General terms and conditions for soft-nrg Development GmbH

Version: 01-2016

Scope, regulatory sections

The following general terms and conditions for soft-nrg Development GmbH (hereinafter **"soft-nrg"**) apply to all deliveries and services provided by soft-nrg to companies (§ 14 para. 1 German Civil Code BGB), merchants, legal entities under public law and special funds under public law (hereinafter **"the customer"**). The goods and services offered by soft-nrg are not aimed at consumers, in the sense of § 13 of the German Civil Code.

They are covered by the following regulatory sections:

Part A: General provisions
Part B: Special provisions regarding the licensing of standard software
Part C: Special provisions regarding software maintenance and care
Part D: Special provisions regarding the service soft-messenger

The customer's general terms and conditions are not applicable, unless soft-nrg expressly agrees to their validity in writing. Soft-nrg's general terms and conditions shall also apply if soft-nrg carries out deliveries or services without reservation in the knowledge that these conflict with or deviate from the general terms and conditions.

A.   General provisions

1.   Offer, contract conclusion

1.1.   Offers provided by soft-nrg are non-binding and represent an invitation to the customer to make a binding purchase through soft-nrg. The order signed by the customer is binding and soft-nrg can accept this within four (4) weeks.

1.2.   The contract generally takes effect once the customer receives a written order confirmation from soft-nrg, however no later than the point at which soft-nrg provides the relevant deliveries and/or services.

1.3.   The scope of the deliveries and/or services usually depends on the order confirmation from soft-nrg or the relevant service specification (hereinafter **"service certificate"**).

2.   Prices, remuneration, expenses

2.1.   The prices agreed are generally listed in the order confirmation or the relevant service certificate from soft-nrg.

2.2.   The prices quoted by soft-nrg shall be understood as subject to any applicable statutory value added tax.

2.3.   Any packaging and/or delivery costs, insurance costs or costs related to travel and sustenance will be billed separately.

2.4.   Any travel or cancellation costs incurred by soft-nrg due to the customer failing to adhere to or cancelling appointments shall be borne by the customer, even if in certain cases soft-nrg agreed to bear the costs of the relevant journey.

3.   Payment conditions, offsetting ban

3.1.   Soft-nrg's invoices are payable upon receipt by the customer or from the date stated on the service certificate.

3.2.   If the customer defaults on payment, soft-nrg is entitled to make use of its statutory claims and rights, in particular the right to claim interest on delayed payments and other potential damages.

3.3.   The customer is not entitled to reclaim payments through counter-claims or claims against soft-nrg, unless such counter-claims are undisputed or legally determined.

4.   Deliveries and services

4.1.   soft-nrg's deadlines for deliveries and services take effect no earlier than upon receipt of soft-nrg's order confirmation or service certificate. The deadlines are only binding if explicitly indicated on the order confirmation or service certificate.

4.2.   Events of force majeure entitle soft-nrg to postpone deliveries or services for the duration of the issue. If soft-nrg is unable to provide deliveries or services for a long period of time, at least for a period of three months, due to events of force majeure, then it shall be relieved of its obligation to render services. Events of force majeure include all circumstances for which soft-nrg is not responsible or those which make it impossible or unreasonably difficult for soft-nrg to render services (e.g. a strike, political lockouts, operational disturbances or delays in material procurement). If soft-nrg is relieved of its obligations to provide the service, the customer is entitled to withdraw from the contract. In this case, soft-nrg is liable for damages, in accordance with point 7.

4.3.   If, after concluding the contract, the customer is subject to a substantial deterioration of financial circumstances or if soft-nrg becomes aware of such, and this jeopardises a claim to remuneration, then soft-nrg is entitled to deny the obligation to perform services until the customer fulfils their contractual obligations or provides collateral. All other applicable rights and claims, in particular statutory retention rights that are held by soft-nrg remain unaffected by this.

5.   Risk transfer

5.1.   Deliveries provided by soft-nrg are ex works or from soft-nrg's warehouse. Risk is transferred to the customer as soon as the contract object is transferred to the person responsible for transporting it. This also applies to transportation by soft-nrg (or its vicarious agents).

5.2.   In the case of shipping, soft-nrg can arrange for transportation insurance if the customer so wishes, at the customer's own expense and benefit. The customer shall notify soft-nrg and the relevant shipping company immediately in writing of any shipping damages.

