

General Terms and Conditions audeoSoft GmbH staffITpro Web (OnSite)

Responsible for the content: audeoSoft GmbH, Kreuzberger Ring 15, 65205 Wiesbaden, Germany +49(0)611/580440 hereinafter referred to as audeoSoft.

§ 1. Definitions

- (1) **staffITpro WEB:** is a tool for data processed technical assistance for recruiting of employed staff and freelance IT specialists. staffITpro WEB consists of client and server installation. The server installation is installed on the server of the customer. The client installations are installed on customer's user PCs. For both variants, customer will be provided with installation routines. The customer thus assumes full operation of the staffITpro WEB server. The term staffITpro WEB always refers to total package – i.e. including acquired additional services / modules. The technical conditions as set out in the document [Technical Requirements for staffITpro WEB \(OnSite\)](#) shall apply.
- (2) **Additional services / modules:** In addition to the basic package audeoSoft offers staffITpro WEB fee-based additional services / modules. These include, for example, smartCV and TAPI function. Further details are set out in the product descriptions in [staffITpro WEB additional services and modules \(OnSite\)](#). The purchase of additional services/modules is optional

§ 2. Scope

- (1) All deliveries and services provided by audeoSoft GmbH (hereinafter referred to as audeoSoft) in the context of purchased staffITpro WEB and optional additional services and modules are subject to these terms and conditions, the service descriptions and price lists for the respectively ordered service. This applies even if customer uses contrary or deviating terms and even if audeoSoft has not expressly objected to these terms.
- (2) These terms and conditions shall also apply to future transactions between the parties.

§ 3. Conclusion of Contract and Adjustments

- (1) All offers are not-binding and without obligation to audeoSoft, unless they are expressly designated as binding or contain specific terms of acceptance. audeoSoft will accept orders or contracts within fourteen days after receipt.
- (2) The conclusion of the contract and other agreements become binding only after written confirmation by audeoSoft. This also applies to any alteration, addition or specification of these contract terms and associated attachments and descriptions.
- (3) For a period of three months from date of the purchase contract for staffITpro WEB audeoSoft is obliged, upon request of the customer, to provide a contract for support and software maintenance on the presently valid conditions (see attachment "staffITpro WEB Support and Software Maintenance (OnSite) "). The start of the maintenance contract and billing period depends on the date of delivery of staffITpro WEB.

- (4) In the event that between the acquisition of staffITpro WEB or the actual completion of a preliminary agreement on support and software maintenance and the beginning of the actual maintenance a period of more than two months should lapse, reference is made to the fact that the commencement or resumption of support and software maintenance requires the implementation of an update to be paid is required.
- (5) Otherwise both parties are free to conclude such contracts.

§ 4. Subject of Contract

With the written confirmation of the purchase agreement by audeoSoft and the receipt of payment the customer is entitled to use the product staffITpro WEB as set out in the attachment [staffITpro WEB products and licenses](#) for permanent use and the agreed additional services / modules such as “smartCV” or “Software maintenance and support” to be paid for at the indicated prices. The conditions and functionalities described are to be understood as service descriptions and not as guarantees. A guarantee is only granted if expressly stated as such.

§ 5. audeoSoft Services in case of staffITpro Purchase

- (1) audeoSoft will provide purchaser with an installation routine to install staffITpro WEB on the server of the purchaser. The software is delivered within 7 work days after written confirmation of the purchase agreement by audeoSoft and receipt of payment by audeoSoft.
- (2) The installation of staffITpro WEB on the server is performed by the customer on its server. The corresponding client software comes as an electronic manual in German, other languages are available for download.
- (3) Agreed additional services are available according to the respective terms of reference “[staffITpro Additional services and modules \(OnSite\)](#) or [staffITpro WEB support and software maintenance \(OnSite\)](#)).

