

TERMS OF CONTRACT FOR THE CREATION OF SOFTWARE

§ 1 Subject matter of the contract

1.1 The provider shall create the software according to the state of the art and in accordance with the specified requirements.

1.2 The provider shall appoint a project manager, the customer a responsible contact person. These can make decisions or bring about decisions without delay. The project manager shall record decisions in writing. The contact person shall be available to the provider for necessary information. The provider shall be obliged to involve the contact person if the execution of the order requires this.

1.3 If required, the provider shall draw up a written time and work schedule at the beginning of the work, considering the agreed deadlines, and update it accordingly. Based on this plan, the provider shall regularly inform the customer about the status of the work.

1.4 Insofar as the customer's requirements do not yet result from the task as set out in the contract, the provider shall detail them with the customer's support, draw up a process sequence for them and submit them to the customer for approval. The customer shall approve them in writing within 14 days if they comply with the contract. The specification is a binding guideline for further work.

The process flow is binding and changes can lead to a supplementary offer (see § 2)

If the provider recognizes that the customer's task is faulty, ambiguous or not executable, the provider will immediately inform the customer in writing. Thereupon the customer decides immediately on the further procedure.

1.5 The customer shall ensure that personnel is available for testing during the development of the software.

§ 2 Changes in scope of work

2.1 If the customer wants to change his requirements, the provider is obliged to agree to this, as far as it is reasonable for the provider, especially regarding the effort. Insofar as the realization of a change request (usually > 1/2 day) affects the terms and conditions of the contract, the provider can demand an appropriate adjustment of the terms and conditions of the contract, in particular an increase in the remuneration or the postponement of deadlines.

At the request of the Provider, the Customer shall detail his request for change to the extent that the task is detailed in the contract. The provider will take over this task at the request of the customer against payment according to expenditure.

2.2 Agreements on changes must be set out in writing.

2.3 The provider shall immediately assert the request for amendment of the contract. The customer shall object immediately if he does not agree with the requested contract adjustments.

§ 3 Place of work, obligations to cooperate of the customer

3.1 The development is carried out exclusively by the provider.

§ 4 Approval

- 4.1** After completion of the software, the customer must accept it by means of a final functional test.
- 4.2** Minor defects that do not affect the function and usability of the software do not prevent the acceptance if the provider promises immediate remedy of the defect (within three days at the latest).
- 4.3** The provider shall set a deadline for acceptance. If a deadline set expires without result, acceptance shall be deemed to have been granted.
- 4.4** The customer may not refuse the acceptance due to minor defects.
- 4.5** If substantial lack are present, the provider commits itself to eliminate the lack immediately. The acceptance is to be repeated within one week after notification of the defect removal.

§ 5 Rights of use

- 5.1** The provider grants the customer an exclusive, unlimited, transferable, irrevocable right to use the software. The right of use applies to all known types of use including editing, copying and publication.

§ 6 Warranty

- 6.1** The provider shall assume a warranty of 3 months after acceptance for the App running without functional errors in accordance with the requirements listed in the specifications and for the App corresponding to the recognized state of the art at the time of acceptance and not exhibiting any defects.
- 6.2** The customer shall only be entitled to warranty claims if reported defects are reproducible or can be identified by machine-generated outputs. The customer must report defects in writing in a comprehensible form, stating the information useful for the detection of the defect.
- 6.3** The customer has to support the provider as far as necessary in the elimination of defects.
- 6.4** If the provider does not meet its obligation to remedy defects within a reasonable period of time set by the customer, the customer may take the necessary measures to remedy the defects himself or have them taken by third parties at the expense and risk of the provider.
- 6.5** Only after a failure of the supplementary performance by the provider a right of withdrawal or reduction is granted.
- 6.6** The warranty period of 3 months shall commence upon approval of the software.
- 6.7** The warranty expires for software which the customer modifies independently or by third parties or in which he intervenes in any other way.