6.   Material defects and defects of title

6.1.   The customer must inspect the item immediately after delivery in order to determine whether there any defects. The customer shall document and notify soft-nrg of any defects immediately in writing and in an understandable manner no later than within one week of discovery. Non-apparent defects shall be reported to soft-nrg no later than within one year of delivery. If the customer neglects the abovementioned limitation periods, the item will be considered as accepted and the customer will lose their defect rights.

6.2.   If the contract object proves to be defective, the customer may, at his/her discretion, demand that the defect be repaired or the delivery of a non-defective item instead.

6.3.   soft-nrg can deny the chosen rectification if it would only be possible at an unreasonable cost or if it otherwise proves unreasonable. The customer may arrange for the rectification of the issue by soft-nrg over the telephone, in writing or through electronic means.

6.4.   If soft-nrg is unable to rectify the issue by a set deadline, which allows for at least two attempts at rectification, then the customer is entitled to set a final extended deadline, which allows for at least two attempts at rectification. The attempt to provide rectification is not considered a final failure after the second attempt, as soft-nrg is free to determine the number of attempts within the extended periods.

6.5.   The right of the customer to withdraw from the agreement and to the payment of compensation in lieu of services shall not be available should the defect be merely insignificant. In the case of a withdrawal from the agreement, soft-nrg has the right to demand appropriate compensation for the benefits accrued by the customer from past use of the item until rescission.

6.6. soft-nrg is also entitled to rectify defective software by providing the customer with updates, patches or new versions of the software (hereinafter **"updates"**), either by sending these to the customer or informing them that they are available for download over the internet.

6.7. The customer is not entitled to any rights for defects caused by customer or third party handling of the delivered product in a manner that is not compliant with the product regulations (e.g. with regards to storage, use or processing).

6.8. The customer's claims have a limitation period of one year from delivery.

6.9. In the event a defect notified by the customer does not exist or is not caused by soft-nrg's services, soft-nrg shall be entitled to invoice the customer for effort and expenses for soft-nrg's analysis and activities according to its current price lists, as well as for any travel and sustenance costs incurred.

6.10. If a third party asserts claims against the customer for the infringement of property rights regarding soft-nrg's deliveries and services, then the customer shall inform soft-nrg of this immediately and allow soft-nrg to handle the defence against these claims as far as possible. The customer will give soft-nrg all reasonable support in this respect.

7. Liability

7.1. soft-nrg shall be liable without restriction for intent or gross negligence as well as for damages arising from injury to life, body or health.

7.2. With the exception of the unrestricted liability for damage to life, body and health (point 7.1), soft-nrg is only liable for simple negligence in cases of significant infringements of contractual obligations, i.e. obligations which make the proper execution of the contract possible in the first place or whose breach jeopardises the achievement of the purpose of the contract and upon which the customer regularly relies. However, liability shall be limited to the damage foreseeable for the particular contract. Liability for simple negligence on the part of soft-nrg shall be ruled out.

7.3. With the exception of the unrestricted liability for damage to life, body and health (point 7.1), liability for indirect and unforeseeable damage, such as damage resulting from defects or lost profit, shall be excluded in the event of simple acts of negligence.

7.4. Any further liability for compensation other than that intended by these general terms and conditions without consideration of the legal nature of the asserted claim, is excluded.

7.5. The limitations or exclusions to liability, stated in points 7.2, 7.3 and 7.4, do not apply to the guarantees accepted in writing by soft-nrg or to liability in accordance with the German product liability law.

7.6. The customer is responsible for the regular backup of data. In the event of data loss caused by soft-nrg, soft-nrg is only liable for the appropriate costs associated with restoring data from the back-up copies to be produced by the customer.

7.7. In the event that soft-nrg's liability is excluded or limited, the same shall also apply to the personal liability of our employees, staff members, co-workers, representatives and vicarious agents.

8. Retention of title

8.1. If the transfer of property to the customer forms part of the contract, the items delivered remain property of soft-nrg until full payment is received. The customer is not entitled to seize or transfer ownership of the item delivered by soft-nrg. If a third party nevertheless acquires any rights to the security collateral, the customer will assign any and all resulting rights in and to the security collateral to soft-nrg. soft-nrg shall accept the assignment.