§ 6. Rights of use

- (1) staffITpro WEB (software and manual) is protected by copyright. audeoSoft is exclusive owner of the rights and shall remain the owner of the exclusive rights to use staffITpro WEB, unless expressly agreed otherwise.
- (2) staffITpro WEB is sold to the purchaser for an indefinite period of time. For this purpose, a simple, unlimited right for nontransferable use is granted. Any other use of the program – in particular for commercial purposes – for example, Application Service Providing, Software as a Service, leasing or free transfer to third parties, and the related supply via download is expressly excluded.
- (3) The customer may reproduce staffITpro WEB, if the respective copying is necessary for the use of the software. Necessary reproduction shall include in particular the installation on the hardware, as well as loading it into memory and the running of the program.
- (4) In case purchaser should use staffITpro WEB to an extent which exceeds the rights of use acquired qualitatively (in regard to the type of permitted use) or quantitatively (in terms of the number of the acquired Licenses) (see contract), he will immediately acquire the necessary rights of use. In case of failure to do so, audeoSoft will take available legal steps.

- (5) The regulations contained in this section shall bind the parties according to the law of obligations.
- (6) If the purchaser should buy optional services and modules or additional programming services (see § 12), the provisions on rights of use for these services shall apply.

§ 7. Cooperation of Purchaser

The operation of the services takes place at purchaser's place of business. The necessary technical requirements are set out in the attachment [Technical Requirements for staffITpro WEB \(OnSite\)](#) and are to be provided by purchaser in time before installation. The designated attachment becomes part of this contract

§ 8. Transferability

- (1) The purchaser may transfer staffITpro WEB on a permanent basis to third parties, provided the third party agrees to the continued validity of these terms and will confirm acceptance to purchaser. For this purpose, the purchaser shall keep safe these [Terms and Conditions of audeoSoft GmbH staffITpro WEB \(OnSite\)](#), and present them to the new user for information prior to the transfer
- (2) In case of transfer purchaser shall inform audeoSoft on the transfer without delay stating the name of the new user and his address. Upon request of audeoSoft the transfer of all possibly produced data storages and documentation, as well as the deletion of data on the systems of the purchaser and the continued validity of the contract terms is to be proven to audeoSoft.
- (3) After the transfer the right of the purchaser to use staffITpro WEB will expire.
- (4) The purchaser may not transfer staffITpro WEB to third parties if there is reasonable suspicion, that the new user will violate the terms and conditions, especially by making unlawful copies.
- (5) For each violation the purchaser will be obliged to pay a contractual penalty in the amount of the full purchase price of the version he has acquired and to compensation of any damage resulting from the infringement. However, the compensation of audeoSoft is not limited to this amount. Proof of a higher damage is reserved.

§ 9. Decompilation and Program Changes

- (1) The reengineering of the entrusted program code into other code forms (decompilation) as well as other kinds of reverse engineering of the different development steps of the software (reverse engineering) including program changes is not permitted. A program change is also to be seen in each access to the database structure. The information recoverable from the software may only be used to the extent necessary to achieve interoperability (§ 69e Copyright Act).
- (2) The removal of any copy protection or similar protective mechanisms is strictly prohibited. Only if the copy protection impairs or prevents the interference-free use of the software this protective mechanism may be removed by audeoSoft and, if audeoSoft was not successful with troubleshooting although requested by customer. Purchaser bears the burden of proof for the impairment or prevention from trouble-free usability caused by the protection mechanism.

- (3) Copyright notices, serial numbers and other program identification features may not be removed or changed under any circumstances.

The database structure of staffITpro WEB is protected by copyright. Any tampering or disclosure of the database structure of staffITpro WEB, which is not authorized by audeoSoft is prohibited. This explicitly includes the direct reading and writing of areas of the staffITpro WEB database. For direct reading and writing of database areas of the staffITpro WEB database audeoSoft provides the software API as additional module to be paid for.

§ 10. Purchaser's Obligations regarding due Care and Information

- (1) The purchaser is obliged to prevent unauthorized access to the program, the license key for activation of the software as well as the documentation by appropriate measures.
- (2) The purchaser will keep possibly created or provided data storages in a safe place protected against unauthorized access by third parties and will strictly instruct his staff to comply with the terms of this agreement and respect the copyright. In particular, purchaser will instruct his staff not to make any unauthorized copies of the program or the user manual.
- (3) If the purchaser becomes aware of any violation of these regulations, he is obliged to assist in the investigation, in particular inform audeoSoft thereof immediately.