GENERAL TERMS AND CONDITIONS

§ 1 Payment / terms of payment / offsetting

1.1 Insofar as services are charged at a fixed price, the terms of payment set out and signed in the offer shall apply.

1.2 Insofar as services are invoiced on a time and material basis, the Supplier's price list valid at the beginning of each month shall apply. The Provider may invoice on a monthly basis. The provider's employees shall record the daily working hours in a list, stating the item processed and the type of activity, and shall submit this list with the invoice. The customer can request to see the list at any time.

1.3 All receivables are due upon invoicing and are payable within 7 days without deductions.

1.4 The customer is - without prejudice to his right to refuse payments due to missing or defective consideration - not authorized to withhold payments. He may only offset against claims which have been legally established or which have been recognized by the provider.

§ 2 Confidentiality of the provider/data protection

2.1 The provider is obliged to maintain secrecy for an unlimited period with regard to business and trade secrets and all information designated as confidential which becomes known to him in connection with the execution of the order. Disclosure to persons not involved in the execution of the order may only take place with the written consent of the customer.

2.2 Each contracting party may process data of the other party automatically within the scope of order processing.

§ 3 Disturbances in the provision of services

3.1 If a cause for which the provider is not responsible, including strike or lockout, impairs compliance with the deadline, the provider may demand an appropriate postponement of the deadlines. If the expenditure increases and the cause lies in the customer's area of responsibility, the provider can also demand compensation for his additional expenditure.

§ 4 Liability of the Provider for infringements of property rights

4.1 The provider is liable for ensuring that its services within the European Community are free of third-party industrial property rights and indemnifies the Customer from all corresponding claims of third parties.

4.2 If a third party asserts against the customer that a service would violate his rights, the customer shall notify the provider immediately. The customer shall leave it to the provider - and, if applicable, to the provider's suppliers - to defend the asserted claims at the cost of the provider to the extent permissible.

4.3 If a service infringes the rights of third parties, the provider shall, at its own discretion and expense

- provide the customer with the right to use the service or
- design the service free of industrial property rights or
- take back the service at the invoice price (less an appropriate compensation for use).

Claims for damages remain unaffected in the event of fault on the part of the provider - within the scope of § 5 AB.

4.4 In accordance with the above provisions, the provider is entitled to prohibit the customer from using the service if claims are asserted against him under industrial property rights.

§ 5 Liability of the provider for damages

5.1 The provider is only liable for damages due to defects of title, for intent and gross negligence (except liability for bodily injury). For slightly negligent breaches of contract, he is only liable up to EURO 2.500,00 € as well as for damages that must typically be expected in connection with a software development order. Any further liability is excluded - regardless of the legal basis - in particular for data loss and consequential damages. Liability is also excluded if the customer has insurance coverage.

5.2 Claims for damages arising from impossibility or delay of performance, from positive violation of claims arising from fault upon conclusion of the contract and from tortious acts are excluded both against the provider and against his vicarious agents and assistants, unless intentional or grossly negligent conduct is involved.

5.3 Contractual claims for damages of the customer against the Provider shall become statute-barred one year after the claim arises, unless shorter statutory limitation periods exist.

§ 6 Other

6.1 German law shall apply. To the extent that the UN Convention on Contracts for the International Sale of Goods, which has been incorporated into German law, would be applicable to foreign customers, this shall be excluded.

6.2 Changes and additions to these terms and conditions shall be set out in writing.

6.3 These terms and conditions shall apply exclusively; any terms and conditions of the business partner which conflict with or deviate from these terms and conditions shall not apply unless the provider has expressly agreed to their validity in writing. The terms and conditions shall also apply if the provider provides the service to the customer without reservation in the knowledge that the customer's terms and conditions contradict or deviate from the following terms and conditions.

6.4 The delivered contractual items remain the property of the provider until payment of the contract price and settlement of all claims arising from the business relationship, as well as any claims still arising in connection with the contractual items as reserved goods.

The inclusion of individual claims in a current invoice or the striking of a balance and its recognition shall not cancel the reservation of title.