



# GENERAL TERMS AND CONDITIONS

REGION: GERMANY

Each Proposal and related Services between NSF Erdmann Analytics GmbH and/or NSF ProSystem GmbH ("NSF") and the persons or entities for which Services are performed ("Client") are subject to these General Terms and Conditions ("General Terms") along with the applicable service specific terms and conditions located at the NSF Terms and Conditions website. The "Services" shall be set forth in a proposal/quotation/scope of work or offer issued by NSF from time to time ("Proposal"). The General Terms, service specific terms, and Proposal shall collectively be referred to as the "Agreement." Any variations to the General Terms and service specific terms shall be identified on the Proposal and apply only to the identified Services.

1. The fees and expenses for Services shall be set forth on the Proposal. Client shall pay NSF for all fees and expenses within 30 days from the date of the invoice issued by NSF. NSF reserves the right to (a) accrue interest at the lesser of the rate identified on the applicable invoice or the highest rate permitted by law and/or (b) suspend all Services if payment is not received when due. Client shall be responsible for all collection or legal fees necessitated by late payment.
2. Either party may terminate the Agreement for any reason upon 30 days written notice. Either party may terminate this Agreement immediately if: (a) the other party commits a breach of any material term or condition of this Agreement and does not cure such breach within 15 days of written notice; or (b) the other party's assets are transferred to an assignee for the benefit of creditors, to a receiver or to a trustee in bankruptcy or similar laws, a proceeding is commenced by or against the other party for relief under bankruptcy or similar laws and such proceeding is not dismissed within 60 days, or the other party is adjudged bankrupt or similar. Termination of this Agreement shall not affect the liability of the parties at the date of such termination and all fees and expenses owed by Client through the date of termination automatically and immediately become due and payable. Payment shall be made for all work performed until the effective date of termination and for any additional costs necessary to terminate Services.
3. NSF warrants and represents that it shall perform the Services in a reasonable and workmanlike manner. The Services, including the Deliverables, will reflect the findings of NSF at the time the Services are performed and will be limited to the scope of the Services and the information and access provided to NSF. The Services will depend on variables outside NSF's control including the extent and quality of the information, timeliness, cooperation, materials and access provided to NSF. The Services are not guaranteed or intended to achieve a particular result and/or specific Client targets, whether expressly or impliedly expected by Client. Furthermore, Client is itself responsible for deciding whether and in what manner it is to take action based on services provided by NSF. Client is itself responsible for deciding whether and in what manner it is to take action based on services provided by NSF.
4. Defects are to be notified to NSF in text form (email or fax will suffice) immediately and in any event within 8 working days of receipt of a Service or, in the case of hidden defects, within 3 working days of discovery. Otherwise the Service provided by NSF will be deemed approved by Client. The provision in § 377 HGB also applies mutatis mutandis. Where a Service provided by NSF is defective and Client raises an objection thereto in accordance with this Agreement, NSF may choose to either remedy the defect or provide a non-defective service. NSF must always be given an opportunity to do so within a reasonable period of time unless the setting of a deadline should be unnecessary. If subsequent performance should fail or prove superfluous Client may rescind the contract. The length of the warranty period is 12 months from the date of delivery.
5. NSF has the right, in its sole discretion, to subcontract Services to NSF affiliates and third parties. NSF agrees any such subcontractors shall be bound by obligations of confidentiality as least as strict as contained herein.
6. In the event the Services require a visit by NSF to any non-NSF controlled location ("Site"), Client shall: (a) provide a safe and appropriate working environment for NSF; (b) provide prior written notice to NSF of any potential hazards or risks; and (c) be responsible for the protection of health, safety and wellbeing (including, protection from harassment, discrimination and injury) of NSF representatives while at the Site. Client does not have the right to give instructions to NSF staff operating on its Sites, e.g. with regard to the content, execution, timing and place of provision of Services. Client must instead address any requirements and wishes to NSF's competent contact person. NSF will generally provide the Services using its own equipment and resources. At the request of NSF, Client shall provide however, all required information and documents to enable NSF to perform the contracted Services and if absolutely necessary with (limited) access to technical facilities of Client. Resulting remuneration for Client is already included and offset with the remuneration agreed on with NSF. Client expressly agrees that it will supply any information, cooperation and access to Sites needed for the Services. NSF's time of performance will be increased by any delay in NSF's receipt of the required information, cooperation or access to any required Sites.
7. The Services may include NSF sending, or providing Client with access to, electronic documents and messages (including emails), web portals (such as NSF Connect or Share Point), software, applications and computer systems or networks (collectively the "Systems") and the Systems may contain Client's confidential, proprietary or sensitive information. NSF shall use reasonable endeavors to procure that the Systems are safe and secure; however, it does not warrant that Systems will be accurate, up-to-date, compatible, accessible, uninterrupted, complete, error-free or free from viruses or malicious software. Client's access to and use of the Systems is subject to additional terms and conditions published on the applicable Systems ("Access License"). Use of such System constitutes agreement to the Access License by anyone accessing such System.



