

## **General terms and conditions of ondot solutions GmbH for the distribution and maintenance of licensed software**

### **1 Object**

The "shippingNET" software is protected by copyright. These general terms and conditions apply to the "On Premise" rental and purchase products of ondot solutions GmbH. The General Terms and Conditions – Cloud apply to the "Cloud" products, see <https://www.ondot.at/agb/>

### **2 Licences and limitation of the licences**

#### **2.1 Transfer of rights**

Subject to the agreements made and to the limitations set down in item 2.2 below and in the licence agreement, if any, ondot grants the licence holder a non-exclusive, non-licensable, non-transferable (except for section 13.1), terminable right to use the licensed products exclusively at the installation site and only for the licence holders internal use. The licence holder shall be entitled to make one backup copy of the software for each installation site, but only for archiving or system restore purposes. Any relocation of the installation site shall be subject to the prior written consent of ondot.

#### **2.2 Limitation of the licence**

The licence holder shall observe all limitations stipulated in the licence agreement. The licence shall be granted exclusively to the legal entity named in the licence agreement; any transfer to third parties, especially also to parent companies and subsidiaries, shall be excluded. All rights not explicitly transferred shall remain with ondot exclusively. The licence holder must not copy, distribute, reproduce or make the software accessible to third parties, unless agreed otherwise in the agreement.

Third parties shall be granted access to the licensed material only to the extent required for the latter's contractual use. Any direct or indirect use exceeding the use stipulated in the agreement, for instance within the scope of a leasing agreement, contract for work and services, or service contract, shall require the express consent of ondot.

The licence holder warrants that their employees and any persons instructed by them shall not use the licensed material in violation of the agreement.

Prior to passing on the hardware system where the licensed software is installed to any third party, the licence holder shall delete any licensed material stored thereon.

The licence holder must not modify, adapt or compile the software or create any derivations thereof. They must not decompile, reverse-engineer, disassemble the software or otherwise try to obtain the source code, unless they were explicitly permitted to do so under applicable legal provisions.

The licence holder must not remove or obliterate references to proprietary rights, rights of reproduction (copyrights) and intellectual property rights as well as trademarks.

Any licensed material handed over in printed form must not be reproduced. Additional copies may be requested from ondot subject to the present terms and conditions at the respectively applicable licence fees.

If admissible copies of the software or documentation are prepared, all identifying marks attached to the original must also appear on the copy.

## **2.3 Ancillary licences**

Any ancillary licences at reduced rates, as indicated in the licence agreement, entitle the licence holder to use the licensed software received, including any subsequent corrections and patches, on additional devices of their company as designated in the agreement. The cost of additional documentation for such ancillary licences will be charged separately.

## **2.4 Legal responsibility**

Within the internal relationship between the contracting parties, ondot shall retain exclusive legal responsibility for all rights, claims and interests in the software as well as all rights of exploitation, rights of reproduction (copyrights), rights to business secrets, trademarks, and other intellectual property rights. The licence holder shall only acquire the rights of use mentioned in section 2.1. The software is only licensed, but not sold.

## **2.5 Investigation**

After timely announcement and at the usual times, the licence holder shall grant access to their business premises to ondot or any persons instructed by the latter for this purpose, to facilitate verification of the contractual use of the software. Should the actual use of the software exceed the extent agreed, the licensor shall be entitled to terminate the licences in accordance with section 11.1 of the agreement. The licence holder shall pay for any additional use in accordance with the applicable price list of ondot.

# **3 Delivery and installation of the software**

On the effective date, ondot shall have the most recent version of the software as released for distribution delivered promptly. The relevant data carrier shall be provided to the licence holder on loan during the term of the licence.

ondot reserves the right to either hand over the software ready for installation, including detailed installation instructions, or to install the software themselves against reimbursement of the cost. In that case, the licence holder shall provide the required computer time and computer operation staff of the system free of charge for the duration of software installation.

The licensed material shall be deemed to have been accepted 30 days after delivery, unless the licence holder has objected to the functions and performance of the software in writing within said deadline. Any use of the licensed material in live operation shall be considered as acceptance under all circumstances.

## **3.1 Return during the test period**

If a test period was agreed in writing for the licensed material, said period shall commence one week after delivery of the licensed material and shall be 30 days. During the test period, the licence holder will check if the licensed material meets their requirements and if the functions selected by them interact properly. During the test period, the licence holder may return the licensed material at any time.

Upon return of the licensed material in due time, the obligation to pay the licence fee shall lapse subject to the prerequisites that the licence holder has irretrievably deleted all data and programs of this licensed software prior to returning the licensed material, especially the computer codes, that the licence holder confirms deletion in writing, and that they guarantee in writing that no copies of the licensed material were made or used.