8.2. The customer is obligated to inform soft-nrg immediately if a third party seizes, acquires or otherwise obtains the delivered item.

9. Duration, termination of contracts

9.1. Insofar as the contractual rights and obligations have been agreed within the framework of a continuous obligation and it is not otherwise agreed in the respective service certificate or these general terms and conditions, the contract in question shall run for an indefinite period of time, however at least three (3) full calendar years, and may be terminated, subject to a notice period of three (3) calendar months at the end of the third (3rd) or any subsequent calendar year.

9.2. The parties' right to terminate on serious grounds shall remain unaffected.

9.3. In order to take effect, termination shall take place in writing and is to be declared in the form of a registered letter.

10. Place of jurisdiction, applicable law

10.1. For all disputes arising from or connected with this business relationship, Aschheim/Dornach shall be the sole place of jurisdiction.

10.2. Only the laws of the Federal Republic of Germany shall apply, except for conflict regulation of international private law. The provisions of the UN Sales Convention are excluded.

11. Written form clause, severability clause

11.1. Amendments, supplements to the contract, as well as collateral agreements, require written form. This shall also apply to any waiver of the stipulation requiring written form. If the contract requires written form, this shall not be upheld by submitting the declaration in text form (for example by email).

11.2. If one of the provisions of the general terms and conditions becomes ineffective, the validity of the remaining provisions shall remain unaffected.

B. Special provisions regarding the licensing of standard software

In addition to the general terms and conditions described in part A, the following provisions apply to the long-term or temporary licensing of standard software. If the provisions in part B deviate from the regulations set out in part A, then the provisions in part B will take precedence.

The regulations in section II apply to the licensing of software on a long-term basis. The regulations in section III apply to the licensing of software on a temporary basis. Section I applies to the licensing of software on both a long-term and a temporary basis. In the event that the provisions of section I conflict with those in section II or section III, the provisions in section II or section III will take precedence.

Section I - General provisions

1. Subject matter of the contract

1.1. In exchange for the remuneration mentioned in the service certificate (referred to as **"system note"** in part B), soft-nrg shall license the software mentioned in the system note in an executable format.

1.2. The functional scope of the software is stated on the system note and the programme description.

1.3. Installation of and training in the software is not owed within the context of the software license. These special advisory or performance services are to be agreed separately and take place in accordance with part C.

2. Licensing the software

2.1. The software will only be provided in an executable format (object code); the source code is not the subject matter of this contract. The software will be delivered on a data carrier or, insofar as agreed in the system note, the information required for the customer to download the software will be provided.

2.2. Along with the software, the customer will receive the documentation stated in the system note, which unless otherwise agreed upon in the system note, is generally stored on the data carrier used to deliver the software in print format, or, in the event that it is agreed that the software will be downloaded from the internet, the documentation will also be available for download from the internet.

Section II - Long-term software license

1. Granting of rights

1.1. Upon full payment of the remuneration, soft-nrg grants the customer the non-exclusive, long-term right to use the software in connection with its business operation on the number of workplaces stated in the system note. Accordingly, the customer is entitled to install, load and run the software on the maximum number of workplaces stated in the system note.

1.2. The customer is entitled to make a reasonable number of backup copies of the software and conventional data backups.

1.3. The customer is not entitled to lease the software to third parties without express written consent from soft-nrg.

1.4. The customer is advised that the software is equipped with copy-protection and a license key.

1.5. It is not permitted to change or remove the copyright or other trademarks on the software, documentation or data carrier.

1.6. The statutory rights granted to the customer remain unaffected.

2. Material defects and defects of title

2.1. A material defect is if the product, i.e. the software and its documentation, is not in the condition agreed upon in the contract or if it is not suitable for the purpose agreed upon in the contract. The contractual condition is stated on the system note and the programme description.

2.2. A defect of title is if the customer has not been effectively granted or is not able to procure the rights required for the contractual use of the software.

2.3. Insofar as the customer changes or allows third parties to change the software, all claims for material or title defects are excluded, unless the customer proves that the faults are not due to this and that the fault analysis and rectification by soft-nrg are and could not be affected by this.

2.4. Compensation for use, in accordance with part A, point 6.5, shall be determined on the basis of a 4-year total use period for the software, whereby an appropriate deduction will be made for the software compromised due to the defect that led to rescission.