8. Where either party ("Discloser") provides the other ("Recipient") with Confidential Information, it shall be held in strict confidence and shall not be disclosed or used for any purpose other than as specifically authorized/provided in this Agreement or as required to perform the Services, without the prior written consent of the other party. The parties shall only disclose such Confidential Information to its employees, affiliates, contractors, and agents with a need to know for the Services and who are bound by terms at least as strict as contained herein. Confidential Information does not include information (a) that is or becomes generally available in the public domain other than through the action of the Recipient, (b) lawfully in the possession of the Recipient prior to disclosure by the Discloser, (c) lawfully obtained by the Recipient from a third party, or (d) independently developed by the Recipient without use of the Discloser's Confidential Information. Unless prohibited by law, Recipient agrees that it will notify Discloser of a subpoena or government or court order requesting for production of the Discloser's Confidential Information covered by this Agreement. Client will reimburse NSF for all reasonable expenses (including reasonable attorneys' fees) related to any proceedings, including responses to subpoenas, concerning Client. The term "Confidential Information" means: (x) NSF Property; (y) any confidential or proprietary information provided by Client to NSF to enable NSF to perform its obligations under the Agreement; and (z) any information that by its nature, Recipient knows or should know is confidential or proprietary, including Discloser business or technical information.
9. Nothing in the Agreement will serve to transfer or assign either party's intellectual property rights which are already in existence as of the date of this Agreement. Client will not remove any copyright, trademark, or other proprietary notices of NSF or any third party on any Deliverables received from NSF and Client will reproduce all such notices on all copies of such Deliverables. NSF owns and retains all right, title and interest to all NSF Property. The term "NSF Property" means NSF's intellectual property, trademarks, tradenames, business process, technologies, algorithms, analyses, data, know-how, methodologies, processes, tools, trade secrets, and services and any and all enhancements or modifications of the foregoing including those developed in connection with the Services. Client may provide suggestions/feedback regarding NSF Property which NSF may use without any obligation to Client.
10. Client acknowledges and agrees that NSF may use all data generated or collected by the Services on a historical, aggregated and/or anonymous basis (collectively, "Aggregate Data") in compliance with applicable laws for any purpose, including but not limited to benchmarking, research, and/or analytical materials. Aggregate Data shall not identify Client as the source of any specific data, pattern or finding, nor shall it include any personally identifiable information of any individual users of the Service. NSF will be the sole and exclusive owner of all right, title and interest to such Aggregate Data.
11. In the course of the provision of the Services, NSF and Client may each obtain access to the personal data of the respective other party. Each of the parties hereby agrees that where NSF's services will require NSF to process personal data, NSF's Data Processing Addendum ("Data Processing Addendum") will be annexed to this Agreement and shall form an integral part of this Agreement. The Data Processing Addendum is available on the NSF Terms and Conditions website. The parties agree and acknowledge that they will comply with applicable data protection laws relating to personal data (including sensitive personal data) and that whenever NSF processes personal data on behalf of Client, such processing shall be carried out subject to and in accordance with the terms of the Data Processing Addendum.
12. Client is solely responsible for, and assumes all risk for, providing all warnings, instructions, and notices of any kind to governmental/regulatory agencies and to the general public. NSF does not assume any responsibility for any conditions that may present a danger, either potential or real, to health, safety, or the environment. NSF does not assume, displace, or undertake to discharge any obligations or responsibilities of Client, any vendor or supplier to Client, any manufacturer, and/or any other party.
13. Client agrees to assume all risks of loss or damage of any kind to products, samples, equipment, or materials placed with NSF under the terms of this Agreement and acknowledges that the foregoing may be destroyed or rendered unusable as part of the Services. Client shall be solely responsible for, and assumes all risk of property damage, personal injury (including death), or other damages of any kind, arising out of or relating to: (a) its products, services or operations, whether or not directly related to NSF's Services; and (b) the failure to comply with, or violation of, all applicable laws, rules, codes, regulations and industry practices relating to Client's products, services, or operations.
14. Client shall indemnify, defend and hold harmless NSF, its affiliates, successors and assigns and its and their respective directors, officers, employees, representatives and agents (hereinafter referred to collectively as the "NSF Indemnified Persons") from, against and with respect to any and all demands, claims, complaints, actions, investigations, arbitrations, assessments, losses, liabilities, costs and expenses (including, but not limited to, interest, penalties and reasonable attorneys' fees and other costs) asserted or alleged against, imposed upon or incurred by such NSF Indemnified Persons, directly or indirectly, resulting from or in connection with (or allegations thereof): (a) its products, services or operations; (b) any matter covered by Section 13 of this Agreement; (c) any unauthorized use, misuse, infringement or misappropriation of NSF Marks or Deliverables; and (d) any infringement or violation of the intellectual property rights of a third party by Client.
15. Neither NSF, Client nor NSF's third party providers shall have any liability with respect to its obligations under this Agreement for consequential, exemplary, special, incidental, or punitive damages even if such party has been advised of the possibility of such damages. NSF's entire liability shall be limited to the amount actually paid to NSF by Client under the Proposal during 12 month period preceding the date of such claim or matter. This limitation applies to all claims in the aggregate, including, without limitation, claims based on breach of contract, breach of warranty, professional negligence, strict liability, misrepresentations, and any other torts or claims. Nothing in this agreement limits or excludes any liability which cannot be limited or excluded by applicable law, including for death or personal injury, or fraud or fraudulent misrepresentation. This limitation does not apply if NSF, Client or NSF's third-party



