Terms and Conditions for Oleg Lavrovsky, Datalets, Bern

1. Scope

These Terms and Conditions govern the relationship between customers (hereafter: 'the customer') and Oleg Lavrovsky, Datalets (hereafter: 'Datalets') and apply to both services and products - insofar as they are declared valid and are not contrary to any written arrangement.

If any provision set out in these Terms and Conditions either is or becomes invalid or unenforceable, the validity of the remaining provisions will not be affected. In such a case, the contracting parties agree to find a similar agreement to replace the original provision.

2. Subject

Datalets offers its customers high-quality software and database development products and services. The content and scope of specific services is dependent on the individual contract or order confirmation, which together with these Terms and Conditions forms the basis for the contractual relationship that exists between the customer and Datalets.

3. The Project

'Project' refers to any type of service that Datalets provides in the context of its business relationship with the customer (e.g. consulting, product development, product management, design and implementation, IT support etc.). In the interests of orderly and risk-minimized project handling, the contracting parties agree to determine a project's shared tasks, duties and responsibilities in each individual contract, order confirmation or separate project organization phase. The contracting parties are bound to participate in the project management and individual project teams up until the project's end.

4. Customer Instructions and Participation Responsibility

The customer will support Datalets in the provision of services, most centrally through: giving timely and clear instructions; making available all necessary information in the agreed-upon format; ensuring permanent access permissions to all of his IT system components that are necessary for the completion of contractual obligations; and providing appropriate and sufficient staff to meet his contractual participation responsibilities.

If the customer gives delayed or incomplete instructions which make completion of the project impossible or significantly more difficult, Datalets will inform the customer of this situation and request new or amended instructions and information.

If project-critical instructions and information remain unavailable despite this notification, Datalets will provide the customer with a written deadline for the fulfillment of his duty. If this deadline passes without appropriate action, Datalets is entitled to leave the contract without being liable for damages. In this case, the customer's liability for damages is determined as per Section 8 of these Terms and Conditions. All costs incurred from meeting the customer's participation responsibilities will be borne by the customer. If Datalets incurs additional costs due to the customer's delayed fulfillment of his participation responsibilities, these costs will be billed to the customer.

5. Schedules

The schedules laid out in individual contracts are only approximate if they are not explicitly referred to as being otherwise. The parties shall do their best to keep to them. If the customer fails to meet his participation responsibilities, Datalets' subsequent scheduling obligations will be set back by the duration of the delay.

The duration of the extension period referred to in Art. 107 of the Swiss Law of Obligations (Obligationenrecht) that shall be afforded to Datalets is 60 (sixty) days. All liability for delay-related damages is waived.

6. Datalets' Obligations

6.1 Job Execution: Datalets is responsible for ensuring that the work assigned under an individual contract or order confirmation is completed with the due standard of diligence and the necessary expertise.

The expense and risk of Datalets delivering products and services from Bern will be borne by the customer.

6.2 Warranty: The rapid pace of technological development in the online sector requires the regular adaptation of implemented projects. In consequence, Datalets cannot guarantee that a project's functionality will be maintained if changes are made to either the surrounding system environment or the combined use of any data, information systems and programs. No system maintenance is included in this agreement.

6.3 Poor Performance: After the project's completion, the project will be handed over to the customer (e.g. through uploading or the customer's signature). Issues can be raised in writing within 5 (five) working days of the handover. In each case, Datalets has the exclusive right to make corrections.

If Datalets is not able to resolve the issues within a period of 60 (sixty) days after receiving notification, the customer shall receive an exclusive right to reduce the project fee by an appropriate value, the sum of which he must substantiate.

If corrections would involve excessive costs, they do not have to be completed; instead, the project fee can be lowered.

For third-party products and work included in the project scope, the third party's warranty applies - to the exclusion of any other warranty or liability on the part of Datalets.

6.4 Liability: For direct damages set out in this contract, Datalets shall only be liable for a sum to the maximum amount of the project's overall fee - unless Datalets can be proven guilty of either gross negligence or intentional disruption.

Any further liability for Datalets and its agents is, subject to additional and compulsory legal liability provisions, expressly excluded, including: liability for specific technical or commercial success; indirect damages such as loss of earnings; third-party claims such as damage resulting from stopped production; data loss; and slight negligence.

In particular, the customer is responsible for the organizational, technical and contractual implementation of appropriate safety measures regarding: the issuance of access passwords; the transmission of data; misuse by unauthorized persons; and personal data in line with the Data Protection Act - excluding any liability from the side of Datalets.

