contractor shall be on-site within 48 hours at the latest upon ISE's first request,
  - 5.1. If the contractor should not show, a respite of 24 hours shall be granted.
  - 5.2. The contractor shall bear all consequential costs arising from his being absent without excuse. ISE's right to assert any further compensation remains unaffected.
6. The contractor shall keep confidential all business or technical information made accessible by ISE (including features which might be learned from objects, documents or software submitted and any other information or experiences) towards third parties, as long as and to the extent they are not public knowledge, and may only be made available in the contractor's premises to persons who need to make use of the information for the purpose of supplying to ISE and who must also be required to maintain confidentiality. The information remains exclusive property of ISE. The contracting party shall not receive any intellectual property or utilization rights. In case the contractor fails to comply with this clause, the contractor shall take full liability and shall indemnify and hold ISE harmless in any way.
  - 6.1. Without ISE's prior written approval, such information . except for deliveries to ISE . may not be duplicated or exploited commercially. At ISE's request and at ISE's own choice, all information and items (including any copies or recordings made) shall be immediately returned to ISE completely or proved to be destroyed.
  - 6.2. ISE reserves all rights to such information (including copyrights and the right to file for industrial property rights such as patents, utility models, semiconductor protection, etc.). In the event these rights are provided to ISE by third parties, this reservation of rights shall also apply to these third parties.
  - 6.3. Products built on the basis of documentation such as drawings, models and the like prepared by ISE or based on ISE's confidential information or ISE's tools or tools modelled on ISE's tools may neither be used by the contractor himself nor be offered or supplied to third parties. This also applies to ISE's print orders correspondingly.
  - 6.4. All documents and information provided to the contractor by ISE are ISE's, resp. their customers sole intellectual property.
7. All software and documents developed or services performed pursuant this agreement and the results of said work is by virtue of this agreement to ISE and shall be the sole property of ISE resp. its customer.
  - 7.1. For these purposes the contractor assigns - solely and exclusively - to ISE his entire rights, title and interest in the software, object-code, source-code, and its associated documentation created or developed by the contractor for ISE under this agreement including all patents, copyrights, trade secrets and other proprietary rights, without any restrictions in time, place or content.
  - 7.2. The right to install and run the software in own or other enterprises in any arbitrary way, to duplicate the software and to demonstrate and transmit the software in whatever way shall especially be included. Furthermore ISE shall have the right to modify, enhance or alter the software and the associated

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documentation in its own sole discretion in order to use such results in the same way as the original settings of the programme, the source code and the documentation, without a further consent of the contractor. The contractor shall have no right to modify, enhance or alter the software or documentation without explicit written permission by ISE.

- 7.3. ISE shall have the right to freely assign all assigned rights to any third party without the contractor's permission.
- 7.4. The contractor shall have no exploitation right in the software and associated documents developed or performed pursuant this agreement.
- 7.5. The contractor shall execute and aid in the preparation of any documents necessary to secure any copyright, patent or other intellectual property rights in the work product to ISE at no charge.
- 7.6. The contractor stipulates, that he exclusively owns all rights in the developed software for assignment according to Article IV.8., that the use of the objective software, the source-code and the associated documentation does not infringe upon the intellectual property rights of any other party and that no other party shall have any rights or claims thereto. The contractor shall indemnify and hold ISE harmless from and against any alleged, threatened or actual infringement asserted by any third party.
8. Agreed-upon deadlines and time periods are binding.
  - 8.1. The receipt of the deliveries by ISE is the determining factor for having met the date of delivery or the period of delivery.
  - 8.2. If the contractor is responsible for setup or installation, and unless otherwise agreed upon, the contractor shall assume all required incidental costs such as travel expenses, availability of tools as well as daily allowances.
  - 8.3. The legal stipulations shall apply if agreed-upon deadlines are not met.
  - 8.4. If the contractor anticipates difficulties with respect to production, the supply of required materials, meeting the delivery date or similar circumstances that might interfere with his ability to deliver in a timely fashion or delivery with the agreed-upon quality, the contractor must immediately notify ISE.
  - 8.5. The unconditional acceptance of a delayed delivery or service does not constitute a waiver of claims to which ISE is entitled due to the delayed delivery or service; this applies until the complete payment of amounts owed by ISE for the delivery or service in question.
  - 8.6. Partial deliveries are precluded as a rule, unless ISE expressly agreed to them or they are reasonable.
  - 8.7. As long as there is no alternate written agreement, all agreed deadlines in the separate order/purchase agreement shall be fixed dates.