No test period shall be possible for ancillary licences.

## **4 Software maintenance**

If the licence holder has paid the annual maintenance fee under the licence agreement, ondot shall provide maintenance services for the software as of the day of delivery of the software ("effective date for maintenance"). The licence holder shall designate a person who is thoroughly familiar with the features, functions and operation of the licensed products to support users at the licence holder's company.

### **4.1 Maintenance services**

ondot shall provide the following services within the scope of the agreement:

- Delivery of all approved releases of the software within a maximum of four weeks after the latter being put on the market for the first time, as well as delivery of all patch tapes, information, bug fixes, upgrades, documentation updates, release notes and technical notes within a maximum of three weeks after their being initially available;
- Elimination of software bugs by providing new software releases;
- Provision of new releases if legal amendments so require;
- In case of major bugs, provision of a workaround at reasonable cost until delivery of a new software release;
- Error diagnosis by telephone;

If the licence holder requests that ondot installs any updates, program adaptations or fixes and downloads, as well as the provision of support and consultancy services support at the installation site, ondot shall provide such services and charge the relevant costs as incurred pursuant to the applicable scale of fees.

The following, in particular, shall not be part of software maintenance:

- the measures required for error verification due to hardware malfunctions, unless there is irrefutable evidence that they are due to software bugs;
- the creation of new partial or independent software programs;
- the creation of new program versions based on different technical prerequisites (e.g. other operating systems);
- the conversion of individual data for any reason whatsoever;
- the dial-up into the system of the licence holder

### **4.2 On-call maintenance**

Information will be provided on the telephone from Monday to Friday during the office hours applicable at the headquarters of ondot, from 09:00 a.m. to 05:00 p.m.

The contracting parties may conclude a special written agreement to extend or increase on-call maintenance and to provide additional maintenance services.

## **5 Remuneration**

### **5.1 Licence fee**

The licence holder shall be obliged to pay the remuneration for providing the licensed products, as stipulated in the agreement, on the terms defined therein in a non-refundable, unconditional, irrevocable, irreversible and timely manner. In the event of the licence holder using the licensed products in any way exceeding contractual use, such additional use shall be charged.

Any other services, such as installation of the licensed programs or training provided by ondot, as well as any services provided by ondot staff in connection with maintaining the serviceability of the software program, especially all services provided at the installation site, shall be invoiced based on the time and material required at the rates of the respectively applicable scale of fees. Travel time counts as working time.

ondot shall replace any machine-readable licensed material that is lost, damaged or destroyed at no charge to the licence holder. If the licence holder requests express delivery, a processing fee may be charged.

### **5.2 Maintenance fees**

For "On Premise" rental products, maintenance fees are included in the rental price. The provisions of point "5.2. Maintenance fees" apply only to "On Premise" purchase products.

Within the scope of the agreements made, the licence holder shall be obliged to pay the annual maintenance fee, which shall be charged as a percentage of the licence fees, pursuant to the applicable price list, during the term of this agreement ("basis of calculation of the maintenance fee").

The relevant amount is contained in the licence agreement. Any extension of the licences shall increase the basis of calculation of the maintenance fee. Upon extension of the licences, the additional maintenance fee shall become payable, which shall be invoiced pro rata until the next main due date (end of the calendar year) and then charged together with the annual maintenance fee.

Maintenance services may be agreed upon annually for one period on the terms stipulated in the agreement and subject to index-linking. Said remuneration shall be index-adjusted according to the 2000 Consumer Price Index, with the month of conclusion of the service or maintenance agreement serving as a basis. If the CPI 2000 is no longer published, it shall be replaced by the successor index or by any index approximating the same in the best possible way.

If maintenance services are ordered following an interruption of continuous maintenance, the licence holder shall be entitled to subsequently buy the maintenance services previously not made use of.

### **5.3 Taxes and charges**

The licence holder shall be responsible for all taxes and charges of all kinds, such as sales taxes, trading taxes, excise taxes and other taxes incurred due to the exchange of services agreed. Taxes and charges on the income of ondot shall be exempt from this provision. Unless the licence holder provides ondot with evidence of a tax exemption, ondot shall invoice them for all taxes imposed, especially sales tax, with the effect of the licence holder being obliged to pay the same.

#### **5.4 Fee increase**

If the licence holder changes the designated computer system or the extent of application (VDU workstations), they shall inform ondot without being solicited to do so. Upon the date of installation of the changed machine or of new workstations, the new licence fees will become payable in accordance with the current price list; maintenance fees shall be charged pro rata for the months remaining until the end of the calendar year.

