

# GENERAL TERMS AND CONDITIONS

## Art. 1 DEFINITIONS

For the purposes of these General Conditions the terms listed below assume the following meaning:

- **RAWFISH**: Rawfish S.r.l., Software Producer and Service Provider of the Contract, as defined below.
- **CLIENT**: the person who acquires and / or uses the Software and / or the computer and telecommunication services covered by these General Conditions as well as BY the Commercial Offer
- Commercial Offer: the commercial offer provided by **RAWFISH** to the **CLIENT** which provides the technical characteristics and the economic conditions of the Standard or Time&Material Contracts, as well as any maintenance, updating and bugfixing activity by **RAWFISH**. Together with these General Conditions and the Service Level Agreement, the Commercial Offer constitutes the Contract.
- General Conditions: these General Conditions available for consultation and download on **RAWFISH**'s website, which together with the Commercial Offer and the Service Level Agreement constitute the Contract.
- Standard Contract and Time&Material Contract (defined individually or cumulatively also as "Contract" or "Contracts"): the two types of contract between **RAWFISH** and the **CLIENT** whose object and discipline are determined by these General Conditions, the Commercial Offer and the Service Level Agreement;
- Downtime: any delay in the execution of the Contract due to non-compliance, delays in the provision of information, content, specifications, APIs, delays in feedback or other caused by the **CLIENT** that do not allow **RAWFISH** to proceed with the development / design of the Software;
- Service Level Agreement: the Service Level Agreement available for consultation and download on **RAWFISH**'s institutional website, which identifies the procedures and the timing of the Services performed by **RAWFISH**;
- Software: the software products produced by **RAWFISH** and the subject of the Contract.
- Services: the services provided by **RAWFISH** as the subject of the Contract.
- Execution of the Contract or of the Contracts: the acceptance by the **CLIENT** of the Commercial Offer pursuant to Art. 3.
- Parties: **RAWFISH** and **CLIENT**.

## Art. 2 GENERAL DISCIPLINE OF THE GENERAL CONDITIONS AND OF THE STANDARD AND TIME & MATERIAL CONTRACTS

2.1 These General Conditions, together with the Commercial Offer, govern the terms and conditions of the Contract executed in accordance with the following Article 3.

2.2 In the event of a conflict between the discipline of these General Conditions and the Commercial Offer, the discipline of the Commercial Offer shall prevail.

2.3 By executing the Contract pursuant to the following Article 3, the **CLIENT** explicitly acknowledges and accepts the terms and conditions of the Services and of the Software subject of the Contract.

2.4 Object of the Standard Contract is the creation of the Software having the characteristics identified in the Commercial Offer. Unless otherwise explicitly agreed in the Commercial Offer, the ownership of the Software will remain **RAWFISH**, while the **CLIENT** will acquire the right to use the same Software under the terms of the Contract.

2.5 The delivery of the Software under the Standard Contract will take place through a final test that can take place at the premises of the **CLIENT** or in remote assistance. In the final test the Parties will verify the existence of any bugs as well as the completeness and functionality of the Software. Where the outcome of the final test is positive, **RAWFISH** will issue the invoice for the payment of the consideration provided for in the Commercial Offer. From the same moment the coverage period of the after-sales assistance, if provided for in the Commercial Offer, will start to run.

2.6 The methods and deadline of payment of the consideration of the Standard Contract are indicated in the Commercial Offer.

2.7 Under the Time&Material Contract, **RAWFISH** will provide the **CLIENT** with certain resources for a specific period of time or amount of working hours under the conditions set out in the relevant Commercial Offer. The employment of the aforementioned resources shall be aimed at the realization of subsequent operational phases of a complex project, whose complete execution requires research and development activities that cannot be completely estimated at the time of the Commercial Offer. Pursuant to the Time&Material Contract, the **CLIENT** undertakes to agree with **RAWFISH** the planning of the subsequent phases of the project, not included in the Commercial Offer, well before the end of the Contract, so as to allow **RAWFISH** to plan the allocation of its resources.