#### **V. Non Competition**

1. The contractor agrees that for a period of at least one year following the cessation of the relationship with ISE, the contractor shall not provide or arrange any service to or lend any aid or device to any of the clients of ISE. Furthermore, the contractor shall not engage in any business activities associated to ISE's line of business for his own account. Clients are persons and/or companies mentioned in the separate order/purchase agreement.
2. In the case of a violation of this agreement, lump-sum damages amounting to the threefold contract volume are agreed regardless of negligence or fault and shall not be subject to a judge's right of moderation. ISE's right to assert any further compensation remains unaffected.
3. This clause shall survive at least 2 years after termination of this agreement and shall only be terminated ahead of time by ISE's written notice.

#### **VI. Payment in Case of Expense Allowance According to Separate Order/Purchase Agreement**

1. All the services ordered by ISE and performed by the contractor shall be charged as accrued. The reimbursement shall be calculated on basis of hourly rates agreed in the separate order/purchase agreement. Travel time from and to the site shall categorically not be reimbursed.
  - 1.1. If agreed, costs for overnight stays, flight costs and other travel expenses are limited to middle class and shall become due and payable weekly after rendering the original vouchers.
  - 1.2. In case the contractor should use his car for business, ISE shall pay kilometre allowance of " 0,35 per kilometre, that shall become due and payable after proof of kilometres.
  - 1.3. If these costs should exceed the amount of " 100 per day, the contractor shall immediately inform ISE in writing, otherwise the contractor shall lose his right for reimbursement.
2. All payments to the contractor shall only become due on presentation of accordingly signed hourly time sheets, countersigned by ISE's project management, and associated work reports.
  - 2.1. The hourly time sheets shall be presented weekly.
  - 2.2. Invoices of the contractor shall become due and payable 15 days after receipt of the invoice due net.

#### **VII. Payment in Case of Flat-rate Allowance According to Separate Order/Purchase Agreement**

1. All the services ordered by ISE and performed by the contractor shall be performed as a flat rate order and shall only be reimbursed in accordance with the separate order/purchase agreement.
  - 1.1. With the agreed flat rate fixed price all demands of the contractor, especially the assignment of intellectual property rights according to Point IV.7., shall be reimbursed.
  - 1.2. Further demands of any kind shall be excluded.
2. With acceptance of the order ISE shall make a down payment in the amount of 20%.



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- 2.1. After the successful preliminary acceptance test (FAT) according to Point VIII.2. ISE shall pay a further instalment in the amount of 50%.
- 2.2. The remaining sum shall be paid after final acceptance of the complete solution by ISE's customer at the earliest.
3. Unless otherwise agreed upon, the contractor's invoices are to be paid within 14 days by deducting a 3% discount or within 30 days without deduction as of the payment due date and the receipt both of the invoice and the goods or services. The payment is subject to invoice verification.
4. The contractor shall have no right to set-off or reduction unless the underlying counterclaims have been conclusively determined by a court or expressly acknowledged by ISE.
5. The contractor shall have no right to retention unless the underlying counterclaims have been conclusively determined by a court or expressly acknowledged by ISE.

### VIII. Warranty

1. The warranty term, within which warranty claims may be raised, shall be 24 months and shall start at the date of the final acceptance by ISE's customer.
2. A mutual preliminary acceptance test (FAT) with ISE and the contractor shall take place.
  - 2.1. The work made by the contractor shall be demonstrated on-site for the specified use and a first acceptance test shall be performed.
  - 2.2. Faults occurring during the preliminary acceptance test and the following start of operation shall be rectified within 2 days at the contractor's own expense within the scope of warranty.
  - 2.3. In case the contractor does not fulfil his obligation in due time, ISE shall have the right to perform the necessary works on its own or through a competent third party at the expense of the contractor without further notice. ISE's right to assert any further compensation remains unaffected.
3. Before the final acceptance of the complete solution by ISE's customer, it is agreed that a mutual performance testing shall take place within the start of operations on-site.
  - 3.1. Faults occurring during the performance testing and the following start of operation shall be rectified within 2 days at the contractor's own expense within the scope of warranty.
  - 3.2. In case the contractor does not fulfil his obligation in due time, ISE shall have the right to perform the necessary works on its own or through a competent third party at the expense of the contractor without further notice. ISE's right to assert any further compensation remains unaffected.
4. ISE shall notify the contractor immediately upon the occurrence of a fault after the final acceptance by ISE's customer. The contractor shall cure such faults within 2 days at the contractor's own expense within the scope of warranty. ISE's right to assert any further compensation remains unaffected.
5. The contractor shall notify ISE in writing, if he wants ISE to perform the necessary work. Such a cure of fault by ISE does not exempt the contractor from liability. ISE's right to assert any further compensation remains unaffected.

