

## General Terms & Conditions

for the Procurement of Software and Financial Information for the Product(s)

**TAI-PAN Realtime / TAI-PAN End-of-Day / b.i.s. Realtime Terminal / Market Maker End-of-Day**

### 1 Scope of application:

- 1.1 The present General Terms & Conditions apply to orders placed by the customer with Lenz + Partner GmbH, doing business at Bronnerstrasse 7, 44141 Dortmund, Germany (referred to hereinbelow as "L+P"), entered into the Commercial Register of the Local Court (*Amtsgericht*) of Dortmund under the number HRB 28470.
- 1.2 For purposes of the present GTCs, the Parties take the term "Financial Information" to mean financial information and data such as news, quotes (real-time, delayed, and historical), prices (option and certificate prices), indices, etc. (referred to hereinbelow as "Financial Information"). Financial Information is offered to the customer both as a basic service as well as in the form of supplemental products.
- 1.3 For purposes of the present GTCs, the Parties take the term "Basic Service" to mean the basic Financial Information offered to the customer for the respective Software product.
- 1.4 For purposes of the present GTCs, the Parties take the term "Supplemental Products" to mean the Financial Information offered to the customer in addition to the Basic Service provided for the respective Software product.
- 1.5 For purposes of the present GTCs, the Parties take the term "Software" to mean the software products TAI-PAN Realtime, TAI-PAN End-of-Day, b.i.s. Realtime, and Market Maker End-of-Day.
- 1.6 Any deviating general terms & conditions of the customer or any collateral arrangements made orally will apply only insofar as they have been acknowledged in writing by L+P. The customer's acceptance of contractually agreed services delivered by L+P will constitute acknowledgement of the present General Terms & Conditions.

### 2 Coming into force, term, and termination of the agreement:

- 2.1 Agreements concluded with L+P will come into force once L+P has received a customer's order, subject to the provisions set forth in the Withdrawal Instructions.
- 2.2 If the customer has purchased the Software TAI-PAN End-of-Day or Market Maker, this Software will be deemed provided to the customer for use in perpetuity.
- 2.3 As a general rule, agreements regarding Software and regarding the Basic Service will be concluded for an indefinite term and may be terminated by giving notice at least two weeks before the end of a given calendar month. If an agreement has been concluded with a minimum term, then the agreement will renew automatically by the term selected by the customer and will continue to renew in this fashion until terminated with six weeks' notice prior to the end of the minimum contractual term or contractual extension period. If the original minimum term amounts to 24 months, the agreement will renew automatically for another 12 months at a time. The contractual term will begin running on the first day of the month in which the order is placed, even if the first billing may fall on a later date.
- 2.4 If the customer has ordered Supplemental Products along with the Basic Service, the period during which said Supplemental Products may be called down will be in line with the call-down period of the Basic Service. However, the customer will be entitled to separately terminate the Supplemental Products effective as of the end of the Basic Service's respectively applicable contractual term without thereby terminating the Basic Service itself. Termination of the Basic Service will constitute concomitant termination of the Supplemental Products.
- 2.5 Test versions will lapse effective as of the end of the testing period, without termination having to be declared.
- 2.6 Unless otherwise specified in the respective agreement, the customer's right to use the Software and the called-down Financial Information shall lapse once the agreement comes to an end.
- 2.7 In order to obtain real-time data, the customer will be required to sign the conditions of usage stipulated by the respective stock exchanges. The data from the respective stock exchange will not be released to the customer until the customer has signed off on said conditions.
- 2.8 When placing the order, the customer must indicate whether he is a "private investor" or a "professional." If he indicates that he is a private investor, he will have to sign the "Declaration of Private Investor Status" (*Erklärung zur Privatanlegereigenschaft*) in order to obtain Financial Information from Deutsche Börse AG, as well as the "Wiener Börse Non-Professional User Statement" in order to obtain Financial Information from Wiener Börse AG (Vienna Stock Exchange). For as long as these declarations have not been provided in executed form, the customer will be deemed to be a "professional."