2.8 The methods of payment of the Time & Material Contract, without prejudice to the specific provisions of the Commercial Offer, are as follows:

- **RAWFISH** will send monthly to the **CUSTOMER**, also by e-mail, a report including the following items:
  - hour report by type of resource used in the project;
  - list of transfers;
  - list of expenses at the foot of the list;
  - costs for plugins / purchase of audio / video material and/or purchase of services for the implementation of the project;
  - or any additional expense items;
  - pro-forma invoice including the consideration and the aforementioned expenses.

The **CLIENT** is required to communicate to **RAWFISH** within three working days of any request for clarification and / or information and / or objections with respect to the report and to the proforma invoice. After this deadline, the report and the proforma invoice is expressly accepted by the **CLIENT**, who waives any further objection.

### **Art. 3** **EXECUTION OF THE CONTRACT**

3.1 The Contract is deemed to have been executed upon acceptance by the **CLIENT** of the Commercial Offer sent by **RAWFISH**. Such acceptance may be made either in writing, by returning via email the Commercial Offer undersigned, or by concluding facts pursuant to Art. 3.3.

3.2 The acceptance of the Commercial Offer or the execution of the Contract by concluding facts pursuant to Section 3.3 below determines in any case the acceptance of these General Conditions.

3.3 The Parties expressly acknowledge that where, on request also the **CLIENT**, **RAWFISH** begins the performance of the Commercial Offer before its subscription by the **CUSTOMER**, the Contract must be considered concluded and the Parties will therefore be bound by the terms and conditions from the Commercial Offer and from these General Conditions and from the Service Level Agreement.

3.4 The Contracts will have the duration indicated in the Commercial Offer and will not be tacitly renewed. Any renewal of the duration of the Contracts must be the subject of a specific and new agreement between the Parties.

#### **Art. 4** **RIGHT TO SUSPEND THE PERFORMANCE. TERMINATION**

4.1 **RAWFISH** shall be entitled to suspend or cancel the performance of the Contract in its sole discretion, or to render the delivery of the Software or of the Services subject to advance payment in full of the price and of any other sum that may be due, or to presentation of adequate guarantees, should there be any failure or delay in compliance by the **CLIENT** of the term of payment specified in the Commercial Offer, either with regard to previous orders or to the order in question.

4.2 The terms of payment provided in the Commercial Offer shall be considered essential and peremptory.

4.3 **RAWFISH** will also be entitled to, in its sole discretion, proceed as above in the event of a change in the person of the **CLIENT**, in its company structure or situation, in its financial or property situation or in its commercial image, as well as in the event of protests, executive or precautionary proceedings, suspension, difficulties or delays in fulfilling third party obligations and, in any case, should the Buyer be found to be in a state of insolvency or subject to composition procedures.

4.4 Should the situation that determined the suspension of the performance of the order and/or of the non-fulfilment of the condition last for a period longer than 6 (six) months, **RAWFISH** shall be entitled to declare the total or partial termination of the Contract. Any delay by **RAWFISH** in exercising its rights under this article 3 shall not be interpreted as a waiver of them in favour of the **CLIENT**.

#### **Art. 5** **PENALTIES FOR THE SUSPENSION OR THE CANCELLATION OF THE ORDER BY THE CLIENT**

5.1 Should **the CLIENT** suspend or cancel the Contract or should the **CLIENT** fail to fulfil to any of the obligations assumed by the Contract, **the CLIENT** shall be charged, as penalty, with the expenses incurred by **RAWFISH** for the performance of the purchase order, which shall be calculated in an amount equal to 30% of the Contract's value as determined in the Commercial Offer, without prejudice to its rights to claim compensation for any further damages suffered by **RAWFISH** as a consequence of the breach of the contract.

5.2 Should the **CLIENT** already have paid an amount as down payment or as deposit, **RAWFISH** shall retain as penalty for the suspension or the cancellation of the Contract, the down payment or the deposit even if higher than the 30% of the value of the Contract, without prejudice to its right to claim compensation for any further damages suffered by **RAWFISH** as a consequence of that suspension or cancellation.

## **Art. 6** **RETENTION OF OWNERSHIP**

6.1 Where the Commercial Offer provides for the transfer to the **CUSTOMER** of the source code of the Software, the source code of the Software, and therefore the Software itself, shall remain in **RAWFISH**'s ownership until the full consideration price and any other charges due from the **CLIENT** in respect of the Contract have been paid in full, including possible interests on delayed payments and the costs incurred by **RAWFISH** for the compulsory recovery of credit.