#### **5.5 Offsetting**

The licence holder shall not be entitled to retain any payments on account of warranty claims or other counterclaims not accepted by ondot, or to offset the same against any counterclaims.

#### **5.6 Payment default**

In the event of a default of payment by the licence holder, ondot shall be entitled to suspend licensing and maintenance services until receipt of the outstanding payments, to insist on contractual performance, or to declare the cancellation of the agreement subject to a reasonable grace period, claiming damages for non-performance.

In the event of default, interest on arrears in the amount of 12% p.a. plus any sales tax shall fall due.

### **6 Licence holder's duty to cooperate**

The licence holder shall be responsible for selecting, operating and maintaining the designated computer system, the required software, the correct handling and operation of the same, the results obtained by means of the software product, as well as the data backup.

The licence holder agrees to support the activities of ondot. In particular, the licence holder shall provide for all prerequisites within the sphere of its operating environment that are required for the proper performance of the contract. These prerequisites include, among others, the need for the licence holder to make available sufficient working spaces for ondot staff, including all resources as required.

The licence holder shall nominate a contact person who shall be available for ondot staff during the agreed working hours. The contact person shall be authorised to make statements that are required as intermediate decision in order to proceed with the contract. In the event of programming work, this contact person must make available computer time (incl. operating), test data and data capturing capacities in time, without any separate cost calculation and in sufficient amounts.

If the licence holder is in default of accepting the services or if the licence holder fails to cooperate or is delayed in cooperating as they are required to, ondot may claim the agreed remuneration for any services not provided due to such failure or delay. ondot's claims for reimbursement of the extra costs incurred shall remain unaffected.

### **7 Warranty**

The licence holder shall be entitled to warranty claims only if they have met all obligations under the agreement in full.

The warranty comprises, and shall remain limited to, the undertaking that the data carrier on which the software is delivered will be free from defects and manufacturing faults under normal conditions of use, and that the software will meet all essential specifications agreed.

The warranty shall be limited to a period of 12 months following delivery. ondot's obligations during the warranty period shall be limited to the repair or replacement of any software not meeting the specifications or, at their discretion, the termination of the agreement, reimbursing the licence holder for the remuneration paid for the software licences under the licence agreement.

Any defects shall be notified in writing following delivery and installation of the licensed software or maintenance, and shall be documented by the licence holder.

The licence holder's warranty claim shall be limited to remediation. The licence holder shall be solely responsible for the results obtained using the licensed software and for organising security measures to protect any data stored from destruction or misuse.

The warranty shall lapse in any case

- if the licence holder themselves or any unauthorised third parties make any changes to the licensed material,
- in the event of unjustified failure to pay the fees,
- if the licensed material is passed on to third parties without the licensor's consent,
- after expiry of 12 months following delivery.

The licence holder acknowledges that bug fixing can only be effected for the program versions most recently used. They shall waive bug fixing for the software programs replaced.

If it turns out later that a notice of defects was unjustified or that the licence holder is responsible for the defect or the fault, the licence holder shall indemnify ondot based on the respectively applicable rates.

ondot and their suppliers hereby disclaim any warranty beyond that without exception.

## **8 Third-party rights**

To the exclusion of any rights beyond that, ondot shall defend the licence holder against all claims derived by third parties from any violation of an industrial property right or copyright on account of the contractual use of licensed material. They shall reimburse the licence holder for any costs and damages imposed by a court, provided that the licence holder has notified ondot of any such claims in writing without delay and that ondot reserves all defensive measures and settlement negotiations.

The licence holder undertakes to cooperate with ondot and the lawyer designated by ondot. The licence holder remains authorised to consult a lawyer of their choice, subject, however, exclusively to their obligation to cooperate with ondot and at their own expense. ondot's obligation to reimburse any costs shall become binding only upon a written statement by ondot.

If any such claims were asserted or if they are to be expected, ondot may modify or exchange the licensed material at their expense. If this cannot be done or if a right of use cannot be obtained at reasonable cost, ondot shall be free to immediately terminate the agreement with the licence holder regarding the use of the software concerned, reimbursing the licence holder for the licence fees effectively paid, after deduction of the previous usage charge (which was determined assuming use of the licensed material over a period of five years).

This regulation shall not apply if any third-party claims are based on the relevant licensed software program being modified by the licence holder or being used by the latter together with data or programs not delivered by ondot, or under any other conditions of use than the ones specified.