### 3 Financial Information:

- 3.1 The specific scope of the Financial Information to be provided by L+P is set out in the order placed by the customer as well as in his future orders. L+P grants to the customer the right to use the supplied Financial Information within the framework of the supplied Software, whereby the duration of said usage right is limited to the term of the agreement concluded.
- 3.2 The danger of partial or complete non-transmission of the Financial Information devolves to the customer as soon as L+P has dispatched the outbound Financial Information.
- 3.3 The customer is aware that L+P primarily sources the Financial Information from third parties, particularly stock exchanges, financial service providers, news agencies, and other external providers. L+P is not in a position to check – and thus has no obligation to ensure – the substantive accuracy, completeness, and timeliness of such externally sourced information. As a result, L+P assumes no warranty or guarantee concerning the accuracy, completeness or timeliness of the externally sourced information; this is acknowledged by the customer. The foregoing preclusion of liability shall not apply in cases in which L+P has fraudulently concealed a defect or has assumed a warranty obligation for specific characteristics. The customer furthermore acknowledges that the above-referenced third parties are not vicarious agents of L+P.
- 3.4 Insofar as the customer is supplied with information that is contingent on agreements which L+P or its parent company, vwd Vereinigte Wirtschaftsdienste GmbH ("vwd GmbH"), has concluded with third parties (particularly with stock exchanges, financial service providers, news agencies, and other external providers), and insofar as said third-party agreements for any reason are terminated or left fully or partially non-performed for an extended period, L+P shall inasmuch be entitled to exclude the

relevant information from the scope of deliverables. In such event, the agreement shall remain in force, and this shall not constitute grounds for termination by the customer. L+P shall substitute the excluded information by other information within a reasonable period. If excluding the information from the scope of deliverables poses an unreasonable burden for the customer, however, then the customer shall be entitled to terminate the agreement effective as of the point in time at which L+P excluded the information from the scope of deliverables.

- 3.5 The customer shall be permitted to use the Financial Information only within the framework of the Software that has been provided to him for his use. The customer may not use the Financial Information in any other manner, for example:
  - By transferring it to third parties, whether free of charge or for remuneration;
  - By disseminating it in a network through electronic data processing;
  - By re-printing it and/or editing its contents and/or storing it;
  - By making it generally accessible (e.g. via the internet) to third parties or by posting it within an intranet or extranet; or
  - By using it to operate or set up a database.
- 3.6 In some cases, the Financial Information will be covered by copyright protection. Insofar as the Financial Information is coded with a copyright notice, the customer shall have no right to remove said notice.
- 3.7 For cases in which the customer uses the Financial Information in a manner that does not comply with the contractually agreed usage, the customer is to release L+P and vwd GmbH, as well as all data suppliers of L+P and vwd GmbH, from all third-party claims and is to indemnify them for all damage, expenses, costs, etc. incurred in this connection by vwd GmbH, by L+P, or by their respective data suppliers.
- 3.8 L+P and vwd GmbH do not provide any investing consulting services or issue any investment recommendations. L+P expressly notes that the future price trend of a security or derivative financial instrument cannot be predicted with absolute certainty. Thus, any "buy" or "sell" signals, respectively any other trading instructions, that may be issued by way of the Software are to be regarded as suggestions only. No liability will be assumed for the correctness of such suggestions.
- 3.9 L+P and vwd GmbH do not offer any financial services within the meaning of the *Gesetz über das Kreditwesen* (KWG, German Banking Act) or any securities-related services within the meaning of the *Wertpapierhandelsgesetz* (WpHG, German Securities Trading Act).