Section III - Temporary software license

1. Lease fees

1.1. The customer is obligated to pay the agreed lease fees on a monthly basis for the duration of the license agreement.

1.2. The lease fee is to be paid by the customer on the first (1st) working day of each calendar month for that calendar month. If the customer does not pay the lease fee in full by the abovementioned date, then the customer defaults on payment.

1.3. If the contract begins before the fifteenth (15th) calendar day of a calendar month, the customer shall pay half of the agreed lease fee. If the contract begins on or after the fifteenth (15th) calendar day of a calendar month, then the customer does not need to pay a lease fee for that calendar month.

1.4. If soft-nrg has to back-post collected lease fees, the following applies: For the first back-posting, the customer will receive a reminder by email and shall be obligated to pay the outstanding lease sum within one week upon receipt of the reminder, as well as a bank and processing fee of € 12.00, to soft-nrg. If the customer does not react to this request, then soft-nrg is authorised to terminate the contract with immediate effect for exceptional reasons. All other rights and claims held by soft-nrg remain unaffected by this.

2. Granting of rights

2.1. soft-nrg grants the customer the non-exclusive right to use the software in connection with its business operation on the number of workplaces stated in the system note. Accordingly, the customer is entitled to install, load and run the software on the maximum number of workplaces stated in the system note.

2.2. The right to use is denied in the event that and for as long as the customer does not or does not fully pay the amount stated in the system note, whereby soft-nrg retains its payment claim in full.

2.3. The customer is entitled to make a reasonable number of backup copies of the software and conventional data backups.

2.4. The customer is not entitled to make the software accessible to third parties or to pass it on, sell or lease it to third parties, either for a long time or temporarily.

2.5. The customer is advised that the software is equipped with copy-protection and a license key.

2.6. It is not permitted to change or remove the copyright or other trademarks on the software, documentation or data carrier.

2.7. The regulations in point 2 also apply to updates.

2.8. The statutory rights granted to the customer remain unaffected.

3. The customer's custodial obligations

3.1. The customer is obligated to take appropriate precautions to prevent unauthorised access to the software and the documentation by third parties.

3.2. The customer shall store the original data carrier in a location that is safe from unauthorised access and shall inform his/her employees about upholding the conditions agreed in the contract.

3.3. If one of the customer's employees infringes soft-nrg's rights to the licensed software, the customer is obligated to assist soft-nrg, at its own expense and to a reasonable extent, in resolving the copyright infringement. The customer is obligated to inform soft-nrg about such infringing activities immediately.

4. Material defects and defects of title

4.1. soft-nrg guarantees that the software and its documentation shall be provided for the duration of the license agreement and in the contractually agreed condition. The contractual condition is stated on the system note and the programme description.

4.2. A defect of title is if the customer has not been effectively granted or is not able to procure the rights required for the contractual use of the software.

4.3. All of soft-nrg's guarantee obligations are limited to the latest versions of the licensed software published by soft-nrg, i.e. potentially the latest update provided by soft-nrg.

4.4. Insofar as the customer changes or allows third parties to change the software, all claims for material or title defects are excluded, unless the customer proves that the faults are not due to

this and that the fault analysis and rectification by soft-nrg are not and could not be affected by this.

4.5.   The customer's right to terminate the contract, in accordance with § 543 para. 2, p. 1 no. 1 of the German Civil Code, for if the customer is not fully or partly, or not on-time, granted use of the software, or if it is revoked, is excluded unless soft-nrg is considered to have failed to rectify the defect.

4.6.   The customer's claims due to software defects have a limitation period in accordance with statutory provisions.

5.   **Updates and hotline**

5.1.   The customer is entitled to receive updates from soft-nrg for the duration of the license agreement. The customer is obligated to make use of the updates provided by soft-nrg.

5.2.   The customer is entitled to make use of the dedicated hotline for reporting defects and for user support for the duration of the license agreement. This hotline is accessible by phone or email from Monday to Friday from 08:00 until 17:00, except on legal and local holidays at soft-nrg's location. This right is revoked if the customer defaults on their lease fee payments.

6.   **Duration and termination**

6.1.   The license agreement is concluded for an unlimited period of time. Upon expiry of the minimum contract duration of thirty-six (36) full calendar months, the contract may be terminated by either party with a notice period of three (3) months before the end of the calendar year.