§ 11. Payment Agreements and Payment Terms

- (1) Rates and billing periods are set out in attachment "staffITpro WEB products and licenses". Offers are for commercial use only. All prices quoted are exclusive of VAT. All payments are to be provided in advance and in euros.

The payment of fees for recurring additional services / modules (e.g. staffITpro WEB support and software maintenance) are to be made monthly on the 1st of the month by direct debit or recurring debit via credit card. Should the withdrawal fail due to lack of funds or due to other reasons which audeoSoft is not responsible for, audeoSoft shall be entitled to charge to purchaser a lump sum fee of 20 € for bank fees per individual case.

- (2) Invoices are payable immediately upon receipt.

§ 12. Additional Programming Services

audeoSoft offers a choice of programming services in the field of staffITpro WEB – including, for example: data migration, customization style sheets, adaptations to the internet job market (smartCV) and reports. Therefore, audeoSoft will agree with purchaser a written documentation on programming services (hereinafter called "programming services") stating the programming work to be created. The creation of the respective description of the subject matter to be created may be billed in individual cases. audeoSoft shall submit to purchaser a written quote including all cost for the work to be provided before starting to work. audeoSoft will start with the programming work after a written agreement with purchaser has been concluded. In addition, the following regulations apply:

- (1) Both parties shall designate a project manager *programming service* as well as an alternate. Should the respective project manager not be available, the associated proxy must be available. The representative must be informed of the last state of the work and continue the project if necessary.
- (2) If one of the parties should find out that the agreed programming work raises questions or, if changes are required to achieve or secure the required outcome for audeoSoft, the parties obligate themselves to answer respective questions regarding programming work within 2 work days at the latest whereas audeoSoft will check change requests with regard to their realization, effects on agreed due dates and compatibility with the other services. The processing of change requests is subject to the obligation to pay remuneration. Purchaser will be notified shortly by audeoSoft if compensation will be due for the service and will perform the test in this case only after consent of purchaser to implement the payable review process. If purchaser should not order the review process within two work days after notification the request for a change request will no longer be processed. In case the change request should the services rendered up to now the staff responsible for the project will possibly stop current processing work upon mutual agreement and will only continue after decision on the further actions. Otherwise, the parties will continue with the performance of the services agreed upon up to the date on which the parties will have agreed in writing on the change request as if the change request would not have been claimed. The parties will establish the requested changes in a jointly approved change agreement in writing. Possibly agreed upon deadlines will be extended by the downtime and possibly by the time audeoSoft needs to organize the restart of the work after downtime and to provide the necessary resources. If the change request should be turned down or an agreement should not be achieved thereon, the programming work will be continued on the basis of the previous agreements considering an adjustment of deadlines because of possible downtimes caused by the change request procedure.
- (3) audeoSoft shall provide the programming services for acceptance in accordance with the time schedule agreed upon. Purchaser shall check during acceptance whether the service has been provided in accordance with contract. The programming services rendered by audeoSoft are performed in accordance with contract if they are free of material defects or defects in title. Partial acceptance is not admissible unless the parties will expressly agree thereto in a special agreement.
- (4) Purchaser shall start to test the functions of the programming service by suitable acceptance tests within 3 days after delivery and first instruction. Any detected defects in the programming services will be notified in writing by purchaser within a period of maximum 7 days after start of the acceptance tests describing the defect and its effect as detailed as possible. Minor defects that do not affect the function and use of the programming services do not hinder the acceptance. In as far as defects are existent that hinder acceptance audeoSoft will repair those without delay and will declare the service ready for acceptance again. The cost of such repeated acceptance will be borne by each contract partner himself. The contract parties agree that the acceptance of the programming services requires written form and has to be recorded in a mutually signed acceptance protocol. However, the programming services shall be deemed to be accepted – even without formal declaration of acceptance – if purchaser has used the programming services for more than 3 weeks without notifying any defect.