### 4 Software:

- 4.1 The customer is under obligation to promptly inspect the Software provided to him for his use after receiving it in order to determine any deviations from contractually agreed characteristics or other defects (referred to hereinbelow as "Defects"), whereby the customer is aware that it is impossible, given the current state of the technical art, to fully rule out the possibility of defects in the Software and in the other appurtenant materials. The customer must promptly report any identified Defects in writing while also providing a comprehensible description of the associated error symptoms. If the customer fails to report the Defects to L+P GmbH in a timely manner, this shall have the effect of releasing L+P GmbH from liability.
- 4.2 Unless expressly agreed otherwise, the scope of deliverables owed by L+P GmbH shall not include any modifications and expansions of the Software, nor any maintenance, installation or support for the Software or any other support services.
- 4.3 The Software that L+P provides to the customer for his use is protected by copyright. The customer is entitled only to those usage rights to the Software that are expressly granted under the agreement (including the present Terms & Conditions). L+P GmbH, respectively by the holder of the industrial property rights, retains all other rights, particularly industrial property rights and copyrights with respect to the Software.
- 4.4 The customer is entitled to a simple, non-sublicensable right to use the Software provided to him. If the Software is provided for use on a temporary basis, said usage right will be time-limited to the contractual term; if the Software is provided for use in perpetuity (via a sale), the usage right will be perpetual.
- 4.5 Unless expressly agreed otherwise, "usage" is deemed to mean running the Software on a single computer workstation of the customer. A "computer work station" may also consist of a computer or laptop which the customer uses to run the Software at home or while travelling. Usage will also include the process of feeding the Software or data into the working memory and/or permanent memory unit of the customer's computer.
- 4.6 The customer will enjoy the usage right subject to the proviso that the agreed remuneration must be paid in a timely and complete manner. This means that the customer will lose his right to use the Software as soon and for as long as he defaults on duly rendering payment for the agreed remuneration.
- 4.7 The customer is entitled to reproduce the Software within the scope of the agreed usage exclusively for back-up purposes.
- 4.8 Software that is provided to the customer for his use in perpetuity (via a sale) may be passed on to third parties provided that:
  - The relevant third party issues a written pledge to comply with the agreed contractual conditions and with the present General Terms & Conditions;
  - The customer hands over all original data carriers containing the Software, including documentation and all back-up copies, to the relevant third party and provides proof of having done so to L+P GmbH. If a handover of the back-up copies is not possible, the customer must instead destroy the back-up copies. Once the handover has taken place, the customer will lose the right to use the Software.
- 4.9 The customer may not pass on to third parties Software that is provided to the customer for his use for a limited period.
- 4.10 The source code will not form part of the scope of deliverables. The customer has no claim to the source code.
- 4.11 The customer is under obligation to take appropriate measures in order to prevent unauthorized third-party access to the Software and Financial Information.
- 4.12 The warranty obligations of L+P are governed by the relevant statutory provisions; inasmuch, the customer is precluded from claiming indemnity for damage due to Defects. This preclusion shall not apply in cases in which L+P has fraudulently concealed the Defect or has assumed a warranty obligation for specific characteristics.

## 5 Remuneration, due date, payment modalities, billing:

- 5.1 The customer will be under obligation to pay L+P the remuneration contractually agreed for the Software and the Financial Information. The customer shall pay the agreed remuneration in advance in keeping with the payment cycle selected in the agreement by the customer (monthly, quarterly, etc.).
- 5.2 Depending on what is specified in the order form, the customer may be granted a discount for the contractual term selected. If the agreement has a minimum term of 24 months and is subsequently renewed for another 12 months (see Clause 2.4), the discount the customer receives for the extension period will be the one stipulated in the order form for a 12-month period.
- 5.3 L+P is entitled to increase the remuneration payable by the customer once per calendar year, provided it gives advance written notice observing a period of two months before the start of a given month. If the increase exceeds the rise in the Consumer Price Index (overall index) for Germany published by the Federal Statistics Office (baseline year 2010 = 100) by more than two percentage points (based on the rise observed between the month prior to the month when the price increase is announced and the same month in the prior year), then the customer shall be entitled to terminate the agreement by giving notice at least one month before the increase's effective date.
- 5.4 If the customer defaults on payment, L+P shall be entitled to suspend delivery of its services until such time as the outstanding remuneration is paid. This will not affect the customer's obligation to make payment for the period in which delivery of services is interrupted, however.
- 5.5 If the customer defaults on payment, L+P shall also be entitled to give the customer a fourteen-day grace period in which to settle the arrears under threat of contractual termination, and to terminate the agreement with immediate effect if this grace period expires fruitlessly. The right to claim default interest and indemnification of damage shall remain unaffected in this case.
- 5.6 The customer may only assert offsetting claims that are undisputed or that have been finally and conclusively established by a court of law or, if the customer is an entrepreneur (Section 14 of the *Bürgerliches Gesetzbuch* (BGB, German Civil Code)), the customer may assert a right of retention only on the basis of such undisputed/established claims.
- 5.7 If, upon concluding an agreement with us, you have consented to our collecting and storing your email address or if we have your email address on file due to your having set up a user profile with us, you will be deemed to have granted us permission to send you our invoices via email.