6.2.   The right of both parties to terminate for exceptional reasons remains unaffected. Serious grounds include if (i) the customer exceeds their user right, (ii) the customer makes the software accessible to third parties or passes it on to third parties, (iii) the customer defaults or partly defaults on lease fee payments, or (iv) other sections of these general terms and conditions where serious grounds are explicitly mentioned.

7.   **Obligations upon contract termination**

7.1.   Upon terminating the contract, the customer is obligated to cease using the software.

7.2.   The customer is obligated, upon termination of the license agreement, to send a deactivation request to soft-nrg.

7.3.   Upon termination of the license agreement, the customer is obligated to return all original data carriers along with the printed documentation given to him/her. The software and documentation are to be given to soft-nrg at the customer's expense. Shipping is to be insured at the customer's reasonable expense.

7.4.   The customer's obligation to return also includes the complete and definitive deletion or destruction of all available copies of the software and the documentation.

C.   Special provisions regarding software maintenance and care

In addition to the provisions described in part A and part B, the following special provisions regarding the care and handling of software apply. If the provisions in part C deviate from the regulations set out in part A and/or part B, then the provisions in part C will take precedence.

1.   **Services**

1.1.   soft-nrg will provide the following care services for the long-term licensed software (contract software) stated in the service certificate (referred to in part C as **"care note"**), charged according to the fees in the care note:

-   Delivery of more advanced versions of the software
-   Individual rectification of software defects
-   Hotline

1.2.   Furthermore, by a separate order and with separate fees, soft-nrg can offer the customer the following services, in addition to those stated in point 1.1:

-   Installation
-   Monitoring tools
-   Instructing and training employees
-   Software adjustments

1.3.   These services require that the customer pays the agreed remuneration and that they operate the contract software, with the software and hardware environment mentioned in the care note, at the place stated in the care note.

2.   **Delivery of newer, more advanced versions**

2.1.   soft-nrg licenses the customer with new, more advanced versions of the contract software (**"new versions"**).

2.2.   New versions may rectify defects in previous versions and/or change available functions and/or improve or introduce new functions.

2.3.   Delivery to the customer takes place by delivering the object code, including documentation of the changed functions, on a data carrier or, insofar as agreed in the system note, by providing the information required to download it from the internet. The source code is not the subject matter of the contract.

2.4.   soft-nrg grants the customer the right to use the new version of the contract software to the same extent as was authorised for the original contract software (cf. also part B, section II).

2.5.   Insofar as is required for new versions, the customer is responsible for making the required adjustments to their hardware and software environment, in particular with regards to new versions of the operating system or other third party software required to use the new version.

2.6.   The customer shall introduce the new version delivered to him/her immediately and inspect it for any defects. Part A point 6.1 remains unaffected.

3.   **Individual rectification of software defects**

3.1.   soft-nrg shall rectify the defects reported by the customer within an appropriate period of time. The customer's defect claims and rights remain unaffected.

3.2.   This service requires that the customer makes use of the new version of the contract software within a reasonable period of time after its release by soft-nrg.

3.3.   A material defect is considered if the contract software or its documentation, through contractually normal use, does not work as described and this has more than an insignificant effect on its suitability for the contractually agreed use.

3.4.   soft-nrg shall rectify the defect reported by you through your selection of one of the following measures:

-   Transfer of a patch/bug fix that the customer installs,
-   Transfer of a new version of the programme, which does not contain the defect,
-   Providing the customer with instructions on how to deal with the problem or rectify the defect. The customer shall implement the instructions using competent personnel, insofar as reasonably feasible.
-   On-site rectification of the defect only takes place if none of the above-mentioned measures is successful.

4.   **Hotline**

soft-nrg shall provide a hotline for the reporting of defects and for user support. This hotline can be accessed by dialing the number stated in the care note from Monday to Friday from 08:00 until 17:00, except on legal and local holidays at soft-nrg's location.

5.   **Central customer contact partners**

5.1. The customer will set up a central contact point for soft-nrg, which is staffed with at least one employee, who has a deep understanding of the software stated in the programme note (administrator knowledge).

5.2. This central customer contract point coordinates the customer's queries (user support queries and defect reports). At this contact point, the customer's employees shall first analyse the problem (user problem or defect) and, insofar as a solution is already known, solve it internally.