## **9 Liability**

Except for section 7 and for any liabilities arising under mandatory product liability rules, ondot, their suppliers and vicarious agents shall only be liable for any direct damage in case of intent or gross negligence, with the licence holder having the burden of proof.

The licence holder's claim for damages is limited to remediation; should this be impossible or associated with unreasonably high costs, the reimbursement in relation to the licensed programs shall be limited overall to the licence fees effectively paid for that part of the licensed material that has directly caused the damage; as regards maintenance services, the reimbursement shall be limited to the maintenance fee of the past 12 months for that part of the licensed material that has directly caused the damage.

Any liability for indirect or consequential damage, such as loss of income, savings not realised, business interruption or third-party claims, as well as any damage to recorded data shall be explicitly excluded. Liability for ordinary negligence shall also be excluded under all circumstances.

The licence holder declares that they conclude the agreement for the purposes of their business exclusively.

These limitations of liability shall also apply to claims of the licence holder against any third-party supplier of the licensed material.

THE PARTIES IRREVOCABLY ACKNOWLEDGE THE REASONABLENESS OF THE LIABILITY RULES IN THIS SECTION.

## **10 Confidentiality**

The term "confidential information" comprises all information marked as "confidential" or "proprietary" and obtained by one contracting party (the "receiving party") from the other party (the "disclosing party") in any way whatsoever in the course of the business relationship.

Without prejudice to the foregoing sentence, i) any information about the software that is not accessible to the public and ii) any benchmark test of the software shall be confidential information from the point of view of ondot.

Confidential information may only be disclosed to employees or subcontractors of the receiving party if said persons need to know the confidential information for the purpose of making the delivery and providing the service as agreed. Moreover, confidential information may only be used to provide the agreed supplies and services.

The receiving party shall maintain the secrecy of any confidential information with the diligence of a prudent businessman that they would apply to their own business secrets. The confidentiality obligation shall remain valid for a period of five years following receipt of the confidential information. The confidentiality obligation shall not apply to confidential information, or parts thereof, which is generally known or becomes generally known by legitimate means; nor to information that was demonstrably developed independently by the receiving party or legitimately obtained from third parties. Nor in the event that the disclosure of the information



is ordered by the valid decision of a court, government or official authority. In that case, the receiving party shall inform the disclosing party without delay and shall use all promising legal remedies to protect the confidentiality of said information.

The confidentiality obligation is not meant to prevent the receiving party from using proprietary "residual knowledge" of the disclosing party that is protected under copyrights, patents or industrial property rights. The term "residual knowledge" comprises ideas, concepts, know-how or methods relating to the technology of the disclosing party that are controlled by the employees who have had legitimate access to confidential information and proprietary methods and who recall the same unaided. Unaided recall must be assumed if the employee concerned does not use any memory aids and has not memorised the confidential information for the illegal purpose of subsequent use or publication.

## **11 Term of the agreement**

The licence agreement shall commence upon the same being signed and on the commencement date indicated (if any such date is agreed) and shall be concluded for an indefinite period.

The services for the maintenance of the licensed programs shall be provided as of the going live of the licensed programs.

The conclusion of the maintenance agreement shall be mandatory during the first year and shall automatically be extended by additional fixed periods of twelve months each, unless it is terminated by any contracting party in writing with effect to the end of the calendar year, subject to a period of notice of at least three months.

### **11.1 Premature termination**

This agreement shall be terminated immediately upon any serious contract violations occurring on the part of the licence holder; upon the following events occurring, in particular, ondot shall be entitled to cancel the agreements regarding the licensed programs as well as software maintenance with immediate effect:

- in the event of the licensed programs being transferred or used without adequate authorisation
- if, in spite of a relevant dunning notice and granting a reasonable period of grace, the licence holder is in default of paying any fees under this agreement for more than thirty days after expiry of the grace period
- if, in spite of a relevant dunning notice and granting a grace period of thirty days, the licence holder fails to remedy the contract violation

Moreover, ondot shall be entitled to terminate this agreement in accordance with sections 5.6, 7 or 8.

### **11.2 Consequences of termination**

Upon termination of the agreement, for any reason whatsoever

- all licences under this agreement shall lapse,
- there is an obligation on the part of the licence holder under section 5 to pay all outstanding amounts (if any) to ondot immediately,
- there is another obligation on the part of the licence holder to either return or finally destroy all documents and all data carriers containing confidential information that are in the possession or under the control of the licence holder, of any kind whatsoever,



and the software including all copies, and to provide evidence of said final destruction to ondot by sending a protocol.

### **11.3 Continued application**

Sections 5, 7, 8, 9, 10 and 13 of the present GTC shall remain in force even after termination of the contractual relationship.