## 6 Liability:

- 6.1 In cases of simple negligence, L+P will be liable for damage suffered by the customer only in cases in which a breach of cardinal obligations is involved (i.e. cardinal contractual obligations the fulfillment of which is indispensable for proper implementation of the agreement and on the fulfillment of which the counterparty normally may rely).
- 6.2 Insofar as L+P accepts to be held liable, such liability will be limited to the damage that was typical and foreseeable for the type of agreement involved.
- 6.3 The limitation of liability stipulated in Clause 6.2 shall not apply to liability towards an entrepreneur within the meaning of Section 14 of the *Bürgerliches Gesetzbuch* (BGB, German Civil Code), insofar as the damage in question was caused by the willful or grossly negligent conduct of a legal representative or officer of L+P or caused by the willful conduct or grossly negligent breach of a cardinal obligation by some other employee or vicarious agent of L+P.
- 6.4 The limitation of liability set forth in Clause 6.2 shall not apply to liability towards a consumer within the meaning of Section 13 of the Civil Code (BGB) in cases of willful conduct or gross negligence on the part of L+P's legal representatives, officers or vicarious agents.
- 6.5 The limitations or preclusions of liability set forth in Clauses 6.1 and 6.2 shall not apply in cases involving damage caused by representations made not being complied with, or in cases of liability under the *Produkthaftungsgesetz* (ProdHG, Product Liability Act), or in cases of injury to life, limb and health.
- 6.5 Insofar as the customer asserts claims directly against the legal representatives, employees or vicarious agents of L+P, the provisions of Clauses 6.1 to 6.4 shall likewise apply to such persons, insofar as this is legally permissible.

## 7 Rights to products:

- 7.1 Trademarks, company logos, other marks or intellectual property rights, copyright notices, serial numbers, as well as any other features serving to identify the products of L+P or individual elements thereof, may not be removed or altered. This will also apply to any print-outs made of the relevant information.
- 7.2 L+P is entitled to make reference to its collaboration with the customer in the course of its normal business operations and, in this context, to make use of the customer's company name and logo. However, this shall apply only for as long as the customer does not raise any objections to such use of his company name and/or of the logo.

## 8 Miscellaneous provisions:

- 8.1 Both L+P and the customer must keep strictly confidential any trade secrets and company secrets that they obtain from the respectively opposite Party, as well as the particulars of the contract governing their collaboration.
- 8.2 L+P will be released from its contractual obligations and will not be held liable in this regard if L+P is prevented from properly fulfilling said obligations due to labor disputes, measures taken by public agencies or courts of law, or any other cases of force majeure for which it is not culpably responsible. In the aforementioned cases, L+P shall also have the right to terminate the agreement for cause with immediate effect (extraordinary termination). L+P shall promptly notify the customer whenever one of the aforementioned situations prevails.
- 8.3 L+P is entitled to assign some or all of its rights and obligations under an agreement to third parties without having to obtain the customer's consent.
- 8.4 The contractual relationships between L+P and the customer are governed exclusively by German substantive law, whereby the provisions of international private law are expressly precluded (*Einführungsgesetz zum Bürgerlichem Gesetzbuche* (EGBGB, Introductory Law for the German Civil Code)). Furthermore, the United Nations Convention on Contracts for the International Sale of Goods (CISG) of April 11<sup>th</sup>, 1980, is also precluded.