providers acted either with intent or in gross negligence as well as with regard to culpable fatalities, personal injury or damage to health, or where there is liability under the Product Liability Act.

16. The parties to this Agreement shall be and remain at all times independent contractors and nothing in this Agreement will be construed to create a partnership, joint venture or employment relationship between the parties. Client shall not use NSF's name, logo and/or trademark, service mark, or certification mark ("NSF Marks") without prior written authorization from NSF.
17. Any delay in the performance of either party's obligations hereunder, except for payment obligations, will not be considered a breach of this Agreement if such delay is caused by events, circumstances or causes outside of the party's reasonable control, including but not limited to Acts of God (including but not limited to environmental conditions and extreme weather events), war, terrorism, crime or criminal activity (including but not limited to crime or criminal activity in an affected area that create or make for unsafe conditions), civil unrest, national or local emergency, labor disputes, quarantine or similar health crisis, and government restrictions. Nothing in the foregoing sentence or otherwise shall prevent or hinder a party exercising its termination rights in this Agreement or as provided by applicable law.
18. A person who is not a party to the Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement. Neither party may assign the rights and obligations under this Agreement to any third party (whether directly or indirectly, by operation of law or otherwise) without the prior written consent of the other party, provided that NSF may assign any or all of its rights or obligations to any affiliate at its sole discretion. This Agreement is binding on the parties, their successors, and permitted assigns.
19. Any legal action relating in any way to the Agreement shall be brought and maintained exclusively in Germany and the parties consent to exclusive personal jurisdiction and venue in all such courts. Notwithstanding any conflict of law provisions, this Agreement shall be interpreted in accordance with and governed by the laws of Germany. No failure or delay by either party to exercise any right they may have operates as a waiver of their rights at any future time.
20. This Agreement, the Access License, and the Data Protection Addendum (as applicable) constitute the entire agreement between Client and NSF with respect to the subject matter hereof and supersede all previous communications, representations or agreements, whether oral or written, between the parties with respect to said subject matter. No modification will be binding upon either party unless it is made in writing and is signed by duly authorized representatives of both parties. Any written modifications on this document are not acceptable. Any terms and conditions on any purchase order issued by Client, included in Client's vendor set up process, or required to enter any non-NSF location to perform the Services are superseded in their entirety by this Agreement and are without force or effect, even if signed or executed prior to or after the execution of this Agreement. Under no circumstances will NSF's acknowledgement or execution of any such terms be considered an amendment to this Agreement.
21. This Agreement may be executed in counterparts, each of which shall be deemed to constitute an original but all of which together shall constitute one and the same instrument. Each party consents to the other party's use of electronic signatures on this Agreement. The terms and conditions of this Agreement will survive the expiration or other termination to the fullest extent necessary for their enforcement and for the realization of the benefit thereof by the party in whose favor they operate. Each party represents that the individual signing this Agreement on its behalf has the authority to do so and to so legally bind the party.