## **12 Export provisions**

The licence holder declares that they will observe all relevant legal provisions, in particular export regulations, applicable in the country where they are headquartered, at the place of use of the software, and at the places whose local jurisdiction they are subject to. The licence holder shall indemnify ondot for any liability resulting from a failure to observe these obligations.

## **13 Final provisions**

### **13.1 Assignment of rights and obligations**

Without the prior written consent of ondot, the licence holder shall not transfer or assign (either by application of law or otherwise) the present agreement or any rights or obligations arising therefrom. Such consent must not be denied, except in justified cases. However, ondot shall be entitled to assign any fee claims under this agreement to third parties and to impose all rights from this agreement to any parent company or subsidiary.

### **13.2 Amendments and waivers**

Amendments to this agreement shall be marked as such explicitly and shall require the signature of authorised agents of both contracting parties. Unless agreed otherwise in writing, the present agreement shall apply exclusively in the event of deviating order confirmations/purchase orders. Purchase orders shall only be binding upon ondot if they coincide with the provisions of this agreement including annexes, as amended in each case, in terms of the supply or service ordered, the date and place of performance, and the prices.

Any deviating provisions in purchase orders, order confirmations or other written documents shall be without legal effect. Unless agreed otherwise in this agreement, no act of any kind whatsoever shall be construed as a waiver of rights; this shall apply, in particular, to the failure of asserting any rights.

Without prejudice to the foregoing, general terms and conditions of business, of purchasing or sale, any purchase orders, order confirmations and the like showing the letterhead of the licence holder or of any third parties and which deviate from those of ondot shall have no legal effect whatsoever.

### **13.3 Place of business**

All business correspondence relating to the present agreement shall be made in writing and delivered or sent to the address indicated in the licence agreement or to the address indicated by the parties with reference to this section, by personal handover, registered letter or courier service.

### **13.4 Arm's length contracting parties**

The present agreement shall not establish any corporate relationship or agency relationship or other specific legal relationship beyond the agreed exchange of services. Vicarious agents of ondod shall not enter into a legal relationship of any kind whatsoever with the customer, in particular no employment relationship or similar. ondod is solely responsible for all wages, salaries, wage taxes and social insurance contributions incurred under the employment relationship now and in future.

### **13.5 Severability Clause**

Should any provision of the present GTC be found to be illegal and hence invalid by the competent court, the relevant provision shall be replaced, without the assistance of the parties, by an admissible provision best possibly approximating the legal and economic purpose of the original provision.

### **13.6 Exclusivity**

The provisions of these GTC, including all pertaining order confirmations, price lists and specifications, shall replace all previous agreements of any kind whatsoever with exclusive effect. A signed fax copy of the present agreement shall be valid. In case of a conflict between the fax copy of the signed agreement initially sent by the customer and any copy transmitted later, the fax copy initially sent shall apply. If this agreement is executed in two counterparts, both counterparts shall be considered as originals of the same agreement.

### **13.7 Force majeure**

Except for performing the payment obligations for the remuneration owed under this agreement, any default caused by force majeure shall not be considered as a contract violation. Force majeure shall apply, for instance, in the event of any circumstances occurring that usually cannot be influenced by the contracting parties, such as accidents, wars, strikes, acts of God, fire, lockouts, labour conflicts, riots and civil disobedience, acts by public enemies, statutory orders, emergency decrees, orders issued by a military power, judicial or court and official orders, the carriers' inability to deliver on time.

### **13.8 Public relations**

Both parties consent to a press release on the existence of this agreement and the legal relationship established thereby. Said press release shall only be published upon both parties having consented to its content. Said consent shall not be denied, except on serious grounds. The customer consents to their data being included in the customer list of ondod and to general data being processed electronically by ondod in accordance with data protection regulations.

### **13.9 Non-solicitation clause**

During the term of this agreement, none of the contracting parties shall hire, directly or indirectly, any employees of the respective other contracting party, or former employees who were employed by the other contracting party within the past twelve months, or place the same in employment with third parties, without the written consent of the contracting party concerned. Any failure to observe this provision shall constitute a serious violation of the agreement and shall entitle the injured contracting party to appeal to the court immediately and file for a restraining order regarding the employment.

### **13.10 Existing contracts**

Any existing contracts concluded by ondod with third parties shall not be affected by the present agreement in any way.

## **14 Applicable law, place of jurisdiction**

The contractual relationship between the contracting parties shall be governed by Austrian law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). The place of jurisdiction shall be Wiener Neustadt.

In the event of disputes, the contracting parties agree to strive for an amicable settlement before going to court.

**Baden, January 2025**