Defects of the programming services (material defect and defects in title) will be repaired by audeoSoft within the liability period of one year starting with the acceptance upon request by customer. Customer's warranty claims are in the first place limited to repair without delay by audeoSoft – whereas audeoSoft shall be free to deliver a replacement. If the repair or delivery of a replacement should fail customer may claim a reduction of the remuneration after he has set a suitable addition period of time or he may terminate the agreement with respect to the programming service. Defects regardless of any type have to be notified to audeoSoft in writing per fax +49 (0) 611/5804411 or per mail. audeoSoft has to be given a most detailed and reproducible description of the defect to be able to verify the existence of the defect with suitable effort. Purchaser will describe his problem as detailed and precisely as possible to enable the

hotline reconstruct it. audeoSoft may require from customer at any time a detailed, verifiable description of the defect in writing with the pertaining screen shots. If necessary, audeoSoft will send to purchaser a program file with protocol functions. Purchaser agrees already now to use this program file and to send the generated protocols to audeoSoft without any changes. audeoSoft will start to work on the repair of the defect in the software within the hotline hours Monday to Friday from 08:30 a.m. to 17:30 p.m. (except on public holidays in Germany, Hesse as well as on 24.12. and 31.12. of each calendar year from 08:30 a.m. to 12:00 p.m. (if these days do not fall on a Saturday or Sunday) within 4 hours after having received the defect message. The problem is prioritized by the audeoSoft team. In case the repair of the defect should be delayed due to customer's lack of compliance with its obligations to cooperate (e.g. defect description is inaccurate, defect not verifiable) audeoSoft shall be free of any responsibility for the delay.

§ 13. Price Adjustments

Upon agreement on any additional modules or services to staffITpro WEB with a maturity of more than 4 months audeoSoft is entitled, in case of changes in data center costs, personnel costs and other costs to adjust the remuneration for contractual services. Such a price adjustment is possible for the first time, 12 months after conclusion of the contract and only twice a year. AudeoSoft will inform purchase of the change at least 4 weeks prior to the effective date in writing. If the price increase should exceed the previous price by more than 10%, the purchaser may terminate the respective contract with a notice period of 1 month before the end of a calendar month. In this case, the previous prices continue to apply until the contract is terminated.

§ 14. Arrears and Compensation

- (1) If Purchaser should come into arrears with his payments, interest at the rate of 8 percent above the respectively valid base rate will be due.
- (2) If purchaser should come into arrears with his payments for recurring services (e.g. support and software maintenance) for two consecutive months or with a significant portion of the remuneration or in a period extending over more than two months, with the payment of a sum that amounts to the remuneration for two months, audeoSoft shall be entitled to terminate this service without notice and to claim immediately a lump sum of 40% of the remaining monthly remuneration agreed for the remaining contract term. Proof of a higher or lower damage is reserved to the parties.
- (3) Purchaser may only set off against claims of audeoSoft if he holds a final title. Purchaser may only claim a right of retention as far as claims under this contract are concerned.

§ 15. Investigation and Obligation to Complain

- (1) The purchaser will test staffITpro WEB including documentation within 5 work days after installation. This applies in particular to the completeness of the installation, the documentation and the function of basic program functions. Detected defects or which are detectable have been notified to audeoSoft within 5 additional work days in writing by mail or fax.

- (2) Defects of any kind have to be notified to audeoSoft immediately after their discovery in writing by fax 9 0611/5804411 or by mail. . AudeoSoft has to be given a most detailed and reproducible description of the defect to be able to verify the existence of the defect with suitable effort. Purchaser will describe his problem as detailed and precisely as possible to enable the hotline reconstruct. audeoSoft may require from customer at any time a detailed, verifiable description of the defect in writing with the pertaining screen shots. If necessary, audeoSoft will send to purchaser a program file with protocol functions. Purchaser agrees that he is willing to use that program file and to send the generated files unchanged to audeoSoft for repair of the defect. audeoSoft will start to work on the repair of the defect in the software within the hotline hours Monday to Friday from 08:30 a.m. to 17:30 p.m. (except on public holidays in Germany, Hesse as well as on 24.12. and 31.12. of each calendar year from 08:30 a.m.to 12:00 p.m. (if these days do not fall on a Saturday or Sunday) within 4 hours after having received the defect message. The problem is prioritized by the audeoSoft team.
- (3) Defects that are not detected in the context of the described investigation, must be notified within 5 work days after discovery in accordance to the requirements set out in 12.1.
- (4) In the case of a breach of customer's obligation of examination and notification staffITpro WEB shall be deemed to be accepted regarding the relevant defect. In case the defect solution should be delayed due to customer's lack of compliance with its obligations to cooperate (e.g. defect description is inaccurate, defect not verifiable) audeoSoft shall be free of any responsibility for the delay.