7. Design Credit

Datalets will not install a credit or a hyperlink to a website on any resulting publications, sites or applications unless this is welcomed and approved by the client.

Datalets is entitled to list both online and in its promotional materials that it was responsible for implementing the customer's solution.

8. Customer Obligations

As long as the fee payable by the customer is not outlined in either the individual contract or the specifications, work will be charged on a running expenditure basis instead of as a fixed sum. 1/3 (one third) of the project's total budgeted remuneration is to be paid when the contract is signed, and 1/3 (one third) at a point during the project that has been agreed upon with the customer.

The entire fee shall be made in both cases in Swiss Francs and shall exclude Sales Tax and all Datalets-claimed fees, costs, expenses, software licenses that have been acquired for the customer and third-party services that have been engaged either with the customer's approval or under the right of representation.

The individual installments shall be paid within 30 (thirty) days after invoicing.

In the case of payment default, Datalets may cease all project activity until payment is made. Datalets's scheduling obligations will be set back by the length of this duration.

Fee reductions linked to customer counter-claims are only permitted with the express written consent of Datalets.

9. Termination

If either party requires the cancellation of the contract before its full completion due to objectively valid reasons, the already-made payments remain with Datalets in their entirety. Datalets reserves the right to make further claims if expenses incurred in connection with the contract exceed the already-paid sum. In addition, the customer must provide Datalets with remuneration for already-provided services on a pro rata basis. Datalets reserves the right to present additional debts in the future.

If the contract is prematurely terminated without good cause, it is deemed to have been terminated at an improper time. In this case, the customer owes Datalets both the negative interest on the contract and the loss of profit consequential to the withdrawn remuneration opportunity.

In the event of termination, Datalets retains all rights to its completed work. In this case, the customer will be granted no usage rights.

If software licenses were purchased on the customer's behalf, these costs will remain with the customer.

10. Advertising Rights and Integrity

The customer bears sole responsibility for compliance with legal provisions and the principles of advertising integrity with regard to content (web presence, advertisements and promotion). In particular, the customer guarantees the legality (copyright, licenses, penal provisions) of data and content delivered as part of the contract.

The customer agrees to indemnify Datalets against third party claims of both alleged and actual violations of the above-listed provisions - including indemnification for all damages and the supply of all necessary legal defense costs.

Datalets is entitled at any time to refuse without compensation the use of material and/or data that appears likely to be illegal, alongside material and data with likely illegal content.

11. Representation With Third Parties

Datalets is permitted to call upon auxiliaries and third parties for the completion of the contract. In connection with this permission, liability for auxiliaries and slight negligence is excluded. For engaged third parties, Datalets takes liability only for their careful selection and instruction.

In dealings with third parties for the purposes of contract fulfillment, Datalets works in the customer's name and account (direct representation). The authorization and scope of the representation is granted with each individual order, and covers all legal actions relating to the fulfillment of this order.

12. Copyright and Usage Rights

Once full payment of fees and costs has been made, the customer shall receive and retain in perpetuity exclusive intellectual property rights, usage rights, ownership rights and copyright (including related rights) over all commissioned work, including the source code of such work.

Datalets shall ensure that the software it delivers is provided with the appropriate usage rights. Datalets frees the customer from intellectual property and copyright claims relating to this software, provided that the customer promptly makes any alleged violations known. The customer shall be responsible for the licenses that are required for the proper operation of the project's result.

13. Data and Documents

Datalets shall manage customer-provided and self-generated data and documents for the contract's duration. Datalets rejects, to the extent permitted by law, all liability for damage or loss of the customer's data, storage mediums and documents. In any case, Datalets is only obliged to cover replacement material costs.

After the customer has paid the final sum and all costs, he may request the release of the data and documents for a cost-covering fee. After the project has been completed, Datalets is entitled to destroy data and documents that are no longer needed, and without first consulting the customer.

The release of data and documents to the customer in no way equates to a release of usage rights.

14. Transfer

The transfer or use of services in any form from the person involved in the project's fulfillment to another party requires mutual written consent. This restriction applies for the duration of the contract period, and also for a period of one year after the contract's end.

15. Governing Law and Place of Jurisdiction

The present rulings are governed solely by Swiss Substantive Law, to the exclusion of the Vienna Sales Convention. For any disputes arising either directly or indirectly from this contract, the sole place of jurisdiction shall be Bern. Datalets is, however, entitled at will to prosecute the other contracting party at their residence/headquarters.

Bern, October 2017