- 8.5 Any collateral arrangements made orally, any supplements and/or amendments to the agreement must be made in writing. This likewise applies to any waiver of the present requirement as to the written form. A fax transmission shall suffice to fulfill the requirement as to the written form.
- 8.6 If any provision of the agreement or of the present General Terms & Condition should be or become invalid, this shall not affect the validity of the agreement or of the remaining provisions of the present General Terms & Conditions. In such event, the invalid provision shall be substituted, by way of an interpretation by the Parties serving to complement the agreement, by that legally valid provision that comes as close as possible to the economic purpose manifestly intended by the Parties. The same shall apply when it comes to remedying any instances in which the agreement or the present General Terms & Conditions have remained silent, as well as in the event that multiple provisions should be or become invalid.
- 8.7 If the customer is a merchant, a legal person under public law or a special assets fund (*Sondervermögen*) under public law (Section 38 paragraph 1 of the *Zivilprozessordnung* (ZPO, Code of Civil Procedure)), or if the customer does not have a general venue in Germany (Section 38 paragraph 2 of said Code (ZPO)), then the registered seat of L+P shall serve as the exclusive general venue for any and all disputes arising between the Parties from, or in connection with, the agreement or the present General Terms & Conditions. However, L+P shall continue to be entitled to bring legal action against the customer at the latter's registered seat or place of residence.
- 8.8 The following provisions are acknowledged/agreed with respect to the suppliers of Financial Information:
- a. The suppliers of Financial Information shall not assume any warranty or liability for the substantive accuracy, completeness or timeliness of the data and information they deliver or provide; their provision and/or delivery of the data or information will not constitute the issuance of investment advice, investment recommendations or suchlike.
- b. Supplemental provisions for Dow Jones:
- Dow Jones uses its best efforts to keep Dow Jones content continuously available, but cannot warrant that the Dow Jones content will be available at all times. This particularly applies to information and data that Dow Jones obtains from third-party sources. Dow Jones notes that it has no influence on data traffic on the internet or in similar data channels and thus cannot assume any warranty for such data traffic.
- As regards any liability that Dow Jones may have towards the customer, the provisions set forth above in Clauses 6.1 to 6.5 shall apply *mutatis mutandis*.
- Any further-reaching statutory preclusions and limitations of liability that may apply under the law shall remain unaffected by the foregoing provisions.
- The provisions set forth in Clauses 6.1 to 6.5 shall likewise apply in favor of Dow Jones' suppliers of data and information, insofar as any claims for the compensation of damages should arise against such suppliers.
- As regards the Financial Information contained in the Dow Jones indices, the respectively applicable general terms & conditions of Dow Jones shall apply; these are available online at:  
<http://www.djindexes.com/mdsidx/html/tandc/indexstandcs.html>
- c. Supplementary provision for Dow Jones indices:
- In addition, the customer hereby pledges – this being a precondition for his (continued) receipt of the index data generated by Dow Jones & Company Inc., respectively by its affiliated enterprises or by its authorized representatives – that he will not use any stock exchange facilities that he may have in order to develop, create, issue or service, respectively sponsor, any financial instruments or investment products, and also that he will not allow them to be traded (including, without limitation: derivatives, structured products, investment funds, exchange-traded index funds or derivatives based on exchange-traded index funds (e.g. options on exchange-traded index funds or forward contracts (futures) on exchange-traded index funds)), insofar as the price, yield and/or price trend of such instruments or products is determined on the basis of any index published by Dow Jones, or on the basis of a financial security or investment product associated with a Dow Jones index, respectively with an index created to mirror a Dow Jones index, (e.g. an exchange-traded index fund), or insofar as they are linked to said indices or are intended to track the same. The foregoing will apply insofar as no separate, written agreement has been concluded with Dow Jones for this purpose.

Effective as of: \_\_\_\_ June \_\_\_\_ 2018