§ 16. Warranty

- (1) staffITpro WEB has the agreed quality, suitable for the contractually agreed use, otherwise for standard use , and has the usual quality for this kind of software. Despite all the care of audeoSoft it is not possible according to the state of the art, to create software that works perfectly under all conditions. Any malfunction of the software resulting from hardware defects, environmental conditions, operating errors, interference with the database structure or the like by purchaser, is not considered as a defect. Any negligible reduction of quality is not considered. The description of the software does not include an assurance of functionalities.
- (2) Defects of the software (material defects and defects in title), including the user manual shall be resolved by audeoSoft within the warranty period of one year beginning with the installation, upon notification by the purchaser.
- (3) Purchaser's warranty claims are in the first place limited to immediate repair or delivery of a replacement which audeoSoft is free to choose. In case of failure of the repair or replacement, the purchaser may, after a reasonable additional period claim reduction of payment or withdraw from the contract.

§ 17. Liability, Limitation of Liability, Force Majeure

- (1) Claims for damages or reimbursement of expenses are based without regard to the legal nature of the claim on this clause.
- (2) audeoSoft shall not be liable for lost profits, lost savings, and other indirect or consequential damages.
- (3) audeoSoft shall be liable only for intent and gross negligence, unless a breach of a major contractual duty is concerned, violation of life, body or health or for the lack of quality specifications or warranties.

- (4) In case of violation of major contractual obligations audeoSoft's liability is restricted to typical, foreseeable damages. In case of slight negligent violations of the contract liability is limited to a maximum amount of 5,000 € per claim, and a total maximum amount of 15,000 € under this contract. Liability under the product liability law remains unaffected (14 ProdHG).
- (5) audeoSoft is released from the obligation to pay compensation if and to the extent that the non-fulfilment of obligations is the result of circumstances of force majeure. Circumstances of force majeure such as war, strikes, turmoil, storms, floods, other natural disasters and other circumstances that are beyond audeoSoft's control (especially water leaks, power outages and disruption of data carrying lines).

§ 18. Third Party Rights

audeoSoft shall defend customer for two against all claims, which are derived from a culpable infringement of an industrial property rights or copyright by licensed material used according to contract and shall reimburse customer for all cost and damage claims resulting therefrom, provided customer has notified audeoSoft of such claims without delay in writing and all rights to defensive measures and settlement agreements have been reserved. If such claims have been raised or are expected to be raised, audeoSoft may at its own expense modify or replace the purchased item. This also applies to any third-party claims against purchase if purchaser has procured a single license to a third party under this agreement.

For additional programming services (see § 12), the corresponding period begins with the acceptance.

§ 19. Term and Termination of Additional Modules and Services

- (1) If for additional modules or services a minimum period has been agreed with purchaser, then the contract shall renew for a further 12 months after expiry of the minimum term if the contract is not terminated 3 months prior to the expiration of the term. The right to termination applies to both parties.
- (2) If a contract for recurring services is concluded for an indefinite period, the contract may be terminated for the first after a period of 12 months with a period of 3 months in writing by fax or mail.
- (3) If additional services are ordered or canceled individually, this does not affect the contractual term of the others services ordered. The right of termination for cause remains is unaffected.

§ 20. Secrecy, Confidentiality

The contracting parties will undertake all necessary steps to keep confidential all items (documents, information) disclosed to them before or during the performance of the contract, that are subject to copyright or contain business secrets or that are designated as confidential also beyond the end of this contract, unless they are known to the public without violation of confidentiality obligations. The contracting parties will keep these items safe and secure so access of third parties is excluded.

§ 21. Final provisions

- (1) Changes or additions to this agreement shall only be effective if they have been completed in writing or confirmed mutually.
- (2) The law of the Federal Republic of Germany under exclusion of the UN Sales Convention (CISG) shall apply.
- (3) Place of performance for all services is the registered office of audeoSoft.
- (4) If the contract partner is a merchant for all legal disputes such court shall have exclusive jurisdiction which is competent for the place of business of audeoSoft.

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