5.3. Only when a problem cannot be solved at the customer's central contact point shall the customer's central contact point reach out to soft-nrg. Any other of the customer's employees are not authorised to request the services set out in this maintenance contract.

5.4. The customer's central contact point works in close cooperation with soft-nrg, especially to solve user problems and analyse defects. It assists the care services in particular by:

- Coordinating information from soft-nrg with the customer's individual departments,
- Transferring test data and test cases,
- Disclosing circumstances, under which defects have arisen.

6. Remote access

In order to allow the quick rendering of services and avoid on-site operations, the customer shall, at their own expense, set up and maintain remote access that meets soft-nrg's requirements.

7. Remuneration

7.1. The lump sum remuneration for care and the base period are stated on the care note or the order confirmation.

7.2. Remuneration for additional services are, insofar as they are not specified on the care note, based on soft-nrg's relevant applicable price list.

7.3. All prices and sums are to be understood as exclusive of the relevant statutory value added tax.

7.4. soft-nrg shall calculate any additional travel costs and travel times, as well as sustenance costs in accordance with the applicable prices set out in point 7.2 for any necessary on-site operation.

7.5. The sum is to be paid on the first (1st) working day of the base period. The remuneration for additional services is to be paid upon receipt of the invoice.

7.6. If the contract period does not begin on the first (1st) working day of the agreed base period, the remuneration shall be calculated proportionally on a daily basis for the period starting from when the contract began until the start of the calendar base period. It is to be paid at the start of the contract period.

7.7. soft-nrg is entitled to adjust the agreed remuneration at the beginning of the base period to match its current price list. soft-nrg will inform the customer of any change in remuneration at least two (2) months in advance. If the remuneration for care increases by more than ten percent (10%), the customer is, within one month of the increase demand taking effect, entitled to terminate the contract at the end of the current base period.

8. Material defects and defects of title

8.1. Material defects will be rectified during the maintenance contract period, within the context of the rectification of defects set out in point 3.

8.2. A defect of title is if the customer has not been effectively granted the rights required for the contractual use of care service.

D. Special provisions regarding the service soft-messenger

In addition to the provisions described in part A, part B and part C, the following special provisions regarding soft-messenger apply. If the provisions in part D deviate from the regulations set out in part A, part B and/or part C, then the provisions in part D will take precedence.

1. Subject matter of the contract

1.1. soft-nrg shall grant the customer use of the service soft-messenger, hereinafter called **"service"**.

1.2. The functional scope is stated on the system note and the programme description.

2. Laws and data protection

2.1. The customer shall ensure and take care that the content sent through using the service does not infringe upon any applicable law or provision of competition law and that personal rights are upheld. The customer is liable and responsible for any infringement. soft-nrg is not obligated to check the content prior to sending.

2.2. soft-nrg treats the data sent by the customer confidentially. All data shall be processed, deleted and/or destroyed in accordance with legal provisions.

2.3. The customer shall ensure that the access data provided by soft-nrg is not made available to third parties. soft-nrg is not liable for damages arising from the insufficient protection of access data. In the event of misuse or suspected misuse, soft-nrg reserves the right to provide information about the author of the message if requested to do so by authorities, courts or persons.

3. Billing

3.1. After rendering services and no later than by the end of the month, soft-nrg shall present an invoice of the sent items. Invoices shall be sent by email in a verified format. The customer shall provide a valid email address for this purpose.

3.2. The customer shall provide soft-nrg with a direct debit authorisation and shall ensure that the account contains the necessary funds. In the event of a failed direct debit procedure, the customer remains liable to make payment and shall pay soft-nrg a sum of 5.00 EUR plus VAT for processing.

4. Termination

The service can be terminated by either party subject to the termination notice of four (4) weeks before the end of the calendar month.

5. System failure and notification

5.1. The customer is aware that it is not possible to safeguard 100% against technical system failure. If there is a system failure in transmission, the network operator/provider's messaging system or any other hard or software for which soft-nrg is not responsible, liability is excluded. This particularly applies to cases of force majeure, such as power cuts, computer failures due to viruses etc.

5.2. soft-nrg cannot guarantee that individual messages will be sent, as these are dependent on the relevant network operator/provider. It is furthermore not possible to guarantee notification at a specific point in time, as this dependent on the capacity of the mobile networks/email servers and the recipient's individual circumstances.