6.2 Until full payment of the Software price, the **CLIENT** may use the Software solely on **RAWFISH**'s authorization and commits to interrupt its use and to return all copies of the source code of the software to **RAWFISH** at the sole request of the latter in case of failure to pay or delayed payment.

6.3 The **CLIENT** expressly acknowledges and agrees that **RAWFISH** may use parts of the source code of the Software that is the subject of the Contract in order to develop other software and / or projects with third parties.

6.4 In case of breach of Contract by the **CLIENT** with respect to the terms of payment provided for in the Commercial Offer, terms which must be considered essential and peremptory, **RAWFISH** shall have the right to terminate the Contract with immediate effect by means of written communication, even via e-mail, and may retain any sums already paid by the **CLIENT** as a down payment for covering the damage suffered, save in any case the right to claim compensation for any damages suffered as a result of the breach of the Contract by the **CLIENT**.

## **Art. 7** **CLAIMS. TERMS FOR SUBMISSION AND PROHIBITION OF SET-OFF**

7.1 Any claim regarding the Software must be submitted, under penalty of forfeiture of the warranty, in writing to **RAWFISH** within eight (8) days from the delivery of the Software by fax or registered letter with return receipt or by "p.e.c."

7.2 If the claim is sound, **RAWFISH** shall proceed to eliminate the defects at its discretion and in the term that will be determined by **RAWFISH** taking into account the activity needed.

7.3 Should any claim be pending between the **CLIENT** and **RAWFISH** or should the **CLIENT** allege any claim against **RAWFISH**, this does not constitute a justified ground for the **CLIENT** to delay or suspend or deduct or set-off the payment of the price of the Contract, in whole or in part.

7.4 In no case shall **RAWFISH** be held liable for loss of revenues or loss of image/reputation suffered by the **CLIENT** for interruptions in the use of the Software because of defects.

## **Art. 8** **LIMITATION OF LIABILITY**

8.1 **RAWFISH** cannot be held liable in any way for the use of data, delivered and / or requested by the **CLIENT**, which, without the knowledge of **RAWFISH**, is covered by copyright or other regulations governing the processing of sensitive data and the **CLIENT** undertakes to indemnify **RAWFISH** of any claim for damages should arise from third parties for the use of these data.

8.2 The **CLIENT** uses the Services and the Software and eventually handles the Software and / or the use of the same to third parties at his own risk. **RAWFISH** shall not be held liable to the **CLIENT** or third parties to whom the **CLIENT** has eventually handed over the developed Software and / or the use of the same for direct, indirect, specific, incidental, punitive, causal or consequential damages (by way of example but not exclusive: damages in the event of inability to use or access to services, loss or corruption of data, profits, customers, image damage, business interruptions or the like) caused by the use or from the impossibility of using the Services and / or any defects in the Software developed and based on any assumptions of liability including contract violation, negligence, or otherwise, even if **RAWFISH** has been advised of the possibility of such damages and in the event that the present clause has not remedied, unless this is due to serious negligence or fraud of **RAWFISH**.

8.3 It is expressly understood that **RAWFISH** does not have any control on – and therefore we shall not be held in any way liable for – any behavior or action performed by **CLIENT** or by **CLIENT'S** employees and personnel, by operating the **SOFTWARE**. Therefore **CLIENT** is the sole responsible for the use, the operation management and of the contents and for the information uploaded on the Software.

8.4 **RAWFISH** cannot be held liable for malfunctioning of Services caused by technical problems on machines, servers, routers, telephone lines, telematics networks, etc. of its own or of third companies.

8.5 It is not attributable to **RAWFISH** any responsibility for service malfunctions, data loss, accidental or personal data transmission, and any other damage caused by attacks by hackers, thieves, hackers, crackers, viruses, etc.

8.6 **RAWFISH** cannot be held liable for malfunctioning of Services due to non-compliance and / or obsolescence of equipment for which **CLIENT** or third parties are endowed.