### IX. Auxiliary Service

1. The manufacturing and installation of the delivery item resp. the ordered services according to the separate order/purchase agreement shall exclusively be performed as a flat rate order.
2. Any additional order shall be set out in writing and shall be reimbursed according to standard price.
3. The standard prices shall conform with the standard price list that shall be handed over before acceptance of the order and that shall be an integral part of the agreement.
4. Directed performances shall not be rendered and shall therefore not be reimbursed.
5. All deliveries/performances defined in the order/purchase agreement must include all the necessary material, equipment and extra work within the scope of this contract and its basis, even though they are not explicitly stated.

### X. Contractor's Legal Status

1. The concrete contract shall be subject to the Austrian regulations for contracts of work (~~W~~erhvertrag). Out of this contract no employment status shall be achieved.
2. There shall be no registration of the contractor to the national insurance.
3. The contractor shall render booking capable invoices about his activities in weekly intervals.
4. The contractor shall be solely responsible for taxation of his income.

### XI. Trade and Company Secrets

1. In addition to Point IV.6. the contractor shall not disclose any trade and company secrets as well as any other information regarding the way, the operations and the practical activities of ISE or ISE's customers at all time.
2. This obligation of secrecy shall apply without temporary restrictions. This shall also apply for any of ISE's or their customer's operational knowledge that the contractor should learn of accidentally, though not in relation with his activities on basis of this contract.
3. Unless the contractor favourably points out ISE's activities, the contractor shall not comment about ISE, especially when working on-site with ISE's end customer.



**XII. Termination**

1. Both parties shall have the right to terminate this agreement with immediate effect for important reasons in writing.
2. In case such a termination of the contract is capable of causing damage to the other party and if the continuation of this contract for an appropriate time is reasonable for the terminating party in order to avert a damage, the terminating party shall be obliged to continue the contract, otherwise the terminating party shall bear all costs resulting from failure to comply with this regulation.
3. The ordered and to be developed software according to these terms shall be a complete work, that is not separable.
  - 3.1. In case the continuation of this contract according to Point XII.2. is not reasonable for the contractor, or if the contractor is not willing to continue the contract for whatever reason and the software development, as an inseparable work, has to be continued by ISE itself or a separately assigned third party, ISE shall record the status quo of the software development resp. the performed services on basis of the delivered provisional results according to Point III.3.2. and Point IV.1.
  - 3.2. Dependent on the actual development status of the actually ordered work, ISE shall be entitled to a reduction of price in relation to the ordered, inseparable complete work.
  - 3.3. ISE shall be entitled to an additional reduction of price in the amount of 20% of the total order volume for the ascertainment of the actual development status.
4. In case the continuation of the ordered work is not possible without the contractor's fault, ISE shall try to offer the contractor according work within the scope of similar projects and under similar conditions. Though the contractor shall have no right to assert any compensation in such a case.

**XIII. Liability**

1. The contractor shall assume full liability that the software and the associated documentation has no faults, capable of reducing the value or the efficiency for its general use or the specified use agreed by contract, especially specified in the rendered functional specification.
2. Until the end of the warranty term according to the separate order/purchase agreement, the contractor shall make all adjustments of the documentation, as these adjustments are made within the scope of error deletion.
3. The contractor shall assume full liability for having exclusive ownership of and title to all deliverables of whatever kind including copyrights, patents, trademarks, rendered within the scope of the order/purchase agreement and that there are no other rights or claims capable of affecting the use of the objective in whatever way that the contractor is aware of.
4. The contractor shall assume full liability for any damages and losses, regardless of negligence or fault, that shall have been caused by him or a third party in his sphere of influence and hereby indemnifies and holds ISE harmless from and against any alleged, threatened or actual infringement asserted by any third party.

**XIV. General**

1. All norms and directives mentioned in these terms shall be an integral part of the purchase contract.
2. There are no verbal side arrangements to this contract.
3. Any modification or amendment of the abovementioned terms or their exhibits shall not take effect unless agreed by both parties in written form. This applies also to any waiver of the written form requirement.
4. The invalidity of any provision of these terms and conditions shall not affect the validity of the other provisions. Invalid provisions shall be deemed to be replaced by such valid provisions that shall be suitable to implement the economic purpose of the deleted provision to the greatest extent possible.
5. It is agreed on both sides, that place of jurisdiction for all present and future claims arising from or related to this arrangement and its annexes shall be the commercial court in Vienna.
6. For the interpretation of this contract Austrian actual law shall apply. The international purchase laws shall not apply.
7. The English version of these terms and conditions of purchase shall be for convenience purposes only. In case of any inconsistencies, the German version shall prevail.