8.7 **RAWFISH** does not in any way guarantee the **CLIENT** secure revenue deriving from the exploitation of the Services provided by **RAWFISH** or from the use of the Software.

8.8 In the event that the **CLIENT** makes changes or alterations of any kind to the Services offered and / or to the Software (included but not limited to: code changes, folder and / or file arrangement, their names, etc.), **RAWFISH** cannot be held responsible for any damage or malfunction. If the **CLIENT** requires assistance to resolve damages caused by him or third parties, the applicable rates will be applied by the Supplier for providing such activities.

8.9 The Parties agree that, in any case, **RAWFISH** liability under the Contract will be limited to the amount for the Services or for the Software considered in the Contract to which the liability relates.

## Art. 9 ECOMMERCE – EXCLUSION

9.1

Any contractual relationships between **RAWFISH** and the **CLIENT**'s on-line customer shall be excluded. Therefore, **RAWFISH** shall not be subject to the e-commerce obligations such as, for example, obligations as per articles 64-67 of the Italian Consumer Code (D.lgs 6 September 2005, n.206) and article 12 of D.lgs 9 April 2003, n. 70.

9.2 Moreover, **RAWFISH** does not provide any conventional warranty to the **CLIENT**'s customer.

9.3 Any possible different and erroneous indication published on the **CLIENT**'s web-site shall not be effective for **RAWFISH**, safe for, in any case, for **RAWFISH**'s right to claim compensation for direct and/or indirect damages, resulting from these erroneous indications.

### **Art. 10** **FORCE MAJEURE**

10.1 Neither **RAWFISH** nor the **CLIENT** shall be held liable for failing to perform any of their obligation pursuant to these General Conditions and all contracts to which the General Conditions apply if they can demonstrate that such failure was due to an event of force majeure. Should such event occur, both **RAWFISH** and the **CLIENT** shall, unless otherwise agreed upon in writing, fulfil their obligations as soon as such event have ceased.

10.2 For the purposes of this Article, events that are outside the Parties' control are considered as events of a force majeure and that the latter could reasonably not foresee and avoid and which impede or render significantly more complex the execution of the delivery, exemplifying and not exhaustive: strikes, earthquakes, floods and other prohibitive meteorological conditions, warlike and similar events, attacks by hackers, thieves, hackers, crackers, viruses, etc.

### **Art. 11** **TRADE MARKS AND INTELLECTUAL PROPERTY RIGHT**

Any form of reproduction or use of **RAWFISH**'s trademarks and intellectual property rights is strictly prohibited without the prior written authorization of **RAWFISH**.

### **Art. 12** **MENTION OF THE BUYER'S NAME**

12.1 The **CLIENT** expressly authorize **RAWFISH** to use the project subject of the Contract and/or the **CLIENT**'s name as purchaser/client of **RAWFISH**'s Software in its web site, social accounts and advertising material, inserts, newspaper or magazine articles and to advertise by these means.

12.2 Furthermore, the **CUSTOMER** expressly authorizes **RAWFISH** to indicate in the Software the term "powered by Rawfish ®" or "Rawfish Design ®"

### **Art. 13** **CONFIDENTIALITY**

13.1 Each Party agrees that the existence and content of this Contract and all financial data pertaining to any Project shall be maintained secret and strictly confidential and shall not be published, disseminated or disclosed in any manner or to any person during the life of this Contract and for a period of 1 year thereafter.

13.2 Each Party agrees that all data, processes, equipment, technology, design, specifications, financial information, or other information disclosed by it which is in writing, or if not in writing is subsequently reduced to writing following disclosure, and is marked or otherwise indicated in writing to be confidential and/or proprietary (hereinafter referred to as “Confidential Information”), whether received directly or indirectly, shall be maintained in a confidential manner and shall not be published, disseminated or disclosed in any manner or to any person for a period of 1 year from the date of disclosure and, furthermore, any documents, drawings or other information relating to the Contract received by a Party from the other Party shall not be used by the receiving Party except for the purposes of implementing the Contract. This obligation shall survive termination of the Contract, but shall not apply to any part of said Confidential Information which:

- (a) was known by the receiving Party prior to its receipt hereunder, as evidence by written documentation; or
- (b) is acquired by the receiving Party from a third party which has the right to disclose such Confidential Information and which is not under any obligations to maintain the same confidentiality; or
- (c) is or comes into the public domain other than by violation of confidentiality obligations; or
- (d) is released in response to a subpoena, court order, governmental authority requirement, or legal process in which case the Party requested to release such information shall notify the other Party of the demand for information before responding to such demand.

13.3 Additionally, each Party may disclose Confidential Information to outside Agents, provided each such Agent agrees in writing to be bound by the terms and conditions of this clause

## **Art. 14 PRIVACY**

14.1 Personal data collected directly and/or through third parties by the **RAWFISH** (the “Controller”) are processed in printed, computing and telematics form for the performance of contractual and lawful obligations as well as for the effective handling of business relations, also for future use.

14.2 The non-submittal of data, where not compulsory, will be evaluated from time to time by the Controller and the resulting decisions to be made will take into account the importance of the required data in respect of the business relation management.

14.3 Data may be disclosed, strictly in accordance with the above-mentioned purposes, and consequently processed, only in relation to the said purpose, by the other subjects:

- our agents organization
- factoring companies
- banks
- credit recovery companies
- credit insurance company

- business information companies
- professional and consultants

14.4 The **CLIENT** may exercise all the rights set forth in art.7 of L.n.196/2003 (including the rights of data access, updating, objects to data processing and cancellation).

14.5 The processor is **RAWFISH**.

#### **Art. 15**

### **DELIVERY TIME - WARRANTY**

Any delay due to Downtime will also be reflected on the delivery terms with the exclusion of any **RAWFISH** liability and will result in the application to the **CLIENT** of a daily penalty of € 200.00 (two hundred) for each human resource dedicated to the **CLIENT** pursuant to the Commercial Offer for each day of delay. If, on the other hand, **RAWFISH** has underestimated the activities covered by the Contract, it will undertake to deliver the project as soon as possible without additional costs for the **CUSTOMER**.

#### **Art. 16**

### **BUGFIX**

Unless otherwise agreed between the Parties in the Commercial Offer, **RAWFISH** commits itself for 90 days from delivery to provide bug fixing and assistance in the event of malfunctions totally imputable to itself within the terms and with the timelines provided for by the Service Level Agreement.

#### **Art. 17**

### **MISCELLANEOUS**

17.1 **RAWFISH** is solely responsible for the development of the Software in accordance with the specifications provided by the **CLIENT** and supplemented by this agreement. Any problem related to the use of the Software that highlights the need to change the structure of the Software does not imply any activity on **RAWFISH**. Any auditing activity regarding the aforementioned changes will be subject to separate quotation.

17.2 Any variation of the specifications given by the **CLIENT**, even though concerning development activities already validated and concerning activities not yet under development, will result in a change in the time estimates and costs offered by this contract by **RAWFISH**.

#### **Art. 18**

### **LANGUAGE, APPLICABLE LAW AND COURT OF COMPETENT JURISDICTION**

18.1 The language of these General Conditions is Italian and the Italian version will be the only one to be considered for the interpretation of the text of the Contract.

18.2 These General Conditions and Contract executed by the Parties shall be subject wholly and exclusively to Italian law. For any dispute that may arise between the Parties, both with reference to the present General Conditions and to each Contract concluded between said parties, it is hereby agreed



that the competent court shall be exclusively that of Vicenza. **RAWFISH** further has the right to bring legal action against the **CLIENT** before the court at the place of business of the **CLIENT**.

**THE CLIENT**

**RAWFISH SRL**  




The **CLIENT** furthermore declares to expressly accept, in accordance and to the effects of articles 1341 and 1342 c.c., the provisions of articles 2.8 (General discipline of the general conditions and of the standard and time & material contracts), 3.3 (Execution of the Contract), 4 (Right to suspend the performance. Termination), 6 (Retention of ownership), 7 (Claims. Terms for submission and prohibition of set-off), 8 (Limitation of liability), 9 (Ecommerce – exclusion), 12 (Mention of the buyer's name), 15 (Delivery time - Warranty), 17 (Miscellaneous), 18 (Applicable law and court of competent jurisdiction)

**THE CLIENT**